

**EXHIBIT "B"**

**Attached hereto and made part of that certain Letter Agreement dated January 9, 2008  
between Devon Energy Production Company, L.P., McCombs Energy, LLC, and  
Premier Oil & Gas, Inc.**

**A.A.P.L. FORM 610-1982**

**MODEL FORM OPERATING AGREEMENT**

OPERATING AGREEMENT

DATED

January 1 , 2008 ,  
year

OPERATOR Devon Energy Production Company, L.P.

CONTRACT AREA All of Section 31, and W/2 of Section 32, all in

Township 22 South, Range 26 East

COUNTY OR PARISH OF Eddy STATE OF New Mexico

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AMERICAN ASSOCIATION OF PETROLEUM  
LANDMEN, 4100 FOSSIL CREEK BLVD., FORT  
WORTH, TEXAS, 76137-2791, APPROVED  
FORM. A.A.P.L. NO. 610 - 1982 REVISED

**OCD Case# 16115 & 16116  
Premier Oil & Gas, Inc.  
May 3, 2018  
Motion to Dismiss Ex# 2**

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## OPERATING AGREEMENT

THIS AGREEMENT, entered into by and between Devon Energy Production Company, L.P.

hereinafter designated and

referred to as "Operator", and the signatory party or parties other than Operator, sometimes hereinafter referred to individually herein as "Non-Operator", and collectively as "Non-Operators".

## WITNESSETH:

WHEREAS, the parties to this agreement are owners of oil and gas leases and/or oil and gas interests in the land identified in Exhibit "A", and the parties hereto have reached an agreement to explore and develop these leases and/or oil and gas interests for the production of oil and gas to the extent and as hereinafter provided,

NOW, THEREFORE, it is agreed as follows:

ARTICLE I.  
DEFINITIONS

As used in this agreement, the following words and terms shall have the meanings here ascribed to them:

A. The term "oil and gas" shall mean oil, gas, casinghead gas, gas condensate, and all other liquid or gaseous hydrocarbons and other marketable substances produced therewith, unless an intent to limit the inclusiveness of this term is specifically stated.

B. The terms "oil and gas lease", "lease" and "leasehold" shall mean the oil and gas leases covering tracts of land lying within the Contract Area which are owned by the parties to this agreement.

C. The term "oil and gas interests" shall mean unleased fee and mineral interests in tracts of land lying within the Contract Area which are owned by parties to this agreement.

D. The term "Contract Area" shall mean all of the lands, oil and gas leasehold interests and oil and gas interests intended to be developed and operated for oil and gas purposes under this agreement. Such lands, oil and gas leasehold interests and oil and gas interests are described in Exhibit "A".

E. The term "drilling unit" shall mean the area fixed for the drilling of one well by order or rule of any state or federal body having authority. If a drilling unit is not fixed by any such rule or order, a drilling unit shall be the drilling unit as established by the pattern of drilling in the Contract Area or as fixed by express agreement of the Drilling Parties.

F. The term "drillsite" shall mean the oil and gas lease or interest on which a proposed well is to be located.

G. The terms "Drilling Party" and "Consenting Party" shall mean a party who agrees to join in and pay its share of the cost of any operation conducted under the provisions of this agreement.

H. The terms "Non-Drilling Party" and "Non-Consenting Party" shall mean a party who elects not to participate in a proposed operation.

Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

ARTICLE II.  
EXHIBITS

The following exhibits, as indicated below and attached hereto, are incorporated in and made a part hereof:

- A. Exhibit "A", shall include the following information:
- (1) Identification of lands subject to this agreement,
  - (2) Restrictions, if any, as to depths, formations, or substances,
  - (3) Percentages or fractional interests of parties to this agreement,
  - (4) Oil and gas leases and/or oil and gas interests subject to this agreement,
  - (5) Addresses of parties for notice purposes.
- ~~B. Exhibit "B", Form of Lease.~~
- C. Exhibit "C", Accounting Procedure.
- D. Exhibit "D", Insurance.
- E. Exhibit "E", Gas Balancing Agreement.
- F. Exhibit "F", Non-Discrimination and Certification of Non-Segregated Facilities.
- ~~G. Exhibit "G", Tax Partnership.~~

If any provision of any exhibit, except Exhibits "E" and "G", is inconsistent with any provision contained in the body of this agreement, the provisions in the body of this agreement shall prevail.

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**ARTICLE III.**  
**INTERESTS OF PARTIES**

4 A. Oil and Gas Interests:

6 If any party owns an oil and gas interest in the Contract Area, that interest shall be treated for all purposes of this agreement and during the term hereof as if it were covered by the form of oil and gas lease attached hereto as Exhibit "B", and the owner thereof shall be deemed to own both the royalty interest reserved in such lease and the interest of the lessee thereunder.

10 B. Interests of Parties in Costs and Production:

12 Unless changed by other provisions, all costs and liabilities incurred in operations under this agreement shall be borne and paid, and all equipment and materials acquired in operations on the Contract Area shall be owned, by the parties as their interests are set forth in Exhibit "A". In the same manner, the parties shall also own all production of oil and gas from the Contract Area subject to the payment of royalties to the extent of one-eighth (1/8<sup>th</sup>) which shall be borne as hereinafter set forth.

17 Regardless of which party has contributed the lease(s) and/or oil and gas interest(s) hereto on which royalty is due and payable, each party entitled to receive a share of production of oil and gas from the Contract Area shall bear and shall pay or deliver, or cause to be paid or delivered, to the extent of its interest in such production, the royalty amount stipulated hereinabove and shall hold the other parties free from any liability therefor. No party shall ever be responsible, however, on a price basis higher than the price received by such party, to any other party's lessor or royalty owner, and if any such other party's lessor or royalty owner should demand and receive settlement on a higher price basis, the party contributing the affected lease shall bear the additional royalty burden attributable to such higher price.

25 Nothing contained in this Article III.B. shall be deemed an assignment or cross-assignment of interests covered hereby.

27 C. Excess Royalties, Overriding Royalties and Other Payments:

29 Unless changed by other provisions, if the interest of any party in any lease covered hereby is subject to any royalty, overriding royalty, production payment or other burden on production in excess of the amount stipulated in Article III.B., such party so burdened shall assume and alone bear all such excess obligations and shall indemnify and hold the other parties hereto harmless from any and all claims and demands for payment asserted by owners of such excess burden.

34 D. Subsequently Created Interests:

36 If any party should hereafter create an overriding royalty, production payment or other burden payable out of production attributable to its working interest hereunder, or if such a burden existed prior to this agreement and is not set forth in Exhibit "A", or was not disclosed in writing to all other parties prior to the execution of this agreement by all parties, or is not a jointly acknowledged and accepted obligation of all parties (any such interest being hereinafter referred to as "subsequently created interest" irrespective of the timing of its creation and the party out of whose working interest the subsequently created interest is derived being hereinafter referred to as "burdened party"), and:

1. If the burdened party is required under this agreement to assign or relinquish to any other party, or parties, all or a portion of its working interest and/or the production attributable thereto, said other party, or parties, shall receive said assignment and/or production free and clear of said subsequently created interest and the burdened party shall indemnify and save said other party, or parties, harmless from any and all claims and demands for payment asserted by owners of the subsequently created interest; and,
2. If the burdened party fails to pay, when due, its share of expenses chargeable hereunder, all provisions of Article VII.B. shall be enforceable against the subsequently created interest in the same manner as they are enforceable against the working interest of the burdened party.

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**ARTICLE IV.**  
**TITLES**

56 A. Title Examination:

58 Title examination shall be made on the drillsite of any proposed well prior to commencement of drilling operations or, if the Drilling Parties so request, title examination shall be made on the leases and/or oil and gas interests included, or planned to be included, in the drilling unit around such well. The opinion will include the ownership of the working interest, minerals, royalty, overriding royalty and production payments under the applicable leases. At the time a well is proposed, each party contributing leases and/or oil and gas interests to the drillsite, or to be included in such drilling unit, shall furnish to Operator all abstracts (including federal lease status reports), title opinions, title papers and curative material in its possession free of charge. All such information not in the possession of or made available to Operator by the parties, but necessary for the examination of the title, shall be obtained by Operator. Operator shall cause title to be examined by attorneys on its staff or by outside attorneys. Copies of all title opinions shall be furnished to each party hereto. The cost incurred by Operator in this title program shall be borne as follows:

68  Option No. 1: Costs incurred by Operator in procuring abstracts and title examination (including preliminary, supplemental, shut-in gas royalty opinions and division order title opinions) shall be a part of the administrative overhead as provided in Exhibit "C", and shall not be a direct charge, whether performed by Operator's staff attorneys or by outside attorneys.

ARTICLE IV  
continued

1  Option No. 2: Costs incurred by Operator in procuring abstracts and fees paid outside attorneys for title examination  
2 (including preliminary, supplemental, shut-in gas royalty opinions and division order title opinions) shall be borne by the Drilling Parties  
3 in the proportion that the interest of each Drilling Party bears to the total interest of all Drilling Parties as such interests appear in Ex-  
4 hibit "A". Operator shall make no charge for services rendered by its staff attorneys or other personnel in the performance of the above  
5 functions.

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7 Each party shall be responsible for securing curative matter and pooling amendments or agreements required in connection  
8 with leases or oil and gas interests contributed by such party. Operator shall be responsible for the preparation and recording of pooling  
9 designations or declarations as well as the conduct of hearings before governmental agencies for the securing of spacing or pooling orders.  
10 This shall not prevent any party from appearing on its own behalf at any such hearing.

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12 No well shall be drilled on the Contract Area until after (1) the title to the drillsite or drilling unit has been examined as above  
13 provided, and (2) the title has been approved by the examining attorney or title has been accepted by all of the parties who are to par-  
14 ticipate in the drilling of the well.

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16 **B. Loss of Title:**

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18 ~~1. Failure of Title: Should any oil and gas interest or lease, or interest therein, be lost through failure of title, which loss results in a~~  
19 ~~reduction of interest from that shown on Exhibit "A", the party contributing the affected lease or interest shall have ninety (90) days~~  
20 ~~from final determination of title failure to acquire a new lease or other instrument curing the entirety of the title failure, which acquisi-~~  
21 ~~tion will not be subject to Article VIII.B., and failing to do so, this agreement, nevertheless, shall continue in force as to all remaining oil~~  
22 ~~and gas leases and interests; and;~~

23 ~~—(a) The party whose oil and gas lease or interest is affected by the title failure shall bear alone the entire loss and it shall not be~~  
24 ~~entitled to recover from Operator or the other parties any development or operating costs which it may have theretofore paid or incurred,~~  
25 ~~but there shall be no additional liability on its part to the other parties hereto by reason of such title failure;~~

26 ~~—(b) There shall be no retroactive adjustment of expenses incurred or revenues received from the operation of the interest which has~~  
27 ~~been lost, but the interests of the parties shall be revised on an acreage basis, as of the time it is determined finally that title failure has oc-~~  
28 ~~curred, so that the interest of the party whose lease or interest is affected by the title failure will thereafter be reduced in the Contract~~  
29 ~~Area by the amount of the interest lost;~~

30 ~~—(c) If the proportionate interest of the other parties hereto in any producing well theretofore drilled on the Contract Area is~~  
31 ~~increased by reason of the title failure, the party whose title has failed shall receive the proceeds attributable to the increase in such in-~~  
32 ~~terest (less costs and burdens attributable thereto) until it has been reimbursed for unrecovered costs paid by it in connection with such~~  
33 ~~well;~~

34 ~~—(d) Should any person not a party to this agreement, who is determined to be the owner of any interest in the title which has~~  
35 ~~failed, pay in any manner any part of the cost of operation, development, or equipment, such amount shall be paid to the party or parties~~  
36 ~~who bore the costs which are so refunded;~~

37 ~~—(e) Any liability to account to a third party for prior production of oil and gas which arises by reason of title failure shall be~~  
38 ~~borne by the party or parties whose title failed in the same proportions in which they shared in such prior production; and;~~

39 ~~—(f) No charge shall be made to the joint account for legal expenses, fees or salaries, in connection with the defense of the interest~~  
40 ~~claimed by any party hereto, it being the intention of the parties hereto that each shall defend title to its interest and bear all expenses in~~  
41 ~~connection therewith.~~

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43 ~~2. Loss by Non Payment or Erroneous Payment of Amount Due: If, through mistake or oversight, any rental, shut-in well~~  
44 ~~payment, minimum royalty or royalty payment, is not paid or is erroneously paid, and as a result a lease or interest therein terminates,~~  
45 ~~there shall be no monetary liability against the party who failed to make such payment. Unless the party who failed to make the required~~  
46 ~~payment secures a new lease covering the same interest within ninety (90) days from the discovery of the failure to make proper payment,~~  
47 ~~which acquisition will not be subject to Article VIII.B., the interests of the parties shall be revised on an acreage basis, effective as of the~~  
48 ~~date of termination of the lease involved, and the party who failed to make proper payment will no longer be credited with an interest in~~  
49 ~~the Contract Area on account of ownership of the lease or interest which has terminated. In the event the party who failed to make the~~  
50 ~~required payment shall not have been fully reimbursed, at the time of the loss, from the proceeds of the sale of oil and gas attributable to~~  
51 ~~the lost interest, calculated on an acreage basis, for the development and operating costs theretofore paid on account of such interest, it~~  
52 ~~shall be reimbursed for unrecovered actual costs theretofore paid by it (but not for its share of the cost of any dry hole previously drilled~~  
53 ~~or wells previously abandoned) from so much of the following as is necessary to effect reimbursement:~~

54 ~~—(a) Proceeds of oil and gas, less operating expenses, theretofore accrued to the credit of the lost interest, on an acreage basis,~~  
55 ~~up to the amount of unrecovered costs;~~

56 ~~—(b) Proceeds, less operating expenses, thereafter accrued attributable to the lost interest on an acreage basis, of that portion of~~  
57 ~~oil and gas thereafter produced and marketed (excluding production from any wells thereafter drilled) which, in the absence of such lease~~  
58 ~~termination, would be attributable to the lost interest on an acreage basis, up to the amount of unrecovered costs, the proceeds of said~~  
59 ~~portion of the oil and gas to be contributed by the other parties in proportion to their respective interests; and;~~

60 ~~—(c) Any monies, up to the amount of unrecovered costs, that may be paid by any party who is, or becomes, the owner of the interest~~  
61 ~~lost, for the privilege of participating in the Contract Area or becoming a party to this agreement.~~

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63 **3. Other Losses: All losses incurred, other than those set forth in Articles IV.B.1. and IV.B.2. above, shall be joint losses**  
64 **and shall be borne by all parties in proportion to their interests. There shall be no readjustment of interests in the remaining portion of**  
65 **the Contract Area.**

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ARTICLE V.  
OPERATOR

A. Designation and Responsibilities of Operator:

Devon Energy Production Company, L.P. shall be the Operator of the Contract Area, and shall conduct and direct and have full control of all operations on the Contract Area as permitted and required by, and within the limits of this agreement. It shall conduct all such operations in a good and workmanlike manner, but it shall have no liability as Operator to the other parties for losses sustained or liabilities incurred, except such as may result from gross negligence or willful misconduct.

B. Resignation or Removal of Operator and Selection of Successor:

1. Resignation or Removal of Operator: Operator may resign at any time by giving written notice thereof to Non-Operators. If Operator terminates its legal existence, no longer owns an interest hereunder in the Contract Area, or is no longer capable of serving as Operator, Operator shall be deemed to have resigned without any action by Non-Operators, except the selection of a successor. Operator may be removed if it fails or refuses to carry out its duties hereunder, or becomes insolvent, bankrupt or is placed in receivership, by the affirmative vote of two (2) or more Non-Operators owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of Operator. Such resignation or removal shall not become effective until 7:00 o'clock A.M. on the first day of the calendar month following the expiration of ninety (90) days after the giving of notice of resignation by Operator or action by the Non-Operators to remove Operator, unless a successor Operator has been selected and assumes the duties of Operator at an earlier date. Operator, after effective date of resignation or removal, shall be bound by the terms hereof as a Non-Operator. A change of a corporate name or structure of Operator or transfer of Operator's interest to any single subsidiary, parent or successor corporation shall not be the basis for removal of Operator.

