# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 8-K

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

Date of Report (Date of earliest event reported)
**October 17, 2016**

# SM Energy Company

(Exact name of registrant as specified in its charter)

| **Delaware** | **001-31539** | **41-0518430** |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

| **1775 Sherman Street, Suite 1200, Denver, Colorado** | **80203** |
|---|---|
| (Address of principal executive offices) | (Zip Code) |

Registrant's telephone number, including area code: **(303) 861-8140**

**Not applicable**
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2.):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement**

***Howard County Purchase and Sale Agreements***

On October 17, 2016, SM Energy Company, a Delaware corporation (the "***Company***"), entered into a Purchase and Sale Agreement (the "***QStar Purchase Agreement***") with QStar LLC, a Delaware limited liability company ("***QStar***"), pursuant to which the Company will purchase from QStar all of QStar's interests in certain oil and gas assets located in Howard and Martin Counties, Texas (the "***Midland Assets***"). On October 17, 2016, the Company also entered into a Ratification and Joinder Agreement (the "***Joinder Agreement***") with RRP-QStar, LLC ("***RRP***"), whereby RRP agreed to sell its interests in the Midland Assets to the Company on the same terms and conditions set forth in the QStar Purchase Agreement, except as such terms are modified in the Joinder Agreement. The transactions contemplated by the QStar Purchase Agreement are referred to herein as the "***QStar Transaction***," and the transactions contemplated by the Joinder Agreement are referred to herein as the "***RRP Transaction***." The board of directors of the Company has approved the QStar Purchase Agreement, the Joinder Agreement, the QStar Transaction and the RRP Transaction.

Under the QStar Purchase Agreement and the Joinder Agreement, the Company agreed to purchase QStar's and RRP's interests in the Midland Assets for $1.1 billion in cash consideration, and approximately 13.4 million shares of the Company's common stock, par value $0.01 per share (the "***Common Stock***"). The cash consideration is subject to certain purchase price adjustments, including adjustments for certain title defects and certain environmental defects asserted prior to December 2, 2016. Except for its remedy of a breach by QStar or RRP of certain limited representations and interim period covenants, the Company's exclusive remedy for title matters and environmental matters, with certain exceptions, will be handled through a title or environmental defect mechanism. Following the execution of the QStar Purchase Agreement, the Company deposited $60.0 million (the "***QStar Deposit***") into an escrow account as the deposit to be applied against the purchase price for the QStar Transaction at the closing, and following the execution of the Joinder Agreement, the Company deposited $20.0 million (the "***RRP Deposit***") into an escrow account as the deposit to be applied against the purchase price for the RRP Transaction at the closing.

*Conditions to the Closing of the QStar Transaction and the RRP Transaction and Termination Rights*

The completion of each of the QStar Transaction and the RRP Transaction is subject to the satisfaction or waiver of certain customary conditions, including, among others: (a) the absence of certain legal impediments to the consummation of each such transaction; (b) the absence of any litigation related to each such transaction; (c) the material accuracy of the parties' representations and warranties as of the closing; and (d) aggregate adjustments to the purchase price due to title and environmental defects shall not exceed 20% of the unadjusted purchase price.

The QStar Purchase Agreement may be terminated (a) by mutual agreement of the parties; or (b) by QStar or the Company if the conditions to closing have not been satisfied or

waived by January 20, 2017. The Joinder Agreement may be terminated (a) by mutual agreement of the parties; or (b) by RRP or the Company if the conditions to closing have not been satisfied or waived by January 20, 2017.

If the conditions precedent for the Company's obligations to consummate the QStar Transaction are satisfied or waived by the Company and the QStar Transaction is not consummated because of a material breach of its covenants by the Company or because the Company's representations and warranties are not true and the breach of such representations and warranties would constitute a material adverse effect, then QStar shall be entitled to the QStar Deposit as liquidated damages or to seek all remedies at law or equity, including specific performance of the QStar Purchase Agreement. If the conditions precedent for the Company's obligations to consummate the RRP Transaction are satisfied or waived by the Company and the RRP Transaction is not consummated because of a material breach of its covenants by the Company or because the Company's representations and warranties are not true and the breach of such representations and warranties would constitute a material adverse effect, then RRP shall be entitled to the RRP Deposit as liquidated damages or to seek all remedies at law or equity, including specific performance of the Joinder Agreement.

If the QStar Purchase Agreement is permitted to be terminated by the Company because any of its conditions precedent to closing have not been satisfied and QStar is in material breach of any of its covenants or agreements under the QStar Purchase Agreement, then the Company will be entitled to seek all remedies available at law or equity, including specific performance. If the QStar Purchase Agreement is terminated for any other reason, the QStar Deposit will be returned to the Company. If the Joinder Agreement is permitted to be terminated by the Company because any of its conditions precedent to closing have not been satisfied and RRP is in material breach of any of its covenants or agreements under the Joinder Agreement, then the Company will be entitled to seek all remedies available at law or equity, including specific performance. If the Joinder Agreement is terminated for any other reason, the RRP Deposit will be returned to the Company.

*Other Terms of the QStar Purchase Agreement and the Joinder Agreement*

The QStar Purchase Agreement and the Joinder Agreement each contain customary representations, warranties and covenants for a transaction of this nature. The QStar Purchase Agreement and the Joinder Agreement also contain customary mutual pre-closing covenants, including the obligation of QStar and RRP to own and operate the assets it owns in the regular course of business and to refrain from taking certain actions. In addition, each of QStar and RRP have agreed to indemnify the Company for certain losses, including those related to a breach of QStar's or RRP's respective representations or warranties.

The foregoing summary of the QStar Purchase Agreement, the Joinder Agreement, the QStar Transaction and the RRP Transaction does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the QStar Purchase Agreement, which is filed as Exhibit 2.1 to this Current Report on Form 8-K, and the full text of the Joinder Agreement, which is filed as Exhibit 2.2 to this Current Report on Form 8-K. The QStar Purchase Agreement and the Joinder Agreement have been included to provide investors with information regarding their respective terms and is not intended to provide any financial or other



factual information about the Company. In particular, the representations, warranties and covenants contained in each of the QStar Purchase Agreement and the Joinder Agreement (a) were made only for purposes of the QStar Purchase Agreement or the Joinder Agreement, as applicable, and as of specific dates, (b) were solely for the benefit of the parties to the QStar Purchase Agreement or the Joinder Agreement, as applicable, (c) may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures, (d) were made for the purposes of allocating contractual risk between the parties to the QStar Purchase Agreement and the Joinder Agreement instead of establishing matters subject to representations and warranties as facts, and (e) may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the QStar Purchase Agreement and the Joinder Agreement, which subsequent information may or may not be fully reflected in public disclosures by the Company. Accordingly, investors should read the representations and warranties in the QStar Purchase Agreement and in the Joinder Agreement not in isolation but only in conjunction with the other information about the Company that is included in reports, statements and other filings it makes with the U.S. Securities and Exchange Commission.

***Williston Basin Purchase and Sale Agreement***

On October 17, 2016, the Company entered into a Purchase and Sale Agreement (the "***Oasis Purchase Agreement***") with Oasis Petroleum North America LLC, a Delaware limited liability company ("***Oasis***"), pursuant to which Oasis will purchase from the Company all of the Company's interests in certain oil and gas assets located in Montana and North Dakota (the "***Williston Assets***"). The transactions contemplated by the Oasis Purchase Agreement are referred to herein as the "***Oasis Transactions***." The board of directors of the Company has approved the Oasis Purchase Agreement and the Oasis Transactions.

Under the Oasis Purchase Agreement, Oasis agreed to purchase the Williston Assets for $785 million in cash consideration. The purchase price is subject to certain purchase price adjustments, including adjustments for certain title defects and certain environmental defects asserted prior to November 21, 2016. Except for its remedy of a breach by the Company of certain limited representations and interim period covenants, Oasis's exclusive remedy for title matters and environmental matters, with certain exceptions, will be handled through a title or environmental defect mechanism. Following the execution of the Oasis Purchase Agreement, Oasis deposited $78.5 million (the "***Oasis Deposit***") into an escrow account as a deposit to be applied against the purchase price at the closing.

*Conditions to the Closing of the Oasis Transactions and Termination Rights*

The completion of the Oasis Transactions is subject to the satisfaction or waiver of certain customary conditions, including, among others: (a) the absence of certain legal impediments to the consummation of each transaction; (b) the absence of any litigation related to each transaction; (c) the material accuracy of the parties' representations and warranties as of the



closing; and (d) aggregate adjustments to the purchase price due to title and environmental defects shall not exceed 15% of the unadjusted purchase price.

The Oasis Purchase Agreement may be terminated (a) by mutual agreement of the parties; or (b) by Oasis or the Company if the conditions to closing have not been satisfied or waived by December 30, 2016.

If the conditions precedent for Oasis obligations to consummate the Oasis Transaction are satisfied or waived by Oasis and the Oasis Transaction is not consummated because of a material breach of its covenants by Oasis or because Oasis's representations and warranties are not true in all material respects, then the Company shall be entitled to the Oasis Deposit as liquidated damages or to seek specific performance of the Oasis Purchase Agreement.

If the Oasis Purchase Agreement is permitted to be terminated by Oasis because any of its conditions precedent to closing have not been satisfied and the Company is in material breach of any of its covenants or agreements under the Oasis Purchase Agreement, then Oasis will be entitled to seek either specific performance or a return of the Oasis Deposit and monetary damages from the Company. If the Oasis Purchase Agreement is terminated for any other reason, the Oasis Deposit will be returned to Oasis.

*Other Terms of the Oasis Purchase Agreement*

The Oasis Purchase Agreement contains customary representations, warranties and covenants for a transaction of this nature. The Oasis Purchase Agreement also contains customary mutual pre-closing covenants, including the obligation of the Company to own and operate the Williston Assets it owns in the regular course of business

and to refrain from taking certain actions. In addition, the Company has agreed to indemnify Oasis for certain losses, including those related to a breach of the Company's representations or warranties.

The foregoing summary of the Oasis Purchase Agreement and the Oasis Transactions does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Oasis Purchase Agreement, which is filed as Exhibit 2.3 to this Current Report on Form 8-K. The Oasis Purchase Agreement has been included to provide investors with information regarding its terms and is not intended to provide any financial or other factual information about the Company. In particular, the representations, warranties and covenants contained in the Oasis Purchase Agreement (a) were made only for purposes of the Oasis Purchase Agreement and as of specific dates, (b) were solely for the benefit of the parties to the Oasis Purchase Agreement, (c) may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures, (d) were made for the purposes of allocating contractual risk between the parties to the Oasis Purchase Agreement instead of establishing matters subject to representations and warranties as facts, and (e) may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Oasis Purchase Agreement, which subsequent information may or may not be fully reflected in public disclosures by the Company. Accordingly, investors should read the representations and warranties in the Oasis Purchase



Agreement not in isolation but only in conjunction with the other information about the Company that is included in reports, statements and other filings it makes with the U.S. Securities and Exchange Commission.

**Item 3.02 Unregistered Sales of Equity Securities.**

Pursuant to the QStar Purchase Agreement and the Joinder Agreement, the Company will issue approximately 13.4 million shares of Common Stock in aggregate to QStar and RRP upon completion of the QStar Transaction and the RRP Transaction. The shares of Common Stock to be issued to QStar and RRP will be issued in a private placement in reliance upon an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 4(a)(2) thereof and the safe harbor provided by Rule 506 of Regulation D promulgated thereunder.

The information set forth in Item 1.01 under the heading "Howard County Purchase and Sale Agreements" is incorporated herein by reference.

**Item 7.01 Regulation FD Disclosure**

In accordance with General Instruction B.2. of Form 8-K, the following information, including Exhibit 99.1, shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), or otherwise subject to the liabilities of that section, nor shall such information and Exhibit be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended (the "***Securities Act***"), or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

On October 18, 2016, the Company issued a press release announcing that it had entered into the QStar Purchase Agreement, the Joinder Agreement and the Oasis Purchase Agreement. A copy of the press release is furnished as Exhibit 99.1 to this report and is incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

| (d) | Exhibits | Description |
|---|---|---|
| | Exhibit 2.1 | Purchase and Sale Agreement, dated as of October 17, 2016, by and between SM Energy Company and QStar LLC |
| | Exhibit 2.2 | Letter Agreement, dated as of October 17, 2016, by and among SM Energy Company, QStar LLC, and RRP-QStar, LLC |
| | Exhibit 2.3 | Purchase and Sale Agreement, dated as of October 17, 2016, by and between SM Energy Company and Oasis Petroleum North America LLC |
| | Exhibit 99.1 | Press release of the Company dated October 18, 2016, entitled "SM Energy Cores Up in the Midland Basin with Simultaneous Transactions" |



**SIGNATURES**

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

SM ENERGY COMPANY

Date: October 21, 2016

By: /s/ David W. Copeland
David W. Copeland
Executive Vice President, General
Counsel and Corporate Secretary

**Exhibit 2.1**

**EXECUTION VERSION**

# PURCHASE AND SALE AGREEMENT

**between**

**QSTAR LLC**
**as Seller**

**and**

**SM ENERGY COMPANY**
**as Buyer**

**dated**

**OCTOBER 17, 2016**

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**LIST OF EXHIBITS AND SCHEDULES**

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "***Agreement***") is executed as of the 17th day of October, 2016 (the "***Execution Date***"), and is between (i) QStar LLC, a Delaware limited liability company ("***Seller***"), and (ii) SM Energy Company, a Delaware corporation ("***Buyer***"). Seller and Buyer are each referred to as a "***Party***" and collectively referred to as the "***Parties***."

## RECITALS

Seller desires to sell and assign, and Buyer desires to purchase and pay for, all of Seller's right, title and interest in and to the Assets (as defined hereinafter) effective as of the Effective Time (as defined hereinafter).

**NOW**, **THEREFORE**, for and in consideration of the mutual promises contained herein, the benefits to be derived by each Party hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

## ARTICLE I
## DEFINITIONS AND INTERPRETATION

***1.1 Defined Terms.*** Capitalized terms used herein shall have the meanings set forth in *Section 15.1*, unless the context otherwise requires.

***1.2 References and Rules of Construction.*** All references in this Agreement to Appendices, Exhibits, Schedules, Articles, Sections, subsections and other subdivisions refer to the corresponding Appendices, Exhibits, Schedules, Articles, Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections and other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement, and shall be disregarded in construing the language hereof. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof," and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection or other subdivision unless expressly so limited. The words "this Article," "this Section," and "this subsection," and words of similar import, refer only to Article, Section or subsection hereof in which such words occur. References in this Agreement to any agreement, including this Agreement, refer to such agreement as it may be amended, supplemented or otherwise modified from time to time. Wherever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limiting the foregoing in any respect." All references to "$" or "dollars" shall be deemed references to United States Dollars. Each accounting term not defined herein will have the meaning given to it under GAAP as interpreted as of the Execution Date. Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires.



## ARTICLE II
## PURCHASE AND SALE

***2.1 Purchase and Sale.*** Subject to the terms and conditions of this Agreement, Seller agrees to sell, and Buyer agrees to purchase and pay for, as of the Effective Time, all of Seller's right, title and interest in and to the assets described in *Section 2.1(a)* through *Section 2.1(i)* below (such right, title and interest, less and except the Excluded Assets, collectively, the "***Assets***"):

(a) the oil and gas leases described on *Exhibit A-1* and the Additional Leases set forth on *Exhibit A-2* as of Closing, together with any and all other right, title and interest of Seller in and to the leasehold estates created thereby subject to the terms, conditions, covenants and obligations set forth in such leases, *Exhibit A-1* and/or *Exhibit A-2*, subject to any reservations or depth restrictions described on *Exhibit A-1* or *Exhibit A-2*, as applicable (Seller's interest in such leases, the "***Leases***");

(b) any pooled acreage on account of the Leases being pooled and all rights and interests in, under or derived from all unitization agreements in effect with respect to any of the Leases and the units created thereby (Seller's interest in such units, the "***Units***");

(c) the wells set forth on *Exhibit B* (Seller's interest in such wells, the "***Wells***") and all Hydrocarbons produced from the Wells or allocated thereto or produced under the Leases from and after the Effective Time (including all Hydrocarbons in storage or existing in pipelines, plants and/or tanks (including inventory) as of the Effective Time);

(d) all Applicable Contracts and all rights thereunder;

(e) all Applicable Confidentiality Agreements;

(f) to the extent that they may be assigned, all permits, licenses, servitudes, easements, surface leases, surface use agreements and rights-of-way, including such permits, licenses, servitudes, easements, surface leases, surface use agreements and rights-of-way described on *Exhibit A-3*, in each case, to the extent used in connection with the ownership or operation of any of the Leases, Wells, Units or other Assets;

(g) all equipment, machinery, fixtures and other personal, movable and mixed property, operational and nonoperational, used solely in connection with the Wells, including pipelines, gathering systems, manifolds, well equipment, casing, tubing, pumps, motors, fixtures, machinery, compression equipment, flow lines, processing and separation facilities, pads, structures, materials and other items primarily used in the operation thereof (collectively, the "***Personal Property***");

(h) all Imbalances relating to the Assets; and

(i) originals of the following (collectively referred to as the "***Records***"), to the extent primarily relating to Seller's ownership and operation of the Assets and in Seller's or its Affiliates' possession: (A) to the extent assignable by Seller to Buyer, all maps, well logs, well data, geophysical (including seismic) data, technical evaluations, and geological data and (B) all



title records, title opinions, Applicable Contracts, and all other books, records, files, documentation and databases (excluding the maps, well logs and well data described above in *Section 2.1(i)(A)*).

***2.2 Excluded Assets.*** Seller shall reserve and retain all of the Excluded Assets.

***2.3 Revenues and Expenses.*** Subject to *Section 3.6(b)*, Seller shall remain entitled to all of the rights of ownership (including the right to all production, proceeds of production and other proceeds) and shall remain responsible (by payment, through the adjustments to the Cash Consideration hereunder or otherwise) for all Operating Expenses, in each case, attributable to the Assets for the period of time prior to the Effective Time. Subject to *Section 3.6(b)*, and subject to the occurrence of Closing, Buyer shall be entitled to all of the rights of ownership (including the right to all production, proceeds of production and other proceeds), and shall be responsible (by payment, through the adjustments to the Cash Consideration hereunder or otherwise) for all Operating Expenses, in each case, attributable to the Assets for the period of time from and after the Effective Time. "***Operating Expenses***" means all operating expenses (including costs of insurance) and all capital expenditures incurred in the ownership and operation of the Assets in the ordinary course of business and, where applicable, in accordance with the relevant operating or unit agreement, if any, and overhead costs charged to the Assets under the relevant operating or unit agreement, if any, but excluding Liabilities attributable to (A) personal injury or death attributable to Seller's operation of the Assets prior to the Effective Time, (B) disposal of Hazardous Substances off-site of the Assets by Seller prior to the Effective Time, (C) obligations with respect to Imbalances, (D) obligations to pay Working Interests, royalties, overriding royalties or other interest owners revenues or proceeds attributable to sales of Hydrocarbons relating to the Assets, including those held in suspense, (E) Decommissioning Obligations, (F) obligations to clean up and/or remediate the Assets in accordance with applicable Contracts and Laws, (G) obligations applicable to or imposed on the lessee, owner or operator under the Leases and the Applicable Contracts, or as required by Law, (H) obligations with respect to Environmental Conditions, Environmental Defects and Liabilities imposed under Environmental Laws with respect to the Assets, or (I) Asset Taxes, Income Taxes or Transfer Taxes. After Closing, each Party shall be entitled to participate in all joint interest audits and other audits of Operating Expenses for which such Party is entirely or in part responsible under the terms of this *Section 2.3*.

## ARTICLE III
## PURCHASE PRICE

***3.1 Purchase Price.***

(a) The purchase price for the transfer of the Assets and the transactions contemplated hereby and the assumption by Buyer of the Assumed Obligations shall be $1,200,000,000 (the "***Unadjusted Purchase Price***"), consisting of (x) $825,000,000 in cash or other immediately available funds (the "***Cash Consideration***"), and (y) 10,039,462 shares of Buyer Common Stock (the "***Equity Consideration***"). For purposes of clause (x) above only, the Cash Consideration shall be adjusted as provided in *Section 3.3* (as so adjusted plus the value of the Equity Consideration in clause (y) above, the "***Purchase Price***"). Notwithstanding anything



contained in this Agreement to the contrary, any adjustments to the Purchase Price pursuant to this Agreement shall be made to or from the Cash Consideration only.

(b) Any certificate representing Buyer Common Stock to be issued to Seller as Equity Consideration shall be imprinted with the following legend:

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF, IN WHOLE OR IN PART, OTHER THAN PURSUANT TO REGISTRATION UNDER SAID ACT OR IN CONFORMITY WITH THE LIMITATIONS OF RULE 144 OR OTHER EXEMPTION THEN IN EFFECT, WITHOUT FIRST OBTAINING IF REASONABLY REQUIRED BY THE COMPANY, (I) A WRITTEN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, WHICH MAY BE COUNSEL TO THE COMPANY, TO THE EFFECT THAT THE CONTEMPLATED SALE OR OTHER DISPOSITION WILL NOT BE IN VIOLATION OF SAID ACT, OR (II) A 'NO ACTION' OR INTERPRETIVE LETTER FROM THE STAFF OF THE SECURITIES AND EXCHANGE COMMISSION TO THE EFFECT THAT SUCH STAFF WILL TAKE NO ACTION IN RESPECT OF THE CONTEMPLATED SALE OR OTHER DISPOSITION."

If the Equity Consideration issued to Seller is, after the Closing, sold pursuant to an effective registration statement and upon request from Seller or its assigns, Buyer shall remove such legend from any certificate representing Buyer Common Stock or shall replace such certificate with a certificate without the foregoing legend.

***3.2 Deposit.*** On October 18, 2016, Buyer will deposit by wire transfer in same day funds with Escrow Agent the sum of $60,000,000, representing five percent (5%) of the Unadjusted Purchase Price (such amount, including any interest earned thereon, the "***Deposit***"). If Closing occurs, (i) the Deposit shall be (A) reclassified to become a portion of the Holdback Amount at Closing, and (B) retained by the Escrow Agent as provided for in *Section 13.5* and (ii) the Deposit will be applied to the Adjusted Cash Consideration payable at Closing. Otherwise, the Deposit shall be handled in accordance with *Section 14.2*.

***3.3 Adjustments to Purchase Price.*** The Cash Consideration shall be adjusted as follows, and the resulting amount shall be herein called the "***Adjusted Cash Consideration***":

(a) The Cash Consideration shall be adjusted upward by the following amounts (without duplication):

(i) an amount equal to the value of all Hydrocarbons attributable to the Assets in storage or existing in pipelines, plants and/or tanks (including inventory) and upstream of the pipeline connection or upstream of the sales meter as of the Effective Time, the value to be based upon the contract price in effect as of the Effective Time (or the sales price, if there is no contract price, in effect as of the Effective Time), *less* Burdens on such production;

(ii) an amount equal to all Operating Expenses paid by or on behalf of Seller that are attributable to the Assets during the period following the Effective Time, whether paid before or after the Effective Time, including (A) bond and insurance premiums paid by or



on behalf of Seller with respect to the period following the Effective Time and (B) rentals and other lease maintenance payments, that in each case relate to the period after the Effective Time;

(iii) an amount equal to the Additional Lease Amount;

(iv) the amount of all Asset Taxes allocated to Buyer in accordance with *Section 16.2* but paid or otherwise economically borne by Seller;

(v) subject to *Section 3.9*, to the extent that Seller is underproduced as shown with respect to the net Well Imbalances set forth in *Schedule 4.12*, as complete and final settlement of all Well Imbalances attributable to the Assets, an amount equal to the product of the underproduced volumes times (A) $2.50/MMBtu for gaseous Hydrocarbons or (B) $45.00/Bbl for liquid Hydrocarbons, as applicable;

(vi) subject to *Section 3.9*, to the extent that Seller has overdelivered any Hydrocarbons as of the Effective Time as shown with respect to the net Pipeline Imbalances set forth in *Schedule 4.12*, as complete and final settlement of all Pipeline Imbalances attributable to the Assets, an amount equal to the product of the overdelivered volumes times (A) $2.50/MMBtu for gaseous Hydrocarbons or (B) $45.00/Bbl for liquid Hydrocarbons, as applicable; and

(vii) any other amount provided for elsewhere in this Agreement or otherwise agreed upon in writing by Seller and Buyer.

(b) The Cash Consideration shall be adjusted downward by the following amounts (without duplication):

(i) an amount equal to all proceeds actually received by Seller attributable to the sale of Hydrocarbons (1) produced from or allocable to the Assets during the period following the Effective Time or (2) contained in storage or existing in pipelines, plants and/or tanks (including inventory) as of the Effective Time for which an upward adjustment to the Cash Consideration was made pursuant to *Section 3.3(a)(i)*, in each case, less Burdens and expenses (other than Operating Expenses taken into account pursuant to *Section 3.3(a)(ii)*, Asset Taxes, Income Taxes and Transfer Taxes) directly incurred in earning or receiving such proceeds;

(ii) if Seller makes the election under *Section 11.2(d)(i)* with respect to a Title Defect, the Title Defect Amount with respect to such Title Defect if the Title Defect Amount has been determined;

(iii) if Seller makes the election under *Section 12.1(c)(i)* with respect to an Environmental Defect, the Remediation Amount with respect to such Environmental Defect if the Remediation Amount has been determined prior to Closing;

(iv) the Allocated Value of the Assets excluded from the transactions contemplated hereby pursuant to *Section 10.1(b), Section 11.2(d)(iii), Section 11.4(c)(i)*, *Section 11.4(d)(i)* or *Section 12.1(c)(ii)*;



(v) the amount of all Asset Taxes allocated to Seller in accordance with *Section 16.2* but paid or otherwise economically borne by Buyer;

(vi) subject to *Section 3.9*, to the extent that Seller is overproduced as shown with respect to the net Well Imbalances set forth in *Schedule 4.12*, as complete and final settlement of all Well Imbalances attributable to the Assets, an amount equal to the product of the overproduced volumes times (A) $2.50/MMBtu for gaseous Hydrocarbons or (B) $45.00/Bbl for liquid Hydrocarbons, as applicable;

(vii) subject to *Section 3.9*, to the extent that Seller has underdelivered any Hydrocarbons as of the Effective Time as shown with respect to the net Pipeline Imbalances set forth in *Schedule 4.12*, as complete and final settlement of all Pipeline Imbalances attributable to the Assets, an amount equal to the product of the underdelivered volumes times (A) $2.50/MMBtu for gaseous Hydrocarbons or (B) $45.00/Bbl for liquid Hydrocarbons, as applicable;

(viii) an amount equal to all proceeds from sales of Hydrocarbons relating to the Assets and payable to owners of Working Interests, royalties, overriding royalties and other similar interests (in each case) that are held by Seller in suspense as of the Closing Date; and

(ix) any other amount provided for elsewhere in this Agreement or otherwise agreed upon by Seller and Buyer.

***3.4 Adjustment Methodology.*** When available, actual figures will be used for the adjustments to the Cash Consideration at Closing. To the extent actual figures are not available, estimates will be used subject to final adjustments in accordance with *Section 3.6* and *Section 3.7*.

***3.5 Preliminary Settlement Statement.*** Not less than five (5) Business Days prior to Closing, Seller shall prepare and submit to Buyer for review a draft settlement statement (the "***Preliminary Settlement Statement***") that shall set forth the Adjusted Cash Consideration, reflecting each adjustment made to the Cash Consideration in accordance with this Agreement as of the date of preparation of such Preliminary Settlement Statement and the calculation of the adjustments used to determine such amount, together with the designation of Seller's accounts for the wire transfers of funds as required by *Section 3.1* and *Section 9.3(g)*. Within three (3) Business Days after receipt of the Preliminary Settlement Statement, Buyer will deliver to Seller a written report containing all changes, with explanation therefor, that Buyer proposes to be made to the Preliminary Settlement Statement. The Parties shall in good faith attempt to agree on the Preliminary Settlement Statement as soon as possible after Seller's receipt of Buyer's written report. The Preliminary Settlement Statement, as agreed upon by the Parties, will be used to adjust the Cash Consideration at Closing and shall be payable in immediately available funds to the bank account designated by Seller in the Preliminary Settlement Statement; *provided* that if the Parties do not agree upon an adjustment set forth in the Preliminary Settlement Statement, then the amount of such adjustment used to adjust the Cash Consideration at Closing shall be that amount set forth in the draft Preliminary Settlement Statement delivered by Seller to Buyer pursuant to this *Section 3.5*.



***3.6 Final Settlement Statement.***

(a) On or before one hundred twenty (120) days after Closing, a final settlement statement (the "***Final Settlement Statement***") will be prepared by Seller, based on actual income and expenses during the Interim Period and which takes into account all final adjustments made to the Cash Consideration and shows the resulting final Cash Consideration (the "***Final Cash Price***"). Seller shall, at Buyer's request, supply reasonable documentation in its or its Affiliates' possession available to support the actual revenue, expenses and other items for which adjustments are made. The Final Settlement Statement shall set forth the actual proration of the amounts required by this Agreement. As soon as practicable, and in any event within thirty (30) days, after receipt of the Final Settlement Statement, Buyer shall return to Seller a written report containing any proposed changes to the Final Settlement Statement and an explanation of any such changes and the reasons therefor (the "***Dispute Notice***"). Any changes not so specified in the Dispute Notice shall be deemed waived, and Seller's determinations with respect to all such elements of the Final Settlement Statement that are not addressed specifically in the Dispute Notice shall prevail. If Buyer fails to timely deliver a Dispute Notice to Seller containing changes Buyer proposes to be made to the Final Settlement Statement, the Final Settlement Statement as delivered by Seller will be deemed to be correct and mutually agreed upon by the Parties, and will be final and binding on the Parties and not subject to further audit or arbitration. If the Final Cash Price set forth in the Final Settlement Statement is mutually agreed upon by Seller and Buyer, the Final Settlement Statement and the Final Cash Price, shall be final and binding on the Parties. Any difference in the Adjusted Cash Consideration as paid at Closing pursuant to the Preliminary Settlement Statement and the Final Cash Price shall be paid by the owing Party to the owed Party within ten (10) days after final determination of such owed amounts in accordance herewith. All amounts paid pursuant to this *Section 3.6* shall be delivered in United States currency by wire transfer of immediately available funds to the account specified in writing by the relevant Party.

(b) Subject to matters for which a Party has an indemnity obligation pursuant to *Article XIII*, the Final Settlement Statement shall be the final

accounting for any and all revenues, proceeds and/or Operating Expenses, and there shall be no adjustment for, or obligation to pay, any revenues, proceeds or Operating Expenses between the Parties after the Final Settlement Statement has been agreed upon by the Parties or determined by the Accounting Arbitrator.

***3.7 Disputes.*** If Seller and Buyer are unable to resolve the matters addressed in the Dispute Notice (if any), each of Buyer and Seller shall: (i) within fifteen (15) Business Days after the delivery of such Dispute Notice, select (by mutual agreement of Buyer and Seller) an accounting arbitrator to resolve the matters addressed in the Dispute Notice (the "***Accounting Arbitrator***"), or absent such mutual agreement during such period, then the Houston, Texas office of the American Arbitration Association shall select the Accounting Arbitrator, and (ii) within twenty five (25) Business Days after the delivery of such Dispute Notice, summarize its position with regard to such dispute in a written document of twenty (20) pages or less and submit such summaries to the Accounting Arbitrator together with the Dispute Notice, the Final Settlement Statement and any other documentation such Party may desire to submit. Within ten (10) Business Days after receiving the Parties' respective submissions, the Accounting Arbitrator shall render a decision choosing either Seller's position or Buyer's position with respect to each



matter addressed in any Dispute Notice, based on the materials submitted to the Accounting Arbitrator as described above. Any decision rendered by the Accounting Arbitrator pursuant hereto shall be final, conclusive and binding on Seller and Buyer and will be enforceable against the Parties in any court of competent jurisdiction. The costs of the Accounting Arbitrator shall be borne one-half by Buyer and one-half by Seller.

***3.8 Allocated Values.*** Buyer and Seller agree that the Unadjusted Purchase Price shall be allocated among the Assets as set forth in *Schedule 3.8* to this Agreement (the "***Allocated Values***"). Buyer and Seller agree that such allocation is reasonable and shall not take any position inconsistent therewith, including in notices to Preferential Purchase Right holders except as required by Law; provided, however, that nothing contained herein shall prevent Buyer or Seller from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such allocation, and neither Buyer nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Authority challenging such allocation. Any adjustments to the Purchase Price shall be allocated in a manner consistent with the Allocated Values, with such allocation to be agreed by the parties, and any disputes related thereto resolved, as provided in *Sections 3.6* and *3.7 mutatis mutandis*.

***3.9 Allocation for Imbalances at Closing.*** If, prior to Closing, either Party discovers an error in the Imbalances set forth in *Schedule 4.12*, then the Cash Consideration shall be further adjusted at Closing pursuant to *Section 3.3(a)(v)*, *Section 3.3(a)(vi)*, *Section 3.3(b)(vi)* or *Section 3.3(b)(vii)*, as applicable, and *Schedule 4.12* will be deemed amended immediately prior to Closing to reflect the Imbalances for which the Cash Consideration is so adjusted.

***3.10 Withholding Tax.*** In the event Buyer reasonably determines that it is required by applicable Law to deduct and withhold from the Purchase Price any Tax, Buyer shall be entitled to deduct and withhold such amount; *provided* that Buyer shall notify Seller of its determination reasonably in advance of the Closing, and the Parties shall cooperate in good faith to minimize to the extent permissible under applicable Law the amount of any such deduction or withholding, including by providing any certificates or forms that are reasonably requested to establish an exemption from (or reduction in) any deduction or withholding. All such withheld amounts shall be treated as delivered to Seller hereunder.

***3.11 Buyer Material Adverse Effect.*** If Closing does not occur solely as a result of a failure of *Section 8.1* to be satisfied as a result of a breach of *Section 5.5(a)* (a "***Section 5.5(a) Breach***"), Buyer, at its option, may elect to substitute $375,000,000 (the "***Additional Cash Consideration***") in place of the Equity Consideration. In order to make such an election, Buyer shall provide written notice to Seller no later than the later of (a) December 21, 2016, or (b) one (1) Business Day after Seller has notified Buyer that it does not intend to close the transactions contemplated by this Agreement because of a Section 5.5(a) Breach. Following such notice from Buyer, Seller may either approve such election or deny such election and waive the closing condition in *Section 8.1* with respect to the Section 5.5(a) Breach. If Seller fails to respond within two (2) Business Days following its receipt of such notice from Buyer, Seller will be deemed to have denied approval and waived the closing condition in *Section 8.1* with respect to the Section 5.5(a) Breach. If Seller approves, references to "Equity Consideration" in this Agreement shall be changed to "Additional Cash Consideration" unless the context requires otherwise, and at Closing, Buyer shall deliver to Seller, to the accounts designated in the



Preliminary Settlement Statement, by direct bank or wire transfer in same day funds, the Additional Cash Consideration.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the matters specifically listed or disclosed in the Schedules to this Agreement, Seller represents and warrants to Buyer the following:

***4.1 Organization, Existence and Qualification.*** Seller is a limited liability company duly formed and validly existing under the Laws of the State of Delaware. Seller has all requisite power and authority to own and operate its property (including its interests in the Assets) and to carry on its business as now conducted. Seller is duly licensed or qualified to do business as a foreign limited liability company in all jurisdictions in which it carries on business or owns assets and such qualification is required by Law, except where the failure to be so qualified would not have a Material Adverse Effect.

***4.2 Authorization, Approval and Enforceability.*** Seller has full power and authority to enter into and perform this Agreement, the Transaction Documents to which it is a party and the transactions contemplated herein and therein. The execution, delivery and performance by Seller of this Agreement have been duly and validly authorized and approved and the execution, delivery and performance of the Transaction Documents will be when delivered duly and validly authorized and approved by all necessary limited liability company action on the part of Seller. Assuming the due authorization, execution and delivery by the other parties to such documents, this Agreement is, and the Transaction Documents to which Seller is a party, when executed and delivered by Seller, will be, the valid and binding obligations of Seller and enforceable against Seller in accordance with their respective terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar Laws, as well as to principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

***4.3 No Conflicts.*** Assuming the receipt of all Consents and the waiver of, or compliance with, all Preferential Purchase Rights, the execution, delivery and performance by Seller of this Agreement and the Transaction Documents to which it is a party and the consummation of the transactions contemplated herein and therein will not (a) conflict with or result in a breach of any provisions of the organizational documents of Seller, (b) except for Permitted Encumbrances, result in a default or the creation of any Encumbrance or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license or other Applicable Contract to which Seller is a party or by which Seller or the Assets may be bound or (c) violate any Law applicable to Seller or any of the Assets, except in the case of clauses (b) and (c) where such default, Encumbrance, termination, cancellation, acceleration or violation would not have a Material Adverse Effect.

***4.4 Consents.*** Except (a) with respect to the Double Eagle Tag Right, the RRP Tag Right or the Drag Right, (b) the consents, restrictions on assignment, and similar matters described in *Schedule 4.4*, (c) for Customary Post-Closing Consents, (d) under Contracts that are terminable upon not greater than sixty (60) days' notice without payment of any fee, and (e) for

Preferential Purchase Rights, there are no restrictions on assignment, including requirements for consents from Third Parties to any assignment (in each case), that Seller is required to obtain in connection with the transfer of the Assets by Seller to Buyer or the consummation of the transactions contemplated by this Agreement by Seller (each, a "***Consent***").

***4.5 Bankruptcy.*** There are no bankruptcy, reorganization or receivership proceedings pending, being contemplated by or, to Seller's Knowledge, threatened in writing against Seller.

***4.6 Brokers' Fees.*** Seller has incurred no liability, contingent or otherwise, for brokers' or finders' fees relating to the transactions contemplated by this Agreement for which Buyer or any Affiliate of Buyer shall have any responsibility.

***4.7 Litigation.*** Except as set forth in *Schedule 4.7*, as of the Execution Date, there is no material suit, action, litigation or arbitration by any Third Party by any Person or before any Governmental Authority pending or to Seller's Knowledge threatened in writing against Seller or the Assets.

***4.8 Material Contracts.***

(a) Except for Contracts entered into in accordance with *Section 6.1*, as of the Execution Date, *Schedule 4.8* sets forth all Applicable Contracts of the type described below (collectively, the "***Material Contracts***"):

(i) any Applicable Contract that can reasonably be expected to result in aggregate payments by Seller of more than $500,000 during the current or any subsequent calendar year (based solely on the terms thereof and current volumes, without regard to any expected increase in volumes or revenues);

(ii) any Applicable Contract that can reasonably be expected to result in aggregate revenues to Seller of more than $500,000 during the current or any subsequent calendar year (based solely on the terms thereof and current volumes, without regard to any expected increase in volumes or revenues);

(iii) any Hydrocarbon purchase and sale, marketing, transportation, gathering, processing or similar Applicable Contract that is not terminable without penalty upon sixty (60) days' or less notice;

(iv) any indenture, mortgage, loan, credit or sale-leaseback or similar Applicable Contract;

(v) any Applicable Contract that constitutes a lease under which Seller is the lessor or the lessee of real or Personal Property which lease cannot be terminated by Seller without penalty upon sixty (60) days' or less notice;

(vi) any farmout agreement, participation agreement, exploration agreement, development agreement, joint operating agreement or similar Applicable Contract;



(vii) any agreement that contains a non-compete provision or area of mutual interest provision; and

(viii) any Applicable Contract between Seller and any Affiliate of Seller that will not be terminated prior to Closing.

(b) Except as set forth in *Schedule 4.8*, as of the Execution Date, there exists no material default under any Material Contract by Seller or, to Seller's Knowledge, by any other Person that is a party to such Material Contract, and no event has occurred that with notice or lapse of time or both would constitute a material default under any such Material Contract by Seller or, to Seller's Knowledge, any other Person who is a party to such Material Contract.

***4.9 No Violation of Laws.*** As of the Execution Date, except as set forth in *Schedule 4.9*, Seller has not received any unresolved written notice of a material violation of any applicable Laws with respect to its ownership and operation of any of the Assets. To Seller's Knowledge, except as set forth in *Schedule 4.9*, as of the Execution Date, Seller is not in material violation of any applicable Laws with respect to its ownership and operation of the Assets. For the avoidance of doubt, this *Section 4.9* does not include any matters with respect to Environmental Laws or Laws related to Taxes, which shall be exclusively addressed in *Section 4.17* and *Article XII* and in *Section 4.14*, respectively.

***4.10 Preferential Purchase Rights.*** Except for the Double Eagle Tag Right, the RRP Tag Right, the Drag Right or as set forth in *Schedule 4.10*, there are no preferential purchase rights, rights of first refusal or other similar rights that are applicable to the transfer of the Assets in connection with the transactions contemplated hereby (each a "***Preferential Purchase Right***").

***4.11 Royalties, Etc.*** Except for such items that are being held in suspense pursuant to applicable Law for which the Cash Consideration is adjusted pursuant to *Section 3.3(b)(viii)* and except as set forth on *Schedule 4.11*, Seller has paid all material Burdens with respect to the Assets due by Seller, or if not paid, is contesting such Burdens in good faith in the normal course of business as set forth in *Schedule 4.11*. *Schedule 4.11* contains a complete and accurate list of all funds held in suspense, as of the date set forth on *Schedule 4.11,* by Seller related to the Assets.

***4.12 Imbalances.*** *Schedule 4.12* sets forth all material Imbalances associated with the Assets operated by Seller and, to Seller's Knowledge, the Assets not operated by Seller as of the Effective Time.

***4.13 Current Commitments.*** *Schedule 4.13* sets forth, as of the Execution Date, all approved authorizations for expenditures and other approved capital commitments, individually in excess of $150,000 net to Seller's applicable interest (the "***AFEs***"), relating to the Assets to drill or rework wells or for other capital expenditures pursuant to any of the Material Contracts for which all of the activities anticipated in such AFEs have not been completed by the Execution Date.

***4.14 Asset Taxes.*** Except as set forth in *Schedule 4.14*, (a) all Asset Taxes owed by Seller that have become due and payable have been timely and properly paid (whether or not reflected as due on any Tax Return), (b) all Tax Returns required to be filed by Seller with



respect to Asset Taxes have been timely filed and all such Tax Returns are true, correct and complete in all material respects, (c) there are no Encumbrances (other than Permitted Encumbrances) for Taxes on any of the Assets, (d) there are no waivers of any statute of limitations in respect of Asset Taxes in effect, there are no extensions of time with respect to an Asset Tax assessment or deficiency or to file a Tax Return with respect to Asset Taxes in effect and there are no agreements, rulings or technical advice memoranda with, or issued by, any Governmental Authority to Seller with respect to Asset Taxes; (e) there is no dispute or claim concerning any Asset Tax liability of Seller that could give rise to an Encumbrance on the Assets either (i) claimed or raised by any Governmental Authority in writing or (ii) as to which Seller has knowledge based

upon personal contact with any agent of any Governmental Authority, and (f) none of the Assets is subject to any tax partnership agreement or is otherwise treated, or required to be treated, as held in an arrangement requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code.

***4.15 Wells.*** As of the Execution Date, there is no well operated by Seller on the Assets (a) with respect to which there is an order from a Governmental Authority requiring that such well be plugged and abandoned; (b) that is neither in use for purposes of production or injection, nor suspended or temporarily abandoned in accordance with applicable Law, that has not been plugged and abandoned in accordance with applicable Law; or (c) that Seller is currently obligated by contract to plug and abandon that has not been plugged and abandoned.

***4.16 Accredited Investor; Ownership of Buyer Common Stock.*** Seller is an "accredited investor" as such term is defined in Regulation D under the Securities Act of 1933, as amended (the "***Securities Act***"), and will acquire the Equity Consideration for its own account and not with a view to a sale, distribution or other disposition thereof in violation of the Securities Act, and the rules and regulations thereunder, any applicable state blue sky Laws or any other applicable securities Laws. Seller does not, directly or beneficially, own any Buyer Common Stock.

***4.17 Environmental***. Except as set forth in *Schedule 4.17*, as of the Execution Date:

(a) Seller has not entered into any agreement, and is not subject to, any order, decree, or judgment issued by a Governmental Authority, in existence as of the Execution Date, based on any prior violation of Environmental Laws by Seller that interferes in any material respect with the operation, or that requires material Remediation of any part, of the Assets; and

(b) Seller has not received written notice from any Person of any release, event, condition, circumstance, practice, activity, incident or disposal of any Hazardous Substance (for which Remediation has not already been completed or that is not otherwise resolved) concerning any of the Assets that would reasonably be expected to: (i) materially interfere with or prevent compliance by Seller in any material respect with any Environmental Law or the terms of any license or permit issued pursuant thereto; or (ii) give rise to or result in any common Law or other material liability of Seller to any Person.

***4.18 Leases***. Except as set forth on *Schedule 4.18*, as of the Execution Date, Seller has not received any written notice from any lessor to a Lease that Seller has materially violated or is otherwise in material breach of the terms of such Lease, excluding written notices for violations



or breaches that have been cured by Seller or otherwise resolved. Except to the extent of those obligations previously fulfilled by the Seller or any of its predecessors, none of the Leases or Contracts contain express provisions obligating the Company to drill any wells on the Assets (other than provisions requiring optional drilling as a condition of maintaining or earning all or a portion of a presently non-producing Lease).

***4.19 Payouts***. To Seller's Knowledge, *Schedule 4.19* contains a complete and accurate list of the status of any "payout" balance, as of July 31, 2016, with respect to any Wells that are operated by Seller and that are subject to a reversion or other adjustment at some level of cost recovery or payout (or passage of time or other event other than termination of a Lease by its terms).

***4.20 Equipment***. To Seller's Knowledge, except as set forth in *Schedule 4.20*, all equipment located on the Leases is an Asset and has been maintained in operable repair, working order and operating condition in all material respects and is adequate for normal operation of the Wells in all material respects consistent with current practices, ordinary wear and tear excepted.

***4.21 Advance Payments.*** Seller is not obligated by virtue of any take-or-pay payment, advance payment or other similar payment (other than royalties, overriding royalties and similar arrangements reflected with respect to the Net Revenue Interests for the Wells set forth in *Exhibit B* and gas balancing arrangements), to deliver Hydrocarbons attributable to the Assets, or proceeds from the sale thereof, at some future time without receiving payment therefore at or after the time of delivery.

***4.22 Calls on Production***. Except as set forth in *Schedule 4.22*, the Assets are not subject to calls on production (other than standard operating agreement provisions).

***4.23 Surface Access***. To Seller's Knowledge, Seller has and the Assets include all material surface rights reasonably necessary to access, operate, maintain and repair the Wells and equipment currently operated by Seller.

***4.24 Foreign Person***. Seller is not a "disregarded entity" or a "foreign person" within the meaning of Section 1445 of the Code and its implementing Treasury Regulations.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller the following:

***5.1 Organization, Existence and Qualification.*** Buyer is a corporation duly formed, validly existing, and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own and operate its property and to carry on its business as now conducted. Buyer is duly licensed or qualified to do business as a foreign corporation in all jurisdictions in which it carries on business or owns assets and such qualification is required by Law except where the failure to be so qualified would not have a Buyer Material Adverse Effect.



