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San Juan County, NM DEBBIE HOLMES



PRODUCERS 88-PAID UP

OIL AND GAS LEASE

AGREEMENT, Made and entered into the 5 day of January, 2009, by and between Louise Thomason, Individually & as Trustee under Trust Agreement dated October 25, 1990 whose post office

address is 2406 Nathan Ave, Farmington, NM 87401 hereinafter called Lessor (whether one or more) and

T. H. McElvain Oil & Gas Limited Partnership whose post office address is 1050 Seventeenth Street, Suite 1800, Denver, Colorado 80265, hereinafter called Lessee:

WITNESSETH, That the Lessor, for and in consideration of TEN AND MORE DOLLARS cash in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, has granted, demised, leased and let, and by these presents does grant, demise, lease and let exclusively unto the said Lessee, the land hereinafter described, with the exclusive right for the purpose of drilling, mining, exploring by geophysical and other methods, and operating for and producing therefrom oil and all gas of whatsoever nature or kind, specifically including helium, carbon dioxide, and coalbed methane and any and all substances produced in association therewith from coal-bearing formations, dewatering of coalbed methane with ingress and egress for rights of way and easements for roads, laying pipe lines, water wells, disposal wells, injection wells, pits, electric and telephone lines and erection of structures and other facilities thereon to produce, save and take care of said products, all that certain tract of land situated in the County of San Juan, State of New Mexico, described as follows, to-wit:

Township 29 North, Range 13 West, N.M.P.M. Section 3: Block 5, Lot 1, Nygren-Skousen Subdivision City of Farmington, New Mexico

together with any reversionary rights therein, and together with all riparian rights and strips or parcels of land, including alleys, streets, roads and highways (not however, to be construed to include parcels comprising a regular 40-acre legal subdivision or lot of approximately corresponding size) adjoining or contiguous to the above described land and owned or claimed by Lessor, and containing approximately 0.309 acres, more or less ("Leased Premises").

It is agreed that this lease shall remain in force for a term of Three (3) years from this date and as long thereafter as oil or gas of whatsoever nature or kind is produced from said Leased Premises or on acreage pooled, communitized or unitized therewith, or drilling operations are continued as hereinafter provided. If, at the expiration of the primary term of this lease, oil or gas is not being produced on the Leased Premises or on acreage pooled, communitized or unitized therewith but Lessee is then engaged in drilling, re-working, re-completing, or dewatering operations thereon, then this lease shall continue in force so long as operations are being continuously prosecuted on the Leased Premises or on acreage pooled, communitized or unitized therewith; and operations shall be considered to be continuously prosecuted if not more than one hundred and twenty (120) days shall elapse between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well. If after discovery of oil or gas on the Leased Premises or on acreage pooled, communitized or unitized therewith, the production or dewatering thereof should cease from any cause after the primary term, this lease shall not terminate if Lessee commences additional drilling, re-working or dewatering operations within one hundred and twenty (120) days from date of cessation of production, dewatering or from the date of completion of a dry hole. If oil or gas shall be discovered and produced as a result of such operations or dewatering operations are continued at or after the expiration of the primary term of this lease, this lease shall continue in force so long as oil or gas is produced or dewatering operations are continued from the Leased Premises or on acreage pooled, communitized or unitized therewith.

In the event a well or wells is drilled and completed on the Leased Premises, or on the lands pooled, communitized or unitized therewith, for the purpose of developing coalbed gas, the words "operations" and "capable of producing gas" shall mean, in addition to those matters covered in the preceding paragraph: (1) operations of said wells to remove water or other substances from the coalbed, or to dispose of such water or other substances, even though such operations do not result in the production of hydrocarbons in paying quantities, or (2) shutting-in or otherwise discontinuing production from said wells to allow for surface or underground mining affecting the drillsite or wellbore.

2. This is a PAID-UP LEASE. In consideration of the down cash payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the primary term. Lessee may at any time or times during or after the primary term surrender this lease as to all or any portion of the Leased Premises and as to any strata or stratum by delivering to Lessor or by filing for record a release or releases, and be relieved of all obligation thereafter accruing as to the acreage surrendered.

