

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	
	)	Chapter 11
	)	
EXTRACTION OIL & GAS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11548 (CSS)
	)	
<i>Reorganized Debtors.</i>	)	(Jointly Administered)
	)	
	)	Hearing Date: April 15, 2021 at 10:00 a.m. (ET)
	)	Response Deadline: March 26, 2021 at 4:00 p.m. (ET)

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REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 1559 FILED BY  
SWAN EXPLORATION, LLC

**THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON APRIL 15, 2021.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

The above-captioned reorganized debtors (the "Reorganized Debtors") hereby object to Proof of Claim No. 1559 (the "Proof of Claim") filed by Swan Exploration, LLC ("Swan Exploration"). A true and correct copy of the Proof of Claim is attached as **Exhibit A**. In support of this objection, the Reorganized Debtors rely upon the declaration of Allyson Boies attached as **Exhibit B**. In further support, the Reorganized Debtors respectfully represent as follows:

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



### **PRELIMINARY STATEMENT**

1. In the Proof of Claim, Swan Exploration asserts entitlement to a general unsecured claim arising from an alleged breach of a document entitled “Purchase and Sale Agreement” and dated November 8, 2016 (the “Draft Contract”). The Proof of Claim should be disallowed and expunged. *First*, the Proof of Claim is time-barred because Swan Exploration failed to seek recovery within three years of the alleged breach of contract. *Second*, the Draft Contract is not an enforceable contract because there was never a meeting of the minds.

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Reorganized Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”), to the entry of a final order by the Court in connection with this objection to the extent it is later determined that the Court, absent party consent, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 3003 and 3007, and Bankruptcy Local Rule 3007-1.



## **FACTUAL BACKGROUND**

### **I. THE PARTIES TO THE DRAFT CONTRACT**

5. Extraction Oil & Gas, Inc. (“Extraction”) is one of the Reorganized Debtors. On June 14, 2020, Extraction and the other Reorganized Debtors filed voluntary petitions for relief under the Bankruptcy Code. *See* Voluntary Petition [D.I. 1] at 1.

6. Swan Exploration, upon information and belief, is a Colorado limited liability company.

### **II. NEGOTIATION OF THE DRAFT CONTRACT**

7. In 2016, Swan Exploration retained Oil & Gas Asset Clearinghouse (“Clearinghouse”) to sell certain of its oil and gas assets. Ex. B at ¶¶ 3–4. To that end, Extraction and Swan Exploration negotiated a potential Purchase and Sale Agreement (the “Draft Contract”) throughout October 2016. *Id.* at ¶ 3. After the exchange of initial drafts, Extraction sent Clearinghouse a red-line of the then-current version of the Draft Contract. *Id.* at ¶ 5.

8. On November 3, 2016, Extraction wrote Clearinghouse “to ascertain the status of Swan Exploration’s review of the marked-up Draft Contract.” *Id.* at ¶ 6. Extraction informed Swan Exploration that Extraction hoped to execute the Draft Contract on November 7, 2016. *Id.* In response, Clearinghouse wrote that “our comments were minimal. Most of the changes had to do with items that pertain to operations, which Swan doesn’t have.” *See id.* (Ex. 1).

9. On November 4, 2016, Clearinghouse circulated a revised version of the Draft Contract and said “the majority of Seller’s revisions relate to incorrect references to Operator items and a few cleanup items.” *Id.* (Ex. 2).

10. On November 7, 2016, Extraction sent Clearinghouse an allocation schedule. *See id.* (Ex. 3). The allocation schedule was expressly “based on the sheet [Clearinghouse] sent [to Extraction] back in early October,” and, therefore, had no royalty carveout similar to the one excerpted below. *Id.*

11. On November 8, 2016, at 8:31 a.m. (MT), Clearinghouse sent to Extraction an email with a newly edited redline of the Draft Contract. *See id.* (Ex. 4). As relevant here, the Draft Contract added the following language:<sup>2</sup>

Section 1.01 Agreement to Sell and Purchase. Subject to and in accordance with the terms and conditions of this Agreement, Buyer agrees to purchase the Assets from Seller, and Seller agrees to sell the Assets to Buyer. It is Seller’s intent to convey to Buyer a seventy-five percent (75%) net revenue interest (“NRI”) in the Assets, except when Seller’s present NRI is less than such seventy-five percent (75%) or when regulatory obligations limit the percentage of override royalty interest Seller may retain, resulting in an NRI above seventy-five percent (75%). Seller shall retain an overriding royalty interest in each Asset, as applicable, where any NRI is in excess of such seventy-five percent (75%) and as permitted by law.

12. Shortly after Clearinghouse sent this revised document, at 9:43 a.m. (MT), Extraction requested (and received) an executable version of the Draft Contract. *See id.* at ¶ 10.

### **III. EXTRACTION INFORMS SWAN EXPLORATION IT DOES NOT AGREE TO THE TERMS OF THE DRAFT CONTRACT**

13. On November 8, 2016, at 10:55 a.m. (MT), Extraction sent Clearinghouse a signed copy of the Draft Contract signature page. *Id.* at ¶ 11. Within a half-hour of this transmission, however, “Extraction discovered that Swan Exploration had materially altered the terms of the deal when it changed the royalty language excerpted above.” *Id.*

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<sup>2</sup> *Id.* (Ex. 6).

14. Consequently, at 11:31 a.m. (MT), Extraction wrote Clearinghouse “to inform it that Extraction had discovered the changes, that they significantly altered material terms of the deal, and Extraction had not agreed (and would not agree) to the changes.” *Id.* at ¶ 12. Thus, Extraction advised that “we have some more negotiating to do,” highlighting issues with material terms of the Draft Contract. *Id.* (Ex. 8). Patrick M. DaPra, Vice President of Negotiated Transactions for Clearinghouse, responded that he would call Extraction after lunch. *Id.*

15. Around 2:45 p.m. (MT), Extraction called Clearinghouse. *See id.* at ¶ 13. Extraction “informed [Clearinghouse] that the Draft Contract, as written, was not the agreed upon deal and Extraction did not agree to the revised Draft Contract.” *Id.*

16. Nevertheless, and despite Extraction’s repeated declarations that it did *not* agree to the Draft Contract, Swan Exploration executed the Draft Contract and caused it to be recirculated to Extraction. *See id.* at ¶ 15. Pointedly, Swan Exploration’s circulation of an executed signature page from the Draft Contract occurred several hours after Extraction’s rejection of the Draft Contract. *See id.* at ¶¶ 12–15.

#### **IV. THE PARTIES’ MUTUAL NON-PERFORMANCE, NON-ENFORCEMENT, AND DISREGARD OF THE DRAFT CONTRACT**

17. On November 9, 2016, notwithstanding Swan Exploration having signed the Draft Contract’s signature page after Extraction informed it did not agree to the terms of the Draft Contract, Clearinghouse wrote that Swan Exploration was willing to continue negotiating material terms of the Draft Contract. *See id.* (Ex. 9). Thus, from November 10 to November 14, Swan Exploration and Extraction continued to negotiate the material terms of the Draft Contract. *Id.* at ¶ 16. Swan Exploration and Extraction, however, were never able to come to mutually agreeable terms for the purchase and sale of the assets. *Id.*

18. The parties' subsequent dealings confirm that neither Swan Exploration nor Extraction considered the Draft Contract to be enforceable or valid. "For example, Extraction did not deliver—and Swan Exploration did not seek—the deposit referenced in section 2.02 of the Draft Contract during the negotiations from November 10 to November 14." *Id.* at ¶ 17. Similarly, the parties did not close on the Closing Date (November 22, 2016), and Swan Exploration did not terminate the supposedly enforceable Draft Contract on the Closing Date. *See id.* Indeed, Swan Exploration did not even perform its own duties under the Draft Contract; for example, Swan Exploration did not prepare a statement of the estimated Purchase Price Adjustments at least three calendar days prior to the Closing Date, as required by Section 10.03 of the Draft Contract. *Id.*

19. In sum, "[n]either Swan Exploration nor Extraction ever tendered any performance under the Draft Contract." *Id.* at ¶ 17. Indeed, "[o]ther than a single letter in December 2016 and Swan Exploration's activity in the above-captioned bankruptcy case, neither Swan Exploration nor Extraction have ever attempted to enforce the Draft Contract." *Id.* at ¶ 18. "Extraction never intended to agree to the revised material terms of the Draft Contract, and Extraction was ignorant of this language when it executed the Draft Contract. Extraction never treated the Draft Contract as if it was an enforceable contract." *Id.* at ¶ 19.

20. Nevertheless, despite never entering an enforceable contract, or even attempting to perform under that alleged contract, Swan Exploration filed the Proof of Claim on August 14, 2020. *See* Ex. A at 1. In the Proof of Claim, Swan Exploration asserts a general unsecured claim in the amount of \$1,232,677 for an alleged breach of the Draft Contract. *See id.* at 2. That amount is composed of a principal amount of "\$950,000 plus interest at the statutory rate from December 14, 2016 until June 14, 2020 . . . ." *Id.* at 5.

### **RELIEF REQUESTED**

21. The Reorganized Debtors request that the Court enter the Proposed Order attached as **Exhibit C**, (i) sustaining the objection to the Proof of Claim, (ii) disallowing and expunging the Proof of Claim for all purposes, and (iii) authorizing the Reorganized Debtors' Court-appointed claims and noticing agent to reflect the disallowance and expungement of the Proof of Claim on the official Claims Register.

### **BASIS FOR OBJECTION**

22. Swan Exploration's Proof of Claim is unenforceable—and should be disallowed and expunged—for two independently sufficient reasons. *First*, the applicable statute of limitations bars Swan Exploration from recovering for Extraction's alleged breach of contract. *Second*, the Draft Contract is not an enforceable contract because the Draft Contract was not executed at a time when the parties shared mutuality of assent.

#### **I. LEGAL STANDARD**

23. "Not all claims have equal merit; neither will the filing of a proof of claim automatically result in payment of that claim from the estate." *Torres v. Asset Acceptance, LLC*, 96 F. Supp. 3d 541, 544 (E.D. Pa. 2015). Instead, once "a proof of claim has been filed, the court must determine whether the claim is 'allowed' under [section] 502(a) of the Bankruptcy Code." *Id.* (quoting *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 449 (2007)). "Upon objection, the bankruptcy court decides whether to allow or disallow the claim." *Id.* "One reason for disallowance is that 'such claim is unenforceable against the debtor . . . under any agreement or applicable law.'" *Id.* (quoting 11 U.S.C. § 502(b)(1)).

## II. THE STATUTE OF LIMITATIONS BARS THE PROOF OF CLAIM

24. The Colorado<sup>3</sup> statute of limitations required Swan Exploration to seek recovery within three years after the alleged breach of contract. Swan Exploration's failure to do so means the Court should disallow the Proof of Claim. *See Torres*, 96 F. Supp. 3d at 544 (“[I]f as of the date of the debtor’s bankruptcy filing a creditor’s claim was barred by the statute of limitations, then the claim must be disallowed upon objection by a party in interest.”) (quoting *In re Keeler*, 440 B.R. 354, 360 (Bankr. E.D. Pa. 2009)).

25. “[U]nder Colorado law the statute of limitations for contract claims is three years.” *Tapps v. Greyhound Bus Lines, Inc.*, No. 15-CV-02650-RBJ, 2016 WL 6212521, at \*5 (D. Colo. Oct. 1, 2016) (citing Colo. Rev. Stat. § 13-80-101(1)(a)). Thus, contract claims must be brought within three years after accrual, and “a cause of action accrues on the date both the injury and cause are known or should have been known by the exercise of reasonable diligence.” *Id.* at \*4, n. 2 (citing Colo. Rev. Stat. § 13-80-108(1)).

26. Here, Swan Exploration unquestionably seeks recovery for an alleged breach of contract. *See* Ex. A at 2. According to Swan Exploration, the alleged breach occurred on **December 14, 2016**. *See id.* at 5 (“As a result of Debtor’s breach of the PSA, Debtor owes Creditor \$950,000 plus interest at the statutory rate from December 14, 2016 . . . .”). Extraction filed its voluntary petition for bankruptcy more than three years later, on **June 14, 2020**. *See* Voluntary Petition [D.I. 1] at 1. Likewise, the Proof of Claim was filed more than three years after the alleged breach, on **August 14, 2020**. *See* Ex. A at 1.

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<sup>3</sup> The Draft Contract contains a Colorado choice of law provision, but, because the Draft Contract is not enforceable, the choice of law provision is not binding. *See Hite v. Lush Internet Inc.*, 244 F. Supp. 3d 444, 451 (D.N.J. 2017) (“It would be anomalous to apply a contract’s choice of law provision unless it has first been ascertained that the disputed contract exists.”). Nevertheless, Colorado is the state with the most significant relationship to the parties’ dispute, and, therefore, Colorado law governs. *See Falkenberg Capital Corp. v. Dakota Cellular, Inc.*, 925 F. Supp. 231, 235 (D. Del. 1996) (applying Delaware’s “most significant relationship” choice of law test and concluding Colorado law applied to a breach of contract claim).

27. As a result, the Proof of Claim is time-barred by Colorado's statute of limitations. This, in turn, renders the claim unenforceable under applicable law, and the Court should disallow and expunge the Proof of Claim.

### **III. THE DRAFT CONTRACT IS NOT AN ENFORCEABLE CONTRACT**

28. Even assuming, *arguendo*, that Swan Exploration's claim were timely, the Court should nevertheless disallow the Proof of Claim because the Draft Contract is not an enforceable contract. At no point did the parties ever have a meeting of the minds on the Draft Contract's material terms.

29. The Colorado Supreme Court has repeatedly explained that a "fundamental contractual requirement is that of certainty. The minds of the parties must have met. Where one party may have intended a certain obligation, and the other party intended a different one . . . no contract results." *Wilson v. Perkins*, 363 P.2d 492, 494 (Colo. 1961) (*Newton Oil Co. v. Bockhold*, 176 P.2d 904, 908 (Colo. 1946)).

30. A Third Circuit district court applying Colorado<sup>4</sup> law under circumstances identical to the instant case has held that no enforceable contract was created for lack of mutual assent. *See Capital Assocs. Int'l, Inc. v. Knoll Int'l, Inc.*, No. CIV. A. 90-5518, 1991 WL 158959, at \*1 (E.D. Pa. Aug. 14, 1991). "[T]he main issue for decision [was] whether as a matter of law a contract exist[ed] between the parties." *Id.*

31. Capital (plaintiff) and Knoll (defendant) had been negotiating "two transactions, a sale/leaseback and an assignment/lease." *Id.* "[D]uring these negotiations, Capital forwarded form documents to Knoll for its inspection and execution," along with a letter requesting return of the executed copies. *Id.* at \*1-2. Knoll was unwilling to sign the documents, and, "[a]fter

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<sup>4</sup> The court considered both Pennsylvania and Colorado law, concluded there was no conflict between the two, and applied the law of both jurisdictions. *Capital Assocs. Int'l, Inc.*, 1991 WL 158959, at \*1.

discussions on this point, Capital forwarded to Knoll revised documents,” but “Capital had failed to make the changes as requested by Knoll.” *Id.* at \*2. The parties then had a conference call, “after which ***Knoll both executed and forwarded the documents to Capital.***” *Id.* (emphasis added). However, “***before Capital had executed the documents, Knoll informed Capital that it would not go forward with the deal.***” *Id.* (emphasis added).

32. In its analysis, the court said it was “clear from the beginning [that] the parties specifically established joint-execution as the manner or procedure of communicating their intent to be bound.” *Id.* at \*2. It was, therefore, dispositive that “[i]t was not until after Knoll gave notice . . . that Capital supplied Knoll with fully executed copies of the documents.” *Id.* at \*3. Furthermore, Knoll had “shown that the parties specifically established joint-execution as the manner of contract formation.” *Id.* Consequently, because Knoll’s execution of the documents was not a valid acceptance of an offer, “and ***since Knoll informed Capital of its decision not to go forward with the transaction before Capital signed the documents, there [could] be no contract as a matter of law.***” *Id.* (emphasis added) (citing *Stortroen v. Beneficial Fin. Co. of Colorado*, 736 P.2d 391, 393 (Colo. 1987)).

33. The same is true here. Although Extraction executed the Draft Contract, it did so without understanding Swan Exploration had materially altered the terms of the prior version of the Draft Contract. *See* Ex. B at ¶¶ 11, 19. Upon learning of these changes, Extraction immediately notified Swan Exploration that it did not (and would not) agree to the terms of the Draft Contract and that further negotiations were necessary. *See id.* at ¶¶ 11–13. The parties always intended joint-execution of the Draft Contract to be the sole manner of communicating their intent to be bound thereby.<sup>5</sup> ***Only after Extraction informed Swan Exploration of its decision not to go***

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<sup>5</sup> *See, e.g.*, Ex. B at ¶ 20 (testifying to this fact); Ex. A at 26 (contemplating execution of the Draft Contract); Ex. A at 28 (same); Ex. A at 29 (same); Ex. A at 30 (same); Ex. A at 43 (same); Ex. A at 45 (same).



*forward with the transaction did Swan Exploration sign the Draft Contract. See id.* at ¶¶ 11–14.

These circumstances did not give rise to an enforceable contract as a matter of law. *See Capital Assocs. Int’l, Inc.*, 1991 WL 158959, at \*3.

34. Indeed, the parties continued to negotiate the deal for an extended period of time after Extraction’s rejection of the material terms of the Draft Contract. *See* Ex. B at ¶ 16. During and after such negotiations, neither party took any action to perform under the Draft Contract. *Id.* at ¶ 17. Similarly, other than a single letter,<sup>6</sup> neither party made any effort to enforce the Draft Contract until Swan Exploration filed the Proof of Claim. *See id.* at ¶ 18.

35. Extraction informed Swan Exploration at least twice that it did not agree to the Draft Contract before Swan Exploration signed the Draft Contract. Consequently, no mutual assent existed between the parties, and the Draft Contract never became an enforceable contract as a matter of Colorado law. The parties’ own conduct confirms they did not consider the Draft Contract to be an enforceable contract. The Court, therefore, should disallow and expunge the Proof of Claim.

### **RESERVATION OF RIGHTS**

36. The Reorganized Debtors reserve the right to amend, modify, or supplement this objection upon response from any interested party.

### **NOTICE**

37. Notice of the hearing on the relief requested in this objection will be provided by the Reorganized Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as

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<sup>6</sup> After (1) Extraction rejected the revised Draft Contract, (2) the parties continued negotiating material terms of the Draft Contract, and (3) the purported Closing Date in the Draft Contract, Swan Exploration—on December 1, 2016—sent Extraction a letter concerning the Draft Contract. In the letter, Swan Exploration demonstrated, again, that the Draft Contract was not an enforceable contract; specifically, Swan Exploration purported to demand closing under the Draft Contract on a date other than the date identified in the Draft Contract. Alternatively, Swan Exploration demanded a deposit, again under terms different than those in the Draft Contract.

well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the U.S. Trustee for the District of Delaware; (b) the administrative agent under the Reorganized Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (c) the lenders under the Reorganized Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (d) the indenture trustee for the Reorganized Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (e) the holders of the Reorganized Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (f) the ad hoc group of holders of the Reorganized Debtors' preferred equity or, in lieu thereof, counsel thereto; (g) the United States Attorney's Office for the District of Delaware; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the state attorneys general for states in which the Reorganized Debtors conduct business; (k) the holders of the Disputed Claims; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors believe, in light of the relief requested, no other or further notice is needed.

### **CONCLUSION**

38. Swan Exploration improperly seeks to drain assets from the Reorganized Debtors and proper creditors. Swan Exploration has no justification for doing so. Swan Exploration's claim is either barred because of the statute of limitations or because the Draft Contract is not an enforceable contract. For the reasons stated, the Reorganized Debtors respectfully request that the Court disallow and expunge the Proof of Claim.

*[Remainder of page intentionally left blank]*

Dated: March 12, 2021  
Wilmington, Delaware

*/s/ Stephen B. Gerald*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>7</sup>**

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*Co-Counsel to Reorganized Debtors*

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<sup>7</sup> Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
	)	
EXTRACTION OIL & GAS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11548 (CSS)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	Hearing Date: April 15, 2021 at 10:00 a.m. (ET)
	)	Response Deadline: March 26, 2021 at 4:00 p.m. (ET)

**NOTICE OF REORGANIZED DEBTORS' OBJECTION TO PROOF  
OF CLAIM NO. 1559 FILED BY SWAN EXPLORATION, LLC**

TO: Swan Exploration, LLC  
3200 Southwest Freeway, Suite 1400  
Houston, Texas 77027

**PLEASE TAKE NOTICE** that the Reorganized Debtors have filed the **Reorganized Debtors' Objection to Proof of Claim No. 1559 Filed by Swan Exploration, LLC** (the "Objection") with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Objection seeks to alter your rights by disallowing and expunging your claim.

**PLEASE TAKE FURTHER NOTICE** that you are required to file a response to the Objection on or before **March 26, 2021 at 4:00 p.m. (ET)** with the Clerk of the Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801. At the same time, you must also serve a copy of the response upon the undersigned counsel for the Reorganized Debtors.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE, IF A RESPONSE IS FILED, A HEARING (THE "HEARING") ON THE OBJECTION WILL BE HELD ON APRIL 15, 2021 AT 10:00 A.M. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT**

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

OF DELAWARE, 824 NORTH MARKET STREET, 5<sup>TH</sup> FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

**PLEASE TAKE FURTHER NOTICE** THAT IF YOU FILE A RESPONSE TO THE OBJECTION, YOU SHOULD BE PREPARED TO ARGUE THAT RESPONSE AT THE HEARING. YOU NEED NOT APPEAR AT THE HEARING IF YOU DO NOT OBJECT TO THE RELIEF REQUESTED.

**PLEASE TAKE FURTHER NOTICE** THAT THE HEARING MAY BE CONTINUED FROM TIME TO TIME UPON WRITTEN NOTICE TO YOU OR AS DECLARED ORALLY AT THE HEARING.

*[Remainder of the page intentionally left blank]*

Dated: March 12, 2021  
Wilmington, Delaware

*/s/ Stephen B. Gerald*

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**WHITEFORD, TAYLOR & PRESTON LLC<sup>2</sup>**

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*Co-Counsel to Reorganized Debtors*

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<sup>2</sup> Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

# **EXHIBIT A**

## Fill in this information to identify the case:

Debtor Extraction Oil & Gas, Inc.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
(State)

Case number 20-11548

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

## Part 1: Identify the Claim

1. Who is the current creditor?	<u>SWAN EXPLORATION, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  SWAN EXPLORATION, LLC 3200 SOUTHWEST FWY., SUITE 1400 HOUSTON, TX 77027  Contact phone <u>866-539-0860</u> Contact email <u>AGURY@SWANENERGYINC.COM</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b>   Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	





**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>1232677.00</u>	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>BREACH OF NOVEMBER 2016 PURCHASE AND SALE AGREEMENT</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



## 12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check all that apply:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

## 13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

## Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/14/2020

MM / DD / YYYY

/s/Brandon Davis

Signature

Print the name of the person who is completing and signing this claim:

Name

Brandon Davis

First name

Middle name

Last name

Title

Chief Executive Officer

Company

Swan Exploration, LLC

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



Case 20-11548-CSS Doc 1827-2 Filed 03/12/21 Page 5 of 56  
KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 571-1791 | International (781) 575-2049

<b>Debtor:</b> 20-11548 - Extraction Oil & Gas, Inc. <b>District:</b> District of Delaware		
<b>Creditor:</b> SWAN EXPLORATION, LLC 3200 SOUTHWEST FWY., SUITE 1400 HOUSTON, TX, 77027 <b>Phone:</b> 866-539-0860 <b>Phone 2:</b> <b>Fax:</b> <b>Email:</b> AGURY@SWANENERGYINC.COM	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Creditor	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> BREACH OF NOVEMBER 2016 PURCHASE AND SALE AGREEMENT	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 1232677.00	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Brandon Davis on 14-Aug-2020 4:22:43 p.m. Eastern Time <b>Title:</b> Chief Executive Officer <b>Company:</b> Swan Exploration, LLC		

In re Extraction Oil & Gas, Inc. et al.

Case No. 20-11548 (CSS)

United States Bankruptcy Court for the District of Delaware

**Attachment to Proof of Claim of Swan Exploration, LLC**

Swan Exploration, LLC (the “Creditor”) entered into a Purchase and Sale Agreement dated November 8, 2016 with Extraction Oil & Gas, Inc. (the “Debtor”) for the purchase of various assets of the Creditor (the “PSA”). Attached as Exhibit A hereto and incorporated herein, is the PSA.

After Debtor executed the PSA, but prior to payment, Debtor breached its obligations under the PSA. Debtor failed to submit payment or take title to the assets. Section 2.02 of the PSA required Debtor to “Concurrently with the execution of this Agreement . . . deliver to Seller a performance guarantee deposit in the amount of ten percent (10%) of the Purchase Price.” Debtor also breached the PSA by failing to make the performance guarantee deposit (the “Deposit”). Pursuant to the terms of the PSA the Deposit was to be retained by Creditor as liquidated damages, if Debtor failed to perform under the PSA.

As a result of Debtor’s breach of the PSA, Debtor owes Creditor \$950,000 plus interest at the statutory rate from December 14, 2016 until June 14, 2020 (the “Petition Date”). As of Petition Date, the Debtor was obligated to the Creditor for \$1,232,677.

The Creditor reserves the rights (a) to file a claim or request for payment pursuant to Section 503(b) or Section 507(a) of the Bankruptcy Code and generally to make requests for payment of administrative expenses; and (b) to amend and/or supplement this Proof of Claim in any respect.

**EXHIBIT A**  
**TO**  
**ATTACHMENT TO PROOF OF CLAIM OF SWAN EXPLORATION, LLC**

**PURCHASE AND SALE AGREEMENT**

**BETWEEN**

**Swan Exploration, LLC,**

**a Colorado limited liability company**

**AS SELLER**

**AND**

**Extraction Oil & Gas, Inc.,**

**a Delaware corporation**

**AS BUYER**

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**EXHIBITS AND SCHEDULES**

Exhibit A – Subject Interests (Listing of Leases)

Exhibit B – Wells and Interests

Exhibit C – Allocated Values

Exhibit D – Assignment and Bill of Sale

Exhibit E – Executed AFE's

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into this 8<sup>th</sup> day of November, 2016, by and between Swan Exploration, LLC, a Colorado limited liability company (the "Seller"), and Extraction Oil & Gas, Inc., a Delaware corporation (the "Buyer"). Buyer and Seller are collectively referred to herein as the "Parties", and are sometimes referred to individually as a "Party."

### WITNESSETH:

WHEREAS, Seller is willing to sell to Buyer, and Buyer is willing to purchase from Seller, the Assets (as defined in Section 1.02), all upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual benefits derived and to be derived from this Agreement by each Party, Seller and Buyer hereby agree as follows:

### Article I Assets

Section 1.01 Agreement to Sell and Purchase. Subject to and in accordance with the terms and conditions of this Agreement, Buyer agrees to purchase the Assets from Seller, and Seller agrees to sell the Assets to Buyer. It is Seller's intent to convey to Buyer a seventy-five percent (75%) net revenue interest ("NRI") in the Assets, except when Seller's present NRI is less than such seventy-five percent (75%) or when regulatory obligations limit the percentage of override royalty interest Seller may retain, resulting in an NRI above seventy-five percent (75%). Seller shall retain an overriding royalty interest in each Asset, as applicable, where any NRI is in excess of such seventy-five percent (75%) and as permitted by law.

Section 1.02 Assets. Subject to Section 1.03, the term "Assets" shall mean all of Seller's right, title and interest, if any, in and to:

- (a) the leasehold estates in and to the oil, gas and mineral leases described or referred to in Exhibit A and any other oil, gas and mineral leases covering lands in the same sections of the governmental survey as the leases described in Exhibit A (the "Leases"), or lands pooled therewith; provided that all of the foregoing are subject to the limitations described in Exhibit A, which include depth limitations and excluded interests in particular Leases and wells (collectively, the "Subject Interests," or singularly, a "Subject Interest");
- (b) all rights incident to the Subject Interests, including, without limitation, all rights with respect to any pooled, communitized or unitized acreage by virtue of any Subject Interest being a part thereof, including all Hydrocarbon (as defined in Subsection (d) of this Section 1.02) production after the Effective Time (as defined in Section 2.04) attributable to the Subject Interests or any such pool or unit allocated to any such Subject Interest;

- (c) all easements, rights-of-way, surface leases, servitudes, permits, licenses, franchises and other estates or similar rights and privileges directly related to or used in connection with the Subject Interests (the "Easements"), including, without limitation, the Easements described or referred to in Exhibit A;
- (d) all personal property, equipment, fixtures, inventory and improvements located on or used in connection with the Subject Interests and the Easements or with the production, treatment, sale, or disposal of oil, gas or other hydrocarbons (collectively, "Hydrocarbons"), byproducts or waste produced therefrom or attributable thereto, including, without limitation, all wells located on the lands covered by the Subject Interests or on lands with which the Subject Interests may have been pooled, communitized or unitized (whether producing, shut in or abandoned, and whether for production, injection or disposal), including, without limitation, the wells described in Exhibit B, wellhead equipment, pumps, pumping units, flowlines, gathering systems, piping, tanks, buildings, treatment facilities, injection facilities, disposal facilities, compression facilities, and other materials, supplies, equipment, facilities and machinery (collectively, "Personal Property");
- (e) to the extent assignable, all contracts, agreements and other arrangements that directly relate to the Subject Interests, the Leases or the Easements, including, without limitation, production sales contracts, farmout agreements, operating agreements, service agreements and similar arrangements (collectively, the "Contracts");
- (f) all books, records, files, muniments of title, reports and similar documents and materials, including, without limitation, lease records, well records, and division order records, well files, title records (including abstracts of title, title opinions and memoranda, and title curative documents related to the Assets), contracts and contract files, correspondence, that relate to the foregoing interests in the possession of, and maintained by, Seller (collectively, the "Records"); and
- (g) all geological and geophysical data relating to the Subject Interests, other than such data prepared by Seller that is interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party, unless Buyer agrees to make payment. For purposes of this Agreement, "Third Party" means any person or entity, governmental or otherwise, other than Seller or Buyer, and their respective affiliates; the term includes, but is not limited to, working interest owners, royalty owners, lease operators, landowners, service contractors and governmental agencies.

