

ASSIGNMENT AND BILL OF SALE

COPY

STATE OF NEW MEXICO)

COUNTY OF LEA)

Marks and Garner Production, Ltd. Co., a New Mexico limited liability company, ("Assignor"), for and in consideration of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual covenants herein contained, and subject to the reservations, conditions and covenants hereinafter provided, does hereby grant, bargain, sell, convey and assign unto James H. Garner, Jr. ("Assignee"), whose address is P. O. Box 841, Lovington, New Mexico 88260, all of Assignor's right, title and interest in, to and under state of New Mexico oil and gas lease number V-836 ("Lease") insofar and only insofar as said lease covers the following described lands located in Lea County, New Mexico:

NE/4, Section 17, Township 16 South, Range 34 East, NMPM

Assignor also does hereby grant, bargain, sell, transfer, assign, convey and deliver unto Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the personal property, material, equipment and facilities used for and in conjunction with the Lease for oil and gas purposes.

The entire right, title, interest and estate assigned herein is hereinafter referred to collectively as the "Property". This Assignment and Bill of Sale ("Assignment") shall be effective as of the 1st day of March, 2006, at 7:00 a.m., local time ("Effective Date").

This Assignment is made subject to the exceptions, reservations, covenants and conditions hereinafter set forth:

1. This Assignment is made and accepted, subject to, and Assignee hereby assumes, any and all overriding royalties, payments out of production, net profits obligations and other burdens or encumbrances, to which the Property is subject.
2. Assignee, by these presents, assumes and agrees fully to perform all of the express and implied covenants, obligations and conditions under the terms of the Lease together with the orders and contracts to which the Property is subject.

OCD Case# 14041
Marks & Garner Pro
January 10, 08
Exhibit 3D

3. Notwithstanding anything to the contrary contained herein, it is anticipated that the Kemnitz 17 State No. 1 well ("Well") located on the lease will be converted to a disposal well. Assignor shall receive one-half of the gross proceeds of the sale of all surface equipment and tubing in the Well, when sold, whether the Well is converted to a disposal well or not. Further, one-half of the gross proceeds from the sale of the Property, whenever the Property is sold shall be paid to Assignor. Additionally when the Property is sold, Assignor shall receive one-half of any override, percentage of disposal fee or other arrangement for the payment of any consideration for the use of the Property and/or Well reserved by Assignee, his successors or assigns when the Property and/or Well is sold or transferred as a disposal well. In the event the Well is converted to a disposal well and is not transferred by Assignee, Assignor shall receive one-half all consideration paid for the use of the Well as a disposal well, without paying any expenses associated therewith. Assignee shall bear all costs and expenses associated with the disposal of the surface equipment and tubing and with the conversion of the Well to a disposal well.
4. At the Effective Date, all marketable production and inventory prior thereto attributable to Assignor's proportionate share of the Property shall be for Assignor's account and thereafter for the account of Assignee.
5. As used in this paragraph and the subparagraphs hereunder, "claims" shall include claims, demands, causes of action, liabilities, damages, penalties and judgments of any kind or character and all costs and fees in connection therewith.
 - A. Assignee shall, (i) at the Effective Date assume, be responsible for and comply with all duties and obligations of Assignor, express or implied, with respect to the Property, including, without limitation, those arising under or by virtue of any lease, contract, agreement, document, permit, applicable statute or rule, regulation or order of any governmental authority, specifically including, without limitation any

governmental request or requirement to plug, re-plug, and/or abandon any well of whatsoever type, status or classification, or take any clean-up or other action with respect to the Property or premises, including hazardous waste clean-up costs under the Resource Conservation Recovery Act, 42 U.S.C. 6901-6991, the Comprehensive Environmental Response Compensation Liability Act, 42 U.S.C. 9601-9675 or similar laws, rules or regulations, and (ii) defend, indemnify and hold Assignor harmless from any and all claims in connection therewith.