***5.2 Capital Structure.***

(a) As of the date of this Agreement, the authorized capital stock of Buyer consists of 200,000,000 shares of Buyer Common Stock. As of the date of this Agreement: (A) 86,868,482 shares of Buyer Common Stock were issued and outstanding, (B) less than 6,300,000 shares of Buyer Common Stock were reserved for future issuance pursuant to Buyer's equity compensation plans (the "***Buyer Stock Plan***"), and 2,332,102 shares of Buyer Common Stock were subject to issuance pursuant to outstanding awards under the Buyer Stock Plan and (C) no Voting Debt was issued and outstanding other than shares of Buyer Common Stock that was reserved for issuance upon conversion of Buyer's existing 1.50% senior unsecured convertible notes due 2021 in accordance with its terms. All outstanding shares of Buyer Common Stock are validly issued, fully paid and non-assessable and are not subject to preemptive rights. All outstanding shares of Buyer Common Stock have been issued and granted in compliance in all material respects with (1) applicable securities Laws and other applicable Law and (2) all requirements set forth in applicable contracts. *Schedule 5.2* lists, as of the date of this Agreement, all outstanding options, warrants or other rights to subscribe for, purchase or acquire from Buyer or any of its Subsidiaries any capital stock of Buyer or securities convertible into or exchangeable or exercisable for capital stock of Buyer (and the exercise, conversion, purchase, exchange or other similar price thereof), other than, in each case, the 1.50% senior unsecured convertible notes due 2021 and options, warrants or rights granted pursuant to the Buyer Stock Plans. All outstanding shares of capital stock of the Subsidiaries of Buyer that are owned by Buyer, or direct or indirect wholly-owned Subsidiary of Buyer, are free and clear of all Encumbrances and are validly issued, fully paid and non-assessable and are not subject to preemptive rights. Except as set forth in this *Section 5.2* or on *Schedule 5.2* there

are no outstanding: (I) shares of capital stock, Voting Debt or other voting securities of Buyer; (II) securities of Buyer or any Subsidiary of Buyer convertible into or exchangeable or exercisable for shares of capital stock, Voting Debt or other voting securities of Buyer, and/or (III) options, warrants, calls, rights (including preemptive rights), commitments or agreements to which Buyer or any Subsidiary of Buyer is a party or by which it is bound in any case obligating Buyer or any Subsidiary of Buyer to issue, deliver, sell, purchase, redeem or acquire, or cause to be issued, delivered, sold, purchased, redeemed or acquired, additional shares of capital stock of Buyer or any Voting Debt or other voting securities of Buyer, or obligating Buyer or any Subsidiary of Buyer to grant, extend or enter into any such option, warrant, call, right, commitment or agreement. Except as set forth on *Schedule 5.2*, there are not any stockholder agreements, voting trusts or other agreements to which Buyer is a party or by which it is bound relating to the voting of any shares of the capital stock of Buyer. As of the date of this Agreement, Buyer has no (a) material joint venture or other similar material equity interests in any Person and/or (b) obligations, whether contingent or otherwise, to consummate any material additional investment in any Person other than its Subsidiaries and its joint ventures listed on *Schedule 5.2*.

(b) At Closing, the shares of Buyer Common Stock to be issued to Seller as Equity Consideration will be duly authorized, validly issued, fully paid and non-assessable and not be subject to preemptive rights. Assuming the validity of Seller's representation in *Section 4.16*, the shares of Buyer Common Stock to be issued to Seller as Equity Consideration will be issued and granted in compliance in all material respects with (i) applicable securities Laws and other applicable Law and (ii) all requirements set forth in applicable contracts.



***5.3 Authorization, Approval and Enforceability.***

(a) Buyer has full power and authority to enter into and perform this Agreement, the Transaction Documents to which it is a party and the transactions contemplated herein and therein. The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents have been duly and validly authorized and approved by all necessary corporate action on the part of Buyer. Assuming the due authorization, execution and delivery by the other parties to such documents, this Agreement is, and the Transaction Documents to which Buyer is a party, when executed and delivered by Buyer, will be, the valid and binding obligations of Buyer and enforceable against Buyer in accordance with their respective terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar Laws, as well as to principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Assuming the validity of Seller's representation in *Section 4.16*, the transactions contemplated hereby (including the issuance of Buyer Common Stock to Seller as Equity Consideration) do not require any vote of the stockholders of Buyer under applicable Law, the rules and regulations of the NYSE (or other national securities exchange on which the Buyer Common Stock is then listed) or the organizational or other governing documents of Buyer.

***5.4 No Conflicts.*** The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents to which it is a party and the consummation of the transactions contemplated herein and therein will not (a) conflict with or result in a breach of any provisions of the organizational or other governing documents of Buyer, (b) result in a default or the creation of any Encumbrance or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license or other agreement to which Buyer is a party or by which Buyer or any of its property may be bound or (c) violate any Law applicable to Buyer or any of its property, except in the case of clauses (b) and (c) where such default, Encumbrance, termination, cancellation, acceleration or violation would not, individually or in the aggregate, have Buyer Material Adverse Effect.

***5.5 Absence of Certain Changes or Events.***

(a) Since December 31, 2015, except as disclosed in the Buyer SEC Documents filed with the SEC prior to the Execution Date, there has not been any event, change, effect or development that, individually or in the aggregate, would be reasonably likely to have a Buyer Material Adverse Effect.

(b) From December 31, 2015, through and including the Execution Date, except as disclosed in the Buyer SEC Documents filed with the SEC prior to the Execution Date, Buyer and its Subsidiaries have conducted their business in the ordinary course of business in all material respects.

***5.6 SEC Filings***.

(a) Since January 1, 2015, Buyer has timely filed or furnished with the SEC all forms, reports, schedules and statements required to be filed or furnished under the Securities



Act or the Exchange Act (such forms, reports, schedules and statements, the "***Buyer SEC Documents***"). As of their respective dates, each of the Buyer SEC Documents, as amended, complied as to form in all material respects with the applicable requirements of the Securities Act, or the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such Buyer SEC Documents, and none of the Buyer SEC Documents contained, when filed or, if amended prior to the date of this Agreement, as of the date of such amendment with respect to those disclosures that are amended, any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The financial statements of Buyer included in the Buyer SEC Documents, including all notes and schedules thereto, complied in all material respects, when filed or if amended prior to the date of this Agreement, as of the date of such amendment, with the rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of the unaudited statements, as permitted by Rule 10-01 of Regulation S-X of the SEC) and fairly present in all material respects in accordance with applicable requirements of GAAP (subject, in the case of the unaudited statements, to normal year-end audit adjustments) the financial position of Buyer and its consolidated Subsidiaries as of their respective dates and the results of operations and the cash flows of Buyer and its consolidated Subsidiaries for the periods presented therein.

(c) None of Buyer or its Subsidiaries is a party to, nor has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract or agreement (including any agreement relating to any transaction or relationship between or among one or more of Buyer and its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K promulgated by the SEC), where the result, purpose or intended effect of such contract or agreement is to avoid disclosure of any material transaction involving, or material liabilities of, Buyer or any of its Subsidiaries in Buyer's or such Subsidiary's published financial statements or other Buyer SEC Documents.

(d) Buyer keeps books, records, and accounts and has devised and maintains a system of internal controls, in each case as required pursuant to Section 13(b)(2) under the Exchange Act. Buyer has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act and the applicable listing standards of the NYSE. Such disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by Buyer in the reports that it files under the Exchange Act are recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to its management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder.

***5.7 Consents.*** There are no consents or other restrictions on assignment, including requirements for consents from Third Parties to any assignment, (in each case) that Buyer is required to obtain in connection with the consummation of the transactions contemplated by this Agreement by Buyer.

***5.8 Bankruptcy.*** There are no bankruptcy, reorganization or receivership proceedings pending, being contemplated by or, to Buyer's Knowledge, threatened in writing against Buyer or any Affiliate of Buyer.

***5.9 Litigation.*** As of the Execution Date, there is no investigation, lawsuit, action, litigation or arbitration by any Person or before any Governmental Authority pending, or to Buyer's Knowledge, threatened in writing against Buyer or any of its Affiliates that has or would have a Buyer Material Adverse Effect.

***5.10 Financing.*** Buyer has, and Buyer shall have as of the Closing Date, sufficient cash in immediately available funds (or available borrowing capacity under its revolving credit facility) with which to pay the Cash Consideration, consummate the transactions contemplated by this Agreement and perform its obligations under this Agreement and the Transaction Documents.

***5.11 Listing.*** The issued and outstanding shares of Buyer Common Stock are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the NYSE under the symbol "SM". There is no suit, action, proceeding or investigation pending or, to Buyer's Knowledge, threatened against Buyer by the NYSE or the SEC with respect to any intention by such entity to deregister the Buyer Common Stock or prohibit or terminate the listing of Buyer Common Stock on the NYSE. Buyer has taken no action that is designed to terminate the registration of Buyer Common Stock under the Exchange Act.

***5.12 Regulatory.*** Buyer is and hereafter shall continue to be qualified per applicable Law to own and assume operatorship of the Assets in all jurisdictions where the Assets are located, and the consummation of the transactions contemplated by this Agreement will not cause Buyer to be disqualified as such an owner or operator. To the extent required by any applicable Laws, Buyer has maintained, and will hereafter continue to maintain, lease bonds, area-wide bonds or any other surety bonds as may be required by, and in accordance with, all applicable Laws governing the ownership and operation of the Assets and has filed any and all required reports necessary for such ownership and/or operation with all Governmental Authorities having jurisdiction over such ownership and/or operation.

***5.13 Independent Evaluation.*** Buyer (a) is sophisticated in the evaluation, purchase, ownership and operation of oil and gas properties and related facilities, (b) is capable of evaluating, and hereby acknowledges that it has so evaluated, the merits and risks of the Assets, Buyer's acquisition, ownership, and operation thereof, and its obligations hereunder, and (c) is able to bear the economic risks associated with the Assets, Buyer's acquisition, ownership, and operation thereof, and its obligations hereunder. In making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer (i) has relied or shall rely solely on its own independent investigation and evaluation of the Assets and the advice of its own legal, Tax, economic, environmental, engineering, geological and geophysical



advisors and the express provisions of this Agreement and not on any comments, statements, projections or other materials made or given by any representatives or consultants or advisors of Seller, and (ii) has satisfied itself through its own due diligence as to the environmental and physical condition of and contractual arrangements and other matters affecting the Assets. Buyer has no Knowledge of any fact that results in the breach of any representation, warranty or covenant of Seller given hereunder.

***5.14 Brokers' Fees.*** None of Buyer or Buyer's Affiliates has incurred any liability, contingent or otherwise, for brokers' or finders' fees relating to the transactions contemplated by this Agreement or the Transaction Documents for which Seller or any of Seller's Affiliates has or shall have any responsibility.

***5.15 Accredited Investor.*** Buyer is an "accredited investor," as such term is defined in Regulation D of the Securities Act of 1933 and will acquire the Assets for its own account and not with a view to a sale, distribution or other disposition thereof in violation of the Securities Act of 1933 and the rules and regulations thereunder, any applicable state blue sky Laws or any other applicable securities Laws.

## ARTICLE VI
## CERTAIN AGREEMENTS

***6.1 Conduct of Business by Seller.***

(a) Except (w) as set forth in *Schedule 6.1*, (x) for the operations covered by the AFEs and other capital commitments described in *Schedule 4.13*, (y) for actions taken to maintain a lease, or in connection with emergency situations and (z) as expressly contemplated by this Agreement or as expressly consented to in writing by Buyer (which consent shall not be unreasonably delayed, withheld or conditioned), Seller shall, from and after the Execution Date and until Closing:

(i) maintain, and if Seller is the operator thereof, operate, the Assets in the usual, regular and ordinary manner consistent with its past practice; and

(ii) maintain the books of account and Records relating to the Assets in the usual, regular and ordinary manner, in accordance with the usual accounting practices of Seller.

(b) Except (w) as set forth in *Schedule 6.1*, (x) for the operations covered by the AFEs and other capital commitments described in *Schedule 4.13*, (y) for actions taken to maintain a lease, or in connection with emergency situations and (z) as expressly contemplated by this Agreement or as expressly consented to in writing by Buyer (which consent shall not be unreasonably delayed, withheld or conditioned), Seller shall, from and after the Execution Date and until Closing:

(i) not propose any individual operation reasonably expected to cost Seller in excess of $150,000;



(ii) not consent to any individual operation proposed by a Third Party that is reasonably expected to cost Seller in excess of $150,000;

(iii) not enter into an Applicable Contract that, if entered into on or prior to the Execution Date, would be required to be listed in *Schedule 4.8*, or terminate (unless such Material Contract terminates pursuant to its stated terms) or materially amend or change the terms of any Material Contract;

(iv) not transfer, sell, mortgage, pledge or dispose of any portion of the Assets other than (A) the transfer, sale and/or disposal of Hydrocarbons in the ordinary course of business, and (B) sales of equipment that is no longer necessary in the operation of the Assets or for which replacement equipment has been obtained;

(v) settle any suit or litigation or waive any material claims or rights of material value in each case attributable to any Asset and effecting the period after the Effective Time, other than any individual settlement or waiver that does not exceed $100,000;

(vi) not reduce or terminate existing insurance;

(vii) except as may be required to meet the requirements of Law, not (A) file an amendment to any Tax Return with respect to Asset Taxes, (B) consent to any filing extension relating to any Tax Return with respect to Asset Taxes, (C) waive any material Tax claim with respect to Asset Taxes, or (D) make any material election with respect to Asset Taxes, in each case, to the extent that such election, change, filing or other action would reasonably be expected to increase the Asset Taxes with respect to the Assets due on or after the Closing Date;

(viii) not take any action outside of the ordinary course of business or in a manner inconsistent with past practice if such action would reasonably be expected to have the effect of increasing any liability for Asset Taxes attributable to any Tax period (or portion thereof) beginning after the Effective Time, unless required by Law;

(ix) not, directly or beneficially, purchase or contract for purchase any shares of Buyer Common Stock; and

(x) not commit to do any of the foregoing.

(c) Buyer acknowledges that Seller owns undivided interests in certain of the properties comprising the Assets that it is not the operator thereof, and Buyer agrees that the acts or omissions of any other Working Interest owner (including any operator) or any other Person who is not Seller or an Affiliate of Seller shall not constitute a breach of the provisions of this *Section 6.1*, and no action required by a vote of Working Interest owners shall constitute such a breach so long as (i) Seller has voted its interest in a manner that complies with the provisions of this *Section 6.1* and (ii) Seller provides advance written notice to Buyer concerning the vote.

***6.2 Conduct of Business by Buyer.***

(a) Except (x) as set forth in *Schedule 6.2* or (y) as expressly contemplated by this Agreement or as expressly consented to in writing by Seller (which consent shall not be



unreasonably delayed, withheld or conditioned), Buyer shall, from and after the Execution Date and until Closing:

(i) conduct Buyer's businesses in the usual, regular and ordinary manner consistent with its past practice; and

(ii) preserve intact Buyer's present business organization, retain Buyer's current officers, and preserve Buyer's relationships with its key customers and suppliers.

(b) Except (x) as set forth in *Schedule 6.2* or (y) as expressly contemplated by this Agreement or as expressly consented to in writing by Seller (which consent shall not be unreasonably delayed, withheld or conditioned), Buyer shall, from and after the Execution Date and until Closing:

(i) not (A) declare, set aside or pay any dividends on, or make any other distribution in respect of any outstanding capital stock of, or other equity interests in, Buyer or its Subsidiaries, except for dividends and distributions (1) by a direct or indirect Subsidiary of Buyer to Buyer or a direct or indirect Subsidiary of Buyer, (2) pursuant to the organizational or other governing documents of Buyer or its Subsidiaries as in effect on the date hereof, or (3) related to the previously announced semi-annual dividend payable on November 2, 2016, (B) split, combine or reclassify any capital stock of, or other equity interests in, Buyer or any of its Subsidiaries, or (C) purchase, redeem or otherwise acquire, or offer to purchase, redeem or otherwise acquire, any capital stock of, or other equity interests in, Buyer, except as required by the terms of any capital stock or equity interest of a Subsidiary or as contemplated by any Buyer Stock Plan or employment agreement of Buyer in each case existing as of the Execution Date;

(ii) not offer, issue, deliver, grant or sell, or authorize or propose to offer, issue, deliver, grant or sell, any capital stock of, or other equity interests in, Buyer or any of its Subsidiaries or any securities convertible into, or any rights, warrants or options to acquire, any such capital stock or equity interests, other than: (A) the delivery of Buyer Common Stock (i) upon the expiration of any restrictions or applicable vesting periods on any restricted stock, restricted stock units or performance share units granted under the Buyer Stock Plan or (ii) pursuant to Buyer's employee stock purchase plan, (B) issuances by a wholly-owned Subsidiary of Buyer of such Subsidiary's capital stock or other equity interests to Buyer or any other wholly-owned Subsidiary of Buyer, (C) issuances of restricted stock, restricted stock units or performance share units granted under the Buyer Stock Plan, in each case to employees and directors in amounts consistent with past practice, (D) withholding of Buyer Common Stock to satisfy any Tax withholding obligations with respect to awards granted pursuant to the Buyer Stock Plan, (E) pursuant to the terms of any shareholder rights plan adopted by Buyer, or (F) issuance of Buyer Common Stock in an underwritten public offering by Buyer for cash.

(iii) not amend or propose to amend the organizational or other governing documents of Buyer or its Subsidiaries as in effect on the Execution Date;



(iv) not consummate, authorize, recommend, propose or announce an intention to adopt a plan of complete or partial liquidation or dissolution of Buyer or any of its Subsidiaries;

(v) not change in any material respect its material accounting principles, practices or methods, except as required by GAAP or statutory accounting requirements or similar principles in non-U.S. jurisdictions or as disclosed in any Buyer SEC Document; and

(vi) not commit to do any of the foregoing.

***6.3 Governmental Bonds.***

(a) Buyer acknowledges that none of the bonds, letters of credit and guarantees, if any, set forth on *Schedule 6.3*, posted by Seller or its Affiliates with Governmental Authorities and relating to the Assets (the "***Governmental Bonds***") are transferable to Buyer. On or before the Closing Date, Buyer shall obtain, or cause to be obtained in the name of Buyer, replacements for such Governmental Bonds to the extent such replacements are necessary (i) for Buyer's ownership of the Assets and (ii) to permit the cancellation of the Governmental Bonds posted by Seller and/or its Affiliates with respect to the Assets. In addition, at or prior to Closing, Buyer shall deliver to Seller evidence of the posting of bonds or other security with all applicable Governmental Authorities meeting the requirements of such Governmental Authorities to own and, if applicable, operate the Assets.

(b) In the event that any Governmental Authority does not permit the cancellation of any Governmental Bond posted by Seller and/or any Affiliate of

Seller with respect to the Assets, then, from and after Closing, Buyer shall indemnify Seller or any Affiliate of Seller, as applicable, against all amounts incurred by Seller or any Affiliate of Seller, as applicable, under such Governmental Bond (and all costs incurred in connection with such Governmental Bond) if applicable to the Assets acquired by Buyer.

***6.4 Notifications.*** Buyer will notify Seller promptly after Buyer, any Affiliate of Buyer, or any of their respective officers or representatives obtains knowledge that any representation or warranty of Seller contained in this Agreement is, becomes or will be untrue in any material respect on or before the Closing Date.

***6.5 Amendment to Schedules.*** Buyer agrees that, with respect to each Additional Lease acquired pursuant to *Section 6.6*, Seller shall, until ten (10) Business Days prior to the Title Claim Date, supplement or amend *Exhibit A-2* and *Schedule 3.8* to reflect such Additional Lease.

***6.6 Additional Leases.*** From and after the Execution Date until the ten (10) Business Days prior to the Title Claim Date, Seller (or any Affiliate of Seller) shall have the right, but not the obligation, to acquire Additional Leases in accordance with this *Section 6.6*.

(a) *Schedule 6.6* sets forth a list of oil and gas leases that Seller has identified as potential Additional Leases as of the Execution Date. Seller shall have the right, but not the obligation, to acquire all or any portion of the oil and gas leases identified on *Schedule 6.6*



pursuant to this *Section 6.6*. If Seller acquires any such Additional Lease(s), then with respect to each such Additional Lease that Seller adds to *Exhibit A-2*, the Cash Consideration shall be adjusted upward by an amount equal to the sum of (i) the product of (A) the aggregate Net Acres attributable to such Additional Lease that are located in each portion of the Designated Area identified on *Exhibit G* multiplied by (B) the applicable per Net Acre dollar amount for such portion of the Designated Area as set forth on *Schedule 6.6*, plus (ii) the amount of any consideration paid by Seller for such Additional Lease to the extent attributable to existing production, which in no event will exceed an amount equal to the number of barrels of Hydrocarbon production (in barrels of oil equivalent) per day (averaged over the thirty calendar days ending on the Title Claim Date), if any, attributable to the Additional Lease multiplied by $35,000.

(b) Additionally, Seller shall have the right, but not the obligation, to acquire up to fifteen hundred (1500) Net Acres of Additional Leases, in the aggregate, pursuant to this *Section 6.6(b)*. If Seller acquires any Additional Lease(s) pursuant to this *Section 6.6(b)*, then with respect to each such Additional Lease that Seller adds to *Exhibit A-2*, the Cash Consideration shall be adjusted upward by an amount equal to the sum of (i) the product of (A) the aggregate Net Acres for each such Additional Lease that are located in each portion of the Designated Area identified on *Exhibit G* multiplied by (B) the applicable per Net Acre dollar amount for such portion of the Designated Area as set forth on *Exhibit G*, plus (ii) the amount of any consideration paid by Seller for such Additional Lease to the extent attributable to existing production, which in no event will exceed an amount equal to the number of barrels of Hydrocarbon production (in barrels of oil equivalent) per day (averaged over the thirty calendar days ending on the Title Claim Date), if any, attributable to the Additional Lease multiplied by $35,000 (the aggregate of all such amounts for all of the Additional Leases added to *Exhibit A*-2 in accordance with this *Section 6.6*, the "***Additional Lease Amount***").

(c) With respect to each such Additional Lease, within three (3) Business Days after the closing of its acquisition by Seller (or any Affiliate of Seller), Seller shall deliver notice of such acquisition to Buyer, and pursuant to *Section 10.1*, Seller shall afford to Buyer and Buyer's Representatives reasonable access to the information in Seller's possession regarding the Additional Leases in order to conduct a title review and environmental review in accordance with *Article XI* and *Article XII.*

(d) Notwithstanding the other provisions of this *Section 6.6*, in no event will (i) Seller acquire any Additional Lease that is burdened by Burdens in excess of 25%, (ii) any overriding royalty interest be created in favor of Seller or any of its Affiliates that will burden any Additional Lease, or (iii) Seller assign to Buyer any Contract in connection with any Additional Lease.

***6.7 Listing of Equity Consideration.*** Buyer shall take all action necessary to cause the Buyer Common Stock to be issued to Seller as Equity Consideration to be approved for listing on the NYSE prior to the Closing Date, subject to official notice of issuance.

***6.8 Non-Compete.*** Effective as of Closing, until the six-month anniversary of the Closing Date, Seller covenants and agrees that it will, and will cause the Persons set forth on *Schedule 6.8* to, refrain from, directly or indirectly, partially or fully acquiring for its own



account or for any Third Party (other than Buyer), any oil and gas lease or mineral interest (including any mineral fee interest) within the Non-Compete Area, excluding, however, the Excluded Assets and excluding any such leases or interests acquired by Seller within the same any units or pooling arrangements wherein any such leases or interests are pooled or unitized with any Excluded Asset (subject to such exclusion, collectively, the "***Non-Compete Assets***"). To the extent Seller breaches this *Section 6.8*, in addition to any other remedies that may be available in law and equity, Seller and the Persons set forth on *Schedule 6.8* shall be obligated to immediately offer to Buyer any acquired Non-Compete Assets, and Buyer shall have the right, but not the obligation, to acquire such Non-Compete Assets under the same terms and conditions as agreed to by Seller or any Person set forth on *Schedule 6.8*, for the same consideration paid by Seller or such Person set forth on *Schedule 6.8*, together with any out-of-pocket expenses incurred by Seller in acquiring such Non-Compete Assets. For the avoidance of doubt, and notwithstanding anything to the contrary in this *Section 6.8*, the covenants set forth in this *Section 6.8* shall not apply to the operations of (a) EnCap Investments, L.P., (b) the Persons controlled by EnCap Investments, L.P. (other than Seller, QuattroStar Resources, LLC, QStar C Holdings LLC, QStar DS LLC, QStar Operating LLC or QStar SP LLC) or (c) RRP.

***6.9 Record Retention.*** Buyer shall and shall cause its successors and assigns to, for the period provided in Buyer's Record Retention Policy, (a) retain the Records, (b) provide Seller, its Affiliates and its and their respective officers, employees and representatives with access to the Records during normal business hours for review and copying at Seller's expense.

***6.10 Financial Cooperation.***

(a) From and after the Execution Date, Seller shall cooperate with Buyer, its Affiliates and Buyer's and its Affiliate's auditors ("***Buyer's Auditors***") in connection with the preparation of any financial statements of Buyer pertaining to the Assets and any related pro forma financial statements or other financial information, and the conduct of audits or reviews of such financial statements, required under federal securities Laws or rules and regulations of the SEC or under customary practice for securities offerings made pursuant to Rule 144A under the Securities Act, in connection with (i) any filing by Buyer or any of its Affiliates with the SEC pursuant to the Securities Act or the Exchange Act, or (ii) any offering memorandum or similar document relating to a private offering of securities of Buyer or its Affiliates pursuant to Rule 144A under the Securities Act or otherwise. In connection with such cooperation, from and after the Execution Date, Seller shall: (A) provide to Buyer, its Affiliates, and Buyer's Auditors reasonable access to the books, records, information, and documents that are related to the Assets and Seller that are in Seller's possession or control reasonably required by Buyer, its Affiliates, and Buyer's Auditors in order to prepare, audit, and review such financial statements and other financial information; (B) provide to Buyer, its Affiliates, and Buyer's Auditors reasonable access to Seller's officers, managers, employees, agents, and representatives who were responsible for preparing or maintaining the financial records and work papers and other supporting documents used in the preparation of such financial statements; (C) use its commercially reasonable efforts to deliver one or more customary representation letters from Seller to such Buyer's Auditors that are reasonably requested to allow such Buyer's Auditors to complete an audit or review of any such financial statements; and (D) use its commercially reasonable efforts to cause the independent auditor of Seller that conducted any audit of such financial statements to consent to the use of such independent auditor's report, and to be named

as an expert or as having prepared such report, in any SEC filing or offering memorandum or similar document referred to above.

(b) All of the information provided by Seller pursuant to this *Section 6.10* is given without any representation or warranty, express or implied, and no member of the Seller Indemnified Parties or Seller's auditors shall have any liability or responsibility with respect thereto. Buyer will promptly reimburse all reasonable out of pocket expenses incurred in complying with this *Section 6.10* incurred by Seller or its Affiliates. Buyer, for itself and for each member of the Buyer Indemnified Parties, hereby releases, remises, and forever discharges each member of the Seller Indemnified Parties and Seller's auditors from any and all Proceedings, and Liabilities whatsoever, in law or in equity, known or unknown, which any member of the Buyer Indemnified Parties might now or subsequently may have, based on, relating to, or arising out of Seller's obligations and actions pursuant to this *Section 6.10*, except to the extent that such Proceedings, or Liabilities resulted from willful misconduct of any Seller Indemnified Party. Buyer shall indemnify, defend, and hold harmless the Seller Indemnified Parties and Seller's auditors from and against any and all Liabilities arising out of or relating to Seller's obligations and actions pursuant to this *Section 6.10*, EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT), STRICT LIABILITY, OR OTHER LEGAL FAULT OF ANY INDEMNIFIED PERSON, EXCEPT TO THE EXTENT THAT SUCH LOSSES RESULTED FROM THE WILLFUL MISCONDUCT OF ANY SELLER INDEMNIFIED PARTY.

## ARTICLE VII
## BUYER'S CONDITIONS TO CLOSING

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

***7.1 Representations.*** The representations and warranties of Seller set forth in *Article IV* shall be true and correct (without regard to materiality or Material Adverse Effect qualifiers) on and as of the Closing Date, as though such representations and warranties had been made or given on and as of the Closing Date (other than representations and warranties that refer to a specified date, which need only be true and correct on and as of such specified date), except for those breaches, if any, of such representations and warranties that in the aggregate would not have a Material Adverse Effect.

***7.2 Performance.*** Seller shall have materially performed or complied with all obligations, agreements and covenants contained in this Agreement as to which performance or compliance by Seller is required prior to or at the Closing Date; *provided, however,* that the condition in this *Section 7.2* shall be deemed to be satisfied with respect to Seller's covenant in *Section 6.10* unless Seller's breach with respect thereto rises to the level of willful misconduct.

***7.3 No Legal Proceedings.*** No material suit, action, litigation or other proceeding instituted by any Third Party shall be pending before any Governmental Authority seeking to restrain, prohibit, enjoin or declare illegal, or seeking substantial damages in connection with, the transactions contemplated by this Agreement.



***7.4 Title Defects and Environmental Defects.*** In each case subject to the Individual Title Defect Threshold, the Individual Environmental Threshold and the Aggregate Deductible, as applicable, the sum of (a) all Title Defect Amounts determined under *Section 11.2(g)* prior to Closing, *less* the sum of all Title Benefit Amounts determined under *Section 11.2(h)* prior to Closing, *plus* (b) all Remediation Amounts for Environmental Defects determined under *Article XII* prior to Closing shall be less than twenty percent (20%) of the Unadjusted Purchase Price.

***7.5 Closing Deliverables.*** Seller shall have delivered (or be ready, willing and able to deliver at Closing) to Buyer the documents and other items required to be delivered by Seller under *Section 9.3*.

## ARTICLE VIII
## SELLER'S CONDITIONS TO CLOSING

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

***8.1 Representations.*** The representations and warranties of Buyer set forth in *Article V* shall be true and correct (without regard to materiality or Buyer Material Adverse Effect qualifiers) on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made or given on and as of the Closing Date (other than representations and warranties that refer to a specified date, which need only be true and correct on and as of such specified date), except for those breaches, if any, of such representations and warranties that in the aggregate would not have a Buyer Material Adverse Effect, subject to *Section 3.11*.

***8.2 Performance.*** Buyer shall have materially performed or complied with all obligations, agreements and covenants contained in this Agreement as to which performance or compliance by Buyer is required prior to or at the Closing Date.

***8.3 No Legal Proceedings.*** No material suit, action, litigation or other proceeding instituted by any Third Party shall be pending before any Governmental Authority seeking to restrain, prohibit or declare illegal, or seeking substantial damages in connection with, the transactions contemplated by this Agreement.

***8.4 Title Defects and Environmental Defects.*** In each case subject to the Individual Title Defect Threshold, the Individual Environmental Threshold and the Aggregate Deductible, as applicable, the sum of (a) all Title Defect Amounts determined under *Section 11.2(g)* prior to Closing, *less* the sum of all Title Benefit Amounts determined under *Section 11.2(h)* prior to Closing, *plus* (b) all Remediation Amounts for Environmental Defects determined under *Article XII* prior to Closing shall be less than twenty percent (20%) of the Unadjusted Purchase Price.

***8.5 Closing Deliverables.*** Buyer shall have delivered (or be ready, willing and able to deliver at Closing) to Seller the documents and other items required to be delivered by Buyer under *Section 9.3*.



***8.6 RRP Closing***. The transactions contemplated by the RRP Purchase Agreement shall close simultaneously with the transactions contemplated by this Agreement, unless failure to enter into the RRP Purchase Agreement or failure to close is caused by RRP's breach.

***8.7 Double Eagle Closing***. If Double Eagle exercises its Double Eagle Tag Right in accordance with the terms set forth in the JDA, (i) Buyer shall have entered into the Double Eagle Purchase Agreement, and (ii) the transactions contemplated by the Double Eagle Purchase Agreement shall close simultaneously with the transactions contemplated by this Agreement, unless failure to enter into the Double Eagle Purchase Agreement or failure to close is caused by Double Eagle's breach.

***8.8*** ***Listing***. The Buyer Common Stock to be issued to Seller as Equity Consideration shall have been approved for listing on the NYSE, subject only to official notice of issuance thereof.

**ARTICLE IX**
**CLOSING**

***9.1*** ***Date of Closing.*** Subject to the conditions stated in this Agreement, the sale by Seller and the purchase by Buyer of the Assets pursuant to this Agreement (the "***Closing***") shall occur on or before December 21, 2016, or on such date as Buyer and Seller may agree upon in writing. The date on which the Closing actually occurs shall be the "***Closing Date***."

***9.2*** ***Place of Closing.*** Closing shall be held at Seller's office in Midland, Texas, or such other place as mutually agreed upon by the Parties.

***9.3*** ***Closing Obligations.*** At Closing, the following documents shall be delivered and the following events shall occur, the execution of each document and the occurrence of each event being a condition precedent to the others and each being deemed to have occurred simultaneously with the others:

(a) Seller and Buyer shall execute, acknowledge and deliver the Assignment in sufficient counterparts to facilitate recording in the applicable counties covering the Assets.

(b) Seller and Buyer shall execute, acknowledge and deliver the Lock-up and Registration Rights Agreement.

(c) Seller and Buyer shall execute and deliver assignments, on appropriate forms, of federal Leases, state Leases and Indian Leases included in the Assets in sufficient counterparts to facilitate filing with the applicable Governmental Authority.

(d) Seller and Buyer shall execute and deliver the Preliminary Settlement Statement.

(e) Buyer shall issue and deliver to Seller by stock certificates or book entry registrations, the Equity Consideration bearing the legends referenced in *Section 3.1(b)*.



(f) Buyer shall deliver to the Escrow Agent by direct bank or wire transfer in same day funds, the Holdback Excess Amount.

(g) Buyer shall deliver to Seller, to the accounts designated in the Preliminary Settlement Statement, by direct bank or wire transfer in same day funds, the Adjusted Cash Consideration after giving effect to the Deposit and the Holdback Excess Amount.

(h) Seller shall deliver, on forms supplied by Buyer and reasonably acceptable to Seller, transfer orders or letters in lieu thereof directing all purchasers of production to make payment to Buyer of proceeds attributable to production from the Assets from and after the Effective Time, for delivery by Buyer to the purchasers of production.

(i) Seller shall deliver an executed statement that meets the requirements set forth in Treasury Regulation §1.1445-2(b)(2) and that is reasonably acceptable to Buyer.

(j) To the extent required under any applicable Law or Governmental Authority for any federal or state Lease, Seller and Buyer shall deliver federal and state change of operator forms designating Buyer as the operator of the Wells and the Leases currently operated by Seller.

(k) An authorized officer of Seller shall execute and deliver a certificate, dated as of Closing Date, certifying that the conditions set forth in *Section 7.1* and *Section 7.2* have been fulfilled and, if applicable, any exceptions to such conditions that have been waived by Buyer.

(l) An authorized officer of Buyer shall execute and deliver a certificate, dated as of Closing, certifying that the conditions set forth in*Section 8.1* and *Section 8.2* have been fulfilled and, if applicable, any exceptions to such conditions that have been waived by Seller.

(m) Buyer shall deliver any instruments and documents required by *Section 6.3.*

(n) Seller shall deliver a recordable release of any trust, mortgages, financing statements, fixture filings and security agreements made by Seller or its Affiliates affecting the Assets.

(o) Seller and Buyer shall execute and deliver any other agreements, instruments and documents which are required by other terms of this Agreement to be executed and/or delivered at Closing.

***9.4*** ***Records.*** In addition to the obligations set forth under *Section 9.3* above, but notwithstanding anything herein to the contrary, no later than thirty (30) Business Days after the Closing Date, Seller shall make available to Buyer the Records consistent with each Record's current form and format as maintained by Seller as of the Effective Time, for pickup from Seller's offices during normal business hours; *provided* that Seller may retain a copy of the Records;*provided*, *further*, that Seller shall not be required to conduct processing, conversion,



compiling or any other further work with respect to the delivery of copies of the Records pursuant to this*Section 9.4*.

**ARTICLE X**
**ACCESS/DISCLAIMERS**

***10.1*** ***Access.***

(a) From and after the Execution Date and up to and including the Closing Date (or earlier termination of this Agreement), but subject to the other provisions of this *Section 10.1*, Seller shall afford to Buyer and its authorized representatives ("***Buyer's Representatives***") reasonable access, to Seller's personnel knowledgeable with respect to the Assets, the Assets and all Records in Seller's or any of its Affiliates' possession at such time to the extent necessary to conduct (i) the title or environmental review described in this Agreement and (ii) reasonable due diligence with respect to Asset Taxes. All investigations and due diligence conducted by Buyer or any Buyer's Representative shall be conducted at Buyer's sole cost, risk and expense and any conclusions made from any examination done by Buyer or any Buyer's Representative shall result from Buyer's own independent review and judgment.

(b) From the Execution Date to the Title Claim Date, Buyer's inspection right with respect to the Environmental Condition of the Assets shall be limited to a Phase I Environmental Site Assessment of the Assets conducted by a reputable environmental consulting or engineering firm (the "***Environmental Consultant***") and may include only visual inspections and record reviews relating to the Assets. If, following the conduct of any such environmental assessments, Buyer, in its reasonable determination based on the findings and results of the environmental assessments conducted by the Environmental Consultant, determines that further investigation, sampling or testing or other site assessment commonly referred to as a "Phase II" site assessment (collectively, "***Phase II Environmental Site Assessment***") is required to confirm the existence or scope of an Environmental Defect or determine the magnitude of the Remediation Amount, Buyer may request an authorization to conduct such Phase II Assessment, subject to Seller's or any applicable third party operator's consent. If Buyer is not allowed access to conduct a Phase I Environmental Site Assessment, or based upon the Environmental Consultant's Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment, in each case, in accordance with this *Section 10.1(b)* and with respect to any Asset, then Buyer may elect, in its sole discretion, to exclude the affected Assets and any related Assets from the transaction contemplated hereby, in which event the affected Assets and any related Assets will be deemed Excluded Assets, and the Purchase Price will be reduced by the Allocated Value of all such affected Assets and any related Assets. In conducting such Phase I Environmental Site Assessment, Buyer shall not operate any equipment or conduct any testing or sampling of soil, groundwater or other materials (including any testing or sampling for Hazardous Substances, Hydrocarbons or NORM). Seller or Seller's designee shall have the right to be present during any stage of the assessment. Buyer shall give Seller reasonable prior written notice before entering onto any of the Assets, and Seller or its designee shall have the right to accompany Buyer and Buyer's Representatives whenever they are on site on the Assets.

(c) Buyer shall coordinate its access rights, environmental property assessments and physical inspections of the Assets with Seller to minimize any inconvenience to



or interruption of the conduct of business by Seller. Buyer shall abide by Seller's safety rules, regulations and operating policies provided in advance in writing to Buyer while conducting its due diligence evaluation of the Assets, including any environmental or other inspection or assessment of the Assets. Buyer hereby defends, indemnifies and holds harmless the Seller Indemnified Parties from and against any and all Liabilities arising out of, resulting from or relating to any field visit, environmental property assessment or other due diligence activity conducted by Buyer or any Buyer's Representative with respect to the Assets, **EVEN IF SUCH LIABILITIES ARISE OUT OF OR RESULT FROM, IN WHOLE OR IN PART, THE SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OF, OR THE VIOLATION OF LAW BY, ANY SELLER INDEMNIFIED PARTY, EXCEPTING ONLY LIABILITIES TO THE EXTENT ACTUALLY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SELLER INDEMNIFIED PARTY.** Notwithstanding the foregoing, in no event shall Buyer be required to defend, indemnify and hold harmless the Seller Indemnified Parties from and against any Liabilities arising out of, resulting from or relating to any pre-existing Environmental Conditions identified by or on behalf of Buyer as a result of any physical inspection, due diligence activities or access granted to Buyer and Buyer's Representatives pursuant hereto, provided that Buyer does not exacerbate any such pre-existing Environmental Condition.

(d) Buyer acknowledges that any entry into Seller's offices or onto the Assets shall be at Buyer's sole risk, cost and expense, and, subject to the terms hereof, that none of the Seller Indemnified Parties shall be liable in any way for any injury, loss or damage arising out of such entry that may occur to Buyer or any of Buyer's Representatives pursuant to this Agreement. Buyer hereby fully waives and releases any and all Liabilities against all of the Seller Indemnified Parties for any injury, death, loss or damage to any of Buyer's Representatives or their property in connection with Buyer's due diligence activities, **EVEN IF SUCH LIABILITIES ARISE OUT OF OR RESULT FROM, IN WHOLE OR IN PART, THE SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OF, OR THE VIOLATION OF LAW BY, ANY SELLER INDEMNIFIED PARTY, EXCEPTING ONLY LIABILITIES ACTUALLY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SELLER INDEMNIFIED PARTY**.

(e) Buyer agrees to provide to Seller promptly, but in no event later than the Environmental Claim Date, copies of all final reports and test results prepared by Buyer and/or any of Buyer's Representatives which relate to any Environmental Defect that Buyer intends to assert. Seller shall not be deemed by its receipt of said documents or otherwise to have made any representation or warranty, express, implied or statutory, as to the condition of the Assets or to the accuracy of said documents or the information contained therein. Buyer (in the event Closing does not occur) and Seller (in the event Closing occurs) shall keep and maintain confidential (and not disclose to any other Person, except as required by any Governmental Authority, in whole or in part) any results of (or reports or other documents arising from) an environmental assessment of the Assets, unless disclosure of such information is required by applicable Law or necessary to prevent an imminent and substantial endangerment.



(f) Upon completion of Buyer's due diligence, Buyer shall at its sole cost and expense and without any cost or expense to Seller or its Affiliates (i) repair all damage done to the Assets in connection with Buyer's and/or any of Buyer's Representatives' due diligence, (ii) restore the Assets to the approximate same condition as they were prior to commencement of any such due diligence and (iii) remove all equipment, tools and other property brought onto the Assets in connection with such due diligence, provided that in no event will the foregoing be interpreted to require Buyer to remediate any Environmental Defect to the extent not caused by Buyer or any of Buyer's Representatives.

(g) During all periods that Buyer and/or any of Buyer's Representatives are on the Assets, Buyer shall maintain, at its sole expense and with insurers reasonably satisfactory to Seller, policies of insurance of the types and in the amounts reasonably requested by Seller. Coverage under all insurance required to be carried by Buyer hereunder will (i) be primary insurance, (ii) list the Seller Indemnified Parties as additional insureds, (iii) waive subrogation against the Seller Indemnified Parties and (iv) provide for ten (10) days' prior written notice to Seller in the event of cancellation, expiration or modification of the policy or reduction in coverage. Upon request by Seller, Buyer shall provide evidence of such insurance to Seller prior to entering the Assets.

***10.2 Confidentiality.*** Buyer acknowledges that, pursuant to its right of access to the Records or the Assets, Buyer and/or Buyer's Representatives will become privy to confidential and other information of Seller or its Affiliates, and Buyer shall ensure that such confidential information (a) shall not be used for any purpose other than in connection with the transactions contemplated hereby and (b) shall be held confidential by Buyer and Buyer's Representatives, in each case, in accordance with the terms and conditions of the Confidentiality Agreements. If Closing should occur, the each Confidentiality Agreement and the foregoing confidentiality restrictions on Buyer shall terminate (except as to (i) such portion of the Assets that are not conveyed to Buyer pursuant to the provisions of this Agreement, (ii) the Excluded Assets and (iii) information related to Seller or its Affiliates or to assets other than the Assets).

***10.3 Disclaimers.***

(a) **EXCEPT AS AND TO THE LIMITED EXTENT EXPRESSLY SET FORTH IN*ARTICLE IV,* THE SPECIAL WARRANTY SET FORTH IN THE ASSIGNMENT, OR THE CERTIFICATE DELIVERED PURSUANT TO *SECTION 9.3(k)*, (I) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, AND (II) SELLER EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO BUYER OR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY ANY SELLER INDEMNIFIED PARTY).**

(b) **EXCEPT AS AND TO THE LIMITED EXTENT EXPRESSLY REPRESENTED OTHERWISE IN*ARTICLE IV*, THE SPECIAL WARRANTY SET FORTH IN THE ASSIGNMENT, OR THE CERTIFICATE DELIVERED PURSUANT**

**TO *SECTION 9.3(k)*, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS, STATUTORY OR IMPLIED, AS TO (I) TITLE TO ANY OF THE ASSETS, (II) THE CONTENTS, CHARACTER OR NATURE OF ANY REPORT OF ANY PETROLEUM ENGINEERING CONSULTANT, OR ANY ENGINEERING, GEOLOGICAL OR SEISMIC DATA OR INTERPRETATION RELATING TO THE ASSETS, (III) THE QUANTITY, QUALITY OR RECOVERABILITY OF HYDROCARBONS IN OR FROM THE ASSETS, (IV) ANY ESTIMATES OF THE VALUE OF THE ASSETS OR FUTURE REVENUES TO BE GENERATED BY THE ASSETS, (V) THE PRODUCTION OF OR ABILITY TO PRODUCE HYDROCARBONS FROM THE ASSETS, (VI) THE MAINTENANCE, REPAIR, CONDITION, QUALITY, SUITABILITY, DESIGN OR MARKETABILITY OF THE ASSETS, (VII) THE CONTENT, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM, REPORTS, BROCHURES, CHARTS OR STATEMENTS PREPARED BY SELLER OR THIRD PARTIES WITH RESPECT TO THE ASSETS, (VIII) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE TO BUYER OR ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE EMPLOYEES, AGENTS, CONSULTANTS, REPRESENTATIVES OR ADVISORS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO AND (IX) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT. EXCEPT AS AND TO THE LIMITED EXTENT EXPRESSLY REPRESENTED OTHERWISE IN *ARTICLE IV*, THE SPECIAL WARRANTY SET FORTH IN THE ASSIGNMENT, OR THE CERTIFICATE DELIVERED PURSUANT TO *SECTION 9.3(k)*, SELLER FURTHER DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS, STATUTORY OR IMPLIED, OF MERCHANTABILITY, FREEDOM FROM LATENT VICES OR DEFECTS, FITNESS FOR A PARTICULAR PURPOSE OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS OF ANY OF THE ASSETS, RIGHTS OF A PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT BUYER SHALL BE DEEMED TO BE OBTAINING THE ASSETS IN THEIR PRESENT STATUS, CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS" WITH ALL FAULTS OR DEFECTS (KNOWN OR UNKNOWN, LATENT, DISCOVERABLE OR UNDISCOVERABLE), AND THAT BUYER HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS BUYER DEEMS APPROPRIATE.**

(c) **EXCEPT AS PROVIDED IN *SECTION 4.17*, SELLER HAS NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING ANY MATTER OR CIRCUMSTANCE RELATING TO ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT OR THE PROTECTION OF HUMAN HEALTH, SAFETY, NATURAL RESOURCES OR THE ENVIRONMENT, OR ANY OTHER ENVIRONMENTAL CONDITION OF THE ASSETS, AND NOTHING IN THIS AGREEMENT OR OTHERWISE SHALL BE CONSTRUED AS SUCH A REPRESENTATION OR WARRANTY. SUBJECT TO BUYER'S RIGHTS UNDER *SECTION 12.1* AND AS PROVIDED IN THIS AGREEMENT FOR BREACHES OF *SECTION 4.17*, BUYER SHALL BE DEEMED TO**



**BE TAKING THE ASSETS "AS IS" AND "WHERE IS" WITH ALL FAULTS FOR PURPOSES OF THEIR ENVIRONMENTAL CONDITION, AND BUYER HAS MADE OR CAUSED TO BE MADE SUCH ENVIRONMENTAL INSPECTIONS AS BUYER DEEMS APPROPRIATE.**

(d) **SELLER AND BUYER AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS *SECTION 10.3* ARE "*CONSPICUOUS*" DISCLAIMERS FOR THE PURPOSE OF ANY APPLICABLE LAW.**

## ARTICLE XI
## TITLE MATTERS; CASUALTY; TRANSFER RESTRICTIONS

***11.1 Seller's Title.***

(a) General Disclaimer of Title Warranties and Representations. Except for the special warranty of title as set forth in the Assignment and without limiting Buyer's remedies for Title Defects set forth in this *Article XI*, Seller makes no warranty or representation, express, implied, statutory or otherwise, with respect to Seller's title to any of the Assets, and Buyer hereby acknowledges and agrees that Buyer's sole remedy for any defect of title, including any Title Defect, with respect to any of the Assets (i) before Closing, shall be as set forth in *Section 11.2* and (ii) after Closing, shall be pursuant to the special warranty of title set forth in the Assignment.

(b) Special Warranty of Title. If Closing occurs, then the Assignment shall contain a special warranty of title whereby Seller shall warrant Defensible Title, without duplication, to (i) the Wells set forth on *Exhibit B* (subject to the depth restrictions set forth on*Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations), and (ii) through a special warranty on the Leases, the Drilling Units set forth on *Schedule 3.8* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable), unto Buyer against every Person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Seller or its Affiliates, but not otherwise, subject, however, to the Permitted Encumbrances and to any matters of real property record in the applicable counties or in the applicable state or federal records prior to the Title Claim Date.

(c) Recovery on Special Warranty.

(i) Buyer's Assertion of Title Warranty Breaches. Prior to the expiration of the period of time commencing as of the Closing Date and ending at 5 p.m. Central Time on the four (4) year anniversary thereof (the "***Survival Period***"), Buyer shall furnish Seller a Title Defect Notice meeting the requirements of *Section 11.2(a)* setting forth any matters which Buyer intends to assert as a breach of Seller's special warranty of title set forth in the Assignment. For all purposes of this Agreement, Buyer shall be deemed to have waived, and Seller shall have no further liability for, any breach of Seller's special warranty that Buyer fails to assert by a Title Defect Notice given to Seller on or before the expiration of the Survival Period. Seller shall have a reasonable opportunity, but not the obligation, to cure any Title



Defect asserted by Buyer pursuant to this *Section 11.1(c)(i)*. Buyer agrees to reasonably cooperate with any attempt by Seller to cure any such Title Defect.