Section 1.03 Excluded Assets. Notwithstanding the foregoing, the Assets shall not include, and there is excepted, reserved and excluded from the sale contemplated hereby (collectively, the "Excluded Assets"): (a) all trade credits and refunds and all accounts, instruments

and general intangibles (as such terms are defined in the Colorado Uniform Commercial Code), attributable to the Assets with respect to any period of time prior to the Effective Time; (b) all claims and causes of action of Seller arising from acts, omissions or events occurring prior to the Effective Time; (c) all rights and interests of Seller (i) under any policy or agreement of insurance or indemnity, (ii) under any bond, or (iii) to any insurance or condemnation proceeds or awards arising, in each case, from acts, omissions or events, or damage to or destruction of property, occurring prior to the Effective Time; (d) all Hydrocarbons produced from or attributable to the Subject Interests with respect to all periods prior to the Effective Time, together with all proceeds from the sale of such Hydrocarbons; (e) all claims of Seller for refunds of or loss carry forwards with respect to any taxes and refunds for amounts paid in connection with the Assets attributable to any period prior to the Effective Time; (f) all amounts due or payable to the Seller as adjustments to insurance premiums related to the Assets with respect to any period prior to the Effective Time; (g) all proceeds, income or revenues (and any security or other deposits made) attributable to the Assets for any period prior to the Effective Time; (h) all of Seller's rights and interests in geological and geophysical data prepared by Seller that are interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party, unless the Third Party consents or Buyer makes the required payment; (i) all data and other information that cannot be disclosed or assigned to Buyer as a result of confidentiality or similar arrangements under agreements with persons unaffiliated with Seller; (j) all audit rights arising under any of the Contracts with respect to any period prior to the Effective Time; and (k) all overriding royalty interests previously owned or recently created by Seller which shall be determined on or prior to Closing.

## **Article II**

### **Purchase Price**

Section 2.01 Purchase Price. The total consideration for the purchase, sale and conveyance of the Assets to Buyer is Buyer's payment to Seller of the sum of \$9,500,000.00 (the "Purchase Price"), as allocated and as adjusted in accordance with the provisions of this Agreement. The adjusted Purchase Price shall be paid to Seller at Closing (as defined in Section 10.01) by means of a completed federal funds wire transfer to an account designated in writing by Seller.

Section 2.02 Deposit. Concurrently with the execution of this Agreement by Buyer and Seller, Buyer shall deliver to Seller a performance guarantee deposit in the amount of ten percent (10%) of the Purchase Price (the "Deposit"). The Deposit shall be paid by Buyer to Seller by means of a completed federal funds wire transfer to the account of Swan Exploration, LLC. The wiring information will be supplied upon execution of this Agreement.

Section 2.03 Allocated Values. Buyer and Seller have agreed on the allocation of the Purchase Price among the Assets as set forth in Exhibit C attached hereto (the "Allocated Values"). Seller and Buyer agree that the Allocated Values shall be used to compute any adjustments to the Purchase Price pursuant to the provisions of Article III and Article IV.

Section 2.04 Effective Time. If the transactions contemplated hereby are consummated in accordance with the terms and provisions hereof, the ownership of the Assets shall be transferred from Seller to Buyer on the Closing Date (as defined in Section 10.01 below), and effective as of 7:00 a.m. Mountain time where the Assets are located on October 1, 2016 (the "Effective Time").

**Article III**  
**Title Matters**

Section 3.01 Examination Period. Following the execution date of this Agreement until 5:00 p.m., Mountain time in Denver, Colorado on the date that is fifteen (15) calendar days prior to the Closing of this Agreement (the "Examination Period"), Seller shall permit Buyer and/or its representatives (including Buyer's Environmental Consultant) to examine, at all reasonable times, in Seller's offices, all abstracts of title, title opinions, title files, ownership maps, lease files, contract files, assignments, division orders, operating and accounting records and agreements pertaining to the Assets insofar as same may now be in existence and in the possession of Seller, subject to such restrictions on disclosure as may exist under confidentiality agreements or other agreements binding on Seller or such data.

Section 3.02 Defensible Title and Permitted Encumbrances. For purposes of this Agreement, the term "Defensible Title" means, with respect to a given Asset, subject to and except for the Permitted Encumbrances (as defined in Subsection (e) of this Section 3.02):

- (a) as to each well shown on Exhibit B, such ownership by Seller during the productive life of the well that entitles Seller (and, after its purchase, Buyer) to receive not less than the percentage set forth in Exhibit B as Seller's "Net Revenue Interest" of all Hydrocarbons produced, saved and marketed from such well, all without reduction, suspension or termination of such interest throughout the productive life of such well, except for carried interests, production payments, reversionary interests or other changes in interest specifically set forth in Exhibit B;
- (b) as to each well shown on Exhibit B, such ownership by Seller during the productive life of the well that obligates Seller (and, after its purchase, Buyer) to bear not greater than the percentage set forth in Exhibit B as Seller's "Working Interest" of the costs and expenses relating to the maintenance, development and operation of such well, all without increase throughout the productive life of such well, except for carried interests, reversionary interests or other changes in interest specifically set forth in Exhibit B;
- (c) as to each Lease shown in Exhibit A:
  - i. the Lease covers the Net Leased Acres (defined as the gross acres covered by the Lease multiplied by lessor's fee mineral interest in those acres multiplied by Seller's Working Interest shown in Exhibit A in the Lease);
  - ii. Seller owns the Working Interest and Net Revenue Interest shown in Exhibit A as to all depths, unless otherwise indicated in Exhibit A;
  - iii. the primary term of each Lease not included in a currently producing spacing unit continues at least through January 1, 2018; and



- iv. is free and clear of all liens, encumbrances and defects in title.
- (d) The term "Permitted Encumbrances" shall mean any of the following matters to the extent the same are valid and subsisting and affect the Assets:
  - i. the Leases and Contracts;
  - ii. any (A) undetermined or inchoate liens or charges constituting or securing the payment of expenses that were incurred incidental to the maintenance, development, production or operation of the Assets or for the purpose of developing, producing or processing Hydrocarbons therefrom or therein, and (B) materialman's, mechanics', repairman's, employees', contractors', operators' liens or other similar liens or charges for liquidated amounts that are not delinquent;
  - iii. any liens for taxes and assessments not yet delinquent or, if delinquent, that are being contested in good faith in the ordinary course of business and for which any Seller has agreed to pay pursuant to the terms hereof or which have been prorated pursuant to the terms hereof;
  - iv. the terms, conditions, restrictions, exceptions, reservations, limitations and other matters contained in (including any liens or security interests created by law or reserved in oil and gas leases for royalty, bonus or rental, or created to secure compliance with the terms of) the agreements, instruments and documents that create or reserve to Seller its interest in the Assets; provided that such matters do not operate to reduce the Net Revenue Interests of Seller below those set forth in Exhibit B or increase the Working Interests of Seller above those set forth in Exhibit B without a corresponding increase in the Net Revenue Interests;
  - v. any obligations or duties affecting the Assets to any municipality or public authority with respect to any franchise, grant, license or permit and all applicable laws, rules, regulations and orders of any Governmental Authority (as defined in Section 4.02(b));
  - vi. any (A) easements, rights-of-way, servitudes, permits, surface leases and other rights in respect of surface operations, pipelines, grazing, hunting, lodging, canals, ditches, reservoirs or the like, and (B) easements for streets, alleys, highways, pipelines, telephone lines, power lines, railways and other similar rights-of-way on, over or in respect of property owned or leased by Seller or over which Seller owns rights-of-way, easements, permits or licenses, to the extent that same do not materially interfere with the oil and gas operations to be conducted on the Assets;

- vii. all lessors' royalties, overriding royalties, net profits interests, carried interests, production payments, reversionary interests and other burdens on or deductions from the proceeds of production created or in existence as of the date of this Agreement, whether recorded or unrecorded, provided that such matters do not operate to reduce the Net Revenue Interests of Seller below those set forth in Exhibit B or increase the Working Interests of Seller above those set forth in Exhibit B without a corresponding increase in the Net Revenue Interests;
- viii. preferential rights to purchase or similar agreements with respect to which (A) waivers or consents are obtained from the appropriate parties for the transaction contemplated hereby, or (B) required notices have been given for the transaction contemplated hereby to the holders of such rights and the appropriate period for asserting such rights has expired without an exercise of such rights;
- ix. required Third Party consents to assignments or similar agreements with respect to which (A) waivers or consents are obtained from the appropriate parties for the transaction contemplated hereby, or (B) required notices have been given for the transaction contemplated hereby to the holders of such rights and the appropriate period for asserting such rights has expired without an exercise of such rights;
- x. all rights to consent by, required notices to, filings with, or other actions by Governmental Authorities in connection with the sale or conveyance to Buyer of oil and gas leases or interests therein that are customarily obtained subsequent to such sale or conveyance;
- xi. production sales contracts; division orders; contracts for sale, purchase, exchange, refining or processing of Hydrocarbons; unitization and pooling designations, declarations, orders and agreements; operating agreements; agreements of development; area of mutual interest agreements; gas balancing or deferred production agreements; processing agreements; plant agreements; gathering agreements; injection, repressuring and recycling agreements; salt water or other disposal agreements; and any and all other agreements that have terms that are ordinary and customary to the oil and gas exploration, development, processing or extraction business or in the business of processing of gas and gas condensate production for the extraction of products therefrom, to the extent the same do not reduce the Net Revenue Interests of Seller below those set forth in Exhibit B or increase the Working Interests of Seller above those set forth in Exhibit B without a corresponding increase in the Net Revenue Interest;



- xii. rights reserved to or vested in any Governmental Authority to control or regulate any of the Assets and the applicable laws, rules, and regulations of such Governmental Authorities;
- xiii. any liens of record that will be released by Seller at or before Closing; and
- xiv. all defects and irregularities affecting the Assets which individually or in the aggregate (A) do not operate to (1) reduce the Net Revenue Interest of Seller, (2) increase the proportionate share of costs and expenses of leasehold operations attributable to or to be borne by the Working Interests of Seller, or (3) otherwise interfere materially with the operation, value or use of the Assets, or (4) that would not be considered material when applying general industry standards; or (B) operate to increase the proportionate share of costs and expenses of leasehold operations attributable to or to be borne by the Working Interest of Seller, so long as there is a proportionate increase in Seller's Net Revenue Interest.

Section 3.03 Title Defect. The term "Title Defect," as used in this Agreement, shall mean: (a) any encumbrance, encroachment, irregularity, defect in or objection to Seller's ownership of any Asset (expressly excluding Permitted Encumbrances) that causes Seller not to have Defensible Title to such Asset; or (b) any default by Seller under a lease, farmout agreement or other contract or agreement that would (i) have a material adverse effect on the operation, value or use of such Asset, (ii) prevent Seller from receiving the proceeds of production attributable to Seller's interest therein or (iii) result in cancellation of Seller's interest therein.

Section 3.04 Notice of Title Defects.

- (a) If Buyer discovers any Title Defect affecting any Asset, Buyer shall notify Seller as promptly as possible, but no later than the expiration of the Examination Period of such alleged Title Defect. To be effective, such notice must (i) be in writing, (ii) be received by Seller by 5:00 p.m. Mountain Time on the expiration date of the Examination Period, (iii) describe the Title Defect in sufficient, specific detail (including any alleged variance in the Net Revenue Interest), (iv) identify the specific Asset or Assets affected by such Title Defect, and (v) include the value of such Title Defect as determined by Buyer. Any matters that may otherwise constitute Title Defects, but of which Seller has not been specifically notified by Buyer in accordance with the foregoing, shall be deemed to have been waived by Buyer for all purposes and shall constitute Permitted Encumbrances.
- (b) Upon the receipt of such effective notice from Buyer, Seller shall (i) attempt to cure such Title Defect at any time prior to the Closing or (ii) exclude the affected Asset from the sale and reduce the Purchase Price by the Allocated Value of such affected Asset as set forth on Exhibit C.

- (c) The value attributable to each Title Defect (the "Title Defect Value") that is asserted by Buyer in the Title Defect notices shall be determined based upon the criteria set forth below:
- i. If the Title Defect is a lien upon any Asset, the Title Defect Value is the amount necessary to be paid to remove the lien from the affected Asset.
  - ii. If the Title Defect asserted is that the Net Revenue Interest attributable to any Lease or well is less than that stated in Exhibit A or C or the Working Interest attributable to any Lease or well is greater than that stated in Exhibit A or C, or the Net Leases Acres covered by a Lease is less than that stated in Exhibit A, then the Title Defect Value shall take into account the relative change in the interest and the Allocated Value attributed to such Asset.
  - iii. If the Title Defect represents an obligation, encumbrance, burden or charge upon the affected Asset (including any increase in Working Interest for which there is not a proportionate increase in Net Revenue Interest) for which the economic detriment to Buyer is unliquidated, the amount of the Title Defect Value shall be determined by taking into account the Allocated Value of the affected Asset, the portion of the Asset affected by the Title Defect, the legal effect of the Title Defect, the potential discounted economic effect of the Title Defect over the life of the affected Asset, and the Title Defect Values placed upon the Title Defect by Buyer and Seller.
  - iv. If a Title Defect is not in effect or does not adversely affect an Asset throughout the entire productive life of such Asset, such fact shall be taken into account in determining the Title Defect Value.
  - v. The Title Defect Value of a Title Defect shall be determined without duplication of any costs or losses included in another Title Defect Value hereunder.
  - vi. Notwithstanding anything herein to the contrary, in no event shall a Title Defect Value exceed the Allocated Value of the wells, units or other Assets affected thereby.
  - vii. Such other factors as are reasonably necessary to make a proper evaluation.

Section 3.05 Remedies for Title Defects.

- (a) With respect to each Title Defect that Seller does not cure on or before the Closing, except as otherwise provided in this Section 3.05, the Purchase

Price shall be reduced by an amount equal to the Title Defect Value agreed upon in writing by Buyer and Seller.

- (b) If any Title Defect is in the nature of an unobtained consent to assignment or other restriction on assignability, the provisions of Section 3.08 shall apply.
- (c) If on or before Closing the Parties have not agreed upon the validity of any asserted Title Defect or have not agreed on the Title Defect Value attributable thereto, either Party shall have the right to elect to have the validity of such Title Defect and/or such Title Defect Value determined by an Independent Expert pursuant to Section 16.03. If the validity of any asserted Title Defect, or the Title Defect Value attributable thereto, is not determined before Closing, then the affected Asset shall be excluded from the sale and the Purchase Price shall be reduced by the Allocated Value of such affected Asset as set forth on Exhibit C.
- (d) Notwithstanding anything to the contrary in this Agreement, (i) if the value of a given individual Title Defect (or individual Title Benefit (as defined in Section 3.09(a)) does not exceed Fifty Thousand and No/100 Dollars (\$50,000) then no adjustment to the Purchase Price shall be made for such Title Defect (or Title Benefit), (ii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Defects does not exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then no adjustment of the Purchase Price shall be made therefor, and (iii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Defects does exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then the Purchase Price shall only be adjusted by the amount of such excess.

Section 3.06 Special Warranty of Title. Seller hereby agrees to warrant and defend title to the Assets solely unto Buyer against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Seller, but not otherwise; subject, however, to the Permitted Encumbrances and the other matters set forth herein. In no event shall the foregoing warranty extend to or be enforceable by any party other than Buyer and Buyer's successors and assigns in all or part of the Assets.

Section 3.07 Preferential Rights to Purchase. Buyer's good faith allocation of values as set forth in Exhibit C shall be used to prepare an allocation of the Purchase Price to Assets that are subject to preferential rights to purchase and will be set forth in Schedule 3.07. Seller shall use its reasonable efforts to comply with all preferential right to purchase provisions relative to any Asset prior to the Closing. If, prior to Closing, a holder of a preferential purchase right notifies Seller that it intends to exercise its rights with respect to an Asset to which its preferential purchase right applies (as determined in accordance with the agreement in which the preferential purchase right arises), the Asset covered by said preferential purchase right shall be excluded from the Assets to be conveyed to Buyer, and the Purchase Price shall be reduced by the Allocated Value of said

Asset as set forth in Schedule 3.07. Seller shall determine (in its good faith judgment) the extent of the preferential purchase rights encumbering the Assets, and said determination shall be used by Seller to provide the preferential purchase right notifications. If the holder of the preferential purchase right fails to consummate the purchase of the Asset subject to the preferential purchase right, Seller shall promptly notify Buyer. Within ten (10) calendar days after Buyer's receipt of such notice or Closing, whichever is later, Seller shall sell to Buyer, and Buyer shall purchase from Seller, such Asset under the terms of this Agreement for a price equal to the Allocated Value of such Asset as set forth in Schedule 3.07. Notwithstanding the foregoing, Buyer shall have no obligation under this Agreement or otherwise to purchase the Asset if Buyer is not notified of the preferential purchase right holder's failure to consummate the purchase of the Asset within ninety (90) calendar days following Closing. Seller will use reasonable efforts to send out the applicable preferential right to purchase notices within five (5) calendar days after the date this Agreement is executed.

Section 3.08 Consents to Assignment. Seller shall use all reasonable efforts to obtain all necessary consents from third parties to assign the Assets prior to Closing (other than governmental approvals that are customarily obtained after Closing) and Buyer shall assist Seller with such efforts. To the extent such consents are not obtained prior to Closing and are not waived in writing by Buyer, then such failure shall constitute a Title Defect as to that portion of the Assets affected thereby.

Section 3.09 Remedies for Title Benefits.

- (a) If either Party discovers any Title Benefit during the Examination Period affecting the Assets, it shall promptly notify the other Party in writing thereof on or before the expiration of the Examination Period. Subject to Section 3.05, Seller shall be entitled to an upward adjustment to the Purchase Price pursuant to Section 10.02(a)(iii) with respect to all Title Benefits in excess of Fifty Thousand and No/100 Dollars (\$50,000), in an amount mutually agreed upon by the Parties; provided, however, that if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Benefits does not exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then no adjustment of the Purchase Price shall be made therefor, and if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Benefits does exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then the Purchase Price shall only be adjusted by the amount of such excess. For purposes of this Agreement, the term "Title Benefit" shall mean Seller's interest in any Subject Interest that is greater than or in addition to that set forth in Exhibit B (including, without limitation, a Net Revenue Interest that is greater than that set forth in Exhibit B) or Seller's Working Interest in any Subject Interest that is less than the Working Interest set forth in Exhibit B (without a corresponding decrease in the Net Revenue Interest). Any matters that may otherwise constitute Title Benefits, but of which Buyer has not been specifically notified by Seller in accordance with the foregoing, shall be deemed to have been waived by Seller for all purposes.

- (b) If, with respect to a Title Benefit, the Parties are not deemed to have agreed on the amount of the upward Purchase Price adjustment or have not otherwise agreed on such amount prior to the Closing Date, Seller or Buyer shall have the right to elect to have such Purchase Price adjustment determined by an Independent Expert pursuant to Section 16.03. If the amount of such adjustment is not determined pursuant to this Agreement by the Closing, the undisputed portion of the Purchase Price with respect to the Asset affected by such Title Benefit shall be paid by Buyer at the Closing and, subject to Section 3.05, upon determination of the amount of such adjustment, any unpaid portion thereof shall be paid by Buyer to Seller.

#### **Article IV Environmental Matters**

Section 4.01 Environmental Review.

- (a) Buyer shall have the right to conduct or cause a consultant ("Buyer's Environmental Consultant") to conduct an environmental review of the public records regarding each of the Assets and Seller's records pertaining to the Assets (as set forth in Section 3.01) prior to the expiration of the Examination Period ("Buyer's Environmental Review"). The cost and expense of Buyer's Environmental Review, if any, shall be borne solely by Buyer. Buyer acknowledges that Seller is not the operator of any well or location which pertains to any of the Assets and, accordingly, Buyer's Environmental Review shall not include any (x) visits to any well or location which any of the Assets pertain to or (y) intrusive test or procedure without the prior written consent of Seller; provided, however, for those Assets in which no person or entity is acting as operator of such Asset, Seller shall use reasonable efforts to permit Buyer's Environmental Consultant to visit such Asset's location but no intrusive test or procedure shall be permitted at such location without Seller's prior written consent. Buyer shall (and shall cause Buyer's Environmental Consultant to) comply with all applicable laws, rules, and regulations. Buyer shall be solely responsible for obtaining any Third Party consents that are required in order to perform any work comprising Buyer's Environmental Review, and Buyer shall consult with Seller prior to requesting each such Third Party consent. Buyer hereby agrees to release, defend, indemnify and hold harmless Seller from and against all claims, losses, damages, costs, expenses, causes of action and judgments of any kind or character **(INCLUDING THOSE RESULTING FROM SELLER'S SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY)** arising out of or relating to Buyer's Environmental Review. Buyer hereby covenants and agrees that it will have at least \$1,000,000 of general liability insurance prior to the commencement of the Environmental Review.
- (b) Unless otherwise required by applicable law, Buyer shall (and shall cause Buyer's Environmental Consultant to) treat confidentially any matters



revealed by Buyer's Environmental Review and any reports or data generated from such review (the "Environmental Information"), and Buyer shall not (and shall cause Buyer's Environmental Consultant to not) disclose any Environmental Information to any Governmental Authority or other Third Party without the prior written consent of Seller. Unless otherwise required by law, Buyer may use the Environmental Information only in connection with the transactions contemplated by this Agreement. If Buyer, Buyer's Environmental Consultant, or any Third Party to whom Buyer has provided any Environmental Information becomes legally compelled to disclose any of the Environmental Information, Buyer shall provide Seller with prompt notice sufficiently prior to any such disclosure so as to allow Seller to file any protective order, or seek any other remedy, as it deems appropriate under the circumstances. If this Agreement is terminated prior to the Closing, Buyer shall deliver the Environmental Information to Seller, which Environmental Information shall become the sole property of Seller. Buyer shall provide copies of the Environmental Information to Seller without charge.

Section 4.02 Environmental Definitions.

- (a) Environmental Defects. For purposes of this Agreement, the term "Environmental Defect" shall mean, with respect to any given Asset, an individual environmental condition that constitutes, pursuant to Environmental Laws in effect as of the date of this Agreement in the jurisdiction in which such Asset is located, either (i) an actual violation or (ii) a condition that, if investigated by an authority having jurisdiction, would reasonably be expected to constitute a violation, regardless of whether Seller has been so notified or investigated by a Governmental Authority.
- (b) Governmental Authority. For purposes of this Agreement, the term "Governmental Authority" shall mean, as to any given Asset, the United States and the state, county, parish, city and political subdivisions in which such Asset is located and that exercises jurisdiction over such Asset, and any agency, department, board or other instrumentality thereof that exercises jurisdiction over such Asset.
- (c) Environmental Laws. For purposes of this Agreement, the term "Environmental Laws" shall mean all laws, statutes, ordinances, court decisions, rules and regulations of any Governmental Authority pertaining to health or the environment as may be interpreted by applicable court decisions or administrative orders, including, without limitation, the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act, as amended, the Resources Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances

Control Act, as amended, the Superfund Amendment and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and comparable state and local laws.

- (d) Environmental Defect Value. For purposes of this Agreement, the term "Environmental Defect Value" shall mean, with respect to any Environmental Defect, the value, as of the Closing Date (taking into account Seller's working interest percentage in such Asset), of the estimated costs and expenses to correct such Environmental Defect in the most cost-effective manner reasonably available, consistent with Environmental Laws, taking into account that non-permanent remedies (such as mechanisms to contain or stabilize hazardous materials, including monitoring site conditions, natural attenuation, risk-based corrective action, institutional controls or other appropriate restrictions on the use of property, caps, dikes, encapsulation, leachate collection systems, etc.) may be the most cost-effective manner reasonably available.

Section 4.03 Notice of Environmental Defects.

- (a) If Buyer discovers any Environmental Defect affecting the Assets, Buyer shall notify Seller prior to the earlier of (x) five (5) days after discovery of such Environmental Defect or (y) the expiration of the Examination Period of such alleged Environmental Defect. To be effective, such notice must: (i) be in writing; (ii) be received by Seller prior to the expiration of the Examination Period; (iii) describe the Environmental Defect in sufficient, specific detail, including, without limitation, (A) the written conclusion of Buyer's Environmental Consultants that an Environmental Defect exists, which conclusion shall be reasonably substantiated by the factual data gathered in Buyer's Environmental Review, and (B) a separate specific citation of the provisions of Environmental Laws alleged to be violated and the related facts that substantiate such violation; (iv) identify the specific Assets affected by such Environmental Defect; (v) identify the procedures recommended by Buyer's Environmental Consultant to correct the Environmental Defect; and (vi) state Buyer's estimate of the Environmental Defect Value, including the basis for such estimate, for which Buyer would agree to adjust the Purchase Price in order to accept such Environmental Defect if Seller elected Section 4.03(b)(ii) as the remedy therefor.
- (b) Any matters that may otherwise constitute Environmental Defects, but of which Seller has not been specifically notified by Buyer in accordance with the foregoing, together with any environmental matter that does not constitute an Environmental Defect, shall be deemed to have been waived by Buyer for all purposes and constitute an Assumed Obligation (as defined in Section 14.02). Upon the receipt of such effective notice from Buyer, Seller (i) may, but shall not be obligated to, attempt to cure such Environmental Defect at any time prior to the Closing; or (ii) may exclude

the affected Asset from the sale and reduce the Purchase Price by the Allocated Value of such affected Asset as set forth on Exhibit C

Section 4.04 Remedies for Environmental Defects.

- (a) If any Environmental Defect described in a notice delivered in accordance with Section 4.03 is not cured on or before the Closing, and the Seller has not elected to indemnify the Buyer for the Environmental Defect, then the Purchase Price shall be reduced by the Environmental Defect Value of such Environmental Defect as agreed by the Parties.
- (b) If Buyer and Seller have not agreed as to the validity of any asserted Environmental Defect, or if the Parties have not agreed on the Environmental Defect Value therefor, then on or before three (3) calendar days prior to the Closing Date either Party shall have the right to elect to have validity of the asserted Environmental Defect, and/or the Environmental Defect Value for such Environmental Defect, determined by an Independent Expert pursuant to Section 16.03. If the validity of any such asserted Environmental Defect or the amount of any such Environmental Defect Value is not determined by the Closing, the Asset affected by such disputed Environmental Defect shall be excluded from the Closing and the Purchase Price paid at Closing shall be reduced by the Allocated Value of that Asset. Upon resolution of such dispute, the Environmental Defect Value, if any, found to be attributable to such Environmental Defect shall, subject to this Section 4.04, be paid by Buyer to Seller and the Asset conveyed to the Buyer, if that is part of the mutually agreed settlement. Notwithstanding the foregoing, either Buyer or Seller shall have the right to exclude an Asset from the sale if the Environmental Defect Value exceeds the Allocated Value of the Asset(s) affected thereby.
- (c) Notwithstanding anything to the contrary in this Agreement, (i) if the Environmental Defect Value for a given individual Environmental Defect does not exceed Fifty Thousand and No/100 Dollars (\$50,000), then no adjustment to the Purchase Price shall be made for such Environmental Defect; (ii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Environmental Defects does not exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then no adjustment of the Purchase Price shall be made therefore; and (iii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Environmental Defects does exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then the Purchase Price shall only be adjusted by the amount of such excess.



**Article V**  
**Representations and Warranties of Seller**

Seller represents and warrants to Buyer as of the Effective Time and as of Closing that:

Section 5.01 Seller's Existence. Swan Exploration, LLC, is a limited liability company, duly organized and validly existing under the laws of the State of Colorado and is qualified to conduct business in the State of Texas. Seller has full legal power, right and authority to carry on its business as such is now being conducted and as contemplated to be conducted. Seller's headquarters and principal offices are all located in the State of Texas.

Section 5.02 Legal Power. Seller has the legal power and right to enter into and perform this Agreement and the transactions contemplated hereby. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with:

- (a) any provision of Seller's limited liability company agreement, or other governing documents;
- (b) except for any preferential purchase rights and consents to assignment which constitute Permitted Encumbrances, any material agreement or instrument to which Seller is a party or by which Seller or the Assets are bound; or
- (c) any judgment, order, ruling or decree applicable to Seller as a party in interest or any law, rule or regulation applicable to Seller.

Section 5.03 Execution. The execution, delivery and performance of this Agreement and the transactions contemplated hereby are duly and validly authorized by all requisite partnership and/or limited liability company action on the part of Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms.

Section 5.04 Brokers. Oil & Gas Asset Clearinghouse, LLC, a Delaware limited liability company has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated by this Agreement. No broker or finder is entitled to any brokerage or finder's fee, or to any commission, based in any way on agreements, arrangements or understandings made by or on behalf of Seller or any affiliate of Seller for which Buyer has or will have any liabilities or obligations (contingent or otherwise), and Seller shall indemnify Buyer with respect thereto.

Section 5.05 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings pending, being contemplated by or to the knowledge of Seller threatened in writing against Seller.

Section 5.06 Suits. There is no suit, action, claim, investigation or inquiry by any person or entity or by any administrative agency or Governmental Authority and no legal, administrative or arbitration proceeding pending or, to Seller's knowledge, threatened in writing against Seller or any affiliate of Seller or any of the Assets, except as shown on Schedule 5.06.

Section 5.07 [Intentionally Deleted]. [N/A to Assets].

Section 5.08 Taxes. To Seller's knowledge, all ad valorem, property, production, severance, excise and similar taxes and assessments based on or measured by the ownership of the Assets or the production of Hydrocarbons or the receipt of proceeds therefrom that have become due and payable have been paid in all material respects.