- B. Assignee shall defend, indemnify and hold Assignor harmless from any and all claims in favor of any person for personal injury, death or damage to Property or to the environment or for any other relief, arising directly to indirectly from, or incident to, the use, occupation, operation, maintenance or abandonment of any of the Property, or condition of the Property or premises, whether latent or patent, including, without limitation, contamination of the Property or premises with naturally occurring radioactive material ("NORM") and whether arising from or contributed to by the negligence in any form of Assignor, its agents, employees or contractors, and asserted against Assignee and/or Assignor after the Effective Date, whether or not any such claims result from conditions, actions or inactions at or before Effective Date except for any claims, whether asserted before or after the Effective Date, in favor of any person for personal injury, death or property damage occurring with respect to the Property prior to the Effective Date and proximately caused by the gross negligence or willful misconduct of Assignor, its agents, employees, or contractors.
- C. Assignor shall (i) be responsible for any and all claims arising out of the sale of hydrocarbons from the Property or the proper accounting or payment to parties for their interests therein insofar as such claims relate to periods of time prior to the Effective Date and (ii) defend,

indemnify and hold Assignee harmless from any and all such claims. Assignee shall be responsible for all of said types of claims insofar as they relate to periods of time from and after the Effective Date and shall defend, indemnify and hold Assignor harmless therefrom.

- D. The Property has been used for oil and gas drilling, producing and related oil field operations and possibly for the storage and disposal of waste materials or hazardous substances. Physical changes in the land may have occurred as a result of such uses. The Property also may contain buried pipelines and other equipment, whether or not of a similar nature, the locations of which may not now be known by Assignor or be readily apparent by a physical inspection of the Property. The Property may also contain leaking casing, piping, flowlines, tubing and/or pipelines. Assignee understands that Assignor does not have the requisite information with which to determine the exact nature or condition of the Property or the effect any such use has had on the physical condition of the Property. Assignee acknowledges that (i) it has entered into this Agreement on the basis of its own investigation of the physical condition of the Property including subsurface condition and (ii) the Property has been used in the manner and for the purposes set forth above and that physical changes to the Property may have occurred as a result of such use and (iii) low levels of NORM and manmade materials fibers ("MMMF") may be present at some locations. Assignee acknowledges that NORM is a natural phenomenon associated with many oil fields in the U. S. and throughout the world. Assignee should make its own determination of this phenomenon and other conditions. Assignor disclaims any liability arising out of or in connection with any presence of NORM or MMMF on the Property (iv) at the Effective Date, Assignee shall assume the risk that the property may contain wastes or contaminants and that adverse physical

conditions, including the presence of wastes or contaminants may not have been revealed by Assignee's investigation. AT THE EFFECTIVE DATE, ALL RESPONSIBILITY AND LIABILITY RELATED TO LEAKS, DISPOSAL, SPILLS, WASTE, OR CONTAMINATION ON AND BELOW THE PROPERTY ARE TRANSFERRED FROM ASSIGNOR TO ASSIGNEE AND ASSIGNEE SHALL INDEMNIFY, DEFEND AND HOLD ASSIGNOR HARMLESS THEREFROM.

6. it becomes necessary to plug and abandon any well(s) covered under this Assignment and Bill of Sale, Assignee, at Assignee's sole risk and expense, will plug and abandon said well(s) in accordance with all local, state and federal laws, rules and regulations as well as good oil field practice and will restore the premises to the condition they were in prior to the drilling of said well(s). Assignee further agrees to indemnify and hold Assignor harmless from any liability or expense that may become due or payable in connection with any well(s) plugged after the Effective Date, whether or not such liability or expense is incurred as a result of demands made by an authorized regulatory body, or any party or parties claiming to have a vested interest in the Property, or otherwise, and regardless of whether any such liability or expense is caused in whole or in part by the negligence of Assignor or by conditions, acts or omissions (whether in whole or in part the responsibility of or occasioned by the negligence of Assignor) which impose strict liability. Assignee further warrants that it shall post any plugging bond which may be required to be maintained by operators pursuant to any applicable laws, rules, orders or regulations of the State of New Mexico or any other governmental authority having jurisdiction thereof.
7. THIS ASSIGNMENT AND BILL OF SALE EXECUTED IS WITHOUT ANY WARRANTY OF TITLE, EITHER EXPRESSED OR IMPLIED AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION AS TO THE MERCHANTABILITY OF ANY OF THE