(ii) Limitations on Special Warranty. For purposes of Seller's special warranty of title set forth in the Assignment, the value of the Drilling Units and/or Wells set forth in *Schedule 3.8*, as appropriate ((1) for a Well, subject to the depth restrictions set forth on*Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations, and (2) for a Drilling Unit, subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable), shall be deemed to be the Allocated Value thereof, as adjusted herein. Recovery on Seller's special warranty of title shall be limited to an amount (without any interest accruing thereon) equal to the reduction in the Cash Consideration to which Buyer would have been entitled had Buyer asserted the defect giving rise to such breach of Seller's special warranty of title as a Title Defect prior to the Title Claim Date pursuant to *Section 11.2*, except that the Individual Title Defect Threshold and the Aggregate Deductible shall not apply. Seller shall be entitled to offset any amount owed by Seller for breach of its special warranty of title with respect to any Asset by the amount of any Title Benefits with respect to such Asset; *provided* that Seller gives Buyer notice before the later of (x) 30 days after Seller's receipt of a Title Defect Notice for such special warranty breach and (y) the final resolution of any dispute relating to such special warranty breach.

***11.2 Notice of Title Defects; Defect Adjustments.***

(a) Title Defect Notices. Buyer has the right but not the obligation to deliver, no later than December 2, 2016 (the "***Title Claim Date***"), claim notices to Seller meeting the requirements of this *Section 11.2(a)* (collectively, the "***Title Defect Notices***" and, individually, a "***Title Defect Notice***") setting forth any matters which, in Buyer's reasonable opinion, constitute Title Defects and which Buyer intends to assert as a Title Defect pursuant to this *Section 11.2(a)*. For all purposes of this Agreement and notwithstanding anything herein to the contrary, except for the special warranty of title set forth in the Assignment, Buyer shall be deemed to have waived, and Seller shall have no liability for, any Title Defect which Buyer fails to assert as a Title Defect by a properly delivered Title Defect Notice received by Seller on or before the Title Claim Date. To be effective, each Title Defect Notice shall be in writing, and shall include (i) a description of the alleged Title Defect and the Well or Drilling Unit (including a reasonably detailed description to identify such Well or applicable Lease affecting such Drilling Unit), or portion thereof, affected by such Title Defect (each a "***Title Defect Property***"), (ii) the Allocated Value of each Title Defect Property, (iii) supporting documents reasonably necessary for Seller to verify the existence of such alleged Title Defect, and (iv) the amount by which Buyer reasonably believes the Allocated Value of each Title Defect Property is reduced by such alleged Title Defect and the computations upon which Buyer's belief is based. Buyer may deliver any documents required in connection with any Title Defect Notice to Seller via DropBox or Microsoft OneDrive, or any other online storage application approved by Seller. To give Seller an opportunity to commence reviewing and curing Title Defects, Buyer agrees to use reasonable efforts to give Seller, on or before the end of each calendar week prior to the Title Claim Date, written notice of all alleged Title Defects discovered by Buyer during the preceding calendar week, which notice may be preliminary in nature and supplemented prior to the Title Claim Date, provided that any failure of Buyer to deliver such notice shall not constitute a breach of this Agreement. Buyer shall also, promptly upon discovery, furnish Seller with written notice of



any Title Benefit which is discovered by any of Buyer's or any of its Affiliate's employees, title attorneys, landmen or other title examiners while conducting Buyer's due diligence with respect to the Assets prior to the Title Claim Date. Buyer acknowledges that the Drilling Units are proposed drilling and spacing units and have yet been, and are subject to being, formed.

(b) Title Benefit Notices. Seller shall have the right, but not the obligation, to deliver to Buyer on or before the Title Claim Date with respect to each Title Benefit a notice (a "***Title Benefit Notice***") including (i) a description of the alleged Title Benefit and the Asset, or portion thereof, affected by such alleged Title Benefit (each a "***Title Benefit Property***"), and (ii) the amount by which Seller reasonably believes the Allocated Value of such Title Benefit Property is increased by such alleged Title Benefit and the computations upon which Seller's belief is based. Except as set forth in *Section 11.1(c)(ii)* or *Section 11.2(a)*, Seller shall be deemed to have waived all Title Benefits for which a Title Benefit Notice has not been delivered on or before the Title Claim Date.

(c) Seller's Right to Cure. Seller shall have the right, but not the obligation, to attempt, at its sole cost, to cure at any time prior to one hundred ten (110) days after Closing (the "***Cure Period***"), any Title Defects of which it has been advised by Buyer. During the period of time from Closing to the expiration of the Cure Period, Buyer agrees to afford Seller and its officers, employees and other authorized representatives reasonable access, during normal business hours, to the Assets and all Records in Buyer's or any of its Affiliates' possession in order to facilitate Seller's attempt to cure any such Title Defects. No reduction shall be made to the Cash Consideration with respect to any Title Defect for which Seller has provided notice to Buyer prior to or on the Closing Date that Seller intends to attempt to cure the Title Defect during the Cure Period. An election by Seller to attempt to cure a Title Defect shall be without prejudice to its rights under *Section 11.2(j)* and shall not constitute an admission against interest or a waiver of Seller's right to dispute the existence, nature or value of, or cost to cure, the alleged Title Defect.

(d) Remedies for Title Defects. Subject to Seller's continuing right to dispute the existence of a Title Defect and/or the Title Defect Amount asserted with respect thereto, and subject to the rights of the Parties pursuant to *Section 14.1(c)*, in the event that any Title Defect timely asserted by Buyer in accordance with *Section 11.2(a)* is not waived in writing by Buyer or cured during the Cure Period, Seller shall, at its sole option, elect to:

(i) subject to the Individual Title Defect Threshold and the Aggregate Deductible, reduce the Cash Consideration pursuant to*Section 3.5* or Final Cash Price pursuant to *Section 3.6*, as applicable, by the Title Defect Amount determined pursuant to *Section 11.2(g)* or *Section 11.2(j)*;

(ii) with Buyer's approval, indemnify Buyer against all Liability (up to the Allocated Value of the applicable Title Defect Property) resulting from such Title Defect with respect to such Title Defect Property pursuant to an indemnity agreement in a form and substance mutually agreed upon by the Parties (a "***Title Indemnity Agreement***");

(iii) if the asserted Title Defect Amount of any Title Defect Property is greater than or equal to seventy five percent (75%) of the Allocated Value of such Title Defect



Property, retain the entirety of such Title Defect Property, together with all associated Assets, in which event the Cash Consideration or Final Cash Price, as applicable, shall be reduced by an amount equal to the Allocated Value of such Title Defect Property and such associated Assets; or

(iv) if applicable, terminate this Agreement pursuant to *Section 14.1(c)*.

(e) Remedies for Title Benefits. Subject to Buyer's continuing right to dispute the existence of a Title Benefit and/or the Title Benefit Amount asserted with respect thereto, with respect to the Title Benefit Properties reported under *Section 11.2(b)*, the Title Defect Amounts attributable to all properly raised and uncured Title Defects, in the aggregate, shall be decreased by the aggregate amount of all increases to the Allocated Value for such Title Benefit Properties reported under *Section 11.2(b)* (each such increase, a "***Title Benefit Amount***") attributable to all properly raised Title Benefits.

(f) Exclusive Remedy. Except for Buyer's rights under Seller's special warranty of title set forth in the Assignment and Buyer's rights to terminate this Agreement pursuant to *Section 14.1(c)*, the provisions set forth in*Section 11.2(d)* shall be the exclusive right and remedy of Buyer with respect to Seller's failure to have Defensible Title with respect to any Asset or any other title matter.

(g) Title Defect Amount. The amount by which the Allocated Value of a Title Defect Property is reduced as a result of the existence of a Title Defect shall be the "***Title Defect Amount***" and shall be determined in accordance with the following terms and conditions (without duplication):

(i) if Buyer and Seller agree on the Title Defect Amount, then that amount shall be the Title Defect Amount;

(ii) if the Title Defect is an Encumbrance that is undisputed and liquidated in amount, then the Title Defect Amount shall be the amount necessary to be paid to remove the Title Defect from the Title Defect Property;

(iii) if the Title Defect represents a discrepancy between (A) Seller's Net Revenue Interest for any Title Defect Property and (B) the Net Revenue Interest set forth for such Title Defect Property on *Schedule 3.8*, and the Working Interest is reduced proportionately, then the Title Defect Amount shall be the product of the Allocated Value of such Title Defect Property multiplied by a fraction, the numerator of which is the Net Revenue Interest decrease and the denominator of which is the Net Revenue Interest set forth for such Title Defect Property on *Schedule 3.8*;

(iv) if the Title Defect represents a discrepancy where (A) the actual Net Acres for any Title Defect Property is less than (B) the Net Acres for such Title Defect Property stated on *Schedule 3.8*, then the Title Defect Amount shall be the product obtained by multiplying such positive difference by the Allocated Value (on a per Net Acre dollar amount) for such Title Defect Property set forth on *Schedule 3.8*;

(v) if the Title Defect represents an obligation or Encumbrance upon or other defect in title to the Title Defect Property of a type not described above, then the Title



Defect Amount shall be determined by taking into account the Allocated Value of the Title Defect Property, the portion of the Title Defect Property affected by the Title Defect, the legal effect of the Title Defect, the potential economic effect of the Title Defect over the life of the Title Defect Property, the values placed upon the Title Defect by Buyer and Seller and such other reasonable factors as are necessary to make a proper evaluation;

(vi) the Title Defect Amount with respect to a Title Defect Property shall be determined without duplication of any costs or losses included in another Title Defect Amount hereunder; and

(vii) notwithstanding anything to the contrary in this *Article XI*, the aggregate Title Defect Amounts attributable to the effects of all Title Defects upon any Title Defect Property shall not exceed the Allocated Value of such Title Defect Property.

(h) Title Benefit Amount. The Title Benefit Amount resulting from a Title Benefit shall be determined in accordance with the following methodology, terms and conditions (without duplication):

(i) if Buyer and Seller agree on the Title Benefit Amount, then that amount shall be the Title Benefit Amount;

(ii) if the Title Benefit represents a discrepancy between (A) Seller's Net Revenue Interest for any Title Benefit Property and (B) the Net Revenue Interest set forth for such Title Benefit Property on *Schedule 3.8*, and the Working Interest is increased proportionately then the Title Benefit Amount shall be the product of the Allocated Value of such Title Benefit Property multiplied by a fraction, the numerator of which is the Net Revenue Interest increase and the denominator of which is the Net Revenue Interest set forth for such Title Benefit Property on *Schedule 3.8*;

(iii) if the Title Benefit represents a discrepancy where (A) the actual Net Acres for any Title Benefit Property is greater than (B) the Net Acres for such Title Benefit Property stated on *Schedule 3.8*, then the Title Benefit Amount shall be the product obtained by multiplying such difference by the Allocated Value (on a per Net Acre dollar amount) for such Title Benefit Property set forth on *Schedule 3.8*; and

(iv) if the Title Benefit is of a type not described above, then the Title Benefit Amounts shall be determined by taking into account the Allocated Value of Title Benefit Property, the portion of such Title Benefit Property affected by such Title Benefit, the legal effect of the Title Benefit, the potential economic effect of the Title Benefit over the life of such Title Benefit Property, the values placed upon the Title Benefit by Buyer and Seller and such other reasonable factors as are necessary to make a proper evaluation.

(i) Title Defect Threshold and Deductible. Notwithstanding anything herein to the contrary, (i) in no event shall there be any adjustments to the Purchase Price or other remedies provided by Seller for any individual Title Defect for which the Title Defect Amount does not exceed $75,000 (the "***Individual Title Defect Threshold***"); and (ii) in no event shall there be any adjustment to the Purchase Price or other remedies provided by Seller for any Title Defect for which the Title Defect Amount exceeds the Individual Title Defect Threshold unless



(A) the amount of the sum of (1) the aggregate Title Defect Amounts of all such Title Defects that exceed the Individual Title Defect Threshold (but excluding any Title Defect Amounts attributable to Title Defects cured by Seller), *plus* (2) the aggregate Remediation Amounts of all Environmental Defects that exceed the Individual Environmental Threshold (but excluding any Environmental Defects cured by Seller), exceeds (B) the Aggregate Deductible, after which point Buyer shall be entitled to adjustments to the Cash Consideration or other applicable remedies available hereunder, but only to the extent that the amount by which the aggregate amount of such Title Defect Amounts and Remediation Amounts exceeds the Aggregate Deductible. For the avoidance of doubt, if Seller retains any Title Defect Property pursuant to *Section 11.2(d)(iii)*, the Title Defect Amount related to such Title Defect Property will not be counted towards the Aggregate Deductible and will not be considered for purposes of *Section 7.4* and/or *Section 8.4*.

(j) Title Dispute Resolution. Seller and Buyer shall attempt to agree on matters regarding (i) all Title Defects, Title Benefits, Title Defect Amounts and Title Benefit Amounts, and (ii) the adequacy of any curative materials provided by Seller to cure an alleged Title Defect (the "***Disputed Title Matters***") prior to Closing. If Seller and Buyer are unable to agree by Closing (or by the end of the Cure Period if Seller elects to attempt to cure a Title Defect after Closing), the Disputed Title Matters shall be exclusively and finally resolved pursuant to this *Section 11.2(j)*. There shall be a single arbitrator, who shall be an attorney with at least fifteen (15) years' experience in oil and gas titles involving properties in the regional area in which the Title Defect Properties are located, as selected by mutual agreement of Buyer and Seller within fifteen (15) days after the Closing or the end of the Cure Period, as applicable, or, absent such agreement, by the Houston, Texas office of the American Arbitration Association (the "***Title Arbitrator***"). Each of Buyer and Seller shall submit to the Title Arbitrator its proposed resolution of the Disputed Title Matter. The proposed resolution of the Disputed Title Matter shall include the best offer of the submitting Party in a single monetary amount that such Party is willing to pay or accept (as applicable) to settle the Disputed Title Matter. The Title Arbitrator shall be limited to awarding only one or the other of the two proposed settlement amounts. The arbitration proceeding shall be held in Houston, Texas and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this *Section 11.2(j)*. The Title Arbitrator's determination shall be made within twenty (20) days after submission of the Disputed Title Matters and shall be final and binding upon both Parties, without right of appeal. In making his determination with respect to any Disputed Title Matter, the Title Arbitrator shall be bound by the rules set forth in *Section 11.2(g)* and *Section 11.2(h)* and, subject to the foregoing, may consider such other matters as, in the opinion of the Title Arbitrator, are necessary to make a proper determination. The Title Arbitrator, however, may not award Buyer a greater Title Defect Amount than the Title Defect Amount claimed by Buyer in its applicable Title Defect Notice. The Title Arbitrator shall act as an expert for the limited purpose of determining the specific Disputed Title Matter submitted by either Party and may not award damages, interest or penalties to either Party with respect to any matter. Seller and Buyer shall each bear its own legal fees and other costs of presenting its case to the Title Arbitrator. Each of Seller and Buyer shall bear one-half of the costs and expenses of the Title Arbitrator. To the extent that the award of the Title Arbitrator with respect to any Title Defect Amount or Title Benefit Amount is not taken into account as an adjustment to the Cash Consideration pursuant to *Section 3.5* or *Section 3.6(a)*, then, within ten (10) days after the Title Arbitrator delivers written notice to Buyer and Seller of



his award with respect to a Title Defect Amount or a Title Benefit Amount, and, subject to *Section 11.2(i)*, (i) Buyer shall pay to Seller the amount, if any, so awarded by the

Title Arbitrator to Seller, and (ii) Seller shall pay to Buyer the amount, if any, so awarded by the Title Arbitrator to Buyer. Nothing herein shall operate to cause Closing to be delayed on account of any arbitration conducted pursuant to this *Section 11.2(j)* and, to the extent any adjustments are not agreed upon by the Parties as of Closing, the Cash Consideration shall not be adjusted therefor at Closing and subsequent adjustments to the Cash Consideration, if any, will be made pursuant to *Section 3.6* or this *Section 11.2*.

***11.3 Casualty and Condemnation Loss.***

(a) Notwithstanding anything herein to the contrary, from and after the Effective Time, if Closing occurs, Buyer shall assume all risk of loss with respect to production of Hydrocarbons through normal depletion (including watering out of any well, collapsed casing or sand infiltration of any well) and the depreciation of Personal Property due to ordinary wear and tear, in each case, with respect to the Assets, and Buyer shall not assert such matters as Casualty Losses or Title Defects hereunder.

(b) If, after the Execution Date but prior to the Closing Date, any portion of the Assets is damaged or destroyed by fire or other casualty or is taken in condemnation or under right of eminent domain (each, a "***Casualty Loss***"), and the Closing thereafter occurs, (a) in the event of a taking, the Assets affected thereby shall be excluded from the transactions contemplated by this Agreement and the Purchase Price will be reduced by the Allocated Value of all Assets affected by such taking, or (b) except as provided in (a), Seller shall elect by written notice to Buyer prior to Closing either (i) to cause, at Seller's sole cost and expense (*less* the amount of the applicable deductible(s) under Seller's applicable insurance policies, which deductible amounts shall be the responsibility of Buyer), any Asset affected by a Casualty Loss to be repaired or restored to at least its quality and condition as before the Casualty Loss as promptly as reasonably practicable (which work may extend after the Closing Date), or (ii) reduce the Purchase Price by the result of (A) the cost to repair or restore each Asset affected by such Casualty Loss to at least its quality and condition as before the Casualty Loss *less* (B) the amount of the applicable deductible(s) under Seller's applicable insurance policies, which deductible amounts shall be the responsibility of Buyer. In each case, Seller shall be entitled to receive all of its rights to insurance and other Claims (including any condemnation proceeds) with respect to the Casualty Loss, except to the extent the Parties otherwise agree in writing.

***11.4 Preferential Purchase Rights and Consents to Assign.***

(a) Pursuant to that certain Area of Mutual Interest Agreement (the "***AMI Agreement***"), dated August 22, 2016, between Seller and RRP-QStar, LLC ("***RRP***"), (i) RRP has the right to sell its right, title and interest in and to the Subject Assets (such right, title and interest of RRP, the "***RRP Assets***") to Buyer on the terms set forth in the AMI Agreement ("***RRP Tag Right***"), and (ii) Seller has the right to require RRP to sell the RRP Assets to Buyer on the terms set forth in the AMI Agreement ("***Drag Right***"). Contemporaneously with the execution of this Agreement, Buyer, Seller and RRP have entered into a letter agreement whereby: RRP has agreed to sell, and Buyer has agreed to purchase and pay for, all of RRP's right, title and interest in and to the RRP Assets on terms substantially similar to the terms of this Agreement (with the



purchase price for such RRP Assets being set forth in *Schedule 11.4(a)*), in satisfaction of RRP's exercise of the Tag Right (the "***RRP Purchase Agreement***").

(b) Pursuant to that certain Joint Development Agreement (the "***JDA***"), dated July 1, 2015, between Seller and Double Eagle Development LLC ("***Double Eagle***"), Double Eagle has the right to sell its right, title and interest in and to the Subject Assets (such right, title and interest of Double Eagle, the "***Double Eagle Assets***") to Buyer on the terms set forth in the JDA ("***Double Eagle Tag Right***"). If Double Eagle exercises its Tag Right in accordance with the terms set forth in the JDA, then Buyer shall enter into an agreement with Double Eagle for the purchase of the Double Eagle Assets on terms substantially similar to the terms of this Agreement (with the purchase price for such Double Eagle Assets being set forth in *Schedule 11.4(b)*) (the "***Double Eagle Purchase Agreement***").

(c) With respect to each Preferential Purchase Right set forth in *Schedule 4.10*, Seller, promptly following the Execution Date, shall send to the holder of each such Preferential Purchase Right a notice requesting such holder's exercise or waiver in material compliance with the contractual provisions applicable to such Preferential Purchase Right.

(i) If, (a) prior to Closing, any holder of a Preferential Purchase Right notifies Seller that it intends to consummate the purchase of the Asset to which its Preferential Purchase Right applies, or (b) as of Closing, the time for exercising a Preferential Purchase Right has not expired and such Preferential Purchase Right has not been exercised or waived, then the Asset subject to such Preferential Purchase Right shall be excluded from the Assets to be assigned to Buyer at Closing (but only to the extent of the portion of such Asset affected by the Preferential Purchase Right), and the Cash Consideration shall be reduced by the Allocated Value of the Asset (or portion thereof) so excluded. Seller shall be entitled to all proceeds paid by any Person exercising a Preferential Purchase Right prior to Closing. If (1) such holder of such Preferential Purchase Right thereafter fails to consummate the purchase of the Asset (or portion thereof) covered by such Preferential Purchase Right on or before the later of (x) sixty (60) days following the Closing Date or (y) the time period specified in the contractual provisions applicable to such Preferential Purchase Right, or (2) the time for exercising such Preferential Purchase Right expires without exercise by the holder thereof, then (A) Seller shall so notify Buyer, (B) Buyer shall purchase, on or before ten (10) days following receipt of such notice, such Asset (or portion thereof) that was so excluded from the Assets to be assigned to Buyer at Closing, under the terms of this Agreement and for a price equal to the amount by which the Cash Consideration was reduced at Closing with respect to such excluded Asset (or portion thereof) and (C) Seller shall assign to Buyer the Asset (or portion thereof) so excluded at Closing pursuant to an instrument in substantially the same form as the Assignment.

(ii) All Assets for which any applicable Preferential Purchase Right has been waived, or as to which the period to exercise the applicable Preferential Purchase Right has expired without exercise by the holder thereof, in each case, prior to Closing, shall be sold to Buyer at Closing pursuant to the provisions of this Agreement.

(d) With respect to each Consent set forth in *Schedule 4.4*, Seller, promptly following the Execution Date, shall send to the holder of each such Consent a notice in material



compliance with the contractual provisions applicable to such Consent seeking such holder's consent to the transactions contemplated hereby.

(i) If (A) Seller fails to obtain a Consent set forth in *Schedule 4.4* prior to Closing and the failure to obtain such Consent would cause (1) the assignment of the Assets affected thereby to Buyer to be void or (2) the termination of a Lease or Contract under the express terms thereof or (B) a Consent requested by Seller is denied in writing, then, in each case, the Asset (or portion thereof) affected by such un-obtained Consent shall be excluded from the Assets to be assigned to Buyer at Closing, and the Cash Consideration shall be reduced by the Allocated Value of such Asset (or portion thereof) so excluded. In the event that a Consent (with respect to an Asset excluded pursuant to this *Section 11.4(d)(i)*) that was not obtained prior to Closing is obtained within one hundred eighty (180) days following Closing, then, within ten (10) days after such Consent is obtained (x) Buyer shall purchase the Asset (or portion thereof) that was so excluded as a result of such previously un-obtained Consent and pay to Seller the amount by which the Cash Consideration was reduced at Closing with respect to the Asset (or portion thereof) so excluded and (y) Seller shall assign to Buyer the Asset (or portion thereof) so excluded at Closing pursuant to an instrument in substantially the same form as the Assignment.

(ii) If (A) Seller fails to obtain a Consent set forth in *Schedule 4.4* prior to Closing and the failure to obtain such Consent would not cause (1) the assignment of the Asset (or portion thereof) affected thereby to Buyer to be void or (2) the termination of a Lease or Contract under the express terms thereof and (B) such Consent requested by Seller is not denied in writing by the holder thereof, then the Asset (or portion thereof) subject to such un-obtained Consent shall nevertheless be assigned by Seller to Buyer at Closing as part of the Assets and Buyer shall have no claim against, and Seller shall have no Liability for, the failure to obtain such Consent.

(iii) Prior to Closing, Seller and Buyer shall use their commercially reasonable efforts to obtain all Consents listed on *Schedule 4.4*; *provided*, *however*, that neither Party shall be required to incur any Liability or pay any money in order to obtain any such Consent. Subject to the foregoing, Buyer agrees to provide Seller with any information or documentation that may be reasonably requested by Seller and/or the Third Party holder(s) of such Consents in order to facilitate the process of obtaining such Consents.

## ARTICLE XII
## ENVIRONMENTAL MATTERS

***12.1 Notice of Environmental Defects.***

(a) Environmental Defects Notice. Buyer has the right but not the obligation to deliver no later than December 2, 2016 (the "***Environmental Claim Date***") claim notices to Seller meeting the requirements of this *Section 12.1(a)* (collectively, the "***Environmental Defect Notices***" and, individually, an "***Environmental Defect Notice***") setting forth any matters which, in Buyer's reasonable opinion, constitute Environmental Defects and which Buyer asserts as Environmental Defects pursuant to this *Section 12.1*. To be effective, each Environmental Defect Notice shall be in writing and shall include (i) a description of the matter constituting the alleged Environmental Condition (including the applicable Environmental Law violated or



implicated thereby) and the Assets affected by such alleged Environmental Condition, (ii) the Allocated Value of the Assets (or portions thereof) affected by such alleged Environmental Condition, (iii) supporting documents reasonably necessary for Seller to verify the existence of such alleged Environmental Condition, and (iv) a calculation of the Remediation Amount (itemized in reasonable detail) that Buyer asserts is attributable to such alleged Environmental Defect. Notwithstanding anything contained in this Agreement to the contrary, and for the avoidance of doubt, any Environmental Defect asserted by Buyer pursuant to this *Section 12.1(a)* shall be limited to the Assets only, and Buyer shall not have the right to assert environmental defects with respect to any other assets, properties or operations. For all purposes of this Agreement, Buyer shall be deemed to have waived, and Seller shall have no liability for, (A) any Environmental Defect (other than the Scheduled Environmental Matters) which Buyer fails to assert as an Environmental Defect by a properly delivered Environmental Defect Notice received by Seller on or before the Environmental Claim Date, and/or (B) any Environmental Defect affecting any assets, properties or operations other than the Assets (other than contribution requirements in accordance with the applicable operating agreements), in each case, with such liabilities being "***Buyer's Environmental Liabilities***." Buyer's calculation of the Remediation Amount included in the Environmental Defect Notice must describe in reasonable detail the Remediation proposed for the alleged Environmental Condition that gives rise to the asserted Environmental Defect and identify all assumptions used by Buyer in calculating the Remediation Amount, including the standards that Buyer asserts must be met to comply with Environmental Laws. To give Seller an opportunity to commence reviewing and curing Environmental Defects, Buyer agrees to use reasonable efforts to give Seller, on or before the end of each calendar week prior to the Environmental Claim Date, written notice of all alleged Environmental Defects discovered by Buyer during the preceding calendar week, which notice may be preliminary in nature and supplemented prior to the Environmental Claim Date, provided that any failure of Buyer to deliver such notice shall not constitute a breach of this Agreement.

(b) Seller's Right to Cure. Seller shall have the right, but not the obligation, to cure any asserted Environmental Defect on or before the Closing Date. No reduction shall be made to the Purchase Price with respect to any asserted Environmental Defect for which Seller has cured prior to Closing. An election by Seller to attempt to cure an Environmental Defect shall be without prejudice to its rights under *Section 12.1(f)* and shall not constitute an admission against interest or a waiver of Seller's right to dispute the existence, nature or value of, or cost to cure, the alleged Environmental Defect.

(c) Remedies for Environmental Defects. Subject to Seller's continuing right to dispute the existence of an Environmental Defect and/or the Remediation Amount asserted with respect thereto, and subject to the rights of the Parties pursuant to *Section 14.1(c)*, in the event that any Environmental Defect timely asserted by Buyer in accordance with *Section 12.1(a)* is not waived in writing by Buyer or cured prior to Closing, Seller shall, at its sole option, elect to:

(i) subject to the Individual Environmental Threshold and the Aggregate Deductible, reduce the Cash Consideration by the Remediation Amount;



(ii) retain the entirety of the Asset that is subject to such Environmental Defect, in which event the Cash Consideration shall be reduced by an amount equal to the Allocated Value of such Asset;

(iii) with Buyer's approval, indemnify Buyer against all Liability resulting from such Environmental Defect with respect to the Assets pursuant to an indemnity agreement in a form and substance mutually agreeable to the Parties (each, an "***Environmental Indemnity Agreement***"); or

(iv) if applicable, terminate this Agreement pursuant to *Section 14.1(c)*.

If Seller elects the option set forth in clause (i) above, Buyer shall be deemed to have assumed responsibility for all of the costs and expenses attributable to the Remediation of the Environmental Condition attributable to such Environmental Defect and for all Liabilities with respect thereto and such responsibility of Buyer shall be deemed to constitute part of the Assumed Obligations hereunder.

(d) Exclusive Remedy. Except for Buyer's rights to terminate this Agreement pursuant to *Section 14.1(c)* and as provided in this Agreement for breaches of *Section 4.17*, the provisions set forth in *Section 12.1(b)* shall be the exclusive right and remedy of Buyer with respect to any Environmental Defect with respect to any Asset or other environmental matter.

(e) Environmental Deductibles. Notwithstanding anything herein to the contrary, (i) in no event shall there be any adjustment to the Purchase Price or other remedies provided by Seller for any individual Environmental Defect for which the Remediation Amount does not exceed $150,000 (the "***Individual Environmental Threshold***"); and (ii) in no event shall there be any adjustment to the Purchase Price or other remedies provided by Seller for any Environmental Defect for which the Remediation Amount exceeds the Individual Environmental Threshold unless (A) the amount of the sum of (1) the aggregate Remediation Amounts of all such Environmental Defects that exceed the Individual Environmental Threshold (but excluding any Remediation Amounts attributable to any Environmental Defects cured by Seller), *plus* (2) the aggregate Title Defect Amounts of all Title Defects that exceed the Individual Title Defect Threshold (but excluding any Title Defect Amounts attributable to Title Defects cured by Seller), exceeds (B) the Aggregate Deductible, after which point Buyer shall be entitled to adjustments to the Cash Consideration or other applicable remedies available hereunder, but only with respect to the amount by which the aggregate amount of such Remediation Amounts and Title Defect Amounts exceeds the Aggregate Deductible. For the avoidance of doubt, if Seller retains any Assets pursuant to *Section 12.1(c)(ii)*, the Remediation Amounts relating to such retained Assets will not be counted towards the Aggregate Deductible and will not be considered for purposes of *Section 7.4* and/or *Section 8.4*.

(f) Environmental Dispute Resolution. Seller and Buyer shall attempt to agree on (i) all Environmental Defects and Remediation Amounts prior to Closing and (ii) the adequacy of any cure by Seller of any asserted Environmental Defect prior to the end of the Cure Period (items (i) and (ii), collectively, the "***Disputed Environmental Matters***"). If Seller and Buyer are unable to agree by Closing (or by the end of the Cure Period if Seller elects to attempt to cure an asserted Environmental Defect after Closing), the Disputed Environmental Matters

shall be exclusively and finally resolved by arbitration pursuant to this *Section 12.1(f)*. There shall be a single arbitrator, who shall be an attorney with at least fifteen (15) years' experience in environmental matters involving oil and gas producing properties in the regional area in which the affected Assets are located, as selected by mutual agreement of Buyer and Seller within fifteen (15) days after the Closing Date or the end of the Cure Period, as applicable, or, absent such agreement, by the Houston, Texas office of the American Arbitration Association (the "***Environmental Arbitrator***"). The arbitration proceeding shall be held in Houston, Texas and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent such rules do not conflict with the terms of this *Section 12.1*. The Environmental Arbitrator's determination shall be made within twenty (20) days after submission of the matters in dispute and shall be final and binding upon both Parties, without right of appeal. In making his determination, the Environmental Arbitrator shall be bound by the rules set forth in this *Section 12.1* and, subject to the foregoing, may consider such other matters as in the opinion of the Environmental Arbitrator are necessary or helpful to make a proper determination. The Environmental Arbitrator, however, may not award Buyer any greater Remediation Amount than the Remediation Amount claimed by Buyer in its applicable Environmental Defect Notice. The Environmental Arbitrator shall act as an expert for the limited purpose of determining the specific Disputed Environmental Matters submitted by either Party and may not award damages, interest or penalties to either Party with respect to any matter. Seller and Buyer shall each bear its own legal fees and other costs of presenting its case to the Environmental Arbitrator. Each of Seller and Buyer shall bear one-half of the costs and expenses of the Environmental Arbitrator. To the extent that the award of the Environmental Arbitrator with respect to any Remediation Amount is not taken into account as an adjustment to the Cash Consideration pursuant to *Section 3.5* or *Section 3.6(a)*, then, within ten (10) days after the Environmental Arbitrator delivers written notice to Buyer and Seller of his award with respect to any Remediation Amount, and, subject to *Section 12.1(e)*, (i) Buyer shall pay to Seller the amount, if any, so awarded by the Environmental Arbitrator to Seller, and (ii) Seller shall pay to Buyer the amount, if any, so awarded by the Environmental Arbitrator to Buyer. Nothing herein shall operate to cause Closing to be delayed on account of any arbitration conducted pursuant to this *Section 12.1(f)*, and, to the extent any adjustments are not agreed upon by the Parties as of Closing, the Cash Consideration shall not be adjusted therefor at Closing and subsequent adjustments to the Cash Consideration, if any, will be made pursuant to *Section 3.6* or this *Section 12.1(f)*.

***12.2 NORM, Asbestos, Wastes and Other Substances.*** Buyer acknowledges that the Assets have been used for exploration, development, and production of oil and gas and that there may be petroleum, produced water, wastes or other substances or materials located in, on or under the Assets or associated with the Assets. Equipment and sites included in the Assets may contain asbestos, NORM or other Hazardous Substances. NORM may affix or attach itself to the inside of wells, materials and equipment as scale, or in other forms. The wells, materials and equipment located on the Assets or included in the Assets may contain NORM, asbestos and other wastes or Hazardous Substances. NORM containing material and/or other wastes or Hazardous Substances may have come in contact with various environmental media, including, water, soils or sediment. Special procedures may be required for the assessment, remediation, removal, transportation, or disposal of environmental media, wastes, asbestos, NORM and other Hazardous Substances from the Assets. The presence of NORM or asbestos-containing



materials that are non-friable cannot be claimed as an Environmental Defect, except to the extent constituting a violation of Environmental Laws.

## ARTICLE XIII
## ASSUMPTION; INDEMNIFICATION; SURVIVAL

***13.1 Assumption by Buyer.*** Without limiting Buyer's rights to indemnity under this *Article XIII* and Buyer's rights under any Title Indemnity Agreement or Environmental Indemnity Agreement, from and after Closing, Buyer assumes and hereby agrees to fulfill, perform, pay and discharge (or cause to be fulfilled, performed, paid and discharged) all obligations and Liabilities, known or unknown, arising from, based upon, related to or associated with the Assets, regardless of whether such obligations or Liabilities arose prior to, on or after the Effective Time, including obligations and Liabilities relating in any manner to the use, ownership or operation of the Assets, including obligations (a) to furnish makeup gas and/or settle Imbalances, (b) to pay Working Interests, royalties, overriding royalties and other interest owners' revenues or proceeds attributable to sales of Hydrocarbons, including those held in suspense (including those amounts for which the Cash Consideration was adjusted pursuant to *Section 3.3(b)(viii)*, (c) to Decommission the Assets (the "***Decommissioning Obligations***"), (d) to clean up and/or remediate the Assets in accordance with applicable Contracts and Laws, (e) to perform all obligations applicable to or imposed on the lessee, owner or operator under the Leases and the Applicable Contracts, or as required by Law, and (f) subject to *Article XII*, with respect to Environmental Conditions, Environmental Defects, Liabilities imposed under Environmental Laws with respect to the Assets and Buyer's Environmental Liabilities, (all of said obligations and Liabilities described in this *Section 13.1*, including in clauses (a) through (g), subject to Buyer's right to indemnity pursuant to *Section 13.2*, herein being referred to as the "***Assumed Obligations***").

***13.2 Indemnities of Seller.*** Effective as of Closing, subject to the limitations set forth in *Section 13.4* and *Section 13.9* or otherwise in this Agreement, Seller shall be responsible for, shall pay on a current basis, and hereby agrees to defend, indemnify, hold harmless and forever release Buyer and its Affiliates, and all of its and their respective equityholders, partners, members, directors, officers, managers, employees, agents and representatives (collectively, the "***Buyer Indemnified Parties***") from and against any and all Liabilities, whether or not relating to Third Party Claims or incurred in the investigation or defense of any of the same or in asserting, preserving or enforcing any of their respective rights hereunder, arising from, based upon, related to or associated with:

(a) any breach by Seller of any of its representations or warranties contained in *Article IV*;

(b) any breach by Seller of any of its covenants or agreements under this Agreement;

(c) any Liabilities for personal injury or death attributable to Seller's operation of the Assets prior to the Closing Date;

(d) the Seller's or any of its Affiliates' failure to properly pay, in accordance



with the terms of any Lease, all Burdens with respect to such Lease prior to the Effective Time and attributable to Third Party Claims (other than for amounts held in suspense);

(e) any Assets excluded pursuant to *Section 10.1(b)* or *Section 12.1(c)(ii)*;

(f) any Liabilities arising from disposal of Hazardous Substances off-site of the Assets by Seller prior to the Effective Time;

(g) any and all Seller Taxes; or

(h) any Liabilities arising from the Scheduled Environmental Matters to the extent relating to the condition of the Assets at or prior to the Closing.

***13.3 Indemnities of Buyer.*** Effective as of Closing, subject to Buyer's right to indemnity pursuant to *Section 13.2,* Buyer and its successors and assigns shall assume and be responsible for, shall pay on a current basis, and hereby agrees to defend, indemnify, hold harmless and forever release Seller and its Affiliates, and all of its

and their respective equityholders, partners, members, directors, officers, managers, employees, agents and representatives (collectively, the "***Seller Indemnified Parties***") from and against any and all Liabilities, whether or not relating to Third Party Claims or incurred in the investigation or defense of any of the same or in asserting, preserving or enforcing any of their respective rights hereunder, arising from, based upon, related to or associated with:

(a) any breach by Buyer of any of its representations or warranties contained in *Article V*;

(b) any breach by Buyer of any of its covenants or agreements under this Agreement; or

(c) the Assumed Obligations.

***13.4 Limitation on Liability.***

(a) Seller shall not have any liability for any indemnification under *Section 13.2* of this Agreement (i) for any individual Liability unless the amount with respect to such Liability exceeds $150,000, and (ii) until and unless the aggregate amount of all Liabilities for which Claim Notices are delivered by Buyer exceeds the Indemnity Deductible, and then only to the extent such Liabilities exceed the Indemnity Deductible. Notwithstanding anything to the contrary contained in this Agreement, the limitations contained in this *Section 13.4(a)* shall not apply to indemnification under *Section 13.2(g)* or *Section 13.2(h)*.

(b) Notwithstanding anything to the contrary contained in this Agreement, other than indemnification pursuant to *Section 13.2* for (i) the representations and warranties of Seller set forth in *Sections 4.1, 4.2, 4.6* and *4.14* and (ii) the covenants and agreements of Seller set forth in *Section 13.2(e)*, *Section 13.2(g)*, *Section 13.2(h)* or *Section 16.2,* Seller shall not be required to indemnify Buyer for aggregate Liabilities in excess of the Holdback Amount.



(c) Seller shall not have any liability for any indemnification under *Section 13.2(a)* of this Agreement with respect to any breach by Seller of any representation or warranty set forth in *Section 4.14* to the extent attributable to any Asset Tax allocable to Buyer under *Section 16.2*, except for any penalties, interest or additions to Tax imposed with respect to such Asset Tax by a Governmental Authority as a result of such breach.

***13.5 Holdback Amount***. The Holdback Amount shall be disbursed in accordance with the provisions of this *Section 13.5* and the Escrow Agreement, and any amounts due by Seller to Buyer pursuant to this *Article XIII* or the special warranty of title in the Assignment will be first satisfied from the Holdback Amount, in each case, subject to the applicable limitations, if any, set forth in this *Article XIII.* The joint, written authorization of representatives of both Seller and Buyer pursuant to the Escrow Agreement, or a written court order from a court of competent jurisdiction, shall be required for the disbursement of any portion of the Holdback Amount.

(a) To make a claim for an amount determined to be due by Seller to Buyer pursuant to, and in accordance with, this *Article XIII* or the special warranty of title in the Assignment, Buyer shall deliver to Seller, prior to the twelve (12) month anniversary of the Closing Date (such period, the "***Holdback Period***"), a written notice (an "***Escrow Claim Notice***") requesting a disbursement of all or a portion of the Holdback Amount for such amount, and describing nature of Buyer's indemnity claim for such amount pursuant to this *Article XIII* (the "***Escrow Claim***").

(b) Upon final resolution of any such Escrow Claim (pursuant to the mutual written agreement of Buyer and Seller, or as determined by a final, non-appealable judgment of a court of competent jurisdiction in accordance with *Section 16.13*) then Seller and Buyer shall provide joint written instructions to the Escrow Agent to disburse to Buyer the portion of the Holdback Amount determined pursuant to this *Section 13.5(b)* in satisfaction of such Escrow Claim.

(c) On the first Business Day following the date that is six (6) months after the Closing Date, Seller and Buyer shall provide joint written instructions to the Escrow Agent to disburse to Seller the Holdback Amount then-remaining, save and except (i) an amount equal to fifty percent (50%) of the Holdback Amount *plus* (ii) the aggregate amount of all unsatisfied Escrow Claims made against Seller pursuant to an Escrow Claim Notice delivered to Seller prior to such date, the respective amounts for which shall remain in the Escrow Account until the resolution of each particular Escrow Claim, at which time such amounts will be transferred to Seller or Buyer in accordance with the resolution of each such Escrow Claim.

(d) On the first Business Day following the expiration of the Holdback Period, Seller and Buyer shall provide joint written instructions to the Escrow Agent to disburse to Seller the Holdback Amount then-remaining, save and except the aggregate amount of all unsatisfied Escrow Claims made against Seller pursuant to an Escrow Claim Notice delivered to Seller on or before the expiration of the Holdback Period, the respective amounts for which shall remain in the Escrow Account until the resolution of each particular Escrow Claim, at which time such amounts will be transferred to Seller or Buyer in accordance with the resolution of each such Escrow Claim.



***13.6 Express Negligence.*** EXCEPT AS OTHERWISE PROVIDED IN *SECTION 6.2* AND *SECTION 10.1*, THE DEFENSE, INDEMNIFICATION, HOLD HARMLESS, RELEASE AND ASSUMED OBLIGATIONS PROVISIONS PROVIDED FOR IN THIS AGREEMENT SHALL BE APPLICABLE WHETHER OR NOT THE LIABILITIES, LOSSES, COSTS, EXPENSES AND DAMAGES IN QUESTION AROSE OR RESULTED SOLELY OR IN PART FROM THE GROSS, SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OR VIOLATION OF LAW OF OR BY ANY INDEMNIFIED PARTY. BUYER AND SELLER ACKNOWLEDGE THAT THIS STATEMENT COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS "*CONSPICUOUS*."

***13.7 Exclusive Remedy.*** Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that, from and after Closing, *Section 6.3*, *Section 10.1*, *Section 13.2*, *Section 13.3* (subject to the applicable limitations set forth in this *Article XIII*), *Section 13.5*, the special warranty of title in the Assignment and any Title Indemnity Agreement or Environmental Indemnity Agreement entered into by the Parties, contain the Parties' exclusive remedies against each other with respect to the transactions contemplated hereby, including breaches of the representations, warranties, covenants and agreements of the Parties contained in this Agreement or in any document or certificate delivered pursuant to this Agreement. Except as specified in *Section 13.2*, *Section 13.5,* the special warranty of title in the Assignment and any Title Indemnity Agreement or Environmental Indemnity Agreement entered into by the Parties, effective as of Closing, Buyer, on its own behalf and on behalf of the Buyer Indemnified Parties, hereby releases, remises and forever discharges Seller and its Affiliates and all of such Persons' equityholders, partners, members, directors, officers, employees, agents and representatives from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, Liabilities, interest or causes of action whatsoever, at Law or in equity, known or unknown, which Buyer or the Buyer Indemnified Parties might now or subsequently have, based on, relating to or arising out of this Agreement, the transactions contemplated by this Agreement, the ownership, use or operation of any of the Assets prior to Closing or the condition, quality, status or nature of any of the Assets prior to Closing, including rights to contribution under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and any similar Environmental Law, breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, common law rights of contribution and rights under insurance maintained by Seller or any of its Affiliates (except as provided in *Section 11.3(b)*).

***13.8 Indemnification Procedures.*** All claims for indemnification under *Section 6.3, Section 10.1, Section 13.2* and *Section 13.3* shall be asserted and resolved as follows:

(a) For purposes of *Section 6.3, Section 10.1* and this *Article XIII*, the term "***Indemnifying Party***" when used in connection with particular Liabilities shall mean the Party or Parties having an obligation to indemnify the other Party and/or other Persons with respect to such Liabilities pursuant to *Section 6.3, Section 10.1* or

this *Article XIII*, and the term "***Indemnified Party***" when used in connection with particular Liabilities shall mean the Party and/or other Persons having the right to be indemnified with respect to such Liabilities by the Indemnifying Party pursuant to *Section 6.3, Section 10.1* or this *Article XIII*.



(b) To make a claim for indemnification under *Section 6.3, Section 10.1*, *Section 13.2* or *Section 13.3*, an Indemnified Party shall notify the Indemnifying Party of its claim under this *Section 13.8*, including the specific details of and specific basis under this Agreement for its claim (the "***Claim Notice***"). In the event that the claim for indemnification is based upon a claim by a Third Party against the Indemnified Party (a "***Third Party Claim***"), the Indemnified Party shall provide its Claim Notice promptly after the Indemnified Party has actual knowledge of the Third Party Claim and shall enclose a copy of all papers (if any) served with respect to the Third Party Claim; *provided* that the failure of any Indemnified Party to give notice of a Third Party Claim as provided in this *Section 13.8(b)* shall not relieve the Indemnifying Party of its obligations under *Section 6.3, Section 10.1*, *Section 13.2* or *Section 13.3* (as applicable) except to the extent such failure results in insufficient time being available to permit the Indemnifying Party to effectively defend against the Third Party Claim or otherwise materially prejudices the Indemnifying Party's ability to defend against the Third Party Claim. In the event that the claim for indemnification is based upon an inaccuracy or breach of a representation, warranty, covenant or agreement, the Claim Notice shall specify the representation, warranty, covenant or agreement that was inaccurate or breached.

(c) In the case of a claim for indemnification based upon a Third Party Claim, the Indemnifying Party shall have thirty (30) days from its receipt of the Claim Notice to notify the Indemnified Party whether it admits or denies its obligation to defend and indemnify the Indemnified Party against such Third Party Claim at the sole cost and expense of the Indemnifying Party. The Indemnified Party is authorized, prior to and during such thirty (30) day period, at the expense of the Indemnifying Party, to file any motion, answer or other pleading that it shall deem necessary or appropriate to protect its interests or those of the Indemnifying Party and that is not prejudicial to the Indemnifying Party.

(d) If the Indemnifying Party admits its obligation to defend and indemnify the Indemnified Party against a Third Party Claim, it shall have the right and obligation to diligently defend, at its sole cost and expense, the Indemnified Party against such Third Party Claim. The Indemnifying Party shall have full control of such defense and proceedings, including any compromise or settlement thereof. If requested by the Indemnifying Party, the Indemnified Party agrees to cooperate in contesting any Third Party Claim which the Indemnifying Party elects to contest. The Indemnified Party may participate in, but not control, at its own expense, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this *Section 13.8(d)*. An Indemnifying Party shall not, without the written consent of the Indemnified Party, (i) settle any Third Party Claim or consent to the entry of any judgment with respect thereto which does not include an unconditional written release of the Indemnified Party from all Liability in respect of such Third Party Claim or (ii) settle any Third Party Claim or consent to the entry of any judgment with respect thereto in any manner that may materially and adversely affect the Indemnified Party (other than as a result of money damages covered by the indemnity).

(e) If the Indemnifying Party does not admit its obligation or admits its obligation to defend and indemnify the Indemnified Party against a Third Party Claim, but fails to diligently prosecute, indemnify against or settle the Third Party Claim, then the Indemnified Party shall have the right to defend against the Third Party Claim at the sole cost and expense of the Indemnifying Party, with counsel of the Indemnified Party's choosing, subject to the right of



the Indemnifying Party to admit its liability and assume the defense of the Third Party Claim at any time prior to settlement or final determination thereof. If the Indemnifying Party has not yet admitted its obligation to defend and indemnify the Indemnified Party against a Third Party Claim, the Indemnified Party shall send written notice to the Indemnifying Party of any proposed settlement and the Indemnifying Party shall have the option for ten (10) days following receipt of such notice to (i) admit in writing its obligation to indemnify the Indemnified Party from and against the liability and consent to such settlement, (ii) if liability is so admitted, reject, in its reasonable judgment, the proposed settlement, or (iii) deny liability. Any failure by the Indemnifying Party to respond to such notice shall be deemed to be an election under subsection (iii) above.