2. Selection of Successor Operator: Upon the resignation or removal of Operator, a successor Operator shall be selected by the parties. The successor Operator shall be selected from the parties owning an interest in the Contract Area at the time such successor Operator is selected. The successor Operator shall be selected by the affirmative vote of two (2) or more parties owning a majority interest based on ownership as shown on Exhibit "A"; provided, however, if an Operator which has been removed fails to vote or votes only to succeed itself, the successor Operator shall be selected by the affirmative vote of two (2) or more parties owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of the Operator that was removed.

C. Employees:

The number of employees used by Operator in conducting operations hereunder, their selection, and the hours of labor and the compensation for services performed shall be determined by Operator, and all such employees shall be the employees of Operator.

D. Drilling Contracts:

All wells drilled on the Contract Area shall be drilled on a competitive contract basis at the usual rates prevailing in the area. If it so desires, Operator may employ its own tools and equipment in the drilling of wells, but its charges therefor shall not exceed the prevailing rates in the area and the rate of such charges shall be agreed upon by the parties in writing before drilling operations are commenced, and such work shall be performed by Operator under the same terms and conditions as are customary and usual in the area in contracts of independent contractors who are doing work of a similar nature.

ARTICLE VI.  
DRILLING AND DEVELOPMENT

A. Initial Well:

On or before the 1st day of February, (year) 2008, Operator shall commence the drilling of a well for oil and gas at the following location: 920' FSL & 1310' FEL of Section 31-T22S-R26E, Eddy County, New Mexico

and shall thereafter continue the drilling of the well with due diligence to a depth sufficient to test the Morrow formation, expected to require drilling to a depth of approximately 11,675 feet

unless granite or other practically impenetrable substance or condition in the hole, which renders further drilling impractical, is encountered at a lesser depth, or unless all parties agree to complete or abandon the well at a lesser depth.

Operator shall make reasonable tests of all formations encountered during drilling which give indication of containing oil and gas in quantities sufficient to test, unless this agreement shall be limited in its application to a specific formation or formations, in which event Operator shall be required to test only the formation or formations to which this agreement may apply.

ARTICLE VI  
continued

1 If, in Operator's judgment, the well will not produce oil or gas in paying quantities, and it wishes to plug and abandon the  
2 well as a dry hole, the provisions of Article VI.E.1. shall thereafter apply.

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6 B. Subsequent Operations:

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8 1. Proposed Operations: Should any party hereto desire to drill any well on the Contract Area other than the well provided  
9 for in Article VI.A., or to rework, deepen, <sup>recomplete, sidetrack</sup> / or plug back a dry hole drilled at the joint expense of all parties or a well jointly owned by all  
10 the parties and not then producing in paying quantities, the party desiring to drill, rework, deepen, <sup>recomplete, sidetrack</sup> / or plug back such a well shall give the  
11 other parties written notice of the proposed operation, specifying the work to be performed, the location, proposed depth, objective forma-  
12 tion and the estimated cost of the operation. The parties receiving such a notice shall have thirty (30) days after receipt of the notice  
13 within which to notify the party wishing to do the work whether they elect to participate in the cost of the proposed operation. If a drill-  
14 ing rig is on location, notice of a proposal to rework, plug back, <sup>recomplete, sidetrack</sup> / or drill deeper may be given by telephone and the response period shall be  
15 limited to forty-eight (48) hours, exclusive of Saturday, Sunday, and legal holidays. Failure of a party receiving such notice to reply within  
16 the period above fixed shall constitute an election by that party not to participate in the cost of the proposed operation. Any notice or  
17 response given by telephone shall be promptly confirmed in writing.

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21 If all parties elect to participate in such a proposed operation, Operator shall, within ninety (90) days after expiration of the notice  
22 period of thirty (30) days (or as promptly as possible after the expiration of the forty-eight (48) hour period when a drilling rig is on loca-  
23 tion, as the case may be), actually commence the proposed operation and complete it with due diligence at the risk and expense of all par-  
24 ties hereto; provided, however, said commencement date may be extended upon written notice of same by Operator to the other parties,  
25 for a period of up to thirty (30) additional days if, in the sole opinion of Operator, such additional time is reasonably necessary to obtain  
26 permits from governmental authorities, surface rights (including rights-of-way) or appropriate drilling equipment, or to complete title ex-  
27 amination or curative matter required for title approval or acceptance. Notwithstanding the force majeure provisions of Article XI, if the  
28 actual operation has not been commenced within the time provided (including any extension thereof as specifically permitted herein) and  
29 if any party hereto still desires to conduct said operation, written notice proposing same must be resubmitted to the other parties in accor-  
30 dance with the provisions hereof as if no prior proposal had been made.

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34 2. Operations by Less than All Parties: If any party receiving such notice as provided in Article VI.B.1. or VI.D.1. (Option  
35 No. 2) elects not to participate in the proposed operation, then, in order to be entitled to the benefits of this Article, the party or parties  
36 giving the notice and such other parties as shall elect to participate in the operation shall, within ninety (90) days after the expiration of  
37 the notice period of thirty (30) days (or as promptly as possible after the expiration of the forty-eight (48) hour period when a drilling rig is  
38 on location, as the case may be) actually commence the proposed operation and complete it with due diligence. Operator shall perform all  
39 work for the account of the Consenting Parties; provided, however, if no drilling rig or other equipment is on location, and if Operator is  
40 a Non-Consenting Party, the Consenting Parties shall either: (a) request Operator to perform the work required by such proposed opera-  
41 tion for the account of the Consenting Parties, or (b) designate one (1) of the Consenting Parties as Operator to perform such work. Con-  
42 senting Parties, when conducting operations on the Contract Area pursuant to this Article VI.B.2., shall comply with all terms and con-  
43 ditions of this agreement.

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47 If less than all parties approve any proposed operation, the proposing party, immediately after the expiration of the applicable  
48 notice period, shall advise the Consenting Parties of the total interest of the parties approving such operation and its recommendation as  
49 to whether the Consenting Parties should proceed with the operation as proposed. Each Consenting Party, within forty-eight (48) hours  
50 (exclusive of Saturday, Sunday and legal holidays) after receipt of such notice, shall advise the proposing party of its desire to (a) limit par-  
51 ticipation to such party's interest as shown on Exhibit "A" or (b) carry its proportionate part of Non-Consenting Parties' interests, and  
52 failure to advise the proposing party shall be deemed an election under (a). In the event a drilling rig is on location, the time permitted for  
53 such a response shall not exceed a total of forty-eight (48) hours (inclusive of Saturday, Sunday and legal holidays). The proposing party,  
54 at its election, may withdraw such proposal if there is insufficient participation and shall promptly notify all parties of such decision.

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58 The entire cost and risk of conducting such operations shall be borne by the Consenting Parties in the proportions they have  
59 elected to bear same under the terms of the preceding paragraph. Consenting Parties shall keep the leasehold estates involved in such  
60 operations free and clear of all liens and encumbrances of every kind created by or arising from the operations of the Consenting Parties.  
61 If such an operation results in a dry hole, the Consenting Parties shall plug and abandon the well and restore the surface location at their  
62 sole cost, risk and expense. If any well drilled, reworked, deepened or plugged back under the provisions of this Article results in a pro-  
63 ducer of oil and/or gas in paying quantities, the Consenting Parties shall complete and equip the well to produce at their sole cost and risk,

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ARTICLE VI  
continued

1 and the well shall then be turned over to Operator and shall be operated by it at the expense and for the account of the Consenting Parties. Upon commencement of operations for the drilling, reworking, deepening or plugging back of any such well by Consenting Parties  
 2 in accordance with the provisions of this Article, each Non-Consenting Party shall be deemed to have relinquished to Consenting Parties,  
 3 and the Consenting Parties shall own and be entitled to receive, in proportion to their respective interests, all of such Non-Consenting  
 4 Party's interest in the well and share of production therefrom until the proceeds of the sale of such share, calculated at the well, or  
 5 market value thereof if such share is not sold, (after deducting production taxes, excise taxes, royalty, overriding royalty and other in-  
 6 terests not excepted by Article III.D. payable out of or measured by the production from such well accruing with respect to such interest  
 7 until it reverts) shall equal the total of the following:  
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12 (a) 100% of each such Non-Consenting Party's share of the cost of any newly acquired surface equipment beyond the wellhead  
 13 connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping), plus 100% of each such  
 14 Non-Consenting Party's share of the cost of operation of the well commencing with first production and continuing until each such Non-  
 15 Consenting Party's relinquished interest shall revert to it under other provisions of this Article, it being agreed that each Non-  
 16 Consenting Party's share of such costs and equipment will be that interest which would have been chargeable to such Non-Consenting  
 17 Party had it participated in the well from the beginning of the operations; and  
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21 (b) 300 % of that portion of the costs and expenses of drilling, reworking, deepening, plugging back, testing and completing,  
 22 after deducting any cash contributions received under Article VIII.C., and 300 % of that portion of the cost of newly acquired equip-  
 23 ment in the well (to and including the wellhead connections), which would have been chargeable to such Non-Consenting Party if it had  
 24 participated therein.  
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28 An election not to participate in the drilling, <sup>sidetracking</sup> / or the deepening of a well shall be deemed an election not to participate in any re-  
 29 working or plugging back operation proposed in such a well, or portion thereof, to which the initial Non-Consent election applied that is  
 30 conducted at any time prior to full recovery by the Consenting Parties of the Non-Consenting Party's recoupment account. Any such  
 31 reworking or plugging back operation conducted during the recoupment period shall be deemed part of the cost of operation of said well  
 32 and there shall be added to the sums to be recouped by the Consenting Parties one hundred percent (100%) of that portion of the costs of  
 33 the reworking or plugging back operation which would have been chargeable to such Non-Consenting Party had it participated therein. If  
 34 such a reworking or plugging back operation is proposed during such recoupment period, the provisions of this Article VI.B. shall be ap-  
 35 plicable as between said Consenting Parties in said well.  
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39 During the period of time Consenting Parties are entitled to receive Non-Consenting Party's share of production, or the  
 40 proceeds therefrom, Consenting Parties shall be responsible for the payment of all production, severance, excise, gathering and other  
 41 taxes, and all royalty, overriding royalty and other burdens applicable to Non-Consenting Party's share of production not excepted by Ar-  
 42 ticle III.D.  
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46 In the case of any reworking, plugging back or deeper drilling operation, the Consenting Parties shall be permitted to use, free  
 47 of cost, all casing, tubing and other equipment in the well, but the ownership of all such equipment shall remain unchanged; and upon  
 48 abandonment of a well after such reworking, plugging back or deeper drilling, the Consenting Parties shall account for all such equip-  
 49 ment to the owners thereof, with each party receiving its proportionate part in kind or in value, less cost of salvage.  
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53 Within sixty (60) days after the completion of any operation under this Article, the party conducting the operations for the  
 54 Consenting Parties shall furnish each Non-Consenting Party with an inventory of the equipment in and connected to the well, and an  
 55 itemized statement of the cost of drilling, deepening, <sup>sidetracking</sup> / plugging back, testing, completing, and equipping the well for production; or, at its  
 56 option, the operating party, in lieu of an itemized statement of such costs of operation, may submit a detailed statement of monthly bill-  
 57 ings. Each month thereafter, during the time the Consenting Parties are being reimbursed as provided above, the party conducting the  
 58 operations for the Consenting Parties shall furnish the Non-Consenting Parties with an itemized statement of all costs and liabilities in-  
 59 curred in the operation of the well, together with a statement of the quantity of oil and gas produced from it and the amount of proceeds  
 60 realized from the sale of the well's working interest production during the preceding month. In determining the quantity of oil and gas  
 61 produced during any month, Consenting Parties shall use industry accepted methods such as, but not limited to, metering or periodic  
 62 well tests. Any amount realized from the sale or other disposition of equipment newly acquired in connection with any such operation  
 63 which would have been owned by a Non-Consenting Party had it participated therein shall be credited against the total unreturned costs  
 64 of the work done and of the equipment purchased in determining when the interest of such Non-Consenting Party shall revert to it as  
 65 above provided; and if there is a credit balance, it shall be paid to such Non-Consenting Party.  
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**ARTICLE VI**  
continued

1 If and when the Consenting Parties recover from a Non-Consenting Party's relinquished interest the amounts provided for above,  
2 the relinquished interests of such Non-Consenting Party shall automatically revert to it, and, from and after such reversion, such Non-  
3 Consenting Party shall own the same interest in such well, the material and equipment in or pertaining thereto, and the production  
4 therefrom as such Non-Consenting Party would have been entitled to had it participated in the drilling, reworking, deepening or plugging  
5 back of said well. Thereafter, such Non-Consenting Party shall be charged with and shall pay its proportionate part of the further costs of  
6 the operation of said well in accordance with the terms of this agreement and the Accounting Procedure attached hereto.

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10 Notwithstanding the provisions of this Article VI.B.2., it is agreed that without the mutual consent of all parties, no wells shall  
11 be completed in or produced from a source of supply from which a well located elsewhere on the Contract Area is producing, unless such  
12 well conforms to the then-existing well spacing pattern for such source of supply.

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16 The provisions of this Article shall have no application whatsoever to the drilling of the initial well described in Article VI.A.  
17 except (a) as to Article VII.D.1. (Option No. 2), if selected, or (b) as to the reworking, deepening, <sup>sidetracking</sup> and plugging back of such initial well  
18 after it has been drilled to the depth specified in Article VI.A. if it shall thereafter prove to be a dry hole or, if initially completed for pro-  
19 duction, ceases to produce in paying quantities.

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23 **3. Stand-By Time:** When a well which has been drilled or deepened has reached its authorized depth and all tests have been  
24 completed, and the results thereof furnished to the parties, stand-by costs incurred pending response to a party's notice proposing a  
25 reworking, deepening, plugging back or completing operation in such a well shall be charged and borne as part of the drilling or deepening  
26 operation just completed. Stand-by costs subsequent to all parties responding, or expiration of the response time permitted, whichever  
27 first occurs, and prior to agreement as to the participating interests of all Consenting Parties pursuant to the terms of the second gram-  
28 matical paragraph of Article VI.B.2., shall be charged to and borne as part of the proposed operation, but if the proposal is subsequently  
29 withdrawn because of insufficient participation, such stand-by costs shall be allocated between the Consenting Parties in the proportion  
30 each Consenting Party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all Consenting Par-  
31 ties.

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35 **4. Sidetracking:** Except as hereinafter provided, those provisions of this agreement applicable to a "deepening" operation shall  
36 also be applicable to any proposal to directionally control and intentionally deviate a well from vertical so as to change the bottom hole  
37 location (herein call "sidetracking"), unless done to straighten the hole or to drill around junk in the hole or because of other  
38 mechanical difficulties. Any party having the right to participate in a proposed sidetracking operation that does not own an interest in the  
39 affected well bore at the time of the notice shall, upon electing to participate, tender to the well bore owners its proportionate share (equal  
40 to its interest in the sidetracking operation) of the value of that portion of the existing well bore to be utilized as follows:

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44 (a) If the proposal is for sidetracking an existing dry hole, reimbursement shall be on the basis of the actual costs incurred in  
45 the initial drilling of the well down to the depth at which the sidetracking operation is initiated.

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49 (b) If the proposal is for sidetracking a well which has previously produced, reimbursement shall be on the basis of the well's  
50 salvage materials and equipment down to the depth at which the sidetracking operation is initiated, determined in accordance with the  
51 provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning.

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55 In the event that notice for a sidetracking operation is given while the drilling rig to be utilized is on location, the response period  
56 shall be limited to forty-eight (48) hours, exclusive of Saturday, Sunday and legal holidays; provided, however, any party may request and  
57 receive up to eight (8) additional days after expiration of the forty-eight (48) hours within which to respond by paying for all stand-by time  
58 incurred during such extended response period. If more than one party elects to take such additional time to respond to the notice, stand  
59 by costs shall be allocated between the parties taking additional time to respond on a day-to-day basis in the proportion each electing par-  
60 ty's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all the electing parties. In all other in-  
61 stances the response period to a proposal for sidetracking shall be limited to thirty (30) days.