EQUIPMENT OR ITS FITNESS FOR ANY PURPOSE, AND WITHOUT ANY OTHER EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION WHATSOEVER. IT IS UNDERSTOOD AND AGREED THAT ASSIGNEE HAS INSPECTED THE PROPERTY AND PREMISES FOR ALL PURPOSES, INCLUDING WITHOUT LIMITATION FOR THE PURPOSE FOR DETECTING THE PRESENCE OF NORM AND MMMF AND SATISFIED ITSELF AS TO THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY, BOTH SURFACE AND SUBSURFACE. INCLUDING BUT NOT LIMITED TO CONDITIONS RELATED TO THE PRESENCE, RELEASE, DISPOSAL OF HAZARDOUS SUBSTANCES, AND THAT ASSIGNEE ACCEPTS THE PROPERTY IN ITS "AS IS, WHERE IS" CONDITION. ASSIGNOR DISCLAIMS ALL LIABILITY ARISING IN CONNECTION WITH THE PRESENCE OF NORM OR MMMF ON THE PROPERTY AND IF TESTS HAVE BEEN CONDUCTED BY ASSIGNOR FOR THE PRESENCE OF NORM, ASSIGNOR DISCLAIMS ANY WARRANTY RESPECTING THE ACCURACY OF SUCH TESTS OR RESULTS. IN ADDITION, ASSIGNOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR MATERIALS HERETOFORE OR HEREAFTER FURNISHED BUYER IN CONNECTION WITH THE PROPERTY, OR AS TO THE QUALITY OR QUANTITY OF ANY HYDROCARBON RESERVES (IF ANY) ATTRIBUTABLE TO THE PROPERTY OR THE ABILITY OF THE PROPERTY TO PRODUCE HYDROCARBONS. ANY AND ALL SUCH DATA, INFORMATION AND OTHER MATERIALS FURNISHED BY ASSIGNOR IS PROVIDED ASSIGNEE AS A CONVENIENCE AND ANY RELIANCE ON OR USE OF THE SAME SHALL BE AT ASSIGNEE'S SOLE RISK.

8. This Assignment and all rights, reservations and covenants in connection therewith shall be considered covenants running with the land and shall inure to the benefit of, and be binding upon, the parties hereto, their heirs,

personal representatives, successors and assigns.

9. IT IS UNDERSTOOD AND AGREED PART OF THE PROPERTY MAY CONSIST OF ONE OR MORE LEASES ISSUED BY THE STATE LAND OFFICE ON BEHALF OF THE STATE OF NEW MEXICO. ASSIGNOR MAY NOT HAVE ITS INTEREST SHOWN IN THE RECORDS OF ONE OR MORE SUCH AGENCIES. ASSIGNEE RECOGNIZES THE RISK ASSOCIATED WITH SUCH STATUS AND UNDERSTANDS AND AGREES ASSIGNOR HAS NO OBLIGATION OR RESPONSIBILITY TO HAVE ASSIGNOR OR ASSIGNEE'S INTEREST OR INTERESTS RECOGNIZED BY ANY SUCH AGENCY, DEPARTMENT OR OFFICE.

10. As part of the consideration for the execution and delivery of this instrument by Assignor, Assignee agrees to all of the terms and provisions hereof and joins in the execution of this instrument to evidence this agreement.

TO HAVE AND TO HOLD the Property granted, bargained, sold, conveyed, transferred, assigned and delivered as aforesaid unto Assignee, and its successors and assigns, subject to the terms and provisions herein; and, this Assignment is made with full substitution and subrogation of Assignee in and to all covenants and warranties by others heretofore given or made in respect to the Property or any part thereof insofar as such covenants and warranties extend beyond the Effective Date.

EXECUTED this 27th day of February, 2006 but effective as of the Effective Date.


ASSIGNOR

MARKS AND GARNER PRODUCTION, LTD. CO.

By: 

MICKEY WELBORN, MANAGER

ASSIGNEE:


JAMES H. GARNER, JR.

STATE OF NEW MEXICO)
)
COUNTY OF LEA)

The foregoing instrument was acknowledged before me this 27th day of February, 2006, by Mickey Welborn, Manager of Marks and Garner Production, Ltd., Co, a New Mexico limited liability company, on behalf of said limited liability company.

Jimmy K. Jones
NOTARY PUBLIC

My Commission Expires:
4-15-07

STATE OF New Mexico)
COUNTY OF Lea)

The foregoing instrument was acknowledged before me this 27th day of February, 2006, by James H. Garner, Jr.

Camara Montoya
NOTARY PUBLIC

My Commission Expires:
9-20-07