(f) In the case of a claim for indemnification not based upon a Third Party Claim, the Indemnifying Party shall have thirty (30) days from its receipt of the Claim Notice to (i) cure the Liabilities complained of, (ii) admit its liability for such Liability or (iii) dispute the claim for such Liabilities. If the Indemnifying Party does not notify the Indemnified Party within such thirty (30) day period that it has cured the Liabilities or that it disputes the claim for such Liabilities, the Indemnifying Party shall be deemed to dispute the claim for such Liabilities.

***13.9 Survival.***

(a) Except for the Specified Representations and as otherwise provided in this *Section 13.9(a)*, the representations and warranties of the Parties in *Article IV* and *Article V* and the covenants and agreements of the Parties in *Sections 6.1*, *6.10, 9.4* and *16.2* shall survive Closing for a period of nine (9) months. The Specified Representations shall survive Closing without time limit. The representations and warranties in *Section 4.14* shall survive Closing for a period of 60 days after expiration of the applicable statute of limitations. Subject to the foregoing and *Section 13.9(b)*, the remainder of this Agreement shall survive Closing without time limit. Representations, warranties, covenants and agreements shall be of no further force or effect after the date of their expiration; *provided* that there shall be no termination of any bona fide claim asserted pursuant to this Agreement with respect to such a representation, warranty, covenant or agreement prior to its expiration date.

(b) The indemnities in *Section 13.2(a)*, *Section 13.2(b)*, *Section 13.3(a)* and *Section 13.3(b)* shall terminate as of the expiration date of each respective representation, warranty, covenant or agreement that is subject to indemnification, except in each case as to matters for which a specific written claim for indemnity has been delivered to the Indemnifying Party on or before such expiration date. Seller's indemnities in *Sections 13.2(c)*, *13.2(d),* and *13.2(f)* shall terminate twelve (12) months after the Closing. Seller's indemnities in *Section 13.2(e)* shall survive without limit. Seller's indemnities in *Section 13.2(g)* shall survive until 60 days after the expiration of the applicable statute of limitations. Seller's indemnities in *Section 13.2(h)* shall terminate eighteen (18) months after the Closing. Buyer's indemnities in *Section 6.3, Section 10.1* and *Section 13.3(c)* shall survive Closing without time limit and shall be deemed covenants running with the Assets (*provided* that Buyer and its successors and assigns shall not be released from any of, and shall remain jointly and severally liable to the Seller Indemnified Parties for, the obligations and Liabilities of Buyer under such Sections of this Agreement upon any transfer or assignment of any Asset).



***13.10 Waiver of Right to Rescission.*** Seller and Buyer acknowledge that, following Closing, the payment of money or the disbursement of portion(s) of the Holdback Amount, as applicable and in each case, as limited by the terms of this Agreement, shall be adequate compensation for breach of any representation, warranty, covenant or agreement contained herein or for any other claim arising in connection with or with respect to the transactions contemplated by this Agreement. As the payment of money or the disbursement of portion(s) of the Holdback Amount, as applicable and in each case, as limited by the terms of this Agreement, shall be adequate compensation, following Closing, Buyer and Seller waive any right to rescind this Agreement or any of the transactions contemplated hereby.

***13.11 Insurance.*** The amount of any Liabilities for which any of the Buyer Indemnified Parties is entitled to indemnification under this Agreement or in connection with or with respect to the transactions contemplated by this Agreement shall be reduced by any corresponding insurance proceeds received under the relevant insurance policies carried by such Buyer Indemnified Party.

***13.12 Non-Compensatory Damages.*** None of the Buyer Indemnified Parties nor the Seller Indemnified Parties shall be entitled to recover from Seller or Buyer, as applicable, or their respective Affiliates, any special, indirect, consequential, punitive, exemplary, remote or speculative damages (including damages for lost profits of any kind) arising under or in connection with this Agreement or the transactions contemplated hereby, except to the extent any such Party suffers such damages to a Third Party, which damages (including costs of defense and reasonable attorneys' fees incurred in connection with defending against such damages) shall not be excluded by this provision as to recovery hereunder. Subject to the preceding sentence, each of Buyer, on behalf of each of the Buyer Indemnified Parties, and Seller, on behalf of each of the Seller Indemnified Parties, waives any right to recover any special, indirect, consequential, punitive, exemplary, remote or speculative damages (including damages for lost profits of any kind) arising in connection with or with respect to this Agreement or the transactions contemplated hereby.

***13.13 Disclaimer of Application of Anti-Indemnity Statutes.*** The Parties acknowledge and agree that the provisions of any anti-indemnity statute relating to oilfield services and associated activities shall not be applicable to this Agreement and/or the transactions contemplated hereby.

***13.14 Tax Treatment of Indemnification Payments***. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

## ARTICLE XIV
## TERMINATION, DEFAULT AND REMEDIES

***14.1 Right of Termination.*** This Agreement and the transactions contemplated herein may be terminated at any time prior to Closing:

(a) by Seller, at Seller's option, if any of the conditions set forth in *Article VIII* have not been satisfied on or before the Outside Termination Date;



(b) by Buyer, at Buyer's option, if any of the conditions set forth in *Article VII* have not been satisfied on or before the Outside Termination Date;

(c) by Buyer if the condition set forth in *Section 7.4* has not been satisfied on or before the Outside Termination Date or by Seller if the condition set forth in *Section 8.4* is not satisfied on or before the Outside Termination Date; or

(d) by Seller or Buyer if Closing shall not have occurred on or before January 20, 2017 (the "***Outside Termination Date***");

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

***14.2 Effect of Termination.***

(a) If the obligation to close the transactions contemplated by this Agreement is terminated pursuant to any provision of *Section 14.1* hereof, then, except as provided in *Section 3.2* and except for the provisions of *Sections 10.1(c)* through *10.1(g)*, *10.2*, *10.3*, *13.12*, this *Section 14.2*, *Section 14.3*, *Article I* and *Article XVI* (other than *Sections 16.2(b)* through *16.2(h)*, *16.7*, *16.8, 16.15* and *16.17*) and such of the defined terms set forth in *Section 15.1* to give context to such Sections, this Agreement shall forthwith become void, and the Parties shall have no liability or obligation hereunder except and to the extent such termination results from the material breach by a Party of any of its covenants or agreements hereunder in which case the other Party shall have the right to seek all remedies available at law or in equity, including specific performance, for such material breach and shall be entitled to recover court costs and attorneys' fees in addition to any other relief to which such Party may be entitled; *provided* that if Seller is entitled to and elects to retain the Deposit as liquidated damages pursuant to *Section 14.2(b)*, then such retention shall constitute full and complete satisfaction of any and all damages Seller may have against Buyer. The provision for payment of liquidated damages in this *Section 14.2(a)* has been included because, in the event of a termination of this Agreement permitting Seller to retain the Deposit, the actual damages to be incurred by Seller can reasonably be expected to approximate the amount of liquidated damages called for herein and because the actual amount of such damages would be difficult if not impossible to measure accurately.

(b) If (i) all conditions precedent to the obligations of Buyer set forth in *Article VII* (other than those actions or deliveries to occur at Closing or contingent upon the satisfaction of other conditions precedent set forth in *Article VII* at Closing) have been met, or waived by Buyer, and (ii) the transactions contemplated by this Agreement are not consummated because of: (A) the failure of Buyer to perform in any material respect any of its obligations hereunder, or (B) the failure of any of Buyer's representations or warranties hereunder to be true and correct in all respects (without regard to materiality qualifiers) as of the Execution Date and/or as of the Closing, except for those breaches, if any, of such representations and warranties that in the aggregate would not have a Buyer Material Adverse Effect, then, in such event, Seller shall have the right to, at its option, (1) terminate this Agreement pursuant to *Section 14.1* and retain the Deposit together with any interest or income thereon, free of any claims by Buyer with



respect thereto as liquidated damages or (2) seek all remedies available at law or in equity, including specific performance by Buyer.

(c) If this Agreement is terminated by the mutual written agreement of the Parties, or this Agreement is otherwise terminated pursuant to *Section 14.1* and the Closing does not occur on or before the Closing Date for any reason other than as set forth in *Section 14.2(b)*, then Buyer shall be entitled to the delivery of the Deposit together with any interest or income actually earned thereon, free of any claims by Seller with respect thereto after the termination of this Agreement.

***14.3 Return of Documentation and Confidentiality.*** Upon termination of this Agreement, Buyer shall return to Seller all title, engineering, geological and geophysical data, environmental assessments and/or reports, maps and other information furnished by or on behalf of Seller to Buyer or prepared by or on behalf of Buyer in connection with its due diligence investigation of the Assets, in each case in accordance with the Confidentiality Agreements, and an officer of Buyer shall certify same to Seller in writing.

## ARTICLE XV
## DEFINED TERMS

***15.1 Defined Terms.*** Capitalized terms used herein shall have the meanings set forth in this *Section 15.1* unless the context requires otherwise.

"***Accounting Arbitrator***" shall have the meaning set forth in *Section 3.7*.

"***Additional Cash Consideration***" shall have the meaning set forth in *Section 3.11*.

"***Additional Lease***" shall mean any oil and gas lease with a paid-up primary term of not less than three (3) years and lease Burdens not exceeding twenty five percent (25%) and acquired by Seller within the Designated Area from and after the Execution Date and until the Closing, subject to the terms and conditions of *Section 6.6*.

"***Additional Lease Amount***" shall have the meaning set forth in *Section 6.6(a)*.

"***Adjusted Cash Consideration***" shall have the meaning set forth in *Section 3.3*.

"***AFEs***" shall have the meaning set forth in *Section 4.13*.

"***Affiliate***" shall mean, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another Person, and the term "***control***" and its derivatives with respect to any Person mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; *provided, however,* that EnCap Investments, L.P and its other controlled entities shall not be deemed to be an Affiliate of Seller.

"***Aggregate Deductible***" shall mean an amount equal to two and a half percent (2.5%) of the Unadjusted Purchase Price.



"***Agreement***" shall have the meaning set forth in the introductory paragraph herein.

"***Allocated Values***" shall have the meaning set forth in *Section 3.8*.

"***AMI Agreement***" shall have the meaning set forth in *Section 11.4(a)*.

"***Applicable Confidentiality Agreements***" shall mean all confidentiality or non-disclosure agreements executed within the 60 days prior to the Execution Date to which Seller or any affiliate of Seller is a party and that relate to the sale of all or any portion of the Leases or Wells.

"***Applicable Contracts***" shall mean all Contracts to which Seller is a party or is bound to the extent relating to any of the Assets and (in each case) that will be binding on Buyer after Closing, including: communitization agreements; unitization agreements; net profits agreements; production payment agreements; area of mutual interest agreements; joint venture agreements; confidentiality agreements; farmin and farmout agreements; bottom hole agreements; crude oil, condensate and natural gas purchase and sale, gathering, transportation and marketing agreements; hydrocarbon storage agreements; acreage contribution agreements; operating agreements; balancing agreements; processing agreements; saltwater disposal agreements; facilities or equipment leases; and other similar contracts and agreement, including the Contracts set forth on *Schedule 4.8*, but exclusive of any master service agreements and Contracts relating to the Excluded Assets.

"***Asset Taxes***" shall mean ad valorem, property, excise, severance, production, sales, use, or similar Taxes based upon or measured by the ownership or operation of the Assets or the production of Hydrocarbons or the receipt of proceeds therefrom, but excluding, for the avoidance of doubt, Income Taxes and Transfer Taxes.

"***Assets***" shall have the meaning set forth in *Section 2.1*.

"***Assignment***" shall mean the Assignment and Bill of Sale from Seller to Buyer, pertaining to the Assets, substantially in the form attached to this Agreement as *Exhibit D*.

"***Assumed Obligations***" shall have the meaning set forth in *Section 13.1*.

"***Burden***" shall mean any and all royalties (including lessor's royalty), overriding royalties, production payments, net profits interests and other burdens upon, measured by or payable out of production (excluding, for the avoidance of doubt, any Taxes).

"***Business Day***" shall mean a day (other than a Saturday or Sunday) on which commercial banks in Houston, Texas are generally open for business.

"***Buyer***" shall have the meaning set forth in the introductory paragraph herein.

"***Buyer Common Stock***" shall mean the common stock, par value $0.01 per share, of Buyer.

"***Buyer Indemnified Parties***" shall have the meaning set forth in *Section 13.2*.



"***Buyer Material Adverse Effect***" shall mean an event or circumstance that, individually or in the aggregate, results in a material adverse effect (a) to the financial condition, business or results of operations of Buyer and its Subsidiaries, taken as a whole; *provided, however*, that a Buyer Material Adverse Effect shall not include any material adverse effect resulting from: (i) entering into this Agreement or the announcement of the transactions contemplated by this Agreement; (ii) any action or omission of Buyer taken in accordance with the terms of this Agreement without the violation thereof or with the prior written consent of Seller; (iii) changes in general market, economic, financial or political conditions (including changes in commodity prices, fuel supply or transportation markets, interest or rates) in the area in which Buyer's assets are located, the United States or worldwide; (iv) changes in conditions or developments generally applicable to the oil and gas industry in the area where Buyer's assets are located; (v) acts of God, including hurricanes, tornados, storms or other naturally occurring events; (vi) acts or failures to act of Governmental Authorities; (vii) civil unrest, any outbreak of disease or hostilities, terrorist activities or war or any similar disorder; (viii) matters that are cured or no longer exist by the earlier of Closing and the termination of this Agreement; (ix) a change in Laws and any interpretations thereof from and after the Execution Date; (x) any reclassification or recalculation of reserves in the ordinary course of business; (xi) changes in service costs generally applicable to the oil and gas industry in the United States; (xi) strikes and labor disturbances; and (xiii) natural declines in well performance; provided that in each case, the changes and effects described in clauses (iii) or (iv) of this definition do not disproportionately affect Buyer's assets, taken as a whole or (b) on the ability of Buyer to consummate the transactions contemplated by this Agreement or perform its obligations hereunder.

"***Buyer SEC Documents***" shall have the meaning set forth in *Section 5.6(a)*.

"***Buyer's Auditors***" shall have the meaning set forth in *Section 6.10(a)*.

"***Buyer's Environmental Liabilities***" shall have the meaning set forth in *Section 12.1(a)*.

"***Buyer's Representatives***" shall have the meaning set forth in *Section 10.1(a)*.

"***Buyer Stock Plan***" shall have the meaning set forth in *Section 5.2(a)*.

"***Cash Consideration***" shall have the meaning set forth in *Section 3.1(a)*.

"***Casualty Loss***" shall have the meaning set forth in *Section 11.3(b)*.

"***Claim Notice***" shall have the meaning set forth in *Section 13.8(b)*.

"***Closing***" shall have the meaning set forth in *Section 9.1*.

"***Closing Date***" shall have the meaning set forth in *Section 9.1*.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended.

"***Confidentiality Agreement***" shall mean each of (i) that certain Confidentiality Agreement between Buyer and Seller and effective as of January 14, 2016 and (ii) that certain Confidentiality Agreement between Buyer and Seller and effective as of October 4, 2016.



"***Consent***" shall have the meaning set forth in *Section 4.4*.

"***Contract***" shall mean any written contract, agreement or any other legally binding arrangement, but excluding, however, any Lease, easement, right-of-way, permit or other instrument creating or evidencing an interest in the Assets or any real or immovable property related to or used in connection with the operations of any Assets.

"***Cure Period***" shall have the meaning set forth in *Section 11.2(c)*.

"***Customary Post-Closing Consents***" shall mean the consents and approvals from Governmental Authorities for the assignment of the Assets to Buyer that are customarily obtained after the assignment of properties similar to the Assets.

"***Decommission***" and "***Decommissioning***" shall mean all dismantling and decommissioning activities and obligations as are required by Law, any Governmental Authority or agreements including all well plugging, replugging and abandonment, facility dismantlement and removal, pipeline and flowline removal, dismantlement and removal of all other property of any kind related to or associated with operations or activities and associated site clearance, site restoration and site remediation.

"***Decommissioning Obligations***" shall have the meaning set forth in *Section 13.1*.

"***Defensible Title***" shall mean such title of Seller with respect to the Wells set forth on *Exhibit B*, and the Drilling Units set forth on *Schedule 3.8*, that, subject to Permitted Encumbrances:

(a) with respect to each Well set forth on *Schedule 3.8* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations), entitles Seller to receive not less than the Net Revenue Interest set forth on *Schedule 3.8* for such Well throughout the duration of the productive life of such Well, except for (i) decreases in connection with those operations in which Seller or its successors or assigns may from and after the Execution Date elect to be a non-consenting co-owner, (ii) decreases resulting from the establishment or amendment from and after the Execution Date of pools or units, (iii) decreases required to allow other Working Interest owners to make up past underproduction or pipelines to make up past under deliveries, and (iv) as otherwise set forth on *Schedule 3.8*;

(b) with respect to each Well set forth on *Schedule 3.8* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations), obligates Seller to bear not more than the Working Interest set forth on *Schedule 3.8* for such Well throughout the duration of the productive life of such Well, except (i) increases resulting from contribution requirements with respect to defaulting co-owners under applicable operating agreements, (ii) increases to the extent that such increases are accompanied by a proportionate increase in Seller's Net Revenue Interest in such Well, and (iii) as otherwise set forth on *Schedule 3.8*;

(c) with respect to each Drilling Unit set forth on *Schedule 3.8* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2*, as applicable), entitles Seller to receive not



less than the Net Revenue Interest set forth on *Schedule 3.8* for such Drilling Unit, except for (i) decreases in connection with those operations in which Seller or its successors or assigns may from and after the Execution Date elect to be a non-consenting co-owner, (ii) decreases resulting from the establishment or amendment from and after the Execution Date of pools or units, (iii) decreases required to allow other Working Interest owners to make up past underproduction or pipelines to make up past under deliveries, and (iv) as otherwise set forth on *Schedule 3.8*;

(d) with respect to each Drilling Unit set forth on *Schedule 3.8* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2*, as applicable), entitles Seller to receive not less than the Net Acres set forth on *Schedule 3.8* for such Drilling Unit, except for (i) decreases in connection with those operations in which Seller or its successors or assigns may from and after the Execution Date elect to be a non-consenting co-owner, (ii) decreases resulting from the establishment or amendment from and after the Execution Date of pools or units, (iii) decreases required to allow other Working Interest owners to make up past underproduction or pipelines to make up past under deliveries, and (iv) as otherwise set forth on *Schedule 3.8*; and

(e) is free and clear of all Encumbrances.

"***Deposit***" shall have the meaning set forth in *Section 3.2*.

"***Designated Area***" shall mean any area identified as a "Designated Area" on the plat attached hereto as *Exhibit G.*

"***Dispute Notice***" shall have the meaning set forth in *Section 3.6(a)*.

"***Disputed Environmental Matters***" shall have the meaning set forth in *Section 12.1(f)*.

"***Disputed Title Matters***" shall have the meaning set forth in *Section 11.2(j)*.

"***Double Eagle***" shall have the meaning set forth in *Section 11.4(b)*.

"***Double Eagle Assets***" shall have the meaning set forth in *Section 11.4(b)*.

"***Double Eagle Purchase Agreement***" shall have the meaning set forth in *Section 11.4(b)*.

"***Double Eagle Tag Right***" shall have the meaning set forth in *Section 11.4(b)*.

"***Drag Right***" shall have the meaning set forth in *Section 11.4(a)*.

"***Drilling Unit***" shall mean each of the areas of land described on *Exhibit H*.

"***Effective Time***" shall mean 7:00 a.m. (Central Time) on September 1, 2016.

"***email***" shall have the meaning set forth in *Section 16.6*.

"***Encumbrance***" shall mean any lien, mortgage, security interest, pledge, charge or similar encumbrance.



"***Environmental Arbitrator***" shall have the meaning set forth in *Section 12.1(f)*.

"***Environmental Claim Date***" shall have the meaning set forth in *Section 12.1(a)*.

"***Environmental Condition***" shall mean (a) a condition existing on the Environmental Claim Date with respect to the air, soil, subsurface, surface waters, ground waters and/or sediments that causes an Asset (or Seller with respect to an Asset) not to be in compliance with any Environmental Law or (b) the existence as of the Environmental Claim Date with respect to the Assets or their operation thereof of any environmental pollution, contamination or degradation where remedial or corrective action is presently required (or if known, would be presently required) under Environmental Laws.

"***Environmental Consultant***" shall have the meaning set forth in *Section 10.1(b)*.

"***Environmental Defect***" shall mean an Environmental Condition with respect to an Asset.

"***Environmental Defect Notice***" shall have the meaning set forth in *Section 12.1(a)*.

"***Environmental Indemnity Agreement***" shall have the meaning set forth in *Section 12.1(c)(iii)*.

"***Environmental Laws***" shall mean all applicable Laws in effect as of the Execution Date relating to pollution, protection of the environment (including natural resources) or occupational health or workplace safety, including those Laws relating to the storage, handling and use of chemicals and other Hazardous Substances and those Laws relating to the generation, processing, treatment, storage, transportation, disposal or other management thereof. The term "Environmental Laws" does not include (a) good or desirable operating practices or standards that may be employed or adopted by other oil and gas well operators or recommended by a Governmental Authority, or (b) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, as amended, or any other Law governing worker health or safety.

"***Equity Consideration***" shall have the meaning set forth in *Section 3.1(a)*.

"***Escrow Account***" means the account established pursuant to the Escrow Agreement.

"***Escrow Agent***" means Wells Fargo Bank, National Association.

"***Escrow Agreement***" means that certain Escrow Agreement to be entered into as of the Execution Date by and among Seller, Buyer and the Escrow Agent, in the form attached hereto as *Exhibit F*.

"***Escrow Claim***" shall have the meaning set forth in *Section 13.5(a)*.

"***Escrow Claim Notice***" shall have the meaning set forth in *Section 13.5(a)*.

"***Exchange***" shall have the meaning set forth in *Section 16.17*.



"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"***Excluded Assets***" shall mean

(a) all of Seller's corporate minute books, financial records and other business records that relate to Seller's business generally (including the ownership and operation of the Assets);

(b) to the extent that they do not relate to the Assumed Obligations for which Buyer is providing indemnification hereunder, all trade credits, all accounts, all receivables of Seller and all other proceeds, income or revenues of Seller attributable to the Assets and attributable to any period of time prior to the Effective Time;

(c) to the extent that they do not relate to the Assumed Obligations for which Buyer is providing indemnification hereunder, Seller's right with respect to all claims and causes of action of Seller arising under or with respect to any Contract that are attributable to periods of time prior to the Effective Time (including claims for adjustments or refunds);

(d) subject to *Section 11.3* and to the extent that they do not relate to the Assumed Obligations for which Buyer is providing indemnification hereunder, 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;

(e) Seller's rights with respect to all Hydrocarbons produced and sold from the Assets with respect to all periods prior to the Effective Time;

(f) any and all claims of Seller or its Affiliates for refunds of, credits attributable to, loss carryforwards with respect to, or similar Tax assets relating to (i) Asset Taxes attributable to any period (or portion thereof) ending prior to the Effective Time, (ii) Income Taxes, (iii) Taxes attributable to the Excluded Assets and (iv) any other Taxes relating to the ownership or operation of the Assets or the production of Hydrocarbons or the receipt of proceeds therefrom that are attributable to any period (or portion thereof) ending prior to the Effective Time;

(g) all of Seller's personal computers and associated peripherals and all of Seller's radio and telephone equipment;

(h) all of Seller's proprietary computer software, patents, trade secrets, copyrights, names, trademarks, logos and other intellectual property;

(i) all documents and instruments of Seller that may be protected by an attorney-client privilege or any attorney work product doctrine (except for title opinions and memorandums);

(j) all data of Seller that cannot be disclosed to Buyer as a result of confidentiality arrangements under agreements with Third Parties;



(k) all audit rights of Seller arising under any of the Applicable Contracts or otherwise with respect to any period prior to the Effective Time or to any of the Excluded Assets, except for any Imbalances assumed by Buyer;

(l) all geophysical and other seismic and related technical data and information relating to the Assets which Seller may not disclose, assign or transfer under its existing agreements and licenses without making any additional payments or incurring any liabilities or obligations, *provided, however*, that Seller will give Buyer notice of any such additional payments or liabilities or obligations, and if Buyer elects to make such payment or take on such obligation or liability, then such data shall not constitute an Excluded Asset;

(m) correspondence between Seller or any of its representatives and documents prepared or received by Seller or its Affiliates, in each case, with respect to any of the prospective purchasers or the transactions contemplated by this Agreement, except for the Applicable Confidentiality Agreements;

(n) any Assets excluded pursuant to *Section 10.1(b)* or *Section 12.1(c)(ii);*

(o) any offices, office leases and any personal property located in or on such offices or office leases;

(p) any Hedge Contracts;

(q) any debt instruments of Seller;

(r) all of Seller's personnel files and records;

(s) the monies held by Seller for which the Cash Consideration was adjusted pursuant to*Section 3.3(b)(viii)*;

(t) any assets described in *Section 2.1(f)* that are not assignable;

(u) any fee mineral interests, and any right to production revenues associated therewith; and

(v) any leases, Contracts, rights and other assets specifically listed on *Exhibit C*.

"***Execution Date***" shall have the meaning set forth in the introductory paragraph herein.

"***Final Cash Price***" shall have the meaning set forth in *Section 3.6(a)*.

"***Final Settlement Statement***" shall have the meaning set forth in *Section 3.6(a)*.

"***GAAP***" shall mean generally accepted accounting principles in the United States as interpreted as of the Execution Date.

"***Governmental Authority***" shall mean any federal, state, local, municipal, tribal or other government; any governmental, regulatory or administrative agency, commission, body or other



authority exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power, and any court or governmental tribunal, including any tribal authority having or asserting jurisdiction.

"***Governmental Bonds***" shall have the meaning set forth in *Section 6.3(a)*.

"***Hazardous Substances***" shall mean any pollutants, contaminants, toxic or hazardous or extremely hazardous substances, materials, wastes, constituents, compounds or chemicals that are regulated by, or may form the basis of Liability under, any Environmental Laws, including NORM and other substances referenced in *Section 12.2*.

"***Hedge Contract***" shall mean any Contract to which Seller or any of its Affiliates is a party with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, "over-the-counter" or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"***Holdback Amount***" shall mean a portion of the Cash Consideration representing ten percent (10%) of the Unadjusted Purchase Price, together with any dividends, distributions, earnings or other amounts accrued thereon from and after Closing.

"***Holdback Excess Amount***" shall mean the Holdback Amount less the Deposit.

"***Holdback Period***" shall have the meaning set forth in *Section 13.5(a).*

"***Hydrocarbons***" shall mean oil and gas and other hydrocarbons produced or processed in association therewith.

"***Imbalances***" shall mean all Well Imbalances and Pipeline Imbalances.

"***Income Taxes***" shall mean any income, franchise and similar Taxes.

"***Indemnified Party***" shall have the meaning set forth in *Section 13.8(a)*.

"***Indemnifying Party***" shall have the meaning set forth in *Section 13.8(a)*.

"***Indemnity Deductible***" shall mean an amount equal to two and a half percent (2.5%) of the Unadjusted Purchase Price.

"***Individual Environmental Threshold***" shall have the meaning set forth in *Section 12.1(e)*.

"***Individual Title Defect Threshold***" shall have the meaning set forth in *Section 11.2(i)*.

"***Interim Period***" shall mean that period of time commencing with the Effective Time and ending at 7:00 a.m. (Central Time) on the Closing Date.

"***JDA***" shall have the meaning set forth in *Section 11.4(b)*.



"***Knowledge***" shall mean (a) with respect to Seller, the actual knowledge (without investigation) of the following Persons: Gerald R. Carman, David C. Newman, Joel E. Saber, John E. Lodge and Charles R. Close; and (b) with respect to Buyer, the actual knowledge (without investigation) of the following Persons: Javan D. Ottoson, A. Wade Pursell, David Copeland, Kenneth Knott and Herbert S. Vogel.

"***Law***" shall mean any applicable statute, law, rule, regulation, ordinance, order, code, ruling, writ, injunction, decree or other official act of or by any Governmental Authority.

"***Leases***" shall have the meaning set forth in *Section 2.1(a)*.

"***Liabilities***" shall mean any and all claims, obligations, causes of action, payments, charges, judgments, assessments, liabilities, losses, damages, penalties, fines and costs and expenses, including any attorneys' fees, legal or other expenses incurred in connection therewith and including liabilities, costs, losses and damages for personal injury or death or property damage or environmental damage or Remediation.

"***Lock-up and Registration Rights Agreement***" means that certain Lock-up and Registration Rights Agreement dated as of the Closing Date, in the form attached hereto as *Exhibit E*.

"***Material Adverse Effect***" shall mean an event or circumstance that, individually or in the aggregate, results in a material adverse effect on the ownership, operation or value of the Assets taken as a whole and as currently operated as of the Execution Date or a material adverse effect on the ability of Seller to consummate the transactions contemplated by this Agreement and perform its obligations hereunder; *provided*, *however*, that a Material Adverse Effect shall not include any material adverse effect resulting from: (a) entering into this Agreement or the announcement of the transactions contemplated by this Agreement; (b) any action or omission of Seller taken in accordance with the terms of this Agreement without the violation thereof or with the prior written consent of Buyer; (c) changes in general market, economic, financial or political conditions (including changes in commodity prices, fuel supply or transportation markets, interest or rates) in the area in which the Assets are located, the United States or worldwide; (d) changes in conditions or developments generally applicable to the oil and gas industry in the area where the Assets are located; (e) acts of God, including hurricanes, tornados, storms or other naturally occurring events; (f) acts or failures to act of Governmental Authorities; (g) civil unrest, any outbreak of disease or hostilities, terrorist activities or war or any similar disorder; (h) matters that are cured or no longer exist by the earlier of Closing and the termination of this Agreement; (i) a change in Laws and any interpretations thereof from and after the Execution Date; (j) any reclassification or recalculation of reserves in the ordinary course of business; (k) changes in service costs generally applicable to the oil and gas industry in the United States; (l) strikes and labor disturbances; and (m) natural declines in well performance; provided that in each case, the changes and effects described in clauses (c) or (d) of this definition do not disproportionately affect the Assets, taken as a whole.

"***Material Contracts***" shall have the meaning set forth in *Section 4.8(a)*.



"***Net Acres***" shall mean, as computed separately with respect to (a) each Lease, subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2*, as applicable: (i) the number of gross acres in the lands covered by such Lease, *multiplied* by (ii) the undivided percentage interest in oil, gas and other minerals covered by such Lease, *multiplied* by (iii) Seller's portion of such undivided percentage interest that is burdened with the obligation to bear and pay costs and expenses, and (b) each Drilling Unit, the Net Acres (as determined in accordance with clause (a) of this definition) for all Leases located within such Drilling Unit.

"***Net Revenue Interest***" shall mean, (a) with respect to each Well set forth on *Schedule 3.8* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations), the interest in and to all Hydrocarbons produced, saved and sold from or allocated to such Well (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations), after giving effect to all Burdens, and (b) with respect to each Drilling Unit, the Weighted Average Net Revenue Interest for such Drilling Unit, after giving effect to all Burdens.

"***Non-Compete Area***" shall mean the area identified as the "Non-Compete Area" on the plat attached hereto as *Exhibit I.*

"***NORM***" shall mean naturally occurring radioactive material.

"***NYSE***" shall mean the New York Stock Exchange.

"***Operating Expenses***" shall have the meaning set forth in *Section 2.3*.

"***Outside Termination Date***" shall have the meaning set forth in *Section 14.1(d)*.

"***Party***" and "***Parties***" shall have the meaning set forth in the introductory paragraph herein.

"***Permitted Encumbrances***" shall mean:

(a) all Burdens if the net cumulative effect of such Leases and Burdens (i) does not operate to reduce the Net Revenue Interest of Seller with respect to any Well or Drilling Unit set forth on *Exhibit B* or *Schedule 3.8*, as applicable, to an amount less than the Net Revenue Interest set forth on *Exhibit B* or *Schedule 3.8*, as applicable, for such Well or Drilling Unit, (ii) does not obligate Seller to bear a Working Interest with respect to any Well set forth on *Exhibit B* in any amount greater than the Working Interest set forth on *Exhibit B* for such Well (unless the Net Revenue Interest for such Well is greater than the Net Revenue Interest set forth on *Exhibit B* in the same or greater proportion as any increase in such Working Interest), and (iii) does not operate to reduce the Net Acres of Seller with respect to any Drilling Unit set forth on *Schedule 3.8* to an amount less than the Net Acres set forth on *Schedule 3.8* for such Drilling Unit;

(b) Preferential Purchase Rights set forth on *Schedule 4.10*;

(c) required third party consents to assignments or similar agreements set forth on *Schedule 4.4* or under Applicable Contracts that are terminable upon not greater than sixty (60) days' notice without payment of any fee;

(d) liens for Taxes not yet due or delinquent or, if delinquent, that are being contested in good faith in the normal course of business;

(e) Customary Post-Closing Consents;

(f) to the extent not currently triggered or triggered as of the Title Claim Date, conventional rights of reassignment;

(g) such Title Defects as Buyer may have waived or is deemed to have waived pursuant to the terms of this Agreement (other than claims that may be made pursuant to the special warranty of title in the Assignment);

(h) all applicable Laws and all rights reserved to or vested in any Governmental Authority (i) to control or regulate any Asset in any manner; (ii) by the terms of any right, power, franchise, grant, license or permit, or by any provision of Law, to terminate such right, power, franchise, grant, license or permit or to purchase, condemn, expropriate or recapture or to designate a purchaser of any of the Assets; (iii) to use such property in a manner which does not materially impair the use of such property for the purposes for which it is currently owned and operated; or (iv) to enforce any obligations or duties affecting the Assets to any Governmental Authority with respect to any franchise, grant, license or permit;

(i) rights of a common owner of any interest in rights-of-way, permits or easements held by Seller and such common owner as tenants in common or through common ownership to the extent the same does not materially impair the use or operation of the Assets as currently used and operated;

(j) easements, conditions, covenants, restrictions, servitudes, permits, rights-of-way, surface leases and other rights in the Assets for the purpose of operations, facilities, roads, alleys, highways, railways, pipelines, transmission lines, transportation lines, distribution lines, power lines, telephone lines, removal of timber, grazing, logging operations, canals, ditches, reservoirs and other like purposes, or for the joint or common use of real estate, rights-of-way, facilities and equipment, which, in each case do not materially impair the use, ownership or operation of the Assets as currently owned and operated;

(k) vendors, carriers, warehousemen's, repairmen's, mechanics', workmen's, materialmen's, construction or other like liens arising by operation of Law in the ordinary course of business or incident to the construction or improvement of any property in respect of obligations which are not yet due or which are being contested in good faith by appropriate proceedings before a Governmental Authority by or on behalf of Seller;

(l) liens created under operating agreements or by operation of Law in respect of obligations that are not yet due or that are being contested in good faith by appropriate proceedings before a Governmental Authority by or on behalf of Seller;



(m) any Encumbrance affecting the Assets that is discharged by Seller at or prior to Closing;

(n) any matters referenced and set forth on *Exhibit A-1* or *Exhibit A-2* and all litigation set forth in *Schedule 4.7*;

(o) mortgage liens burdening a lessor's interest in the Assets, but only to the extent such lien has not been foreclosed;

(p) the terms and conditions of all Contracts (including the Applicable Contracts) if the net cumulative effect of such Contracts (i) does not operate to reduce the Net Revenue Interest of Seller with respect to any Well or Drilling Unit set forth on *Schedule 3.8*, to an amount less than the Net Revenue Interest set forth on *Schedule 3.8*, for such Well or Drilling Unit, (ii) does not obligate Seller to bear a Working Interest with respect to any Well set forth on *Schedule 3.8* in any amount greater than the Working Interest set forth on *Schedule 3.8* for such Well (unless the Net Revenue Interest for such Well is greater than the Net Revenue Interest set forth on *Schedule 3.8* in the same or greater proportion as any increase in such Working Interest), and (iii) does not operate to reduce the Net Acres of Seller with respect to any Drilling Unit set forth on *Schedule 3.8* to an amount less than the Net Acres set forth on *Schedule 3.8* for such Drilling Unit; and

(q) the Leases and all other Encumbrances, instruments, obligations, defects and irregularities affecting the Assets that, individually or in the aggregate, (i) are not such as to materially interfere with the operation or use of any of the Assets (as currently operated and used), (ii) do not reduce the Net Revenue Interest of Seller with respect to any Well or Drilling Unit set forth on *Schedule 3.8*, to an amount less than the Net Revenue Interest set forth on *Schedule 3.8* for such Well or Drilling Unit, (iii) do not obligate Seller to bear a Working Interest in any amount greater than the Working Interest set forth on *Schedule 3.8* for such Well (unless the Net Revenue Interest for such Well is greater than the Net Revenue Interest set forth on *Schedule 3.8* in the same or greater proportion as any increase in such Working Interest), and (iv) do not operate to reduce the Net Acres of Seller with respect to any Drilling Unit set forth on *Schedule 3.8* to an amount less than the Net Acres set forth on *Schedule 3.8* for such Drilling Unit.

"***Person***" shall mean any individual, firm, corporation, company, partnership, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority or any other entity.

"***Personal Property***" shall have the meaning set forth in *Section 2.1(g)*.

"***Pipeline Imbalance***" shall mean any marketing imbalance between the quantity of Hydrocarbons attributable to the Assets required to be delivered by Seller under any Contract relating to the purchase and sale, gathering, transportation, storage, processing (including any production handling and processing at a separation facility) or marketing of Hydrocarbons and the quantity of Hydrocarbons attributable to the Assets actually delivered by Seller pursuant to the relevant Contract, together with any appurtenant rights and obligations concerning



production balancing at the delivery point into the relevant sale, gathering, transportation, storage or processing facility.

"***Phase I Environmental Site Assessment***" means an environmental site assessment performed pursuant to ASTM Standard E1527, or any similar environmental assessment that does not involve any invasive, sampling or testing activities.

"***Phase II Environmental Site Assessment***" shall have the meaning set forth in *Section 10.1(b)*.

"***Preferential Purchase Right***" shall have the meaning set forth in *Section 4.10*.

"***Preliminary Settlement Statement***" shall have the meaning set forth in *Section 3.5*.

"***Purchase Price***" shall have the meaning set forth in *Section 3.1(a)*.

"***Records***" shall have the meaning set forth in *Section 2.1(i)*.

"***Remediation***" shall mean, with respect to an Environmental Condition, the implementation and completion of any remedial, removal, response, construction, closure, disposal or other corrective actions, including monitoring and reporting, to the extent but only to the extent required under Environmental Laws to correct or remove such Environmental Condition.

"***Remediation Amount***" shall mean, with respect to an Environmental Condition, the present value as of the Closing Date (using an annual discount rate of ten percent (10%)) of the cost (net to Seller's interest prior to the consummation of the transactions contemplated by this Agreement) of the most cost-effective Remediation of such Environmental Condition that is reasonably available.

"***RRP***" shall have the meaning set forth in *Section 11.4(a)*.

"***RRP Assets***" shall have the meaning set forth in *Section 11.4(a)*.

"***RRP Purchase Agreement***" shall have the meaning set forth in *Section 11.4(a)*.

"***RRP Tag Right***" shall have the meaning set forth in *Section 11.4(a)*.

"***Scheduled Environmental Matters***" shall mean the air emissions permits, SPCC plans and oil spill matters specifically described on *Schedule 4.17* to the extent relating to the condition of the Assets at or prior to the Closing.

"***SEC***" shall mean the United States Securities and Exchange Commission.

"***Securities Act***" shall have the meaning set forth in *Section 4.16*.

"***Section 5.5(a) Breach***" shall have the meaning set forth in *Section 3.11*.

"***Seller***" shall have the meaning set forth in the introductory paragraph of this Agreement.



"***Seller Indemnified Parties***" shall have the meaning set forth in *Section 13.3*.

"***Seller Taxes***" shall mean (a) all Income Taxes imposed by any applicable Law on Seller, (b) Asset Taxes allocable to Seller pursuant to *Section 16.2* (taking into account, and without duplication of, (i) such Asset Taxes effectively borne by Seller as a result of adjustments to the Cash Consideration made pursuant to *Sections 3.3*, *3.5* and *3.6*, as applicable, and (ii) any payments made from one Party to the other in respect of Asset Taxes pursuant to *Section 16.2(d)*), and (c) any Taxes imposed on or with respect to the ownership or operation of the Excluded Assets or that are attributable to any asset or business of Seller that is not part of the Assets and (d) any and all Taxes (other than the Taxes described in clauses (a), (b) or (c) of this definition) imposed on or with respect to the ownership or operation of the Assets or the production of Hydrocarbons or the receipt of proceeds therefrom for any Tax period (or portion thereof) ending before the Effective Time.

"***Specified Representations***" shall mean the representations and warranties in *Sections 4.1, 4.2, 4.6, 5.1*, *5.2*, *5.3*, *5.13*, *5.14* and *5.15*.

"***Straddle Period***" shall mean any Tax period beginning before and ending after the Effective Time.

"***Subject Assets***" means the full 8/8ths interest in the assets described in *Section 2.1(a)* through *Section 2.1(i)* (disregarding the "Seller's right, title and interest" clause in the lead-in to *Section 2.1*).

"***Subsidiary***" shall mean, with respect to a Person (the "***Subject Person***"), any Person, whether incorporated or unincorporated, of which (a) at least 50% of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors of other Persons performing similar functions, (b) a general partner interest or (c) a managing member interest, is in each case, directly or indirectly, owned or controlled by the Subject Person or by one or more of its respective Subsidiaries.

"***Survival Period***" shall have the meaning set forth in *Section 11.1(c)(i)*.

"***Tax Return***" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"***Taxes***" shall mean any taxes, assessments, fees, levies, duties, tariffs, imposts and other governmental charges in the nature of a tax imposed by any Governmental Authority, including (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return) income, windfall, profits, capital gains, gross receipts, goods and services, ad valorem, real property, personal property, transfer, sales, use, value added, stamp, customs, duties, franchise, capital stock, capital, net worth, payroll, employment, unemployment, occupation, social security, excise, withholding, severance, production, environmental, estimated or other tax, including any interest, penalty or addition thereto (whether disputed or not).

"***Third Party***" shall mean any Person other than a Party to this Agreement or an Affiliate of a Party to this Agreement.



"***Third Party Claim***" shall have the meaning set forth in *Section 13.8(b)*.

"***Title Arbitrator***" shall have the meaning set forth in *Section 11.2(j)*.

"***Title Benefit***" shall mean, (a) with respect to each Well set forth on *Exhibit B*, any right, circumstance or condition that operates to (i) increase the Net Revenue Interest of Seller above that shown for such Well on *Exhibit B,* to the extent the same does not cause a greater than proportionate increase in Seller's Working Interest therein

above that shown on *Exhibit B* or (ii) to decrease the Working Interest of Seller in any Well below that shown for such Well on *Exhibit B*, to the extent the same causes a decrease in Seller's Working Interest that is proportionately greater than the decrease in Seller's Net Revenue Interest therein below that shown on *Exhibit B*; and (b) with respect to each Drilling Unit set forth on *Schedule 3.8*, or any other property included in the Assets, as applicable, subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2* (as applicable), any right, circumstance or condition that operates to increase the Net Acres of Seller above that shown for such Drilling Unit or other property shown on *Schedule 3.8*, if applicable.

"***Title Benefit Amount***" shall have the meaning set forth in *Section 11.2(e)*.

"***Title Benefit Notice***" shall have the meaning set forth in *Section 11.2(b)*.

"***Title Benefit Property***" shall have the meaning set forth in *Section 11.2(b)*.

"***Title Claim Date***" shall have the meaning set forth in *Section 11.2(a)*.

"***Title Defect***" shall mean any Encumbrance, defect or other matter that causes Seller not to have Defensible Title in and to the Wells set forth on *Exhibit B*, or the Drilling Units set forth on *Schedule 3.8*, as of the Title Claim Date, without duplication; *provided* that the following shall not be considered Title Defects:

(a) defects arising out of lack of corporate or other entity authorization unless Buyer provides affirmative evidence that reasonably indicates such corporate or other entity action may not have been authorized and could reasonably be expected to result in another Person's superior claim of title to the relevant Asset;

(b) defects based on a gap in Seller's chain of title in the applicable federal, state or county records, unless such gap is affirmatively shown to exist in such records by an abstract of title, title opinion or landman's title chain which documents shall be included in a Title Defect Notice;

(c) defects based upon the failure to record any federal, state or Indian Leases or any assignments of interests in such Leases in any applicable county records;

(d) defects based on the failure to recite marital status in a document;

(e) any Encumbrance or loss of title resulting from Seller's conduct of business after the Execution Date pursuant to actions specifically permitted by Seller pursuant to this Agreement;



(f) defects that affect only which Person has the right to receive royalty payments (rather than the amount or the proper payment of such royalty payment) to the extent that the applicable royalty payments have been legally placed in suspense;

(g) defects based solely on lack of information in Seller's files;

(h) defects or irregularities that would customarily be waived by a reasonable owner or operator of oil and gas properties;

(i) defects arising out of lack of survey, unless a survey is expressly required by applicable Laws;

(j) defects that have been cured by applicable Laws of limitations or prescription;

(k) defects arising from any change in applicable Law after the Execution Date, including changes that would raise the minimum landowner royalty; and

(l) defects or irregularities resulting from liens, production payments, or mortgages that have expired by their own express terms or the enforcement of which are barred by applicable statutes of limitation.

"***Title Defect Amount***" shall have the meaning set forth in *Section 11.2(g)*.

"***Title Defect Notice***" shall have the meaning set forth in *Section 11.2(a)*.

"***Title Defect Property***" shall have the meaning set forth in *Section 11.2(a)*.

"***Title Indemnity Agreement***" shall have the meaning set forth in *Section 11.2(d)(ii)*.

"***Transaction Documents***" shall mean those documents executed pursuant to or in connection with this Agreement.

"***Transfer Taxes***" shall have the meaning set forth in *Section 16.2(f)*.

"***Unadjusted Purchase Price***" shall have the meaning set forth in *Section 3.1(a)*.

"***Units***" shall have the meaning set forth in *Section 2.1(b)*.

"***Voting Debt***" shall mean any bonds, debentures, notes or other indebtedness having the right to vote, or convertible into securities having the right to vote, on any matters on which stockholders of the Buyer or any its Subsidiaries may vote.

"***VWAP***" means, for any trading day, the volume-weighted average price per share of Buyer Common Stock as displayed in the "VWAP" field on Bloomberg (or any successor service) page in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such trading day.

"***Wells***" shall have the meaning set forth in *Section 2.1(c)*.



"***Well Imbalance***" shall mean any imbalance at the wellhead between the amount of Hydrocarbons produced from a Well and allocable to the interests of Seller therein and the shares of production from the relevant Well to which Seller is entitled, together with any appurtenant rights and obligations concerning future in kind and/or cash balancing at the wellhead.

"***Weighted Average Net Revenue Interest***" shall mean in the case of any Drilling Unit, the sum of the following for each Lease in such Drilling Unit: (a) the product of the Net Revenue Interest for such Lease, multiplied by (b) a fraction, (i) the numerator of which is the number of Net Acres subject to such Lease (but only to the extent such Lease is actually located within such Drilling Unit), and (ii) the denominator of which is the total number of Net Acres subject to Leases in such Drilling Unit (but only to the extent such Leases are actually located within such Drilling Unit).

"***Working Interest***" shall mean with respect to any Well set forth on *Exhibit B* (subject to the depth restrictions set forth on *Exhibit A-1* or *Exhibit A-2,* as applicable, and limited to any currently producing formations) or any Lease, the interest in and to such currently producing formations for such Well that is burdened with the obligation to bear and pay costs and expenses of maintenance, development and operations on or in connection with such currently producing formations for such Well, but without regard to the effect of any Burdens.

## ARTICLE XVI
## MISCELLANEOUS

***16.1 Appendices, Exhibits and Schedules.*** All of the Appendices, Exhibits and Schedules referred to in this Agreement are hereby incorporated into this Agreement by reference and constitute a part of this Agreement. Each Party to this Agreement and its counsel has received a complete set of Appendices, Exhibits and Schedules prior to and as of the execution of this Agreement.

***16.2 Expenses and Taxes.***

(a) Except as otherwise specifically provided herein, all fees, costs and expenses incurred by Buyer or Seller in negotiating this Agreement or in consummating the transactions contemplated by this Agreement shall be paid by the Party incurring the same, including legal and accounting fees, costs and expenses.