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65 **C. TAKING PRODUCTION IN KIND:**

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68 Each party shall take in kind or separately dispose of its proportionate share of all oil and gas produced from the Contract Area,  
69 exclusive of production which may be used in development and producing operations and in preparing and treating oil and gas for  
70 marketing purposes and production unavoidably lost. Any extra expenditure incurred in the taking in kind or separate disposition by any  
71 party of its proportionate share of the production shall be borne by such party. ~~Any party taking its share of production in kind shall be~~

ARTICLE VI  
continued

1 required to pay for only its proportionate share of such part of Operator's surface facilities which it uses.

2

3 Each party shall execute such division orders and contracts as may be necessary for the sale of its interest in production from  
4 the Contract Area, and, except as provided in Article VII.B., shall be entitled to receive payment directly from the purchaser thereof for  
5 its share of all production.

6

7 \* In the event any party shall fail to make the arrangements necessary to take in kind or separately dispose of its proportionate share of  
8 the oil produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party owning it, but not  
9 the obligation, to purchase such oil or sell it to others at any time and from time to time, for the account of the non-taking party at the  
10 best price obtainable in the area for such production. Any such purchase or sale by Operator shall be subject always to the right of the  
11 owner of the production to exercise at any time its right to take in kind, or separately dispose of, its share of all oil not previously  
12 delivered to a purchaser. Any purchase or sale by Operator of any other party's share of oil shall be only for such reasonable periods of  
13 time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess  
14 of one (1) year.

15

16 In the event one or more parties' separate disposition of its share of the gas causes split-stream deliveries to separate pipelines and/or  
17 deliveries which on a day-to-day basis for any reason are not exactly equal to a party's respective proportionate share of total gas sales to  
18 be allocated to it, the balancing or accounting between the respective accounts of the parties shall be in accordance with any gas balancing  
19 agreement between the parties hereto, <sup>which</sup> whether such an agreement is attached as Exhibit "E" <sup>hereto</sup> or is a separate agreement.

20

21 D. Access to Contract Area and Information:

22

23 Each party shall have access to the Contract Area at all reasonable times, at its sole cost and risk to inspect or observe operations,  
24 and shall have access at reasonable times to information pertaining to the development or operation thereof, including Operator's books  
25 and records relating thereto. Operator, upon request, shall furnish each of the other parties with copies of all forms or reports filed with  
26 governmental agencies, daily drilling reports, well logs, tank tables, daily gauge and run tickets and reports of stock on hand at the first of  
27 each month, and shall make available samples of any cores or cuttings taken from any well drilled on the Contract Area. The cost of  
28 gathering and furnishing information to Non-Operator, other than that specified above, shall be charged to the Non-Operator that re-  
29 quests the information.

30

31 E. Abandonment of Wells:

32

33 1. Abandonment of Dry Holes: Except for any well drilled, <sup>sidetracked</sup> / or deepened pursuant to Article VI.B.2., any well which has been  
34 drilled, / or deepened under the terms of this agreement and is proposed to be completed as a dry hole shall not be plugged and abandoned  
35 without the consent of all parties. Should Operator, after diligent effort, be unable to contact any party, or should any party fail to reply  
36 within forty-eight (48) hours (exclusive of Saturday, Sunday and legal holidays) after receipt of notice of the proposal to plug and abandon  
37 such well, such party shall be deemed to have consented to the proposed abandonment. All such wells shall be plugged and abandoned in  
38 accordance with applicable regulations and at the cost, risk and expense of the parties who participated in the cost of drilling or deepening  
39 such well. Any party who objects to plugging and abandoning such well shall have the right to take over the well and conduct further  
40 operations in search of oil and/or gas subject to the provisions of Article VI.B.

41

42 2. Abandonment of Wells that have Produced: Except for any well in which a Non-Consent operation has been conducted  
43 hereunder for which the Consenting Parties have not been fully reimbursed as herein provided, any well which has been completed as a  
44 producer shall not be plugged and abandoned without the consent of all parties. If all parties consent to such abandonment, the well shall  
45 be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of all the parties hereto. If, within  
46 thirty (30) days after receipt of notice of the proposed abandonment of any well, all parties do not agree to the abandonment of such well,  
47 those wishing to continue its operation from the interval(s) of the formation(s) then open to production shall tender to each of the other  
48 parties its proportionate share of the value of the well's salvageable material and equipment, determined in accordance with the provisions of  
49 Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning. Each abandoning party shall assign  
50 the non-abandoning parties, without warranty, express or implied, as to title or as to quantity, or fitness for use of the equipment and  
51 material, all of its interest in the well and related equipment, together with its interest in the leasehold estate as to, but only as to, the in-  
52 terval or intervals of the formation or formations then open to production. If the interest of the abandoning party is or includes an oil and  
53 gas interest, such party shall execute and deliver to the non-abandoning party or parties an oil and gas lease, limited to the interval or in-  
54 tervals of the formation or formations then open to production, for a term of one (1) year and so long thereafter as oil and/or gas is pro-  
55 duced from the interval or intervals of the formation or formations covered thereby, such lease to be on the form attached as Exhibit

56

57 \* In the event any party shall fail to make the arrangements necessary to take in kind or separately dispose of its proportionate  
58 share of the oil and gas produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party  
59 owning it, but not the obligation, to purchase such oil and gas or sell it to others in an arms length transaction at any time and from  
60 time to time, for the account of the non-taking party and Operator will use its best efforts to market Non-operator's share of the oil  
61 and/or gas on the same terms that Operator markets its own share of such production. Any such purchase or sale by Operator shall  
62 be subject always to the right of the owner of the production upon thirty (30) days written notice to exercise its right to take in kind  
63 or separately dispose of, its share of all oil and gas not previously delivered to a purchaser. Any purchase or sale by Operator of any  
64 other party's share of oil and gas shall be only for such reasonable periods of time as are consistent with the minimum needs of the  
65 industry under the particular circumstances, but in no event for a period in excess of one (1) year.

64

65 Each party electing to take in kind or separately dispose of its proportionate share of the production from the Contract Area  
66 shall keep accurate records of the volume, selling price, royalty and taxes relative to its share of production. Non-Operators shall,  
67 upon request, furnish operator with true and complete copies of the records required to be kept hereunder whenever, under the terms  
68 of this agreement or any agreement executed in connection herewith, it is necessary for Operator to obtain said information. Any  
69 information furnished to Operator hereunder shall be used by Operator only to the extent necessary to carry out its duties as  
70 Operator and shall otherwise be kept confidential.

70

**ARTICLE VI**  
continued

1 "B". The assignments or leases so limited shall encompass the "drilling unit" upon which the well is located. The payments by, and the  
2 assignments or leases to, the assignees shall be in a ratio based upon the relationship of their respective percentage of participation in the  
3 Contract Area to the aggregate of the percentages of participation in the Contract Area of all assignees. There shall be no readjustment of  
4 interests in the remaining portion of the Contract Area.

5  
6 Thereafter, abandoning parties shall have no further responsibility, liability, or interest in the operation of or production from  
7 the well in the interval or intervals then open other than the royalties retained in any lease made under the terms of this Article. Upon re-  
8 quest, Operator shall continue to operate the assigned well for the account of the non-abandoning parties at the rates and charges con-  
9 templated by this agreement, plus any additional cost and charges which may arise as the result of the separate ownership of the assigned  
10 well. Upon proposed abandonment of the producing interval(s) assigned or leased, the assignor or lessor shall then have the option to  
11 repurchase its prior interest in the well (using the same valuation formula) and participate in further operations therein subject to the pro-  
12 visions hereof.

13  
14 3. Abandonment of Non-Consent Operations: The provisions of Article VI.E.1. or VI.E.2 above shall be applicable as between  
15 Consenting Parties in the event of the proposed abandonment of any well excepted from said Articles; provided, however, no well shall be  
16 permanently plugged and abandoned unless and until all parties having the right to conduct further operations therein have been notified  
17 of the proposed abandonment and afforded the opportunity to elect to take over the well in accordance with the provisions of this Article  
18 VI.E.

**ARTICLE VII.**  
**EXPENDITURES AND LIABILITY OF PARTIES**

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21  
22  
23 **A. Liability of Parties:**

24  
25 The liability of the parties shall be several, not joint or collective. Each party shall be responsible only for its obligations, and  
26 shall be liable only for its proportionate share of the costs of developing and operating the Contract Area. Accordingly, the liens granted  
27 among the parties in Article VII.B. are given to secure only the debts of each severally. It is not the intention of the parties to create, nor  
28 shall this agreement be construed as creating, a mining or other partnership or association, or to render the parties liable as partners.

29  
30 **B. Liens and Payment Defaults:**

31  
32 Each Non-Operator grants to Operator a lien upon its oil and gas rights in the Contract Area, and a security interest in its share  
33 of oil and/or gas when extracted and its interest in all equipment, to secure payment of its share of expense, together with interest thereon  
34 at the rate provided in Exhibit "C". To the extent that Operator has a security interest under the Uniform Commercial Code of the  
35 state, Operator shall be entitled to exercise the rights and remedies of a secured party under the Code. The bringing of a suit and the ob-  
36 taining of judgment by Operator for the secured indebtedness shall not be deemed an election of remedies or otherwise affect the lien  
37 rights or security interest as security for the payment thereof. In addition, upon default by any Non-Operator in the payment of its share  
38 of expense, Operator shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from  
39 the sale of such Non-Operator's share of oil and/or gas until the amount owed by such Non-Operator, plus interest, has been paid. Each  
40 purchaser shall be entitled to rely upon Operator's written statement concerning the amount of any default. Operator grants a like lien  
41 and security interest to the Non-Operators to secure payment of Operator's proportionate share of expense.

42  
43 If any party fails or is unable to pay its share of expense within sixty (60) days after rendition of a statement therefor by  
44 Operator, the non-defaulting parties, including Operator, shall, upon request by Operator, pay the unpaid amount in the proportion that  
45 the interest of each such party bears to the interest of all such parties. Each party so paying its share of the unpaid amount shall, to obtain  
46 reimbursement thereof, be subrogated to the security rights described in the foregoing paragraph.

47  
48 **C. Payments and Accounting:**

49  
50 Except as herein otherwise specifically provided, Operator shall promptly pay and discharge expenses incurred in the development  
51 and operation of the Contract Area pursuant to this agreement and shall charge each of the parties hereto with their respective propor-  
52 tionate shares upon the expense basis provided in Exhibit "C". Operator shall keep an accurate record of the joint account hereunder,  
53 showing expenses incurred and charges and credits made and received.

54  
55 Operator, at its election, shall have the right from time to time to demand and receive from the other parties payment in advance  
56 of their respective shares of the estimated amount of the expense to be incurred in <sup>all operations other than routine monthly</sup> operations hereunder during the next succeeding  
57 month, which right may be exercised only by submission to each such party of an itemized statement of such estimated expense, together  
58 with an invoice for its share thereof. Each such statement and invoice for the payment in advance of estimated expense shall be submitted  
59 on or before the 20th day of the next preceding month. Each party shall pay to Operator its proportionate share of such estimate within  
60 fifteen (15) days after such estimate and invoice is received. If any party fails to pay its share of said estimate within said time, the amount  
61 due shall bear interest as provided in Exhibit "C" until paid. Proper adjustment shall be made monthly between advances and actual ex-  
62 pense to the end that each party shall bear and pay its proportionate share of actual expenses incurred, and no more.

63  
64 **D. Limitation of Expenditures:**

65  
66 1. Drill or Deepen: Without the consent of all parties, no well shall be drilled or deepened, except any well drilled or deepened  
67 pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the drilling or deepening shall include:

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ARTICLE VII  
continued

1  **Option No. 1:** All necessary expenditures for the drilling or deepening, testing, completing and equipping of the well, including  
2 necessary tankage and/or surface facilities.

3  
4  **Option No. 2:** All necessary expenditures for the drilling or deepening and testing of the well. When such well has reached its  
5 authorized depth, and all tests have been completed, and the results thereof furnished to the parties, Operator shall give immediate notice  
6 to the Non-Operators who have the right to participate in the completion costs. The parties receiving such notice shall have forty-eight  
7 (48) hours (exclusive of Saturday, Sunday and legal holidays) in which to elect to participate in the setting of casing and the completion at-  
8 tempt. Such election, when made, shall include consent to all necessary expenditures for the completing and equipping of such well, in-  
9 cluding necessary tankage and/or surface facilities. Failure of any party receiving such notice to reply within the period above fixed shall  
10 constitute an election by that party not to participate in the cost of the completion attempt. If one or more, but less than all of the parties,  
11 elect to set pipe and to attempt a completion, the provisions of Article VI.B.2. hereof (the phrase "reworking, deepening or plugging  
12 back" as contained in Article VI.B.2. shall be deemed to include "completing") shall apply to the operations thereafter conducted by less  
13 than all parties.

14  
15 **2. Rework or Plug Back:** Without the consent of all parties, no well shall be reworked or plugged back except a well reworked or  
16 plugged back pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the reworking or plugging back of a well shall  
17 include all necessary expenditures in conducting such operations and completing and equipping of said well, including necessary tankage  
18 and/or surface facilities.

19  
20 **3. Other Operations:** Without the consent of all parties, Operator shall not undertake any single project reasonably estimated  
21 to require an expenditure in excess of Thirty-five thousand and No/100 Dollars (\$ 35,000.00)  
22 except in connection with a well, the drilling, reworking, deepening, completing, recompleting, or plugging back of which has been  
23 previously authorized by or pursuant to this agreement; provided, however, that, in case of explosion, fire, flood or other sudden  
24 emergency, whether of the same or different nature, Operator may take such steps and incur such expenses as in its opinion are required  
25 to deal with the emergency to safeguard life and property but Operator, as promptly as possible, shall report the emergency to the other  
26 parties. If Operator prepares an authority for expenditure (AFE) for its own use, Operator shall furnish any Non-Operator so requesting  
27 an information copy thereof for any single project costing in excess of Twenty-five thousand and No/100  
28 Dollars (\$ 25,000.00) but less than the amount first set forth above in this paragraph.

29  
30 **E. Rentals, Shut-In Well Payments and Minimum Royalties:**

31  
32 Rentals, shut-in well payments and minimum royalties which may be required under the terms of any lease shall be paid by the  
33 party or parties who subjected such lease to this agreement at its or their expense. In the event two or more parties own and have con-  
34 tributed interests in the same lease to this agreement, such parties may designate one of such parties to make said payments for and on  
35 behalf of all such parties. Any party may request, and shall be entitled to receive, proper evidence of all such payments. In the event of  
36 failure to make proper payment of any rental, shut-in well payment or minimum royalty through mistake or oversight where such pay-  
37 ment is required to continue the lease in force, any loss which results from such non-payment shall be borne in accordance with the pro-  
38 visions of Article IV.B.2. 1. When sales commence, Operator shall notify non-Operator of the date of first sale.

39  
40 Operator shall notify Non-Operator of the anticipated completion of a shut-in gas well, or the shutting in or return to production  
41 of a producing gas well, at least five (5) days (excluding Saturday, Sunday and legal holidays), or at the earliest opportunity permitted by  
42 circumstances, prior to taking such action, but assumes no liability for failure to do so. In the event of failure by Operator to so notify  
43 Non-Operator, the loss of any lease contributed hereto by Non-Operator for failure to make timely payments of any shut-in well payment  
44 shall be borne jointly by the parties hereto under the provisions of Article IV.B.3 1.

45  
46 **F. Taxes:**

47  
48 Beginning with the first calendar year after the effective date hereof, Operator shall render for ad valorem taxation all property  
49 subject to this agreement which by law should be rendered for such taxes, and it shall pay all such taxes assessed thereon before they  
50 become delinquent. Prior to the rendition date, each Non-Operator shall furnish Operator information as to burdens (to include, but not  
51 be limited to, royalties, overriding royalties and production payments) on leases and oil and gas interests contributed by such Non-  
52 Operator. If the assessed valuation of any leasehold estate is reduced by reason of its being subject to outstanding excess royalties, over-  
53 riding royalties or production payments, the reduction in ad valorem taxes resulting therefrom shall inure to the benefit of the owner or  
54 owners of such leasehold estate, and Operator shall adjust the charge to such owner or owners so as to reflect the benefit of such reduc-  
55 tion. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding  
56 anything to the contrary herein, charges to the joint account shall be made and paid by the parties hereto in accordance with the tax  
57 value generated by each party's working interest. Operator shall bill the other parties for their proportionate shares of all tax payments in  
58 the manner provided in Exhibit "C".