Section 5.09 Status and Operation of Assets. Except as described on Exhibit E ("Executed AFE's"), (i) Seller has incurred no expenses, and has made no commitments to make expenditures in connection with the ownership of the Assets after the Effective Time (other than with respect to routine operations performed in the ordinary course of operating the existing Wells), which expenditures are, individually, estimated to cost Fifty Thousand Dollars and No/100 (\$50,000) or more, net to Seller's interest, and (ii) no contractual obligations, proposals or authorities for expenditures are currently outstanding (whether made by Seller or by any other party) to drill additional wells, or to deepen, plug back, rework any Well, or to conduct other operations on the Assets for which consent is required under the applicable operating agreement, to abandon any Well, or to conduct any other operations on the Assets for which the estimated cost individually exceed Fifty Thousand Dollars and No/100 (\$50,000), net to Seller's interest.

Section 5.10 Contracts. To Seller's knowledge, except as shown in Schedule 5.10, there are no Contracts (i) that can reasonably be expected to result in aggregate payments by Seller of more than Fifty Thousand Dollars and No/100 (\$50,000) during the current or any subsequent fiscal year or One Hundred Fifty Thousand Dollars and No/100 (\$150,000) in the aggregate over the term of such Contract that cannot be terminated by the Seller on not greater than ninety (90) days' notice; (ii) any Hydrocarbon purchase and sale, transportation, processing or similar Contract that is not terminable without penalty on thirty (30) days or less notice; or (iii) any Contract that is an indenture, mortgage, loan, credit or sale-leaseback, guaranty of any obligation, bonds, letters of credit or similar financial Contract.

Section 5.11 Lease and Contract Defaults. To Seller's knowledge, all Leases and Contracts are in full force and effect, and Seller is not in default with respect to any of its material obligations thereunder.

Section 5.12 Areas of Mutual Interest. To Seller's knowledge, except as shown in Schedule 5.12, no Subject Interest is subject to (or has related to it) any area of mutual interest agreement.

Section 5.13 Plugging. To Seller's knowledge, there are no dry holes, shut-in or otherwise inactive wells located on lands covered by the Leases or lands pooled therewith that (i) are currently required to be plugged and abandoned; or (ii) have been plugged and abandoned, but have not been plugged or reclaimed in accordance with law.

Section 5.14 [Intentionally Deleted]. [N/A to Assets]

Section 5.15 No Oral Contracts. Seller has not entered into any oral Contract in respect of any of the Assets which will be in force and effect at Closing.

## **Article VI**

### **Representations and Warranties of Buyer**

Buyer represents and warrants to Seller that:

Section 6.01 Buyer's Existence. Buyer is a corporation, duly organized and validly existing under the laws of the State of Delaware and is qualified to conduct business in the State of Colorado. Buyer has full legal power, right and authority to carry on its business as such is now being conducted and as contemplated to be conducted. Buyer's headquarters and principal offices are all located in the State of Colorado.

Section 6.02 Legal Power. Buyer has the legal power and right to enter into and perform this Agreement and the transactions contemplated hereby. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with:

- (a) any provision of Buyer's articles of incorporation, by-laws or other governing documents;
- (b) any material agreement or instrument to which Buyer is a party or by which Buyer is bound; or
- (c) any judgment, order, ruling or decree applicable to Buyer as a party in interest or any law, rule or regulation applicable to Buyer.

Section 6.03 Execution. The execution, delivery and performance of this Agreement and the transactions contemplated hereby are duly and validly authorized by all requisite corporate action on the part of Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms.

Section 6.04 Brokers. No broker or finder has acted for or on behalf of Buyer or any affiliate of Buyer in connection with this Agreement or the transactions contemplated by this Agreement. No broker or finder is entitled to any brokerage or finder's fee, or to any commission, based in any way on agreements, arrangements or understandings made by or on behalf of Buyer or any affiliate of Buyer for which Seller has or will have any liabilities or obligations (contingent or otherwise), and Buyer shall indemnify Seller with respect thereto.

Section 6.05 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings pending, being contemplated by or to the knowledge of Buyer threatened against Buyer or any affiliate of Buyer.

Section 6.06 Suits. There is no suit, action, claim, investigation or inquiry by any person or entity or by any administrative agency or Governmental Authority and no legal, administrative or arbitration proceeding pending or, to Buyer's knowledge, threatened against Buyer or any affiliate of Buyer that has materially affected or will materially affect Buyer's ability to consummate the transactions contemplated herein.

Section 6.07 Qualifications. Buyer is now, and after the Closing shall continue to be, qualified with all applicable Governmental Authorities to own and operate the Assets and has, and shall maintain, all necessary bonds to own and operate the Assets.

Section 6.08 Investment. Prior to entering into this Agreement, Buyer was advised by and has relied solely on its own legal, tax and other professional counsel concerning this Agreement, the Assets and the value thereof. Buyer is acquiring the Assets for its own account and not for distribution or resale in any manner that would violate any state or federal securities law, rule, regulation or order. Buyer understands and acknowledges that if any of the Assets were held to be securities, they would be restricted securities and could not be transferred without registration under applicable state and federal securities laws or the availability of an exemption from such registration.

Section 6.09 Funds. Buyer has arranged to have available by the Closing Date sufficient funds to enable Buyer to pay in full the Purchase Price as herein provided and otherwise to perform its obligations under this Agreement.

## **Article VII**

### **Seller's Conditions to Close**

The obligations of Seller to consummate the transaction provided for herein are subject, at the option of Seller, to the fulfillment on or prior to the Closing Date of each of the following conditions:

Section 7.01 Representations. The representations and warranties of Buyer herein contained shall be true and correct in all material respects on the Closing Date as though made on and as of such date.

Section 7.02 Performance. Buyer shall have performed all material obligations, covenants and agreements contained in this Agreement to be performed or complied with by it at or prior to the Closing.

Section 7.03 Pending Matters. No suit, action or other proceeding shall be pending or threatened that seeks to restrain, enjoin or otherwise prohibit the consummation of the transaction contemplated by this Agreement.

Section 7.04 Purchase Price. Buyer shall have delivered to Seller the Purchase Price, as the same may be adjusted hereunder, in accordance with the provisions of Article II.

Section 7.05 Closing Documents. On or prior to the Closing Date, Buyer shall have delivered, or be standing ready, willing and able to deliver at the Closing, all Closing Documents to be executed and delivered by Buyer.

**Article VIII**  
**Buyer's Conditions to Close**

The obligations of Buyer to consummate the transaction provided for herein are subject, at the option of Buyer, to the fulfillment on or prior to the Closing Date of each of the following conditions:

Section 8.01 Representations. The representations and warranties of Seller herein contained shall be true and correct in all material respects on the Closing Date as though made on and as of such date.

Section 8.02 Performance. Seller shall have performed all material obligations, covenants and agreements contained in this Agreement to be performed or complied with by it at or prior to the Closing.

Section 8.03 Pending Matters. No suit, action or other proceeding shall be pending or, to Seller's knowledge, threatened that seeks to restrain, enjoin, or otherwise prohibit the consummation of the transactions contemplated by this Agreement.

Section 8.04 Closing Documents. On or prior to the Closing Date, Seller shall have delivered, or be standing ready, willing and able to deliver at the Closing, all Closing Documents to be executed and delivered by Seller.

**Article IX**  
**Tax Matters**

Section 9.01 Transfer Taxes. All sales, use or other taxes (other than taxes on gross income, net income or gross receipts) and duties, levies, recording fees or other governmental charges incurred by or imposed with respect to the property transfers undertaken pursuant to this Agreement shall be the responsibility of, and shall be paid by, Buyer.

Section 9.02 Ad Valorem and Similar Taxes. Ad valorem, property, severance and similar taxes and assessments based upon or measured by the value of the Assets shall be divided or prorated between Seller and Buyer as of the Effective Time. Seller shall retain responsibility for such taxes attributable to the period of time prior to the Effective Time and Buyer shall assume responsibility for the period of time from and after the Effective Time.

Section 9.03 Form 8594. Seller and Buyer shall cooperate in the preparation of Internal Revenue Service Form 8594 pursuant to Section 1060 of the Internal Revenue Code of 1986, as amended and the Treasury Regulations promulgated thereunder, to report the allocation of the Purchase Price among the Assets. To the extent required by Code Section 1060, and any regulations promulgated thereunder, any such allowance shall be consistent with the Purchase Price allocation set forth in Exhibit C.

**Article X**  
**The Closing**

Section 10.01 Time and Place of the Closing. If the conditions referred to in Articles VII and VIII of this Agreement have been satisfied or waived in writing, the transaction contemplated by this Agreement (the "Closing") shall take place at such place designated by Buyer and Seller on or before November 22, 2016, (the "Closing Date").

Section 10.02 Adjustments to Purchase Price at the Closing.

- (a) At the Closing, the Purchase Price shall be increased by the following amounts:
  - i. The proceeds of production of Hydrocarbons attributable to the Assets occurring before the Effective Time and received by Buyer (net of all Royalties and Taxes to be paid by Seller on behalf of Buyer under this Agreement), other than amounts held for a third party;
  - ii. An amount equal to (i) all Hydrocarbons attributable to the Assets that, at the Effective Time, are owned by Seller and that are in tanks above the pipeline sales connection (exclusive of any brine, sludge or water that may be present in the oil storage tanks) (ii) multiplied by the price for which production from the Assets was sold immediately prior to the Effective Time (net of Royalties and Taxes to be paid by Buyer on behalf of Seller under this Agreement);
  - iii. The amount of all property expenses attributable to the Assets after the Effective Time and paid by the Seller, subject to the terms hereof;
  - iv. all upward Purchase Price adjustments for Title Benefits determine in accordance with Article III;
  - v. any other amount provided for in this Agreement or agreed upon by Buyer and Seller; and
  - vi. an estimate of any and all transfer, sales, gross receipts, compensating use or similar taxes resulting from the transaction, but only to the extent Seller has already paid or discharged such taxes or assessments and without duplication of Buyer's obligation for such taxes and assessments under Section 9.01.
- (b) At the Closing, the Purchase Price shall be decreased by the following amounts:
  - i. The proceeds of production of Hydrocarbons attributable to the Assets occurring after the Effective Time and received by Seller;



- ii. The amount of all property expenses attributable to the Assets prior to the Effective Time and paid by Buyer, subject to the terms hereof;
  - iii. the Allocated Value of any Subject Interest sold prior to the Closing to the holder of a preferential right pursuant to Section 3.07;
  - iv. all downward Purchase Price Adjustments for Title Defects and Environmental Defects determined in accordance with Article III and Article IV;
  - v. any other amount provided for in this Agreement or agreed upon by Buyer and Seller; and
  - vi. the Deposit.
- (c) The adjustments described in Sections 10.02(a) and (b) are hereinafter referred to as the "Purchase Price Adjustments."

Section 10.03 Closing Statement. Not later than three (3) calendar days prior to the Closing Date, Seller shall prepare a statement of the estimated Purchase Price Adjustments taking into account the foregoing principles (the "Statement"). Until one (1) day before the Closing Date, Buyer shall have the opportunity to review and discuss the Statement with Seller, provided, however, Seller shall not be required to make any changes thereto to which Seller does not agree. Prior to or at Closing, Buyer and Seller will execute and deliver to each other the Statement as prepared in accordance with the terms hereof; amounts that could not be agreed prior to Closing will be resolved under the Accounting Statement. At the Closing, Buyer shall pay the Purchase Price, as adjusted by the estimated Purchase Price Adjustments reflected on the Statement.

Section 10.04 Actions of Seller at the Closing. At the Closing, Seller shall:

- (a) execute, acknowledge and deliver to Buyer the Assignment (substantially in the form as set forth in Exhibit D of this Agreement) and such other instruments (in form and substance mutually agreed upon by Buyer and Seller) as may be reasonably necessary to convey the Assets to Buyer;
- (b) execute, acknowledge and deliver to Buyer letters in lieu of transfer directing all purchasers of production from the Subject Interests to make payment of proceeds attributable to such production to Buyer from and after the Effective Time as reasonably requested by Buyer prior to the Closing Date;
- (c) deliver to Buyer possession of the Assets;
- (d) execute and deliver to Buyer an affidavit attesting to its non-foreign status;
- (e) execute and deliver the Statement;

- (f) deliver to Buyer releases of all mortgages, deeds of trust, financing statements and other liens against the Assets, executed and, if intended for recording in the real property records, acknowledged by the lien holders; and
- (g) execute, acknowledge and deliver any other agreements provided for herein or necessary or desirable to effectuate the transaction contemplated hereby.

Section 10.05 Actions of Buyer at the Closing. At the Closing, Buyer shall:

- (a) deliver to Seller the Purchase Price (as adjusted pursuant to the provisions hereof and net of the Deposit and the Computed Interest on the Deposit) by wire transfer to an account designated in writing by Seller;
- (b) execute and deliver the Statement;
- (c) take possession of the Assets; and
- (d) execute, acknowledge and deliver the Assignment and any other agreements provided for herein or necessary or desirable to effectuate the transaction contemplated hereby.

**Article XI**  
**Termination**

Section 11.01 Right of Termination. This Agreement may be terminated at any time at or prior to the Closing:

- (a) by mutual written consent of the Parties;
- (b) by Seller on the Closing Date if the conditions set forth in Article VII have not been satisfied in all material respects by Buyer or waived by Seller in writing by the Closing Date;
- (c) by Buyer on the Closing Date if the conditions set forth in Article VIII have not been satisfied in all material respects by Seller or waived by Buyer in writing by the Closing Date;
- (d) by either Party if any Governmental Authority shall have issued an order, judgment or decree or taken any other action challenging, delaying, restraining, enjoining, prohibiting or invalidating the consummation of the transaction contemplated herein;
- (e) by either Party if the aggregate amount to be deducted from the Purchase Price because of Title Defects, Environmental Defects, Casualty Losses, and the Allocated Value of Assets (or portion thereof) excluded on account of preferential purchase rights and consents exceeds in the aggregate twenty-five percent (25%); or



- (f) as otherwise expressly provided herein;

provided, however, that no Party shall have the right to terminate this Agreement pursuant to clause (b) or (c) above if such Party is at such time in material breach of any provision of this Agreement.

Section 11.02 Termination Remedies.

- (a) If this Agreement is terminated by Seller under Section 11.01(b), and if Buyer has no right to assert termination under any other subsection of Section 11.01, then Seller shall retain the Deposit as liquidated damages on account of Buyer's failure to perform its obligations under this Agreement or Buyer's breach of any representation under this Agreement, which remedy shall be the sole and exclusive remedy available to Seller for Buyer's failure to perform or breach. Buyer and Seller acknowledge and agree that (i) Seller's actual damages upon the event of such a termination are difficult to ascertain with any certainty, (ii) that the Deposit is a reasonable estimate of such actual damages and (iii) such liquidated damages do not constitute a penalty.
- (b) If this Agreement is terminated by Buyer under Section 11.01(c), and if Seller has no right to assert termination under any other subsection of Section 11.01, then Buyer shall, in its sole discretion, be entitled either (x) to a return of the Deposit as full and final settlement of all liabilities associated with Seller's breach of this Agreement or (y) to seek to enforce the remedy of specific performance against Seller hereunder.
- (c) If this Agreement is terminated under Section 11.01(a), 11.01(d), 11.01(e), or 11.01(f), then the Deposit shall be returned to Buyer, unless the Parties mutually agree otherwise.

Section 11.03 Attorneys' Fees, Etc. If either Party to this Agreement resorts to legal proceedings to enforce this Agreement, the prevailing Party in such proceedings shall be entitled to recover all costs incurred by such Party, including reasonable attorneys' fees, in addition to any other relief to which such Party may be entitled. Notwithstanding anything to the contrary in this Agreement, in no event shall either Party be entitled to receive any punitive, indirect or consequential damages unless same are a part of a Third Party claim for which a Party is seeking indemnification hereunder, **REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE OTHER PARTY.**

**Article XII**  
**Post Closing Obligations**

Section 12.01 Allocation of Expense and Revenues.

- (a) Provided that the Closing occurs, appropriate adjustments shall be made between Buyer and Seller so that (i) Buyer will receive all proceeds from sales of Hydrocarbons that are produced and saved from and after the

Effective Time and any other revenues arising out of the ownership or operation of the Assets from and after the Effective Time, net of all applicable production, severance, and similar taxes, and net of all costs and expenses that are incurred in the ownership or operation of the Assets from and after the Effective Time (provided that such costs and expenses are incurred pursuant to and under the authority of Article XIII), including, without limitation, all drilling costs, all capital expenditures, all overhead charges under applicable operating or other agreements (regardless of whether Seller or an affiliate of Seller serves as operator prior to the Closing), and (ii) Seller will receive all proceeds from sales of Hydrocarbons that are produced and saved prior to the Effective Time and any other revenues arising out of the ownership or operation of the Assets prior to the Effective Time, net of all applicable production, severance, and similar taxes, and net of all costs and expenses that are incurred in the ownership or operation of the Assets prior to the Effective Time, including, without limitation, all drilling costs, all capital expenditures, all overhead charges under applicable operating or other agreements.

- (b) In addition to the foregoing, the Seller will be paid (i) the amount as of the Effective Time of all prepaid ad valorem, property or similar taxes and **assessments based upon or measured by ownership of the Assets and any prepaid costs**, including rentals and insurance premiums, insofar as such prepaid taxes, assessments and costs relate to periods of time after the Effective Time, and (ii) the value of all merchantable Hydrocarbons produced prior to the Effective Time but in storage above the inlet connection or upstream of the applicable sales meter on the Closing Date.
- (c) In addition to the foregoing, the Buyer will be paid (i) an amount equal to all unpaid ad valorem, property, production, severance and similar taxes and assessments based upon or measured by the **ownership** of the Assets that are attributable to periods of time prior to the Effective Time, which amounts shall, to the extent not actually assessed or for which current rates of assessment are not available, be computed based on such taxes and assessments for the preceding tax year (such amount to be prorated for the period of Seller's and Buyer's ownership before and after the Effective Time), and (ii) an amount equal to all cash in, or attributable to, suspense accounts relative to the Assets for which Buyer has assumed responsibility under Section 14.02.
- (d) All amounts due under this Section 12.01 will be settled in accordance with the final Accounting Statement (as defined in Section 12.02) under Section 12.02.

#### Section 12.02 Final Accounting Statement.

- (a) On or before ninety (90) days after the Closing Date, Seller shall prepare and deliver to Buyer a post-Closing statement setting forth a detailed

calculation of all post-Closing adjustments applicable to the period for time between the Effective Time and Closing (the "Accounting Statement"). The Accounting Statement shall include any adjustment or payment which was not agreed or finally determined as of the Closing Date and the allocation of revenues and expenses as determined in accordance with Section 12.01. To the extent reasonably required by Seller, Buyer shall assist in the preparation of the Accounting Statement. Seller shall provide Buyer such data and information as Buyer may reasonably request supporting the amounts reflected on the Accounting Statement in order to permit Buyer to perform or cause to be performed an audit. The Accounting Statement shall become final and binding upon the Parties on the thirtieth (30th) day following receipt thereof by Buyer (the "Final Settlement Date") unless Buyer gives written notice of its disagreement (a "Notice of Disagreement") to Seller prior to such date. Any Notice of Disagreement shall specify in detail the dollar amount, nature and basis of any disagreement so asserted. If a Notice of Disagreement is received by Seller in a timely manner, then the Parties shall resolve the Dispute (as defined in Section 16.01) evidenced by the Notice of Disagreement in accordance with Article XVI.

- (b) Within five (5) calendar days after the Final Settlement Date, Seller shall pay to Buyer or Buyer shall pay to Seller in immediately available funds the net amount due. For purposes of this Agreement, the term "Final Statement" shall mean (i) the revised Accounting Statement becoming final pursuant to this Section, or (ii) upon resolution of any Dispute regarding a Notice of Disagreement, the revised Accounting Statement reflecting such resolutions, which the Parties shall issue, or cause the Independent Expert or arbitrators to issue, as applicable, following such resolution.

Section 12.03 Further Cooperation. Seller shall make the Records available to be picked up by Buyer at the offices of Seller during normal business hours within five (5) calendar days after the later of the Closing or the end of the Transition Period (as defined in Section 13.06) to the extent the Records are in the possession of Seller and are not subject to contractual restrictions on transferability. Seller shall have the right to retain copies of any of the Records and the rights granted under Section 17.03.

After the Closing Date, each Party, at the request of the other and without additional consideration, shall execute and deliver, or shall cause to be executed and delivered, from time to time such further instruments of conveyance and transfer and shall take such other action as the other Party may reasonably request to convey and deliver the Assets to Buyer and to accomplish the orderly transfer of the Assets to Buyer in the manner contemplated by this Agreement. After the Closing, the Parties will cooperate to have all proceeds received attributable to the Assets be paid to the proper Party hereunder and to have all expenditures to be made with respect to the Assets be made by the proper Party hereunder.

**Article XIII**  
**Operation of the Assets**

Section 13.01 Operations after Effective Time. Seller agrees, from and after the date hereof until Closing, except as expressly contemplated by this Agreement, as expressly consented to in writing by Buyer, or in situations wherein emergency action is taken in the face of risk to life, property or the environment, to:

- (a) own the Assets in the usual, regular and ordinary manner consistent with Seller's past practice;
- (b) maintain the books of account and records relating to the Assets in the usual, regular and ordinary manner of Seller, in accordance with the usual accounting practices of Seller;
- (c) not enter into a material contract regarding any Asset, or materially amend or change the terms of any such contract regarding any Asset that would involve individual commitments of more than Fifty Thousand and No/100 Dollars (\$50,000);
- (d) not transfer, sell, mortgage, pledge or dispose of any of the Assets other than the sale and/or disposal of Hydrocarbons in the ordinary course of business;
- (e) preserve in full force and effect all oil and gas leases and operating agreements that relate to the Assets in which Seller is a party or beneficiary;
- (f) submit to Buyer for prior written approval, all requests for operating or capital expenditures relating to any of the Assets that involve individual commitments of more than Fifty Thousand and No/100 Dollars (\$50,000); and
- (g) obtain Buyer's written approval prior to voting under any operating, joint venture, partnership or similar agreement, which Buyer shall not unreasonably withhold or delay.

Section 13.02 Limitations on the Ownership Obligations and Liabilities of Seller

- (a) From and after the date of execution of this Agreement and until the Closing, and subject to the provisions of applicable operating and other agreements, Seller shall use its reasonable efforts to own the Assets and use its reasonable efforts to cause its operators to operate and administer the Assets in a manner consistent with such operator's past practices, and shall carry on Seller's business with respect to the Assets in substantially the same manner as before execution of this Agreement.

Buyer acknowledges that Seller owns undivided interests in some or all of the Assets, and Buyer agrees that the acts or omissions of Seller's operators

and the other working interest owners shall not constitute a violation of the provisions of this Article XIII, nor shall any action required by a vote of working interest owners constitute such a violation, so long as Seller has voted its interests in a manner that complies with the provisions of this Article XIII. Buyer acknowledges and agrees that Seller is not the operator of any of the Assets, and, therefore, the obligations of Seller in this Article XIII shall be construed to require that Seller use best efforts (without being obligated to incur any expense or institute any cause of action) to cause the operator of such Assets to take such actions or render such performance within the constraints of the applicable operating agreements and other applicable agreements.

Section 13.03 No Liability of Seller. Notwithstanding anything to the contrary in this Article XIII, Seller shall have no liability to Buyer for, and Buyer hereby agrees to release, defend, indemnify and hold harmless Seller from, the incorrect payment of delay rentals, royalties, shut-in royalties or similar payments or for any failure to pay any such payments through mistake or oversight **(INCLUDING THOSE RESULTING FROM SELLER'S SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY)** provided that such payments relate to production months after the Effective Time. In no event shall Buyer's remedy for any Seller's breach of its obligations under this Article XIII exceed the Allocated Value of the Subject Interest affected by such breach.

Section 13.04 Casualty Loss.

- (a) Buyer shall assume all risk of loss with respect to, and any change in the condition of, the Assets from the Effective Time until the Closing, including with respect to the depletion of Hydrocarbons, the watering-out of any well, the collapse of casing, sand infiltration of wells, and the depreciation of personal property.
- (b) If after the Effective Time and prior to the Closing any part of the Assets shall be damaged or destroyed by fire or other casualty or if any part of the Assets shall be taken in condemnation or under the right of eminent domain or if proceedings for such purposes shall be pending or threatened, this Agreement shall remain in full force and effect notwithstanding any such destruction, taking or proceeding, or the threat thereof and the Parties shall proceed with the transaction contemplated by this Agreement notwithstanding such destruction or taking without reduction of the Purchase Price, but subject to Section 13.04(c).
- (c) Notwithstanding Section 13.04(a), in the event of any loss described in Section 13.04(b), at the Closing, Buyer shall have the option to: (i) exclude the affected Asset from the sale and reduce the Purchase Price by the Allocated Value of such affected Asset as set forth on Exhibit C, or (ii) include the affected Asset in the sale, in which event Seller shall pay to Buyer all sums paid to Seller by third parties by reason of the destruction or taking of such Assets (up to the Allocated Value thereof), including any



sums paid pursuant to any policy or agreement of insurance or indemnity, and shall assign, transfer and set over unto Buyer all of the rights, title and interest of Seller in and to any claims, causes of action, unpaid proceeds or other payments from third parties, including any policy or agreement of insurance or indemnity, arising out of such destruction or taking (up to the Allocated Value thereof). Notwithstanding anything to the contrary in this Section 13.04, Seller shall not be obligated to carry or maintain, and shall have no obligation or liability to Buyer for its failure to carry or maintain, any insurance coverage with respect to any of the Assets. Notwithstanding anything to the contrary contained in this Section 13.04, should the uncompensated loss exceed twenty-five percent (25%) of the Purchase Price, either Seller or Buyer shall have the option to terminate this Agreement in which event Seller shall return the Deposit to Buyer within three (3) calendar days after such termination

#### **Article XIV Obligations and Indemnification**

Section 14.01 Retained Obligations. Provided that the Closing occurs, Seller shall retain (a) all obligations and liabilities of Seller for the payment or improper payment of royalties, rentals and other similar payments under the Leases relating to the Subject Interests accruing prior to the Effective Time; (b) all obligations of Seller under the Contracts for (i) overhead charges related to periods prior to the Effective Time, (ii) costs and expenses incurred prior to the Effective Time for goods and services provided prior to the Effective Time, and (iii) other payment obligations that accrue and become due prior to the Effective Time; (c) all liability of Seller to third parties for property damage, personal injury or death to the extent occurring prior to the Effective Time as a result of Seller's ownership of the Assets; (d) ad valorem, property, severance and similar taxes attributable to the period of time prior to the Effective Time retained by Seller under Section 9.02; and (e) all litigation existing as of the Closing Date, to the extent it relates to the period of time prior to the Effective Time (collectively, the "Retained Obligations").

Section 14.02 Assumed Obligations. Provided that the Closing occurs, subject to Seller's obligations for the Retained Obligations, Buyer hereby assumes all duties, obligations and liabilities of every kind and character with respect to the Assets or the ownership thereof (other than the Retained Obligations), attributable to periods before and after the Effective Time (collectively, the "Assumed Obligations").

Section 14.03 Buyer's Indemnification. Provided that the Closing occurs, Buyer shall release, defend, indemnify and hold harmless Seller, its partners, and its respective officers, directors, employees, agents, representatives, members, shareholders, affiliates, subsidiaries, successors and assigns (collectively, the "Seller Indemnitees") from and against any and all claims, damages, liabilities, losses, causes of action, costs and expenses (including, without limitation, those involving theories of negligence or strict liability and including court costs and attorneys' fees) (collectively, the "Losses") as a result of, arising out of, or related to the Assumed Obligations, **REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE**

**SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE SELLER INDEMNITEES.**

Section 14.04 Seller's Indemnification. Provided that the Closing occurs, Seller shall release, defend, indemnify and hold harmless Buyer, its partners, and its respective officers, directors, employees, agents, representatives, members, shareholders, affiliates and subsidiaries (collectively, the "Buyer Indemnitees") from and against any and all Third Party non-environmental claims relating to Seller's ownership of the Assets prior to the Effective Time or as a result of, arising out of, or related to the Retained Obligations **REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE BUYER INDEMNITEES**. Provided, however, notwithstanding anything to the contrary contained herein, Seller's indemnification obligation under this Section 14.04 shall only apply if Buyer has provided Seller with written notice claiming indemnification within six (6) months after the Closing. Notwithstanding anything to the contrary herein, Seller's obligation to indemnify hereunder will not exceed a maximum of twenty-five percent (25%) of the Purchase Price, prior to any adjustments thereto.

Section 14.05 Notices and Defense of Indemnified Matters. Each Party shall promptly notify the other Party of any matter of which it becomes aware and for which it is entitled to indemnification from the other Party under this Agreement. The indemnifying Party shall be obligated to defend, at the indemnifying Party's sole expense, any litigation or other administrative or adversarial proceeding against the indemnified Party relating to any matter for which the indemnifying Party has agreed to indemnify and hold the indemnified Party harmless under this Agreement. However, the indemnified Party shall have the right to participate with the indemnifying Party in the defense of any such matter at its own expense.

## **Article XV**

### **Limitations on Representations and Warranties**

Section 15.01 Disclaimers of Representations and Warranties. The express representations and warranties of Seller contained in this Agreement are exclusive and are in lieu of all other representations and warranties, express, implied or statutory. **EXCEPT FOR THE EXPRESS REPRESENTATIONS OF SELLER IN THIS AGREEMENT, BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND BUYER HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO (a) PRODUCTION RATES, RECOMPLETION OPPORTUNITIES, DECLINE RATES, OR THE QUALITY, QUANTITY OR VOLUME OF THE RESERVES OF HYDROCARBONS, IF ANY, ATTRIBUTABLE TO THE ASSETS, (b) THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) NOW, HERETOFORE OR HEREAFTER FURNISHED TO BUYER BY OR ON BEHALF OF SELLER, AND (c) THE ENVIRONMENTAL CONDITION OF THE ASSETS. EXCEPT FOR THE EXPRESS REPRESENTATIONS OF SELLER IN THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS AND NEGATES, AND BUYER HEREBY WAIVES, AS TO PERSONAL PROPERTY,**

EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES CONSTITUTING A PART OF THE ASSETS (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF PURCHASERS UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE, (v) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM DEFECTS, WHETHER KNOWN OR UNKNOWN, (vi) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW, AND (vii) ANY IMPLIED OR EXPRESS WARRANTY REGARDING ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, OR PROTECTION OF THE ENVIRONMENT OR HEALTH, IT BEING THE EXPRESS INTENTION OF BUYER AND SELLER THAT THE PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES INCLUDED IN THE ASSETS SHALL BE CONVEYED TO BUYER, AND BUYER SHALL ACCEPT SAME, AS IS, WHERE IS, WITH ALL FAULTS AND IN THEIR PRESENT CONDITION AND STATE OF REPAIR AND BUYER REPRESENTS TO SELLER THAT BUYER WILL MAKE OR CAUSE TO BE MADE SUCH INSPECTIONS WITH RESPECT TO SUCH PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES AS BUYER DEEMS APPROPRIATE. SELLER AND BUYER AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER.