(b) Seller shall be allocated and bear all Asset Taxes attributable to (i) any Tax period ending prior to the Effective Time and (ii) the portion of any Straddle Period ending immediately prior to the Effective Time. Buyer shall be allocated and bear all Asset Taxes attributable to (x) any Tax period beginning at or after the Effective Time and (y) the portion of any Straddle Period beginning at the Effective Time.

(c) For purposes of determining the allocations described in *Section 16.2(b)*, (i) Asset Taxes that are attributable to the severance or production of Hydrocarbons (other than such Asset Taxes described in clause (iii) below) shall be allocated to the period (or portion thereof) in which the severance or production giving rise to such Asset Taxes occurred, (ii) Asset Taxes that are based upon or related to income or receipts or imposed on a transactional basis (other than such Asset Taxes described in clause (i) above or (iii) below), shall be allocated to



the period (or portion thereof) in which the transaction giving rise to such Asset Taxes occurred, and (iii) Asset Taxes that are ad valorem, property or other Asset Taxes imposed on a periodic basis pertaining to a Straddle Period shall be allocated between the portion of such Straddle Period ending immediately prior to the Effective Time and the portion of such Straddle Period beginning at the Effective Time by prorating each such Asset Tax based on the number of days in the applicable Straddle Period that occur before the date on which the Effective Time occurs, on the one hand, and the number of days in such Straddle Period that occur on or after the date on which the Effective Time occurs, on the other hand. For purposes of clause (iii) of the preceding sentence, the period for such Asset Taxes shall begin on the date on which ownership of the applicable Assets gives rise to liability for the particular Asset Tax and shall end on the day before the next such date.

(d) To the extent the actual amount of an Asset Tax is not known at the time an adjustment is to be made with respect to such Asset Tax pursuant to *Sections 3.3*, *3.5* and *3.6*, as applicable, the Parties shall utilize the most recent information available in estimating the amount of such Asset Tax for purposes of such adjustment. To the extent the actual amount of an Asset Tax (or the amount thereof paid or economically borne by a Party) is ultimately determined to be different than the amount (if any) that was taken into account in the Final Settlement Statement as finally determined pursuant to *Section 3.6*, timely payments will be made from one Party to the other to the extent necessary to cause each Party to bear the amount of such Asset Tax that is allocable to such Party under this *Section 16.2*.

(e) Subject to Buyer's indemnification rights under *Article XIII*, after the Closing Date, Buyer shall (i) be responsible for paying any Asset Taxes relating to any Tax period that ends before or includes the Effective Time that become due and payable after the Closing Date and shall file with the appropriate Governmental Authority any and all Tax Returns required to be filed after the Closing Date with respect to such Asset Taxes, (ii) submit each such Tax Return to Seller for its review and comment reasonably in advance of the due date therefor, (iii) timely file any such Tax Return incorporating any reasonable comments received from Seller prior to the due date therefor, and (iv) provide a copy of each such Tax Return, as filed, to Seller reasonably promptly after the filing thereof. The Parties agree that (A) this *Section 16.2(e)* is intended to solely address the timing and manner in which certain Tax Returns relating to Asset Taxes are filed and the Asset Taxes shown thereon are paid to the applicable taxing authority, and (B) nothing in this *Section 16.2(e)* shall be interpreted as altering the manner in which Asset Taxes are allocated to and economically borne by both the Parties (except for any penalties, interest or additions to Tax imposed as a result of any breach by Buyer of its obligations under this *Section 16.2(e)*, which shall be borne by Buyer).

(f) The transactions described in this Agreement involve the transfer of real estate with tangible personal property, if any, being transferred incidental to such real estate; accordingly, the Parties do not anticipate that any sales, use, transfer, stamp, documentary, registration or similar Taxes will be incurred or imposed with respect to the transactions described in this Agreement (collectively "***Transfer Taxes***"). To the extent that any Transfer Taxes are imposed on the purchase and sale of the Assets pursuant to this Agreement, Buyer shall bear and pay such Transfer Taxes. Seller and Buyer shall reasonably cooperate in good faith to minimize, to the extent permissible under applicable Law, the amount of any such Transfer Taxes.



(g) The Parties shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, litigation, or other proceeding with respect to Taxes relating to the Assets. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information that are relevant to any such Tax Return or audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided under this Agreement. The Parties agree to retain all books and records with respect to Tax matters pertinent to the Assets relating to any Tax period beginning before the Closing Date until the expiration of the statute of limitations of the respective Tax periods and to abide by all record retention agreements entered into by either Party with any Governmental Authority.

(h) Buyer and Seller shall use commercially reasonable efforts to agree to an allocation of the Purchase Price and any other items properly treated as consideration for U.S. federal income Tax purposes among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder and, to the extent allowed under applicable federal income tax Law, in a manner consistent with the Allocated Values, within thirty (30) days after the date that the Final Settlement Statement is delivered pursuant to *Section 3.6*. If Seller and Buyer reach an agreement with respect to the allocation, (i) Buyer and Seller shall use commercially reasonable efforts to update the allocation in accordance with Section 1060 of the Code following any adjustment to the Purchase Price pursuant to this Agreement, and (ii) Buyer and Seller shall, and shall cause their Affiliates to, report consistently with the allocation, as adjusted, on all Tax Returns, including Internal Revenue Service Form 8594 (Asset Acquisition Statement under Section 1060), which Buyer and Seller shall timely file with the IRS, and neither Seller nor Buyer shall take any position on any Tax Return that is inconsistent with the allocation, as adjusted, unless otherwise required by applicable Law; provided, however, that neither Party shall be unreasonably impeded in its ability and discretion to negotiate, compromise and/or settle any Tax audit, claim or similar proceedings in connection with such allocation.

***16.3 Assignment.*** Subject to the provisions of *Section 16.17*, this Agreement may not be assigned by either Party without the prior written consent of the other Party. In the event the other Party consents to any such assignment, such assignment shall not relieve the assigning Party of any obligations and responsibilities hereunder, including obligations and responsibilities arising following such assignment. Any assignment or other transfer by either Party or its successors and assigns of any of the Assets shall not relieve such Party or its successors or assigns of any of their obligations (including indemnity obligations) hereunder, as to the Assets so assigned or transferred.

***16.4 Preparation of Agreement.*** Both Seller and Buyer and their respective counsel participated in the preparation of this Agreement. In the event of any ambiguity in this Agreement, no presumption shall arise based on the identity of the draftsman of this Agreement.

***16.5 Publicity.*** Seller and Buyer shall promptly consult with each other with regard to all press releases or other public or private announcements issued or made at or prior to Closing concerning this Agreement or the transactions contemplated herein, and, except as may be required by applicable Laws or the applicable rules and regulations of any Governmental



Authority or stock exchange, neither Buyer nor Seller shall issue any such press release or other public or private announcement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. The Parties shall be obligated to hold all specific terms and provisions of this Agreement strictly confidential until the expiration of the two (2)-year period after the Closing; *provided*, *however*, that the foregoing shall not (a) restrict disclosures by Buyer or Seller that are required by applicable securities or other Laws or regulations or the applicable rules of any stock exchange having jurisdiction over the disclosing Party or its Affiliates, *provided* that such disclosures shall be made only to the extent required thereunder, (b) prevent Buyer or Seller from recording the Assignment and any federal or state assignments delivered at Closing or from complying with any disclosure requirements of Governmental Authorities that are applicable to the transfer of the Assets from Seller to Buyer, (c) prevent Buyer or Seller from making any disclosure of information relating to this Agreement if made in a manner, under conditions and to Persons that would be permitted under the Confidentiality Agreement so long as such Person continues to hold such information confidential on the same terms as set forth in this *Section 16.5* and (d) prevent Seller from making disclosures in connection with complying with Preferential Purchase Rights and other transfer restrictions applicable to the transactions contemplated hereby. Notwithstanding anything to the contrary in this *Section 16.5*, any Party or Affiliate of a Party may disclose information regarding the Assets in investor presentations, industry conference presentations or similar disclosures to the extent that such information has previously been publicly released in compliance with this Section.

***16.6 Notices.*** All notices and communications required or permitted to be given hereunder shall be given in writing and shall be delivered personally, or sent by bonded overnight courier, or mailed by U.S. Express Mail, Federal Express or United Parcel Service Express Delivery or by certified or registered United States Mail with all postage fully prepaid, or sent by facsimile transmission (*provided* any such facsimile transmission is confirmed either orally or by written confirmation), or sent by electronic mail ("***email***") transmission (*provided* that receipt of such email is requested and received, excluding automatic receipts) addressed to the appropriate Party at the address for such Party shown below or at such other address as such Party shall have theretofore designated by written notice delivered to the Party giving such notice:

If to Seller:

QStar LLC
203 Wall Street
Midland, Texas 79701
Attention: John E. Lodge
Vice President – Land & Commercial
Email: jlodge@qstarllc.com

If to Buyer:

SM Energy Company
1775 Sherman Street
Suite 1200



Denver, Colorado 80203
Attn: David W. Copeland
Executive Vice President, General Counsel and Corporate Secretary
Email: dcopeland@sm-energy.com

With a copy to (which shall not constitute notice):

SM Energy Company
1775 Sherman Street
Suite 1200
Denver, Colorado 80203
Attn: Kenneth J. Knott
Senior Vice President, Business Development & Land
Email: kknott@sm-energy.com

Any notice given in accordance herewith shall be deemed to have been given when delivered to the addressee in person, or by courier, or transmitted by facsimile or email transmission during normal business hours on a Business Day (or if delivered or transmitted after normal business hours on a Business Day or on a day other than a Business Day, then on the next Business Day), or upon actual receipt by the addressee during normal business hours on a Business Day after such notice has either been delivered to an overnight courier or deposited in the United States Mail or with Federal Express or United Parcel Service, as the case may be (or if delivered after normal business hours on a Business Day or on a day other than a Business Day, then on the next Business Day). Either Party may change their contact information for notice by giving written notice to the other Party in the manner provided in this *Section 16.6*. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day. Notwithstanding the foregoing, neither Party may deliver notice of breach of this Agreement by email.

***16.7 Further Cooperation.*** After Closing, Buyer and Seller 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 actions as any Party may reasonably request, to convey and deliver the Assets to Buyer, to perfect

Buyer's title thereto, and to accomplish the orderly transfer of the Assets to Buyer in the manner contemplated by this Agreement.

***16.8 Filings, Notices and Certain Governmental Approvals.*** Promptly after Closing, Buyer shall (a) record the Assignment and all other assignments executed at Closing in the records of the applicable Governmental Authority (including any federal or state agencies, if applicable), (b) if applicable, send notices to vendors supplying goods and services for the Assets and to the operator of such Assets of the assignment of such Assets to Buyer, (c) actively pursue the unconditional approval of all applicable Governmental Authorities of the assignment of the Assets to Buyer and (d) actively pursue all other consents and approvals that may be required in connection with the assignment of the Assets to Buyer and the assumption of the Liabilities



assumed by Buyer hereunder, in each case, that shall not have been obtained prior to Closing. Buyer obligates itself to take any and all action required by any Governmental Authority in order to obtain such unconditional approval, including the posting of any and all bonds or other security that may be required in excess of its existing lease, pipeline or area-wide bond.

***16.9 Entire Agreement; Conflicts.*** THIS AGREEMENT, THE APPENDICES, EXHIBITS AND SCHEDULES HERETO, THE TRANSACTION DOCUMENTS AND THE CONFIDENTIALITY AGREEMENT COLLECTIVELY 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. THERE ARE NO WARRANTIES, REPRESENTATIONS OR OTHER AGREEMENTS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR ANY TRANSACTION DOCUMENT, AND NEITHER SELLER NOR BUYER SHALL BE BOUND BY OR LIABLE FOR ANY ALLEGED REPRESENTATION, PROMISE, INDUCEMENT OR STATEMENTS OF INTENTION NOT SO SET FORTH. IN THE EVENT OF A CONFLICT BETWEEN (A) THE TERMS AND PROVISIONS OF THIS AGREEMENT AND THE TERMS AND PROVISIONS OF ANY SCHEDULE OR EXHIBIT HERETO OR (B) THE TERMS AND PROVISIONS OF THIS AGREEMENT AND THE TERMS AND PROVISIONS OF ANY TRANSACTION DOCUMENT, THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL GOVERN AND CONTROL; *PROVIDED*, *HOWEVER*, THAT THE INCLUSION IN ANY OF THE SCHEDULES AND EXHIBITS HERETO OR ANY TRANSACTION DOCUMENT OF TERMS AND PROVISIONS NOT ADDRESSED IN THIS AGREEMENT SHALL NOT BE DEEMED A CONFLICT, AND ALL SUCH ADDITIONAL PROVISIONS SHALL BE GIVEN FULL FORCE AND EFFECT, SUBJECT TO THE PROVISIONS OF THIS *SECTION 16.9*.

***16.10 Parties in Interest.*** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the Parties or their respective successors and permitted assigns, or the Parties' respective related Indemnified Parties hereunder any rights, remedies, obligations or Liabilities under or by reason of this Agreement; *provided* that only a Party and its successors and permitted assigns will have the right to enforce the provisions of this Agreement on its own behalf or on behalf of any of its related Indemnified Parties (but shall not be obligated to do so).

***16.11 Amendment.*** This Agreement may be amended, restated, supplemented or otherwise modified only by an instrument in writing executed by both Parties and expressly identified as an amendment, restatement, supplement or modification.

***16.12 Waiver; Rights Cumulative.*** Any of the terms, covenants, representations, warranties or conditions hereof may be waived only by a written instrument executed by or on behalf of the Party waiving compliance. No course of dealing on the part of Seller or Buyer or their respective officers, employees, agents, or representatives, and no failure by Seller or Buyer



to exercise any of its rights under this Agreement, shall, in any such case, operate as a waiver thereof or affect in any way the right of such Party at a later time to enforce the performance of such provision. No waiver by any Party of any condition, or any breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation or warranty. The rights of Seller and Buyer under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

***16.13 Governing Law; Jurisdiction.***

(a) This Agreement and any claim, controversy or dispute arising under or related to this Agreement or the transactions contemplated hereby or the rights, duties and relationship of the parties hereto and thereto, shall be governed by and construed and enforced in accordance with the laws of the State of Texas, excluding any conflicts of law, rule or principle that might refer construction of provisions to the Laws of another jurisdiction.

(b) The Parties agree that the appropriate, exclusive and convenient forum for any disputes between any of the Parties arising out of this Agreement, the Transaction Documents or the transactions contemplated hereby shall be in any state or federal court in Harris County, Texas and each of the Parties irrevocably submits to the jurisdiction of such courts solely in respect of any proceeding arising out of or related to this Agreement. The Parties further agree that the Parties shall not bring suit with respect to any disputes arising out of this Agreement, the Transaction Documents or the transactions contemplated hereby in any court or jurisdiction other than the above specified courts. The Parties further agree, to the extent permitted by Law, that a final and nonappealable judgment against a Party in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and amount of such judgment.

(c) To the extent that any Party or any of its Affiliates has acquired, or hereafter may acquire, any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, such Party (on its own behalf and on behalf of its Affiliates) hereby irrevocably (i) waives such immunity in respect of its obligations with respect to this Agreement and (ii) submits to the personal jurisdiction of any court described in *Section 16.13(b)*.

(d) THE PARTIES HERETO AGREE THAT THEY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

***16.14 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 so long as the

economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

***16.15 Removal of Name.*** As promptly as practicable, but in any case within sixty (60) days after the Closing Date, Buyer shall eliminate the names "QStar LLC", "QStar Operating LLC", "QStar" and any variants of the foregoing from the Assets and, except with respect to such grace period for eliminating existing usage, shall have no right to use any logos, trademarks or trade names belonging to Seller or any of its Affiliates.

***16.16 Counterparts.*** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a Party by facsimile or other electronic transmission shall be deemed an original signature hereto.

***16.17 Like-Kind Exchange.*** Buyer and Seller agree that either or both of Seller and Buyer may elect to treat the acquisition or sale of the Assets as an exchange of like-kind property under Section 1031 of the Code (an "***Exchange***"); *provided* that the Closing shall not be delayed by reason of the Exchange. Each Party agrees to use reasonable efforts to cooperate with the other Party in the completion of such an Exchange including an Exchange subject to the procedures outlined in Treasury Regulation Section 1.1031(k)-1 and/or Internal Revenue Service Revenue Procedure 2000-37. Each of Seller and Buyer shall have the right at any time prior to Closing to assign all or a part of its rights under this Agreement to a qualified intermediary (as that term is defined in Treasury Regulation Section 1.1031(k)-1(g)(4)(iii)) or an exchange accommodation titleholder (as that term is defined in Internal Revenue Service Revenue Procedure 2000-37) to effect an Exchange. Each Party acknowledges and agrees that neither an assignment of a Party's rights under this Agreement nor any other actions taken by a Party or any other person in connection with the Exchange shall release any Party from, or modify, any of its liabilities and obligations (including indemnity obligations to each other) under this Agreement, and no Party makes any representations as to any particular tax treatment that may be afforded to any other Party by reason of such assignment or any other actions taken in connection with the Exchange. Any Party electing to treat the acquisition or sale of the Assets as an Exchange shall be obligated to pay all additional costs incurred hereunder as a result of the Exchange, and in consideration for the cooperation of the other Party, the Party electing Exchange treatment shall agree to pay all costs associated with the Exchange and to indemnify and hold the other Party, its Affiliates, and their respective former, current and future partners, members, shareholders, owners, officers, directors, managers, employees, agents and representatives harmless from and against any and all liabilities and taxes arising out of, based upon, attributable to or resulting from the Exchange or transactions or actions taken in connection with the Exchange that would not have been incurred by the other Party but for the electing Party's Exchange election.

***16.18 Specific Performance***. The Parties agree that if any of the provisions of this Agreement are not performed by a Party in accordance with their specific terms, the other Party



shall be entitled to specific performance of the terms hereof, in addition to any other remedy available at law or in equity.

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**IN WITNESS WHEREOF**, Seller and Buyer have executed this Agreement as of the date first written above.

**SELLER:**

QSTAR LLC

By: /s/ John E. Lodge
Name: John E. Lodge
Title: Vice President – Land and Commercial

**BUYER:**

SM ENERGY COMPANY

By: /s/ Javan D. Ottoson
Name: Javan D. Ottoson
Title: President and Chief Executive Officer

**RRP-QSTAR LLC**
**767 Fifth Avenue, 16th Floor**
**New York, NY 10153**

October 17, 2016

SM Energy Company
1775 Sherman Street
Suite 1200
Denver, Colorado 80203
Attn: David W. Copeland
Executive Vice President, General Counsel and Corporate Secretary
Email: dcopeland@sm-energy.com

SM Energy Company
1775 Sherman Street
Suite 1200
Denver, Colorado 80203
Attn: Kenneth J. Knott
Senior Vice President, Business
Development & Land
Email: kknott@sm-energy.com

QSTAR LLC
6363 Woodway, Suite 750
Houston, TX 77057
Attn: John E. Lodge
Email: jlodge@qstarllc.com

Re: Ratification and Joinder

Dear Gentlemen:

Reference is made in this Letter Agreement ("Letter") to (i) that certain Purchase and Sale Agreement, dated October 17, 2016, effective as of September 1, 2016, by and between QStar LLC, as Seller ("QStar") and SM Energy Company, as Buyer ("SM Energy") attached as Exhibit I hereto (the "Purchase Agreement") along with all schedules, annexes and exhibits thereto and (ii) that certain Confidentiality Agreement dated October 15, 2016 between SM Energy and RRP-QStar, LLC ("RRP"). Capitalized terms used in this Letter and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement.

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Pursuant to that certain Area of Mutual Interest Agreement (the "AMI Agreement"), dated August 22, 2016, between QStar and RRP, (i) RRP has the right to sell its right, title and interest in and to the Subject Assets (such right, title and interest of RRP, the "RRP Assets") to Buyer on the terms set forth in the AMI Agreement ("Tag Right"), and (ii) Seller has the right to require RRP to sell the RRP Assets to Buyer on the terms set forth in the AMI Agreement ("Drag Right").

Notwithstanding the Drag Right and Tag Right and the notice provisions required, RRP desires to sell such RRP Assets to SM Energy, and SM Energy desires to purchase such RRP Assets from RRP, in each case, on the terms set forth in the Purchase Agreement (the terms of which are hereby incorporated by reference), except as expressly modified by the terms set forth in this Letter Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon your countersignature and delivery of this letter agreement to us, RRP, QStar and SM Energy hereby agree as follows:

1. RRP hereby agrees to sell, and SM Energy hereby agrees to purchase and pay for, all of RRP's right, title and interest in and to the RRP Assets on the terms set forth in the Purchase Agreement as if RRP were "Seller" thereunder, subject only to the following (the terms of the Purchase Agreement, as modified by this Section 1, the "RRP Purchase Agreement"):

a. The "Unadjusted Purchase Price" shall be $400,000,000, the "Cash Consideration" shall be $275,000,000 and the "Equity Consideration" shall be 3,346,487 shares of Buyer Common Stock.

b. The "Additional Cash Consideration" shall be $125,000,000.

c. In case of ambiguity, the parties will interpret the RRP Purchase Agreement to effectuate the conveyance of RRP's percentage ownership of the Subject Assets.

d. RRP hereby makes the Specified Representations in Article IV with respect to the RRP Assets as set forth in the Purchase Agreement and all other representations and warranties are qualified by RRP's Knowledge.

e. Schedule 3.8 to the Purchase Agreement shall be deleted in its entirety and replaced with Schedule 11.4(a) to the Purchase Agreement.

f. Section 6.8 of the Purchase Agreement shall be deleted in its entirety.

g. With respect to RRP, "Knowledge" shall mean the actual knowledge (without investigation) of the following Persons: Craig Huff and Anil Ranavat.

h. The first sentence of Section 3.2 of the Purchase Agreement provides that Buyer will deposit in same day funds with the Escrow Agent the sum of $20,000,000 promptly upon receipt of notice from RRP that it has completed the account



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opening process with the Escrow Agent and such notice contains wiring instructions.

i. RRP is not bound by any non-compete agreements.

j. The closing shall occur simultaneously with the transaction closing under the Purchase Agreement.

2. Subject to compliance with Sections 3, 4 and 5 below, RRP hereby agrees and acknowledges that upon execution and delivery of this Letter Agreement by the parties: (a) QStar has satisfied in full its obligations to RRP described in Article VI to the AMI Agreement with respect to the transactions contemplated by the Purchase Agreement and this Letter, and (b) QStar is free to sell its right, title and interest in and to the RRP Assets, without restriction.

3. QStar hereby represents and warrants that (a) it has provided RRP with a full and complete executed copy of the Purchase Agreement along with all schedules, annexes and exhibits, (b) there are no additional agreements or understandings relating to the transaction with SM Energy that have not been provided to RRP other than the Confidentiality Agreements and (c) the sale of the RRP Assets by RRP as contemplated by Section 1 hereof will be on substantially the same terms and conditions applicable to, and, for the same type of consideration payable to, QStar under the terms of the Purchase Agreement and agreements related to the transactions contemplated thereunder (other than as set forth under Section 1 hereof).

4. QStar hereby agrees to promptly provide RRP with any amendments, supplements, notices, claims or modifications to the Purchase Agreement and agreements related to the transactions contemplated thereunder.

5. Each of the parties hereto acknowledges that each of the other parties are relying on this Letter Agreement and the Purchase Agreement, and the accuracy of the statements herein and therein contained. Each party hereto does hereby covenant and agree that it will execute such further documents and undertake any further measures as may be reasonably necessary to effect and carry out the terms of this Letter Agreement and the Purchase Agreement and the implementation hereof and thereof.

6. The parties hereto shall enter into a single Lock-Up and Registration Rights Agreement at Closing.

7. There are no third party beneficiary rights in favor of any person or entity are, nor are they intended to be, created by this Letter Agreement.

8. RRP hereby confirms that it and its counsel have received and reviewed a copy of the Purchase Agreement.

9. This Letter Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile, .pdf or other electronic transmission of copies of signatures shall



constitute original signatures for all purposes of this Letter Agreement and any enforcement hereof.

10. Section 16.13 of the Purchase Agreement is incorporated by reference herein.

11. The notice information for RRP for Section 16.6 is as follows:

If to Seller:

RRP-QSTAR, LLC
c/o Reservoir Capital Group, L.L.C.
767 5th Avenue, 16th Floor
New York, NY 10153

Attention: General Counsel
Telephone: 212-610-9000
Email: legalnotices@reservoircap.com

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If you are in agreement with the foregoing, please countersign this Letter in the space provided below and return to the attention of the undersigned.

**RRP-QSTAR, LLC**

By: /s/ Craig A. Huff
Name: Craig A. Huff
Title: President

**SIGNATURE PAGE TO LETTER AGREEMENT RE: RATIFICATION AND JOINDER**

ACCEPTED AND AGREED TO this 17th day of October, 2016.

**SM ENERGY COMPANY**

By: /s/ Javan D. Ottoson
Name: Javan D. Ottoson
Title: President and Chief Executive Officer

**QSTAR LLC**

By: /s/ John E. Lodge
Name: John E. Lodge
Title: Vice President – Land and Commercial

**SIGNATURE PAGE TO LETTER AGREEMENT RE: RATIFICATION AND JOINDER**

**Exhibit 2.3**

***Execution Version***

**PURCHASE AND SALE AGREEMENT**

**BETWEEN**

**SM ENERGY COMPANY**

**as Seller**

**and**

**OASIS PETROLEUM NORTH AMERICA LLC**

**as Buyer**

**DATED October 17, 2016**

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| Exhibit H | Salt Water Disposal Systems |

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**THIS PURCHASE AND SALE AGREEMENT** (this "***Agreement***") is made as of October 17, 2016 (the "***Execution Date***") between SM ENERGY COMPANY, a Delaware corporation ("***SM Energy***") and OASIS PETROLEUM NORTH AMERICA LLC, a Delaware limited liability company ("***Buyer***"). SM Energy and Buyer shall sometimes be referred to herein together as the "***Parties***", and each individually as a "***Party***".

**RECITALS**

**WHEREAS**, SM Energy owns certain oil and gas leases located in Montana, and North Dakota and associated assets as more fully described below; and

**WHEREAS**, SM Energy desires to sell and Buyer desires to purchase the Assets (as defined below) upon the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual agreements herein contained, the Parties hereby agree as follows:

**ARTICLE I**
**DEFINITIONS; INTERPRETATION**

***1.1*** ***Definitions***. Capitalized terms used in this Agreement shall have the meanings given such terms in Annex I.

***1.2*** ***Interpretation***. All references in this Agreement to Exhibits, Appendices, Annexes, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Appendices, Annexes, Articles, Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections and other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement, and shall be disregarded in construing the language hereof. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof," and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection or other subdivision unless expressly so limited. The words "this Article," "this Section" and "this subsection," and words of similar import, refer only to Article, Section or subsection hereof in which such words occur. The word "including" (in its various forms) means "including without limitation." All references to "$" or "dollars" shall be deemed references to United States Dollars. Each accounting term not defined herein will have the meaning given to it under GAAP, as in effect on the Execution Date. Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Appendices, Annexes and Exhibits referred to herein are attached to and made a part of this Agreement. Unless expressly stated otherwise, references to any Law or contract shall mean such Law or contract as it may be amended from time to time.



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**ARTICLE II**
**PURCHASE AND SALE**

***2.1*** ***Purchase and Sale***.

(a) Subject to the terms and conditions of this Agreement, Buyer agrees to purchase from SM Energy, and SM Energy agrees to sell, assign and deliver to Buyer the Assets for the consideration specified in this *Article II*.

(b) SM Energy shall reserve and retain all of the Excluded Assets.

***2.2*** ***Purchase Price***. Subject to the other terms and conditions of this Agreement, the purchase price for the Assets shall be Seven Hundred Eighty-Five Million Dollars ($785,000,000) (the "***Purchase Price***"). The Purchase Price shall be payable as follows:

(a) Upon the earlier of October 21, 2016, or one (1) Business Day following the day when the Escrow Agent opens the escrow account, Buyer shall deposit by wire transfer in immediately available funds with Wells Fargo Bank, National Association (the "***Escrow Agent***"), the sum of $78,500,000 (such amount, together with any interest earned thereon (the "***Deposit***"), which Deposit shall be held in escrow by the Escrow Agent pursuant to the terms of the Escrow Agreement, and disbursed in accordance with the terms of this Agreement; and

(b) At Closing, Buyer shall pay SM Energy the Closing Amount by wire transfer in immediately available funds.

***2.3 Deposit.***

(a) If the transactions contemplated by *Section 2.1* are not consummated on or before the Closing Date because of: the failure of Buyer to materially perform any of its obligations hereunder; provided, that SM Energy is not in material breach of the terms of this Agreement and is ready, willing and able to perform all of its obligations hereunder, or the failure of any of Buyer's representations or warranties hereunder to be true and correct in all material respects (without regard to materiality qualifiers) as of the Execution Date and as of the Closing, then, in such event, SM Energy shall have the right to terminate this Agreement and receive the Deposit free of any claims by Buyer thereto, as provided in *Section 12.2(b)*.

(b) If this Agreement is terminated by the mutual written agreement of the Parties, or if the Closing does not occur on or before the Closing Date for any reason other than as set forth in *Section 2.3(a)*, then Buyer shall be entitled to the delivery of the Deposit, free of any claims by SM Energy with respect thereto.

(c) In the event of any termination of this Agreement as contemplated by *Section 2.3(a)* or *Section 2.3(b)* above, the Parties shall, in each case, immediately have the rights and obligations set forth in *Section 12.2* and *Section 12.3*.



***2.4 Adjustments to Purchase Price.***

(a) For purposes of determining the amounts of the adjustments to the Purchase Price provided for in this *Section 2.4*, the principles set forth in this *Section 2.4(a)* shall apply. Buyer shall be entitled to all production of Hydrocarbons from or attributable to the Units, Leases, and Wells at and after the Effective Time (and all products and proceeds attributable thereto), and to all other income, proceeds, receipts and credits earned with respect to the Assets at or after the Effective Time, and shall be responsible for (and entitled to any refunds with respect to) all Operating Expenses incurred at and after the Effective Time. SM Energy shall be entitled to all Hydrocarbon production from or attributable to Units, Leases and Wells prior to the Effective Time (and all products and proceeds attributable thereto), and to all other income, proceeds, receipts and credits earned with respect to the Assets prior to the Effective Time, and shall be responsible for (and entitled to any refunds with respect to) all Operating Expenses incurred prior to the Effective Time. The Parties shall disclose to each other any revenues received after the date of final settlement of the Purchase Price pursuant to Section 2.6 to which the other Party is entitled and account to such Party within ten (10) days of receipt of such revenues. "Earned" and "incurred", as used in the Agreement shall be interpreted in accordance with GAAP and Council of Petroleum Accountants Society standards, except as otherwise specified herein. For purposes of allocating production (and proceeds and accounts receivable with respect thereto), under this *Section 2.4*, (i) liquid Hydrocarbons shall be deemed to be "***from or attributable to***" the Units, Leases and Wells when they pass through the pipeline connecting into the storage facilities into which they are run and (ii) gaseous Hydrocarbons shall be deemed to be "***from or attributable to***" the Units, Leases and Wells when they pass through the royalty measurement meters, delivery point sales meters or custody transfer meters on the gathering lines or pipelines through which they are transported (whichever meter is closest to the well). SM Energy shall utilize reasonable interpolative procedures, consistent with industry practice, to arrive at an allocation of production when exact meter readings or gauging and strapping data are not available. As part of the Preliminary Settlement Statement, Buyer shall provide to SM Energy such data as is reasonably necessary to support any estimated allocation, for purposes of establishing the Closing Amount.

(b) The Purchase Price shall be adjusted upward by the following amounts (without duplication):

(i) an amount equal to the value of all marketable Hydrocarbons produced from or attributable to the Assets in storage or existing in stock tanks (excluding tank bottoms), pipelines and/or plants (including inventory) as of the Effective Time, the value to be based upon the contract price in effect as of the Effective Time (or if there is no contract price, then the market price in effect as of the Effective Time in the field in which such Hydrocarbons were produced) or if actually sold prior to the date of determination, the proceeds actually recovered by SM Energy attributable to such sale, net of amounts payable as royalties, overriding royalties and other burdens upon, measured by or payable out of such production and Asset Taxes;

(ii) an amount equal to all Operating Expenses for which Buyer is responsible under *Section 2.4(a)* paid by SM Energy that are attributable to the Assets from and after the Effective Time, whether paid before or after the Effective Time;



(iii) [*reserved*];

(iv) Subject Transfer Taxes paid by SM Energy with respect to the transactions contemplated by this Agreement;

(v) all Asset Taxes allocated to Buyer that are paid or to be paid by SM Energy; and

(vi) any other amount provided for elsewhere in this Agreement or otherwise agreed upon by the Parties.

(c) The Purchase Price shall be adjusted downward by the following amounts (without duplication):

(i) an amount equal to all proceeds actually received by or credited to SM Energy attributable to the sale of Hydrocarbons produced from or attributable to the Assets from and after the Effective Time or contained in storage or existing in stock tanks, pipelines and/or plants (including inventory) as of the Effective Time for which an upward Purchase Price adjustment was made pursuant to *Section 2.4(b)*;

(ii) if SM Energy makes the election under *Section 6.2(c)(i)* with respect to a Title Defect, the Title Defect Amount with respect to such Title Defect if the Title Defect Amount has been determined prior to Closing;

(iii) if SM Energy makes the election under *Section 7.1(b)(i)* with respect to an Environmental Defect, the Remediation Amount with respect to such Environmental Defect if the Remediation Amount has been determined prior to Closing;

(iv) an amount determined pursuant to *Section 7.1(b)(iii)*, *Section 6.4(c)(ii)* or *Section 6.4(d)(i)*, as applicable, for any Asset excluded from the transaction contemplated hereby pursuant to such Sections;

(v) the value of any Casualty Loss pursuant to *Section 6.3(b)(B)*;

(vi) all costs and expenses incurred by Buyer related to the Venting Obligations (which in no event will exceed $600,000);

(vii) an amount equal to all Operating Expenses for which SM Energy is responsible under *Section 2.4(a)* paid or payable by Buyer that are attributable to the Assets prior to the Effective Time;

(viii) any other amount provided for elsewhere in this Agreement or otherwise agreed upon by the Parties; and

(ix) all Asset Taxes allocated to Seller that are paid or to be paid by Buyer.



(d) If, prior to Closing, Buyer or SM Energy discovers an error in the Imbalances set forth in *Schedule 3.10*, then the Purchase Price shall be further adjusted at Closing (based on a value of (x) $1.00 per Mcf for gas multiplied by the total volume of such imbalances and (y) NYMEX (as of the Closing Date) less $6.00 per barrel multiplied by the total volume of oil imbalances) pursuant to *Section 2.4(b)(iii)* or *Section 2.4(c)(vi)*, as applicable, and *Schedule 3.10* will be deemed amended immediately prior to the Closing to reflect the Imbalances for which the Purchase Price is so adjusted.

***2.5 Allocated Value***.

(a) SM Energy and Buyer have agreed upon an allocation of the unadjusted Purchase Price among each of the Wells and Well Locations, and such allocations are set forth on *Schedule 2.5(a)* (the "***Allocated Values***"). SM Energy and Buyer agree that the Allocated Values shall be used in calculating adjustments to the Purchase Price as provided herein. Any adjustments to the Purchase Price, other than the adjustments provided for in *Section 2.4*, shall be applied on a pro rata basis to the amounts set forth in *Schedule 2.5(a)*, as applicable, for all Assets. After all such adjustments are made, any adjustments to the Purchase Price made pursuant to *Section 2.4* shall be applied to the amounts set forth on *Schedule 2.5(a)*, as applicable, for the particular affected Assets.

(b) On or before the Closing Date, Buyer and SM Energy will agree upon an allocation of the unadjusted Purchase Price among each of the Assets, in compliance with the principles of Section 1060 of the Code, and the United States Treasury Regulations thereunder. Such allocation shall be in the format of *Schedule 2.5(b)*. SM Energy and Buyer agree (i) that the Allocated Values, as adjusted pursuant to this paragraph, shall be used by SM Energy and Buyer as the basis for reporting asset values and other items for purposes of all federal, state, and local Tax Returns, including Internal Revenue Service Form 8594 and (ii) that neither they nor their Affiliates will take positions inconsistent with *Schedule 2.5(b)* (as adjusted pursuant to this paragraph) in notices to Governmental Bodies, in audit or other Proceedings with respect to Taxes, in notices to preferential purchase right holders, or in other documents or notices relating to the transactions contemplated by this Agreement without the consent of the other Party. Buyer and SM Energy further agree that, on or immediately after the Closing Date, they will mutually agree as to the further allocation of the values on *Schedule 2.5(a)* as to the relative portion of those values attributable to leasehold costs and depreciable equipment.

***2.6 Settlement; Disputes***.

(a) Not less than five (5) Business Days prior to the Closing, SM Energy shall prepare and submit to Buyer for review a draft settlement statement using the best information available to SM Energy (the "***Preliminary Settlement Statement***") that shall set forth the adjusted Purchase Price reflecting each adjustment made in good faith in accordance with this Agreement as of the date of preparation of such Preliminary Settlement Statement. Within three (3) Business Days of receipt of the Preliminary Settlement Statement, Buyer has the right, but not the obligation, to deliver to SM Energy a written report containing all changes with the explanation therefor that Buyer proposes to be made to the Preliminary Settlement Statement. The Preliminary Settlement Statement, as agreed upon by the Parties, will be used to adjust the Purchase Price at Closing (such adjusted price, the "***Preliminary Purchase Price***"). If the



Parties cannot agree on the Preliminary Settlement Statement prior to the Closing, the Preliminary Settlement Statement as presented by SM Energy and prepared in accordance with this *Section 2.6(a)* will be used to adjust the Purchase Price at Closing.

(b) On or before 120 days after the Closing, a final settlement statement (the "***Final Settlement Statement***") will be prepared by SM Energy, based on actual income and expenses attributable to the periods prior to and after the Effective Time, including any amount set forth in the Preliminary Settlement Statement as well as any settlement during the term of the Transition Services Agreement, and which takes into account all final adjustments made to the Purchase Price and shows the resulting final adjusted Purchase Price (the "***Final Purchase Price***"). SM Energy shall, at Buyer's request, supply reasonable documentation in its or its Affiliates' possession available to support the actual revenue, expenses and other items for which adjustments are made. The Final Settlement Statement shall set forth the actual proration of the amounts required by this Agreement. As soon as practicable, and in any event within 45 days, after receipt of the Final Settlement Statement, Buyer has the right, but not the obligation, to return a written report containing any proposed changes to the Final Settlement Statement and an explanation of any such changes and the reasons therefor (the "***Dispute Notice***"). If the Final Purchase Price set forth in the Final Settlement Statement is mutually agreed upon by SM Energy and Buyer, the Final Settlement Statement and the Final Purchase Price shall be final and binding on the Parties. Once the Final Purchase Price has been agreed upon by the Parties pursuant to this *Section 2.6(b)* or determined by the Accounting Arbitrator pursuant to *Section 2.6(c)*, as applicable, the Parties shall execute a certificate setting forth such agreed or determined, as applicable, Final Purchase Price, which shall be binding on the Parties for all purposes of this Agreement.

(c) If the Parties are unable to resolve the matters addressed in the Dispute Notice, each of Buyer and SM Energy shall, within 14 Business Days following the delivery of such Dispute Notice, summarize its position with regard to such dispute in a written document and submit such summaries to the Houston, Texas office of KPMG LLP or such other Person as the Parties may mutually select (the "***Accounting Arbitrator***"), together with the Dispute Notice, the Final Settlement Statement and any other documentation such Party may desire to submit. Within 20 Business Days after receiving the Parties' respective submissions, the Accounting Arbitrator shall render a decision choosing either SM Energy's position or Buyer's position with respect to each matter addressed in any Dispute Notice, based on the materials described above. Any decision rendered by the Accounting Arbitrator pursuant hereto shall be final, conclusive and binding on the Parties and will be enforceable against any of the Parties in any court of competent jurisdiction. The costs of such Accounting Arbitrator shall be borne one-half by Buyer and one-half by SM Energy.

***2.7 Section 1031 Like-Kind Exchange***. SM Energy and Buyer hereby agree that SM Energy shall have the right at any time prior to completion of all the transactions that are to occur at Closing to assign all or a portion of its rights under this Agreement to a Qualified Intermediary (as that term is defined in Section 1.1031(k)-1(g)(4)(v) of the Treasury Regulations) in order to accomplish the transaction in a manner that will comply, either in whole or in part, with the requirements of a like-kind exchange pursuant to Section 1031 of the Code. Likewise, Buyer shall have the right at any time prior to completion of all the transactions that are to occur at Closing to assign all or a portion of its rights under this Agreement to a Qualified Intermediary



for the same purpose. If SM Energy assigns all or any of its rights under this Agreement for this purpose, Buyer agrees to (a) consent to SM Energy's assignment of its rights in this Agreement, which assignment shall be in a form reasonably acceptable to Buyer, and (b) pay the Purchase Price (or a designated portion thereof as specified by SM Energy) into a qualified escrow or qualified trust account(s) at Closing as directed in writing. If Buyer assigns all or any of its rights under this Agreement for this purpose, SM Energy agrees to (i) consent to Buyer's assignment of its rights in this Agreement, which assignment shall be in a form reasonably acceptable to SM Energy, (ii) accept the Purchase Price from the qualified escrow or qualified trust account at Closing, and (iii) at Closing, convey and assign directly to Buyer the Assets (or any portion thereof) as directed by Buyer. SM Energy and Buyer acknowledge and agree that any assignment of this Agreement (or any rights hereunder) to a Qualified Intermediary shall not release any Party from any of its respective liabilities and obligations hereunder, and that neither Party represents to the other Party that any particular tax treatment will be

given to any Party as a result thereof. The Party electing to assign all or any of its rights under this Agreement pursuant to this *Section 2.7* shall defend, indemnify, and hold harmless the other Party and its Affiliates from all claims, costs, losses and expenses relating to such election.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES OF SM ENERGY

SM Energy represents and warrants to Buyer, as of the Execution Date and as of the Closing Date, except to the extent any representation or warranty is made as of a specified date, in which case, SM Energy represents and warrants to Buyer as of such specified date, the following:

***3.1 Organization, Existence***. SM Energy is a corporation duly formed and validly existing under the Laws of the State of Delaware. SM Energy has all requisite power and authority to own and operate its property (including, without limitation, the Assets) and to carry on its business as now conducted. SM Energy is duly licensed or qualified to do business as a foreign corporation and is in good standing in all jurisdictions in which such qualification is required by Law, except where the failure to qualify or be in good standing would not have a Material Adverse Effect.



***3.2 Authorization***. SM Energy has full power and authority to enter into and perform this Agreement and the transactions contemplated herein. The execution, delivery and performance by SM Energy of this Agreement has been, and the execution, delivery and performance by SM Energy of all other documents delivered pursuant to this Agreement will be when delivered, duly and validly authorized and approved by all necessary corporate action on the part of SM Energy. Assuming the due authorization, execution and delivery by the other parties to such documents, this Agreement constitutes, and the other documents delivered pursuant to this Agreement to which SM Energy is a party will constitute when delivered, SM Energy's legal, valid and binding obligations, enforceable against SM Energy in accordance with their respective terms, subject however to the effects of bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and similar Laws relating to or affecting creditors' rights, as well as to principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

***3.3 No Conflicts***. Assuming the receipt of all Consents and the waiver of all Preferential Rights, in each case, as set forth on *Schedule 3.3*, the execution, delivery and performance by SM Energy of this Agreement and the consummation of the transactions contemplated hereby does not and will not (a) conflict with or result in a breach of any provisions of the organizational documents or other governing documents of SM Energy, (b) except for Permitted Encumbrances (if any), result in a default or the creation of any Encumbrance or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license or other material agreement (other than the Leases or Applicable Contracts) to which SM Energy is a party or by which SM Energy or the Assets may be bound, (c) violate any Law applicable to SM Energy or any of the Assets or (d) violate any judgment, order, ruling, or decree applicable to SM Energy or any of the Assets, except in the case of clauses (b), (c) and (d) where such default, Encumbrance, termination, cancellation, acceleration or violation would not have a material adverse effect, individually or in the aggregate, upon the ability of SM Energy to consummate the transactions contemplated by this Agreement.

***3.4 Bankruptcy***. There are no bankruptcy, reorganization or receivership proceedings pending, being contemplated by or, to SM Energy' Knowledge, threatened in writing against SM Energy or in respect of any of the Assets.

***3.5 Foreign Person***. SM Energy is not a "disregarded entity" or a "foreign person" within the meaning of Section 1445 of the Code and its implementing Treasury Regulations.

***3.6 Litigation***. Except as set forth in *Schedule 3.6*, there are no pending Proceedings against SM Energy or in respect of any of the Assets before any Governmental Authority or arbitral panel, and no Proceedings pending or, to SM Energy's Knowledge, threatened in writing against SM Energy or the Assets, or with respect to SM Energy's ownership or operation of the Assets.

***3.7 Material Contracts***.

(a) *Schedule 3.7(a)* sets forth all Applicable Contracts of the type described below (collectively, the "***Material Contracts***"):



(i) any Applicable Contract that can reasonably be expected to result in aggregate payments by SM Energy of more than $100,000 during the current or any subsequent fiscal year or $500,000 in the aggregate over the term of such Applicable Contract (in each case, based solely on the terms thereof and without regard to any expected increase in volumes or revenues) that cannot be terminated by SM Energy on not greater than 90 days' notice without liability or penalty;

(ii) any Applicable Contract that can reasonably be expected to result in aggregate revenues to SM Energy of more than $100,000 during the current or any subsequent fiscal year or $500,000 in the aggregate over the term of such Applicable Contract (in each case, based solely on the terms thereof and without regard to any expected increase in volumes or revenues);

(iii) any Applicable Contract that (A) is a Hydrocarbon purchase and sale, gathering, transportation, processing, compression or similar Contract pursuant to which SM Energy received annual revenues or makes annual payments in excess of $500,000 and (B) is not terminable by SM Energy or its assignee without liability or penalty on 60 days' or less notice;

(iv) any Applicable Contract that is an indenture, mortgage, loan, credit or sale-leaseback, guaranty of any obligation, bonds, letters of credit or similar financial Contract;

(v) any Applicable Contract that is a joint operating agreement, area of mutual interest agreement, farmout or farmin agreement, partnership agreement, joint venture agreement, or agreement containing a call option, most favored nations provision or any restriction on ability to engage in business;

(vi) any Applicable Contract that constitutes a lease under which SM Energy is the lessor or the lessee of real, immovable, personal or movable property that is material to the ownership or use of the Assets as currently used;

(vii) any agreement of or binding upon SM Energy to sell, lease, transfer, farmout, or otherwise dispose of any interest in any of the Assets after the Execution Date, other than (x) conventional rights of reassignment arising in connection with SM Energy's surrender or release of any of the Assets and (y) preferential rights to purchase the Assets, which are addressed in *Section 6.4*; and

(viii) Applicable Contracts with any Affiliate of SM Energy that will be binding on Buyer after the Closing Date and will not be terminable by Buyer within 30 days' or less notice.

(b) Except as set forth in *Schedule 3.7(a)*, as of the Execution Date there exist no material defaults under the Material Contracts by SM Energy or, to SM Energy's Knowledge, by any other Person that is a party to the Material Contracts. To SM Energy's Knowledge, the Material Contracts are in full force and effect and

legally enforceable (as to enforceability, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and to general principles of equity



(regardless of whether enforceability is considered in a proceeding at law or in equity)) against the parties thereto.

***3.8 No Violation of Laws***. SM Energy and its Affiliates are not, and the ownership and operation of the Assets are not, in violation of any applicable Laws in material respects, provided, however, that with respect to the Assets not operated by SM Energy or its Affiliates, this representation is limited to the Knowledge of SM Energy. This *Section 3.8* does not include any matters with respect to Environmental Laws, such matters being addressed exclusively in *Section 3.12*.

***3.9 Royalties, Etc.*** Except for such items that are being held in suspense as permitted pursuant to applicable Law in the amounts set forth on *Schedule 3.9*, SM Energy has paid all Burdens in all material respects due by SM Energy with respect the Assets or, if SM Energy has not paid any such Burdens, is contesting such unpaid Burdens in good faith.

***3.10 Imbalances***. *Schedule 3.10* sets forth all material Imbalances associated with the Assets as of the Effective Time.