59  
60 If Operator considers any tax assessment improper, Operator may, at its discretion, protest within the time and manner  
61 prescribed by law, and prosecute the protest to a final determination, unless all parties agree to abandon the protest prior to final deter-  
62 mination. During the pendency of administrative or judicial proceedings, Operator may elect to pay, under protest, all such taxes and any  
63 interest and penalty. When any such protested assessment shall have been finally determined, Operator shall pay the tax for the joint ac-  
64 count, together with any interest and penalty accrued, and the total cost shall then be assessed against the parties, and be paid by them, as  
65 provided in Exhibit "C".

66  
67 Each party shall pay or cause to be paid all production, severance, excise, gathering and other taxes imposed upon or with respect  
68 to the production or handling of such party's share of oil and/or gas produced under the terms of this agreement.

69  
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**ARTICLE VII**  
continued

1 **G. Insurance:**

2

3 At all times while operations are conducted hereunder, Operator shall comply with the workmen's compensation law of  
4 the state where the operations are being conducted; provided, however, that Operator may be a self-insurer for liability under said com-  
5 pensation laws in which event the only charge that shall be made to the joint account shall be as provided in Exhibit "C". Operator shall  
6 also carry or provide insurance for the benefit of the joint account of the parties as outlined in Exhibit "D", attached to and made a part  
7 hereof. Operator shall require all contractors engaged in work on or for the Contract Area to comply with the workmen's compensation  
8 law of the state where the operations are being conducted and to maintain such other insurance as Operator may require.

9

10 In the event automobile public liability insurance is specified in said Exhibit "D", or subsequently receives the approval of the  
11 parties, no direct charge shall be made by Operator for premiums paid for such insurance for Operator's automotive equipment.

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**ARTICLE VIII.**  
**ACQUISITION, MAINTENANCE OR TRANSFER OF INTEREST**

14

15

16 **A. Surrender of Leases:**

17

18 The leases covered by this agreement, insofar as they embrace acreage in the Contract Area, shall not be surrendered in whole  
19 or in part unless all parties consent thereto.

20

21 However, should any party desire to surrender its interest in any lease or in any portion thereof, and the other parties do not  
22 agree or consent thereto, the party desiring to surrender shall assign, without express or implied warranty of title, all of its interest in  
23 such lease, or portion thereof, and any well, material and equipment which may be located thereon and any rights in production  
24 thereafter secured, to the parties not consenting to such surrender. If the interest of the assigning party is or includes an oil and gas in-  
25 terest, the assigning party shall execute and deliver to the party or parties not consenting to such surrender an oil and gas lease covering  
26 such oil and gas interest for a term of one (1) year and so long thereafter as oil and/or gas is produced from the land covered thereby, such  
27 lease to be on the form attached hereto as Exhibit "B". Upon such assignment or lease, the assigning party shall be relieved from all  
28 obligations thereafter accruing, but not theretofore accrued, with respect to the interest assigned or leased and the operation of any well  
29 attributable thereto, and the assigning party shall have no further interest in the assigned or leased premises and its equipment and pro-  
30 duction other than the royalties retained in any lease made under the terms of this Article. The party assignee or lessee shall pay to the  
31 party assignor or lessor the reasonable salvage value of the latter's interest in any wells and equipment attributable to the assigned or leas-  
32 ed acreage. The value of all material shall be determined in accordance with the provisions of Exhibit "C", less the estimated cost of  
33 salvaging and the estimated cost of plugging and abandoning. If the assignment or lease is in favor of more than one party, the interest  
34 shall be shared by such parties in the proportions that the interest of each bears to the total interest of all such parties.

35

36 Any assignment, lease or surrender made under this provision shall not reduce or change the assignor's, lessor's or surrendering  
37 party's interest as it was immediately before the assignment, lease or surrender in the balance of the Contract Area; and the acreage  
38 assigned, leased or surrendered, and subsequent operations thereon, shall not thereafter be subject to the terms and provisions of this  
39 agreement.

40

41 **B. Renewal or Extension of Leases:**

42

43 If any party secures a renewal of any oil and gas lease subject to this agreement, all other parties shall be notified promptly, and  
44 shall have the right for a period of thirty (30) days following receipt of such notice in which to elect to participate in the ownership of the  
45 renewal lease, insofar as such lease affects lands within the Contract Area, by paying to the party who acquired it their several proper pro-  
46 portionate shares of the acquisition cost allocated to that part of such lease within the Contract Area, which shall be in proportion to the  
47 interests held at that time by the parties in the Contract Area.

48

49 If some, but less than all, of the parties elect to participate in the purchase of a renewal lease, it shall be owned by the parties  
50 who elect to participate therein, in a ratio based upon the relationship of their respective percentage of participation in the Contract Area  
51 to the aggregate of the percentages of participation in the Contract Area of all parties participating in the purchase of such renewal lease.  
52 Any renewal lease in which less than all parties elect to participate shall not be subject to this agreement.

53

54 Each party who participates in the purchase of a renewal lease shall be given an assignment of its proportionate interest therein  
55 by the acquiring party without warranty of title, except as to acts by, through or under the acquiring party.

56

57 The provisions of this Article shall apply to renewal leases whether they are for the entire interest covered by the expiring lease  
58 or cover only a portion of its area or an interest therein. Any renewal lease taken before the expiration of its predecessor lease, or taken or  
59 contracted for within six (6) months after the expiration of the existing lease shall be subject to this provision; but any lease taken or con-  
60 tracted for more than six (6) months after the expiration of an existing lease shall not be deemed a renewal lease and shall not be subject to  
61 the provisions of this agreement.

62

63 The provisions in this Article shall also be applicable to extensions of oil and gas leases.

64

65 **C. Acreage or Cash Contributions:**

66

67 While this agreement is in force, if any party contracts for a contribution of cash towards the drilling of a well or any other  
68 operation on the Contract Area, such contribution shall be paid to the party who conducted the drilling or other operation and shall be  
69 applied by it against the cost of such drilling or other operation. If the contribution be in the form of acreage, the party to whom the con-  
70 tribution is made shall promptly tender an assignment of the acreage, without warranty of title, to the Drilling Parties in the proportions

**ARTICLE VIII**  
continued

1 said Drilling Parties shared the cost of drilling the well. Such acreage shall become a separate Contract Area and, to the extent possible, be  
2 governed by provisions identical to this agreement. Each party shall promptly notify all other parties of any acreage or cash contributions  
3 it may obtain in support of any well or any other operation on the Contract Area. The above provisions shall also be applicable to optional  
4 rights to earn acreage outside the Contract Area which are in support of a well drilled inside the Contract Area.

5  
6 If any party contracts for any consideration relating to disposition of such party's share of substances produced hereunder, such  
7 consideration shall not be deemed a contribution as contemplated in this Article VIII.C.

8  
9 **D. Maintenance of Uniform Interests:**

10  
11 For the purpose of maintaining uniformity of ownership in the oil and gas leasehold interests covered by this agreement, no  
12 party shall sell, encumber, transfer or make other disposition of its interest in the leases embraced within the Contract Area and in wells,  
13 equipment and production unless such disposition covers either:

- 14  
15 1. the entire interest of the party in all leases and equipment and production; or  
16  
17 2. an equal undivided interest in all leases and equipment and production in the Contract Area.

18  
19 Every such sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement  
20 and shall be made without prejudice to the right of the other parties.

21  
22 If, at any time the interest of any party is divided among and owned by four or more co-owners, Operator, at its discretion, may  
23 require such co-owners to appoint a single trustee or agent with full authority to receive notices, approve expenditures, receive billings for  
24 and approve and pay such party's share of the joint expenses, and to deal generally with, and with power to bind, the co-owners of such  
25 party's interest within the scope of the operations embraced in this agreement; however, all such co-owners shall have the right to enter  
26 into and execute all contracts or agreements for the disposition of their respective shares of the oil and gas produced from the Contract  
27 Area and they shall have the right to receive, separately, payment of the sale proceeds thereof.

28  
29 **E. Waiver of Rights to Partition:**

30  
31 If permitted by the laws of the state or states in which the property covered hereby is located, each party hereto owning an  
32 undivided interest in the Contract Area waives any and all rights it may have to partition and have set aside to it in severalty its undivided  
33 interest therein.

34  
35 ~~**F. Preferential Right to Purchases**~~

36  
37 ~~Should any party desire to sell all or any part of its interests under this agreement, or its rights and interests in the Contract~~  
38 ~~Area, it shall promptly give written notice to the other parties, with full information concerning its proposed sale, which shall include the~~  
39 ~~name and address of the prospective purchaser (who must be ready, willing and able to purchase), the purchase price, and all other terms~~  
40 ~~of the offer. The other parties shall then have an optional prior right, for a period of ten (10) days after receipt of the notice, to purchase~~  
41 ~~on the same terms and conditions the interest which the other party proposes to sell; and, if this optional right is exercised, the purchasing~~  
42 ~~parties shall share the purchased interest in the proportions that the interest of each bears to the total interest of all purchasing parties.~~  
43 ~~However, there shall be no preferential right to purchase in those cases where any party wishes to mortgage its interests, or to~~  
44 ~~dispose of its interests by merger, reorganization, consolidation, or sale of all or substantially all of its assets to a subsidiary or parent company~~  
45 ~~or to a subsidiary of a parent company, or to any company in which any one party owns a majority of the stock.~~

46  
47 **ARTICLE IX.**  
48 **INTERNAL REVENUE CODE ELECTION**

49  
50 This agreement is not intended to create, and shall not be construed to create, a relationship of partnership or an association  
51 for profit between or among the parties hereto. Notwithstanding any provision herein that the rights and liabilities hereunder are several  
52 and not joint or collective, or that this agreement and operations hereunder shall not constitute a partnership, if, for federal income tax  
53 purposes, this agreement and the operations hereunder are regarded as a partnership, each party hereby affected elects to be excluded  
54 from the application of all of the provisions of Subchapter "K", Chapter 1, Subtitle "A", of the Internal Revenue Code of 1954, as per-  
55 mitted and authorized by Section 761 of the Code and the regulations promulgated thereunder. Operator is authorized and directed to ex-  
56 ecute on behalf of each party hereby affected such evidence of this election as may be required by the Secretary of the Treasury of the  
57 United States or the Federal Internal Revenue Service, including specifically, but not by way of limitation, all of the returns, statements,  
58 and the data required by Federal Regulations 1.761. Should there be any requirement that each party hereby affected give further  
59 evidence of this election, each such party shall execute such documents and furnish such other evidence as may be required by the  
60 Federal Internal Revenue Service or as may be necessary to evidence this election. No such party shall give any notices or take any other  
61 action inconsistent with the election made hereby. If any present or future income tax laws of the state or states in which the Contract  
62 Area is located or any future income tax laws of the United States contain provisions similar to those in Subchapter "K", Chapter 1,  
63 Subtitle "A", of the Internal Revenue Code of 1954, under which an election similar to that provided by Section 761 of the Code is per-  
64 mitted, each party hereby affected shall make such election as may be permitted or required by such laws. In making the foregoing elec-  
65 tion, each such party states that the income derived by such party from operations hereunder can be adequately determined without the  
66 computation of partnership taxable income.

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ARTICLE XIV.  
COMPLIANCE WITH LAWS AND REGULATIONS

A. Laws, Regulations and Orders:

This agreement shall be subject to the conservation laws of the state in which the Contract Area is located, to the valid rules, regulations, and orders of any duly constituted regulatory body of said state; and to all other applicable federal, state, and local laws, ordinances, rules, regulations, and orders.

B. Governing Law:

This agreement and all matters pertaining hereto, including, but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the law of the state in which the Contract Area is located. ~~If the Contract Area is in two or more states, the law of the state of \_\_\_\_\_ shall govern.~~

C. Regulatory Agencies:

Nothing herein contained shall grant, or be construed to grant, Operator the right or authority to waive or release any rights, privileges, or obligations which Non-Operators may have under federal or state laws or under rules, regulations or orders promulgated under such laws in reference to oil, gas and mineral operations, including the location, operation, or production of wells, on tracts offsetting or adjacent to the Contract Area.

With respect to operations hereunder, Non-Operators agree to release Operator from any and all losses, damages, injuries, claims and causes of action arising out of, incident to or resulting directly or indirectly from Operator's interpretation or application of rules, rulings, regulations or orders of the Department of Energy or predecessor or successor agencies to the extent such interpretation or application was made in good faith. Each Non-Operator further agrees to reimburse Operator for any amounts applicable to such Non-Operator's share of production that Operator may be required to refund, rebate or pay as a result of such an incorrect interpretation or application, together with interest and penalties thereon owing by Operator as a result of such incorrect interpretation or application.

Non-Operators authorize Operator to prepare and submit such documents as may be required to be submitted to the purchaser of any crude oil sold hereunder or to any other person or entity pursuant to the requirements of the "Crude Oil Windfall Profit Tax Act of 1980", as same may be amended from time to time ("Act"), and any valid regulations or rules which may be issued by the Treasury Department from time to time pursuant to said Act. Each party hereto agrees to furnish any and all certifications or other information which is required to be furnished by said Act in a timely manner and in sufficient detail to permit compliance with said Act.

ARTICLE XV.  
OTHER PROVISIONS

See attached Article XV.

**ARTICLE XV.  
OTHER PROVISIONS**

A. With respect to a well drilled or deepened pursuant to Article VI.B.2. for which the Consenting Parties have not been fully reimbursed for the amounts provided in Article VI.B. ("Non-Consent Well"), the right to propose and to participate in further operations under Article VI.B. for such Non-Consent Well shall be limited as follows:

1. Only a party which participated in the Non-Consent Well shall have the right to propose a reworking, plugging back or completion operation for such Non-Consent Well, and only those parties which elected to participate in such Non-Consent Well shall be entitled to receive such notice and to participate in such operation pursuant to Article VI.B.
2. Only a party which participated in the Non-Consent Well shall have the right to propose a deepening or sidetracking operation for such Well, but all parties (including parties which did not participate in such Well) shall be entitled to receive notice and shall have the right to participate pursuant to Article VI.B. in such sidetracking or deepening operation except as to a well covered by Article XV, Paragraph G. hereof. However, those parties which did not participate in the Non-Consent Well shall reimburse the Consenting Parties the unrecouped portion of the amount allowed by Article VI.B. to be recouped with respect to such Non-Consent Well.

B. If Operator is not successful with its initial completion attempt in any well drilled pursuant to this Agreement, and recommends a subsequent completion attempt in another zone and if less than all parties elect to attempt such completion, the provisions of Article VI.B.2. shall apply. Provided, however, that Article VI.B.2. shall apply separately to each separate completion or recompletion attempt undertaken hereunder, and an election to become a Non-Consenting Party as to one completion or recompletion attempt shall not prevent a party from becoming a Consenting Party in subsequent completion or recompletion attempts regardless whether the Consenting Parties, as to earlier completions or recompletions have recouped their costs pursuant to Article VI.B.2.; provided further, that any recoupment of costs by a Consenting Party shall be made solely from the production attributable to the zone in which the completion attempt is made. Election by a previous Non-Consenting Party to participate in a subsequent completion or recompletion attempt shall require such party to pay its proportionate share of the costs of salvable materials and equipment installed in the well pursuant to the previous completion or recompletion attempt, insofar and only insofar as such materials and equipment benefit the zone in which such party participates in a completion attempt. Notwithstanding the foregoing, to be entitled to the benefits of this Article a party must have participated in all operations prior to the initial completion attempt.

C. Priority of Proposals:

If at any time there is more than one operation proposed in connection with any well subject to this Agreement, and the parties participating in the well cannot agree upon the sequence and timing of further operations regarding the well, the following elections shall control in the order enumerated, as follows:

1. Prior to Reaching the Objective Depth
  - a. Drilling a well to its Objective Depth shall have first priority over all other operations and proposals.
  - b. In the event that impenetrable conditions or mechanical difficulties prevent reaching the Objective Depth, a proposal to sidetrack in an effort to reach the Objective Depth shall have priority over a proposal to attempt a completion in a formation already reached.
2. After the Objective Depth Has Been Reached
  - a. An election to add additional logging, coring or testing.