Section 15.02 Independent Investigation. Buyer represents and acknowledges that it is knowledgeable of the oil and gas business and of the usual and customary practices of working interest and net revenue interest owners such as Seller and that it has had (or will have prior to the Closing) an opportunity to review the Assets, the officers and employees of Seller, and the books, records and files of Seller relating to the Assets, and in making the decision to enter into this Agreement and consummate the transaction contemplated hereby, Buyer has relied solely on the basis of its own independent due diligence investigation of the Assets and upon the representations and warranties made in Article V, and not on any other representations or warranties of Seller or any other person or entity.

Section 15.03 Survival. The representations, warranties, covenants and obligations of Buyer and Seller under this Agreement shall survive for a period of six (6) months from the Closing.

## Article XVI Dispute Resolution

Section 16.01 General. Any and all claims, Disputes, controversies or other matters in question arising out of or relating to title issues, environmental issues, or calculation of the Statement or revisions thereto (all of which are referred to herein as "Disputes" which term shall not include any other disputes claims, disputes, controversies or other matters in question arising under this Agreement) shall be resolved in the manner prescribed by this Article XVI.



Section 16.02 Independent Expert.

- (a) Disputes regarding title issues, environmental issues, or calculation of the Statement or Accounting Statement shall be finally and exclusively resolved by an independent expert appointed in accordance with this Section 16.02 (each, an "Independent Expert"), who shall serve as sole arbitrator. The Independent Expert shall be appointed by mutual agreement of the Parties from among candidates with experience and expertise in the area that is the subject of such Dispute, and failing such agreement within seven (7) days of a Party sending a demand for arbitration, such Independent Expert for such Dispute shall be selected by the Chief Judge of the United States District Court for the District of Colorado.
- (b) Disputes to be resolved by an Independent Expert shall be resolved within thirty (30) days after appointment of the Independent Expert. The decision and award of the Independent Expert shall be binding upon the Parties as an award under the Colorado Revised Uniform Arbitration Act and final and nonappealable to the maximum extent permitted by law, and judgment thereon may be entered in a court of competent jurisdiction and enforced by any Party as a final judgment of such court.
- (c) The charges and expenses of the arbitrator shall be shared equally by Seller and Buyer.
- (d) Any arbitration hearing held pursuant to Section 16.02 shall be held in Denver, Colorado, and shall be conducted in accordance with such rules and procedures as the sole arbitrator may direct in his or her sole discretion.

Section 16.03 Limitation on Arbitration. ALL OTHER DISAGREEMENTS, DIFFERENCES, OR DISPUTES ARISING BETWEEN SELLER AND BUYER UNDER THE TERMS OF THIS AGREEMENT (AND NOT COVERED BY SECTION 16.02) SHALL NOT BE SUBJECT TO ARBITRATION AND SHALL BE DETERMINED BY A COURT OF COMPETENT JURISDICTION, UNLESS THE PARTIES OTHERWISE MUTUALLY AGREE.

**Article XVII**  
**Miscellaneous**

Section 17.01 Names. As soon as reasonably possible after the Closing, but in no event later than forty-five (45) days after the Closing, Buyer shall remove the names of Seller and its affiliates, and all variations thereof, from all of the Assets and make the requisite filings with, and provide the requisite notices to, the appropriate federal, state or local agencies to place the title or other indicia of ownership, including operation of the Assets, in a name other than the name of the Seller or any of its affiliates, or any variations thereof.

Section 17.02 Expenses. Each Party shall be solely responsible for all expenses, including due diligence expenses, incurred by it in connection with this transaction, and neither Party shall be entitled to any reimbursement for such expenses from the other Party.

Section 17.03 Document Retention. As used in this Section 17.03, the term "Documents" shall mean all files, documents, books, records and other data (a) set forth in Seller's electronic file data room and (b) delivered to Buyer by Seller pursuant to the provisions of this Agreement (other than those that Seller has retained either the original or a copy of), including, but not limited to: financial and tax accounting records; land, title and division of interest files; contracts; engineering and well files; and books and records related to the operation of the Assets prior to the Closing Date. Buyer shall retain and preserve the Documents for a period of no less than four (4) years following the Closing Date (or for such longer period as may be required by law or governmental regulation), and shall allow Seller or its representatives to inspect the Documents at reasonable times and upon reasonable notice during regular business hours during such time period. Seller shall have the right during such period to make copies of the Documents at its expense.

Section 17.04 Entire Agreement. This Agreement, the documents to be executed hereunder, and the exhibits attached hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof. No supplement, amendment, alteration, modification or waiver of this Agreement shall be binding unless executed in writing by the Parties and specifically referencing this Agreement.

Section 17.05 Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 17.06 Publicity. Neither Seller nor Buyer will issue any public announcement or press release concerning this transaction without the written consent of the other Party (except as required by law and in such case with prior written agreement between the Parties on the wording of the announcement or press release).

Section 17.07 Construction. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. The Parties acknowledge that they have participated jointly in the negotiation and drafting of this Agreement and as such the Parties agree that if an ambiguity or question of intent or interpretation arises hereunder, this Agreement shall not be construed more strictly against one Party than another on the grounds of authorship.

Section 17.08 No Third Party Beneficiaries. Except as provided in Sections 14.04 and 14.05, nothing in this Agreement shall provide any benefit to any Third Party or entitle any Third Party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall otherwise not be construed as a Third Party beneficiary contract.

Section 17.09 Assignment. No Party may assign or delegate any of its rights or duties hereunder without the prior written consent of the other Party, and any such assignment shall be void. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors, assigns and legal representatives.

Section 17.10 Governing Law. This Agreement, other documents delivered pursuant hereto and the legal relations between the Parties shall be governed and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflicts of laws that would result in the application of the laws of another jurisdiction.

Section 17.11 Notices. Any notice, communication, request, instruction or other document required or permitted hereunder shall be given in writing and delivered in person or sent by U.S. Mail postage prepaid, return receipt requested, nationally recognized, receipt overnight courier, email or facsimile to the addresses of Seller and Buyer set forth below. Any such notice shall be effective only upon receipt.

Seller:

Swan Exploration, LLC  
Attention: Joe Weigel  
1235 N Loop West, Ste. 510  
Houston, TX 77008  
Telephone: 866-539-0860  
Email: JoeW@swanenergyinc.com  
Facsimile: 866-550-5435

With a copy to:

Swan Exploration, LLC  
Attention: Katherine N. O'Connell  
1235 North Loop W., Suite 510  
Houston, TX 77008  
Telephone: 866-539-0860  
Email: koconnell@swanenergyinc.com  
Facsimile: 866-550-5435

Buyer:

Extraction Oil & Gas, Inc.  
Attention: Allyson Vistica, Land Manager  
370 Seventeenth Street, Suite 5300  
Denver, Colorado 80202  
Telephone:  
E-mail: avistica@extractionog.com  
Facsimile: 720-557-8301

Either Party may, by written notice so delivered to the other Party, change its address for notice purposes hereunder.

Section 17.12 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and the Parties shall negotiate in good faith to modify this Agreement so as to affect their original intent as closely as

possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17.13 Time of the Essence. Time shall be of the essence with respect to all time periods and notice periods set forth in this Agreement.

Section 17.14 Counterpart Execution. This Agreement may be executed in any number of counterparts, and each counterpart hereof shall be effective as to each party that executes the same whether or not all of such parties execute the same counterpart. If counterparts of this Agreement are executed, the signature pages from various counterparts may be combined into one composite instrument for all purposes. All counterparts together shall constitute only one Agreement, but each counterpart shall be considered an original.

Section 17.15 Affiliates. In the event that either Seller or Buyer discovers that any of the Assets are owned by an affiliate of Seller, Seller shall cause such affiliate(s) to execute a joinder to this Agreement and cause such affiliate(s) to convey such Asset(s) owned by such affiliate(s) to Buyer pursuant to and in accordance with the terms of this Agreement as though such affiliate(s) had been an original party to this Agreement regarding only such Asset(s).

IN WITNESS WHEREOF, Seller and Buyer have executed and delivered this Agreement as of the date first set forth above.

**SWAN EXPLORATION, LLC:**



\_\_\_\_\_  
Name: Brandon Davis  
Title: Chief Executive Officer

**EXTRACTION OIL & GAS, INC.:**

\_\_\_\_\_  
Name: Matt Owens  
Title: President



possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

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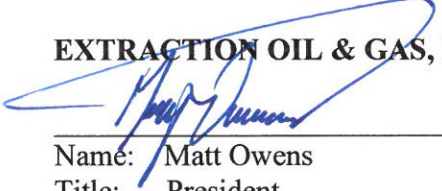
Section 17.15 Affiliates. In the event that either Seller or Buyer discovers that any of the Assets are owned by an affiliate of Seller, Seller shall cause such affiliate(s) to execute a joinder to this Agreement and cause such affiliate(s) to convey such Asset(s) owned by such affiliate(s) to Buyer pursuant to and in accordance with the terms of this Agreement as though such affiliate(s) had been an original party to this Agreement regarding only such Asset(s).

IN WITNESS WHEREOF, Seller and Buyer have executed and delivered this Agreement as of the date first set forth above.

**SWAN EXPLORATION, LLC:**

\_\_\_\_\_  
Name: Brandon Davis  
Title: Chief Executive Officer

**EXTRACTION OIL & GAS, INC.:**

  
\_\_\_\_\_  
Name: Matt Owens  
Title: President

**EXHIBIT A**  
**SUBJECT INTERESTS**

**EXHIBIT B**  
**WELLS AND INTERESTS**

**EXHIBIT C**  
**ALLOCATED VALUES**



## EXHIBIT D

### ASSIGNMENT AND BILL OF SALE

THIS ASSIGNMENT AND BILL OF SALE (this "Assignment"), effective as of 7:00 a.m. on October 1, 2016 (the "Effective Time"), is made by Swan Exploration, LLC, a Colorado limited liability company (the "Assignor"), whose address is 1235 N Loop West, Suite 510, Houston, TX 77008, to Extraction Oil & Gas, Inc., a Delaware corporation (the "Assignee"), whose address is 370 Seventeenth Street, Suite 5300, Denver, Colorado 80202.

## ARTICLE I

### Granting and Habendum

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, Assignor does hereby grant, bargain, sell, transfer, convey, set over, assign and deliver unto Assignee, its successors and assigns, effective for all purposes as of the Effective Time and subject to the matters set forth herein, the Assets. The term "Assets" shall mean all of Assignor's right, title and interest, if any, in and to the following:

(a) the leasehold estates in and to the oil, gas and mineral leases described or referred to in Exhibit A (the "Leases") or land pooled therewith, all as more specifically described in Exhibit A attached hereto and made a part hereof, provided that all of the foregoing are subject to the limitations described in Exhibit A (collectively, the "Subject Interests," or singularly, a "Subject Interest");

(b) all rights incident to the Subject Interests, including, without limitation, all rights with respect to any pooled, communitized or unitized acreage by virtue of any Subject Interest being a part thereof, including all Hydrocarbon (as defined in subsection (d) below) production after the Effective Time attributable to the Subject Interests or any such pool or unit allocated to any such Subject Interest;

(c) all easements, rights-of-way, surface leases, servitudes, permits, licenses, franchises and other estates or similar rights and privileges directly related to or used solely in connection with the Subject Interests ("Easements"), including, without limitation, the Easements described on Exhibit A;

(d) all personal property, equipment, fixtures, inventory and improvements located on or used solely in connection with the Subject Interests and the Easements or with the production, treatment, sale, or disposal of oil, gas or other hydrocarbons (collectively, "Hydrocarbons"), byproducts or waste produced therefrom or attributable thereto, including, without limitation, all wells located on the lands covered by the Subject Interests or on lands with which the Subject Interest have been pooled, communitized or unitized (whether producing, shut in or abandoned, and whether for production, injection or disposal), including, without limitation, the wells described in Exhibit B attached hereto and made a part hereof, wellhead equipment, pumps, pumping units, flowlines, gathering systems, piping, tanks, buildings, treatment facilities, injection facilities, disposal facilities, compression facilities, and other materials, supplies, equipment, facilities and machinery (collectively, "Personal Property");

(e) to the extent assignable or transferable, all contracts, agreements and other arrangements that relate to the Subject Interests, the Leases or the Easements, including, without limitation, production sales contracts, farmout agreements, operating agreements, service agreements and similar agreements (collectively, the "Contracts");

(f) all books, records, files, muniments of title, reports and similar documents and materials, including, without limitation, lease records, well records, and division order records, well files, title records (including abstracts of title, title opinions and memoranda, and title curative documents related to the Assets), contracts and contract files, and correspondence, that relate to the foregoing interests in the possession of, and maintained by, Assignor (collectively, the "Records"); and

(g) all geological and geophysical data relating to the Subject Interests, other than such data prepared by Assignor that is interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party unless Assignee has made a payment therefore. For purposes hereof "Third Party" means any person or entity, governmental or otherwise, other than Assignor or Assignee, and their respective affiliates; the term includes, but is not limited to, working interest owners, royalty owners, lease operators, landowners, service contractors and governmental agencies.

(h) NOTWITHSTANDING THE FOREGOING, the Assets shall not include, and there is excepted, reserved and excluded from the assignment contemplated hereby (collectively, the "Excluded Assets"): (i) all trade credits and all accounts, instruments and general intangibles (as such terms are defined in the Colorado Uniform Commercial Code) attributable to the Assets with respect to any period of time prior to the Effective Time; (ii) all claims and causes of action of Assignor arising from acts, omissions or events occurring prior to the Effective Time; (iii) all rights and interests of Assignor (i) under any policy or agreement of insurance or indemnity, (ii) under any bond, or (iii) to any insurance or condemnation proceeds or awards arising, in each case, from acts, omissions or events, or damage to or destruction of property, occurring prior to the Effective Time; (iv) all Hydrocarbons produced from or attributable to the Subject Interests with respect to all periods prior to the Effective Time, together with all proceeds from the sale of such Hydrocarbons; (v) all claims of Assignor for refunds of or loss carry forwards with respect to any taxes and refunds for amounts paid in connection with the Assets attributable to any period prior to the Effective Time; (vi) all amounts due or payable to Assignor as adjustments to insurance premiums related to the Assets with respect to any period prior to the Effective Time; (vii) all proceeds, income or revenues (and any security or other deposits made) attributable to the Assets for any period prior to the Effective Time; (viii) all of Assignor's rights and interests in geological and geophysical data prepared by Assignor that are interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party unless such Third Party or Assignee has made any required payment; (ix) all data and other information that cannot be disclosed or assigned to Assignee as a result of confidentiality or similar arrangements under agreements with persons unaffiliated with Assignor; (x) all audit rights arising under any of the Contracts or otherwise with respect to any period prior to the Effective Time; and (xi) all overriding royalty interests previously owned or recently created by Assignor which are determined on \_\_\_\_\_.

TO HAVE AND TO HOLD the Assets, together with all and singular the rights, privileges, contracts and appurtenances, in any way appertaining or belonging thereto, unto Assignee, its successors and assigns, forever, subject to the matters set forth herein.

## **ARTICLE II**

### **Special Warranty of Title and Disclaimers**

Section 2.01 Special Warranty of Title. Seller hereby agrees to warrant and defend title to the Assets solely unto Buyer against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Seller, but not otherwise; subject, however, to the Permitted Encumbrances (as such term is defined in the Purchase Agreement described below) and the other matters set forth herein. In no event shall the foregoing warranty extend to or be enforceable by any party other than Buyer and Buyer's successors and assigns in all or part of the Assets.

Section 2.02 Disclaimer. ASSIGNEE ACKNOWLEDGES THAT ASSIGNOR HAS NOT MADE, AND ASSIGNOR HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND ASSIGNEE HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO (a) PRODUCTION RATES, RECOMPLETION OPPORTUNITIES, DECLINE RATES, INFORMATION OR THE QUALITY, QUANTITY OR VOLUME OF THE RESERVES OF HYDROCARBONS, IF ANY, ATTRIBUTABLE TO THE ASSETS; (b) THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) NOW, HERETOFORE OR HEREAFTER FURNISHED TO ASSIGNEE BY OR ON BEHALF OF ASSIGNOR; AND (c) THE ENVIRONMENTAL CONDITION OF THE ASSETS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ASSIGNMENT, ASSIGNOR EXPRESSLY DISCLAIMS AND NEGATES, AND ASSIGNEE HEREBY WAIVES, AS TO PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES CONSTITUTING A PART OF THE ASSETS (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF PURCHASERS UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE, (v) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM DEFECTS, WHETHER KNOWN OR UNKNOWN, (vi) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW, AND (vii) ANY IMPLIED OR EXPRESS WARRANTY REGARDING ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, OR PROTECTION OF THE ENVIRONMENT OR HEALTH, IT BEING THE EXPRESS INTENTION OF ASSIGNEE AND ASSIGNOR THAT THE PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES INCLUDED IN THE ASSETS SHALL BE CONVEYED TO ASSIGNEE, AND ASSIGNEE SHALL ACCEPT SAME, AS IS, WHERE IS, WITH ALL FAULTS AND IN THEIR PRESENT CONDITION AND STATE OF REPAIR AND ASSIGNEE REPRESENTS TO ASSIGNOR THAT ASSIGNEE HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS WITH RESPECT TO SUCH PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES AS ASSIGNEE DEEMS APPROPRIATE. ASSIGNOR AND ASSIGNEE

AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER.

### **ARTICLE III Miscellaneous**

Section 3.01 Construction. The captions in this Assignment are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Assignment. Assignor and Assignee acknowledge that they have participated jointly in the negotiation and drafting of this Assignment and as such they agree that if an ambiguity or question of intent or interpretation arises hereunder, this Assignment shall not be construed more strictly against one party than another on the grounds of authorship.

Section 3.02 No Third Party Beneficiaries. Nothing in this Assignment shall provide any benefit to any Third Party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties hereto that this Assignment shall otherwise not be construed as a Third Party beneficiary contract.

Section 3.03 Assignment. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 3.04 Governing Law. This Assignment, other documents delivered pursuant hereto and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflicts of laws that would result in the application of the laws of another jurisdiction.

Section 3.05 Counterpart Execution. This Assignment may be executed in any number of counterparts, and each counterpart hereof shall be effective as to each party that executes the same whether or not all of such parties execute the same counterpart. If counterparts of this Assignment are executed, the signature pages from various counterparts may be combined into one composite instrument for all purposes. All counterparts together shall constitute only one Assignment, but each counterpart shall be considered an original.

Section 3.06 Recording. To facilitate the recording or filing of this Assignment, the counterpart to be recorded in a given county may contain only that portion of the exhibits that describes Assets located in that county. In addition to filing this Assignment, the parties hereto shall execute and file with the appropriate authorities, whether federal, state or local, all forms or instruments required by applicable law to effectuate the conveyance contemplated hereby. Said instruments shall be deemed to contain all of the exceptions, reservations, rights, titles and privileges set forth herein as fully as though the same were set forth in each such instrument. The interests conveyed by such separate assignments are the same, and not in addition to the Assets conveyed herein.

Section 3.07 Purchase Agreement. This Assignment is subject to all of the terms and conditions of the Purchase and Sale Agreement dated November 8, 2016 by and between Assignor and Assignee (the "Purchase Agreement").

IN WITNESS WHEREOF, this Assignment is executed by the parties on the date of their respective acknowledgments below, but shall be effective for all purposes as of the Effective Time.

**ASSIGNOR: SWAN EXPLORATION, LLC**

\_\_\_\_\_  
Name: Brandon Davis  
Title: Chief Executive Officer

**ASSIGNEE:**

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

**[Insert Acknowledgments]**

**EXHIBIT E**

**Executed AFE's**

Well Name	Operator	AFE #	Swan WI	Estimated Spud	Gross AFE	Swan Net
Puma Fed 5S-35HZ	Kerr-McGee	2113668	2.083333%	Q4 2016	\$ 17,500	\$ 364.58
Puma Fed 13C-35HZ	Kerr-McGee	2111653	1.388889%	Q4 2016	\$ 3,839,571	\$ 53,327.38
Puma Fed 34N-35HZ (Puma Fed 13N-35HZ)	Kerr-McGee	2111654	1.388889%	Q4 2016	\$ 4,512,146	\$ 62,668.70
Puma Fed 34C-35HZ	Kerr-McGee	2111655	1.388889%	Q4 2016	\$ 3,810,229	\$ 52,919.85
Puma Fed 34N-35HZ	Kerr-McGee	2111659	2.430556%	Q4 2016	\$ 4,475,783	\$ 108,786.41
Jaguar 14N-35HZ	Kerr-McGee	2111328	2.082391%	Q4 2016	\$ 4,590,216	\$ 95,586.24
Jaguar 28C-14HZ	Kerr-McGee	2110946	0.519739%	Q4 2016	\$ 2,963,730	\$ 15,403.66
Jaguar Fed 6S-35HZ	Kerr-McGee	2116182	2.080862%	Q4 2016	\$ 2,854,818	\$ 59,404.82
Jaguar Fed 35C-35HZ	Kerr-McGee	2111325	1.388889%	Q4 2016	\$ 3,895,330	\$ 54,101.81
Jaguar Fed 35N-35HZ	Kerr-McGee	2111323	1.388889%	Q4 2016	\$ 4,588,371	\$ 63,727.38
Jaguar Fed 36C-35HZ	Kerr-McGee	2111326	2.082391%	Q4 2016	\$ 3,896,607	\$ 81,142.59
Garfield 2N-14HZ	Kerr-McGee	2110942	1.039668%	Q1 2017	\$ 3,388,080	\$ 35,224.78
Garfield 15C-35HZ	Kerr-McGee	2110935	2.083403%	Q1 2017	\$ 3,915,163	\$ 81,568.62
Garfield 15N-35HZ	Kerr-McGee	2110932	2.778453%	Q1 2017	\$ 4,607,671	\$ 128,021.97
Garfield 27C-35HZ	Kerr-McGee	2110944	1.021700%	Q1 2017	\$ 2,977,692	\$ 30,423.08
Garfield 28N-14HZ	Kerr-McGee	2110945	0.518577%	Q1 2017	\$ 3,391,338	\$ 17,586.70
Garfield 36N-35HZ	Kerr-McGee	2110941	2.083403%	Q1 2017	\$ 4,609,791	\$ 96,040.52
Garfield 37N-35HZ	Kerr-McGee	2110925	2.766789%	Q1 2017	\$ 4,609,880	\$ 127,545.65
Meese 1C-14HZ	Kerr-McGee	2110928	1.021700%	Q2 2017	\$ 2,963,580	\$ 30,278.90
Meese 1N-14HZ	Kerr-McGee	2110927	1.002604%	Q2 2017	\$ 3,370,335	\$ 33,791.11
Meese 16N-35HZ	Kerr-McGee	2110930	2.755134%	Q2 2017	\$ 4,596,564	\$ 126,641.50
Meese 26N-14HZ	Kerr-McGee	2110922	3.070469%	Q2 2017	\$ 3,371,442	\$ 103,519.08
Meese 27N-14HZ	Kerr-McGee	2110924	1.021700%	Q2 2017	\$ 2,977,692	\$ 30,423.08
Meese 37C-35HZ	Kerr-McGee	2110923	2.767890%	Q2 2017	\$ 3,864,665	\$ 106,969.68
Meese 38C-35HZ	Kerr-McGee	2110926	3.090182%	Q2 2017	\$ 3,903,878	\$ 120,636.94
Meese 38N-35HZ	Kerr-McGee	2110937	3.090182%	Q2 2017	\$ 4,598,603	\$ 142,105.20
<b>TOTAL Kerr-McGee</b>					<b>\$ 96,590,675.00</b>	<b>\$ 1,858,210.25</b>

Well Name	Operator	AFE #	Swan WI	Estimated Spud	Gross AFE	Swan Net
LEHL 30-1	HRM Resources	201620	3.210715%	Q4 2016	\$ 4,772,796.00	\$ 153,240.88
LEHL 30-2	HRM Resources	201621	3.210000%	Q4 2016	\$ 4,769,937.69	\$ 153,115.00
LEHL 30-3	HRM Resources	201622	3.210715%	Q4 2016	\$ 4,771,460.56	\$ 153,198.00
LEHL 30-4	HRM Resources	201623	3.210715%	Q4 2016	\$ 4,773,771.00	\$ 153,272.18
LEHL 30-5	HRM Resources	201624	3.210715%	Q4 2016	\$ 4,770,427.00	\$ 153,164.81
LEHL 30-6	HRM Resources	201625	3.210715%	Q4 2016	\$ 4,771,472.00	\$ 153,198.35
<b>TOTAL HRM Resources</b>					<b>\$ 28,629,864.26</b>	<b>\$ 919,189.22</b>

# **EXHIBIT B**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:

EXTRACTION OIL & GAS, INC., *et al.*,<sup>1</sup>

*Reorganized Debtors.*

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Chapter 11

Case No. 20-11548 (CSS)

(Jointly Administered)

**DECLARATION OF ALLYSON BOIES IN SUPPORT OF REORGANIZED  
DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 1559 FILED BY SWAN  
EXPLORATION, LLC**

---

Allyson Boies, née Vistica, pursuant to 28 U.S.C. § 1746 hereby declares as follows:

1. I am over eighteen years of age, of sound mind, and otherwise competent to make this Declaration. The evidence set out in this Declaration is based on my personal knowledge. The statements in this Declaration are true and accurate to the best of my knowledge.

2. I was, at all relevant times, a Land Manager with Extraction Oil and Gas, Inc. ("Extraction"). In 2019, I became Vice President of Land at Extraction. I submit this Declaration in support of the *Reorganized Debtors' Objection to Proof of Claim No. 1559 Filed by Swan Exploration, LLC*. In my capacity as Land Manager, I was heavily involved in the 2016 negotiations between Extraction and Swan Exploration, LLC ("Swan Exploration") concerning the potential sale of certain oil and gas assets.

3. Throughout October 2016, Extraction and Swan Exploration negotiated a potential Purchase and Sale Agreement (the "Draft Contract").

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



4. Swan Exploration appointed the Oil & Gas Asset Clearinghouse as its agent for the purposes of these negotiations.

5. On or around October 25, 2016, Extraction sent to the Oil & Gas Asset Clearinghouse a redline markup of the Draft Contract.

6. On November 3, 2016, I wrote the Oil & Gas Asset Clearinghouse to ascertain the status of Swan Exploration's review of the marked-up Draft Contract. In that correspondence, I informed Swan Exploration that Extraction would like to execute the Draft Contract on November 7, 2016. In response, the Oil & Gas Asset Clearinghouse wrote "our comments were minimal. Most of the changes had to do with items that pertain to operations, which Swan doesn't have." A true and correct copy of this correspondence is attached as **Exhibit 1**.

7. On November 4, 2016, the Oil & Gas Asset Clearinghouse circulated a revised version of the Draft Contract and said "the majority of [the] revisions relate to incorrect references to Operator items and a few cleanup items." A true and correct copy of this correspondence is attached as **Exhibit 2**.

8. On November 7, 2016, Extraction sent to the Oil & Gas Asset Clearinghouse an allocation schedule. The allocation schedule was expressly "based on the sheet [the Oil & Gas Asset Clearinghouse] sent [to Extraction] back in early October," and, therefore, had no royalty carveout. A true and correct copy of this correspondence is attached as **Exhibit 3**.

9. On November 8, 2016, at 8:31 a.m. (MT), the Oil & Gas Asset Clearinghouse sent to Extraction an email with an attached, and newly edited, redline of the Draft Contract. A true and correct copy of this correspondence is attached as **Exhibit 4**. As relevant here, the Draft Contract inserted the language below:

Section 1.01 Agreement to Sell and Purchase. Subject to and in accordance with the terms and conditions of this Agreement, Buyer agrees to purchase the Assets from Seller, and Seller agrees to sell the Assets to Buyer. It is Seller's intent to convey to Buyer a seventy-five percent (75%) net revenue interest ("NRI") in the Assets, except when Seller's present NRI is less than such seventy-five percent (75%) or when regulatory obligations limit the percentage of override royalty interest Seller may retain, resulting in an NRI above seventy-five percent (75%). Seller shall retain an overriding royalty interest in each Asset, as applicable, where any NRI is in excess of such seventy-five percent (75%) and as permitted by law.

A true and correct copy of this redlined version of the Draft Contract is attached as **Exhibit 5**.

10. At 9:43 a.m. (MT), Extraction wrote to the Oil & Gas Asset Clearinghouse: "We are in agreement with the attached. Please send the executable version and I will have it signed." Shortly thereafter, the Oil & Gas Asset Clearinghouse sent to Extraction an executable version of the Draft Contract. A true and correct copy of this correspondence is attached as **Exhibit 6**.

11. At 10:55 a.m. (MT), Extraction sent an executed version of the Draft Contract. A true and correct copy of this correspondence is attached as **Exhibit 7**. However, within a half-hour of this submission, Extraction discovered that Swan Exploration had materially altered the terms of the deal when it changed the royalty language excerpted above.

12. At 11:31 a.m. (MT), Extraction wrote to the Oil & Gas Asset Clearinghouse to inform it that Extraction had discovered the changes, that they significantly altered material terms of the deal, and Extraction had not agreed (and would not agree) to the changes. Extraction advised that "we have some more negotiating to do." Patrick M. DaPra, Vice President of Negotiated Transactions for the Oil & Gas Asset Clearinghouse, responded that he would call Extraction after lunch. A true and correct copy of this correspondence is attached as **Exhibit 8**.