***3.11 Current Commitments***. *Schedule 3.11* sets forth, as of the Execution Date, all authorities for expenditures relating to the Assets to drill or rework Wells or other operations ("***AFEs***") for which all of the activities anticipated in such AFEs have not been completed by the Execution Date, and all AFEs for which costs are attributable to the Interim Period.

***3.12 Environmental***.

(a) With respect to the Assets, SM Energy has not entered into, and is not subject to, any agreement, consent, order, decree, judgment, license or permit condition or other directive of any Governmental Authority that (i) are in existence as of the Execution Date, (ii) are based on any Environmental Laws that relate to the future use of any of the Assets and (iii) require any change in the present conditions of any of the Assets.

(b) Except as set forth in *Schedule 3.12*, as of the Execution Date, SM Energy has not received any unresolved written notice from any Person of any material release, disposal, event, condition, circumstance, activity, practice or incident concerning any land, facility, asset or property included in the Assets that: (i) interferes with or prevents compliance by SM Energy with any Environmental Law or the terms of any license or permit issued pursuant thereto or (ii) gives rise to or results in any common Law or other liability of SM Energy to any Person.

***3.13 Asset Taxes***. Except as set forth in *Schedule 3.13*,

(a) With respect to all Asset Taxes, (i) all reports, returns, statements (including estimated reports, returns or statements), and other similar filings (the "***Tax Returns***") affecting the ownership or operation of the Assets required to be filed on or before the Closing Date by SM Energy have been or will be timely filed with the appropriate Governmental Authority in all jurisdictions in which such Tax Returns are required to be filed; and (ii) such Tax Returns are true and correct in all material respects, and all Asset Taxes reported on such Tax Returns have been or will be paid when due.



(b) With respect to all Asset Taxes, (i) there are not currently in effect any extension or waiver of any statute of limitations of any jurisdiction regarding the assessment or collection of any Asset Tax; (ii) there are no claims or Proceedings pending against SM Energy or the Assets by any Governmental Authority for which SM Energy has received written notice; and (iii) there are no Asset Tax liens on any of the Assets except for liens for Asset Taxes not yet due.

***3.14 Brokers' Fees***. SM Energy has incurred no liability, contingent or otherwise, for brokers' or finders' fees relating to the transactions contemplated by this Agreement for which Buyer or any Affiliate of Buyer shall have any responsibility.

***3.15 Wells***. Except as set forth on *Schedule 3.15,*

(a) all Wells have been drilled and completed within the limits permitted by all applicable Leases related to such Leases;

(b) other than Wells that have been plugged and abandoned in accordance with all applicable Laws, there are no dry holes, or shut in or otherwise inactive wells drilled by SM Energy that are located on lands burdened by the Leases or on lands pooled or unitized therewith that SM Energy is currently obligated or liable to plug and abandon; and

(c) there are no Wells that constitute a part of the Assets (i) in respect of which SM Energy has received a written notice, claim, demand or order from any Governmental Authority notifying, claiming, demanding or requiring that such Well(s) be temporarily or permanently plugged and abandoned, and (ii) which have not been temporarily or permanently plugged and abandoned.

***3.16 Payout Schedule***. To SM Energy's Knowledge, **Exhibit B** identifies each Well that is subject to a change of ownership at payout or other contractual trigger at payout, and the reduced interest of SM Energy therein, subject to any Permitted Encumbrances. *Schedule 3.16* identifies the payout status for each Well as of June 1, 2016, for Wells operated by SM Energy and as of the most recent statement received from the operator of each Well not operated by SM Energy. Other than as identified on *Schedule 3.16*, since October 1, 2016, SM Energy has not elected or been deemed to have elected to "non-consent," or failed to participate in, the drilling or reworking of a Well, any seismic program or any other operation which would cause SM Energy to lose or forfeit any interests in the Wells constituting part of the Assets under any applicable operating agreement.

***3.17 Permits***. Except as set forth on *Schedule 3.17*, with respect to Assets operated by SM Energy (and to SM Energy's Knowledge with respect to Assets not operated by SM Energy), SM Energy has all material licenses, orders, franchises, registrations and permits of all Governmental Authorities required to permit the operation of the Assets as presently operated (the "***Required Permits***") and each is in full force and effect. To SM Energy's Knowledge, there are no outstanding violations of any of the Required Permits.



***3.18 Compliance with Leases and Easements.***

(a) Except as set forth in *Schedule 3.18*, neither SM Energy nor any of its Affiliates have breached the Leases in a manner that would result in

material damages thereunder or termination thereof. No written demands or notices of default or non-compliance or dispute (including those received electronically) have been issued to or received by SM Energy or any of its Affiliates that remain uncured or outstanding with respect to any Lease. Except as set forth in *Schedule 3.18*, to SM Energy's Knowledge, all material rentals due and payable by or on account of SM Energy (including any operator of the Assets) to royalty holders and other interest owners under or with respect to the Assets have been timely paid in full or are being disputed in good faith. Except as set forth on **Exhibit A**, no undeveloped Lease has a primary term expiring less than six (6) months from the Execution Date.

(b) Except as set forth in *Schedule 3.18*, neither SM Energy or any of its Affiliates is in breach, in any material respect, of any provision in any Easement necessary to operate the Assets in a manner consistent with its past practices or in default with respect to the performance of any obligation under any such Easement, and, to SM Energy's Knowledge, no party to any such Easement or any successor to the interest of such party has filed or has threatened in writing to file any Proceeding to terminate, cancel, rescind or procure judicial reformation of any Lease or any such Easement.

***3.19*** ***Suspended Funds***. *Schedule 3.19* sets forth a true, correct and complete list of all Suspended Funds as of the date set forth thereon, in respect of each of the Wells.

***3.20*** ***Advance Payments***. SM Energy is not obligated by virtue of any take-or-pay payment, advance payment or other similar payment (other than royalties, overriding royalties and similar arrangements reflected with respect to the Net Revenue Interests for the Wells set forth in **Exhibit B** and gas balancing arrangements), to deliver Hydrocarbons attributable to the Assets, or proceeds from the sale thereof, at some future time without receiving payment therefore at or after the time of delivery.

***3.21*** ***Partnerships***. *Schedule 3.21* sets forth all of the Assets that are deemed by agreement or applicable Law to be held by a partnership for federal Tax purposes.

***3.22*** ***No Other Representations or Warranties***; ***Disclosed Materials.*** Except for the representations and warranties contained in this Agreement (as qualified by the Schedules), or in the certificate delivered by SM Energy at Closing or the Subject Special Warranty, neither SM Energy nor any other Person makes (and Buyer is not relying upon) any other express or implied representation or warranty with respect to SM Energy (including the value, condition or use of any of the Assets) or the transactions contemplated by this Agreement, and SM Energy disclaims any other representations or warranties not contained in this Agreement, whether made by SM Energy, any Affiliate of SM Energy, or any of their respective officers, directors, managers, employees or agents. Except for the representations and warranties contained in this Agreement (as qualified by the Schedules), SM Energy disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement or information made, communicated or furnished (orally or in writing) to Buyer or any of its Affiliates or any of its officers, directors, managers, employees or agents (including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or representative of SM Energy, or any of its Affiliates). Buyer acknowledges and represents,



warrants and agrees that it has not relied upon the accuracy or completeness of any express or implied representation, warranty, statement or information of any nature made or provided by or on behalf of SM Energy, except for the representations and warranties of SM Energy expressly set forth in this Agreement, or in the certificate delivered by SM Energy at Closing or the Subject Special Warranty and waives any right Buyer may have against SM Energy with respect to any inaccuracy in any such representation, warranty, statement or information, or with respect to any omission or concealment, on the part of SM Energy or any representative of SM Energy, of any potentially material information. The disclosure of any matter or item in the Schedules shall not be deemed to constitute an acknowledgement that any such matter is required to be disclosed or is material or that such matter would or would reasonably be expected to result in a Material Adverse Effect. Notwithstanding any of the foregoing, nothing herein shall relieve SM Energy for any liability for knowing and intentional fraud.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to SM Energy, as of the Execution Date and as of the Closing Date, except to the extent any representation or warranty is made as of a specified date, in which case, Buyer represents and warrants to SM Energy as of such specified date, the following:

***4.1*** ***Organization; Existence***. Buyer is a limited liability company duly formed and validly existing under the Laws of the State of Delaware. Buyer has all requisite power and authority to own and operate its property (including, at Closing, the Assets) and to carry on its business as now conducted. Buyer is duly licensed or qualified to do business as a foreign limited liability company and is in good standing in all jurisdictions in which such qualification is required by Law except where the failure to qualify or be in good standing would not have a material adverse effect upon the ability of Buyer to consummate the transactions contemplated by this Agreement.

***4.2*** ***Authorization***. Buyer has full power and authority to enter into and perform this Agreement to which it is a party and the transactions contemplated herein. The execution, delivery and performance by Buyer of this Agreement has been, and the execution, delivery and performance by Buyer of all other documents delivered pursuant to this Agreement will be when delivered, duly and validly authorized and approved by all necessary limited liability company action on the part of Buyer. Assuming the due authorization, execution and delivery by the other parties to such documents, this Agreement constitutes, and the other documents delivered pursuant to this Agreement to which Buyer is a party will constitute, Buyer's legal, valid and binding obligations, enforceable against Buyer in accordance with their respective terms, subject however to the effects of bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and similar Laws relating to or affecting creditors' rights, as well as to principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

***4.3*** ***No Conflicts***. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated herein will not (a) conflict with or result in a breach of any provisions of the organizational or other governing documents of Buyer, (b) result in a default or the creation of any Encumbrance or give rise to any right of



termination, cancellation or acceleration under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license or other agreement to which Buyer is a party or by which Buyer or any of its property may be bound or (c) violate any Law applicable to Buyer or any of its property, except in the case of clauses (b) and (c) where such default, Encumbrance, termination, cancellation, acceleration or violation would not have a material adverse effect upon the ability of Buyer to consummate the transactions contemplated by this Agreement.

***4.4*** ***Consents***. Except for those Consents contained in the Contracts or otherwise applicable to the Assets, there are no consents or other restrictions on assignment, including requirements for consents from third parties to any assignment, in each case, that would be applicable in connection with the consummation by Buyer of the transactions contemplated by this Agreement.

***4.5*** ***Bankruptcy***. There are no bankruptcy, reorganization or receivership proceedings pending, being contemplated by or, to Buyer's knowledge, threatened in writing against Buyer.

***4.6*** ***Litigation***. There is no Proceeding by any Person or by or before any Governmental Authority, and no Proceeding pending, or to Buyer's knowledge, threatened against Buyer, or to which Buyer is a party, that would affect the ability of Buyer to consummate the transactions contemplated by this Agreement.

***4.7*** ***Financing***. Buyer has, and shall have as of the Closing Date, sufficient funds with which to pay the Closing Amount and consummate the transactions contemplated to occur at Closing by this Agreement and, following Closing, Buyer will have sufficient funds to pay any adjustments to the Purchase Price pursuant to *Section 2.4*.

***4.8*** ***Independent Evaluation***. Buyer is sophisticated in the evaluation, purchase, ownership and operation of oil and gas properties and related facilities. In making its decision to enter into this Agreement and to consummate the transaction contemplated herein, Buyer has relied or shall rely solely on its own independent investigation and evaluation of the Assets and the advice of its own legal, tax, economic, environmental, engineering, geological and geophysical advisors and the express provisions of this Agreement and not on any comments, statements, projections or other materials made or given by any representatives or consultants or advisors engaged by SM Energy, provided, that Buyer shall be entitled to rely on the representations, warranties, covenants and agreements of SM Energy set forth in this Agreement, the agreements to be executed in connection with this Agreement and in the certificate delivered by SM Energy at Closing, and the Subject Special Warranty.

***4.9*** ***Brokers' Fees***. Buyer has incurred no liability, contingent or otherwise, for brokers' or finders' fees relating to the transactions contemplated by this Agreement for which SM Energy or any Affiliate of SM Energy shall have any responsibility.



***4.10*** ***Accredited Investor***. Buyer is an "accredited investor," as such term is defined in Regulation D of the Securities Act of 1933, as amended, and will acquire the Assets for its own account and not with a view to a sale or distribution thereof in violation of such Law and the rules and regulations thereunder, any applicable state blue sky Laws or any other applicable securities Laws.

## ARTICLE V
## ACCESS / DISCLAIMERS

***5.1*** ***Access***.

(a) From and after the Execution Date and up to and including the Closing Date (or earlier termination of this Agreement), but subject to the other provisions of this Agreement (including this *Section 5.1*) and obtaining any required consents of third parties (with respect to which consents SM Energy shall use its commercially reasonable efforts to obtain), SM Energy shall afford to Buyer, its Affiliates and its and their officers, employees, agents, accountants, attorneys, investment bankers, consultants and other authorized representatives (collectively, "***Buyer's Representatives***") reasonable access, during normal business hours, to the Assets and all Records in SM Energy's or any of its Affiliates' possession. SM Energy shall also make available to Buyer and Buyer's Representatives, upon reasonable notice during normal business hours, SM Energy's personnel knowledgeable with respect to the Assets in order that Buyer may make such diligence investigation as Buyer considers necessary or appropriate. All investigations and due diligence conducted by Buyer or any Buyer's Representative shall be conducted at Buyer's sole cost, risk and expense; and any conclusions made from any examination done by Buyer or any Buyer's Representative shall result from Buyer's own independent review and judgment. Buyer shall coordinate its access rights and physical inspections of the Assets with SM Energy and any third party that serves as an Operator (each a "***Third Party Operator***") to reasonably minimize any inconvenience to or interruption of the conduct of business by SM Energy or any Third Party Operator. Buyer shall give SM Energy reasonable prior written notice before entering onto any of the Assets and SM Energy shall have the right to have its representatives present at any time any Buyer's Representative is present on the Assets. Buyer shall, and shall cause all of the Buyer's Representatives to, abide by SM Energy's and any Third Party Operator's safety rules, regulations and operating policies while conducting its due diligence evaluation of the Assets including any environmental or other inspection or assessment of the Assets.

(b) Buyer shall not conduct any sampling, boring, drilling or other invasive investigation activities ("***Invasive Activities***") on or with respect to any of the Assets without SM Energy's prior written consent, which consent may be withheld in the sole and absolute discretion of SM Energy for any reason whatsoever.

(c) Buyer agrees to defend, indemnify and hold harmless each of the Operators of the Assets and the SM Indemnified Parties from and against any and all Liabilities arising out of, resulting from or relating to any field visit, environmental property assessment or other due diligence activity conducted by Buyer or any Buyer's Representative (including an Invasive Activity, if any) with respect to the Assets, **EVEN IF SUCH LIABILITIES ARISE OUT OF OR RESULT FROM, SOLELY OR IN PART, THE SOLE, ACTIVE, PASSIVE,**



**CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OR VIOLATION OF LAW OF OR BY A MEMBER OF THE SM INDEMNIFIED PARTIES, EXCEPTING ONLY LIABILITIES ACTUALLY RESULTING ON THE ACCOUNT OF THE KNOWING AND INTENTIONAL FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A MEMBER OF THE SM INDEMNIFIED PARTIES**.

(d) Buyer agrees to promptly provide SM Energy with copies, but in any event within three (3) Business Days after its receipt or creation thereof, of all final reports and test results prepared by Buyer, any of Buyer's Representatives or any third party consultants and which contain data collected or generated from Buyer's due diligence with respect to the Assets (including an Invasive Activity, if any). SM Energy shall not be deemed by its receipt of said documents or otherwise to have made any representation or warranty, expressed, implied or statutory as to the condition to the Assets or to the accuracy of said documents or the information contained therein.

(e) Upon completion of Buyer's due diligence, Buyer shall, at its sole cost and expense and without any cost or expense to SM Energy or its Affiliates (i) repair all damage done to the Assets in connection with Buyer's due diligence, (ii) restore the Assets to the approximate same or better condition in existence prior to commencement of Buyer's due diligence and (iii) remove all equipment, tools or other property brought onto the Assets in connection with Buyer's due diligence. Any disturbance to the Assets (including, without limitation, the real property associated with such Assets) resulting from Buyer's due diligence will be promptly corrected by Buyer.

(f) During all periods that Buyer and/or any of Buyer's Representatives are present on the Assets, Buyer shall maintain, at its sole expense and with insurers reasonably satisfactory to SM Energy, policies of insurance of the types and in the amounts reasonably requested by SM Energy. Each such insurance policy required to be carried by Buyer hereunder will (i) be primary insurance, (ii) list the SM Indemnified Parties as additional insureds, (iii) waive subrogation against the SM Indemnified Parties and (iv) provide for five days prior notice to SM Energy in the event of cancellation or modification of such policy or reduction in the coverage of such policy. Upon request by SM Energy, Buyer shall provide evidence of such insurance to SM Energy prior to entering the Assets.

(g) In no event shall Buyer or Buyer's Representatives be responsible under this *Section 5.1* for any Liabilities arising from the disclosure of a condition of the Assets that existed as of the time immediately prior to inspection.

***5.2*** ***Confidentiality***. Buyer acknowledges that, pursuant to its right of access to the Records and the Assets, Buyer will become privy to confidential and other information of SM Energy and that such confidential information shall be held confidential by Buyer and Buyer's Representatives in accordance with the terms of the Confidentiality Agreement. If Closing should occur, the foregoing confidentiality restriction on Buyer, including the Confidentiality Agreement, shall terminate (except as to (a) any Assets that are excluded from the transactions contemplated hereby pursuant to the provisions of this Agreement, (b) the Excluded Assets, and (c) information related to assets other than the Assets). Subject to *Section 14.2*, for a period of

one (1) year following the Closing, SM Energy shall, and shall cause its Affiliates to, not make any disclosure to third parties of any confidential or proprietary information relating to the Assets, except with the prior consent of Buyer or as required by applicable Law, except to the extent that such information (x) is generally available to and known by the public through no fault of SM Energy or any of its Affiliates, (y) is lawfully acquired by SM Energy or any of its Affiliates from and after the Closing from sources which are not known to SM Energy to be prohibited from disclosing such information by a legal, contractual or fiduciary obligation, or (z) is required to be disclosed pursuant to applicable law, rule or regulation; provided, further, that nothing shall prohibit SM Energy or its Affiliates from using their knowledge or mental impressions of such information or their general knowledge of the industry or geographic area in the conduct of their respective businesses following Closing.

***5.3 Disclaimers***.

(a) EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH IN *ARTICLE III*, OR IN THE CERTIFICATE DELIVERED BY SM ENERGY AT CLOSING OR THE SUBJECT SPECIAL WARRANTY, (I) SM ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, AND (II) SM ENERGY EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO BUYER OR ANY BUYER'S REPRESENTATIVE (INCLUDING, WITHOUT LIMITATION, ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, CONSULTANT, REPRESENTATIVE OR ADVISOR OF SM ENERGY OR ANY OF ITS AFFILIATES).

(b) EXCEPT AS EXPRESSLY SET FORTH IN *ARTICLE III*, OR IN THE CERTIFICATE DELIVERED BY SM ENERGY AT CLOSING OR THE SUBJECT SPECIAL WARRANTY, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SM ENERGY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS, STATUTORY OR IMPLIED, AS TO (I) TITLE TO ANY OF THE ASSETS, (II) THE CONTENTS, CHARACTER OR NATURE OF ANY REPORT OF ANY PETROLEUM ENGINEERING CONSULTANT, OR ANY ENGINEERING, GEOLOGICAL OR SEISMIC DATA OR INTERPRETATION, RELATING TO THE ASSETS, (III) THE QUANTITY, QUALITY OR RECOVERABILITY OF HYDROCARBONS IN OR FROM THE ASSETS, (IV) ANY ESTIMATES OF THE VALUE OF THE ASSETS OR FUTURE REVENUES GENERATED BY THE ASSETS, (V) THE ABILITY TO PRODUCE HYDROCARBONS FROM THE ASSETS, (VI) THE MAINTENANCE, REPAIR, CONDITION, QUALITY, SUITABILITY, DESIGN OR MARKETABILITY OF THE ASSETS, (VII) THE CONTENT, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM, REPORTS, BROCHURES, CHARTS OR STATEMENTS PREPARED BY SM ENERGY OR THIRD PARTIES WITH RESPECT TO THE ASSETS, (VIII) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE TO BUYER OR ANY BUYER'S REPRESENTATIVE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO AND (IX) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT. EXCEPT AS



EXPRESSLY REPRESENTED OTHERWISE IN A*RTICLE III*, SM ENERGY FURTHER DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS, STATUTORY OR IMPLIED, OF MERCHANTABILITY, FREEDOM FROM LATENT VICES OR DEFECTS, FITNESS FOR A PARTICULAR PURPOSE OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS OF ANY ASSETS, RIGHTS OF A PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF CONSIDERATION, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT BUYER SHALL BE DEEMED TO BE OBTAINING THE ASSETS IN THEIR PRESENT STATUS, CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS" WITH ALL FAULTS OR DEFECTS (KNOWN OR UNKNOWN, LATENT, DISCOVERABLE OR UNDISCOVERABLE), AND THAT BUYER HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS BUYER DEEMS APPROPRIATE.

(c) OTHER THAN THOSE REPRESENTATIONS SET FORTH IN *SECTION 3.12*, SM ENERGY HAS NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING ANY MATTER OR CIRCUMSTANCE RELATING TO ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT OR THE PROTECTION OF HUMAN HEALTH, SAFETY, NATURAL RESOURCES OR THE ENVIRONMENT, OR ANY OTHER ENVIRONMENTAL CONDITION OF THE ASSETS, AND NOTHING IN THIS AGREEMENT OR OTHERWISE SHALL BE CONSTRUED AS SUCH A REPRESENTATION OR WARRANTY, AND SUBJECT TO BUYER'S LIMITED RIGHTS UNDER *SECTION 7.1*, AT CLOSING BUYER SHALL BE DEEMED TO BE TAKING THE ASSETS "AS IS" AND "WHERE IS" WITH ALL FAULTS FOR PURPOSES OF THEIR ENVIRONMENTAL CONDITION AND THAT BUYER HAS MADE OR CAUSED TO BE MADE SUCH ENVIRONMENTAL INSPECTIONS AS BUYER DEEMS APPROPRIATE.

(d) SM ENERGY AND BUYER AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS *SECTION 5.3* ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSE OF ANY APPLICABLE LAW.

(e) NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL RELIEVE SM ENERGY FOR ANY LIABILITY FOR KNOWING AND INTENTIONAL FRAUD, INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.

## ARTICLE VI
## TITLE MATTERS; CASUALTIES

***6.1 SM Energy's Title***. Without limiting Buyer's remedies for Title Defects set forth in this *Article VI*, except for the Subject Special Warranty, SM Energy makes no warranty or representation, express, implied, statutory or otherwise with respect to its title to any of the Assets and Buyer hereby acknowledges and agrees that Buyer's sole remedy for any defect of title, including any Title Defect, with respect to any of the Assets shall be as set forth in *Section 6.2*.



***6.2 Notice of Title Defects; Defect Adjustments***.

(a) Title Defect Notices. On or before 4:00 p.m. (Mountain Time) on November 21, 2016 (the "***Defect Claim Date***"), Buyer shall have the right, but not the obligation, to deliver notices to SM Energy meeting the requirements of this *Section 6.2(a)* (each, a "***Title Defect Notice***") setting forth any matters which, in Buyer's reasonable opinion, constitute Title Defects and which Buyer asserts as a Title Defect pursuant to this *Section 6.2*. For all purposes of this Agreement and notwithstanding anything herein to the contrary, except with respect to the Subject Special Warranty and/or claims pursuant to *Section 8.1* (solely as to matters occurring between the Execution Date and the Closing Date), Buyer shall be deemed to have waived, and SM Energy shall have no liability for, any Title Defect that Buyer fails to assert as a Title Defect pursuant to a Title Defect Notice delivered in material compliance with this *Section 6.2(a)* and received by SM Energy on or before the Defect Claim Date. To be effective, each Title Defect Notice shall be in writing and shall include (i) a description of the alleged Title Defect and the Assets affected by such Title Defect (each a "***Title Defect Property***"), (ii) the Allocated Value of each Title Defect Property, (iii) supporting documents reasonably necessary for SM Energy to verify the existence of the alleged Title Defect(s), (iv) the amount by which Buyer reasonably believes the Allocated Value of each Title Defect Property is reduced by the alleged Title Defect(s), and (v) the computations upon which Buyer's belief is based. To give SM Energy an opportunity to commence reviewing and curing Title Defects, Buyer agrees to use

reasonable efforts to give SM Energy, on or before the end of each calendar week prior to the Defect Claim Date, written reports of alleged Title Defects discovered by Buyer during the preceding calendar week, which reports may be preliminary in nature and supplemented prior to the expiration of the applicable Defect Claim Date, provided that the failure to provide such reports shall not waive Buyer's rights to provide a Title Defect Notice prior to the Defect Claim Date for any Title Defect. Buyer shall also promptly furnish SM Energy with written notice of any Title Benefit that is discovered by Buyer or any Buyer's Representative while conducting Buyer's due diligence with respect to the Assets prior to the Defect Claim Date.

(b) Title Benefit Notices. SM Energy shall have the right, but not the obligation, to deliver to Buyer on or before the Defect Claim Date, a notice setting forth any matters that, in SM Energy's reasonable opinion, constitute Title Benefits and that SM Energy asserts as a Title Benefit pursuant to this *Section 6.2* (each, a "***Title Benefit Notice***") including a description of the Title Benefit and the Assets affected by the Title Benefit (the "***Title Benefit Property***"), the amount by which SM Energy reasonably believes the Allocated Value of the Title Benefit Property is increased by the Title Benefit, (iii) supporting documents reasonably necessary for Buyer to verify the existence of the alleged Title Benefit and (iv) the computations upon which SM Energy's belief is based. SM Energy shall be deemed to have waived all Title Benefits of which it, or Buyer pursuant to *Section 6.2(a)*, has not given notice on or before the Defect Claim Date.

(c) Remedies for Title Defects. Subject to SM Energy's continuing right to dispute the existence of a Title Defect or the Title Defect Amount asserted with respect thereto and subject to the Individual Title Defect Threshold and the Aggregate Deductible, in the event that any Title Defect properly asserted by Buyer in accordance with *Section 6.2(a)* is not waived in writing by Buyer or cured on or before Closing, SM Energy shall, at its sole option, elect to:



(i) transfer, convey and assign the entirety of the Title Defect Property that is subject to such Title Defect, together with all associated Assets, to Buyer at Closing, and reduce the Purchase Price by the Title Defect Amount;

(ii) transfer, convey and assign the entirety of the Title Defect Property that is subject to such Title Defect, together with all associated Assets, to Buyer at Closing, in which event SM Energy shall have the right, for a period of 110 days following the Closing Date (such period, the "***Cure Period***"), to cure any Title Defect relating to such retained Title Defect Property, and should SM Energy cure such Title Defect during the Cure Period, then the Purchase Price shall not be adjusted. If SM Energy is unable to cure any such Title Defect during the Cure Period, then the Purchase Price shall be reduced by an amount equal to the Title Defect Amount;

(iii) if agreed to by Buyer in writing, transfer, convey and assign the entirety of the Title Defect Property that is subject to such Title Defect, together with all associated Assets, to Buyer at Closing, and indemnify Buyer against all Liability resulting from such Title Defect with respect to the Assets pursuant to an indemnity agreement mutually agreeable to the Parties; or

(iv) at Closing, retain the entirety of the Title Defect Property that is subject to such Title Defect, together with all associated Assets and all rights to operate such retained Assets, and reduce the Purchase Price by an amount equal to the Allocated Value of such Title Defect Property and associated Assets;

provided, however, if a Title Defect is a "most favored nations" clause in a Lease, or related to an Unreviewed Material Contract, then Buyer's sole and exclusive remedy for such Title Defect shall be to exclude the affected Leases or Assets, and all associated Assets, in which case the provisions of *Section 6.2(c)(iv)* shall apply.

(d) Remedies for Title Benefits. With respect to each Well or Well Location affected by Title Benefits reported under this *Section 6.2*, the aggregate Title Defect Amounts shall be decreased by an amount equal to the increase in the Allocated Value for such Asset caused by such Title Benefits, as determined pursuant to *Section 6.2(g)* (the "***Title Benefit Amount***"). The Title Benefit Amounts may only be used to offset Title Defect Amounts and may not increase the Purchase Price.

(e) Exclusive Remedy. The provisions set forth in *Section 6.2(c)* and *Section 6.2(i)*, shall be the exclusive right and remedy of Buyer with respect to SM Energy's failure to have Defensible Title with respect to any Asset, except for the Subject Special Warranty and/or claims pursuant to *Section 8.1* (solely as to matters occurring between the Execution Date and the Closing Date).

(f) Title Defect Amount. The amount by which the Allocated Value of the affected Title Defect Property is reduced as a result of the existence of such Title Defect shall be the "***Title Defect Amount***" and shall be determined in accordance with the following terms and conditions:



(i) if Buyer and SM Energy agree on the Title Defect Amount, then that amount shall be the Title Defect Amount;

(ii) if the Title Defect is an Encumbrance that is undisputed and liquidated in amount, then the Title Defect Amount shall be the amount necessary to be paid to remove the Title Defect from the Title Defect Property;

(iii) if the Title Defect represents a discrepancy between (A) the Net Revenue Interest for any Title Defect Property and (B) the Net Revenue Interest for such Title Defect Property stated in **Exhibit B**, and the Working Interest attributable to such Title Defect Property has been reduced proportionately, then the Title Defect Amount shall be the product of the Allocated Value of such Title Defect Property multiplied by a fraction, the numerator of which is the positive difference between such Net Revenue Interest values, and the denominator of which is the Net Revenue Interest for such Title Defect Property stated in **Exhibit B**, provided that if the Net Revenue discrepancy does not affect the Title Defect Property throughout its entire life, the Title Defect Amount determined under this *Section 6.2(f)* shall be reduced to take into account the applicable time period only;

(iv) if the Title Defect represents an obligation or Encumbrance upon or other defect in title to the Title Defect Property of a type not described above, including a Title Defect that represents a discrepancy between (A) the Net Revenue Interest for any Title Defect Property and (B) the Net Revenue Interest for such Title Defect Property stated in **Exhibit B**, and the Working Interest attributable to such Title Defect Property has not been reduced proportionately, the applicable Title Defect Amount shall be determined by taking into account the Allocated Value of the Title Defect Property, the portion of the Title Defect Property affected by the Title Defect, the legal effect of the Title Defect, the potential economic effect of the Title Defect over the life of the Title Defect Property, the values placed upon the Title Defect by Buyer and SM Energy and such other reasonable factors as are necessary to make a proper evaluation;

(v) the Title Defect Amount with respect to a Title Defect Property shall be determined without duplication of any costs or losses included in any other Title Defect Amount hereunder; and

(vi) notwithstanding anything to the contrary in this *Article VI*, the aggregate Title Defect Amounts attributable to the effects of all Title Defects upon any single Title Defect Property shall not exceed the Allocated Value of such Title Defect Property, except (but subject to SM Energy's rights under *Sections 6.2(c)(ii)*, *6.2(c)(iii)* and *6.2(c)(iv)*) if a Title Defect is a lien, mortgage or deed of trust, the Title Defect Amount shall be the amount necessary to remove such mortgage, deed of trust or lien (provided that this exception shall not apply to mortgages, deeds of trust or liens granted by the lessors under the Leases, unless there is a default thereunder or foreclosure proceedings pursuant thereto).

(g) Title Benefit Amount. The Title Benefit Amount resulting from a Title Benefit shall be determined in accordance with the following methodology, terms and conditions:

(i) if Buyer and SM Energy agree on the Title Benefit Amount, then that amount shall be the Title Benefit Amount;

(ii) if the Title Benefit represents an increase between (A) the Net Revenue Interest for any Title Benefit Property and (B) the Net Revenue Interest for such Title Benefit Property stated in **Exhibit B**, and the Working Interest has increased proportionately, then the Title Benefit Amount shall be the product of the Allocated Value of such Title Benefit Property multiplied by a fraction, the numerator of which is the positive difference between such Net Revenue Interest values, and the denominator of which is the Net Revenue Interest for such Title Benefit Property stated in **Exhibit B**, provided that if the Net Revenue increase does not affect the Title Benefit Property throughout its entire life, the Title Benefit Amount determined under this *Section 6.2(g)* shall be reduced to take into account the applicable time period only;

(iii) if the Title Benefit is of a type not described above, then the applicable Title Benefit Amount shall be determined by taking into account the Allocated Value of the Title Benefit Property, the portion of the Title Benefit Property affected by such Title Benefit, the legal effect of the Title Benefit, the potential economic effect of the Title Benefit over the life of such Title Benefit Property, the values placed upon the Title Benefit by Buyer and SM Energy and such other reasonable factors as are necessary to make a proper evaluation; and

(iv) the Title Benefit Amount with respect to a Title Benefit Property shall be determined without duplication of any items or amounts included in any other Title Benefit Amount hereunder.

(h) Title Threshold and Deductibles. Notwithstanding anything to the contrary, in no event shall there be any adjustments to the Purchase Price or other remedies provided by SM Energy hereunder or under the Assignment: (i) for any individual Title Defect for which the Title Defect Amount does not exceed the Individual Title Defect Threshold and (ii) for any Title Defect for which the Title Defect Amount exceeds the Individual Title Defect Threshold unless the sum of the aggregate Title Defect Amounts of all such Title Defects that exceed the Individual Title Defect Threshold (excluding any Title Defect Amounts attributable to Title Defects cured by SM Energy), exceeds the Aggregate Title Deductible, after which point Buyer shall be entitled to adjustments to the Purchase Price only with respect to such Title Defects in excess of the Aggregate Title Deductible. For the avoidance of doubt, if SM Energy elects to transfer, convey and assign any Title Defect Property pursuant to *Section 6.2(c)(ii)*, the Purchase Price shall not be reduced by the Title Defect Amount of such Title Defect Property and the Title Defect Amount relating to such Title Defect Property will not be counted toward the Aggregate Title Deductible, unless SM Energy is unable to cure such Title Defect during the Cure Period, in which case the Purchase Price shall be adjusted as provided in *Section 6.2(c)(ii)*. If a single Title Defect or series of related Title Defects affects several Well Locations in the same drilling or spacing unit, then such Title Defect(s) shall be deemed to have exceeded the



Individual Title Defect Threshold if the total amount by which such Title Defect(s) reduce(s) the Allocated Value(s) of all the affected Well Locations exceed(s) the Individual Title Defect Threshold.

(i) Title Dispute Resolution. The Parties agree to resolve disputes concerning the following matters pursuant to this *Section 6.2(i)*: (1) the existence and scope of a Title Defect or Title Defect Amount, (2) the adequacy of SM Energy's Title Defect curative materials and Buyer's reasonable satisfaction thereof and (3) the existence and scope of a Title Benefit or Title Benefit Amount (collectively, "***Title Disputed Matters***"). The Parties agree to attempt to initially resolve all disputes through good faith negotiations. If the Parties cannot resolve disputes regarding Title Disputed Matters, on or before Closing, the Closing shall be delayed as to only the Assets subject to the Title Disputed Matters until the Parties finally resolve the dispute pursuant to this *Section 6.2(i)*; provided, however, if either Party asserts that the condition in *Section 9.1(d)* or *Section 9.2(d)* has not been satisfied due, in whole or in part, to Title Defects, then the Parties will resolve all Title Disputed Matters pursuant to this *Section 6.2(i)* prior to Closing. In the event that neither Party asserts that the condition in *Section 9.1(d)* or *Section 9.2(d)* has not been satisfied, it is understood and agreed that the Parties shall proceed to Closing as contemplated herein as to all Assets not covered by a Title Disputed Matter. The Title Disputed Matters will be finally determined pursuant to this *Section 6.2(i)*. There shall be a single arbitrator, who shall be an attorney with at least 10 years' experience in oil and gas title and transactional matters, as selected by mutual agreement of Buyer and SM Energy within 15 days after any Party invokes the provisions of this *Section 6.2(i)* to resolve such Dispute, and absent such agreement, by the Houston office of the AAA (the "***Title Arbitrator***"). The arbitration proceeding shall be held in Houston, Texas and shall be conducted in accordance with the AAA Rules to the extent such rules do not conflict with the terms of this *Section 6.2(i)*. The Title Arbitrator's determination shall be made within 20 days after submission by the Parties of the matters in Dispute and shall be final and binding upon both Parties, without right of appeal. In making his determination, the Title Arbitrator shall be bound by the rules set forth in *Section 6.2(f)* and *Section 6.2(g)* and, subject to the foregoing, may consider such other matters as in the opinion of the Title Arbitrator are necessary to make a proper determination. The Title Arbitrator, however, may not award (a) Buyer a greater Title Defect Amount than the Title Defect Amount claimed by Buyer in the applicable Title Defect Notice (which such Title Defect Amount shall not exceed the Allocated Value of the applicable Title Defect Property) or (b) SM Energy a greater Title Benefit Amount than the Title Benefit Amount claimed by SM Energy in the applicable Title Benefit Notice. The Title Arbitrator shall act as an expert for the limited purpose of determining the specific disputed Title Defect, Title Benefit, Title Defect Amount or Title Benefit Amount submitted by either Party and may not award damages, interest or penalties to either Party with respect to any Dispute. SM Energy and Buyer shall each bear its own legal fees and other costs of presenting its case to the Title Arbitrator. Each of SM Energy and Buyer shall bear one-half of the costs and expenses of the Title Arbitrator. To the extent that the award of the Title Arbitrator with respect to any Title Defect Amount or Title Benefit Amount was not taken into account as an adjustment to the Purchase Price or the aggregate Title Defect Amounts, as applicable at Closing pursuant to *Section 2.4* and an adjustment would otherwise be required under the provisions of *Section 6.2(c)* or *Section 6.2(d)*, as applicable, then, within 10 days after the Title Arbitrator delivers written notice to Buyer and SM Energy of its award with respect to such Title Defect Amount or a Title Benefit Amount and subject to *Section 6.2(h)*, the Purchase Price will be adjusted pursuant to *Section 2.4* by the amount so awarded by the Title Arbitrator.



***6.3 Casualty or Condemnation Loss.***

(a) Notwithstanding anything herein to the contrary, from and after the Effective Time, if Closing occurs, Buyer shall assume all risk of loss with respect to (i) production of Hydrocarbons from the Assets through normal depletion (including watering out of any well, collapsed casing or sand infiltration of any well) and (ii) the depreciation of personal property due to ordinary wear and tear and, in each case, Buyer shall not assert such matters as Casualty Losses or Title Defects hereunder.

(b) If, from and after the Effective Time but prior to the Closing Date, any portion of the Assets is damaged or destroyed by fire or other casualty or is taken in condemnation or under right of eminent domain (a "***Casualty Loss***"), and the resulting loss from such Casualty Loss exceeds $100,000 based on the Allocated Value of the affected Assets, then (i) Buyer shall nevertheless be required to close the transactions contemplated by this Agreement and (ii) SM Energy shall elect by written notice to Buyer prior to Closing to either (A) cause, at SM Energy's sole cost and as promptly as reasonably practicable (which work may extend after the Closing Date), each Asset affected by such Casualty Loss to be repaired or restored to at least its condition prior to such casualty or taking, or (B) reduce the Purchase Price by the cost to repair or restore each Asset affected by such Casualty Loss to at least its condition prior to such casualty or taking. In each case, SM Energy shall retain all rights to insurance, condemnation awards and other claims against third parties with respect to the casualty or taking except to the extent the Parties otherwise agree in writing.

***6.4 Preferential Rights and Consents to Assign.***

(a) All consents to assign relating to the Assets ("***Consents***") and preferential rights to purchase ("***Preferential Rights***") are listed on *Schedule 6.4*. The remedies set forth in this *Section 6.4* are the exclusive remedies under this Agreement related to the Consents and Preferential Rights.

(b) From and after the Execution Date up to Closing, SM Energy shall use its commercially reasonable efforts (with the cooperation of Buyer) to obtain all Consents and waivers of all Preferential Rights (excluding any Customary Post-Closing Consents); provided, however, that neither Party shall be required to incur any Liability or pay any money in order to obtain such Consents or waivers.

(c) Preferential Rights. SM Energy shall, within 10 days after the Execution Date, send to each holder of a Preferential Right a notice requesting the election or waiver by each such holder of its applicable Preferential Right, in each case in material compliance with the contractual provisions applicable to such Preferential Right, requesting a waiver of such right. Any Preferential Right must be exercised subject to all terms and conditions set forth in this Agreement, including the successful Closing of this Agreement pursuant to *Article XI*. The consideration payable under this Agreement for any particular Asset for purposes of Preferential Right notices shall be the Allocated Value of such Asset.

(i) All Assets burdened by Preferential Rights for which (A) the applicable Preferential Right has been waived, or (B) the period to exercise such



Preferential Right has expired prior to the Closing without the applicable holder of such Preferential Right electing to enforce its Preferential Right, shall, in each case, be assigned to Buyer at the Closing pursuant to the provisions of this Agreement.

(ii) If, prior to the Closing (A) any holder of a Preferential Right notifies SM Energy that it intends to consummate the purchase of the portion of the Assets to which its Preferential Right applies or (B) the time for exercising a Preferential Right has not expired and the holder of such Preferential Right has not waived such Preferential Right, then, in each case, such portion of the Assets affected by such Preferential Right shall be excluded from the Assets to be conveyed to Buyer at Closing and the Purchase Price shall be reduced by the Allocated Value of such excluded portion of the Assets. SM Energy shall be entitled to all proceeds paid by a Person exercising a Preferential Right prior to the Closing. If, after the Closing but prior to the date of final settlement of the Purchase Price under *Section 2.6*, (1) such holder of such Preferential Right thereafter fails to consummate the purchase of the portion of the Assets covered by such Preferential Right or (2) the time for exercising such Preferential Right expires without exercise by the holder thereof, then SM Energy shall (x) so notify Buyer and (y) on or before 10 days following delivery of such notice, assign such portion of the Assets to Buyer pursuant to an assignment in substantially the form of the Assignment and the Purchase Price shall be increased by an amount equal to the Allocated Value of such portion of the Assets.

(d) Consents. SM Energy, within 10 days after the Execution Date, shall send to each holder of a Consent a notice seeking such holder's consent to the transactions contemplated hereby.

(i) If (A) SM Energy fails to obtain a Consent prior to Closing and the failure to obtain such Consent would cause (1) the assignment to Buyer of any portion of the Assets to be void or expose Buyer to material damages or (2) the termination of a Lease under the express terms thereof or (B) a Consent requested by SM Energy is denied in writing, then, in each case, that portion of the Assets affected by such Consent shall be excluded from the Assets to be conveyed to Buyer at Closing and the Purchase Price shall be reduced by the Allocated Value of such portion of the Assets. In the event that a Consent that was not obtained prior to Closing is obtained following Closing but prior to the final settlement of the Purchase Price under *Section 2.6* or the requirement to obtain such Consent is waived by Buyer then, within 10 days after such Consent is obtained or the requirement to obtain such Consent is waived by Buyer, (x) SM Energy shall assign such excluded portion of the Assets to Buyer pursuant to an assignment in substantially the form of the Assignment (and if the requirement to obtain a Consent is waived by Buyer, Buyer shall have no claim against, and SM Energy shall have no Liability for, the failure to obtain such Consent), and (y) Buyer shall pay to SM Energy by wire transfer of immediately available funds an amount equal to the Allocated Value of such portion of the Assets so assigned.

(ii) If (A) SM Energy fails to obtain a Consent prior to Closing and the failure to obtain such Consent would not cause (1) the assignment to Buyer of any portion of the Assets to be void or expose Buyer to material damages or (2) the



termination of a Lease under the express terms thereof and (B) such Consent requested by SM Energy is not denied in writing, then that portion of the Assets subject to such Consent shall be assigned by SM Energy to Buyer at Closing pursuant to the Assignment and Buyer shall have no claim against, and SM Energy shall have no Liability for, the failure to obtain such Consent.

## ARTICLE VII
## ENVIRONMENTAL MATTERS

***7.1 Environmental Defects.***

(a) Environmental Defects Notice. On or before the Defect Claim Date, Buyer shall have the right, but not the obligation, to deliver notices to SM Energy materially meeting the requirements of this *Section 7.1(a)* (each, an "***Environmental Defect Notice***") setting forth any matters that, in Buyer's reasonable opinion, constitute Environmental Defects and that Buyer asserts as Environmental Defects pursuant to this *Section 7.1*. For all purposes of this Agreement, Buyer shall be deemed to have waived any Environmental Defect that Buyer fails to properly assert as an Environmental Defect pursuant to an Environmental Defect Notice delivered in accordance with this *Section 7.1(a)* and received by SM Energy on or before the Defect Claim Date, except for claims relating to a breach of *Section 3.12*, or claims pursuant to *Section 8.1* (solely as to matters occurring between the Execution Date and the Closing Date), *Section 13.2(d),* and/or *Section 13.2(g)*. To be effective, each Environmental Defect Notice shall be in writing and shall include: (i) a description of the Environmental Condition constituting the alleged Environmental Defect, including the Environmental Law(s) violated by such Environmental Defect, (ii) each Asset (or portion thereof) affected by the alleged Environmental Defect (the "***Environmental Defect Property***"), (iii) the Allocated Value of each Environmental Defect Property, (iv) supporting documents in the possession of Buyer reasonably necessary for SM Energy to verify the existence of the alleged Environmental Defect, and (v) a calculation of the Remediation Amount (itemized in reasonable detail) that Buyer asserts is attributable to such alleged Environmental Defect. Buyer's calculation of the Remediation Amount included in the Environmental Defect Notice must describe in reasonable detail the Remediation proposed for the Environmental Condition that gives rise to the asserted Environmental Defect and identify all assumptions used by Buyer in calculating the Remediation Amount, including the standards that Buyer asserts must be met to comply with Environmental Laws. SM Energy shall have the right, but not the obligation, to cure any claimed Environmental Defect on or before Closing. To give SM Energy an opportunity to commence reviewing and curing Environmental Defects, Buyer agrees to use reasonable efforts to give SM Energy, on or before the end of each calendar week prior to the Defect Claim Date, written report of all alleged Environmental Defects discovered by Buyer during the preceding calendar week, which reports may be preliminary in nature and supplemented prior to the expiration of the applicable Defect Claim Date, provided, however, that the failure to provide such reports shall not waive Buyer's rights to provide an Environmental Defect Notice prior to the Defect Claim Date for any Environmental Defect, unless Buyer's failure materially prejudices SM Energy's ability to cure an Environmental Defect prior to Closing.

(b) Remedies for Environmental Defects. Subject to SM Energy's continuing right to dispute the existence of an Environmental Defect or the

Remediation Amount asserted



with respect thereto and subject to the Individual Environmental Threshold and the Aggregate Deductible, in the event that any Environmental Defect timely asserted by Buyer in accordance with *Section 7.1(a)* is not waived in writing by Buyer or cured on or before Closing, SM Energy shall, at its sole option, elect to:

(i) reduce the Purchase Price by the Remediation Amount for such Environmental Defect;

(ii) retain the entirety of the Environmental Defect Property subject to such Environmental Defect, together with all associated Assets, and reduce the Purchase Price by an amount equal to the Allocated Value of the Environmental Defect Property and associated Assets; or

(iii) with the prior written consent of Buyer, indemnify Buyer against all Liability resulting from such Environmental Defect with respect to the Assets pursuant to an indemnity agreement in a form mutually agreeable to the Parties.

If SM Energy elects the option set forth in clause (i) above, Buyer shall be deemed to have assumed responsibility for all costs and expenses attributable to the Remediation of the applicable Environmental Defect (net to the Assets) and all Liabilities (net to the Assets) with respect thereto, and Buyer's obligations with respect to the foregoing shall be deemed to constitute part of the Assumed Obligations.

(c) Exclusive Remedy. Subject to Buyer's remedy for a breach of SM Energy's representation contained in *Section 3.12* or for claims pursuant to *Section 8.1* (solely as to matters occurring between the Execution Date and the Closing Date),*Section 13.2(d) or 13.2(g)*, *Section 7.1(b)* shall be the exclusive right and remedy of Buyer with respect to any Environmental Defect.