- b. An election to attempt to complete the well at either the objective depth or objective formation.
- c. An election to deepen said well, in descending order.
- d. An election to plug back and attempt to complete said well, in ascending order.
- e. An election to sidetrack the well.
- f. An election to plug and abandon.

It is provided, however, that if at the time said participating parties are considering any of the above elections the hole is in such a condition that a reasonable, prudent operator would not conduct the operations contemplated by the particular election involved for fear of placing the hole in jeopardy or losing the same prior to completing the well in the objective depth or objective formation, such election shall not be given the priority hereinabove set forth.

D. If any party is required under this Agreement to assign or relinquish to any other party or parties all or a portion of its working interest or production attributable thereto, the interest or production so assigned or relinquished shall be free and clear, not only of "subsequently created interests" as defined in Article III.D., but also of all mortgages, liens or other similar burdens placed thereon by the assigning party or resulting from its ownership and operation of such lease or interest on and after the date of this Agreement, but otherwise without warranty of title, express or implied, except against those parties claiming by, through and under but not otherwise and assignee shall have the right of subrogation as to any warranties to which it may be entitled.

E. Each party hereto covenants and agrees for itself, its successors and assigns, that any sale, assignment, sublease, mortgage, pledge or other instrument affecting the leases and lands subject to this instrument (whether of an operating or non-operating interest or a mortgage, pledge or other security interest) will be made and accepted subject to this instrument and the party acquiring the interest or security shall expressly agree to be bound by all its terms and provisions. Any party hereto who executes any instrument in favor of any party without complying with the provisions of this paragraph shall indemnify, defend and hold the other parties hereto harmless from and against any and all claims or causes of action by any person whomsoever and for any expenses and losses sustained as a result of the failure of such party to comply with these provisions.

F. The lien and security interest granted by each Non-Operator to Operator and by Operator to the Non-Operator under Article VII.B. shall extend not only to such party's oil and gas rights in the Contract Area (which for greater certainty shall include all of each party's leasehold interest and leasehold estate in the Contract Area), the oil and/or gas when extracted and equipment (as mentioned in said Article) but also to all accounts, contract rights, inventory and general intangibles constituting a part of, relating or arising out of said oil and gas rights, extracted oil and gas and said equipment or which are otherwise owned or held by any such party in the Contract Area. Further, the lien and security interest of each of said parties shall extend to all proceeds and products of all of the property and collateral described in this paragraph and in Article VII.B. as being subject to said lien and security interest. Any party, to the extent it deems necessary to perfect the lien and security interest provided herein, may file this Operating Agreement as a lien or mortgage in the applicable real estate records and as a financing statement with the proper officer under the Uniform Commercial Code.

G. If, following the granting of relief under the Bankruptcy Code to any party hereto as debtor thereunder, this Agreement should be held to be an executory contract within the meaning of 11 U.S.C. 365, then the Operator, or (if the Operator is the debtor in bankruptcy) any other party, shall be entitled to a determination by debtor or any trustee for debtor within thirty (30) days from the date an order for relief is entered under the Bankruptcy Code as to the rejection or assumption of this Operating Agreement. In the event of an assumption, Operator or said other party shall be entitled to adequate assurances as to future performance of debtor's obligation hereunder and the protection of the interest of all other parties.

H. At the request of any party, all the parties hereto shall execute a recordable Memorandum and Financing Statement referring to this Agreement, the Contract Area of this Agreement, and the rights and obligations of the parties under this Agreement.

I. This Agreement shall be subject to the conservation laws of the state in which the Contract Area is located, to the valid rules, regulations and orders of any duly constituted regulatory body of said state; and to all other applicable Federal, state and local laws, ordinances, rules, regulations and orders.

J. In the event of a conflict between the provisions of this Article XV. and any other provision of this Operating Agreement, the provisions of this Article XV. shall control and prevail.

K. As to the Contract Area covered hereby and for so long as this Operating Agreement remains in effect, this Operating Agreement is intended to supercede and take the place of any previously existing Operating Agreement(s) the parties hereto may have entered into prior to the date of this Operating Agreement.



STATE OF OKLAHOMA            )  
  ) SS  
COUNTY OF OKLAHOMA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by D. D. DeCarlo, Vice President of Devon Energy Production Company, L.P., an Oklahoma limited partnership, on behalf of the partnership.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF TEXAS                )  
  ) SS  
COUNTY OF                        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Ricky Haikin, Vice President of McCombs Energy, LLC, on behalf of said corporation.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF NEW MEXICO         )  
  ) SS  
COUNTY OF                        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Kenneth Jones, Vice President of Premier Oil & Gas, Inc., on behalf of said corporation.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

Attached to that certain Operating Agreement dated January 1, 2008,  
by and between Devon Energy Production Company, L.P., as Operator,  
and McCombs Energy, LLC, et al, as Non-Operator.

1. IDENTIFICATION OF LANDS SUBJECT TO THIS AGREEMENT:

All of Section 31, and W/2 of Section 32, all in T22S-R26E, Eddy County, New Mexico,  
Containing 953.80 acres, more or less

2. RESTRICTIONS, IF ANY, AS TO DEPTHS, FORMATIONS, OR SUBSTANCES:

None

3. PERCENTAGES OR FRACTIONAL INTERESTS AND ADDRESSES OF PARTIES  
TO THIS AGREEMENT:

	<u>BCP of Initial Well</u>	<u>ACP of Initial Well and Subsequent Wells</u>
Devon Energy Production Company, L.P. 20 North Broadway Oklahoma City, OK 73102	46.4744%	65.0000%
McCombs Energy, LLC 5599 San Felipe, Suite 1200 Houston, TX 77056	22.9395%*	15.0000%
Premier Oil & Gas, Inc. P. O. Box 1246 Artesia, NM 88210 Attn: Ken Jones	30.5861%*	20.0000%
	<u>100.0000%</u>	<u>100.0000%</u>

\*Not to exceed 110% of dry hole cost as set forth on Exhibit "C" to Letter Agreement  
dated January 9, 2008.

4. OVERRIDING ROYALTIES

To be determined

5. OIL & GAS LEASES SUBJECT TO THIS AGREEMENT:

Lease No. 1

Lease Serial No.: V-6025  
Lease Date: May 1, 2001  
Lessor: State of New Mexico  
Lessee: Rolla R. Hinkle III  
Description: Township 22 South, Range 26 East, N.M.P.M.  
Section 31: E/2

Lease No. 2

Lease Serial No.: V-6218  
Lease Date: May 1, 2001  
Lessor: State of New Mexico  
Lessee: Rolla R. Hinkle III  
Description: Township 22 South, Range 26 East, N.M.P.M.  
Section 31: Lots 1, 2, 3, 4, E/2 W/2

**EXHIBIT "B"**

**Attached to that certain Operating Agreement dated January 1, 2008,  
by and between Devon Energy Production Company, L.P., as Operator,  
and McCombs Energy, LLC, et al, as Non-Operator.**

**There is no Exhibit "B" to this Operating Agreement.**

## EXHIBIT " C "

1 Attached to and made a part of that certain Operating Agreement dated January 1, 2008 by and between Devon  
2 Energy Production Company, L.P., as Operator, and McCombs Energy, L.L.C. et al, as Non-Operator  
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# ACCOUNTING PROCEDURE JOINT OPERATIONS

## I. GENERAL PROVISIONS

### 1. Definitions

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16 "Joint Property" shall mean the real and personal property subject to the agreement to which this Accounting Procedure  
17 is attached.

18 "Joint Operations" shall mean all operations necessary or proper for the development, operation, protection and  
19 maintenance of the Joint Property.

20 "Joint Account" shall mean the account showing the charges paid and credits received in the conduct of the Joint  
21 Operations and which are to be shared by the Parties.

22 "Operator" shall mean the party designated to conduct the Joint Operations.

23 "Non-Operators" shall mean the Parties to this agreement other than the Operator.

24 "Parties" shall mean Operator and Non-Operators.

25 "First Level Supervisors" shall mean those employees whose primary function in Joint Operations is the direct  
26 supervision of other employees and/or contract labor directly employed on the Joint Property in a field operating  
27 capacity.

28 "Technical Employees" shall mean those employees having special and specific engineering, geological or other  
29 professional skills, and whose primary function in Joint Operations is the handling of specific operating conditions and  
30 problems for the benefit of the Joint Property.

31 "Personal Expenses" shall mean travel and other reasonable reimbursable expenses of Operator's employees.

32 "Material" shall mean personal property, equipment or supplies acquired or held for use on the Joint Property.

33 "Controllable Material" shall mean Material which at the time is so classified in the Material Classification Manual as  
34 most recently recommended by the Council or Petroleum Accountants Societies.

### 2. Statement and Billings

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38 Operator shall bill Non-Operators on or before the last day of each month for their proportionate share of the Joint  
39 Account for the preceding month. Such bills will be accompanied by statements which identify the authority for  
40 expenditure, lease or facility, and all charges and credits summarized by appropriate classifications of investment and  
41 expense except that items of Controllable Material and unusual charges and credits shall be separately identified and  
42 fully described in detail.

### 3. Advances and Payments by Non-Operators

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45  
46 A. Unless otherwise provided for in the agreement, the Operator may require the Non-Operators to advance their  
47 share of estimated cash outlay for the succeeding month's operation within ~~fifteen (15)~~ <sup>thirty (30)</sup> days after receipt of the  
48 billing or by the first day of the month for which the advance is required, whichever is later. Operator shall adjust  
49 each monthly billing to reflect advances received from the Non-Operators.

50  
51 B. Each Non-Operator shall pay its proportion of all bills within fifteen (15) days after receipt. If payment is not made  
52 within such time, the unpaid balance shall bear interest monthly at the prime rate in effect at Bank of America, Dallas, Texas  
53 on the first day of the month in which delinquency occurs plus 1% or the  
54 maximum contract rate permitted by the applicable usury laws in the state in which the Joint Property is located,  
55 whichever is the lesser, plus attorney's fees, court costs, and other costs in connection with the collection of unpaid  
56 amounts.

### 4. Adjustments

1 5. Audits

2  
3 A. A Non-Operator, upon notice in writing to Operator and all other Non-Operators, shall have the right to audit  
4 Operator's accounts and records relating to the Joint Account for any calendar year within the twenty-four  
5 (24) month period following the end of such calendar year; provided, however, the making of an audit shall not  
6 extend the time for the taking of written exception to and the adjustments of accounts as provided for in  
7 Paragraph 4 of this Section I. Where there are two or more Non-Operators, the Non-Operators shall make  
8 every reasonable effort to conduct a joint audit in a manner which will result in a minimum of inconvenience  
9 to the Operator. Operator shall bear no portion of the Non-Operators' audit cost incurred under this  
10 paragraph unless agreed to by the Operator. The audits shall not be conducted more than once each year  
11 without prior approval of Operator, except upon the resignation or removal of the Operator, and shall be made  
12 at the expense of those Non-Operators approving such audit.

13  
14 B. The Operator shall reply in writing to an audit report within 180 days after receipt of such report.

15  
16 6. Approval By Non-Operators

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18 Where an approval or other agreement of the Parties or Non-Operators is expressly required under other sections of this  
19 Accounting Procedure and if the agreement to which this Accounting Procedure is attached contains no  
20 contrary provisions in regard thereto, Operator shall notify all Non-Operators of the Operator's proposal, and the  
21 agreement or approval of a majority in interest of the Non-Operators shall be controlling on all Non-Operators.  
22

23  
24 II. DIRECT CHARGES

25  
26 Operator shall charge the Joint Account with the following items:

27  
28 1. Ecological and Environmental

29  
30 Costs incurred for the benefit of the Joint Property as a result of governmental or regulatory requirements to satisfy  
31 environmental considerations applicable to the Joint Operations. Such costs may include surveys of an ecological or  
32 archaeological nature and pollution control procedures as required by applicable laws and regulations.  
33

34 2. Rentals and Royalties

35  
36 Lease rentals and royalties paid by Operator for the Joint Operations.

37  
38 3. Labor

39  
40 A. (1) Salaries and wages of Operator's field employees directly employed on the Joint Property in the conduct of  
41 Joint Operations.

42  
43 (2) Salaries of First level Supervisors in the field.

44  
45 (3) Salaries and wages of Technical Employees directly employed on the Joint Property if such charges are  
46 excluded from the overhead rates.

47  
48 (4) Salaries and wages of Technical Employees either temporarily or permanently assigned to and directly  
49 employed in the operation or the Joint Property if such charges are excluded from the overhead rates.

50  
51 B. Operator's cost of holiday, vacation, sickness and disability benefits and other customary allowances paid to  
52 employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II.  
53 Such costs under this Paragraph 3B may be charged on a "when and as paid basis" or by "percentage assessment"  
54 on the amount of salaries and wages chargeable to the Joint Account under Paragraph 3A of this Section II. If  
55 percentage assessment is used, the rate shall be based on the Operator's cost experience.

56  
57 C. Expenditures or contributions made pursuant to assessments imposed by governmental authority which are  
58 applicable to Operator's costs chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II.  
59

1 5. **Material**

2  
3 Material purchased or furnished by Operator for use on the Joint Property as provided under Section IV. Only such  
4 Material shall be purchased for or transferred to the Joint Property as may be required for immediate use and is  
5 reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be  
6 avoided.

7  
8 6. **Transportation**

9  
10 Transportation of employees and Material necessary for the Joint Operations but subject to the following limitations:

11  
12 A. If Material is moved to the Joint Property from the Operator's warehouse or other properties, no charge shall be  
13 made to the Joint Account for a distance greater than the distance from the nearest reliable supply store where like  
14 material is normally available or railway receiving point nearest the Joint Property unless agreed to by the Parties.

15  
16 B. If surplus Material is moved to Operator's warehouse or other storage point, no charge shall be made to the Joint  
17 Account for a distance greater than the distance to the nearest reliable supply store where like material is normally  
18 available, or railway receiving point nearest the Joint Property unless agreed to by the Parties. No charge shall be  
19 made to the Joint Account for moving Material to other properties belonging to Operator, unless agreed to by the  
20 Parties.

21  
22 C. In the application of subparagraphs A and B above, the option to equalize or charge actual trucking cost is  
23 available when the actual charge is \$400 or less excluding accessorial charges. The \$400 will be adjusted to the  
24 amount most recently recommended by the Council of Petroleum Accountants Societies.

25  
26 7. **Services**

27  
28 The cost of contract services, equipment and utilities provided by outside sources, except services excluded by Paragraph  
29 10 of Section II and Paragraph i, ii, and iii, of Section III. The cost of professional consultant services and contract  
30 services of technical personnel directly engaged on the Joint Property if such charges are excluded from the overhead  
31 rates. The cost of professional consultant services or contract services of technical personnel not directly engaged on the  
32 Joint Property shall not be charged to the Joint Account unless previously agreed to by the Parties.

33  
34 8. **Equipment and Facilities Furnished By Operator**

35  
36 A. Operator shall charge the Joint Account for use of Operator owned equipment and facilities at rates commensurate  
37 with costs of ownership and operation. Such rates shall include costs of maintenance, repairs, other operating  
38 expense, insurance, taxes, depreciation, and interest on gross investment less accumulated depreciation not to  
39 exceed eight percent (8%) per annum. Such rates shall not exceed average commercial  
40 rates currently prevailing in the immediate area of the Joint Property.

41  
42 B. In lieu of charges in Paragraph 8A above, Operator may elect to use average commercial rates prevailing in the  
43 immediate area of the Joint Property less 20%. For automotive equipment, Operator may elect to use rates  
44 published by the Petroleum Motor Transport Association.

45  
46 9. **Damages and Losses to Joint Property**

47  
48 All costs or expenses necessary for the repair or replacement of Joint Property made necessary because of damages or  
49 losses incurred by fire, flood, storm, theft, accident, or other cause, except those resulting from Operator's gross  
50 negligence or willful misconduct. Operator shall furnish Non-Operator written notice of damages or losses incurred as  
51 soon as practicable after a report thereof has been received by Operator.