13. Around 2:45 p.m. (MT), I called the Oil & Gas Asset Clearinghouse and talked to them for roughly two minutes. I informed the Oil & Gas Asset Clearinghouse that the Draft Contract, as written, was not the agreed upon deal and Extraction did not agree to the revised Draft Contract.

14. At 3:09 p.m. (MT), Swan Exploration executed the Draft Contract and caused it to be recirculated to Extraction. *See* Ex. 7.

15. On November 9, 2016, at 2:13 p.m. (MT), notwithstanding the fact that Swan Exploration had executed the Draft Contract, the Oil & Gas Asset Clearinghouse wrote that Swan was willing to continue negotiating material terms of the Draft Contract. A true and correct copy of this correspondence is attached as **Exhibit 9**.

16. From November 10 to November 14, Swan Exploration and Extraction continued to negotiate the material terms of the Draft Contract. Swan Exploration and Extraction, however, were not able to come to mutually agreeable terms.

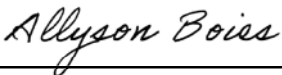
17. Neither Swan Exploration nor Extraction ever tendered any performance under the Draft Contract. For example, Extraction did not deliver—and Swan Exploration did not seek—the deposit referenced in section 2.02 of the Draft Contract during the negotiations from November 10 to November 14. Swan Exploration did not prepare a statement of the estimated Purchase Price Adjustments at least three calendar days prior to November 22, 2016, the Closing Date under the Draft Contract. The parties did not close on the Closing Date. Swan Exploration did not terminate the Draft Contract on the Closing Date.

18. Other than a single letter in December 2016 and Swan Exploration's activity in the above-captioned bankruptcy case, neither Swan Exploration nor Extraction have ever attempted to enforce the Draft Contract. Indeed, the December 2016 letter demonstrated that the Draft Contract was not an enforceable contract. Specifically, Swan Exploration purported to demand closing under the Draft Contract on a date other than the date identified in the Draft Contract. Alternatively, Swan Exploration demanded a deposit, again under terms different than those in the Draft Contract. A true and correct copy of this letter is attached as **Exhibit 10**.

19. Extraction never intended to agree to the revised material terms of the Draft Contract and Extraction was ignorant of this language when it executed the Draft Contract. Extraction never treated the Draft Contract as if it was an enforceable contract.

20. Extraction and Swan Exploration are both sophisticated entities and both parties always intended joint-execution of the Draft Contract as the sole manner of communicating their intent to be bound.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 9, 2021.

  
\_\_\_\_\_  
Allyson Boies

# **EXHIBIT 1**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Thursday, November 3, 2016 8:05 PM  
**To:** Allyson Vistica  
**Cc:** Matt Volkmar  
**Subject:** Re: Swan PSA Revision 10-23

I sure hope so, our comments were minimal. Most of the changes had to do with items that pertain to operations, which Swan doesn't have.

I let you know when I send it back.

Patrick M. DaPra  
Vice President - Negotiated Transactions  
(Office) 832-601-7655  
(Cell) 281-435-1337

On Nov 3, 2016, at 8:36 PM, Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)> wrote:

Great - thanks for letting me know. We would like to sign Monday - do you think that is feasible?

Allyson Vistica  
214 676-9425

On Nov 3, 2016, at 7:16 PM, Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)> wrote:

We hope to have our comments to your redline and all the Exhibits back to you tomorrow afternoon.

Please give me a call tomorrow if you would like to discuss.

Thanks Allyson.

Patrick M. DaPra  
Vice President - Negotiated Transactions  
(Office) 832-601-7655  
(Cell) 281-435-1337

On Nov 3, 2016, at 5:06 PM, Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)> wrote:

Hi Pat – just wanted to check in with you all and see where you are on the PSA.

Thanks!

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Tuesday, October 25, 2016 1:19 PM  
**To:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>  
**Cc:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Subject:** RE: Swan PSA Revision 10-23

Thank you Matt and Allyson, I appreciate it. We will get back to you soon.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Matt Volkmar [<mailto:mvolkmar@extractionog.com>]  
**Sent:** Tuesday, October 25, 2016 1:55 PM  
**To:** Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)>  
**Cc:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Subject:** FW: Swan PSA Revision 10-23

Pat,

At last we have the first turn back for you on the PSA. Please feel free to contact Allyson or myself with follow up as necessary when you begin looking through everything.

Thanks,

*Matt Volkmar*

Petroleum Engineer  
Extraction Oil & Gas  
370 17<sup>th</sup> St., Suite 5300  
Denver, CO 80202  
Direct: 720-557-8315  
Cell: 303-475-7166  
[www.ExtractionOG.com](http://www.ExtractionOG.com)

<image001.jpg>

---

**From:** David Ebner [<mailto:debner@lohshaiman.com>]  
**Sent:** Monday, October 24, 2016 10:39 PM  
**To:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Subject:** Swan PSA Revision 10-23

Several things:

1. I know your guys are reviewing the tax stuff, so I didn't mess with that;
2. There is no promise that the Leases cover Codell-Niobrara; you have to look at Exhibit A and see what the depth restrictions are on each lease. Important for setting Allocated Values, which should be shown on Exhibit A for Leases and Exhibit C for wells; and
3. Section 12.02 and Schedule 12.02 seem to contemplate some baseline gas imbalance that already exists; there's a price adjustment only if the imbalance is greater than shown on Schedule 12.02.

David, 303-753-9000

---

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## **EXHIBIT 2**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Tuesday, March 9, 2021 12:55 PM  
**To:** Allyson Vistica  
**Cc:** Matt Volkmar; Katherine O'Connell  
**Subject:** Swan PSA Revision 11-04-16

Allyson;

Attached please find draft redline and clean versions of the above-referenced PSA for your review. Please note that the redline details those revisions from Buyer's last version. We hope to finalize the Exhibits by early next week and, therefore, we reserve our right to further comment and revisions. Finally, as stated in a prior email, the majority of Seller's revisions relate to incorrect references to Operator items and a few cleanup items.

Also, I have copied Katherine O'Connell, Swan's General Counsel, on this email. Katherine's contact information is below. Katherine is a new employee and is available to discuss directly with your legal counsel.

**Katherine N. O'Connell | General Counsel**

**Swan Energy**

1235 North Loop W., Suite 510 | Houston, TX 77008

o (866) 539-0860 | c (713) 557-6104

[koconnell@swanenergyinc.com](mailto:koconnell@swanenergyinc.com) | [swanenergyinc.com](http://swanenergyinc.com)

Thank you for your patience, please give me a call if you have any questions

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

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## **EXHIBIT 3**

---

**From:** Matt Volkmar <mvolkmar@extractionog.com>  
**Sent:** Tuesday, March 9, 2021 12:55 PM  
**To:** Allyson Vistica; Pat DaPra  
**Cc:** Katherine O'Connell  
**Subject:** RE: Swan PSA Revision 11-04-16

Pat...attached is an allocation schedule based on the sheet you had sent me back in early October. This basically allocates everything on the acreage listed within the sheet at that time. Being that we are putting all value on acreage, I assume this would be usable for an exhibit. Let us know your thoughts.

Thanks,

*Matt Volkmar*

Petroleum Engineer  
Extraction Oil & Gas  
370 17<sup>th</sup> St., Suite 5300  
Denver, CO 80202  
Direct: 720-557-8315  
Cell: 303-475-7166  
[www.ExtractionOG.com](http://www.ExtractionOG.com)



---

**From:** Allyson Vistica  
**Sent:** Monday, November 7, 2016 3:23 PM  
**To:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Cc:** Matt Volkmar <mvolkmar@extractionog.com>; Katherine O'Connell <koconnell@ogclearinghouse.com>  
**Subject:** RE: Swan PSA Revision 11-04-16

I will also need wire instructions.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Friday, November 04, 2016 4:01 PM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** Swan PSA Revision 11-04-16

Allyson;

Attached please find draft redline and clean versions of the above-referenced PSA for your review. Please note that the redline details those revisions from Buyer's last version. We hope to finalize the Exhibits by early next week and,

therefore, we reserve our right to further comment and revisions. Finally, as stated in a prior email, the majority of Seller's revisions relate to incorrect references to Operator items and a few cleanup items.

Also, I have copied Katherine O'Connell, Swan's General Counsel, on this email. Katherine's contact information is below. Katherine is a new employee and is available to discuss directly with your legal counsel.

**Katherine N. O'Connell | General Counsel**

Swan Energy

1235 North Loop W., Suite 510 | Houston, TX 77008

o (866) 539-0860 | c (713) 557-6104

[koconnell@swanenergyinc.com](mailto:koconnell@swanenergyinc.com) | [swanenergyinc.com](http://swanenergyinc.com)

Thank you for your patience, please give me a call if you have any questions

Patrick M. DaPra

Vice President – Negotiated Transactions

Office Direct: 832-601-7655

Cell: 281-435-1337

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## **EXHIBIT 4**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Tuesday, March 9, 2021 12:55 PM  
**To:** Allyson Vistica  
**Cc:** Matt Volkmar; Katherine O'Connell  
**Subject:** Swan PSA Revision 11-08-16

Allyson;

Attached please find redline and clean versions of the PSA detailing Purchaser's comments from yesterday and the following revisions I made this morning:

1. Revised PSA date to 11.08.2016
2. Section 1.01 language relating to Seller's override royalty interest
3. Re-inserted the header 3.09 which was inadvertently deleted in yesterday's version.
4. Completed Notice section
5. Inserted PSA date into Assignment exhibit
6. Revised footer for execution.

If you are in agreement with the attached, please let us know and we will send an executable version to you. Please give me a call a call on my cell phone if you would like to discuss.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

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## **EXHIBIT 5**



**PURCHASE AND SALE AGREEMENT**  
**BETWEEN**

**Swan Exploration, LLC,**  
**a Colorado limited liability company**

**AS SELLER**

**AND**

**Extraction Oil & Gas, Inc.,**  
**a Delaware corporation**

**AS BUYER**

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## **EXHIBITS AND SCHEDULES**

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Exhibit B – Wells and Interests  
Exhibit C – Allocated Values  
Exhibit D – Assignment and Bill of Sale  
Exhibit E – Executed AFE's

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into this 8<sup>th</sup> day of November, 2016, by and between Swan Exploration, LLC, a Colorado limited liability company (the "Seller"), and Extraction Oil & Gas, Inc., a Delaware corporation (the "Buyer"). Buyer and Seller are collectively referred to herein as the "Parties", and are sometimes referred to individually as a "Party."

### WITNESSETH:

WHEREAS, Seller is willing to sell to Buyer, and Buyer is willing to purchase from Seller, the Assets (as defined in Section 1.02), all upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual benefits derived and to be derived from this Agreement by each Party, Seller and Buyer hereby agree as follows:

### Article I Assets

Section 1.01 Agreement to Sell and Purchase. Subject to and in accordance with the terms and conditions of this Agreement, Buyer agrees to purchase the Assets from Seller, and Seller agrees to sell the Assets to Buyer. It is Seller's intent to convey to Buyer a seventy-five percent (75%) net revenue interest ("NRI") in the Assets, except when Seller's present NRI is less than such seventy-five percent (75%) or when regulatory obligations limit the percentage of override royalty interest Seller may retain, resulting in an NRI above seventy-five percent (75%). Seller shall retain an overriding royalty interest in each Asset, as applicable, where any NRI is in excess of such seventy-five percent (75%) and as permitted by law.

Section 1.02 Assets. Subject to Section 1.03, the term "Assets" shall mean all of Seller's right, title and interest, if any, in and to:

- (a) the leasehold estates in and to the oil, gas and mineral leases described or referred to in Exhibit A and any other oil, gas and mineral leases covering lands in the same sections of the governmental survey as the leases described in Exhibit A (the "Leases"), or lands pooled therewith; provided that all of the foregoing are subject to the limitations described in Exhibit A, which include depth limitations and excluded interests in particular Leases and wells (collectively, the "Subject Interests," or singularly, a "Subject Interest");
- (b) all rights incident to the Subject Interests, including, without limitation, all rights with respect to any pooled, communitized or unitized acreage by virtue of any Subject Interest being a part thereof, including all Hydrocarbon (as defined in Subsection (d) of this Section 1.02) production after the Effective Time (as defined in Section 2.04) attributable to the Subject Interests or any such pool or unit allocated to any such Subject Interest;

- (c) all easements, rights-of-way, surface leases, servitudes, permits, licenses, franchises and other estates or similar rights and privileges directly related to or used in connection with the Subject Interests (the "Easements"), including, without limitation, the Easements described or referred to in Exhibit A;
- (d) all personal property, equipment, fixtures, inventory and improvements located on or used in connection with the Subject Interests and the Easements or with the production, treatment, sale, or disposal of oil, gas or other hydrocarbons (collectively, "Hydrocarbons"), byproducts or waste produced therefrom or attributable thereto, including, without limitation, all wells located on the lands covered by the Subject Interests or on lands with which the Subject Interests may have been pooled, communitized or unitized (whether producing, shut in or abandoned, and whether for production, injection or disposal), including, without limitation, the wells described in Exhibit B, wellhead equipment, pumps, pumping units, flowlines, gathering systems, piping, tanks, buildings, treatment facilities, injection facilities, disposal facilities, compression facilities, and other materials, supplies, equipment, facilities and machinery (collectively, "Personal Property");
- (e) to the extent assignable, all contracts, agreements and other arrangements that directly relate to the Subject Interests, the Leases or the Easements, including, without limitation, production sales contracts, farmout agreements, operating agreements, service agreements and similar arrangements (collectively, the "Contracts");
- (f) all books, records, files, muniments of title, reports and similar documents and materials, including, without limitation, lease records, well records, and division order records, well files, title records (including abstracts of title, title opinions and memoranda, and title curative documents related to the Assets), contracts and contract files, correspondence, that relate to the foregoing interests in the possession of, and maintained by, Seller (collectively, the "Records"); and
- (g) all geological and geophysical data relating to the Subject Interests, other than such data prepared by Seller that is interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party, unless Buyer agrees to make payment. For purposes of this Agreement, "Third Party" means any person or entity, governmental or otherwise, other than Seller or Buyer, and their respective affiliates; the term includes, but is not limited to, working interest owners, royalty owners, lease operators, landowners, service contractors and governmental agencies.

Section 1.03 Excluded Assets. Notwithstanding the foregoing, the Assets shall not include, and there is excepted, reserved and excluded from the sale contemplated hereby

(collectively, the "Excluded Assets"): (a) all trade credits and refunds and all accounts, instruments and general intangibles (as such terms are defined in the Colorado Uniform Commercial Code), attributable to the Assets with respect to any period of time prior to the Effective Time; (b) all claims and causes of action of Seller arising from acts, omissions or events occurring prior to the Effective Time; (c) all rights and interests of Seller (i) under any policy or agreement of insurance or indemnity, (ii) under any bond, or (iii) to any insurance or condemnation proceeds or awards arising, in each case, from acts, omissions or events, or damage to or destruction of property, occurring prior to the Effective Time; (d) all Hydrocarbons produced from or attributable to the Subject Interests with respect to all periods prior to the Effective Time, together with all proceeds from the sale of such Hydrocarbons; (e) all claims of Seller for refunds of or loss carry forwards with respect to any taxes and refunds for amounts paid in connection with the Assets attributable to any period prior to the Effective Time; (f) all amounts due or payable to the Seller as adjustments to insurance premiums related to the Assets with respect to any period prior to the Effective Time; (g) all proceeds, income or revenues (and any security or other deposits made) attributable to the Assets for any period prior to the Effective Time; (h) all of Seller's rights and interests in geological and geophysical data prepared by Seller that are interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party, unless the Third Party consents or Buyer makes the required payment; (i) all data and other information that cannot be disclosed or assigned to Buyer as a result of confidentiality or similar arrangements under agreements with persons unaffiliated with Seller; (j) all audit rights arising under any of the Contracts with respect to any period prior to the Effective Time; and (k) all overriding royalty interests previously owned or recently created by Seller which ~~are~~ shall be determined on                      or prior to Closing.

## Article II Purchase Price

Section 2.01 Purchase Price. The total consideration for the purchase, sale and conveyance of the Assets to Buyer is Buyer's payment to Seller of the sum of \$                      9,500,000.00 (the "Purchase Price"), as allocated and as adjusted in accordance with the provisions of this Agreement. The adjusted Purchase Price shall be paid to Seller at Closing (as defined in Section 10.01) by means of a completed federal funds wire transfer to an account designated in writing by Seller.

Section 2.02 Deposit. Concurrently with the execution of this Agreement by Buyer and Seller, Buyer shall deliver to Seller a performance guarantee deposit in the amount of ten percent (10%) of the Purchase Price (the "Deposit"). The Deposit shall be paid by Buyer to Seller by means of a completed federal funds wire transfer to the account of Swan Exploration, LLC. The wiring information will be supplied upon execution of this Agreement.

Section 2.03 Allocated Values. Buyer and Seller have agreed on the allocation of the Purchase Price among the Assets as set forth in Exhibit C attached hereto (the "Allocated Values"). Seller and Buyer agree that the Allocated Values shall be used to compute any adjustments to the Purchase Price pursuant to the provisions of Article III and Article IV.

Section 2.04 Effective Time. If the transactions contemplated hereby are consummated in accordance with the terms and provisions hereof, the ownership of the Assets shall be



transferred from Seller to Buyer on the Closing Date (as defined in Section 10.01 below), and effective as of 7:00 a.m. Mountain time where the Assets are located on October 1, 2016 (the "Effective Time").

### **Article III Title Matters**

Section 3.01 Examination Period. Following the execution date of this Agreement until 5:00 p.m., Mountain time in Denver, Colorado on the date that is fifteen (15) calendar days prior to the Closing of this Agreement (the "Examination Period"), Seller shall permit Buyer and/or its representatives (including Buyer's Environmental Consultant) to examine, at all reasonable times, in Seller's offices, all abstracts of title, title opinions, title files, ownership maps, lease files, contract files, assignments, division orders, operating and accounting records and agreements pertaining to the Assets insofar as same may now be in existence and in the possession of Seller, subject to such restrictions on disclosure as may exist under confidentiality agreements or other agreements binding on Seller or such data.

Section 3.02 Defensible Title and Permitted Encumbrances. For purposes of this Agreement, the term "Defensible Title" means, with respect to a given Asset, subject to and except for the Permitted Encumbrances (as defined in Subsection (e) of this Section 3.02):

- (a) as to each well shown on Exhibit B, such ownership by Seller during the productive life of the well that entitles Seller (and, after its purchase, Buyer) to receive not less than the percentage set forth in Exhibit B as Seller's "Net Revenue Interest" of all Hydrocarbons produced, saved and marketed from such well, all without reduction, suspension or termination of such interest throughout the productive life of such well, except for carried interests, production payments, reversionary interests or other changes in interest specifically set forth in Exhibit B;
- (b) as to each well shown on Exhibit B, such ownership by Seller during the productive life of the well that obligates Seller (and, after its purchase, Buyer) to bear not greater than the percentage set forth in Exhibit B as Seller's "Working Interest" of the costs and expenses relating to the maintenance, development and operation of such well, all without increase throughout the productive life of such well, except for carried interests, reversionary interests or other changes in interest specifically set forth in Exhibit B;
- (c) as to each Lease shown in Exhibit A:
  - i. the Lease covers the Net Leased Acres (defined as the gross acres covered by the Lease multiplied by lessor's fee mineral interest in those acres multiplied by Seller's Working Interest shown in Exhibit A in the Lease);

- ii. Seller owns the Working Interest and Net Revenue Interest shown in Exhibit A as to all depths, unless otherwise indicated in Exhibit A;
  - iii. the primary term of each Lease not included in a currently producing spacing unit continues at least through January 1, 2018; and
  - iv. is free and clear of all liens, encumbrances and defects in title.
- (d) The term "Permitted Encumbrances" shall mean any of the following matters to the extent the same are valid and subsisting and affect the Assets:
- i. the Leases and Contracts;
  - ii. any (A) undetermined or inchoate liens or charges constituting or securing the payment of expenses that were incurred incidental to the maintenance, development, production or operation of the Assets or for the purpose of developing, producing or processing Hydrocarbons therefrom or therein, and (B) materialman's, mechanics', repairman's, employees', contractors', operators' liens or other similar liens or charges for liquidated amounts that are not delinquent;
  - iii. any liens for taxes and assessments not yet delinquent or, if delinquent, that are being contested in good faith in the ordinary course of business and for which any Seller has agreed to pay pursuant to the terms hereof or which have been prorated pursuant to the terms hereof;
  - iv. the terms, conditions, restrictions, exceptions, reservations, limitations and other matters contained in (including any liens or security interests created by law or reserved in oil and gas leases for royalty, bonus or rental, or created to secure compliance with the terms of) the agreements, instruments and documents that create or reserve to Seller its interest in the Assets; provided that such matters do not operate to reduce the Net Revenue Interests of Seller below those set forth in Exhibit B or increase the Working Interests of Seller above those set forth in Exhibit B without a corresponding increase in the Net Revenue Interests;
  - v. any obligations or duties affecting the Assets to any municipality or public authority with respect to any franchise, grant, license or permit and all applicable laws, rules, regulations and orders of any Governmental Authority (as defined in Section 4.02(b));

- vi. any (A) easements, rights-of-way, servitudes, permits, surface leases and other rights in respect of surface operations, pipelines, grazing, hunting, lodging, canals, ditches, reservoirs or the like, and (B) easements for streets, alleys, highways, pipelines, telephone lines, power lines, railways and other similar rights-of-way on, over or in respect of property owned or leased by Seller or over which Seller owns rights-of-way, easements, permits or licenses, to the extent that same do not materially interfere with the oil and gas operations to be conducted on the Assets;
- vii. all lessors' royalties, overriding royalties, net profits interests, carried interests, production payments, reversionary interests and other burdens on or deductions from the proceeds of production created or in existence as of the date of this Agreement, whether recorded or unrecorded, provided that such matters do not operate to reduce the Net Revenue Interests of Seller below those set forth in Exhibit B or increase the Working Interests of Seller above those set forth in Exhibit B without a corresponding increase in the Net Revenue Interests;
- viii. preferential rights to purchase or similar agreements with respect to which (A) waivers or consents are obtained from the appropriate parties for the transaction contemplated hereby, or (B) required notices have been given for the transaction contemplated hereby to the holders of such rights and the appropriate period for asserting such rights has expired without an exercise of such rights;
- ix. required Third Party consents to assignments or similar agreements with respect to which (A) waivers or consents are obtained from the appropriate parties for the transaction contemplated hereby, or (B) required notices have been given for the transaction contemplated hereby to the holders of such rights and the appropriate period for asserting such rights has expired without an exercise of such rights;
- x. all rights to consent by, required notices to, filings with, or other actions by Governmental Authorities in connection with the sale or conveyance to Buyer of oil and gas leases or interests therein that are customarily obtained subsequent to such sale or conveyance;
- xi. production sales contracts; division orders; contracts for sale, purchase, exchange, refining or processing of Hydrocarbons; unitization and pooling designations, declarations, orders and agreements; operating agreements; agreements of development; area of mutual interest agreements; gas balancing or deferred production agreements; processing agreements; plant agreements; gathering agreements; injection, repressuring and recycling

agreements; salt water or other disposal agreements; and any and all other agreements that have terms that are ordinary and customary to the oil and gas exploration, development, processing or extraction business or in the business of processing of gas and gas condensate production for the extraction of products therefrom, to the extent the same do not reduce the Net Revenue Interests of Seller below those set forth in Exhibit B or increase the Working Interests of Seller above those set forth in Exhibit B without a corresponding increase in the Net Revenue Interest;

- xii. rights reserved to or vested in any Governmental Authority to control or regulate any of the Assets and the applicable laws, rules, and regulations of such Governmental Authorities;
- xiii. any liens of record that will be released by Seller at or before Closing; and
- xiv. all defects and irregularities affecting the Assets which individually or in the aggregate (A) do not operate to (1) reduce the Net Revenue Interest of Seller, (2) increase the proportionate share of costs and expenses of leasehold operations attributable to or to be borne by the Working Interests of Seller, or (3) otherwise interfere materially with the operation, value or use of the Assets, or (4) that would not be considered material when applying general industry standards; or (B) operate to increase the proportionate share of costs and expenses of leasehold operations attributable to or to be borne by the Working Interest of Seller, so long as there is a proportionate increase in Seller's Net Revenue Interest.

Section 3.03 Title Defect. The term "Title Defect," as used in this Agreement, shall mean: (a) any encumbrance, encroachment, irregularity, defect in or objection to Seller's ownership of any Asset (expressly excluding Permitted Encumbrances) that causes Seller not to have Defensible Title to such Asset; or (b) any default by Seller under a lease, farmout agreement or other contract or agreement that would (i) have a material adverse effect on the operation, value or use of such Asset, (ii) prevent Seller from receiving the proceeds of production attributable to Seller's interest therein or (iii) result in cancellation of Seller's interest therein.

Section 3.04 Notice of Title Defects.

- (a) If Buyer discovers any Title Defect affecting any Asset, Buyer shall notify Seller as promptly as possible, but no later than the expiration of the Examination Period of such alleged Title Defect. To be effective, such notice must (i) be in writing, (ii) be received by Seller by 5:00 p.m. Mountain Time on the expiration date of the Examination Period, (iii) describe the Title Defect in sufficient, specific detail (including any alleged variance in the Net Revenue Interest), (iv) identify the specific Asset or Assets affected by such Title Defect, and (v) include the value of

such Title Defect as determined by Buyer. Any matters that may otherwise constitute Title Defects, but of which Seller has not been specifically notified by Buyer in accordance with the foregoing, shall be deemed to have been waived by Buyer for all purposes and shall constitute Permitted Encumbrances.

- (b) Upon the receipt of such effective notice from Buyer, Seller shall (i) attempt to cure such Title Defect at any time prior to the Closing or (ii) exclude the affected Asset from the sale and reduce the Purchase Price by the Allocated Value of such affected Asset as set forth on Exhibit C.
- (c) The value attributable to each Title Defect (the "Title Defect Value") that is asserted by Buyer in the Title Defect notices shall be determined based upon the criteria set forth below:
  - i. If the Title Defect is a lien upon any Asset, the Title Defect Value is the amount necessary to be paid to remove the lien from the affected Asset.
  - ii. If the Title Defect asserted is that the Net Revenue Interest attributable to any Lease or well is less than that stated in Exhibit A or C or the Working Interest attributable to any Lease or well is greater than that stated in Exhibit A or C, or the Net Leases Acres covered by a Lease is less than that stated in Exhibit A, then the Title Defect Value shall take into account the relative change in the interest and the Allocated Value attributed to such Asset.
  - iii. If the Title Defect represents an obligation, encumbrance, burden or charge upon the affected Asset (including any increase in Working Interest for which there is not a proportionate increase in Net Revenue Interest) for which the economic detriment to Buyer is unliquidated, the amount of the Title Defect Value shall be determined by taking into account the Allocated Value of the affected Asset, the portion of the Asset affected by the Title Defect, the legal effect of the Title Defect, the potential discounted economic effect of the Title Defect over the life of the affected Asset, and the Title Defect Values placed upon the Title Defect by Buyer and Seller.
  - iv. If a Title Defect is not in effect or does not adversely affect an Asset throughout the entire productive life of such Asset, such fact shall be taken into account in determining the Title Defect Value.
  - v. The Title Defect Value of a Title Defect shall be determined without duplication of any costs or losses included in another Title Defect Value hereunder.

- vi. Notwithstanding anything herein to the contrary, in no event shall a Title Defect Value exceed the Allocated Value of the wells, units or other Assets affected thereby.
- vii. Such other factors as are reasonably necessary to make a proper evaluation.

Section 3.05 Remedies for Title Defects.

- (a) With respect to each Title Defect that Seller does not cure on or before the Closing, except as otherwise provided in this Section 3.05, the Purchase Price shall be reduced by an amount equal to the Title Defect Value agreed upon in writing by Buyer and Seller.
- (b) If any Title Defect is in the nature of an unobtained consent to assignment or other restriction on assignability, the provisions of Section 3.08 shall apply ~~Section 3.08 does not handle this as currently revised~~.
- (c) If on or before Closing the Parties have not agreed upon the validity of any asserted Title Defect or have not agreed on the Title Defect Value attributable thereto, either Party shall have the right to elect to have the validity of such Title Defect and/or such Title Defect Value determined by an Independent Expert pursuant to Section 16.03. If the validity of any asserted Title Defect, or the Title Defect Value attributable thereto, is not determined before Closing, then the affected Asset shall be excluded from the sale and the Purchase Price shall be reduced by the Allocated Value of such affected Asset as set forth on Exhibit C.
- (d) Notwithstanding anything to the contrary in this Agreement, (i) if the value of a given individual Title Defect (or individual Title Benefit (as defined in Section 3.09(a))) does not exceed Fifty Thousand and No/100 Dollars (\$50,000) then no adjustment to the Purchase Price shall be made for such Title Defect (or Title Benefit), (ii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Defects does not exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then no adjustment of the Purchase Price shall be made therefor, and (iii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Defects does exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then the Purchase Price shall only be adjusted by the amount of such excess.

Section 3.06 Special Warranty of Title. Seller hereby agrees to warrant and defend title to the Assets solely unto Buyer against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Seller, but not otherwise; subject, however, to the Permitted Encumbrances and the other matters set forth herein. In no event shall the

foregoing warranty extend to or be enforceable by any party other than Buyer and Buyer's successors and assigns in all or part of the Assets.