(d) Environmental Deductibles. Notwithstanding anything to the contrary, in no event shall there be any adjustments to the Purchase Price or other remedies provided by SM Energy for (i) any individual Environmental Defect for which the Remediation Amount does not exceed the Individual Environmental Threshold, or (ii) any Environmental Defect for which the Remediation Amount exceeds the Individual Environmental Threshold, unless the sum of (A) the aggregate Remediation Amounts of all such Environmental Defects that exceed the Individual Environmental Threshold (excluding any Remediation Amounts attributable to (1) Environmental Defects cured by SM Energy or (2) Environmental Defect Properties that SM Energy elects to retain pursuant to *Section 7.1(b)(ii)*), exceeds the Aggregate Environmental Deductible, after which point Buyer shall only be entitled to adjustments to the Purchase Price with respect to such Environmental Defects in excess of the Aggregate Environmental Deductible. For the avoidance of doubt, if SM Energy elects to retain any Asset pursuant to *Section 7.1(b)(ii)*, the Purchase Price shall be reduced by the Allocated Value of such retained Asset and the Remediation Amount for the Environmental Defect relating to such retained Asset will not be counted towards the Aggregate Environmental Deductible. If a single Environmental Defect or series of related Environmental Defects affects several Well Locations in the same drilling or spacing unit, then such Environmental Defect(s) shall be deemed to have exceeded the Individual Environmental Threshold if the total amount by which such Environmental Defect(s)



reduce(s) the Allocated Value(s) of all the affected Well Locations exceed(s) the Individual Environment Threshold.

(e) Environmental Dispute Resolution. The Parties agree to resolve disputes concerning the existence and scope of an Environmental Defect or Remediation Amount pursuant to this *Section 7.1(e)* (the "***Environmental Disputed Matters***"). The Parties agree to attempt to initially resolve all disputes through good faith negotiations. If the Parties cannot resolve disputes regarding Environmental Disputed Matters on or before Closing, the Closing shall be delayed as to only the Assets subject to the Environmental Disputed Matters until the Parties finally resolve the dispute pursuant to this *Section 7.1(e)*; provided, however, if either Party asserts that the condition in *Section 9.1(d)* or *Section 9.2(d)* has not been satisfied due, in whole or in part, to Environmental Defects, then the Parties will resolve all Environmental Disputed Matters pursuant to this *Section 7.1(e)* prior to Closing. In the event that neither Party asserts that the condition in*Section 9.1(d)* or *Section 9.2(d)* has not been satisfied, it is understood and agreed that the Parties shall proceed to Closing as contemplated herein as to all Assets not covered by an Environmental Disputed Matter. The Environmental Disputed Matters will be finally determined pursuant to this *Section 7.1(e)*. There will be a single arbitrator, who must be an environmental attorney with at least 10 years' experience in environmental matters involving oil and gas properties, as selected by mutual agreement of Buyer and SM Energy within 15 days after any Party invokes the provisions of this *Section 7.1(e)* to resolve such Dispute, and absent such agreement, by the Houston office of the AAA (the "***Environmental Arbitrator***"). The arbitration proceeding will be held in Houston, Texas and conducted in accordance with the AAA Rules to the extent such rules do not conflict with the terms of this *Section 7.1(e)*. The Environmental Arbitrator's determination must be made within 20 days after submission of the matters in Dispute and shall be final and binding upon both Parties, without right of appeal. In making its determination, the Environmental Arbitrator shall be bound by the rules set forth in this *Section 7.1* and, subject to the foregoing, may consider such other matters as in the opinion of the Environmental Arbitrator are necessary or helpful to make a proper determination. The Environmental Arbitrator, however, may not award Buyer a greater Remediation Amount than the Remediation Amount claimed by Buyer in the applicable Environmental Defect Notice (which such award shall not exceed the Allocated Value of the applicable Environmental Defect Property). The Environmental Arbitrator will act as an expert for the limited purpose of determining the specific disputed Environmental Defects and/or Remediation Amounts submitted by either Party and may not award damages, interest or penalties to either Party with respect to any matter. SM Energy and Buyer will each bear its own legal fees and other costs of presenting its case. Each Party will bear one-half of the costs and expenses of the Environmental Arbitrator. To the extent that the award of the Environmental Arbitrator with respect to any Remediation Amount is not taken into account as an adjustment to the Purchase Price at Closing pursuant to *Section 2.4* and Buyer would otherwise be entitled to an adjustment under the provisions of*Section 7.1(d)*, then, within 10 days after the Environmental Arbitrator delivers written notice to Buyer and SM Energy of such award and subject to *Section 7.1(d)*, the Purchase Price will be adjusted pursuant to *Section 2.4* by such Remediation Amount.

***7.2 NORM, Wastes and Other Substances.*** Buyer acknowledges that the Assets have been used for exploration, development and production of oil and gas and that there may be petroleum, produced water, wastes or other substances or materials located in, on or under or



associated with the Assets. Equipment and sites included in the Assets may contain asbestos, NORM or other Hazardous Substances. NORM may affix or attach itself to the inside of wells, materials and equipment as scale, or in other forms. The wells, materials and equipment located on the Assets or included in the Assets may contain NORM and other wastes or Hazardous Substances. NORM containing material or other wastes or Hazardous Substances may have come in contact with various environmental media, including without limitation, water, soils or sediment. Special procedures may be required for the assessment, remediation, removal, transportation or disposal of environmental media, wastes, asbestos, NORM and other Hazardous Substances from the Assets.

## ARTICLE VIII
## CERTAIN AGREEMENTS

***8.1 Conduct of Business.*** Except (x) as set forth in*Schedule 8.1*, (y) as expressly contemplated by this Agreement or (z) as expressly consented to in writing by Buyer, SM Energy agrees that from and after the Execution Date up to Closing:

(a) SM Energy will, and will cause its Affiliates to:

(i) maintain, and if SM Energy is the Operator thereof, operate, the Assets in the usual, regular and ordinary manner consistent with its past practice;

(ii) maintain insurance coverage on the Assets presently furnished by nonaffiliated third parties in the amounts and of the types presently in force;

(iii) maintain the books of account and records relating to the Assets in the usual, regular and ordinary manner, in accordance with its usual accounting practices;

(iv) give written notice to Buyer as soon as is practicable of any written notice received or given by SM Energy with respect to any alleged material breach by SM Energy of any Lease or Material Contract; and

(v) timely pay or cause to be paid (or dispute in good faith) all bonuses and rentals, royalties, overriding royalties, shut-in royalties, minimum royalties and development and operating expenses, Taxes, Transfer Taxes, renewal and extension payments required in respect of the Assets, and all other payments or expenses incurred with respect to the Assets in the ordinary course of business and consistent with past practice, and perform all other acts that are necessary to maintain SM Energy's rights in and to the Assets in full force and effect until the Closing.

(b) SM Energy will not, and will cause its Affiliates not to:

(i) except for (A) emergency operations, (B) operations required under presently existing AFEs described on *Schedule 3.11*, (C) operations undertaken to avoid any penalty provision of any Applicable Contract or Governmental Authority order, and (D) operations proposed by third parties relating to drilling, sidetracking, reworking or other similar operations with respect to the Assets operated by third parties, agree to, propose or commence any operations on the Assets anticipated to cost (net to



the Assets) in excess of $100,000 per operation; provided that with respect to emergency operations, SM Energy shall notify Buyer of such emergency as soon as reasonably practicable;

(ii) enter into an Applicable Contract that, if entered into prior to the Execution Date, would be required to be listed in *Schedule 3.7(a)*,

(iii) terminate (unless such Material Contract terminates pursuant to its stated terms) or materially amend the terms of any Material Contract;

(iv) settle any Proceeding or waive any material claims or rights of material value in each case attributable to the Assets and effecting the period after the Effective Time;

(v) transfer, sell, mortgage, pledge or dispose of any material portion of the Assets other than the sale or disposal of Hydrocarbons in the ordinary course of business and sales of equipment that is no longer necessary in the operation of the Assets or for which replacement equipment of equal or greater value has been obtained; or

(vi) commit to do any of the foregoing.

Buyer acknowledges that SM Energy owns undivided interests in certain of the Assets with respect to which it is not the Operator, and Buyer agrees that the acts or omissions of the other Working Interests owners (including the Third Party Operators) who are not SM Energy shall not constitute a breach of the provisions of this *Section 8.1*, and no action required pursuant to a vote of Working Interest owners shall constitute a breach of the provisions of this *Section 8.1* so long as SM Energy voted its interest in such a manner that complies with the provisions of this *Section 8.1*.

***8.2 Governmental Bonds***. Buyer acknowledges that none of the bonds, letters of credit and guarantees, if any, posted by SM Energy or its Affiliates with Governmental Authorities and relating to the Assets are transferable to Buyer. At or prior to Closing, Buyer shall deliver to SM Energy evidence of the posting of bonds or other security with all applicable Governmental Authorities meeting the requirements of such Governmental Authorities to own the Assets.

***8.3 Notifications***. The provisions of this Agreement relating to representations, warranties, indemnities and agreements of the Parties shall not be altered or modified by Buyer's knowledge or SM Energy's Knowledge, as applicable, of any event or Buyer's or SM Energy's review of any documents or other matters except as expressly provided herein to the contrary.

***8.4 Financial Cooperation***.

(a) From and after the Execution Date, SM Energy shall cooperate with Buyer, its Affiliates and Buyer's and its Affiliate's auditors ("***Buyer's Auditors***") in connection with the preparation of any financial statements of Buyer or pertaining to the Assets and any related pro forma financial statements or other financial information, and the conduct of audits or reviews of such financial statements, required under federal securities Laws or rules and



regulations of the Securities and Exchange Commission ("***SEC***") or under customary practice for securities offerings made pursuant to Rule 144A under the Securities Act of 1933, as amended (the "***Securities Act***"), in connection with (a) any filing by Buyer or any of its Affiliates with the SEC pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended, or (b) any offering memorandum or similar document relating to a private offering of securities of Buyer or its Affiliates pursuant to Rule 144A under the Securities Act or otherwise. In connection with such cooperation, from and after the Execution Date, SM Energy shall: (i) provide to Buyer, its Affiliates, and Buyer's Auditors reasonable access to the books, records, information, and documents that are related to the Assets and SM Energy that are in SM Energy's possession or control reasonably required by Buyer, its Affiliates, and Buyer's Auditors in order to prepare, audit, and review such financial statements and other financial information; (ii) provide to Buyer, its Affiliates, and Buyer's Auditors reasonable access to SM Energy's officers, managers, employees, agents, and representatives who were responsible for preparing or maintaining the financial records and work papers and other supporting documents used in the preparation of such financial statements; (iii) deliver one or more customary representation letters from SM Energy to such Buyer's Auditors that are reasonably requested to allow such Buyer's Auditors to complete an audit or review of any such financial statements and to issue an opinion acceptable to such Buyer's Auditors with respect to an audit or review of such financial statements; and (iv) use its reasonable best efforts to obtain the consent of the independent auditor of SM Energy that conducted any audit of such financial statements to the use of such independent auditor's report, and to be named as an expert or as having prepared such report, in any SEC filing or offering memorandum or similar document referred to above.

(b) All of the information provided by SM Energy pursuant to this *Section 8.4* is given without any representation or warranty, express or implied, and no member of the SM Indemnified Parties or SM Energy's auditors shall have any liability or responsibility with respect thereto. Buyer, for itself and for each member of the Buyer Indemnified Parties, hereby releases, remises, and forever discharges each member of the SM Indemnified Parties and SM Energy's auditors from any and all Proceedings, and Losses whatsoever, in law or in equity, known or unknown, which any member of the Buyer Indemnified Parties might now or subsequently may have, based on, relating to, or arising out of SM Energy's obligations and actions pursuant to this *Section 8.4*, except to the extent that such Proceedings, or Liabilities resulted from willful misconduct of any SM Indemnified Party. From and after Closing, Buyer shall indemnify, defend, and hold harmless the SM Indemnified Parties and SM Energy's auditors from and against any and all Losses arising out of or relating to SM Energy's obligations and actions pursuant to this *Section 8.4*, EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT), STRICT LIABILITY, OR OTHER LEGAL FAULT OF ANY INDEMNIFIED PERSON, EXCEPT TO THE EXTENT THAT SUCH LOSSES RESULTED FROM THE WILLFUL MISCONDUCT OF ANY SM INDEMNIFIED PARTY.



## ARTICLE IX
## CONDITIONS TO CLOSING

***9.1 Buyer's Conditions to Closing.*** The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment (or waiver by Buyer) on or prior to the Closing of each of the following conditions:

(a) Representations. The representations and warranties of SM Energy set forth in *Article III* shall be true and correct in all respects (other than those representations and warranties of SM Energy that are qualified by materiality, which shall be true and correct in all respects) as of the Closing Date as though made on and as of the Closing Date (other than representations and warranties that refer to a specified date, which need only be true and correct on and as of such specified date), except for those breaches, if any, of such representations and warranties that in the aggregate would not have a Material Adverse Effect.

(b) Performance. SM Energy shall have materially performed or complied with all obligations, agreements and covenants contained in this Agreement as to which performance or compliance by SM Energy is required prior to or at the Closing Date.

(c) No Legal Proceedings. No material Proceeding instituted by a third party shall be pending before any Governmental Authority seeking to restrain, prohibit, enjoin or declare illegal, or seeking substantial damages in connection with, the transactions contemplated by this Agreement. No order, award or judgment shall have been issued by any Governmental Authority or arbitrator to restrain, prohibit, enjoin, or declare illegal, or awarding substantial damages in connection with, the transactions contemplated by this Agreement.

(d) Title Defects; Environmental Defects; Preferential Rights; Consents; Casualty Losses The sum of (i) all (A) Title Defect Amounts determined under *Section 6.2(c)(i)*, *plus* (B) all potential adjustments to the Purchase Price pursuant to *Section 6.2(c)(ii)* if SM Energy were to fail to cure all of the applicable Title Defects not cured as of the Closing in accordance with such section within the Cure Period, *less* (C) all Title Benefit Amounts determined under *Section 6.2(g)*, *plus* (ii) all (A) Remediation Amounts for Environmental Defects determined under *Section 7.1(b)(i)*, *plus* (B) all adjustments to the Purchase Price pursuant to *Section 7.1(b)(ii)*, *plus* (iii) all adjustments to the Purchase Price made pursuant to *Section 6.4(c)(ii)* as a result of un-waived or unexpired Preferential Rights and *Section 6.4(d)(i)* in respect of unobtained or denied Consents, *plus* (iv) the amount of all Casualty Losses pursuant to *Section 6.3* shall, in the aggregate, be less than 15% of the unadjusted aggregate Purchase Price.

(e) Closing Deliverables. SM Energy shall have delivered (or be ready, willing and able to deliver at Closing) to Buyer the documents and other items required to be delivered by SM Energy under *Section 11.3*.

***9.2 SM Energy's Conditions to Closing.*** The obligations of SM Energy to consummate the transactions contemplated by this Agreement are subject to the fulfillment (or waiver by SM Energy) on or prior to the Closing of each of the following conditions:



(a) Representations. The representations and warranties of Buyer set forth in *Article IV* shall be true and correct in all material respects (other than those representations and warranties of Buyer that are qualified by materiality, which shall be true and correct in all respects) as of the Closing Date as though made on and as of the Closing Date (other than representations and warranties that refer to a specified date, which need only be true and correct on and as of such specified date).

(b) Performance. Buyer shall have materially performed or complied with all obligations, agreements and covenants contained in this Agreement as to which performance or compliance by Buyer is required prior to or at the Closing Date.

(c) No Legal Proceedings. No material Proceeding instituted by a third party shall be pending before any Governmental Authority seeking to restrain, prohibit, enjoin or declare illegal, or seeking substantial damages in connection with, the transactions contemplated by this Agreement. No order, award or judgment shall have been issued by any Governmental Authority or arbitrator to restrain, prohibit, enjoin, or declare illegal, or awarding substantial damages in connection with, the transactions contemplated by this Agreement.

(d) Title Defects; Environmental Defects; Preferential Rights; Consents; Casualty Losses The sum of (i) all (A) Title Defect Amounts determined under *Section 6.2(c)(i)*, *plus* (B) all potential adjustments to the Purchase Price pursuant to *Section 6.2(c)(ii)* if SM Energy were to fail to cure all of the applicable Title Defects not cured as of the Closing in accordance with such section within the Cure Period, *less* (C) all Title Benefit Amounts determined under *Section 6.2(g)*, *plus* (ii) all (A) Remediation Amounts for Environmental Defects determined under *Section 7.1(b)(i)*, *plus* (B) all adjustments to the Purchase Price pursuant to *Section 7.1(b)(ii)*, *plus* (iii) all adjustments to the Purchase Price made pursuant to *Section 6.4(c)(ii)* as a result of un-waived or unexpired Preferential Rights and *Section 6.4(d)(i)* in respect of unobtained or denied Consents, *plus* (iv) the amount of all Casualty Losses pursuant to *Section 6.3* shall, in the aggregate, be less than 15% of the unadjusted aggregate Purchase Price.

(e) Closing Deliverables. Buyer shall have delivered (or be ready, willing and able to deliver at Closing) to SM Energy the documents and other items required to be delivered by Buyer under *Section 11.3*.

## ARTICLE X
## TAX MATTERS

***10.1 Asset Tax Liability***. Subject to the treatment of ad valorem Taxes provided below, all Asset Taxes shall be allocated between Buyer and SM Energy as of the Effective Time for all taxable periods that include the Effective Time. All Asset Taxes that are not ad valorem taxes shall be allocated to SM Energy to the extent they relate to production prior to the Effective Time and to Buyer to the extent they relate to production on or after the Effective Time. No liability for Asset Taxes shall duplicate an adjustment to Purchase Price made pursuant to *Section 2.4*. Ad valorem Taxes for each assessment period shall be allocated to SM Energy based on the percentage of the assessment period occurring before the Effective Time and to Buyer based on the percentage of the assessment period occurring on or after the Effective Time.

Each Party shall promptly furnish to the other copies of any Asset Tax assessments and statements (or invoices therefor from the operator of the Assets) received by it to the extent such assessment, statement, or invoice relates to an Asset Tax allocable to the other Party under this *Section 10.1*. Each Party shall timely pay all Asset Taxes subject to allocation under this Section and shall furnish to the other Party evidence of such payment. The Parties shall estimate all Asset Taxes that are attributable to the ownership or operation of the Assets through the Closing Date and all Subject Transfer Taxes and incorporate such estimates into the Preliminary Settlement Statement. The actual amounts (to the extent the actual amounts differ from the estimates included in the Preliminary Settlement Statement and are known at the time of the Final Settlement Statement) shall be accounted for in the Final Settlement Statement. If the actual amounts are not known at the time of the Final Settlement Statement, the amounts shall be re-estimated based on the best information available at the time of the Final Settlement Statement. When the actual amounts are known, Buyer or SM Energy shall make such payments to the other (if any) as are necessary to effect the allocation of Taxes described in this *Section 10.1*.

***10.2 Transfer Taxes***. All sales, use or other Taxes (other than Taxes on gross income, net income or gross receipts), duties, levies, recording fees or other governmental charges incurred by or imposed with respect to the property transfers undertaken pursuant to this Agreement ("***Subject Transfer Taxes***") shall be the responsibility of, and shall be paid by, Buyer. The Parties shall reasonably cooperate in taking steps that would minimize or eliminate any Subject Transfer Taxes. Buyer agrees to file all Subject Transfer Tax Returns relating to such Subject Transfer Taxes.

***10.3 Asset Tax Reports and Returns***. For Asset Tax periods in which the Effective Time occurs, SM Energy agrees to immediately forward to Buyer copies of any Asset Tax reports and Tax Returns received or filed by SM Energy after the Closing and provide Buyer with any information SM Energy has that is reasonably necessary for Buyer to file any required Tax Return related to the Assets. Buyer agrees to file all Tax Returns and reports applicable to the Assets that Buyer is required to file after the Closing and, subject to the provisions of *Section 10.1*, to pay all required Asset Taxes payable with respect to the Assets.

***10.4 Tax Cooperation***. Buyer and SM Energy shall cooperate fully as and to the extent reasonably requested by the other party, in connection with the filing of any Tax Returns and any audit, litigation or other proceeding (each, a "***Tax Proceeding***") with respect to Taxes relating to or in connection with the Assets. Such cooperation shall include the retention and (upon the other Party's request) the provision of such records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

***10.5 Indemnity Payments***. Buyer and SM Energy agree to treat any payment made pursuant to the indemnification provisions of this Agreement as an adjustment to the Purchase Price for Tax purposes.



## ARTICLE XI
## CLOSING

***11.1 Date of Closing***. Subject to the conditions stated in this Agreement, the transfer by SM Energy and the acceptance by Buyer of the Assets (the "***Closing***") shall occur on December 1, 2016 or, if all conditions to Closing in *Article IX* (other than those conditions that are only capable of being satisfied at the Closing) have not yet been satisfied or waived by that date, five (5) Business Days after such conditions have been satisfied or waived, or such other date as Buyer and SM Energy may agree upon in writing. The date when Closing actually occurs shall be the "***Closing Date***."

***11.2 Place of Closing***. Closing shall be held at the offices of SM Energy, at 1775 Sherman Street, Suite 1200, Denver, CO 80203 or such other location as Buyer and SM Energy may agree upon in writing.

***11.3 Closing Obligations***. At Closing, the following documents shall be delivered and the following events shall occur, the execution of each document and the occurrence of each event being a condition precedent to the others and each being deemed to have occurred simultaneously with the others:

(a) SM Energy and Buyer shall execute and deliver the Assignment, in sufficient counterparts to facilitate recording in the applicable counties where the Assets are located;

(b) SM Energy and Buyer shall execute and deliver assignments, on appropriate forms, of state and of federal leases comprising portions of the Assets, if any;

(c) SM Energy and Buyer shall execute and deliver the Preliminary Settlement Statement pursuant to *Section 2.6(a)*;

(d) Buyer shall deliver to SM Energy, to the accounts designated in the Preliminary Settlement Statement, by direct bank or wire transfer in same day funds, the Closing Amount, and the Parties shall execute joint written instructions to the Escrow Agent to deliver the Deposit to SM Energy;

(e) SM Energy shall deliver on forms supplied by Buyer (and reasonably acceptable to SM Energy) transfer orders or letters in lieu thereof directing all purchasers of production to make payment to Buyer of proceeds attributable to Hydrocarbon production from the Assets from and after the Effective Time, for delivery by Buyer to each purchaser of such Hydrocarbon production;

(f) SM Energy shall deliver an executed statement described in Treasury Regulation § 1.1445-2(b)(2) certifying that SM Energy is not a "foreign person" or a "disregarded entity";

(g) Buyer shall execute and deliver a certificate from an authorized officer of Buyer certifying on behalf of Buyer that the conditions set forth in *Section 9.2(a)* and *Section 9.2(b)* have been fulfilled by Buyer;



(h) SM Energy shall execute and deliver a certificate from an authorized officer of SM Energy certifying on behalf of SM Energy that the conditions set forth in *Section 9.1(a)* and *Section 9.1(b)* have been fulfilled by SM Energy;

(i) SM Energy shall deliver a recordable release of any trust, mortgages, financing statements, fixture filings and security agreements made by SM Energy or its Affiliates affecting the Assets;

(j) SM Energy and Buyer shall execute and deliver the Seismic License;

(k) SM Energy and Buyer shall execute and deliver the Transition Services Agreement in the form attached hereto as **Exhibit G**; and

(l) SM Energy and Buyer shall execute and deliver any other agreements, instruments and documents that are required by other terms of this

Agreement to be executed or delivered at Closing.

***11.4 Records***. In addition to the obligations set forth under *Section 11.3* above, as soon as reasonably practicable following Closing but in any event within 30 days following the Closing Date, SM Energy shall make available to Buyer, during normal business hours at SM Energy's offices, such copies of the Records to which Buyer is entitled pursuant to the terms of this Agreement.

## ARTICLE XII
## ACQUISITION TERMINATION AND REMEDIES

***12.1 Right of Termination***. This Agreement and the transactions contemplated herein may be terminated at any time at or prior to Closing:

(a) by SM Energy, if any of the conditions set forth in *Section 9.2* (other than the conditions set forth in *Section 9.2(d)*) have not been satisfied by Buyer on or before December 30, 2016 (the "***Outside Termination Date***");

(b) by Buyer, if any of the conditions set forth in *Section 9.1* (other than the conditions set forth in *Section 9.1(d)*) have not been satisfied by SM Energy on or before the Outside Termination Date;

(c) by SM Energy if the condition set forth in *Section 9.2(d)* is not satisfied on or before the Outside Termination Date or by Buyer if the condition set forth in *Section 9.1(d)* has not been satisfied on or before the Outside Termination Date; or

(d) by the mutual written agreement of Buyer and SM Energy;

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



***12.2 Effect of Termination***.

(a) If the obligation to close the transactions contemplated by this Agreement is terminated pursuant to any provision of *Section 12.1*, then, except as set forth in *Section 12.2(b)* and *Section 12.2(c)* and except for the provisions of (x) *Section 2.3*, *Sections 5.1(c)* through *5.1(g)*, *Section 5.2*, *Section 5.3*, this *Section 12.2*, *Section 13.9*, and *Section 14.7,* and (y) such terms as set forth in this Agreement in order to give context to any of the surviving Sections, this Agreement shall forthwith become void and the Parties shall have no liability or obligation hereunder, except and to the extent such termination results from the material breach by a Party of any of its covenants or agreements hereunder, in which case the non-breaching Party shall be entitled to the Deposit, damages, or specific performance as hereinafter provided.

(b) If this Agreement is terminated by SM Energy pursuant to *Section 12.1(a)*, SM Energy has performed or is ready, willing and able to perform all of its agreements and covenants contained herein in all material respects which are to be performed or observed at Closing, and Buyer has failed to perform or observe any of its agreements or covenants contained herein which are to be performed or observed at Closing, then except for the remedies provided in *Section 12.2(d)*, SM Energy shall receive and retain the Deposit as liquidated damages as SM Energy's sole and exclusive remedy for any breach or failure to perform by Buyer under this Agreement, except for the indemnities provided in *Section 5.1(c)*, and all other rights and remedies arising under this Agreement (except for the provisions that survive pursuant to *Section 12.2(a),* which shall remain in full force and effect) are hereby expressly waived by SM Energy. SM Energy and Buyer agree upon the Deposit as liquidated damages due to the difficulty and inconvenience of measuring actual damages and the uncertainty thereof, and SM Energy and Buyer agree that such amount would be a reasonable estimate of SM Energy's loss in the event of any such breach or failure to perform by Buyer. In lieu of termination of this Agreement, subject to *Section 13.9*, SM Energy shall be entitled to specific performance of this Agreement as provided below.

(c) If this Agreement is terminated by Buyer pursuant to *Section 12.1(b)*, Buyer has performed or is ready, willing and able to perform all of its agreements and covenants contained herein in all material respects which are to be performed or observed at Closing, and SM Energy has failed to perform or observe any of its agreements or covenants contained herein which are to be performed or observed at Closing, SM Energy shall cause the Deposit to be returned to Buyer and Buyer shall be entitled to seek money damages from SM Energy available at Law for SM Energy's applicable breach of this Agreement subject to *Section 13.9*, as Buyer's sole and exclusive remedy for any breach or failure to perform by SM Energy under this Agreement (except for the remedies provided in *Section 12.2(d)*), and all other rights and remedies arising under this Agreement (except for the provisions that survive pursuant to *Section 12.2(a)*, which shall remain in full force and effect) are hereby expressly waived by Buyer, and SM Energy shall be free immediately to enjoy all rights of ownership of the Assets and to sell, transfer, encumber or otherwise dispose of the Assets to any Person without any restriction under this Agreement. In lieu of termination of this Agreement, Buyer shall be entitled to specific performance of this Agreement as provided below.

(d) In lieu of termination of this Agreement, the Parties expressly agree that monetary damages will be insufficient to compensate them for their damages and as such each of Buyer and SM Energy agree that the Party with the right to terminate this Agreement shall in lieu



thereof be entitled to exercise the remedy of specific performance under this Agreement. Prior to exercising the remedy of specific performance under this Agreement pursuant to this *Section 12.2(d)*, the Party entitled thereto must deliver notice in writing to the other Party stating its election to exercise such remedy under this *Section 12.2(d)* within thirty (30) days counted from and after the Termination Date. If the Party entitled to exercise the remedy of specific performance elects to exercise such remedy pursuant to this *Section 12.2(d)*, the Deposit shall continue to be held by the Escrow Agent, until a non-appealable final judgment or award on the claim of specific performance is rendered, or if specific performance is not granted, the Deposit shall be paid to the Party that was entitled to terminate this Agreement, or as otherwise provided in *Section 2.3(b)*, as applicable. After such judgment is rendered, the Parties will issue a joint written instruction to the Escrow Agent to distribute the Deposit pursuant to such judgment. The Parties hereby agree not to raise, and hereby waive, any objections to the availability of the equitable remedy of specific performance to specifically enforce the terms and provisions of this Agreement or to enforce compliance with, the covenants and agreements of the Parties under this Agreement. The Party entitled to exercise specific performance as a remedy under this Agreement shall not be required to provide any bond or other security, or to prove irreparable injury or harm, in connection with seeking an injunction or injunctions to enforce specifically the terms and provisions of this Agreement. The Parties hereto further agree that (x) by seeking the specific performance provided for in this paragraph, including by the institution of a court proceeding, the Party entitled to seek such specific performance shall not in any respect waive its right to seek any other form of relief that may be available to it under this Agreement (including those related to termination of this Agreement) in the event that the specific performance provided for in this paragraph are not available or otherwise are not granted, and (y) nothing set forth in this paragraph shall require such Party to institute any proceeding for (or limit such Party's right to institute a proceeding for) such remedies prior to or as a condition of exercising any termination right under this *Section 12.2*, nor shall the commencement of any proceeding pursuant to this paragraph restrict or limit such Party's right to terminate this Agreement in accordance with this *Section 12.2*.

***12.3 Return of Documentation and Confidentiality***. Upon termination of this Agreement, Buyer shall return to SM Energy all title, engineering, geological and geophysical data, environmental assessments or reports, maps and other information furnished by SM Energy to Buyer or, if not destroyed by Buyer, prepared by or on behalf of Buyer in connection with its due diligence investigation of the Assets, in each case, in accordance with the Confidentiality Agreement.

## ARTICLE XIII

**ASSUMPTION; SURVIVAL; INDEMNIFICATION**

***13.1 Assumption by Buyer***. Without limiting Buyer's rights to indemnity under this *Article XIII* and subject to any adjustments to the Purchase Price pursuant to *Section 2.4*, from and after the Closing, Buyer assumes and agrees to fulfill, perform, pay and discharge (or cause to be fulfilled, performed, paid or discharged) all obligations and Liabilities, known or unknown, with respect to the Assets, regardless of whether such obligations or Liabilities arose prior to, on or after the Effective Time, including, but not limited to, obligations and Liabilities relating in any manner to the use, ownership or operation of the Assets, such as obligations to: furnish makeup gas and/or settle Imbalances attributable to the Assets according to the terms of



applicable gas sales, processing, gathering or transportation Contracts, pay working interests, royalties, overriding royalties and other interest owners' revenues or proceeds attributable to sales of Hydrocarbons produced from the Assets, including those held in suspense, pay the proportionate share attributable to the Assets to properly plug and abandon any and all wells, including inactive wells or temporarily abandoned wells, located on the Assets, fulfill the Venting Obligations, pay the proportionate share attributable to the Assets to replug any well, wellbore or previously plugged well on the Assets to the extent required or necessary, pay the proportionate share attributable to the Assets to dismantle or decommission and remove any Personal Property and other property of whatever kind related to or associated with operations and activities conducted by whomever on the Assets, pay the proportionate share attributable to the Assets to clean up, restore and/or remediate the Assets in accordance with Applicable Contracts and Laws, and pay the proportionate share attributable to the Assets to perform all obligations applicable to or imposed on the lessee, owner or operator under the Leases and the Applicable Contracts, or as required by any Law, including the payment of all Taxes related to the Assets (all of said obligations and Liabilities, subject to the exclusions below, herein being referred to as the "***Assumed Obligations***"); provided, Buyer does not assume any obligations or Liabilities of SM Energy attributable to the Assets to the extent that such obligations or Liabilities consist of any of the following (the "***Retained Obligations***"):

(i) attributable to or arise out of the ownership, use or operation of the Excluded Assets;

(ii) attributable to any Income Tax Liability or Franchise Tax Liability;

(iii) any Taxes for which SM Energy is responsible pursuant to *Article X*; or

(iv) any obligation or liability relating to any well control incident prior to the Effective Time at the Jaynes 16-12H Well.

***13.2 Indemnities of SM Energy***. Effective as of the Closing and thereafter, subject to the limitations set forth in*Section 13.4* and otherwise contained in this *Article XIII*, SM Energy is responsible for, shall pay on a current basis and shall defend, indemnify and hold harmless Buyer and its Affiliates, and all of its and their respective stockholders, partners, members, directors, officers, managers, employees, agents and representatives, except for stockholders of any publicly traded entity (collectively, "***Buyer Indemnified Parties***"), and releases the Buyer Indemnified Parties from and against any and all Liabilities, arising from, based upon, related to or associated with:

(a) any breach by SM Energy of its representations or warranties contained in*Article III*;

(b) any breach by SM Energy of its covenants and agreements contained in this Agreement;



(c) the injury or death of any person, or property damage (other than property damage attributable to Environmental Conditions) to the extent arising out of or relating to the operation of the Assets by SM Energy prior to Closing;

(d) any contamination or condition that is the result of the SM Energy's or its Affiliates' off site transport, storage or disposal, or arrangement for transport, storage or disposal, of any hazardous substance from the Assets that occurred prior to Closing or are attributable to SM Energy's or its Affiliates' operations prior to Closing;

(e) any amounts due to third parties for failure to pay by SM Energy or the incorrect payment by SM Energy of any amount due to any royalty owner, overriding royalty owner, working interest owner or other interest holder under the Leases, Wells, Units or Lands and escheat obligations insofar as the same are attributable to periods and Hydrocarbons produced and marketed with respect to the Assets prior to the Closing Date, including matters related to the High Water Mark Claims or to other claims relating to the location of the ordinary high water mark;

(f) Suspended proceeds and the administration thereof to the extent such suspended proceeds (x) accrued and (y) were not accounted for pursuant to *Section 2.4(c)(vii)*;

(g) any Proceedings set forth in *Schedule 3.6* and/or any Proceeding filed by a third party against SM Energy in connection with any Asset, the operator of any Asset in connection with any such Asset or against any Asset, that is filed on or prior to the Execution Date, except in all cases the High Water Mark Suit, or as related to the High Water Mark Claims; and

(h) the Retained Obligations.

***13.3 Indemnities of Buyer***. Effective as of the Closing and thereafter, except for Liabilities for which SM Energy is required to indemnify Buyer Indemnified Parties under *Section 13.2*, Buyer and its successors and assigns shall assume, be responsible for, shall pay on a current basis and shall defend, indemnify, hold harmless and forever release SM Energy and its Affiliates, and all of their respective stockholders, partners, members, directors, officers, managers, employees, agents and representatives, except for stockholders of any publicly traded entity (collectively, "***SM Indemnified Parties***"), and releases the SM Indemnified Parties from and against any and all Liabilities arising from, based upon, related to or associated with:

(a) any breach by Buyer of its representations or warranties contained in *Article IV*;

(b) any breach by Buyer of its covenants and agreements contained in this Agreement;

(c) Subject Transfer Taxes; or

(d) the Assumed Obligations.

***13.4 Limitation on Liability***.

(a) SM Energy shall not have any liability for any indemnification under *Section 13.2(a)*, unless (i) the individual amount of any Liability for which a Claim Notice is delivered by Buyer to SM Energy under this *Article XIII* and for which SM Energy is liable exceeds $100,000 and (ii) the aggregate amount of such Liabilities for which SM Energy is liable under this Agreement after the application of the provisions of clause (i) above exceeds 1.75% of the aggregate unadjusted Purchase Price; provided, however, that the foregoing limitation shall not apply to any knowing and intentional fraud of SM Energy, or the Subject Special Warranty and/or breach of the Fundamental Representations.

(b) For purposes of this *Article XIII*, any breach or inaccuracy in any representations or warranties shall be determined without regard to any dollar or Material Adverse Effect, materiality or similar qualifiers.

(c) Notwithstanding anything to the contrary contained in this Agreement, SM Energy shall not be required to indemnify the Buyer Indemnified Parties for aggregate Liabilities under *Section 13.2(a)*, *13.2(c)*, *13.2(d), 13.2(e), 13.2(f)* and/or *13.2(g)* in excess of the sum of 20% of the aggregate unadjusted Purchase Price (the "***Cap***"), provided that the amount of any Liability for which an indemnity claim is made by Buyer which SM Energy actually recovers from any third party insurer shall not be counted against the Cap, and provided further, that the Cap shall not apply to any knowing and intentional fraud of SM Energy, the Subject Special Warranty and/or breach of the Fundamental Representations. SM Energy shall use reasonable commercial efforts to recover from any third party insurers the amount of any Liabilities for which an indemnity claim is made by Buyer.

***13.5 Express Negligence***. EXCEPT AS OTHERWISE PROVIDED IN SECTION 5.1(c), THE INDEMNIFICATION, RELEASE, ASSUMED OBLIGATIONS, WAIVER AND LIMITATION OF LIABILITY PROVISIONS PROVIDED FOR IN THIS AGREEMENT SHALL BE APPLICABLE WHETHER OR NOT THE LIABILITIES, LOSSES, COSTS, EXPENSES AND DAMAGES IN QUESTION AROSE OR RESULTED SOLELY OR IN PART FROM THE GROSS, SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OR VIOLATION OF LAW OF OR BY ANY INDEMNIFIED PERSON, EXCEPT FOR KNOWING AND INTENTIONAL FRAUD AND/OR WILLFUL MISCONDUCT. BUYER AND SM ENERGY ACKNOWLEDGE THAT THIS STATEMENT COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS "CONSPICUOUS".

***13.6 Exclusive Remedy for Agreement***. Notwithstanding anything to the contrary contained in this Agreement, from and after the Closing,*Section 5.1(c)*, *Section 13.2*, *Section 13.3* and the Subject Special Warranty contain the Parties' exclusive remedy against each other with respect to breaches of the representations, warranties, covenants and agreements of the Parties contained in this Agreement and the affirmations of such representations, warranties, covenants and agreements contained in the certificate delivered by each Party at Closing pursuant to *Section 11.3(g)* or *Section 11.3(h)*, as applicable. Except for (a) the remedies contained in this *Article XIII*, (b) Subject Special Warranty, (c) knowing and intentional fraud of SM Energy, and (d) other remedies available to the Parties at Law or in equity for breaches of



*Section 5.1(c)* and *Section 5.2*, from and after the Closing, SM Energy and Buyer each release, remise and forever discharge the other Party and its Affiliates and all such Persons' stockholders, officers, directors, employees, agents, advisors and representatives from any and all Liabilities in Law or in equity, known or unknown, which such Parties might now or subsequently may have, based on, relating to or arising out of (i) this Agreement or the consummation of the transactions contemplated by this Agreement, (ii) the ownership, use or operation of the Assets prior to the Closing, or the condition, quality, status or nature of the Assets prior to the Closing, including rights to contribution under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (iii) breaches of statutory or implied warranties with respect to this Agreement, (iv) nuisance or other tort actions with respect to this Agreement, (v) rights to punitive damages with respect to this Agreement, (vi) common Law rights of contribution with respect to this Agreement, and (vii) rights under insurance maintained by SM Energy or any of its Affiliates with respect to this Agreement.

***13.7 Indemnification Procedures***. All claims for indemnification under *Section 5.1(c)*, *Section 13.2* and *Section 13.3* shall be asserted and resolved as follows:

(a) For purposes of this *Article XIII*, the term "***Indemnifying Party***", when used in connection with particular Liabilities, shall mean the Party having an obligation to indemnify another Party or Person(s) with respect to such Liabilities pursuant to this *Article XIII*, and the term "***Indemnified Party***", when used in connection with particular Liabilities, shall mean the Party or Person(s) having the right to be indemnified with respect to such Liabilities by another Party pursuant to this *Article XIII*.

(b) To make claim for indemnification under *Section 5.1(c)*, *Section 13.2* or *Section 13.3*, an Indemnified Party shall notify the Indemnifying Party of its claim under this *Section 13.7*, including the specific details of and specific basis under this Agreement for its claim (the "***Claim Notice***"). In the event that the claim for indemnification is based upon a claim by a third party against the Indemnified Party (a "***Third Party Claim***"), the Indemnified Party shall provide its Claim Notice promptly after the Indemnified Party has actual knowledge of the Third Party Claim and shall enclose a copy of all papers (if any) served with respect to the Third Party Claim; provided that the failure of any Indemnified Party to give notice of a Third Party Claim as provided in this *Section 13.7* shall not relieve the Indemnifying Party of its obligations under *Section 5.1(c)*, *Section 13.2* or *Section 13.3* (as applicable) except to the extent such failure results in insufficient time being available to permit the Indemnifying Party to effectively defend against the Third Party Claim or otherwise materially prejudices the Indemnifying Party's ability to defend against the claim. In the event that the claim for indemnification is based upon an inaccuracy or breach of a representation, warranty, covenant or agreement, the Claim Notice shall specify the representation, warranty, covenant or agreement that was inaccurate or breached.

(c) In the case of a claim for indemnification based upon a Third Party Claim, the Indemnifying Party shall have fifteen (15) days from its receipt of the Claim Notice to notify the Indemnified Party whether it admits or denies its liability to defend the Indemnified Party against such Third Party Claim at the sole cost and expense of the Indemnifying Party. The Indemnified Party is authorized, prior to and during such fifteen (15) day period, at the expense of the Indemnifying Party, to file any motion, answer or other pleading that it shall deem



necessary or appropriate to protect its interests or those of the Indemnifying Party and that is not prejudicial to the Indemnifying Party.

(d) If the Indemnifying Party admits its obligation to indemnify a Third Party Claim, it shall have the right and obligation to diligently defend, at its sole cost and expense, the Third Party Claim provided that, where the Third Party Claim consists of (i) a civil, criminal or regulatory proceeding, action, indictment or investigation against the Indemnified Party by any Governmental Authority, (ii) a claim in which the Indemnifying Party is also a party and the Indemnified Party determines in good faith that joint representation would be inappropriate, or (iii) a claim that primarily seeks injunctive or other non-monetary or equitable relief against the Indemnified Party, the Indemnified Party shall at its option have the right to control the defense and proceedings. Except as provided in the preceding sentence, the Indemnifying Party shall have full control of such defense and proceedings, including any compromise or settlement thereof. If requested by the Indemnifying Party, the Indemnified Party agrees to cooperate in contesting any Third Party Claim that the Indemnifying Party elects to contest (provided, however, that the Indemnified Party shall not be required to bring any counterclaim or cross-complaint against any Person). The Indemnified Party may participate in, but not control, at its own expense, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this *Section 13.7(d)*. An Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle any Third Party Claim or consent to the entry of any judgment with respect thereto that (i) does not result in a final resolution of the Indemnified Party's Liability in respect of such Third Party Claim (including in the case of a settlement an unconditional written release of the Indemnified Party from all Liability in respect of such Third Party Claim), (ii) results in a finding or admission of any violation of Law or the violation of the rights of any Person or subjects the Indemnified Party to other Third Party Claims or (iii) in any manner may materially and adversely affect the Indemnified Party (other than as a result of money damages covered by the

indemnification obligations hereunder).

(e) If the Indemnifying Party does not admit its obligation to indemnify and bear all expenses associated with a Third Party Claim or admits its obligation to indemnify and bear all expenses associated with a Third Party Claim but fails to diligently prosecute or settle the Third Party Claim, then the Indemnified Party shall have the right to defend against the Third Party Claim at the sole cost and expense of the Indemnifying Party, with counsel of the Indemnified Party's choosing, subject to the right of the Indemnifying Party to admit its obligation to indemnify and bear all expenses associated with a Third Party Claim and assume the defense of the Third Party Claim at any time prior to settlement or final determination thereof. If the Indemnifying Party has not yet admitted its obligation to indemnify and bear all expenses associated with a Third Party Claim, the Indemnified Party shall send written notice to the Indemnifying Party of any proposed settlement and the Indemnifying Party shall have the option for 10 Business Days following receipt of such notice to (i) admit in writing its obligation to indemnify and bear all expenses associated with a Third Party Claim and (ii) if such obligation is so admitted, reject, in its reasonable judgment, the proposed settlement. Any failure to respond to such notice by the Indemnifying Party shall be deemed to be an election under (ii) of the preceding sentence.

(f) In the case of a claim for indemnification not based upon a Third Party Claim, the Indemnifying Party shall have 30 days from its receipt of the Claim Notice to (i) cure



the Liabilities complained of, (ii) admit its obligation to indemnify for and bear all expenses associated with such Liability or (iii) dispute the claim for such Liabilities. If the Indemnifying Party does not notify the Indemnified Party within such 30 day period that it has cured the Liabilities or that it disputes the claim for such Liabilities, the amount of such Liabilities shall conclusively be deemed a liability of the Indemnifying Party hereunder.

***13.8 Survival***.

(a) The representations and warranties of SM Energy contained in this Agreement shall survive the Closing until the date that is the first anniversary date of the Closing Date and expire thereafter; provided however, that the Fundamental Representations shall survive until sixty (60) days following the expiration of the applicable statute of limitations period. The covenants and agreements of SM Energy and of Buyer contained in this Agreement to be performed prior to the Closing Date shall, in each case, survive the Closing until the date that is the first anniversary date of the Closing Date and expire thereafter, and all other covenants and agreements of SM Energy and Buyer contained in this Agreement shall survive the Closing until fully performed, subject however to applicable statutes of limitation. The representations and warranties of Buyer contained in *Article IV* shall survive the Closing without time limit, subject to applicable statutes of limitations. Representations, warranties, covenants and agreements shall be of no further force and effect after the date of their expiration; provided that there shall be no termination of any bona fide claim asserted pursuant to this Agreement with respect to such a representation, warranty, covenant or agreement prior to its expiration date.

(b) The indemnities in *Section 13.2(a)*, *Section 13.2(b)*, *Section 13.3(a)* and *Section 13.3(b)* shall terminate as of the termination date of each respective representation, warranty, covenant or agreement that is subject to indemnification as set forth in *Section 13.8(a)*. The indemnities contained in *Section 13.2(h)* shall survive the Closing without time limit, subject to applicable statutes of limitation, and Buyer's indemnities contained in *Section 13.3(c)* and/or *Section 13.3(d)* shall survive the Closing without time limit, subject to applicable statutes of limitation. The indemnities in *Section 13.2(c), Section 13.2(e), Section 13.2(f)* and *Section 13.2(g)* shall terminate after the expiration of five hundred and forty eight (548) days after the Closing Date. The indemnities in *Section 13.2(d)* shall survive the Closing indefinitely, subject to expiration under applicable statues of limitations. Notwithstanding the foregoing, there shall be no termination of any bona fide claim asserted pursuant to the indemnities in *Section 13.2* or *Section 13.3* prior to the date of termination for such indemnity.

***13.9 Non-Compensatory Damages***. None of the Buyer Indemnified Parties or SM Indemnified Parties shall be entitled to recover from SM Energy or Buyer, as applicable, or their respective Affiliates, any indirect, consequential (including consequential damages for lost profits), punitive or exemplary damages of any kind arising under or in connection with this Agreement or the transactions contemplated by this Agreement, except to the extent any such Party suffers such damages (including costs of defense and reasonable attorney's fees incurred in connection with defending of such damages) to a third party, which damages (including costs of defense and reasonable attorney's fees incurred in connection with defending against such damages) shall not be excluded by this provision as to recovery hereunder. Subject to the preceding sentence, Buyer, on behalf of each of the Buyer Indemnified Parties, and SM Energy, on behalf of each of SM Indemnified Parties, each waive any right to recover punitive, special,



exemplary and consequential damages, including consequential damages for lost profits of any kind, arising in connection with this Agreement or the transactions contemplated by this Agreement. This *Section 13.9* shall not restrict Buyer's right to obtain specific performance or other equitable remedies (other than rescission) pursuant to *Section 12.2*.

## ARTICLE XIV
## MISCELLANEOUS

***14.1 Counterparts***. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a Party by facsimile transmission shall be deemed an original signature hereto.

***14.2 Notices***. All notices and communications required or permitted to be given hereunder shall be sufficient in all respects if given in writing and delivered personally, or sent by bonded overnight courier, or mailed by U.S. Express Mail or by certified or registered United States Mail with all postage fully prepaid, or sent by telex or facsimile transmission (provided any such telex or facsimile transmission is confirmed either orally or by written confirmation), addressed to the appropriate Party at the address for such Party shown below or at such other address as such Party shall have theretofore designated by written notice delivered to the Party giving such notice:

If to SM Energy:

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, CO 80203
Attention: David W. Copeland – Executive Vice President, General Counsel and Corporate Secretary
Fax: 303.864.2598

SM Energy Company
777 North Eldridge Parkway, Suite 1100
Houston, TX 77079
Attention: Kenneth J. Knott – Senior Vice President – Business Development and Land
Fax: 281.677.2810

If to Buyer:

Oasis Petroleum North America LLC
1001 Fannin Street, Suite 1500
Houston, Texas 77002
Attention: Niko Lorentzatos, Esq., – Senior Vice President, General Counsel & Corporate Secretary
Fax: 281.404.9704



With a copy to:

DLA Piper LLP (US)
1000 Louisiana Street, Suite 2800
Houston, Texas 77002
Attention: Jack Langlois, Esq.
Fax: 713.300.6019

Any notice given in accordance herewith shall be deemed to have been given when delivered to the addressee in person or by courier, transmitted by facsimile transmission during normal business hours, or upon actual receipt by the addressee after such notice has either been delivered to an overnight courier or deposited in the United States Mail, as the case may be. The Parties may change the address and facsimile numbers to which such communications are to be addressed by giving written notice to the other Parties in the manner provided in this *Section 14.2*.