52  
53 10. **Legal Expense**

54  
55 Expense of handling, investigating and settling litigation or claims, discharging of liens, payment of judgments and  
56 amounts paid for settlement of claims incurred in or resulting from operations under the agreement or necessary to  
57 protect or recover the Joint Property, except that no charge for services of Operator's legal staff or fees or expense of  
58 outside attorneys shall be made unless previously agreed to by the Parties. All other legal expense is considered to be  
59 covered by the overhead provisions of Section III unless otherwise agreed to by the Parties except as provided in Section

1 12. Insurance

2  
3 Net premiums paid for insurance required to be carried for the Joint Operations for the protection of the Parties. In the  
4 event Joint Operations are conducted in a state in which Operator may act as self-insurer for Worker's Compensation  
5 and/or Employers Liability under the respective state's laws, Operator may, at its election, include the risk under its self-  
6 insurance program and in that event, Operator shall include a charge at Operator's cost not to exceed manual rates.  
7

8 13. Abandonment and Reclamation

9  
10 Costs incurred for abandonment of the Joint Property, including costs required by governmental or other regulatory  
11 authority.  
12

13 14. Communications

14  
15 Cost of acquiring, leasing, installing, operating, repairing and maintaining communication systems, including radio and  
16 microwave facilities directly serving the Joint Property. In the event communication facilities/systems serving the Joint  
17 Property are Operator owned, charges to the Joint Account shall be made as provided in Paragraph 8 of this Section II.  
18

19 15. Other Expenditures

20  
21 Any other expenditure not covered or dealt with in the foregoing provisions of this Section II, or in Section III and which  
22 is of direct benefit to the Joint Property and is incurred by the Operator in the necessary and proper conduct of the Joint  
23 Operations.  
24

25  
26 III. OVERHEAD  
27

28 1. Overhead - Drilling and Producing Operations

29  
30 i. As compensation for administrative, supervision, office services and warehousing costs, Operator shall charge  
31 drilling and producing operations on either:

- 32  
33 ( X ) Fixed Rate Basis, Paragraph IA, or  
34 ( ) Percentage Basis, Paragraph IB  
35

36 Unless otherwise agreed to by the Parties, such charge shall be in lieu of costs and expenses of all offices and  
37 salaries or wages plus applicable burdens and expenses of all personnel, except those directly chargeable under  
38 Paragraph 3A, Section II. The cost and expense of services from outside sources in connection with matters of  
39 taxation, traffic, accounting or matters before or involving governmental agencies shall be considered as included in  
40 the overhead rates provided for in the above selected Paragraph of this Section III unless such cost and expense are  
41 agreed to by the Parties as a direct charge to the Joint Account.  
42

43 ii. The salaries, wages and Personal Expenses of Technical Employees and/or the cost of professional consultant  
44 services and contract services of technical personnel directly employed on the Joint Property:

- 45  
46 ( ) shall be covered by the overhead rates, or  
47 ( X ) shall not be covered by the overhead rates.  
48

49 iii. The salaries, wages and Personal Expenses of Technical Employees and/or costs of professional consultant services  
50 and contract services of technical personnel either temporarily or permanently assigned to and directly employed in  
51 the operation of the Joint Property:

- 52  
53 ( X ) shall be covered by the overhead rates, or  
54 ( ) shall not be covered by the overhead rates.  
55

56 A. Overhead - Fixed Rate Basis

57  
58 (1) Operator shall charge the Joint Account at the following rates per well per month:  
59

1 is later, except that no charge shall be made during suspension of drilling or completion operations  
2 for fifteen (15) or more consecutive calendar days.

- 3  
4 (2) Charges for wells undergoing any type of workover or recompletion for a period of five (5)  
5 consecutive work days or more shall be made at the drilling well rate. Such charges shall be  
6 applied for the period from date workover operations, with rig or other units used in workover,  
7 commence through date of rig or other unit release, except that no charge shall be made during  
8 suspension of operations for fifteen (15) or more consecutive calendar days.

9  
10 (b) Producing Well Rates

- 11  
12 (1) An active well either produced or injected into for any portion of the month shall be considered as  
13 a one-well charge for the entire month.  
14  
15 (2) Each active completion in a multi-completed well in which production is not commingled down  
16 hole shall be considered as a one-well charge providing each completion is considered a separate  
17 well by the governing regulatory authority.  
18  
19 (3) An inactive gas well shut in because of overproduction or failure of purchaser to take the  
20 production shall be considered as a one-well charge providing the gas well is directly connected to  
21 a permanent sales outlet.  
22  
23 (4) A one-well charge shall be made for the month in which plugging and abandonment operations  
24 are completed on any well. This one-well charge shall be made whether or not the well has  
25 produced except when drilling well rate applies.  
26  
27 (5) All other inactive wells (including but not limited to inactive wells covered by unit allowable, lease  
28 allowable, transferred allowable, etc.) shall not qualify for an overhead charge.

- 29  
30 (3) The well rates shall be adjusted as of the first day of April each year following the effective date of the  
31 agreement to which this Accounting Procedure is attached. The adjustment shall be computed by multiplying  
32 the rate currently in use by the percentage increase or decrease in the average weekly earnings of Crude  
33 Petroleum and Gas Production Workers for the last calendar year compared to the calendar year preceding as  
34 shown by the index of average weekly earnings of Crude Petroleum and Gas Production Workers as published  
35 by the United States Department of Labor, Bureau of Labor Statistics, or the equivalent Canadian index as  
36 published by Statistics Canada, as applicable. The adjusted rates shall be the rates currently in use, plus or  
37 minus the computed adjustment.  
38

39 ~~B. Overhead - Percentage Basis~~

- 40  
41 ~~(1) Operator shall charge the Joint Account at the following rates:~~

42  
43 ~~(a) Development~~

44  
45 ~~\_\_\_\_\_ Percent (\_\_\_\_%) of the cost of development of the Joint Property exclusive of costs~~  
46 ~~provided under Paragraph 10 of Section II and all salvage credits.~~

47  
48 ~~(b) Operating~~

49  
50 ~~\_\_\_\_\_ Percent (\_\_\_\_%) of the cost of operating the Joint Property exclusive of costs provided~~  
51 ~~under Paragraphs 2 and 10 of Section II, all salvage credits, the value of injected substances purchased~~  
52 ~~for secondary recovery and all taxes and assessments which are levied, assessed and paid upon the~~  
53 ~~mineral interest in and to the Joint Property.~~

- 54  
55 ~~(2) Application of Overhead - Percentage Basis shall be as follows:~~

56  
57 ~~For the purpose of determining charges on a percentage basis under Paragraph 1B of this Section III,~~  
58 ~~development shall include all costs in connection with drilling, redrilling, deepening, or any remedial~~  
59 ~~operations on any or all wells involving the use of drilling rigs and other equipment.~~

1 Account for overhead based on the following rates for any Major Construction project in excess of \$ 25,000.00 :

- 2  
3 A. 5 % of first \$100,000 or total cost if less, plus  
4  
5 B. 3 % of costs in excess of \$100,000 but less than \$1,000,000, plus  
6  
7 C. 2 % of costs in excess of \$1,000,000.  
8

9 Total cost shall mean the gross cost of any one project. For the purpose of this paragraph, the component parts of a single  
10 project shall not be treated separately and the cost of drilling and workover wells and artificial lift equipment shall be  
11 excluded.  
12

13 **3. Catastrophe Overhead**

14  
15 To compensate Operator for overhead costs incurred in the event of expenditures resulting from a single occurrence due  
16 to oil spill, blowout, explosion, fire, storm, hurricane, or other catastrophes as agreed to by the Parties, which are  
17 necessary to restore the Joint Property to the equivalent condition that existed prior to the event causing the  
18 expenditures, Operator shall either negotiate a rate prior to charging the Joint Account or shall charge the Joint Account  
19 for overhead based on the following rates:  
20

- 21 A. 5 % of total costs through \$100,000; plus  
22  
23 B. 3 % of total costs in excess of \$100,000 but less than \$1,000,000; plus  
24  
25 C. 2 % of total costs in excess of \$1,000,000.  
26

27 Expenditures subject to the overheads above will not be reduced by insurance recoveries, and no other overhead  
28 provisions of this Section III shall apply.  
29

30 **4. Amendment of Rates**

31  
32 The overhead rates provided for in this Section III may be amended from time to time only by mutual agreement  
33 between the Parties hereto if, in practice, the rates are found to be insufficient or excessive.  
34  
35

36 **IV. PRICING OF JOINT ACCOUNT MATERIAL PURCHASES, TRANSFERS AND DISPOSITIONS**

37  
38 Operator is responsible for Joint Account Material and shall make proper and timely charges and credits for all Material  
39 movements affecting the Joint Property. Operator shall provide all Material for use on the Joint Property; however, at  
40 Operator's option, such Material may be supplied by the Non-Operator. Operator shall make timely disposition of idle and/or  
41 surplus Material, such disposal being made either through sale to Operator or Non-Operator, division in kind, or sale to  
42 outsiders. Operator may purchase, but shall be under no obligation to purchase, interest of Non-Operators in surplus condition  
43 A or B Material. The disposal of surplus Controllable Material not purchased by the Operator shall be agreed to by the Parties.  
44

45 **1. Purchases**

46  
47 Material purchased shall be charged at the price paid by Operator after deduction of all discounts received. In case of  
48 Material found to be defective or returned to vendor for any other reasons, credit shall be passed to the Joint Account  
49 when adjustment has been received by the Operator.  
50

51 **2. Transfers and Dispositions**

52  
53 Material furnished to the Joint Property and Material transferred from the Joint Property or disposed of by the Operator,  
54 unless otherwise agreed to by the Parties, shall be priced on the following basis exclusive of cash discounts:  
55

56 **A. New Material (Condition A)**

- 57  
58 (1) Tubular Goods Other than Line Pipe  
59

1 pound Oil Field Haulers Association interstate truck rate shall be used.

2  
3 (c) Special end finish tubular goods shall be priced at the lowest published out-of-stock price, f.o.b. Houston,  
4 Texas, plus transportation cost, using Oil Field Haulers Association interstate 30,000 pound truck rate,  
5 to the railway receiving point nearest the Joint Property.

6  
7 (d) Macaroni tubing (size less than 2 3/8 inch OD) shall be priced at the lowest published out-of-stock prices  
8 f.o.b. the supplier plus transportation costs, using the Oil Field Haulers Association interstate truck rate  
9 per weight of tubing transferred, to the railway receiving point nearest the Joint Property.

10  
11 (2) Line Pipe

12  
13 (a) Line pipe movements (except size 24 inch OD and larger with walls 1/4 inch and over) 30,000 pounds or  
14 more shall be priced under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above.  
15 Freight charges shall be calculated from Lorain, Ohio.

16  
17 (b) Line Pipe movements (except size 24 inch OD) and larger with walls 1/4 inch and over) less than 30,000  
18 pounds shall be priced at Eastern mill published carload base prices effective as of date of shipment,  
19 plus 20 percent, plus transportation costs based on freight rates as set forth under provisions of tubular  
20 goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain,  
21 Ohio.

22  
23 (c) Line pipe 24 inch OD and over and 1/4 inch wall and larger shall be priced f.o.b. the point of  
24 manufacture at current new published prices plus transportation cost to the railway receiving point  
25 nearest the Joint Property.

26  
27 (d) Line pipe, including fabricated line pipe, drive pipe and conduit not listed on published price lists shall  
28 be priced at quoted prices plus freight to the railway receiving point nearest the Joint Property or at  
29 prices agreed to by the Parties.

30  
31 (3) Other Material shall be priced at the current new price, in effect at date of movement, as listed by a reliable  
32 supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the  
33 railway receiving point nearest the Joint Property.

34  
35 (4) Unused new Material, except tubular goods, moved from the Joint Property shall be priced at the current  
36 new price, in effect on date of movement, as listed by a reliable supply store nearest the Joint Property, or  
37 point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint  
38 Property. Unused new tubulars will be priced as provided above in Paragraph 2.A.(1) and (2).

39  
40 B. Good Used Material (Condition B)

41  
42 Material in sound and serviceable condition and suitable for reuse without reconditioning:

43  
44 (1) Material moved to the Joint Property

45  
46 At seventy-five percent (75%) of current new price, as determined by Paragraph A.

47  
48 (2) Material used on and moved from the Joint Property

49  
50 (a) At seventy-five percent (75%) of current new price, as determined by Paragraph A, if Material was  
51 originally charged to the Joint Account as new Material or

52  
53 (b) At sixty-five percent (65%) of current new price, as determined by Paragraph A, if Material was  
54 originally charged to the Joint Account as used Material

55  
56 (3) Material not used on and moved from the Joint Property

57  
58 At seventy-five percent (75%) of current new price as determined by Paragraph A.

1 (2) Condition D

2  
3 Material, excluding junk, no longer suitable for its original purpose, but usable for some other purpose  
4 shall be priced on a basis commensurate with its use. Operator may dispose of Condition D Material  
5 under procedures normally used by Operator without prior approval of Non-Operators.

6  
7 (a) Casing, tubing, or drill pipe used as line pipe shall be priced as Grade A and B seamless line pipe  
8 of comparable size and weight. Used casing, tubing or drill pipe utilized as line pipe shall be  
9 priced at used line pipe prices.

10  
11 (b) Casing, tubing or drill pipe used as higher pressure service lines than standard line pipe, e.g.  
12 power oil lines, shall be priced under normal pricing procedures for casing, tubing, or drill pipe.  
13 Upset tubular goods shall be priced on a non upset basis.

14  
15 (3) Condition E

16  
17 Junk shall be priced at prevailing prices. Operator may dispose of Condition E Material under  
18 procedures normally utilized by Operator without prior approval of Non-Operators.

19  
20 D. Obsolete Material

21  
22 Material which is serviceable and usable for its original function but condition and/or value of such Material  
23 is not equivalent to that which would justify a price as provided above may be specially priced as agreed to by  
24 the Parties. Such price should result in the Joint Account being charged with the value of the service  
25 rendered by such Material.

26  
27 E. Pricing Conditions

28  
29 (1) Loading or unloading costs may be charged to the Joint Account at the rate of twenty-five cents (25¢)  
30 per hundred weight on all tubular goods movements, in lieu of actual loading or unloading costs  
31 sustained at the stocking point. The above rate shall be adjusted as of the first day of April each year  
32 following January 1, 1985 by the same percentage increase or decrease used to adjust overhead rates in  
33 Section III, Paragraph I.A.(3). Each year, the rate calculated shall be rounded to the nearest cent and  
34 shall be the rate in effect until the first day of April next year. Such rate shall be published each year  
35 by the Council of Petroleum Accountants Societies.

36  
37 (2) Material involving erection costs shall be charged at applicable percentage of the current knocked-down  
38 price of new Material.

39  
40 3. Premium Prices

41  
42 Whenever Material is not readily obtainable at published or listed prices because of national emergencies, strikes or other  
43 unusual causes over which the Operator has no control, the Operator may charge the Joint Account for the required  
44 Material at the Operator's actual cost incurred in providing such Material, in making it suitable for use, and in moving it  
45 to the Joint Property; provided notice in writing is furnished to Non-Operators of the proposed charge prior to billing  
46 Non-Operators for such Material. Each Non-Operator shall have the right, by so electing and notifying Operator within  
47 ten days after receiving notice from Operator, to furnish in kind all or part of his share of such Material suitable for use  
48 and acceptable to Operator.

49  
50 4. Warranty of Material Furnished By Operator

51  
52 Operator does not warrant the Material furnished. In case of defective Material, credit shall not be passed to the Joint  
53 Account until adjustment has been received by Operator from the manufacturers or their agents.

54  
55  
56 V. INVENTORIES

57  
58 The Operator shall maintain detailed records of Controllable Material.

1 overages and shortages, but, Operator shall be held accountable only for shortages due to lack of reasonable diligence.

2  
3 **3. Special Inventories**

4  
5 Special inventories may be taken whenever there is any sale, change of interest, or change of Operator in the Joint  
6 Property. It shall be the duty of the party selling to notify all other Parties as quickly as possible after the transfer of  
7 interest takes place. In such cases, both the seller and the purchaser shall be governed by such inventory. In cases  
8 involving a change of Operator, all Parties shall be governed by such inventory.

9  
10 **4. Expense of Conducting Inventories**

- 11  
12 A. The expense of conducting periodic inventories shall not be charged to the Joint Account unless agreed to by the  
13 Parties.  
14  
15 B. The expense of conducting special inventories shall be charged to the Parties requesting such inventories, except  
16 inventories required due to change of Operator shall be charged to the Joint Account.  
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## EXHIBIT "D"

Attached to and made a part of that certain Operating Agreement dated January 1, 2008, between Devon Energy Production Company, L.P., as Operator, and McCombs Energy, LLC, et al, as Non-Operator.