Section 3.07 Preferential Rights to Purchase. Buyer's good faith allocation of values as set forth in Exhibit C shall be used to prepare an allocation of the Purchase Price to Assets that are subject to preferential rights to purchase and will be set forth in Schedule 3.07. Seller shall use its reasonable efforts to comply with all preferential right to purchase provisions relative to any Asset prior to the Closing. If, prior to Closing, a holder of a preferential purchase right notifies Seller that it intends to exercise its rights with respect to an Asset to which its preferential purchase right applies (as determined in accordance with the agreement in which the preferential purchase right arises), the Asset covered by said preferential purchase right shall be excluded from the Assets to be conveyed to Buyer, and the Purchase Price shall be reduced by the Allocated Value of said Asset as set forth in Schedule 3.07. Seller shall determine (in its good faith judgment) the extent of the preferential purchase rights encumbering the Assets, and said determination shall be used by Seller to provide the preferential purchase right notifications. If the holder of the preferential purchase right fails to consummate the purchase of the Asset subject to the preferential purchase right, Seller shall promptly notify Buyer. Within ten (10) calendar days after Buyer's receipt of such notice or Closing, whichever is later, Seller shall sell to Buyer, and Buyer shall purchase from Seller, such Asset under the terms of this Agreement for a price equal to the Allocated Value of such Asset as set forth in Schedule 3.07. Notwithstanding the foregoing, Buyer shall have no obligation under this Agreement or otherwise to purchase the Asset if Buyer is not notified of the preferential purchase right holder's failure to consummate the purchase of the Asset within ninety (90) calendar days following Closing. Seller will use reasonable efforts to send out the applicable preferential right to purchase notices within five (5) calendar days after the date this Agreement is executed.

Section 3.08 Consents to Assignment. ~~{Unclear language}~~ Seller shall use all reasonable efforts to obtain all necessary consents from third parties to assign the Assets prior to Closing (other than governmental approvals that are customarily obtained after Closing) and Buyer shall assist Seller with such efforts. To the extent such consents are not obtained prior to Closing and are not waived in writing by Buyer, then such failure shall constitute a Title Defect as to that portion of the Assets affected thereby. ~~Unobtained consents shall not constitute Title Defects [The last two sentences expressly conflict.] [Also, this needs to tie back to Section 3.05(b)].~~

~~Section 3.09~~ Section 3.09 Remedies for Title Benefits.

- (a) If either Party discovers any Title Benefit during the Examination Period affecting the Assets, it shall promptly notify the other Party in writing thereof on or before the expiration of the Examination Period. Subject to Section 3.05, Seller shall be entitled to an upward adjustment to the Purchase Price pursuant to Section 10.02(a)(iii) with respect to all Title Benefits in excess of Fifty Thousand and No/100 Dollars (\$50,000), in an amount mutually agreed upon by the Parties; provided, however, that if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Benefits does not exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then



no adjustment of the Purchase Price shall be made therefor, and if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Title Benefits does exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then the Purchase Price shall only be adjusted by the amount of such excess. For purposes of this Agreement, the term "Title Benefit" shall mean Seller's interest in any Subject Interest that is greater than or in addition to that set forth in Exhibit B (including, without limitation, a Net Revenue Interest that is greater than that set forth in Exhibit B) or Seller's Working Interest in any Subject Interest that is less than the Working Interest set forth in Exhibit B (without a corresponding decrease in the Net Revenue Interest). Any matters that may otherwise constitute Title Benefits, but of which Buyer has not been specifically notified by Seller in accordance with the foregoing, shall be deemed to have been waived by Seller for all purposes.

- (b) If, with respect to a Title Benefit, the Parties are not deemed to have agreed on the amount of the upward Purchase Price adjustment or have not otherwise agreed on such amount prior to the Closing Date, Seller or Buyer shall have the right to elect to have such Purchase Price adjustment determined by an Independent Expert pursuant to Section 16.03. If the amount of such adjustment is not determined pursuant to this Agreement by the Closing, the undisputed portion of the Purchase Price with respect to the Asset affected by such Title Benefit shall be paid by Buyer at the Closing and, subject to Section 3.05, upon determination of the amount of such adjustment, any unpaid portion thereof shall be paid by Buyer to Seller.

#### **Article IV Environmental Matters**

##### **Section 4.01 Environmental Review.**

- (a) Buyer shall have the right to conduct or cause a consultant ("Buyer's Environmental Consultant") to conduct an environmental review of the public records regarding each of the Assets and Seller's records pertaining to the Assets (as set forth in Section 3.01) prior to the expiration of the Examination Period ("Buyer's Environmental Review"). The cost and expense of Buyer's Environmental Review, if any, shall be borne solely by Buyer. Buyer acknowledges that Seller is not the operator of any well or location which pertains to any of the Assets and, accordingly, Buyer's Environmental Review shall not include any (x) visits to any well or location which any of the Assets pertain to or (y) intrusive test or procedure without the prior written consent of Seller; provided, however, for those Assets in which no person or entity is acting as operator of such Asset, Seller shall use reasonable efforts to permit Buyer's Environmental Consultant to visit such Asset's location but no intrusive test or procedure shall be permitted at such location without Seller's prior written consent.



Buyer shall (and shall cause Buyer's Environmental Consultant to) comply with all applicable laws, rules, and regulations. Buyer shall be solely responsible for obtaining any Third Party consents that are required in order to perform any work comprising Buyer's Environmental Review, and Buyer shall consult with Seller prior to requesting each such Third Party consent. Buyer hereby agrees to release, defend, indemnify and hold harmless Seller from and against all claims, losses, damages, costs, expenses, causes of action and judgments of any kind or character **(INCLUDING THOSE RESULTING FROM SELLER'S SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY)** arising out of or relating to Buyer's Environmental Review. Buyer hereby covenants and agrees that it will have at least \$1,000,000 of general liability insurance prior to the commencement of the Environmental Review.

- (b) Unless otherwise required by applicable law, Buyer shall (and shall cause Buyer's Environmental Consultant to) treat confidentially any matters revealed by Buyer's Environmental Review and any reports or data generated from such review (the "Environmental Information"), and Buyer shall not (and shall cause Buyer's Environmental Consultant to not) disclose any Environmental Information to any Governmental Authority or other Third Party without the prior written consent of Seller. Unless otherwise required by law, Buyer may use the Environmental Information only in connection with the transactions contemplated by this Agreement. If Buyer, Buyer's Environmental Consultant, or any Third Party to whom Buyer has provided any Environmental Information becomes legally compelled to disclose any of the Environmental Information, Buyer shall provide Seller with prompt notice sufficiently prior to any such disclosure so as to allow Seller to file any protective order, or seek any other remedy, as it deems appropriate under the circumstances. If this Agreement is terminated prior to the Closing, Buyer shall deliver the Environmental Information to Seller, which Environmental Information shall become the sole property of Seller. Buyer shall provide copies of the Environmental Information to Seller without charge.

#### Section 4.02 Environmental Definitions.

- (a) Environmental Defects. For purposes of this Agreement, the term "Environmental Defect" shall mean, with respect to any given Asset, an individual environmental condition that constitutes, pursuant to Environmental Laws in effect as of the date of this Agreement in the jurisdiction in which such Asset is located, either (i) an actual violation or (ii) a condition that, if investigated by an authority having jurisdiction, would reasonably be expected to constitute a violation, regardless of whether Seller has been so notified or investigated by a Governmental Authority.

- (b) Governmental Authority. For purposes of this Agreement, the term "Governmental Authority" shall mean, as to any given Asset, the United States and the state, county, parish, city and political subdivisions in which such Asset is located and that exercises jurisdiction over such Asset, and any agency, department, board or other instrumentality thereof that exercises jurisdiction over such Asset.
- (c) Environmental Laws. For purposes of this Agreement, the term "Environmental Laws" shall mean all laws, statutes, ordinances, court decisions, rules and regulations of any Governmental Authority pertaining to health or the environment as may be interpreted by applicable court decisions or administrative orders, including, without limitation, the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act, as amended, the Resources Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendment and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and comparable state and local laws.
- (d) Environmental Defect Value. For purposes of this Agreement, the term "Environmental Defect Value" shall mean, with respect to any Environmental Defect, the value, as of the Closing Date (taking into account Seller's working interest percentage in such Asset), of the estimated costs and expenses to correct such Environmental Defect in the most cost-effective manner reasonably available, consistent with Environmental Laws, taking into account that non-permanent remedies (such as mechanisms to contain or stabilize hazardous materials, including monitoring site conditions, natural attenuation, risk-based corrective action, institutional controls or other appropriate restrictions on the use of property, caps, dikes, encapsulation, leachate collection systems, etc.) may be the most cost-effective manner reasonably available.

#### Section 4.03 Notice of Environmental Defects.

- (a) If Buyer discovers any Environmental Defect affecting the Assets, Buyer shall notify Seller prior to the earlier of (x) five (5) days after discovery of such Environmental Defect or (y) the expiration of the Examination Period of such alleged Environmental Defect. To be effective, such notice must: (i) be in writing; (ii) be received by Seller prior to the expiration of the Examination Period; (iii) describe the Environmental Defect in sufficient, specific detail, including, without limitation, (A) the written conclusion of Buyer's Environmental Consultants that an Environmental Defect exists, which conclusion shall be reasonably substantiated by the factual data gathered in Buyer's Environmental Review, and (B) a separate specific citation of the provisions of Environmental Laws alleged to be violated

and the related facts that substantiate such violation; (iv) identify the specific Assets affected by such Environmental Defect; (v) identify the procedures recommended by Buyer's Environmental Consultant to correct the Environmental Defect; and (vi) state Buyer's estimate of the Environmental Defect Value, including the basis for such estimate, for which Buyer would agree to adjust the Purchase Price in order to accept such Environmental Defect if Seller elected Section 4.03(b)(ii) as the remedy therefor.

- (b) Any matters that may otherwise constitute Environmental Defects, but of which Seller has not been specifically notified by Buyer in accordance with the foregoing, together with any environmental matter that does not constitute an Environmental Defect, shall be deemed to have been waived by Buyer for all purposes and constitute an Assumed Obligation (as defined in Section 14.02). Upon the receipt of such effective notice from Buyer, Seller (i) may, but shall not be obligated to, attempt to cure such Environmental Defect at any time prior to the Closing; or (ii) may exclude the affected Asset from the sale and reduce the Purchase Price by the Allocated Value of such affected Asset as set forth on Exhibit C

#### Section 4.04 Remedies for Environmental Defects.

- (a) If any Environmental Defect described in a notice delivered in accordance with Section 4.03 is not cured on or before the Closing, and the Seller has not elected to indemnify the Buyer for the Environmental Defect, then the Purchase Price shall be reduced by the Environmental Defect Value of such Environmental Defect as agreed by the Parties.
- (b) If Buyer and Seller have not agreed as to the validity of any asserted Environmental Defect, or if the Parties have not agreed on the Environmental Defect Value therefor, then on or before three (3) calendar days prior to the Closing Date either Party shall have the right to elect to have validity of the asserted Environmental Defect, and/or the Environmental Defect Value for such Environmental Defect, determined by an Independent Expert pursuant to Section 16.03. If the validity of any such asserted Environmental Defect or the amount of any such Environmental Defect Value is not determined by the Closing, the Asset affected by such disputed Environmental Defect shall be excluded from the Closing and the Purchase Price paid at Closing shall be reduced by the Allocated Value of that Asset. Upon resolution of such dispute, the Environmental Defect Value, if any, found to be attributable to such Environmental Defect shall, subject to this Section 4.04, be paid by Buyer to Seller and the Asset conveyed to the Buyer, if that is part of the mutually agreed settlement. Notwithstanding the foregoing, either Buyer or Seller shall have the right to exclude an Asset from the sale if the Environmental Defect Value exceeds the Allocated Value of the Asset(s) affected thereby.

- (c) Notwithstanding anything to the contrary in this Agreement, (i) if the Environmental Defect Value for a given individual Environmental Defect does not exceed Fifty Thousand and No/100 Dollars (\$50,000), then no adjustment to the Purchase Price shall be made for such Environmental Defect; (ii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Environmental Defects does not exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then no adjustment of the Purchase Price shall be made therefore; and (iii) if the aggregate adjustment to the Purchase Price determined in accordance with this Agreement for Environmental Defects does exceed two and one-half percent (2.5%) of the Purchase Price prior to any adjustments thereto, then the Purchase Price shall only be adjusted by the amount of such excess.

## **Article V**

### **Representations and Warranties of Seller**

Seller represents and warrants to Buyer as of the Effective Time and as of Closing that:

Section 5.01 Seller's Existence. Swan Exploration, LLC, is a limited liability company, duly organized and validly existing under the laws of the State of Colorado and is qualified to conduct business in the State of Texas. Seller has full legal power, right and authority to carry on its business as such is now being conducted and as contemplated to be conducted. Seller's headquarters and principal offices are all located in the State of Texas.

Section 5.02 Legal Power. Seller has the legal power and right to enter into and perform this Agreement and the transactions contemplated hereby. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with:

- (a) any provision of Seller's limited liability company agreement, or other governing documents;
- (b) except for any preferential purchase rights and consents to assignment which constitute Permitted Encumbrances, any material agreement or instrument to which Seller is a party or by which Seller or the Assets are bound; or
- (c) any judgment, order, ruling or decree applicable to Seller as a party in interest or any law, rule or regulation applicable to Seller.

Section 5.03 Execution. The execution, delivery and performance of this Agreement and the transactions contemplated hereby are duly and validly authorized by all requisite partnership and/or limited liability company action on the part of Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms.

Section 5.04 Brokers. Oil & Gas Asset Clearinghouse, LLC, a Delaware limited liability company has acted for or on behalf of Seller in connection with this Agreement or the

transactions contemplated by this Agreement. No broker or finder is entitled to any brokerage or finder's fee, or to any commission, based in any way on agreements, arrangements or understandings made by or on behalf of Seller or any affiliate of Seller for which Buyer has or will have any liabilities or obligations (contingent or otherwise), and Seller shall indemnify Buyer with respect thereto.

Section 5.05 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings pending, being contemplated by or to the knowledge of Seller threatened in writing against Seller.

Section 5.06 Suits. There is no suit, action, claim, investigation or inquiry by any person or entity or by any administrative agency or Governmental Authority and no legal, administrative or arbitration proceeding pending or, to Seller's knowledge, threatened in writing against Seller or any affiliate of Seller or any of the Assets, except as shown on Schedule 5.06.

Section 5.07 [Intentionally Deleted]. **[N/A to Assets]**.

Section 5.08 Taxes. To Seller's knowledge, all ad valorem, property, production, severance, excise and similar taxes and assessments based on or measured by the ownership of the Assets or the production of Hydrocarbons or the receipt of proceeds therefrom that have become due and payable have been paid in all material respects.

Section 5.09 Status and Operation of Assets. Except as described on Exhibit E ("Executed AFE's"), (i) Seller has incurred no expenses, and has made no commitments to make expenditures in connection with the ownership of the Assets after the Effective Time (other than with respect to routine operations performed in the ordinary course of operating the existing Wells), which expenditures are, individually, estimated to cost Fifty Thousand Dollars and No/100 (\$50,000) or more, net to Seller's interest, and (ii) no contractual obligations, proposals or authorities for expenditures are currently outstanding (whether made by Seller or by any other party) to drill additional wells, or to deepen, plug back, rework any Well, or to conduct other operations on the Assets for which consent is required under the applicable operating agreement, to abandon any Well, or to conduct any other operations on the Assets for which the estimated cost individually exceed Fifty Thousand Dollars and No/100 (\$50,000), net to Seller's interest.

Section 5.10 Contracts. To Seller's knowledge, except as shown in Schedule 5.10, there are no Contracts (i) that can reasonably be expected to result in aggregate payments by Seller of more than Fifty Thousand Dollars and No/100 (\$50,000) during the current or any subsequent fiscal year or One Hundred Fifty Thousand Dollars and No/100 (\$150,000) in the aggregate over the term of such Contract that cannot be terminated by the Seller on not greater than ninety (90) days' notice; (ii) any Hydrocarbon purchase and sale, transportation, processing or similar Contract that is not terminable without penalty on thirty (30) days or less notice; or (iii) any Contract that is an indenture, mortgage, loan, credit or sale-leaseback, guaranty of any obligation, bonds, letters of credit or similar financial Contract.

Section 5.11 Lease and Contract Defaults. To Seller's knowledge, all Leases and Contracts are in full force and effect, and Seller is not in default with respect to any of its material obligations thereunder.

Section 5.12 Areas of Mutual Interest. To Seller's knowledge, except as shown in Schedule 5.12, no Subject Interest is subject to (or has related to it) any area of mutual interest agreement.

Section 5.13 Plugging. To Seller's knowledge, there are no dry holes, shut-in or otherwise inactive wells located on lands covered by the Leases or lands pooled therewith that (i) are currently required to be plugged and abandoned; or (ii) have been plugged and abandoned, but have not been plugged or reclaimed in accordance with law.

Section 5.14 [Intentionally Deleted]. [N/A to Assets]

Section 5.15 No Oral Contracts. Seller has not entered into any oral Contract in respect of any of the Assets which will be in force and effect at Closing.

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

Buyer represents and warrants to Seller that:

Section 6.01 Buyer's Existence. Buyer is a corporation, duly organized and validly existing under the laws of the State of Delaware and is qualified to conduct business in the State of Colorado. Buyer has full legal power, right and authority to carry on its business as such is now being conducted and as contemplated to be conducted. Buyer's headquarters and principal offices are all located in the State of Colorado.

Section 6.02 Legal Power. Buyer has the legal power and right to enter into and perform this Agreement and the transactions contemplated hereby. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with:

- (a) any provision of Buyer's articles of incorporation, by-laws or other governing documents;
- (b) any material agreement or instrument to which Buyer is a party or by which Buyer is bound; or
- (c) any judgment, order, ruling or decree applicable to Buyer as a party in interest or any law, rule or regulation applicable to Buyer.

Section 6.03 Execution. The execution, delivery and performance of this Agreement and the transactions contemplated hereby are duly and validly authorized by all requisite corporate action on the part of Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms.

Section 6.04 Brokers. No broker or finder has acted for or on behalf of Buyer or any affiliate of Buyer in connection with this Agreement or the transactions contemplated by this Agreement. No broker or finder is entitled to any brokerage or finder's fee, or to any commission, based in any way on agreements, arrangements or understandings made by or on behalf of Buyer



or any affiliate of Buyer for which Seller has or will have any liabilities or obligations (contingent or otherwise), and Buyer shall indemnify Seller with respect thereto.

Section 6.05 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings pending, being contemplated by or to the knowledge of Buyer threatened against Buyer or any affiliate of Buyer.

Section 6.06 Suits. There is no suit, action, claim, investigation or inquiry by any person or entity or by any administrative agency or Governmental Authority and no legal, administrative or arbitration proceeding pending or, to Buyer's knowledge, threatened against Buyer or any affiliate of Buyer that has materially affected or will materially affect Buyer's ability to consummate the transactions contemplated herein.

Section 6.07 Qualifications. Buyer is now, and after the Closing shall continue to be, qualified with all applicable Governmental Authorities to own and operate the Assets and has, and shall maintain, all necessary bonds to own and operate the Assets.

Section 6.08 Investment. Prior to entering into this Agreement, Buyer was advised by and has relied solely on its own legal, tax and other professional counsel concerning this Agreement, the Assets and the value thereof. Buyer is acquiring the Assets for its own account and not for distribution or resale in any manner that would violate any state or federal securities law, rule, regulation or order. Buyer understands and acknowledges that if any of the Assets were held to be securities, they would be restricted securities and could not be transferred without registration under applicable state and federal securities laws or the availability of an exemption from such registration.

Section 6.09 Funds. Buyer has arranged to have available by the Closing Date sufficient funds to enable Buyer to pay in full the Purchase Price as herein provided and otherwise to perform its obligations under this Agreement.

## **Article VII**

### **Seller's Conditions to Close**

The obligations of Seller to consummate the transaction provided for herein are subject, at the option of Seller, to the fulfillment on or prior to the Closing Date of each of the following conditions:

Section 7.01 Representations. The representations and warranties of Buyer herein contained shall be true and correct in all material respects on the Closing Date as though made on and as of such date.

Section 7.02 Performance. Buyer shall have performed all material obligations, covenants and agreements contained in this Agreement to be performed or complied with by it at or prior to the Closing.

Section 7.03 Pending Matters. No suit, action or other proceeding shall be pending or threatened that seeks to restrain, enjoin or otherwise prohibit the consummation of the transaction contemplated by this Agreement.

Section 7.04 Purchase Price. Buyer shall have delivered to Seller the Purchase Price, as the same may be adjusted hereunder, in accordance with the provisions of Article II.

Section 7.05 Closing Documents. On or prior to the Closing Date, Buyer shall have delivered, or be standing ready, willing and able to deliver at the Closing, all Closing Documents to be executed and delivered by Buyer.

### **Article VIII**

#### **Buyer's Conditions to Close**

The obligations of Buyer to consummate the transaction provided for herein are subject, at the option of Buyer, to the fulfillment on or prior to the Closing Date of each of the following conditions:

Section 8.01 Representations. The representations and warranties of Seller herein contained shall be true and correct in all material respects on the Closing Date as though made on and as of such date.

Section 8.02 Performance. Seller shall have performed all material obligations, covenants and agreements contained in this Agreement to be performed or complied with by it at or prior to the Closing.

Section 8.03 Pending Matters. No suit, action or other proceeding shall be pending or, to Seller's knowledge, threatened that seeks to restrain, enjoin, or otherwise prohibit the consummation of the transactions contemplated by this Agreement.

Section 8.04 Closing Documents. On or prior to the Closing Date, Seller shall have delivered, or be standing ready, willing and able to deliver at the Closing, all Closing Documents to be executed and delivered by Seller.

### **Article IX**

#### **Tax Matters**

Section 9.01 Transfer Taxes. All sales, use or other taxes (other than taxes on gross income, net income or gross receipts) and duties, levies, recording fees or other governmental charges incurred by or imposed with respect to the property transfers undertaken pursuant to this Agreement shall be the responsibility of, and shall be paid by, Buyer.

Section 9.02 Ad Valorem and Similar Taxes. Ad valorem, property, severance and similar taxes and assessments based upon or measured by the value of the Assets shall be divided or prorated between Seller and Buyer as of the Effective Time. Seller shall retain responsibility for such taxes attributable to the period of time prior to the Effective Time and Buyer shall assume responsibility for the period of time from and after the Effective Time.

Section 9.03 Form 8594. Seller and Buyer shall cooperate in the preparation of Internal Revenue Service Form 8594 pursuant to Section 1060 of the Internal Revenue Code of 1986, as amended and the Treasury Regulations promulgated thereunder, to report the allocation of the Purchase Price among the Assets. To the extent required by Code Section 1060, and any



regulations promulgated thereunder, any such allowance shall be consistent with the Purchase Price allocation set forth in Exhibit C.

## Article X The Closing

Section 10.01 Time and Place of the Closing. If the conditions referred to in Articles VII and VIII of this Agreement have been satisfied or waived in writing, the transaction contemplated by this Agreement (the "Closing") shall take place ~~at the offices of Seller, whose address is [Need to discuss]~~ \_\_\_\_\_, or at such place designated by Buyer and Seller on or before \_\_\_\_\_, November 22, 2016, (the "Closing Date").

### Section 10.02 Adjustments to Purchase Price at the Closing.

- (a) At the Closing, the Purchase Price shall be increased by the following amounts:
- i. The proceeds of production of Hydrocarbons attributable to the Assets occurring before the Effective Time and received by Buyer (net of all Royalties and Taxes to be paid by Seller on behalf of Buyer under this Agreement), other than amounts held for a third party;
  - ii. An amount equal to (i) all Hydrocarbons attributable to the Assets that, at the Effective Time, are owned by Seller and that are in tanks above the pipeline sales connection (exclusive of any brine, sludge or water that may be present in the oil storage tanks) (ii) multiplied by the price for which production from the Assets was sold immediately prior to the Effective Time (net of Royalties and Taxes to be paid by Buyer on behalf of Seller under this Agreement);
  - iii. The amount of all property expenses attributable to the Assets after the Effective Time and paid by the Seller, subject to the terms hereof;
  - iv. all upward Purchase Price adjustments for Title Benefits determine in accordance with Article III;
  - v. any other amount provided for in this Agreement or agreed upon by Buyer and Seller; and
  - vi. an estimate of any and all transfer, sales, gross receipts, compensating use or similar taxes resulting from the transaction, but only to the extent Seller has already paid or discharged such taxes or assessments and without duplication of Buyer's obligation for such taxes and assessments under Section 9.01.

- (b) At the Closing, the Purchase Price shall be decreased by the following amounts:
- i. The proceeds of production of Hydrocarbons attributable to the Assets occurring after the Effective Time and received by Seller;
  - ii. The amount of all property expenses attributable to the Assets prior to the Effective Time and paid by Buyer, subject to the terms hereof;
  - iii. the Allocated Value of any Subject Interest sold prior to the Closing to the holder of a preferential right pursuant to Section 3.07;
  - iv. all downward Purchase Price Adjustments for Title Defects and Environmental Defects determined in accordance with Article III and Article IV;
  - v. any other amount provided for in this Agreement or agreed upon by Buyer and Seller; and
  - vi. the Deposit.
- (c) The adjustments described in Sections 10.02(a) and (b) are hereinafter referred to as the "Purchase Price Adjustments."

Section 10.03 Closing Statement. Not later than three (3) calendar days prior to the Closing Date, Seller shall prepare a statement of the estimated Purchase Price Adjustments taking into account the foregoing principles (the "Statement"). Until one (1) day before the Closing Date, Buyer shall have the opportunity to review and discuss the Statement with Seller, provided, however, Seller shall not be required to make any changes thereto to which Seller does not agree. Prior to or at Closing, Buyer and Seller will execute and deliver to each other the Statement as prepared in accordance with the terms hereof; amounts that could not be agreed prior to Closing will be resolved under the Accounting Statement. At the Closing, Buyer shall pay the Purchase Price, as adjusted by the estimated Purchase Price Adjustments reflected on the Statement.

Section 10.04 Actions of Seller at the Closing. At the Closing, Seller shall:

- (a) execute, acknowledge and deliver to Buyer the Assignment (substantially in the form as set forth in Exhibit D of this Agreement) and such other instruments (in form and substance mutually agreed upon by Buyer and Seller) as may be reasonably necessary to convey the Assets to Buyer;
- (b) execute, acknowledge and deliver to Buyer letters in lieu of transfer directing all purchasers of production from the Subject Interests to make payment of proceeds attributable to such production to Buyer from and

after the Effective Time as reasonably requested by Buyer prior to the Closing Date;

- (c) deliver to Buyer possession of the Assets;
- (d) execute and deliver to Buyer an affidavit attesting to its non-foreign status;
- (e) execute and deliver the Statement;
- (f) deliver to Buyer releases of all mortgages, deeds of trust, financing statements and other liens against the Assets, executed and, if intended for recording in the real property records, acknowledged by the lien holders; and
- (g) execute, acknowledge and deliver any other agreements provided for herein or necessary or desirable to effectuate the transaction contemplated hereby.

**Section 10.05 Actions of Buyer at the Closing. At the Closing, Buyer shall:**

- (a) deliver to Seller the Purchase Price (as adjusted pursuant to the provisions hereof and net of the Deposit and the Computed Interest on the Deposit) by wire transfer to an account designated in writing by Seller;
- (b) execute and deliver the Statement;
- (c) take possession of the Assets; and
- (d) execute, acknowledge and deliver the Assignment and any other agreements provided for herein or necessary or desirable to effectuate the transaction contemplated hereby.

**Article XI  
Termination**

**Section 11.01 Right of Termination.** This Agreement may be terminated at any time at or prior to the Closing:

- (a) by mutual written consent of the Parties;
- (b) by Seller on the Closing Date if the conditions set forth in Article VII have not been satisfied in all material respects by Buyer or waived by Seller in writing by the Closing Date;
- (c) by Buyer on the Closing Date if the conditions set forth in Article VIII have not been satisfied in all material respects by Seller or waived by Buyer in writing by the Closing Date;

- (d) by either Party if any Governmental Authority shall have issued an order, judgment or decree or taken any other action challenging, delaying, restraining, enjoining, prohibiting or invalidating the consummation of the transaction contemplated herein;
- (e) by either Party if the aggregate amount to be deducted from the Purchase Price because of Title Defects, Environmental Defects, Casualty Losses, and the Allocated Value of Assets (or portion thereof) excluded on account of preferential purchase rights and consents exceeds in the aggregate twenty-five percent (25%); or
- (f) as otherwise expressly provided herein;

provided, however, that no Party shall have the right to terminate this Agreement pursuant to clause (b) or (c) above if such Party is at such time in material breach of any provision of this Agreement.

#### Section 11.02 Termination Remedies.

- (a) If this Agreement is terminated by Seller under Section 11.01(b), and if Buyer has no right to assert termination under any other subsection of Section 11.01, then Seller shall retain the Deposit as liquidated damages on account of Buyer's failure to perform its obligations under this Agreement or Buyer's breach of any representation under this Agreement, which remedy shall be the sole and exclusive remedy available to Seller for Buyer's failure to perform or breach. Buyer and Seller acknowledge and agree that (i) Seller's actual damages upon the event of such a termination are difficult to ascertain with any certainty, (ii) that the Deposit is a reasonable estimate of such actual damages and (iii) such liquidated damages do not constitute a penalty.
- (b) If this Agreement is terminated by Buyer under Section 11.01(c), and if Seller has no right to assert termination under any other subsection of Section 11.01, then Buyer shall, in its sole discretion, be entitled either (x) to a return of the Deposit as full and final settlement of all liabilities associated with Seller's breach of this Agreement or (y) to seek to enforce the remedy of specific performance against Seller hereunder.
- (c) If this Agreement is terminated under Section 11.01(a), 11.01(d), 11.01(e), or 11.01(f), then the Deposit shall be returned to Buyer, unless the Parties mutually agree otherwise.