***14.3 Expenses***. Except as otherwise specifically provided, all fees, costs and expenses incurred by the Parties in negotiating this Agreement shall be paid by the Party incurring the same, including legal and accounting fees, costs and expenses.

***14.4 Waivers; Rights Cumulative***. Any of the terms, covenants or conditions hereof may be waived only by a written instrument executed by or on behalf of the Party waiving compliance. No course of dealing on the part of any Party or its respective officers, employees, agents or representatives, and no failure by a Party to exercise any of its rights under this Agreement shall, in either case, operate as a waiver thereof or affect in any way the right of such Party at a later time to enforce the performance of such provision. No waiver by any Party of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

***14.5 Relationship of the Parties***. The rights, duties, obligations and liabilities of the Parties under this Agreement shall be individual, not joint or collective. It is not the intention of the Parties to create, and this Agreement shall not be deemed or construed to create, a mining or other partnership, joint venture or association or a trust. This Agreement shall not be deemed or construed to authorize any Party to act as an agent, servant or employee for any other Party for any purpose whatsoever except as explicitly set forth in this Agreement. In their relations with each other under this Agreement, the Parties shall not be considered fiduciaries.

***14.6 Entire Agreement; Conflicts***. THIS AGREEMENT, THE EXHIBITS, SCHEDULES AND APPENDICES HERETO COLLECTIVELY CONSTITUTE THE ENTIRE AGREEMENT AMONG THE PARTIES PERTAINING TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ALL PRIOR AGREEMENTS, UNDERSTANDINGS, NEGOTIATIONS AND DISCUSSIONS, WHETHER ORAL OR WRITTEN, OF THE PARTIES PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THERE ARE NO WARRANTIES, REPRESENTATIONS OR OTHER AGREEMENTS AMONG THE



PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, AND NO PARTY SHALL BE BOUND BY OR LIABLE FOR ANY ALLEGED REPRESENTATION, PROMISE, INDUCEMENT OR STATEMENTS OF INTENTION NOT SO SET FORTH. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS AND PROVISIONS OF THIS AGREEMENT AND THE TERMS AND PROVISIONS OF ANY EXHIBIT HERETO; THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL GOVERN AND CONTROL; PROVIDED, HOWEVER, THAT THE INCLUSION IN ANY OF THE EXHIBITS HERETO OF TERMS AND PROVISIONS NOT ADDRESSED IN THIS AGREEMENT SHALL NOT BE DEEMED A CONFLICT, AND ALL SUCH ADDITIONAL PROVISIONS SHALL BE GIVEN FULL FORCE AND EFFECT.

***14.7 Governing Law; Jurisdiction; Waiver of Jury Trial***. THIS AGREEMENT AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT REFER CONSTRUCTION OF SUCH PROVISIONS TO THE LAWS OF ANOTHER JURISDICTION. ALL OF THE PARTIES CONSENT TO THE EXERCISE OF JURISDICTION IN PERSONAM BY THE FEDERAL AND STATE COURTS IN THE STATE OF TEXAS LOCATED IN HARRIS COUNTY FOR ANY DISPUTE. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE.

***14.8 Filings, Notices and Certain Governmental Approvals***. Promptly after the Closing, Buyer shall (a) record the Assignments and all state/federal assignments executed at Closing in all applicable real property records and/or, if applicable, all state or federal agencies. Buyer obligates itself to post any and all customary bonds or other security that may be required in excess of any existing bond required by a Governmental Authority in connection with the transfer of the Assets to Buyer.

***14.9 Amendment***. This Agreement may be amended only by an instrument in writing executed by the Parties and expressly identified as an amendment or modification hereof.

***14.10 Parties in Interest***. Nothing in this Agreement shall entitle any Person other than the Parties to any claim, cause of action, remedy or right of any kind, other than with respect to the rights of the Affiliates and representatives of SM Energy and Buyer described in *Section 13.2* and *Section 13.3*, respectively.

***14.11 Successors and Permitted Assigns***. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, provided, however, except as set forth in *Section 2.7*, neither Party shall have the right to assign its rights and/or obligations under the Agreement without the prior written consent of the other Party, and any such assignment or transfer, whether effected directly or indirectly, shall be void. Nothing herein shall prevent Buyer after the Closing from assigning any of its right, title and interest in the Assets.



***14.12 Publicity***.

(a) Without reasonable prior notice to the other Parties, no Party will issue, or permit any of its agents or Affiliates to issue, any press releases or otherwise make, or cause any of its agents or Affiliates to make, any public statements with respect to this Agreement or the activities contemplated hereby, except where such release or statement is deemed in good faith by the releasing Party to be required by Law or under the rules and regulations of a recognized stock exchange on which shares of such Party or any of its Affiliates are listed.

(b) Notwithstanding anything to the contrary in *Section 14.12(a)*, any Party or Affiliate of a Party may disclose information regarding the Assets in investor presentations, industry conference presentations or similar disclosures to the extent that such information has previously been publicly released.

***14.13 Preparation of Agreement.*** Both SM Energy and Buyer and their respective counsel participated in the preparation of this Agreement. In the event of any ambiguity in this Agreement, no presumption shall arise based on the identity of the draftsman of this Agreement.

***14.14 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 so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

***14.15 Captions***. The captions and headings in this Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provisions of this Agreement.

[*Signature Page Follows*]



**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representatives on and as of the Execution Date.

**SM ENERGY COMPANY**

By: /s/ Javan D. Ottoson
Name: Javan D. Ottoson
Title: President and Chief Executive Officer

**OASIS PETROLEUM NORTH AMERICA LLC**

By: /s/ Taylor L. Reid
Name: Taylor L. Reid
Title: President and Chief Operating Officer



## Annex I

### Definitions

"***Accounting Arbitrator***" has the meaning set forth in *Section 2.6(c)*.

"***AFE***" has the meaning set forth in *Section 3.11*.

"***Affiliate***" means, with respect to any Party, a Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such Party.

"***Aggregate Environmental Deductible***" means 2.0% of the unadjusted Purchase Price.

"***Aggregate Title Deductible***" means 1.0% of the unadjusted Purchase Price.

"***Agreement***" has the meaning set forth in the preamble to this Agreement.

"***Allocated Value***" has the meaning set forth in *Section 2.5*.

"***Applicable Contracts***" means all Contracts that will be binding on the Assets or Buyer after the Closing or to which SM Energy is a party that primarily relate to the Assets and that will be binding on the Assets or Buyer after the Closing, including, without limitation; farmin and farmout agreements; participation agreements; drag along agreements; bottomhole agreements; crude oil, condensate and natural gas purchase and sale agreements; gathering, transportation and marketing agreements; hydrocarbon storage agreements; joint venture agreements; surface use agreements; acreage contribution agreements; operating agreements (including, for the avoidance of doubt, Applicable Operating Agreements); balancing agreements; pooling declarations or agreements; unitization agreements; processing agreements; water rights agreement, disposal agreements, or similar agreement relating to sourcing, transportation, or disposal of water; crossing agreements, surface use agreements and other similar contracts and agreements, but excluding the Leases and any master service agreements.

"***Applicable Operating Agreements***" means, collectively, the joint operating agreements applicable to the Assets, and "*Applicable Operating Agreement*" means any of them.

"***Asset Taxes***" means ad valorem, property, excise, severance, production or similar taxes (including any interest, fine, penalty or additions to tax imposed by Governmental Authorities in connection with such taxes) based upon operation or ownership of the Assets or the production of Hydrocarbons therefrom, but excluding, for the avoidance of doubt, income, capital gains and franchise taxes.

"***Assets***" means SM Energy's right, title and interest in and to the following: (a) all oil and gas leases and mineral interests described in **Exhibit A** and any leasehold estates, royalty interests, overriding royalty interests, net profits interests and other rights and interests to the oil and gas in place covered by such leases (the "***Leases***") together with each and every kind and character of right, title, claim, and interest that SM Energy has in and to the Leases, the lands covered by the Leases and the lands pooled acreage, communitized acreage or included units

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arising on account of Leases being pooled, communitized or unitized ("***Units***", and the lands covered by the Leases or pooled, unitized, communitized or consolidated therewith being hereinafter referred to as the "***Lands***"); (b) the oil, gas, casinghead gas, coal bed methane, condensate and other gaseous and liquid hydrocarbons or any combination thereof, sulphur extracted from hydrocarbons and all other lease substances ("***Hydrocarbons***") under the Leases, Units or Lands and that may be produced and saved under or otherwise be allocated or attributed to the Leases, Units or Lands (including Hydrocarbons produced from or attributable to the Assets in storage or existing in stock tanks, pipelines and/or plants (including inventory) as of the Effective Time),; (c) the oil, gas, water or injection wells located on Leases, Units or Lands, whether producing, shut-in or temporarily abandoned, including those described in **Exhibit B** (whether or not such Wells described in **Exhibit B** are located on the Lands or Units), (the "***Wells***") and including all of the personal property, equipment, fixtures and improvements used in connection therewith; (d) the unitization, pooling and communitization agreements, declarations, orders and the units created thereby relating to the properties and interests described in clauses (a) through (c) or to the production, gathering, treatment, processing, storage, sale, disposal and other handling of Hydrocarbons, if any, attributable to said properties and interests; (e) all equipment, machinery, fixtures and other tangible personal property and improvements located on or used or held for use in connection with the operation of the interests described in clauses (a) through (d) or the production, gathering, treatment, processing, storage, sale, disposal, and other handling of Hydrocarbons attributable thereto, including any wells, well equipment, tanks, boilers, buildings, fixtures, injection facilities, saltwater disposal facilities, compressors and compression facilities, pumping units and engines, platforms, flow lines, pipelines, gathering systems, gas and oil treating facilities, machinery, power lines, telephone and telegraph lines, SCADA and other measurement equipment, roads, and other appurtenances, improvements and facilities (all of the foregoing, collectively, the "***Equipment***"); (f) all surface fee interests, leases, permits, rights-of-way, licenses, easements licenses, servitudes, and other surface rights and governmental authorizations and other surface rights agreements solely to the extent used or held for use in connection with the production, gathering, treatment, processing, storage, sale, disposal and other handling of Hydrocarbons, produced water, or water for injection from the interests described in clauses (a) through (e) (collectively, the "***Surface Contracts***"); (g) all existing contracts and effective sales, purchase contracts, operating agreements, exploration agreements, joint venture agreements, development agreements, balancing agreements, farmout agreements, service agreements, transportation, processing, treatment or gathering agreements, equipment leases and other contracts, agreements and instruments, insofar as they directly relate to the properties and interests described in clauses (a) through (f) (collectively, the "***Contracts***"); (h) all claims, refunds, and other rights to the extent such items arise from or by their terms relate to the Assumed Obligations or are items otherwise allocated to Buyer under the other provisions of this Agreement, (i) to the extent transferable without payment of additional consideration, originals, to the extent available, or copies of all the files, records and data relating to the items described in clauses (a) through (h) above and (i) below, which records shall include, without limitation: lease records, well records, division order records, well files, title records (including abstracts of title, title opinions and memoranda, and title curative documents), engineering records, geological and all technical evaluations, interpretative data and technical data and information relating to the Assets, correspondence, electronic data files (if any), maps, production records, electric logs, core data, pressure data, decline curves and graphical production curves, reserve reports, appraisals and accounting and Asset Tax records

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(collectively, the "***Records***"); and (i) the salt water disposal systems depicted on the map attached as **Exhibit H** or located on the lands described on **Exhibit H**, and all pipelines, equipment and contracts related thereto.

"***Assignment***" means the Assignment and Bill of Sale from SM Energy to Buyer, pertaining to the Assets, substantially in the form attached hereto as **Exhibit C**.

"***Assumed Obligations***" has the meaning set forth in *Section 13.1*.

"***Burdens***" means, with respect to any Asset, all royalties, overriding royalties, production payments, carried interests, net profits interests, reversionary interests and other burdens upon, measured by or payable out of, production therefrom.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks in Texas are generally open for business.

"***Buyer***" has the meaning set forth in the preamble to this Agreement.

"***Buyer Indemnified Parties***" has the meaning set forth in *Section 13.2*.

"***Buyer's Representatives***" has the meaning set forth in *Section 5.1(a)*.

"***Cap***" has the meaning set forth in *Section 13.4(c)*.

"***Casualty Loss***" has the meaning set forth in *Section 6.3(b)*.

"***Claim Notice***" has the meaning set forth in *Section 13.7(b)*.

"***Closing***" has the meaning set forth in *Section 11.1*.

"***Closing Amount***" means the Preliminary Purchase Price less the Deposit.

"***Closing Date***" has the meaning set forth in *Section 11.1*.

"***Code***" means the Internal Revenue Code of 1986, as amended.

"***Confidentiality Agreement***" means that certain Confidentiality Agreement between SM Energy and Buyer, dated as of October 10, 2016.

"***Consents***" has the meaning set forth in *Section 6.4*.

"***Contract***" has the meaning set forth in the definition of "Assets" above.

"***Control***" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to exercise or determine the voting of more than 50% of the voting rights in a corporation, and, in the case of any other type of entity, the right to exercise or determine the voting of more than 50% of the equity interests having voting rights, or otherwise to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

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"***Cure Period***" has the meaning set forth in *Section 6.2(c)(ii)*.

"***Customary Post-Closing Consents***" means those consents and approvals from Governmental Authorities for the assignment of the Assets to the Buyer that are customarily obtained after the assignment of properties similar to the Assets.

"***Defect Claim Date***" has the meaning set forth in *Section 6.2(a)*.

"***Defensible Title***" means such title of SM Energy with respect to the Assets that is deducible of record, or by any other legally enforceable right superior to claims of other persons, and that subject to Permitted Encumbrances:

(a) with respect to each Well or Well Location shown in **Exhibit B** (but limited to the applicable Target Interval set forth in **Exhibit B** for such Well or Well Location and any other currently producing formation (for such Well)), entitles SM Energy to receive not less than the Net Revenue Interest shown in **Exhibit B**, for such Well or Well Location throughout the duration of the productive life of such Well or Well Location, except for (i) decreases in connection with those operations in which SM Energy may, from and after the Execution Date, be a non-consenting co-owner (to the extent permitted pursuant to *Section 8.1*), (ii) decreases resulting from the establishment or amendment from and after the Execution Date of pools or units, (iii) decreases required to allow other Working Interest owners to make up past underproduction or pipelines to make up past under deliveries to the extent such underproduction is set forth in *Schedule 3.10*, and (iv) as otherwise expressly stated in **Exhibit B**;

(b) with respect to each Well or Well Location shown in **Exhibit B** (but limited to the applicable Target Interval set forth in **Exhibit B** for such Well or Well Location and any other currently producing formation (for such Well)), obligates SM Energy to bear the Working Interest for such Well or Well Location not greater than the Working Interest shown in **Exhibit B**, for such Well or Well Location without increase throughout the productive life of such Well or Well Location, except (i) increases resulting from contribution requirements with respect to defaults after the Effective Time by co-owners from and after the Execution Date under Applicable Operating Agreements, (ii) increases to the extent that they are accompanied by a proportionate increase in the Net Revenue Interest in the Assets, and (iii) as otherwise expressly stated in **Exhibit B**; and

(c) is free and clear of all Encumbrances.

"***Deposit***" has the meaning set forth in *Section 2.2(a)*.

"***Dispute***" means any dispute, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation or otherwise) arising out of, relating to or connected with this Agreement or the transactions contemplated hereby, including but not limited to any dispute, controversy or claim concerning the existence, validity, interpretation, performance, breach or termination of this Agreement, the relationship of the Parties arising out of this Agreement or the transactions contemplated hereby.

"***Dispute Notice***" has the meaning set forth in *Section 2.6(b)*.

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"***Effective Time***" means 7:00 a.m. local time at the location of the Assets on October 1, 2016.

"***Encumbrance***" means a mortgage, lien, security interest, pledge, charge or other encumbrance, and "*Encumber*" and other similar derivatives shall be construed accordingly.

"***Environmental Arbitrator***" has the meaning set forth in *Section 7.1(e)*.

"***Environmental Condition***" means (a) a condition existing on the Defect Claim Date with respect to the air, soil, subsurface, surface waters, ground waters and/or sediments that causes any Asset (or SM Energy with respect to any Asset) not to be in compliance with any Environmental Law or (b) the existence as of the Execution Date with respect to any Asset or the operation thereof of any environmental pollution, contamination, degradation, damage or injury caused by, related to such Asset for which remedial or corrective action is presently required (or if known, would be presently required) under Environmental Laws.

"***Environmental Defect***" means an Environmental Condition with respect to an Asset, *provided, however*, (a) the matters set forth in *Schedule 3.12* and (b) matters related to the Venting Obligations, shall in each case, not constitute an Environmental Defect.

"***Environmental Defect Notice***" has the meaning set forth in *Section 7.1(a)*.

"***Environmental Defect Property***" has the meaning set forth in *Section 7.1(a)*.

"***Environmental Laws***" means all applicable federal, state and local Laws in effect as of the Effective Time or Execution Date, including common Law, relating to the protection of the public health, welfare and the environment, including, without limitation, those Laws relating to the generation, storage, handling, use, processing, treatment, transportation, disposal or other management of chemicals and other Hazardous Substances. The term "*Environmental Laws*" does not include good or desirable operating practices or standards that may be employed or adopted by other oil and gas well operators or recommended by OSHA.

"***Equipment***" has the meaning set forth in the definition of "Assets" above.

"***Escrow Agent***" has the meaning set forth in *Section 2.2(a).*

"***Escrow Agreement***" means that certain escrow agreement, among Buyer, SM Energy and the Escrow Agent.

"***Excluded Assets***" means (a) all of SM Energy's corporate minute books, financial records and other business records that relate to SM Energy's business generally (including the ownership and operation of the Assets); (b) all trade credits, all accounts, receivables and all other proceeds, income or revenues attributable to the Assets with respect to any period of time prior to the Effective Time; (c) subject to Section 6.3, all rights and interests relating to the Assets (i) under any existing policy or agreement of insurance, (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 and sold from the Assets with respect to all periods prior to the Effective

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Time, except for Hydrocarbons produced from or attributable to the Assets in storage or existing in stock tanks, pipelines and/or plants (including inventory) as of the Effective Time; (e) all claims of SM Energy or its Affiliates for refunds of or loss carry forwards with respect to (i) production or any other Taxes paid by SM Energy or its Affiliates attributable to any period prior to the Effective Time, except, in each case, to the extent such items arise from or by their terms relate to the Assumed Obligations or are items otherwise allocated to Buyer under the other provisions of this Agreement, (ii) income Taxes paid by SM Energy or its Affiliates or (iii) any Taxes attributable to the other Excluded Assets; (f) all personal computers and associated peripherals and all radio and telephone equipment, except as set forth in the definition of Assets; (g) all of SM Energy's proprietary computer software, patents, trade secrets, copyrights, names, trademarks, logos and other intellectual property; (h) all documents and instruments of

SM Energy that may be protected by an attorney-client privilege, other than title opinions; (i) all data that cannot be disclosed to Buyer as a result of confidentiality arrangements under agreements with third parties, provided that the existence of such agreements has been disclosed to Buyer in writing; (j) all audit rights arising under any of the (i) Applicable Contracts or otherwise with respect to any period prior to the Effective Time or (ii) other Excluded Assets, except for any Imbalances and except, in each case, to the extent such items arise from or by their terms relate to the Assumed Obligations or are items otherwise allocated to Purchaser under the other provisions of this Agreement; (k) all non-proprietary geophysical data and other seismic data relating to the assets; (l) documents prepared or received by SM Energy or its Affiliates with respect to (i) lists of prospective purchasers for the Assets, (ii) bids submitted by other prospective purchasers of the Assets, (iii) analyses by SM Energy or its Affiliates of any bids submitted by any prospective purchaser, (iv) correspondence between or among SM Energy, its representatives and any prospective purchaser other than Buyer, and (v) correspondence between SM Energy or any of its representatives with respect to any of the bids, the prospective purchasers or the transactions contemplated by this Agreement; (m) a copy of all Records; (n) except as specifically described in the definition of Assets, any offices, office leases and any office furniture or office supplies located in or on such offices or office leases; (o) any Applicable Contracts and Records that are related to Assets that are excluded pursuant to the provisions of Section 6.4(c)(ii), Section 6.4(d)(i) or Section 7.1(b)(ii); (p) any Contracts that constitute master services agreements or similar contracts; and (q) the assets described in **Exhibit F**.

"***Execution Date***" has the meaning set forth in the preamble to this Agreement.

"***Final Settlement Statement***" has the meaning set forth in *Section 2.6(b)*.

"***Franchise Tax Liability***" means any Tax imposed by a state on SM Energy's or any of its Affiliates' gross or net income and/or capital for the privilege of engaging in business in that state that was or is attributable to SM Energy's or any of its Affiliates' ownership of an interest in the Assets.

"***GAAP***" means the generally accepted accounting principles in the United States of America.

"***Governmental Authority***" means any federal, state, local, municipal, tribal or other government; any governmental, regulatory or administrative agency, commission, body or other

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authority exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power; and any court or governmental tribunal, including any tribal authority having or asserting jurisdiction.

"***Hazardous Substances***" means any pollutants, contaminants, toxics or hazardous or extremely hazardous substances, materials, wastes, constituents, compounds or chemicals that are regulated by, or may form the basis of any liability under, any Environmental Laws, including NORM and other substances referenced in *Section 7.2*.

"***High Water Mark Claims***" means all claims arising out of or relating to the delineation of the Ordinary High Water Mark (OHWM) within the bounds of Lake Sakakawea, a man made reservoir which began filling in the 1950's, where the State of North Dakota is claiming rights to minerals up to the artificial OHWM creating by the filling of the reservoir rather than the OHWM of the natural Missouri River, including but not limited to, all claims arising out of or related to the High Water Mark Suit.

"***High Water Mark Suit***" means **EEE Minerals, LLC et al. v. SM Energy Company et al.**where SM Energy was named as one of approximately 100 defendants, including the State of North Dakota, in a Class Action Suit filed in the Northwestern Judicial District Court in McKenzie County, North Dakota. The First Amendment Class Action Complaint is dated December 22, 2015 and the Order Granting the Defendant's Motions to Dismiss is dated October 3, 2016.

"***Hydrocarbons***" has the meaning set forth in the definition of "Assets" above.

"***Imbalance***" means any imbalance at the (a) wellhead between the amount of Hydrocarbons produced from a Well and allocable to the interests of SM Energy therein and the shares of production from the relevant Well to which SM Energy is entitled or (b) pipeline flange between the amount of Hydrocarbons nominated by or allocated to SM Energy and the Hydrocarbons actually delivered on behalf of SM Energy at that point.

"***Income Tax Liability***" means any Liability of SM Energy or any of its Affiliates attributable to any federal, state or local income Tax measured by or imposed on the net income of SM Energy or any of its Affiliates that was or is attributable to SM Energy's or any of its Affiliates' ownership of an interest in or the operation of the Assets.

"***Indemnified Party***" has the meaning set forth in *Section 13.7(a)*.

"***Indemnifying Party***" has the meaning set forth in *Section 13.7(a)*.

"***Individual Environmental Threshold***" means $100,000.

"***Individual Title Defect Threshold***" means $50,000.

"***Interim Period***" means that period of time from and after the Effective Time up to Closing.

"***Invasive Activities***" has the meaning set forth in *Section 5.1(b)*.

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"***Knowledge***" means with respect to SM Energy, the actual knowledge of the following Persons: Mark Mueller, Senior Vice President and Regional Manager - Rockies; Steve Lauver, Asset Manager - North Rockies; Tim Keating, Land Manager - Rockies; Mark Borla, Operation Manager — Rockies; Garth Hill, Business Development Supervisor; and David Copeland, Executive Vice President, General Counsel and Corporate Secretary.

"***Laws***" means any constitution, decree, arbitral award or ruling, resolution, law, statute, act, ordinance, rule, directive, order, treaty, code or regulation and any injunction or final non-appealable judgment or any interpretation of the foregoing, as enacted, issued or promulgated by any Governmental Authority.

"***Leases***" has the meaning set forth in the definition of "Assets" above.

"***Liabilities***" means any and all claims, causes of actions, payments, charges, judgments, awards, assessments, liabilities, losses, damages, penalties, fines, costs, obligations and expenses, diminution in value, including any attorneys' fees and legal or other expenses incurred in connection therewith and including liabilities, costs, losses and damages for personal injury or death or property damage.

"***Material Adverse Effect***" means any change, effect, event, result, occurrence, condition or fact (for the purposes of this definition, each, an "event") (whether foreseeable or not and whether covered by insurance or not) that has had or would be reasonably likely to have, individually or in the aggregate with any other event or events, a material adverse effect on the ownership, operation or financial condition of the Assets, taken as a whole; provided, however, that "*Material Adverse Effect*" shall not include such material adverse effects resulting from (a) general changes in oil and gas prices; (b) general changes in industry, economic or political conditions or markets; (c) changes in conditions or developments generally applicable to the oil and gas industry in any or all of the states where the Assets are located; (d) acts of God, including

hurricanes and storms; (e) acts or failures to act of Governmental Authorities; (f) civil unrest or similar disorder, terrorist acts or changes in Laws; (g) effects or changes that are cured or no longer exist by the earlier of Closing and the termination of this Agreement pursuant to *Section 12.1*, without cost to Buyer; (h) changes in GAAP; and (i) changes resulting from the announcement of the transactions contemplated hereby or the performance of the covenants set forth in *Article VIII*; provided that, in each case, the changes and effects described in clauses (a), (b) and (c) of this definition do not disproportionately affect the Assets, taken as a whole.

"***Material Contracts***" has the meaning set forth in *Section 3.7(a)*.

"***Month***" means any of the months of the Gregorian calendar.

"***Net Revenue Interest***" means, with respect to any Well or Well Location (but limited to the applicable Target Interval set forth in **Exhibit B** for such Well or Well Location and any other currently producing formation (for such Well)), the interest in and to all Hydrocarbons produced, saved and sold from or allocated to such Well or Well Location, including the proceeds thereof (but limited to the applicable Target Interval set forth in **Exhibit B** for such Well or Well Location and any other currently producing formation (for such Well)), after giving effect to all Burdens thereon.

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"***NORM***" means naturally occurring radioactive material.

"***Operating Expenses***" means all operating expenses (including Asset Taxes) and capital expenditures incurred in the ownership and operation of the Assets in the ordinary course of business and, where applicable, in accordance with the Applicable Operating Agreement, and overhead costs charged to the Assets under joint operating agreements, but excluding Liabilities attributable to (a) personal injury or death, property damage or violation of any Law, (b) obligations to plug wells and dismantle or decommission facilities, (c) the Remediation of any Environmental Condition under applicable Environmental Laws, (d) obligations with respect to Imbalances, or (e) obligations to pay Working Interests, royalties, overriding royalties or other interest owners revenues or proceeds attributable to sales of Hydrocarbons relating to the Assets, including those held in suspense.

"***Operator***" means the Person serving as operator under any Applicable Operating Agreement.

"***Outside Termination Date***" has the meaning set forth in *Section 12.1(a)*.

"***Party***" and "***Parties***" have the meanings set forth in the preamble to this Agreement.

"***Permitted Encumbrances***" means:

(a) lessor's royalties, non-participating royalties, overriding royalties, reversionary interests and similar burdens upon, measured by or payable out of production if the net cumulative effect of such burdens does not (i) operate to reduce the Net Revenue Interest of SM Energy in any Well or Well Location to an amount less than the Net Revenue Interest set forth in **Exhibit B** for such Well or Well Location, or (ii) obligate SM Energy to bear a Working Interest for such Well or Well Location in any amount greater than the Working Interest set forth in **Exhibit B** for such Well or Well Location (unless the Net Revenue Interest for such Asset is greater than the Net Revenue Interest set forth in **Exhibit B**, in the same proportion as any increase in such Working Interest);

(b) Preferential Rights or similar agreements with respect to which (A) waivers are obtained from the appropriate parties for the transaction contemplated hereby prior to Closing, or (B) required notices have been given for the transaction contemplated hereby to the holders of such rights and the appropriate period for making an election has expired without an exercise of such rights;

(c) required third party consents to assignments or similar agreements with respect to which (A) consents have been obtained from the appropriate parties for the transaction contemplated hereby prior to Closing, or (B) required notices have been given for the transaction contemplated hereby to the holders of such rights and the applicable period (as specified in the contract, agreement or other instrument granting or reserving such rights) for giving notice of objection or withholding of consent has expired without an exercise of such rights or the period within which the failure to respond to such notice is considered under the relevant contract, agreement or other instrument as deemed consent has expired without SM Energy's receipt of a notice of objection or withholding of consent;

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(d) liens for Taxes or assessments not yet due or delinquent;

(e) Customary Post-Closing Consents;

(f) other than such rights that have already been triggered, conventional rights of reassignment;

(g) such Title Defects as Buyer may have waived or is deemed to have waived pursuant to the terms of this Agreement or Title Defects that were not properly asserted by Buyer prior to the Defect Claim Date (other than claims which may be made pursuant to the special warranty of title set forth in the Assignment);

(h) all applicable Laws, and rights reserved to or vested in any Governmental Authority (i) to control or regulate any Asset in any manner; (ii) by the terms of any right, power, franchise, grant, license or permit, or by any provision of Law, to terminate such right, power, franchise grant, license or permit or to purchase, condemn, expropriate or recapture or to designate a purchaser of any of the Assets; (iii) to use such property in a manner which does not materially impair the use of such property for the purposes for which it is currently owned and operated and (iv) to enforce any obligations or duties affecting the Assets to any Governmental Authority, with respect to any franchise, grant, license or permit;

(i) rights of a common owner of any interest in rights-of-way or easements currently held by SM Energy and such common owner as tenants in common or through common ownership to the extent that the same does not materially impair the use or operation of the Assets as currently used and operated;

(j) easements, conditions, covenants, restrictions, servitudes, permits, rights-of-way, surface leases and other rights in the Assets for the purpose of surface operations, roads, alleys, highways, railways, pipelines, transmission lines, transportation lines, distribution lines, power lines, telephone lines and removal of timber, grazing, logging operations, canals, ditches, reservoirs and other like purposes, or for the joint or common use of real estate, rights-of-way, facilities and equipment, (in each case) that do not (i) materially impair the use, ownership or operation of the Assets (as currently owned and operated), (ii) reduce the Net Revenue Interest of SM Energy in any Well or Well Location to an amount less than the Net Revenue Interest set forth in **Exhibit B**, for such Well or Well Location, or (iii) obligate SM Energy to bear a Working Interest for such Well or Well Location in any amount greater than the Working Interest set forth in **Exhibit B**, as applicable, for such Well or Well Location (unless the Net Revenue Interest for such Asset is greater than the Net Revenue Interest set forth in **Exhibit B**, in the same proportion as any increase in such Working Interest);

(k) zoning and planning ordinances and municipal regulations;

(l) vendors, carriers, warehousemen's, repairmen's, mechanics, workmen's, materialmen's, construction or other like Encumbrances arising by operation of Law in the ordinary course of business or incident to the construction or improvement of any property in respect of obligations that are not yet due;

(m) Encumbrances created under Leases and/or Applicable Operating Agreements or by operation of Law in respect of obligations that are not yet due;

(n) any Encumbrance affecting the Assets which is discharged by SM Energy at or prior to Closing;

(o) any Contracts (other than the Unreviewed Material Contracts, provided that if any such Unreviewed Material Contract is provided to Buyer at least five days prior to the Defect Claim Date, then after Closing such Unreviewed Material Contract shall constitute a Permitted Encumbrance), provided further, that such Contracts do not (i) materially impair the use, ownership or operation of the Assets (as currently owned and operated), (ii) reduce the Net Revenue Interest of SM Energy in any Well or Well Location to an amount less than the Net Revenue Interest set forth in **Exhibit B**, for such Well or Well Location, or (iii) obligate SM Energy to bear a Working Interest for such Well or Well Location in any amount greater than the Working Interest set forth in **Exhibit B**, as applicable, for such Well or Well Location (unless the Net Revenue Interest for such Asset is greater than the Net Revenue Interest set forth in **Exhibit B**, in the same proportion as any increase in such Working Interest);

(p) restrictions or exclusions set forth in **Exhibit A** or **Exhibit B**, as applicable, and all litigation referenced in *Schedule 3.6*;

(q) the Leases and all other Encumbrances, Contracts (including the Applicable Contracts), agreements, instruments, obligations, defects and irregularities affecting the Assets that (in each case) do not (i) materially impair the use, ownership, value or operation of the Assets (as currently owned and operated) and that would be acceptable to a reasonable purchaser of oil and gas properties, (ii) reduce the Net Revenue Interest of SM Energy in any Well or Well Location to an amount less than the Net Revenue Interest set forth in **Exhibit B** for such Well or Well Location, or (iii) obligate SM Energy to bear a Working Interest for such Well or Well Location in any amount greater than the Working Interest set forth in **Exhibit B** for such Well or Well Location (unless the Net Revenue Interest for such Asset is greater than the Net Revenue Interest set forth in **Exhibit B**, in the same proportion as any increase in such Working Interest); and

(r) the High Water Mark Claims.

"***Person***" means any individual, firm, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority or any other entity.

"***Personal Property***" means equipment, machinery, fixtures, and other real, immovable, personal, movable and mixed property, including saltwater disposal wells, well equipment, casing, rods, tanks, boilers, buildings, tubing, pumps, motors, fixtures, machinery, compressors, compression equipment, flow lines, and separation facilities, structures, materials, and other items used or held for use in the operation thereof and located upstream of the outlet flange of the relevant custody transfer meter (or, in the case of Hydrocarbon liquids, upstream of the outlet flange in the tanks).

"***Preferential Right***" has the meaning set forth in *Section 6.4*.

"***Preliminary Settlement Statement***" has the meaning set forth in *Section 2.6(a)*.

"***Proceeding***" means any suit, legal action, or legal, administrative, arbitration or other alternative dispute resolution proceeding, hearing or formal investigation.

"***Purchase Price***" has the meaning set forth in *Section 2.2*, as such amount may be adjusted from time to time pursuant to *Section 2.4* and *Section 2.6*.

"***Records***" has the meaning set forth in the definition of "Assets" above.

"***Remediation***" means, with respect to an Environmental Condition, the implementation and completion of any remedial, removal, response, construction, closure, disposal or other corrective actions required under Environmental Laws to correct or remove such Environmental Condition.

"***Remediation Amount***" means, with respect to an Environmental Condition, the present value as of the Closing Date of the cost (net to the Asset) of the most cost effective Remediation of such Environmental Condition that is reasonably available.

"***Retained Obligations***" has the meaning set forth in *Section 13.1*.

"***Schedules***" means the schedule delivered to Buyer prior to the execution of this Agreement and attached to this Agreement, setting forth specific exceptions to SM Energy's representations and warranties set forth in this Agreement.

"***Seismic License***" means the Seismic License from SM Energy, as Licensor, to Buyer, as Licensee, covering all geological and geophysical data (including seismic data) included in the Assets, substantially in the form attached hereto as **Exhibit E**.

"***SM Energy***" has the meaning set forth in the preamble to this Agreement.

"***SM Indemnified Parties***" has the meaning set forth in *Section 13.3*.

"***Subject Special Warranty***" means the special warranty of title in the Assignment.

"***Subject Transfer Taxes***" has the meaning set forth in *Section 10.2*.

"***Surface Contracts***" has the meaning set forth in the definition of "Assets" above.

"***Suspended Funds***" means proceeds of production which SM Energy is holding (including funds held in suspense for unleased interests and penalties and interest) which are owing to third party owners of royalty, overriding royalty, working, or other interests in respect of past production.

"***Target Intervals***" means the intervals set forth in **Exhibit D**, as applicable.

"***Taxes***" means any and all federal, state, local, foreign and other taxes or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, profit share, license, lease, service, service use, value added, withholding, payroll, employment, excise, estimated severance, stamp, occupation, premium, property, windfall profit or other taxes of any kind whatsoever, together with any interests, penalties, additions to tax, fines or other additional amounts imposed thereon or related thereto, and the term "*Tax*" means any one of the foregoing Taxes.

"***Third Party Claim***" has the meaning set forth in *Section 13.7(b)*.

"***Third Party Operator***" has the meaning set forth in *Section 5.1(a)*.

"***Title Arbitrator***" has the meaning set forth in *Section 6.2(i)*.

"***Title Benefit***" means any enforceable and valid right, circumstance or condition that operates to increase the Net Revenue Interest being assigned to Buyer in any Well or Well Location above that shown for such Well or Well Location in **Exhibit B**, to the extent the same does not cause a greater than proportionate increase in the Working Interest being assigned to Buyer therein above that shown in **Exhibit B**, in each case as to the Target Intervals for such Well or Well Location shown in **Exhibit B**.

"***Title Benefit Amount***" has the meaning set forth in *Section 6.2(d)*.

"***Title Benefit Notice***" has the meaning set forth in *Section 6.2(b)*.

"***Title Benefit Property***" has the meaning set forth in *Section 6.2(b)*.

"***Title Defect***" means any Encumbrance, defect, irregularity or other matter that causes SM Energy not to have Defensible Title in and to any Asset; provided that (but subject to *Section 6.2(h)*) each Title Defect will be addressed as a single condition with respect to each Well or Well Location affected thereby and such Title Defects will not be aggregated on a per condition basis or otherwise across different Wells or Well Locations; and provided further that the following shall not be considered Title Defects:

(a) defects in the chain of title consisting of the failure to recite marital status in a document or omissions of successions of heirship or estate proceedings, unless Buyer provides affirmative evidence that such failure or omission could reasonably be expected to result in another Person's superior claim of title to the relevant Asset;

(b) defects arising out of lack of survey, unless a survey is expressly required by applicable Laws;

(c) liens created under deeds of trust, mortgages and similar instruments by the lessor under a Lease covering the lessor's surface and mineral interests in the land covered thereby that would customarily be accepted in taking oil and gas leases or purchasing undeveloped oil and gas leases and for which the lessee would not customarily seek a subordination of such lien to the oil and gas leasehold estate prior to conducting drilling activities on the Lease, or with respect to which foreclosure proceedings have not been initiated;

(d) defects arising out of lack of corporate or other entity authorization unless Buyer provides affirmative evidence that causes Buyer to reasonably believe such corporate or

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other entity action may not have been authorized and could reasonably be expected to result in another Person's superior claim of title to the relevant Asset;

(e) defects based only on a gap in SM Energy's chain of title in the state's records as to state Leases, or in the county records as to other Leases, unless such gap is affirmatively shown to exist in such records by an abstract of title, title opinion or landman's title chain or runsheet, which documents shall be included in a Title Defect Notice;

(f) defects that have been cured by applicable Laws of limitations or prescription; and

(g) any Encumbrance or loss of title resulting from SM Energy's conduct of business after the Execution Date in compliance with *Section 8.1*.

For purposes of *Section 6.2(c)*, (i) the inclusion in a Lease of a "most favored nations" clause, and (ii) the terms of an Unreviewed Material Contract that adversely affect the ownership, operation or value of an Asset, restrict the ability of Buyer to drill horizontal wells, or that contain an area of mutual interest clause or other restrictions on competition or require a party thereto to offer any other party thereto to participate in any infrastructure project, shall constitute Title Defects.

"***Title Defect Amount***" has the meaning set forth in *Section 6.2(f)*.

"***Title Defect Notice***" has the meaning set forth in *Section 6.2(a)*.

"***Title Defect Property***" has the meaning set forth in *Section 6.2(a)*.

"***Title Disputed Matters***" has the meaning set forth in *Section 6.2(i)*.

"***Transition Services Agreement***" means the Transition Services Agreement between SM Energy and Buyer in the form attached hereto as **Exhibit G**.

"***Treasury Regulations***" means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Internal Revenue Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar, substitute, proposed or final Treasury Regulations.

"***Unit***" has the meaning set forth in the definition of "Assets" above.

"***Unreviewed Material Contracts***" means any Material Contracts that is listed on *Schedule 10* and marked as "NO*" in the column "Reviewed by Oasis", provided, that if such Material Contract is an operating agreement that contains terms substantially similar to that certain Joint Operating Agreement, dated as of February 1, 2011, relating to Sections 1 and 12 of Township 150 North, Range 99 West, such operating agreement shall not be deemed an Unreviewed Material Contract.

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"***Venting Obligations***" means the obligation to install, maintain and have operational the equipment required by the Montana Department of Environmental Quality for the Wells to comply with Administrative Rules of Montana Section 17.8.1711, and all costs and expenses incurred in connection therewith.

"***Well***" has the meaning set forth in the definition of "Assets" above.

"***Well Location***" means each well location and the lands constituting the assumed spacing unit or approved governmental spacing unit associated with such well location, as set forth in **Exhibit B**.

"***Working Interest***" means, with respect to any Well or Well Location (but limited to the applicable Target Interval set forth in **Exhibit B** for such Well or Well Location and any currently producing formation (for such Well)), the interest in and to such Target Interval for such Well or Well Location or producing formation (for such Well) that is burdened with the obligation to bear and pay costs and expenses of maintenance, development and operations on or in connection with such Target Interval for such Well or Well Location or producing formation (for such Well), but without regard to the effect of any Burdens.

News Release

**FOR IMMEDIATE RELEASE**

**SM ENERGY CORES UP IN THE MIDLAND BASIN WITH SIMULTANEOUS TRANSACTIONS**

- **$1.6B HOWARD/MARTIN COUNTY ACQUISITION**
- **$0.8B WILLISTON BASIN DIVESTITURE**

**DENVER, CO October 18, 2016** - SM Energy Company (NYSE: SM) today announced that it has entered into a definitive purchase agreement to acquire 35,700 net acres in Howard and Martin Counties in West Texas, expanding the Company's Midland Basin footprint to approximately 82,450 net acres. The acquired acreage complements, and is partially contiguous to, the Company's recently closed Howard County acreage acquisition and includes approximately 2,400 Boe per day net production. The purchase price is $1.1 billion cash, subject to customary purchase price adjustments, plus 13.4 million shares of SM common stock to be issued to the seller. The seller is QStar LLC, a portfolio company of EnCap Investments L.P. and a related entity. The Company also announced today that it has entered into a definitive agreement for the sale of its Williston Basin assets located outside of Divide County for $785 million, subject to customary purchase price adjustments. The purchaser is Oasis Petroleum Inc.

President and Chief Executive Officer Jay Ottoson comments: "Our strategy is straight-forward, we intend to deliver growth in cash flow per debt-adjusted share by being a premier operator of top tier assets. We have established a position as an outstanding operator in the Midland Basin, and with this acquisition we also establish significant scale. We are particularly excited about the performance and future potential of Howard County, leading us to further core up our portfolio and focus on this fast emerging, top tier area.

"As with our initial Howard County acquisition, we expect to immediately employ our operational expertise to the area. Our preliminary plans for Midland Basin activity include adding a fourth rig during the fourth quarter of 2016 and increasing to six rigs in early 2017, thereby increasing our expected aggregate 2016 capital program before acquisitions to approximately $710 million. We continue to work to concentrate capital on the highest return programs and generate higher company-wide margins, which drive cash flow growth and value creation for our shareholders."

The Company plans to fund the majority of the $1.1 billion cash portion of the acquisition with the proceeds from the Williston Basin asset sale and the remainder under the Company's revolving line of credit, which has a borrowing base of $1.35 billion, aggregate commitments of $1.25 billion and was undrawn as of October 14, 2016. The Company is issuing to the sellers $500 million in SM Energy common stock based on the 30-day volume-weighted average price of $37.35 per share, or approximately 13.4 million shares. Further, the Company remains on track with the planned sale of its

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non-operated assets in the Eagle Ford program, which we expect will be a potential source of funding for the acceleration of activity in the Permian Basin over the coming years.

Mr. Ottoson adds: "We are delighted to have QStar/EnCap as new shareholders and believe their desire to take a significant portion of the consideration in stock is a strong vote of confidence in the quality of the QStar acreage and in our Company."

QStar CEO Gerald Carman comments: "SM Energy will have one of the largest, highest-quality leasehold positions in the Midland Basin, pro forma the QStar transaction, and we believe SM's operations team is ideally suited to optimize the long-term value of QStar's excellent asset base. SM is successfully executing a transformation that we view as under-appreciated by the market, and this transaction provides our management team and sponsor significant upside exposure as we will be among SM's largest shareholders."

The acquisition is expected to close mid-December, 2016, with an effective date of September 1, 2016, and the divestiture is expected to close early-December, with an effective date of October 1, 2016. Both transactions will be subject to customary purchase price adjustments and subject to the satisfaction of customary closing conditions, and there can be no assurance that either transaction will close on the expected closing date or at all.

Petrie Partners served as exclusive financial advisor to SM Energy in connection with both of the transactions. Jefferies LLC served as sole financial advisor to QStar and EnCap Investments, L.P.

Please join SM Energy management today at 8:00 a.m. Mountain time/10:00 a.m. Eastern time for a discussion of today's announcements via webcast (available live and for replay) on the Company's website at www.sm-energy.com. Please reference the "Coring Up in the Midland Basin" IR presentation to be posted to the Company's website prior to the call.

Alternatively, you may join by telephone with the passcode 3439649 (applicable for live and replay calls) at:

Live - Domestic toll free/International: 877-303-1292/315-625-3086

Replay - Domestic toll free/International: 855-859-2056/404-537-3406

The call replay will be available approximately two hours after the call until November 1, 2016.

**FORWARD LOOKING STATEMENTS**

This release contains forward-looking statements within the meaning of securities laws. The words "anticipate," "assume," "believe," "budget," "estimate," "expect," "forecast," "guidance," "intend," "plan," "project," "will" and similar expressions are intended to identify forward-looking statements. These statements involve known and unknown risks, which may cause SM Energy's actual results to differ materially from results expressed or implied by the forward-looking statements. Forward-looking statements in this release include, among other things, expectations regarding growth strategy, consummation of pending transactions, anticipated drilling plans and capital expenditures, anticipated

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growth in cash flows, the expected benefits, financing sources and timing of acquisitions, and the expected benefits and likelihood of completing divestitures. General risk factors include the uncertain nature of acquisition, divestiture, joint venture, farm down or similar efforts and the ability to complete any such transactions; the uncertain nature of expected benefits from the actual or expected acquisition, divestiture, joint venture, farm down or similar efforts; the uncertainty of negotiations to result in an agreement or a completed transaction; the availability of and access to capital markets; the availability, proximity and capacity of gathering, processing and transportation facilities; the volatility and level of oil, natural gas, and natural gas liquids prices, including any impact on the Company's asset carrying values or reserves arising from price declines; uncertainties inherent in projecting future rates of production or other results from drilling and completion activities; the imprecise nature of estimating oil and gas reserves; uncertainties inherent in projecting future drilling and completion activities, costs or results, including from pilot tests; the availability of additional economically attractive exploration, development, and acquisition opportunities for future growth and any necessary financings; unexpected drilling conditions and results; unsuccessful exploration and development drilling results; the availability of drilling, completion, and operating equipment and services; the risks associated with the Company's commodity price risk management strategy; uncertainty regarding the ultimate impact of potentially dilutive securities; and other such matters discussed in the "Risk Factors" section of SM Energy's 2015 Annual Report on Form 10-K, as such risk factors may be updated from time to time in the Company's other periodic reports filed with the Securities and Exchange Commission. The forward-looking statements contained herein speak as of the date of this announcement. Although SM Energy may from time to time voluntarily update its prior forward-looking statements, it disclaims any commitment to do so except as required by securities laws.

**ABOUT THE COMPANY**

SM Energy Company is an independent energy company engaged in the acquisition, exploration, development, and production of crude oil, natural gas, and natural gas liquids in onshore North America. SM Energy routinely posts important information about the Company on its website. For more information about SM Energy, please visit its website at www.sm-energy.com.

**SM ENERGY CONTACTS**

INVESTORS - Jennifer Martin Samuels, jsamuels@sm-energy.com, 303-864-2507