The Operator shall carry insurance for the benefit of the joint account covering Operator's operations upon the Unit Area subject to the Operating Agreement to which this Exhibit "D" is attached as follows:

- a) Workmen's compensation insurance: In compliance with the workmen's compensation laws of the State of New Mexico, including employer's liability with minimum limits of \$1,000,000.00.
- b) Comprehensive general liability insurance, excluding products: A limit of \$1,000,000.00 each occurrence for bodily injuries, \$2,000,000.00 aggregate. Property damage liability limit being \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate.
- c) Automobile public liability and property damage insurance. Limits of bodily injury \$1,000,000.00 each person; \$1,000,000.00 each occurrence; property damage \$1,000,000.00 each occurrence.

The Operator shall require its contracts and subcontractors working or performing services upon the Unit Area subject to the Operating Agreement to which this Exhibit "D" is attached to comply with the workmen's compensation laws of the State of New Mexico and to carry such other insurance and in such amounts as the Operator shall deem necessary.

During drilling operations, Operator shall also carry Operator's Extra Expense Indemnity insurance during drilling and completion including coverage for well seepage, pollution, cleanup and containment and evacuation expenses. The limit of such insurance is \$10,000,000.00 any one occurrence. Non-Operators shall elect, in writing prior to spudding, to be covered under such policy or shall furnish Operator with evidence that it carries for its own account such insurance with minimum limits corresponding to those provided for in Operator's policy. At all times while operations are being conducted under this agreement, Operator, or the designated Operator for the account of the Non-Operators, shall maintain insurance in accordance with this Exhibit. If a Non-Operator elects to be an additional insured on Operator's policy, it shall bear its proportionate part of the expense of such policy.

1 **NOTE:** Instructions For Use of Gas Balancing  
2 Agreement **MUST** be reviewed before finalizing  
3 this document.

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EXHIBIT "E"  
GAS BALANCING AGREEMENT ("AGREEMENT")  
ATTACHED TO AND MADE PART OF THAT CERTAIN

OPERATING AGREEMENT DATED January 1, 2008

BY AND BETWEEN Devon Energy Production Company, L.P., as Operator,  
AND McCombs Energy, LLC, et al, as Non-Operator ("OPERATING AGREEMENT")  
RELATING TO THE All of Section 31-T22S-R26E AREA,  
Eddy COUNTY/PARISH, STATE OF New Mexico

1. DEFINITIONS

The following definitions shall apply to this Agreement:

1.01 "Arm's Length Agreement" shall mean any gas sales agreement with an unaffiliated purchaser or any gas sales agreement with an affiliated purchaser where the sales price and delivery conditions under such agreement are representative of prices and delivery conditions existing under other similar agreements in the area between unaffiliated parties at the same time for natural gas of comparable quality and quantity.

1.02 "Balancing Area" shall mean (select one):

each well subject to the Operating Agreement that produces Gas or is allocated a share of Gas production. If a single well is completed in two or more producing intervals, each producing interval from which the Gas production is not commingled in the wellbore shall be considered a separate well.

all of the acreage and depths subject to the Operating Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.03 "Full Share of Current Production" shall mean the Percentage Interest of each Party in the Gas actually produced from the Balancing Area during each month.

1.04 "Gas" shall mean all hydrocarbons produced or producible from the Balancing Area, whether from a well classified as an oil well or gas well by the regulatory agency having jurisdiction in such matters, which are or may be made available for sale or separate disposition by the Parties, excluding oil, condensate and other liquids recovered by field equipment operated for the joint account. "Gas" does not include gas used in joint operations, such as for fuel, recycling or reinjection, or which is vented or lost prior to its sale or delivery from the Balancing Area.

1.05 "Makeup Gas" shall mean any Gas taken by an Underproduced Party from the Balancing Area in excess of its Full Share of Current Production, whether pursuant to Section 3.3 or Section 4.1 hereof.

1.06 "Mcf" shall mean one thousand cubic feet. A cubic foot of Gas shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base.

1.07 "MMBtu" shall mean one million British Thermal Units. A British Thermal Unit shall mean the quantity of heat required to raise one pound avoirdupois of pure water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

1.08 "Operator" shall mean the individual or entity designated under the terms of the Operating Agreement or, in the event this Agreement is not employed in connection with an operating agreement, the individual or entity designated as the operator of the well(s) located in the Balancing Area.

1.09 "Overproduced Party" shall mean any Party having taken a greater quantity of Gas from the Balancing Area than the Percentage interest of such Party in the cumulative quantity of all Gas produced from the Balancing Area.

1.10 "Overproduction" shall mean the cumulative quantity of Gas taken by a Party in excess of its Percentage Interest in the cumulative quantity of all Gas produced from the Balancing Area.

1.11 "Party" shall mean those individuals or entities subject to this Agreement, and their respective heirs, successors, transferees and assigns.

1.12 "Percentage Interest" shall mean the percentage or decimal interest of each Party in the Gas produced from the Balancing Area pursuant to the Operating Agreement covering the Balancing Area.

1.13 "Royalty" shall mean payments on production of Gas from the Balancing Area to all owners of royalties, overriding royalties, production payments or similar interests.

1.14 "Underproduced Party" shall mean any Party having taken a lesser quantity of Gas from the Balancing Area than the Percentage Interest of such Party in the cumulative quantity of all Gas produced from the Balancing Area.

1.15 "Underproduction" shall mean the deficiency between the cumulative quantity of Gas taken by a Party and the

60

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1 requirements. Operator is authorized to deliver the volumes so nominated <sup>in accordance with each Parties' interest in the well</sup> and confirmed (if confirmation is required) to the  
2 transporting pipeline in accordance with the terms of this Agreement, provided however, the Well is capable of delivering the nominated volume for the  
3 applicable Party or Parties.

3.2 Each Party shall make a reasonable, good faith effort to take its Full Share of Current Production each month, to the  
4 extent that such production is required to maintain leases in effect, to protect the producing capacity of a well or reservoir, to  
5 preserve correlative rights, or to maintain oil production.

3.3 When a Party fails for any reason to take its Full Share of Current Production (as such Share may be reduced by the  
7 right of the other Parties to make up for Underproduction as provided herein), the other Parties shall be entitled to take any  
8 Gas which such Party fails to take. To the extent practicable, such Gas shall be made available initially to each Underproduced  
9 Party in the proportion that its Percentage Interest in the Balancing Area bears to the total Percentage Interests of all  
10 Underproduced Parties desiring to take such Gas. If all such Gas is not taken by the Underproduced Parties, the portion not  
11 taken shall then be made available to the other Parties in the proportion that their respective Percentage Interests in the  
12 Balancing Area bear to the total Percentage Interests of such Parties.

3.4 All Gas taken by a Party in accordance with the provisions of this Agreement, regardless of whether such Party is  
14 underproduced or overproduced, shall be regarded as Gas taken for its own account with title thereto being in such taking  
15 Party.

3.5 Notwithstanding the provisions of Section 3.3 hereof, no Overproduced Party shall be entitled in any month to take any  
17 Gas in excess of three hundred percent (300%) of its Percentage Interest of the Balancing Area's then-current Maximum  
18 Monthly Availability; <sup>unless agreed to by all Parties hereto</sup> provided, however, that this limitation shall not apply to the extent that it would preclude production  
19 that is required to maintain leases in effect, to protect the producing capacity of a well or reservoir, to preserve correlative  
20 rights, or to maintain oil production. "Maximum Monthly Availability" shall mean the maximum average monthly rate of  
21 production at which Gas can be delivered from the Balancing Area, as determined by the Operator, considering the maximum  
22 efficient well rate for each well within the Balancing Area, the maximum allowable(s) set by the appropriate regulatory agency,  
23 mode of operation, production facility capabilities and pipeline pressures.

3.6 In the event that a Party fails to make arrangements to take its Full Share of Current Production required to be  
25 produced to maintain leases in effect, to protect the producing capacity of a well or reservoir, to preserve correlative rights, or  
26 to maintain oil production, the Operator may sell <sup>if it so elects</sup> any part of such Party's Full Share of Current Production that such Party fails  
27 to take for the account of such Party and render to such Party, on a current basis, the full proceeds of the sale, less any  
28 reasonable marketing, compression, treating, gathering or transportation costs incurred directly in connection with the sale of  
29 such Full Share of Current Production. In making the sale contemplated herein, the Operator shall be obligated only to obtain  
30 such price and conditions for the sale as are reasonable under the circumstances and shall not be obligated to share any of its  
31 markets. Any such sale by Operator under the terms hereof shall be only for such reasonable periods of time as are consistent  
32 with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one  
33 year. Notwithstanding the provisions of Article 3.4 hereof, Gas sold by Operator for a Party under the provisions hereof shall  
34 be deemed to be Gas taken for the account of such Party.

35 4. IN-KIND BALANCING

4.1 Effective the first day of any calendar month following <sup>reasonable notice of</sup> thirty (30) days prior  
36 written notice to the Operator, <sup>if required by Operator,</sup> any Underproduced Party may begin taking, in addition to its Full Share of Current  
37 Production and any Makeup Gas taken pursuant to Section 3.3 of this Agreement, a share of current production determined  
38 by multiplying thirty-five percent (35%) of the Full Shares of Current Production of all Overproduced Parties by  
39 a fraction, the numerator of which is the Percentage Interest of such Underproduced Party and the denominator of which  
40 is the total of the Percentage Interests of all Underproduced Parties desiring to take Makeup Gas. In no event will an  
41 Overproduced Party be required to provide more than thirty-five percent (35%) of its Full Share of Current  
42 Production for Makeup Gas. The Operator will promptly notify all Overproduced Parties of the election of an Underproduced  
43 Party to begin taking Makeup Gas.

4.2  (Optional - Seasonal Limitation on Makeup - Option 1) Notwithstanding the provisions of Section 4.1, the  
46 average monthly amount of Makeup Gas taken by an Underproduced Party during the Winter Period pursuant to Section 4.1  
47 shall not exceed the average monthly amount of Makeup Gas taken by such Underproduced Party during the  
48 \_\_\_\_\_ (        ) months immediately preceding the Winter Period.

4.2  (Optional - Seasonal Limitation on Makeup - Option 2) Notwithstanding the provisions of Section 4.1, no  
50 Overproduced Party will be required to provide more than \_\_\_\_\_ percent (        %) of its Full Share  
51 of Current Production for Makeup Gas during the Winter Period.

4.3  (Optional) Notwithstanding any other provision of this Agreement, at such time and for so long as Operator, or  
53 (insofar as concerns production by the Operator) any Underproduced Party, determines in good faith that an Overproduced  
54 Party has produced all of its share of the ultimately recoverable reserves in the Balancing Area, such Overproduced Party may  
55 be required to make available for Makeup Gas, upon the demand of the Operator or any Underproduced Party, up to  
56 one hundred percent (100%) of such Overproduced Party's Full Share of Current Production.

57 5. STATEMENT OF GAS BALANCES

5.1 The Operator will maintain appropriate accounting on a monthly and cumulative basis of the volumes of Gas that each  
58 Party is entitled to receive and the volumes of Gas actually taken or sold for each Party's account. Within <sup>sixty (60)</sup> ~~forty-five (45)~~ days  
59 after the month of production, the Operator will furnish a statement for such month showing (1) each Party's Full Share of  
60

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1 owners to whom it is accountable as if such Party were taking its Full Share of Current Production, and only its Full Share of  
2 Current Production.

3 6.2.1  (Optional - For use only with Section 6.2 - Alternative I - Entitlement) Upon written request of a Party  
4 taking less than its Full Share of Current Production in a given month ("Current Underproducer"), any Party taking more than  
5 its Full Share of Current Production in such month ("Current Overproducer") will pay to such Current Underproducer an  
6 amount each month equal to the Royalty percentage of the proceeds received by the Current Overproducer for that portion of  
7 the Current Underproducer's Full Share of Current Production taken by the Current Overproducer; provided, however, that  
8 such payment will not exceed the Royalty percentage that is common to all Royalty burdens in the Balancing Area. Payments  
9 made pursuant to this Section 6.2.1 will be deemed payments to the Underproduced Party's Royalty owners for purposes of  
10 Section 7.5.

11 6.2  (Alternative 2 - Sales) Each Party shall pay or cause to be paid Royalty due with respect to Royalty owners to  
12 whom it is accountable based on the volume of Gas actually taken for its account.

13 6.3 In the event that any governmental authority requires that Royalty payments be made on any other basis than that  
14 provided for in this Section 6, each Party agrees to make such Royalty payments accordingly, commencing on the effective date  
15 required by such governmental authority, and the method provided for herein shall be thereby superseded.

16 7. CASH SETTLEMENTS

17 7.1 Upon the earlier of the plugging and abandonment of the last producing interval in the Balancing Area, the termination  
18 of the Operating Agreement or any pooling or unit agreement covering the Balancing Area, or at any time no Gas is taken  
19 from the Balancing Area for a period of twelve (12) consecutive months, any Party may give written notice calling for cash  
20 settlement of the Gas production imbalances among the Parties. Such notice shall be given to all Parties in the Balancing Area.

21 7.2 Within sixty (60) days after the notice calling for cash settlement under Section 7.1, the Operator will distribute to each  
22 Party a Final Gas Settlement Statement detailing the quantity of Overproduction owed by each Overproduced Party to each  
23 Underproduced Party and identifying the month to which such Overproduction is attributed, pursuant to the methodology  
24 set out in Section 7.4.

25 7.3  (Alternative 1 - Direct Party-to-Party Settlement) Within sixty (60) days after receipt of the Final Gas Settlement  
26 Statement, each Overproduced Party will pay to each Underproduced Party entitled to settlement the appropriate cash  
27 settlement, accompanied by appropriate accounting detail. At the time of payment, the Overproduced Party will notify the  
28 Operator of the Gas imbalance settled by the Overproduced Party's payment.

29 7.3  (Alternative 2 - Settlement Through Operator) Within sixty (60) days after receipt of the Final Gas Settlement  
30 Statement, each Overproduced Party will send its cash settlement, accompanied by appropriate accounting detail, to the  
31 Operator. The Operator will distribute the monies so received, along with any settlement owed by the Operator as an  
32 Overproduced Party, to each Underproduced Party to whom settlement is due within ninety (90) days after issuance of the  
33 Final Gas Settlement Statement. In the event that any Overproduced Party fails to pay any settlement due hereunder, the  
34 Operator may turn over responsibility for the collection of such settlement to the Party to whom it is owed, and the Operator  
35 will have no further responsibility with regard to such settlement.

36 7.3.1  (Optional - For use only with Section 7.3, Alternative 2 - Settlement Through Operator) Any Party shall have  
37 the right at any time upon thirty (30) days' prior written notice to all other Parties to demand that any settlements due such  
38 Party for Overproduction be paid directly to such Party by the Overproduced Party, rather than being paid through the  
39 Operator. In the event that an Overproduced Party pays the Operator any sums due to an Underproduced Party at any time  
40 after thirty (30) days following the receipt of the notice provided for herein, the Overproduced Party will continue to be liable  
41 to such Underproduced Party for any sums so paid, until payment is actually received by the Underproduced Party.

42 7.4  (Alternative 1 - Historical Sales Basis) The amount of the cash settlement will be based on the proceeds  
43 received by the Overproduced Party under an Arm's Length Agreement for the Gas taken from time to time by the  
44 Overproduced Party in excess of the Overproduced Party's Full Share of Current Production. Any Makeup Gas taken by the  
45 Underproduced Party prior to monetary settlement hereunder will be applied to offset Overproduction chronologically in the  
46 order of accrual.

47 7.4  (Alternative 2 - Most Recent Sales Basis) The amount of the cash settlement will be based on the proceeds  
48 received by the Overproduced Party under an Arm's Length Agreement for the volume of Gas that constituted Overproduction  
49 by the Overproduced Party from the Balancing Area. For the purpose of implementing the cash settlement provision of the  
50 Section 7, an Overproduced Party will not be considered to have produced any of an Underproduced Party's share of Gas until  
51 the Overproduced Party has produced cumulatively all of its Percentage Interest share of the Gas ultimately produced from the  
52 Balancing Area.