Section 11.03 Attorneys' Fees, Etc. If either Party to this Agreement resorts to legal proceedings to enforce this Agreement, the prevailing Party in such proceedings shall be entitled to recover all costs incurred by such Party, including reasonable attorneys' fees, in addition to any other relief to which such Party may be entitled. Notwithstanding anything to the contrary in this Agreement, in no event shall either Party be entitled to receive any punitive, indirect or consequential damages unless same are a part of a Third Party claim for which a Party is seeking

indemnification hereunder, **REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE OTHER PARTY.**

## Article XII Post Closing Obligations

### Section 12.01 Allocation of Expense and Revenues.

- (a) Provided that the Closing occurs, appropriate adjustments shall be made between Buyer and Seller so that (i) Buyer will receive all proceeds from sales of Hydrocarbons that are produced and saved from and after the Effective Time and any other revenues arising out of the ownership or operation of the Assets from and after the Effective Time, net of all applicable production, severance, and similar taxes, and net of all costs and expenses that are incurred in the ownership or operation of the Assets from and after the Effective Time (provided that such costs and expenses are incurred pursuant to and under the authority of Article XIII), including, without limitation, all drilling costs, all capital expenditures, all overhead charges under applicable operating or other agreements (regardless of whether Seller or an affiliate of Seller serves as operator prior to the Closing), and (ii) Seller will receive all proceeds from sales of Hydrocarbons that are produced and saved prior to the Effective Time and any other revenues arising out of the ownership or operation of the Assets prior to the Effective Time, net of all applicable production, severance, and similar taxes, and net of all costs and expenses that are incurred in the ownership or operation of the Assets prior to the Effective Time, including, without limitation, all drilling costs, all capital expenditures, all overhead charges under applicable operating or other agreements.
- (b) In addition to the foregoing, the Seller will be paid (i) the amount as of the Effective Time of all prepaid ad valorem, property or similar taxes and **assessments based upon or measured by ownership of the Assets and any prepaid costs**, including rentals and insurance premiums, insofar as such prepaid taxes, assessments and costs relate to periods of time after the Effective Time, and (ii) the value of all merchantable Hydrocarbons produced prior to the Effective Time but in storage above the inlet connection or upstream of the applicable sales meter on the Closing Date.
- (c) In addition to the foregoing, the Buyer will be paid (i) an amount equal to all unpaid ad valorem, property, production, severance and similar taxes and assessments based upon or measured by the **ownership** of the Assets that are attributable to periods of time prior to the Effective Time, which amounts shall, to the extent not actually assessed or for which current rates of assessment are not available, be computed based on such taxes and assessments for the preceding tax year (such amount to be prorated for the period of Seller's and Buyer's ownership before and after the Effective

Time), and (ii) an amount equal to all cash in, or attributable to, suspense accounts relative to the Assets for which Buyer has assumed responsibility under Section 14.02.

- (d) All amounts due under this Section 12.01 will be settled in accordance with the final Accounting Statement (as defined in Section 12.02) under Section 12.02.

Section 12.02 Final Accounting Statement.

- (a) On or before ninety (90) days after the Closing Date, Seller shall prepare and deliver to Buyer a post-Closing statement setting forth a detailed calculation of all post-Closing adjustments applicable to the period for time between the Effective Time and Closing (the "Accounting Statement"). The Accounting Statement shall include any adjustment or payment which was not agreed or finally determined as of the Closing Date and the allocation of revenues and expenses as determined in accordance with Section 12.01. To the extent reasonably required by Seller, Buyer shall assist in the preparation of the Accounting Statement. Seller shall provide Buyer such data and information as Buyer may reasonably request supporting the amounts reflected on the Accounting Statement in order to permit Buyer to perform or cause to be performed an audit. The Accounting Statement shall become final and binding upon the Parties on the thirtieth (30th) day following receipt thereof by Buyer (the "Final Settlement Date") unless Buyer gives written notice of its disagreement (a "Notice of Disagreement") to Seller prior to such date. Any Notice of Disagreement shall specify in detail the dollar amount, nature and basis of any disagreement so asserted. If a Notice of Disagreement is received by Seller in a timely manner, then the Parties shall resolve the Dispute (as defined in Section 16.01) evidenced by the Notice of Disagreement in accordance with Article XVI.
- (b) Within five (5) calendar days after the Final Settlement Date, Seller shall pay to Buyer or Buyer shall pay to Seller in immediately available funds the net amount due. For purposes of this Agreement, the term "Final Statement" shall mean (i) the revised Accounting Statement becoming final pursuant to this Section, or (ii) upon resolution of any Dispute regarding a Notice of Disagreement, the revised Accounting Statement reflecting such resolutions, which the Parties shall issue, or cause the Independent Expert or arbitrators to issue, as applicable, following such resolution.

Section 12.03 Further Cooperation. Seller shall make the Records available to be picked up by Buyer at the offices of Seller during normal business hours within five (5) calendar days after the later of the Closing or the end of the Transition Period (as defined in Section 13.06) to the extent the Records are in the possession of Seller and are not subject to contractual

restrictions on transferability. Seller shall have the right to retain copies of any of the Records and the rights granted under Section 17.03.

After the Closing Date, each Party, at the request of the other and without additional consideration, shall execute and deliver, or shall cause to be executed and delivered, from time to time such further instruments of conveyance and transfer and shall take such other action as the other Party may reasonably request to convey and deliver the Assets to Buyer and to accomplish the orderly transfer of the Assets to Buyer in the manner contemplated by this Agreement. After the Closing, the Parties will cooperate to have all proceeds received attributable to the Assets be paid to the proper Party hereunder and to have all expenditures to be made with respect to the Assets be made by the proper Party hereunder.

### **Article XIII Operation of the Assets**

Section 13.01 Operations after Effective Time. Seller agrees, from and after the date hereof until Closing, except as expressly contemplated by this Agreement, as expressly consented to in writing by Buyer, or in situations wherein emergency action is taken in the face of risk to life, property or the environment, to:

- (a) own the Assets in the usual, regular and ordinary manner consistent with Seller's past practice;
- (b) maintain the books of account and records relating to the Assets in the usual, regular and ordinary manner of Seller, in accordance with the usual accounting practices of Seller;
- (c) not enter into a material contract regarding any Asset, or materially amend or change the terms of any such contract regarding any Asset that would involve individual commitments of more than Fifty Thousand and No/100 Dollars (\$50,000);
- (d) not transfer, sell, mortgage, pledge or dispose of any of the Assets other than the sale and/or disposal of Hydrocarbons in the ordinary course of business;
- (e) preserve in full force and effect all oil and gas leases and operating agreements that relate to the Assets in which Seller is a party or beneficiary;
- (f) submit to Buyer for prior written approval, all requests for operating or capital expenditures relating to any of the Assets that involve individual commitments of more than Fifty Thousand and No/100 Dollars (\$50,000); and
- (g) obtain Buyer's written approval prior to voting under any operating, joint venture, partnership or similar agreement, which Buyer shall not unreasonably withhold or delay.



Section 13.02 Limitations on the Ownership Obligations and Liabilities of Seller

- (a) From and after the date of execution of this Agreement and until the Closing, and subject to the provisions of applicable operating and other agreements, Seller shall use its reasonable efforts to own the Assets and use its reasonable efforts to cause its operators to operate and administer the Assets in a manner consistent with such operator's past practices, and shall carry on Seller's business with respect to the Assets in substantially the same manner as before execution of this Agreement.

Buyer acknowledges that Seller owns undivided interests in some or all of the Assets, and Buyer agrees that the acts or omissions of Seller's operators and the other working interest owners shall not constitute a violation of the provisions of this Article XIII, nor shall any action required by a vote of working interest owners constitute such a violation, so long as Seller has voted its interests in a manner that complies with the provisions of this Article XIII. Buyer acknowledges and agrees that Seller is not the operator of any of the Assets, and, therefore, the obligations of Seller in this Article XIII shall be construed to require that Seller use best efforts (without being obligated to incur any expense or institute any cause of action) to cause the operator of such Assets to take such actions or render such performance within the constraints of the applicable operating agreements and other applicable agreements.

Section 13.03 No Liability of Seller. Notwithstanding anything to the contrary in this Article XIII, Seller shall have no liability to Buyer for, and Buyer hereby agrees to release, defend, indemnify and hold harmless Seller from, the incorrect payment of delay rentals, royalties, shut-in royalties or similar payments or for any failure to pay any such payments through mistake or oversight (**INCLUDING THOSE RESULTING FROM SELLER'S SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY**) provided that such payments relate to production months after the Effective Time. In no event shall Buyer's remedy for any Seller's breach of its obligations under this Article XIII exceed the Allocated Value of the Subject Interest affected by such breach.

Section 13.04 Casualty Loss.

- (a) Buyer shall assume all risk of loss with respect to, and any change in the condition of, the Assets from the Effective Time until the Closing, including with respect to the depletion of Hydrocarbons, the watering-out of any well, the collapse of casing, sand infiltration of wells, and the depreciation of personal property.
- (b) If after the Effective Time and prior to the Closing any part of the Assets shall be damaged or destroyed by fire or other casualty or if any part of the Assets shall be taken in condemnation or under the right of eminent domain or if proceedings for such purposes shall be pending or threatened, this Agreement shall remain in full force and effect notwithstanding any



such destruction, taking or proceeding, or the threat thereof and the Parties shall proceed with the transaction contemplated by this Agreement notwithstanding such destruction or taking without reduction of the Purchase Price, but subject to Section 13.04(c).

- (c) Notwithstanding Section 13.04(a), in the event of any loss described in Section 13.04(b), at the Closing, Buyer shall have the option to: (i) exclude the affected Asset from the sale and reduce the Purchase Price by the Allocated Value of such affected Asset as set forth on Exhibit C, or (ii) include the affected Asset in the sale, in which event Seller shall pay to Buyer all sums paid to Seller by third parties by reason of the destruction or taking of such Assets (up to the Allocated Value thereof), including any sums paid pursuant to any policy or agreement of insurance or indemnity, and shall assign, transfer and set over unto Buyer all of the rights, title and interest of Seller in and to any claims, causes of action, unpaid proceeds or other payments from third parties, including any policy or agreement of insurance or indemnity, arising out of such destruction or taking (up to the Allocated Value thereof). Notwithstanding anything to the contrary in this Section 13.04, Seller shall not be obligated to carry or maintain, and shall have no obligation or liability to Buyer for its failure to carry or maintain, any insurance coverage with respect to any of the Assets. Notwithstanding anything to the contrary contained in this Section 13.04, should the uncompensated loss exceed twenty-five percent (25%) of the Purchase Price, either Seller or Buyer shall have the option to terminate this Agreement in which event Seller shall return the Deposit to Buyer within three (3) calendar days after such termination

#### **Article XIV**

##### **Obligations and Indemnification**

Section 14.01 Retained Obligations. Provided that the Closing occurs, Seller shall retain (a) all obligations and liabilities of Seller for the payment or improper payment of royalties, rentals and other similar payments under the Leases relating to the Subject Interests accruing prior to the Effective Time; (b) all obligations of Seller under the Contracts for (i) overhead charges related to periods prior to the Effective Time, (ii) costs and expenses incurred prior to the Effective Time for goods and services provided prior to the Effective Time, and (iii) other payment obligations that accrue and become due prior to the Effective Time; (c) all liability of Seller to third parties for property damage, personal injury or death to the extent occurring prior to the Effective Time as a result of Seller's ownership of the Assets; (d) ad valorem, property, severance and similar taxes attributable to the period of time prior to the Effective Time retained by Seller under Section 9.02; and (e) all litigation existing as of the Closing Date, to the extent it relates to the period of time prior to the Effective Time (collectively, the "Retained Obligations").

Section 14.02 Assumed Obligations. Provided that the Closing occurs, subject to Seller's obligations for the Retained Obligations, Buyer hereby assumes all duties, obligations and liabilities of every kind and character with respect to the Assets or the ownership thereof (other

than the Retained Obligations), attributable to periods before and after the Effective Time (collectively, the "Assumed Obligations").

Section 14.03 Buyer's Indemnification. Provided that the Closing occurs, Buyer shall release, defend, indemnify and hold harmless Seller, its partners, and its respective officers, directors, employees, agents, representatives, members, shareholders, affiliates, subsidiaries, successors and assigns (collectively, the "Seller Indemnitees") from and against any and all claims, damages, liabilities, losses, causes of action, costs and expenses (including, without limitation, those involving theories of negligence or strict liability and including court costs and attorneys' fees) (collectively, the "Losses") as a result of, arising out of, or related to the Assumed Obligations, **REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE SELLER INDEMNITEES.**

Section 14.04 Seller's Indemnification. Provided that the Closing occurs, Seller shall release, defend, indemnify and hold harmless Buyer, its partners, and its respective officers, directors, employees, agents, representatives, members, shareholders, affiliates and subsidiaries (collectively, the "Buyer Indemnitees") from and against any and all Third Party non-environmental claims relating to Seller's ownership of the Assets prior to the Effective Time or as a result of, arising out of, or related to the Retained Obligations **REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE BUYER INDEMNITEES.** Provided, however, notwithstanding anything to the contrary contained herein, Seller's indemnification obligation under this Section 14.04 shall only apply if Buyer has provided Seller with written notice claiming indemnification within six (6) months after the Closing. Notwithstanding anything to the contrary herein, Seller's obligation to indemnify hereunder will not exceed a maximum of twenty-five percent (25%) of the Purchase Price, prior to any adjustments thereto.

Section 14.05 Notices and Defense of Indemnified Matters. Each Party shall promptly notify the other Party of any matter of which it becomes aware and for which it is entitled to indemnification from the other Party under this Agreement. The indemnifying Party shall be obligated to defend, at the indemnifying Party's sole expense, any litigation or other administrative or adversarial proceeding against the indemnified Party relating to any matter for which the indemnifying Party has agreed to indemnify and hold the indemnified Party harmless under this Agreement. However, the indemnified Party shall have the right to participate with the indemnifying Party in the defense of any such matter at its own expense.

## Article XV

### Limitations on Representations and Warranties

Section 15.01 Disclaimers of Representations and Warranties. The express representations and warranties of Seller contained in this Agreement are exclusive and are in lieu of all other representations and warranties, express, implied or statutory. **EXCEPT FOR THE EXPRESS REPRESENTATIONS OF SELLER IN THIS AGREEMENT, BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND BUYER HEREBY EXPRESSLY**

**WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO (a) PRODUCTION RATES, RECOMPLETION OPPORTUNITIES, DECLINE RATES, OR THE QUALITY, QUANTITY OR VOLUME OF THE RESERVES OF HYDROCARBONS, IF ANY, ATTRIBUTABLE TO THE ASSETS, (b) THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) NOW, HERETOFORE OR HEREAFTER FURNISHED TO BUYER BY OR ON BEHALF OF SELLER, AND (c) THE ENVIRONMENTAL CONDITION OF THE ASSETS. EXCEPT FOR THE EXPRESS REPRESENTATIONS OF SELLER IN THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS AND NEGATES, AND BUYER HEREBY WAIVES, AS TO PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES CONSTITUTING A PART OF THE ASSETS (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF PURCHASERS UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE, (v) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM DEFECTS, WHETHER KNOWN OR UNKNOWN, (vi) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW, AND (vii) ANY IMPLIED OR EXPRESS WARRANTY REGARDING ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, OR PROTECTION OF THE ENVIRONMENT OR HEALTH, IT BEING THE EXPRESS INTENTION OF BUYER AND SELLER THAT THE PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES INCLUDED IN THE ASSETS SHALL BE CONVEYED TO BUYER, AND BUYER SHALL ACCEPT SAME, AS IS, WHERE IS, WITH ALL FAULTS AND IN THEIR PRESENT CONDITION AND STATE OF REPAIR AND BUYER REPRESENTS TO SELLER THAT BUYER WILL MAKE OR CAUSE TO BE MADE SUCH INSPECTIONS WITH RESPECT TO SUCH PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES AS BUYER DEEMS APPROPRIATE. SELLER AND BUYER AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER.**

Section 15.02 Independent Investigation. Buyer represents and acknowledges that it is knowledgeable of the oil and gas business and of the usual and customary practices of working interest and net revenue interest owners such as Seller and that it has had (or will have prior to the Closing) an opportunity to review the Assets, the officers and employees of Seller, and the books, records and files of Seller relating to the Assets, and in making the decision to enter into this Agreement and consummate the transaction contemplated hereby, Buyer has relied solely on the basis of its own independent due diligence investigation of the Assets and upon the representations and warranties made in Article V, and not on any other representations or warranties of Seller or any other person or entity.

Section 15.03 Survival. The representations, warranties, covenants and obligations of Buyer and Seller under this Agreement shall survive for a period of six (6) months from the Closing.

## **Article XVI**

### **Dispute Resolution**

Section 16.01 General. Any and all claims, Disputes, controversies or other matters in question arising out of or relating to title issues, environmental issues, or calculation of the Statement or revisions thereto (all of which are referred to herein as "Disputes" which term shall not include any other disputes claims, disputes, controversies or other matters in question arising under this Agreement) shall be resolved in the manner prescribed by this Article XVI.

#### Section 16.02 Independent Expert.

- (a) Disputes regarding title issues, environmental issues, or calculation of the Statement or Accounting Statement shall be finally and exclusively resolved by an independent expert appointed in accordance with this Section 16.02 (each, an "Independent Expert"), who shall serve as sole arbitrator. The Independent Expert shall be appointed by mutual agreement of the Parties from among candidates with experience and expertise in the area that is the subject of such Dispute, and failing such agreement within seven (7) days of a Party sending a demand for arbitration, such Independent Expert for such Dispute shall be selected by the Chief Judge of the United States District Court for the District of Colorado.
- (b) Disputes to be resolved by an Independent Expert shall be resolved within thirty (30) days after appointment of the Independent Expert. The decision and award of the Independent Expert shall be binding upon the Parties as an award under the Colorado Revised Uniform Arbitration Act and final and nonappealable to the maximum extent permitted by law, and judgment thereon may be entered in a court of competent jurisdiction and enforced by any Party as a final judgment of such court.
- (c) The charges and expenses of the arbitrator shall be shared equally by Seller and Buyer.
- (d) Any arbitration hearing held pursuant to Section 16.02 shall be held in Denver, Colorado, and shall be conducted in accordance with such rules and procedures as the sole arbitrator may direct in his or her sole discretion.

Section 16.03 Limitation on Arbitration. ALL OTHER DISAGREEMENTS, DIFFERENCES, OR DISPUTES ARISING BETWEEN SELLER AND BUYER UNDER THE TERMS OF THIS AGREEMENT (AND NOT COVERED BY SECTION 16.02) SHALL NOT BE SUBJECT TO ARBITRATION AND SHALL BE DETERMINED BY A COURT OF COMPETENT JURISDICTION, UNLESS THE PARTIES OTHERWISE MUTUALLY AGREE.

## **Article XVII Miscellaneous**

Section 17.01 Names. As soon as reasonably possible after the Closing, but in no event later than forty-five (45) days after the Closing, Buyer shall remove the names of Seller and its affiliates, and all variations thereof, from all of the Assets and make the requisite filings with, and provide the requisite notices to, the appropriate federal, state or local agencies to place the title or other indicia of ownership, including operation of the Assets, in a name other than the name of the Seller or any of its affiliates, or any variations thereof.

Section 17.02 Expenses. Each Party shall be solely responsible for all expenses, including due diligence expenses, incurred by it in connection with this transaction, and neither Party shall be entitled to any reimbursement for such expenses from the other Party.

Section 17.03 Document Retention. As used in this Section 17.03, the term "Documents" shall mean all files, documents, books, records and other data (a) set forth in ~~the Seller's~~ electronic file data room ~~established at \_\_\_\_\_~~ and (b) delivered to Buyer by Seller pursuant to the provisions of this Agreement (other than those that Seller has retained either the original or a copy of), including, but not limited to: financial and tax accounting records; land, title and division of interest files; contracts; engineering and well files; and books and records related to the operation of the Assets prior to the Closing Date. Buyer shall retain and preserve the Documents for a period of no less than four (4) years following the Closing Date (or for such longer period as may be required by law or governmental regulation), and shall allow Seller or its representatives to inspect the Documents at reasonable times and upon reasonable notice during regular business hours during such time period. Seller shall have the right during such period to make copies of the Documents at its expense.

Section 17.04 Entire Agreement. This Agreement, the documents to be executed hereunder, and the exhibits attached hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof. No supplement, amendment, alteration, modification or waiver of this Agreement shall be binding unless executed in writing by the Parties and specifically referencing this Agreement.

Section 17.05 Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 17.06 Publicity. Neither Seller nor Buyer will issue any public announcement or press release concerning this transaction without the written consent of the other Party (except as required by law and in such case with prior written agreement between the Parties on the wording of the announcement or press release).

Section 17.07 Construction. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. The Parties acknowledge that they have participated jointly in the negotiation

and drafting of this Agreement and as such the Parties agree that if an ambiguity or question of intent or interpretation arises hereunder, this Agreement shall not be construed more strictly against one Party than another on the grounds of authorship.

Section 17.08 No Third Party Beneficiaries. Except as provided in Sections 14.04 and 14.05, nothing in this Agreement shall provide any benefit to any Third Party or entitle any Third Party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall otherwise not be construed as a Third Party beneficiary contract.

Section 17.09 Assignment. No Party may assign or delegate any of its rights or duties hereunder without the prior written consent of the other Party, and any such assignment shall be void. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors, assigns and legal representatives.

Section 17.10 Governing Law. This Agreement, other documents delivered pursuant hereto and the legal relations between the Parties shall be governed and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflicts of laws that would result in the application of the laws of another jurisdiction.

Section 17.11 Notices. Any notice, communication, request, instruction or other document required or permitted hereunder shall be given in writing and delivered in person or sent by U.S. Mail postage prepaid, return receipt requested, nationally recognized, receipt overnight courier, email or facsimile to the addresses of Seller and Buyer set forth below. Any such notice shall be effective only upon receipt.

Seller: ~~Joe Weigel~~  
 Swan Exploration, LLC  
Attention: Joe Weigel  
 1235 N Loop West, Ste. 510  
 Houston, TX 77008  
 Telephone: 866-539-0860  
 Email: JoeW@swanenergyinc.com  
 Facsimile: 866-550-5435

With a copy to:  
Swan Exploration, LLC  
Attention: Katherine N. O'Connell  
~~Swan Energy, Inc.~~  
 1235 North Loop W., Suite 510  
 Houston, TX 77008  
 Telephone: 866-539-0860  
 Email: koconnell@swanenergyinc.com  
 Facsimile: 866-550-5435

Buyer:



Extraction Oil & Gas, Inc.  
Attention: Allyson Vistica, Land Manager  
370 Seventeenth Street, Suite 5300  
Denver, Colorado 80202  
Telephone:  
E-mail: [avistica@extractionog.com](mailto:avistica@extractionog.com)  
Facsimile: 720-557-8301

Either Party may, by written notice so delivered to the other Party, change its address for notice purposes hereunder.

Section 17.12 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and the Parties shall negotiate in good faith to modify this Agreement so as to affect their original intent as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17.13 Time of the Essence. Time shall be of the essence with respect to all time periods and notice periods set forth in this Agreement.

Section 17.14 Counterpart Execution. This Agreement may be executed in any number of counterparts, and each counterpart hereof shall be effective as to each party that executes the same whether or not all of such parties execute the same counterpart. If counterparts of this Agreement are executed, the signature pages from various counterparts may be combined into one composite instrument for all purposes. All counterparts together shall constitute only one Agreement, but each counterpart shall be considered an original.

Section 17.15 Affiliates. In the event that either Seller or Buyer discovers that any of the Assets are owned by an affiliate of Seller, Seller shall cause such affiliate(s) to execute a joinder to this Agreement and cause such affiliate(s) to convey such Asset(s) owned by such affiliate(s) to Buyer pursuant to and in accordance with the terms of this Agreement as though such affiliate(s) had been an original party to this Agreement regarding only such Asset(s).

IN WITNESS WHEREOF, Seller and Buyer have executed and delivered this Agreement as of the date first set forth above.

**SWAN EXPLORATION, LLC:**

\_\_\_\_\_  
Name: Brandon Davis  
Title: Chief Executive Officer

**EXTRACTION OIL & GAS, INC.:**

\_\_\_\_\_  
Name: Matt Owens

Title:

President



**EXHIBIT A**  
**SUBJECT INTERESTS**

**EXHIBIT B**  
**WELLS AND INTERESTS**

**EXHIBIT C**  
**ALLOCATED VALUES**

## EXHIBIT D

### ASSIGNMENT AND BILL OF SALE

THIS ASSIGNMENT AND BILL OF SALE (this "Assignment"), effective as of 7:00 a.m. on October 1, 2016 (the "Effective Time"), is made by Swan Exploration, LLC, a Colorado limited liability company (the "Assignor"), whose address is 1235 N Loop West, Suite 510, Houston, TX 77008, to Extraction Oil & Gas, Inc., a Delaware corporation (the "Assignee"), whose address is 370 Seventeenth Street, Suite 5300, Denver, Colorado 80202.

## ARTICLE I

### Granting and Habendum

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, Assignor does hereby grant, bargain, sell, transfer, convey, set over, assign and deliver unto Assignee, its successors and assigns, effective for all purposes as of the Effective Time and subject to the matters set forth herein, the Assets. The term "Assets" shall mean all of Assignor's right, title and interest, if any, in and to the following:

- (a) the leasehold estates in and to the oil, gas and mineral leases described or referred to in Exhibit A (the "Leases") or land pooled therewith, all as more specifically described in Exhibit A attached hereto and made a part hereof, provided that all of the foregoing are subject to the limitations described in Exhibit A (collectively, the "Subject Interests," or singularly, a "Subject Interest");
- (b) all rights incident to the Subject Interests, including, without limitation, all rights with respect to any pooled, communitized or unitized acreage by virtue of any Subject Interest being a part thereof, including all Hydrocarbon (as defined in subsection (d) below) production after the Effective Time attributable to the Subject Interests or any such pool or unit allocated to any such Subject Interest;
- (c) all easements, rights-of-way, surface leases, servitudes, permits, licenses, franchises and other estates or similar rights and privileges directly related to or used solely in connection with the Subject Interests ("Easements"), including, without limitation, the Easements described on Exhibit A;
- (d) all personal property, equipment, fixtures, inventory and improvements located on or used solely in connection with the Subject Interests and the Easements or with the production, treatment, sale, or disposal of oil, gas or other hydrocarbons (collectively, "Hydrocarbons"), byproducts or waste produced therefrom or attributable thereto, including, without limitation, all wells located on the lands covered by the Subject Interests or on lands with which the Subject Interest have been pooled, communitized or unitized (whether producing, shut in or abandoned, and whether for production, injection or disposal), including, without limitation, the wells described in Exhibit B attached hereto and made a part hereof, wellhead equipment, pumps, pumping units, flowlines, gathering systems, piping, tanks, buildings, treatment facilities, injection

facilities, disposal facilities, compression facilities, and other materials, supplies, equipment, facilities and machinery (collectively, "Personal Property");

(e) to the extent assignable or transferable, all contracts, agreements and other arrangements that relate to the Subject Interests, the Leases or the Easements, including, without limitation, production sales contracts, farmout agreements, operating agreements, service agreements and similar agreements (collectively, the "Contracts");

(f) all books, records, files, muniments of title, reports and similar documents and materials, including, without limitation, lease records, well records, and division order records, well files, title records (including abstracts of title, title opinions and memoranda, and title curative documents related to the Assets), contracts and contract files, and correspondence, that relate to the foregoing interests in the possession of, and maintained by, Assignor (collectively, the "Records"); and

(g) all geological and geophysical data relating to the Subject Interests, other than such data prepared by Assignor that is interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party unless Assignee has made a payment therefore. For purposes hereof "Third Party" means any person or entity, governmental or otherwise, other than Assignor or Assignee, and their respective affiliates; the term includes, but is not limited to, working interest owners, royalty owners, lease operators, landowners, service contractors and governmental agencies.

(h) NOTWITHSTANDING THE FOREGOING, the Assets shall not include, and there is excepted, reserved and excluded from the assignment contemplated hereby (collectively, the "Excluded Assets"): (i) all trade credits and all accounts, instruments and general intangibles (as such terms are defined in the Colorado Uniform Commercial Code) attributable to the Assets with respect to any period of time prior to the Effective Time; (ii) all claims and causes of action of Assignor arising from acts, omissions or events occurring prior to the Effective Time; (iii) all rights and interests of Assignor (i) under any policy or agreement of insurance or indemnity, (ii) under any bond, or (iii) to any insurance or condemnation proceeds or awards arising, in each case, from acts, omissions or events, or damage to or destruction of property, occurring prior to the Effective Time; (iv) all Hydrocarbons produced from or attributable to the Subject Interests with respect to all periods prior to the Effective Time, together with all proceeds from the sale of such Hydrocarbons; (v) all claims of Assignor for refunds of or loss carry forwards with respect to any taxes and refunds for amounts paid in connection with the Assets attributable to any period prior to the Effective Time; (vi) all amounts due or payable to Assignor as adjustments to insurance premiums related to the Assets with respect to any period prior to the Effective Time; (vii) all proceeds, income or revenues (and any security or other deposits made) attributable to the Assets for any period prior to the Effective Time; (viii) all of Assignor's rights and interests in geological and geophysical data prepared by Assignor that are interpretive in nature or which cannot be transferred without the consent of or payment to any Third Party unless such Third Party or Assignee has made any required payment; (ix) all data and other information that cannot be disclosed or assigned to Assignee as a result of confidentiality or similar arrangements under agreements with persons unaffiliated with Assignor; (x) all audit

rights arising under any of the Contracts or otherwise with respect to any period prior to the Effective Time; and (xi) all overriding royalty interests previously owned or recently created by Assignor which are determined on \_\_\_\_\_.

TO HAVE AND TO HOLD the Assets, together with all and singular the rights, privileges, contracts and appurtenances, in any way appertaining or belonging thereto, unto Assignee, its successors and assigns, forever, subject to the matters set forth herein.

## ARTICLE II

### Special Warranty of Title and Disclaimers

Section 2.01 Special Warranty of Title. Seller hereby agrees to warrant and defend title to the Assets solely unto Buyer against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Seller, but not otherwise; subject, however, to the Permitted Encumbrances (as such term is defined in the Purchase Agreement described below) and the other matters set forth herein. In no event shall the foregoing warranty extend to or be enforceable by any party other than Buyer and Buyer's successors and assigns in all or part of the Assets.

Section 2.02 Disclaimer. ASSIGNEE ACKNOWLEDGES THAT ASSIGNOR HAS NOT MADE, AND ASSIGNOR HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND ASSIGNEE HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO (a) PRODUCTION RATES, RECOMPLETION OPPORTUNITIES, DECLINE RATES, INFORMATION OR THE QUALITY, QUANTITY OR VOLUME OF THE RESERVES OF HYDROCARBONS, IF ANY, ATTRIBUTABLE TO THE ASSETS; (b) THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) NOW, HERETOFORE OR HEREAFTER FURNISHED TO ASSIGNEE BY OR ON BEHALF OF ASSIGNOR; AND (c) THE ENVIRONMENTAL CONDITION OF THE ASSETS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ASSIGNMENT, ASSIGNOR EXPRESSLY DISCLAIMS AND NEGATES, AND ASSIGNEE HEREBY WAIVES, AS TO PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES CONSTITUTING A PART OF THE ASSETS (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF PURCHASERS UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE, (v) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM DEFECTS, WHETHER KNOWN OR UNKNOWN, (vi) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW, AND (vii) ANY IMPLIED OR EXPRESS WARRANTY REGARDING ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, OR PROTECTION OF THE ENVIRONMENT OR HEALTH, IT BEING THE EXPRESS INTENTION OF ASSIGNEE AND ASSIGNOR THAT THE PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES INCLUDED IN THE ASSETS SHALL BE CONVEYED TO ASSIGNEE, AND ASSIGNEE SHALL ACCEPT SAME, AS IS, WHERE IS, WITH ALL

FAULTS AND IN THEIR PRESENT CONDITION AND STATE OF REPAIR AND ASSIGNEE REPRESENTS TO ASSIGNOR THAT ASSIGNEE HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS WITH RESPECT TO SUCH PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES AS ASSIGNEE DEEMS APPROPRIATE. ASSIGNOR AND ASSIGNEE AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER.

### **ARTICLE III Miscellaneous**

Section 3.01 Construction. The captions in this Assignment are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Assignment. Assignor and Assignee acknowledge that they have participated jointly in the negotiation and drafting of this Assignment and as such they agree that if an ambiguity or question of intent or interpretation arises hereunder, this Assignment shall not be construed more strictly against one party than another on the grounds of authorship.

Section 3.02 No Third Party Beneficiaries. Nothing in this Assignment shall provide any benefit to any Third Party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties hereto that this Assignment shall otherwise not be construed as a Third Party beneficiary contract.

Section 3.03 Assignment. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 3.04 Governing Law. This Assignment, other documents delivered pursuant hereto and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Colorado, without giving effect to principles of conflicts of laws that would result in the application of the laws of another jurisdiction.

Section 3.05 Counterpart Execution. This Assignment may be executed in any number of counterparts, and each counterpart hereof shall be effective as to each party that executes the same whether or not all of such parties execute the same counterpart. If counterparts of this Assignment are executed, the signature pages from various counterparts may be combined into one composite instrument for all purposes. All counterparts together shall constitute only one Assignment, but each counterpart shall be considered an original.

Section 3.06 Recording. To facilitate the recording or filing of this Assignment, the counterpart to be recorded in a given county may contain only that portion of the exhibits that describes Assets located in that county. In addition to filing this Assignment, the parties hereto shall execute and file with the appropriate authorities, whether federal, state or local, all forms or instruments required by applicable law to effectuate the conveyance contemplated hereby. Said instruments shall be deemed to contain all of the exceptions, reservations, rights, titles and privileges set forth herein as fully as though the same were set forth in each such instrument. The interests conveyed by such separate assignments are the same, and not in addition to the Assets conveyed herein.

Section 3.07 Purchase Agreement. This Assignment is subject to all of the terms and conditions of the Purchase and Sale Agreement dated                     , November 8, 2016 by and between Assignor and Assignee (the "Purchase Agreement").

IN WITNESS WHEREOF, this Assignment is executed by the parties on the date of their respective acknowledgments below, but shall be effective for all purposes as of the Effective Time.

**ASSIGNOR: SWAN EXPLORATION, LLC**

\_\_\_\_\_  
Name: Brandon Davis  
Title: Chief Executive Officer

**ASSIGNEE:**

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

**[Insert Acknowledgments]**



**EXHIBIT E****Executed AFE's**

Well Name	Operator	AFE #	Swan WI	Estimated Spud	Gross AFE	Swan Net
Puma Fed 5S-35HZ	Kerr-McGee	2113668	2.083333%	Q4 2016	\$ 17,500	\$ 364.58
Puma Fed 13C-35HZ	Kerr-McGee	2111653	1.388889%	Q4 2016	\$ 3,839,571	\$ 53,327.38
Puma Fed 34N-35HZ (Puma Fed 13N-35HZ)	Kerr-McGee	2111654	1.388889%	Q4 2016	\$ 4,512,146	\$ 62,668.70
Puma Fed 34C-35HZ	Kerr-McGee	2111655	1.388889%	Q4 2016	\$ 3,810,229	\$ 52,919.85
Puma Fed 34N-35HZ	Kerr-McGee	2111659	2.430556%	Q4 2016	\$ 4,475,783	\$ 108,786.41
Jaguar 14N-35HZ	Kerr-McGee	2111328	2.082391%	Q4 2016	\$ 4,590,216	\$ 95,586.24
Jaguar 28C-14HZ	Kerr-McGee	2110946	0.519739%	Q4 2016	\$ 2,963,730	\$ 15,403.66
Jaguar Fed 6S-35HZ	Kerr-McGee	2116182	2.080862%	Q4 2016	\$ 2,854,818	\$ 59,404.82
Jaguar Fed 35C-35HZ	Kerr-McGee	2111325	1.388889%	Q4 2016	\$ 3,895,330	\$ 54,101.81
Jaguar Fed 35N-35HZ	Kerr-McGee	2111323	1.388889%	Q4 2016	\$ 4,588,371	\$ 63,727.38
Jaguar Fed 36C-35HZ	Kerr-McGee	2111326	2.082391%	Q4 2016	\$ 3,896,607	\$ 81,142.59
Garfield 2N-14HZ	Kerr-McGee	2110942	1.039668%	Q1 2017	\$ 3,388,080	\$ 35,224.78
Garfield 15C-35HZ	Kerr-McGee	2110935	2.083403%	Q1 2017	\$ 3,915,163	\$ 81,568.62
Garfield 15N-35HZ	Kerr-McGee	2110932	2.778453%	Q1 2017	\$ 4,607,671	\$ 128,021.97
Garfield 27C-35HZ	Kerr-McGee	2110944	1.021700%	Q1 2017	\$ 2,977,692	\$ 30,423.08
Garfield 28N-14HZ	Kerr-McGee	2110945	0.518577%	Q1 2017	\$ 3,391,338	\$ 17,586.70
Garfield 36N-35HZ	Kerr-McGee	2110941	2.083403%	Q1 2017	\$ 4,609,791	\$ 96,040.52
Garfield 37N-35HZ	Kerr-McGee	2110925	2.766789%	Q1 2017	\$ 4,609,880	\$ 127,545.65
Meese 1C-14HZ	Kerr-McGee	2110928	1.021700%	Q2 2017	\$ 2,963,580	\$ 30,278.90
Meese 1N-14HZ	Kerr-McGee	2110927	1.002604%	Q2 2017	\$ 3,370,335	\$ 33,791.11
Meese 16N-35HZ	Kerr-McGee	2110930	2.755134%	Q2 2017	\$ 4,596,564	\$ 126,641.50
Meese 26N-14HZ	Kerr-McGee	2110922	3.070469%	Q2 2017	\$ 3,371,442	\$ 103,519.08
Meese 27N-14HZ	Kerr-McGee	2110924	1.021700%	Q2 2017	\$ 2,977,692	\$ 30,423.08
Meese 37C-35HZ	Kerr-McGee	2110923	2.767890%	Q2 2017	\$ 3,864,665	\$ 106,969.68
Meese 38C-35HZ	Kerr-McGee	2110926	3.090182%	Q2 2017	\$ 3,903,878	\$ 120,636.94
Meese 38N-35HZ	Kerr-McGee	2110937	3.090182%	Q2 2017	\$ 4,598,603	\$ 142,105.20
<b>TOTAL Kerr-McGee</b>					<b>\$ 96,590,675.00</b>	<b>\$ 1,858,210.25</b>

Well Name	Operator	AFE #	Swan WI	Estimated Spud	Gross AFE	Swan Net
LEHL 30-1	HRM Resources	201620	3.210715%	Q4 2016	\$ 4,772,796.00	\$ 153,240.88
LEHL 30-2	HRM Resources	201621	3.210000%	Q4 2016	\$ 4,769,937.69	\$ 153,115.00
LEHL 30-3	HRM Resources	201622	3.210715%	Q4 2016	\$ 4,771,460.56	\$ 153,198.00
LEHL 30-4	HRM Resources	201623	3.210715%	Q4 2016	\$ 4,773,771.00	\$ 153,272.18
LEHL 30-5	HRM Resources	201624	3.210715%	Q4 2016	\$ 4,770,427.00	\$ 153,164.81
LEHL 30-6	HRM Resources	201625	3.210715%	Q4 2016	\$ 4,771,472.00	\$ 153,198.35
<b>TOTAL HRM Resources</b>					<b>\$ 28,629,864.26</b>	<b>\$ 919,189.22</b>

Document comparison by Workshare 9 on Tuesday, November 08, 2016 9:00:26 AM

Input:	
Document 1 ID	file:///H:/Swan Exploration Sale/PSA/Swan - Purchase and Sale Agreement 11042016.docx
Description	Swan - Purchase and Sale Agreement 11042016
Document 2 ID	file:///H:/Swan Exploration Sale/PSA/Swan - Purchase and Sale Agreement 1108201616.docx
Description	Swan - Purchase and Sale Agreement 1108201616
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	21
Deletions	26
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	47

## **EXHIBIT 6**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Tuesday, November 8, 2016 9:02 AM  
**To:** Allyson Vistica  
**Cc:** Matt Volkmar; Katherine O'Connell  
**Subject:** RE: Swan PSA Revision 11-08-16  
**Attachments:** Swan - FINAL Purchase and Sale Agreement 1108201616.pdf

Allyson; Attached please find the Executable version of the PSA.

If you need to reach me, please call me on my cell.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [mailto:[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)]  
**Sent:** Tuesday, November 08, 2016 9:43 AM  
**To:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Cc:** Matt Volkmar <mvolkmar@extractionog.com>; Katherine O'Connell <koconnell@ogclearinghouse.com>  
**Subject:** RE: Swan PSA Revision 11-08-16

We are in agreement with the attached. Please send the executable version and I will have it signed. Once I receive your signature we will wire the money. I will also fedex original signature pages to you.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Tuesday, November 08, 2016 8:31 AM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** Swan PSA Revision 11-08-16

Allyson;

Attached please find redline and clean versions of the PSA detailing Purchaser's comments from yesterday and the following revisions I made this morning:

1. Revised PSA date to 11.08.2016
2. Section 1.01 language relating to Seller's override royalty interest
3. Re-inserted the header 3.09 which was inadvertently deleted in yesterday's version.
4. Completed Notice section
5. Inserted PSA date into Assignment exhibit
6. Revised footer for execution.

If you are in agreement with the attached, please let us know and we will send an executable version to you. Please give me a call a call on my cell phone if you would like to discuss.

Patrick M. DaPra  
Vice President – Negotiated Transactions

Office Direct: 832-601-7655

Cell: 281-435-1337

---

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To: [avistica@extractionog.com](mailto:avistica@extractionog.com)

[Remove](#) this sender from my allow list

From: pdapra@ogclearinghouse.com

*You received this message because the sender is on your allow list.*

## **EXHIBIT 7**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Tuesday, November 8, 2016 3:09 PM  
**To:** Allyson Vistica  
**Subject:** RE: Swan PSA Revision 11-08-16  
**Attachments:** Swan signature page 11.08.2016.pdf

Allyson, Here is Swan's signature page, Please give me a call.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [mailto:[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)]  
**Sent:** Tuesday, November 08, 2016 10:55 AM  
**To:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Cc:** Matt Volkmar <mvolkmar@extractionog.com>; Katherine O'Connell <koconnell@ogclearinghouse.com>  
**Subject:** RE: Swan PSA Revision 11-08-16

Pat – please find Extractions signature. Once I receive your signature I will initial the wire as well as send original signature pages for your records.

---

**From:** Pat DaPra [mailto:[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)]  
**Sent:** Tuesday, November 08, 2016 9:02 AM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

Allyson; Attached please find the Executable version of the PSA.

If you need to reach me, please call me on my cell.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [mailto:[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)]  
**Sent:** Tuesday, November 08, 2016 9:43 AM  
**To:** Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

We are in agreement with the attached. Please send the executable version and I will have it signed. Once I receive your signature we will wire the money. I will also fedex original signature pages to you.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]

**Sent:** Tuesday, November 08, 2016 8:31 AM

**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>

**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>

**Subject:** Swan PSA Revision 11-08-16

Allyson;

Attached please find redline and clean versions of the PSA detailing Purchaser's comments from yesterday and the following revisions I made this morning:

1. Revised PSA date to 11.08.2016
2. Section 1.01 language relating to Seller's override royalty interest
3. Re-inserted the header 3.09 which was inadvertently deleted in yesterday's version.
4. Completed Notice section
5. Inserted PSA date into Assignment exhibit
6. Revised footer for execution.

If you are in agreement with the attached, please let us know and we will send an executable version to you. Please give me a call a call on my cell phone if you would like to discuss.

Patrick M. DaPra

Vice President – Negotiated Transactions

Office Direct: 832-601-7655

Cell: 281-435-1337

---

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To: [avistica@extractionog.com](mailto:avistica@extractionog.com)

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From: [pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)

*You received this message because the sender is on your allow list.*



## **EXHIBIT 8**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Tuesday, November 8, 2016 10:41 AM  
**To:** Allyson Vistica  
**Cc:** Matt Volkmar; Katherine O'Connell  
**Subject:** Re: Swan PSA Revision 11-08-16

Allyson; I can give you a call right after lunch when I get back in the office. What is a good number to call you on?

Patrick M. DaPra  
Vice President - Negotiated Transactions  
(Office) 832-601-7655  
(Cell) 281-435-1337

On Nov 8, 2016, at 11:31 AM, Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)> wrote:

Hi Pat – we have a few issues here.

1. The allocation of value here was not based on a 75% NRI as this was added in at the last second. Extraction would like to change the allocation. Also, this deal was evaluated on the NRIs listed on the lease schedule so we would like to change the purchase price. I understand that this is a last minute statement; however, once I looked at the lease schedule I realized the materiality of the change in section 1.01 where in Swan states that they will only be delivering a 75% NRI.
2. The examination period has already passed so should we need to change this as well as the closing date.

Looks like we have some more negotiating to do.

Please let me know when you have a second to discuss.

Thank you,

<image001.jpg>

**Allyson Vistica**  
*Land Manager*  
Extraction Oil & Gas  
370 17<sup>th</sup> St, Ste 5300  
Denver, CO 80202  
Direct: 720-382-5225  
Cell: 214-676-9425  
[www.ExtractionOG.com](http://www.ExtractionOG.com)

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Tuesday, November 08, 2016 9:02 AM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>

**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>

**Subject:** RE: Swan PSA Revision 11-08-16

Allyson; Attached please find the Executable version of the PSA.

If you need to reach me, please call me on my cell.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [<mailto:avistica@ExtractionOG.com>]

**Sent:** Tuesday, November 08, 2016 9:43 AM

**To:** Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)>

**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>

**Subject:** RE: Swan PSA Revision 11-08-16

We are in agreement with the attached. Please send the executable version and I will have it signed. Once I receive your signature we will wire the money. I will also fedex original signature pages to you.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]

**Sent:** Tuesday, November 08, 2016 8:31 AM

**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>

**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>

**Subject:** Swan PSA Revision 11-08-16

Allyson;

Attached please find redline and clean versions of the PSA detailing Purchaser's comments from yesterday and the following revisions I made this morning:

1. Revised PSA date to 11.08.2016
2. Section 1.01 language relating to Seller's override royalty interest
3. Re-inserted the header 3.09 which was inadvertently deleted in yesterday's version.
4. Completed Notice section
5. Inserted PSA date into Assignment exhibit
6. Revised footer for execution.

If you are in agreement with the attached, please let us know and we will send an executable version to you. Please give me a call a call on my cell phone if you would like to discuss.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

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To: [avistica@extractionog.com](mailto:avistica@extractionog.com) [Remove](#) this sender from my allow list

From: pdapra@ogclearinghouse.com

*You received this message because the sender is on your allow list.*

## **EXHIBIT 9**

---

**From:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Sent:** Thursday, November 10, 2016 9:12 AM  
**To:** Allyson Vistica  
**Subject:** RE: Swan PSA Revision 11-08-16

Allyson; I think there is some miscommunication on the retained interest. In Swan's calculation they are assuming a 640 acre unit. They are willing to assign 80% in the 2 large State Leases (738.19 NMA) and 75% in the remaining.

Please give me a call

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:**  
**Sent:** Wednesday, November 09, 2016 5:55 PM  
**To:** Pat DaPra <pdapra@ogclearinghouse.com>  
**Subject:** RE: Swan PSA Revision 11-08-16

Hey Pat – sorry I missed you today. The day just got away from me. Lets chat in the morning as I have clear direction from senior management here. We will not go below 80% as we were under the impression these NRIs were a lot higher than 80% to begin with. Give me a call tomorrow and we can work something out.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Wednesday, November 09, 2016 2:13 PM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

Allyson, Swan is willing to accept 77% rather than 75%. Please let me know if this will work for you. We will need to amend the PSA for the cure period and closing date.

Thanks Allyson, please call me if you want to discuss.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [<mailto:avistica@ExtractionOG.com>]  
**Sent:** Tuesday, November 08, 2016 4:37 PM  
**To:** Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

Attached is the lease schedule with those leases at a higher than 75% NRI that we have question about, this amounts to a lot of value lost to Extraction as we valued the leases at the royalties listed on the attached. Is there room for negotiation on a lesser reservation for swan? 75% is too low for us but we can talk about 80%.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Tuesday, November 08, 2016 3:09 PM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

Allyson, Here is Swan's signature page, Please give me a call.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [<mailto:avistica@ExtractionOG.com>]  
**Sent:** Tuesday, November 08, 2016 10:55 AM  
**To:** Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

Pat – please find Extractions signature. Once I receive your signature I will initial the wire as well as send original signature pages for your records.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Tuesday, November 08, 2016 9:02 AM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

Allyson; Attached please find the Executable version of the PSA.

If you need to reach me, please call me on my cell.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

**From:** Allyson Vistica [<mailto:avistica@ExtractionOG.com>]  
**Sent:** Tuesday, November 08, 2016 9:43 AM  
**To:** Pat DaPra <[pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** RE: Swan PSA Revision 11-08-16

We are in agreement with the attached. Please send the executable version and I will have it signed. Once I receive your signature we will wire the money. I will also fedex original signature pages to you.

---

**From:** Pat DaPra [<mailto:pdapra@ogclearinghouse.com>]  
**Sent:** Tuesday, November 08, 2016 8:31 AM  
**To:** Allyson Vistica <[avistica@ExtractionOG.com](mailto:avistica@ExtractionOG.com)>  
**Cc:** Matt Volkmar <[mvolkmar@extractionog.com](mailto:mvolkmar@extractionog.com)>; Katherine O'Connell <[koconnell@ogclearinghouse.com](mailto:koconnell@ogclearinghouse.com)>  
**Subject:** Swan PSA Revision 11-08-16

Allyson;

Attached please find redline and clean versions of the PSA detailing Purchaser's comments from yesterday and the following revisions I made this morning:

1. Revised PSA date to 11.08.2016
2. Section 1.01 language relating to Seller's override royalty interest
3. Re-inserted the header 3.09 which was inadvertently deleted in yesterday's version.
4. Completed Notice section
5. Inserted PSA date into Assignment exhibit
6. Revised footer for execution.

If you are in agreement with the attached, please let us know and we will send an executable version to you. Please give me a call a call on my cell phone if you would like to discuss.

Patrick M. DaPra  
Vice President – Negotiated Transactions  
Office Direct: 832-601-7655  
Cell: 281-435-1337

---

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To: [avistica@extractionog.com](mailto:avistica@extractionog.com) [Remove](#) this sender from my allow list  
From: [pdapra@ogclearinghouse.com](mailto:pdapra@ogclearinghouse.com)

*You received this message because the sender is on your allow list.*



## **EXHIBIT 10**



KANE RUSSELL COLEMAN & LOGAN PC

CHARLES E. ASTER  
(214) 777-4266  
caster@krcel.com

December 1, 2016

**VIA FEDEX AIRBILL NO. 777838814828**

**AND EMAIL** [avistica@extractionog.com](mailto:avistica@extractionog.com)

Extraction Oil & Gas, Inc.

Attention: Allyson Vistica, Land Manager

370 Seventeenth Street, Suite 5300

Denver, Colorado 80202

**VIA FEDEX AIRBILL NO. 777841361160**

**AND EMAIL** [mowens@extractionog.com](mailto:mowens@extractionog.com)

Extraction Oil & Gas, Inc.

Attention: Matt Owens, President

370 Seventeenth Street, Suite 5300

Denver, Colorado 80202

**VIA FEDEX AIRBILL NO. 777838851190**

**AND EMAIL** [echrist@extractionog.com](mailto:echrist@extractionog.com)

Extraction Oil & Gas, Inc.

Attention: Eric Christ, General Counsel

370 Seventeenth Street, Suite 5300

Denver, Colorado 80202

Re: Purchase and Sale Agreement (the "PSA"), dated November 8, 2016, by and between Swan Exploration, LLC, a Colorado limited liability company ("Seller"), and Extraction Oil & Gas, Inc., a Delaware corporation ("Buyer"), covering the oil and gas interests more particularly described therein (the "Assets"). All capitalized terms not defined in this letter shall have the meanings given them in the PSA.

Ladies and Gentlemen:

This letter is written at the request and on behalf of our client, Seller.

Demand is hereby made by Seller upon Buyer for Buyer, to either: (a) by 5:00 p.m. Houston, Texas time on December 14, 2016, close under the PSA with Seller and wire transfer to the account of Seller, pursuant to the wire instructions attached hereto, the full amount of the Purchase Price for

Allyson Vistica  
Matt Owens  
Eric Christ, Esq.  
December 1, 2016  
Page 2

the Assets, whereupon, simultaneously with such payment, Seller shall deliver to Buyer executed transfer instruments conveying and transferring the Assets to Buyer; or (b) by 5:00 pm. Houston, Texas time on December 7, 2016, wire transfer to the account of Seller, pursuant to the wire instructions attached hereto, the full amount of the Deposit in the amount of \$950,000.00, which will be retained by Seller as liquidated damages for Buyer's breach of and failure to close under the PSA.

In a telephone conversation occurring on November 19, 2016 between the General Counsel of Buyer and the General Counsel of Seller, the General Counsel of Buyer alleged that the PSA does not exist and that it has been repudiated.

Please be advised that the PSA has not been repudiated, it is still in full force and effect and Seller has never received a timely and valid repudiation of the PSA. However, due to Buyer's failure to close under the PSA in accordance with its terms, Buyer is in default under the PSA.

Please note that, at the specific request of Buyer, the PSA was executed on Tuesday, November 8, 2016 so that, as was explained by a representative of Buyer, Allyson Vistica, who is both an oil and gas land manager and an attorney working for Buyer ("Buyer's Representative"), to a representative of Seller, Patrick M. DaPra ("Seller's Representative"), Buyer could announce the signing of the PSA on the Buyer's call with its investors later that morning on Tuesday, November 8, 2016 (the "Investor Call").

In order to facilitate and accommodate this specific request of Buyer, Seller forwarded, by email to Buyer: (i) on Friday, November 4, 2016 an updated version of the PSA; and (ii) on Monday, November 7, 2016, the draft exhibits to the PSA. On the morning of Tuesday, November 8, 2016, Seller emailed clean and redlined versions of the PSA to Buyer detailing changes and clarifications as requested by Buyer's Representative from the day before. Subsequently, at the explicit request of Buyer and pursuant to an email from Buyer's Representative to Seller's Representative earlier that same morning stating: "We are in agreement with the attached [updated form of PSA]. Please send the executable version and I will have it signed", Seller accommodated Buyer's request and emailed Buyer's Representative a clean execution copy of the PSA whereupon that same morning Seller received Buyer's signature pages to the PSA.

Further, Buyer by a later email the morning of Tuesday, November 8, 2016, confirmed the existence of the PSA when Buyer's Representative contacted Seller's Representative to request a "change" to the PSA noting that: "The examination period has already passed so should we need to change this as well as the closing date." There would be no examination period or closing date that needed to be changed if the PSA was not in existence.

Allyson Vistica  
Matt Owens  
Eric Christ, Esq.  
December 1, 2016  
Page 3

Because there is no legitimate basis for Buyer to claim that the PSA is not in existence, Seller is concerned that Buyer is attempting to create a fictitious claim that the PSA is not in existence due to possible negative business reactions Buyer received from Buyer's investors during its Investor Call. While Buyer, after reactions from its investors, may have second thoughts regarding the business deal it agreed to in the PSA, such second thoughts are not a proper basis to claim that the PSA is not in existence. Accordingly, Buyer is bound by the terms of the PSA and is now in default under the PSA.

If Buyer should continue to claim that the PSA is not in existence, Seller, reserves all of its rights and remedies under the PSA, at law and in equity. The exercise of such rights and remedies may include, but not be limited to, legal action where Seller may elect to depose all parties on the Investor Call to ascertain whether any of Buyer's investors encouraged or instructed Buyer to unilaterally reverse its position that Buyer is "in agreement" with the PSA and "we need to change" certain terms, to claim that the PSA does not exist or find any other reason to extract itself from the PSA.

Notwithstanding the above, Seller's Representative, during communications following Buyer's Representative's request to commence discussions to modify certain terms of the PSA, explained that Seller would be willing to discuss certain modifications to the PSA. Accordingly, in the interest of avoiding wasting time and resources of both Seller and Buyer, Seller between the date of this letter and 5:00 p.m. Houston, Texas time on December 7, 2016 is willing to discuss certain modifications to the PSA. If: (a) Buyer and Seller, exercising their own independent judgment, have not entered into a written modification agreement of the PSA by 5:00 p.m. Houston, Texas time on December 7, 2016; or (b) Seller has not received by 5:00 p.m. Houston, Texas time on December 7, 2016 (i) the Deposit in Seller's account pursuant to the attached wiring instructions and (ii) a written notice from Buyer stating that Buyer is not proceeding with the purchase of the Assets under the PSA; or (c) Seller has not received by 5:00 p.m. Houston, Texas time on December 7, 2016 (i) the Deposit in Seller's account pursuant to the attached wiring instructions and (ii) a written notice from Buyer stating that Buyer is ready to close under the PSA and pay the full Purchase Price to Seller on or before 5:00 p.m. Houston, Texas time on December 14, 2016 (a "Buyer Go Forward Notice"); or (d) Seller has received by 5:00 p.m. Houston, Texas time on December 7, 2016 (i) the Deposit in Seller's account pursuant to the attached wiring instructions and (ii) a Buyer Go Forward Notice but Buyer has failed to close the purchase of the Assets under the PSA and pay the full Purchase Price to Seller on or before 5:00 p.m. Houston, Texas time on December 14, 2016, then Seller reserves it rights to exercise any or all rights and remedies available under the PSA, at law or in equity. If Buyer wishes to accept Seller's offer to discuss such modifications, then please immediately contact Buyer's Representative at his office: 832-601-7655 or on his cell: 281-435-1337 to arrange a conference call between senior business representatives of Seller and senior business representatives of Buyer.

Allyson Vistica  
Matt Owens  
Eric Christ, Esq.  
December 1, 2016  
Page 4

It is Seller's desire to close the transaction contemplated by the PSA or, in lieu thereof receive the Deposit as Buyer agreed to in the PSA. However, as discussed above, until December 7, 2016, Seller is willing to accommodate Buyer and discuss modifications to the PSA. After such date, Seller shall be free to exercise any and all rights and remedies of Seller.

Very truly yours,

**KANE RUSSELL COLEMAN & LOGAN PC**

By: 

Charles E. Aster

CEA/nmc

cc: Mr. Brandon Davis (via email)  
Katherine O'Connell, Esq. (via email)  
Mr. Patrick M. DaPra (via email)

Allyson Vistica  
Matt Owens  
Eric Christ, Esq.  
December 1, 2016  
Page 5

**SELLER WIRING INSTRUCTIONS**

Swan Exploration, LLC  
Firstwestern Trust Bank  
Englewood, CO

Route: 102007011  
Acct: 2088125

# **EXHIBIT C**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

EXTRACTION OIL & GAS, INC., *et al.*,<sup>1</sup>

*Reorganized Debtors.*

## Chapter 11

Case No. 20-11548 (CSS)

(Jointly Administered)

**Re: Docket No. \_\_\_\_\_**

**ORDER GRANTING REORGANIZED DEBTORS' OBJECTION TO PROOF OF  
CLAIM NO. 1559 FILED BY SWAN EXPLORATION, LLC**

This matter having come before this Court on *Reorganized Debtors’ Objection to Proof of Claim No. 1559 Filed by Swan Exploration, LLC* (the “Objection”); this Court having reviewed the Objection; this Court have jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference, dated February 29, 2012; this Court having found this is a core proceeding under 28 U.S.C. § 157(b)(2); this Court having found it may enter a final order consistent with Article III of the United States Constitution; this Court having found that venue of this proceeding and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409; this Court having found that the Reorganized Debtors’ notice of the Objection and opportunity for a hearing on the Objection were appropriate under the circumstances and no other notice need be provided; this Court having reviewed the Objection and all other related materials, and having heard any argument in support or in opposition to the relief requested therein at a hearing before this Court; this Court having determined that the legal and factual bases set forth in

<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



the Objection and at the hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Reorganized Debtors' Objection is SUSTAINED.
2. Proof of Claim No. 1559 filed by Swan Exploration, LLC is disallowed and expunged for all purposes.
3. The claims agent is authorized to, and shall, reflect the disallowance and expungement of the aforesaid Proof of Claim No. 1559 on the Official Claims Register.
4. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.