53 7.5 The values used for calculating the cash settlement under Section 7.4 will include all proceeds received for the sale of the  
54 Gas by the Overproduced Party calculated at the Balancing Area, after deducting any production or severance taxes paid and any  
55 Royalty actually paid by the Overproduced Party to an Underproduced Party's Royalty owner(s), to the extent said payments  
56 amounted to a discharge of said Underproduced Party's Royalty obligation, as well as any reasonable marketing, compression,  
57 treating, gathering or transportation costs incurred directly in connection with the sale of the Overproduction.

58 7.5.1  (Optional - For Valuation Under Percentage of Proceeds Contracts) For Overproduction sold under a gas  
59 purchase contract providing for payment based on a percentage of the proceeds obtained by the purchaser upon resale of  
60 residue gas and liquid hydrocarbons extracted therefrom.

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1 Balancing Area under Arm's Length Agreements during the months to which such Overproduction is attributed. In the event  
2 that no sales under Arm's Length Agreements were made during any such month, the cash settlement for such month will be  
3 based on the spot sales prices published for the applicable geographic area during such month in a mutually acceptable pricing  
4 bulletin.

5 7.7 Interest compounded at the <sup>prime rate in effect at Bank of America, Dallas, Texas</sup> rate of \_\_\_\_\_ percent (~~\_\_\_\_\_~~%) per annum or the maximum lawful  
6 rate of interest applicable to the Balancing Area, whichever is less, will accrue for all amounts due under Section 7.1 beginning  
7 the first day following the date payment is due pursuant to Section 7.3. Such interest shall be borne by the Operator or any  
8 Overproduced Party in the proportion that their respective delays beyond the deadlines set out in Sections 7.2 and 7.3  
9 contributed to the accrual of the interest. ~~The Operator shall also be required to pay such interest if it has received payment from any Overproduced~~  
10 ~~Party but failed to timely pay the Underproduced Party.~~

11 7.8 In lieu of the cash settlement required by Section 7.3, an Overproduced Party may deliver to the Underproduced Party  
12 an offer to settle its Overproduction in-kind and at such rates, quantities, times and sources as may be agreed upon by the  
13 Underproduced Party. If the Parties are unable to agree upon the manner in which such in-kind settlement gas will be  
14 furnished within sixty (60) days after the Overproduced Party's offer to settle in kind, which period may be extended by  
15 agreement of said Parties, the Overproduced Party shall make a cash settlement as provided in Section 7.3. The making of an  
16 in-kind settlement offer under this Section 7.8 will not delay the accrual of interest on the cash settlement should the Parties  
17 fail to reach agreement on an in-kind settlement.

18 7.9  (Optional - For Balancing Areas Subject to Federal Price Regulation) That portion of any monies collected by an  
19 Overproduced Party for Overproduction which is subject to refund by orders of the Federal Energy Regulatory Commission or  
20 other governmental authority may be withheld by the Overproduced Party until such prices are fully approved by such  
21 governmental authority, unless the Underproduced Party furnishes a corporate undertaking, acceptable to the Overproduced  
22 Party, agreeing to hold the Overproduced Party harmless from financial loss due to refund orders by such governmental  
23 authority.

24 7.10  (Optional - Interim Cash Balancing) At any time during the term of this Agreement, any Overproduced Party  
25 may, in its sole discretion, make cash settlement(s) with the Underproduced Parties covering all or part of its outstanding Gas  
26 imbalance, provided that such settlements must be made with all Underproduced Parties proportionately based on the relative  
27 imbalances of the Underproduced Parties, and provided further that such settlements may not be made more often than once  
28 every twenty-four (24) months. Such settlements will be calculated in the same manner provided above for final cash  
29 settlements. The Overproduced Party will provide Operator a detailed accounting of any such cash settlement within thirty (30)  
30 days after the settlement is made.

31 8. TESTING

32 Notwithstanding any provision of this Agreement to the contrary, any Party shall have the right, from time to time, to  
33 produce and take up to one hundred percent (100%) of a well's entire Gas stream to meet the reasonable deliverability test(s)  
34 required by such Party's Gas purchaser, and the right to take any Makeup Gas shall be subordinate to the right of any Party to  
35 conduct such tests; provided, however, that such tests shall be conducted in accordance with prudent operating practices only  
36 after thirty (30) days' prior written notice to the Operator and shall last no longer than  
37 seven (7) hours-days including prior shut-in time.

38 9. OPERATING COSTS

39 Nothing in this Agreement shall change or affect any Party's obligation to pay its proportionate share of all costs and  
40 liabilities incurred in operations on or in connection with the Balancing Area, as its share thereof is set forth in the Operating  
41 Agreement, irrespective of whether any Party is at any time selling and using Gas or whether such sales or use are in  
42 proportion to its Percentage Interest in the Balancing Area.

43 10. LIQUIDS

44 The Parties shall share proportionately in and own all liquid hydrocarbons recovered with Gas by field equipment operated  
45 for the joint account in accordance with their Percentage Interests in the Balancing Area.

46 11. AUDIT RIGHTS

47 Notwithstanding any provision in this Agreement or any other agreement between the Parties hereto, and further  
48 notwithstanding any termination or cancellation of this Agreement, for a period of two (2) years from the end of the calendar  
49 year in which any information to be furnished under Section 5 or 7 hereof is supplied, any Party shall have the right to audit  
50 the records of any other Party regarding quantity, including but not limited to information regarding Btu-content.  
51 Any Underproduced Party shall have the right for a period of two (2) years from the end of the calendar year in which any  
52 cash settlement is received pursuant to Section 7 to audit the records of any Overproduced Party as to all matters concerning  
53 values, including but not limited to information regarding prices and disposition of Gas from the Balancing Area. Any such  
54 audit shall be conducted at the expense of the Party or Parties desiring such audit, and shall be conducted, after reasonable  
55 notice, during normal business hours in the office of the Party whose records are being audited. Each Party hereto agrees to  
56 maintain records as to the volumes and prices of Gas sold each month and the volumes of Gas used in its own operations,  
57 along with the Royalty paid on any such Gas used by a Party in its own operations. The audit rights provided for in this  
58 Section 11 shall be in addition to those provided for in Section 5.2 of this Agreement.

59 12. MISCELLANEOUS

60 12.1 As between the Parties, in the event of any conflict between the provisions of this Agreement and the provisions of  
any gas sales contract or in the event of any conflict between the provisions of this Agreement and the provisions of

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1 and assigns, if any. The Parties hereto agree to give notice of the existence of this Agreement to any successor in interest of  
2 any such Party and to provide that any such successor shall be bound by this Agreement, and shall further make any transfer of  
3 any interest subject to the Operating Agreement, or any part thereof, also subject to the terms of this Agreement.

4 12.5 Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the  
5 singular, and the neuter gender includes the masculine and the feminine.

6 12.6 In the event that any "Optional" provision of this Agreement is not adopted by the Parties to this Agreement by a  
7 typed, printed or handwritten indication, such provision shall not form a part of this Agreement, and no inference shall be  
8 made concerning the intent of the Parties in such event. In the event that any "Alternative" provision of this Agreement is not  
9 so adopted by the Parties, Alternative 1 in each such instance shall be deemed to have been adopted by the Parties as a result  
10 of any such omission. In those cases where it is indicated that an Optional provision may be used only if a specific Alternative  
11 is selected: (i) an election to include said Optional provision shall not be effective unless the Alternative in question is selected;  
12 and (ii) the election to include said Optional provision must be expressly indicated hereon, it being understood that the  
13 selection of an Alternative either expressly or by default as provided herein shall not, in and of itself, constitute an election to  
14 include an associated Optional provision.

15 12.7 This Agreement shall bind the Parties in accordance with the provisions hereof, and nothing herein shall be construed  
16 or interpreted as creating any rights in any person or entity not a signatory hereto, or as being a stipulation in favor of any  
17 such person or entity.

18 12.8 If contemporaneously with this Agreement becoming effective, or thereafter, any Party requests that any other Party  
19 execute an appropriate memorandum or notice of this Agreement in order to give third parties notice of record of same and  
20 submits same for execution in recordable form, such memorandum or notice shall be duly executed by the Party to which such  
21 request is made and delivered promptly thereafter to the Party making the request. Upon receipt, the Party making the request  
22 shall cause the memorandum or notice to be duly recorded in the appropriate real property or other records affecting the  
23 Balancing Area.

24 ~~12.9 In the event Internal Revenue Service regulations require a uniform method of computing taxable income by all~~  
25 ~~Parties, each Party agrees to compute and report income to the Internal Revenue Service (select one)  as if such Party were~~  
26 ~~taking its Full Share of Current Production during each relevant tax period in accordance with such regulations, insofar as same~~  
27 ~~relate to entitlement method tax computations; or  based on the quantity of Gas taken for its account in accordance with~~  
28 ~~such regulations, insofar as same relate to sales method tax computations. See 14.3 on Page -5a-.~~

29 13. ASSIGNMENT AND RIGHTS UPON ASSIGNMENT

30 13.1 Subject to the provisions of Sections 13.2 (if elected) and 13.3 hereof, and notwithstanding anything in this Agreement  
31 or in the Operating Agreement to the contrary, if any Party assigns (including any sale, exchange or other transfer) any of its  
32 working interest in the Balancing Area when such Party is an Underproduced or Overproduced Party, the assignment or other  
33 act of transfer shall, insofar as the Parties hereto are concerned, include all interest of the assigning or transferring Party in the  
34 Gas, all rights to receive or obligations to provide or take Makeup Gas and all rights to receive or obligations to make any  
35 monetary payment which may ultimately be due hereunder, as applicable. Operator and each of the other Parties hereto shall  
36 thereafter treat the assignment accordingly, and the assigning or transferring Party shall look solely to its assignee or other  
37 transferee for any interest in the Gas or monetary payment that such Party may have or to which it may be entitled, and shall  
38 cause its assignee or other transferee to assume its obligations hereunder.

39 13.2  (Optional - Cash Settlement Upon Assignment) Notwithstanding anything in this Agreement (including but not  
40 limited to the provisions of Section 13.1 hereof) or in the Operating Agreement to the contrary, and subject to the provisions  
41 of Section 13.3 hereof, in the event an Overproduced Party intends to sell, assign, exchange or otherwise transfer any of its  
42 interest in a Balancing Area, such Overproduced Party shall notify in writing the other working interest owners who are  
43 Parties hereto in such Balancing Area of such fact at least \_\_\_\_\_ (\_\_\_\_\_) days prior to closing the  
44 transaction. Thereafter, any Underproduced Party may demand from such Overproduced Party in writing, within  
45 \_\_\_\_\_ (\_\_\_\_\_) days after receipt of the Overproduced Party's notice, a cash settlement of its  
46 Underproduction from the Balancing Area. The Operator shall be notified of any such demand and of any cash settlement  
47 pursuant to this Section 13, and the Overproduction and Underproduction of each Party shall be adjusted accordingly. Any cash  
48 settlement pursuant to this Section 13 shall be paid by the Overproduced Party on or before the earlier to occur (i) of sixty (60)  
49 days after receipt of the Underproduced Party's demand or (ii) at the closing of the transaction in which the Overproduced  
50 Party sells, assigns, exchanges or otherwise transfers its interest in a Balancing Area on the same basis as otherwise set forth in  
51 Sections 7.3 through 7.6 hereof, and shall bear interest at the rate set forth in Section 7.7 hereof, beginning sixty (60) days  
52 after the Overproduced Party's sale, assignment, exchange or transfer of its interest in the Balancing Area for any amounts not  
53 paid. Provided, however, if any Underproduced Party does not so demand such cash settlement of its Underproduction from the  
54 Balancing Area, such Underproduced Party shall look exclusively to the assignee or other successor in interest of the  
55 Overproduced Party giving notice hereunder for the satisfaction of such Underproduced Party's Underproduction in accordance  
56 with the provisions of Section 13.1 hereof.

57 13.3 The provisions of this Section 13 shall not be applicable in the event any Party mortgages its interest or disposes of its  
58 interest by merger, reorganization, consolidation or sale of substantially all of its assets to a subsidiary or parent company, or to  
59 any company in which any parent or subsidiary of such Party owns a majority of the stock of such company.

60 14. OTHER PROVISIONS

14. OTHER PROVISIONS

- 14.1 Any Underproduced party can require cash settlement from the Overproduced Parties in January of each even numbered year by providing written notice to the Operator. Section 7 of this Gas Balancing Agreement shall govern cash settlement under this provision.
- 14.2 In the event any Party feels a Party has produced more than its share of recoverable reserves and wants to prohibit said Party from selling additional Gas, the Party shall notify the Operator, including its estimate of remaining recoverable reserves. The Operator shall notify all other Parties. If Parties concur with the recoverable reserve estimate, said Overproduced Party shall be prohibited from selling Gas until the Overproduced Party is back in balance. If the Parties cannot agree on the remaining recoverable reserves, the Operator shall retain an independent reservoir engineer, experienced and competent in the geographical areas of the well(s) in question, to compute the reserves. Its decision shall be final. Costs incurred by the independent engineer shall be borne by the Parties hereto.
- 14.3 The Parties to this Agreement agree to abide by Regulation 1.761-2(d)(2) as promulgated by the Internal Revenue Service. Regulation 1.761-2(d)(2) requires that all co-producers of natural gas operating under the same joint operating agreement must use the cumulative gas balancing method, as described under this regulation, to report gas balancing for tax purposes. In the event of a conflict between the provisions of this Section and any other provisions of this Agreement, the provisions of this Section shall control.

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1 15. COUNTERPARTS

2 This Agreement may be executed in counterparts, each of which when taken with all other counterparts shall constitute  
3 a binding agreement between the Parties hereto; provided, however, that if a Party or Parties owning a Percentage Interest in  
4 the Balancing Area equal to or greater than a \_\_\_\_\_ percent (\_\_\_\_\_% ) therein fail(s) to execute this  
5 Agreement on or before \_\_\_\_\_, this Agreement shall not be binding upon any Party and shall be of  
6 no further force and effect.

7 IN WITNESS WHEREOF, this Agreement shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

8  
9

10 ATTEST OR WITNESS:

OPERATOR

11

\_\_\_\_\_

12

\_\_\_\_\_

BY: \_\_\_\_\_

13

\_\_\_\_\_

\_\_\_\_\_

14

Type or print name

15

Title \_\_\_\_\_

16

Date \_\_\_\_\_

17

Tax ID or S.S. No. \_\_\_\_\_

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NON-OPERATORS

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BY: \_\_\_\_\_

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Type or print name

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Title \_\_\_\_\_

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Date \_\_\_\_\_

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Tax ID or S.S. No. \_\_\_\_\_

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BY: \_\_\_\_\_

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Type or print name

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Title \_\_\_\_\_

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Date \_\_\_\_\_

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Tax ID or S.S. No. \_\_\_\_\_

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ACKNOWLEDGMENTS

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Note: The following forms of acknowledgment are the short forms approved by the Uniform Law on Notarial Acts. The validity and effect of these forms in any state will depend upon the statutes of that state.

Individual acknowledgment:

State of \_\_\_\_\_ )

\_\_\_\_\_ ) ss.

County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_

\_\_\_\_\_ by \_\_\_\_\_

(Seal, if any) \_\_\_\_\_

Title (and Rank) \_\_\_\_\_

My commission expires: \_\_\_\_\_

Acknowledgment in representative capacity:

State of \_\_\_\_\_ )

\_\_\_\_\_ ) ss.

County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_

\_\_\_\_\_ by \_\_\_\_\_ as

\_\_\_\_\_ of \_\_\_\_\_

(Seal, if any) \_\_\_\_\_

Title (and Rank) \_\_\_\_\_

My commission expires: \_\_\_\_\_

EXHIBIT "F"

EQUAL EMPLOYMENT OPPORTUNITY AND  
NON-DISCRIMINATION SUPPLEMENT

Attached to and made a part of that certain Operating Agreement dated January 1, 2008, between Devon Energy Production Company, L.P., as Operator, and McCombs Energy, LLC, et al, as Non-Operator.

The term "Contractor", as used herein shall mean the party designated or acting as contractor, Operator or Seller in the foregoing agreement, of which this supplement is a part.

During the performance of this contract, Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applications for employment, notices to be provided by the contracting officer, setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every