3. In consideration of the Leased Premises the said Lessee covenants and agrees:

- 1st To deliver to the credit of Lessor, free of cost, in the pipe line to which Lessee may connect wells on the Leased Premises, the equal one-eighth (1/8) part of all oil produced and saved from the Leased Premises.
2nd To pay Lessor on gas and casinghead gas produced from the Leased Premises (1) when sold by Lessee, one-eighth (1/8) of the net proceeds realized by Lessee from such sale or (2) when used by Lessee off the Leased Premises or in the manufacture of gasoline or other products, the market value, at the wellhead, of one-eighth (1/8) of such gas and casinghead gas; Lessor's interest, in either case, to bear one-eighth (1/8) of all post-production costs (i.e., all costs incurred once the product is brought to the wellhead from the subsurface) including but not limited to the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and one-eighth (1/8) of the cost of gathering and transporting such gas and casinghead gas from the wellhead to the point of sale or use.

3rd In calculating royalties on production hereunder, Lessee may deduct Lessor's proportionate part of any ad valorem, production and excise taxes. If after the primary term one or more wells on the Lease Premises or lands pooled, communitized or unitized therewith are capable of producing oil or gas or other substances covered hereby, but such well or wells are either shut in or production therefrom is not being sold by Lessee, including dewatering of coalbed gas, such well or wells shall nevertheless be deemed to be producing for the purpose of maintaining this lease. If for a period of ninety (90) consecutive days such well or wells are shut in or production therefrom is not sold by Lessee, including dewatering of coalbed gas, the Lessee shall pay an aggregate shut-in royalty of one dollar per acre then covered by this lease, such payment to be made to Lessor on or before the anniversary date of this lease next ensuing after the expiration of the said ninety (90) day period and thereafter on or before each anniversary of date of this lease while the well or wells are shut in or production therefrom is not being sold by Lessee; provided that if this lease is in its primary term or otherwise being maintained by operations, or if production is being sold by Lessee from another well on the Leased Premises or lands pooled, communitized or unitized therewith, no shut-in royalty shall be due until end of the next following anniversary date of this lease that cessation of such operations or production occurs, as the case may be. Lessee's failure to properly pay shut-in royalty shall render Lessee liable for the amount due, but shall not operate to terminate this lease.

5. If said Lessor owns a less interest in the Leased Premises than the entire and undivided fee simple estate therein, then the royalties (including any shut-in royalty) herein provided for shall be paid the Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.

- 6. Lessee shall have the right to use, free of cost, gas, oil and water produced on the Leased Premises for Lessee's operation thereon.
7. When requested by Lessor, Lessee shall bury Lessee's pipe line below plow depth.
8. No well shall be drilled nearer than 200 feet to the house or barn now on the Leased Premises without written consent of Lessor.
9. Lessee shall only pay for damages caused by Lessee's operations to growing crops on the Leased Premises.
10. Lessee shall have the right at any time to remove all machinery and fixtures placed on the Leased Premises, including the right to draw and remove casing.

11. The rights of Lessor and Lessee hereunder may be assigned in whole or part, by area and/or depth or zone and the rights and obligations of the parties hereunder shall extend to their respective heirs, devisees, executors, administrators, successors and assigns. No change in ownership of Lessor's interest (by assignment or otherwise) shall have the effect of reducing the rights or enlarging the obligations of Lessee hereunder, and no change in ownership shall be binding on Lessee until sixty (60) days after Lessee has been furnished with notice, consisting of certified copies of all recorded instruments or documents and other information necessary to establish a complete chain of record title from Lessor to the satisfaction of Lessee, and then only with respect to payments thereafter made. No other kind of notice, whether actual or constructive, shall be binding on Lessee. No present or future division of Lessor's ownership as to different portions or parcels of the Leased Premises shall operate to enlarge the obligations or diminish the rights of Lessee, and all Lessee's operations may be conducted without regard to any such division. In the event of death of any person entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to the credit of decedent or decedent's estate. If at any time two or more persons are entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to such persons either jointly, or separately in proportion to the interest which each owns. If Lessee transfers or assigns its interest hereunder in whole or in part Lessee shall be relieved of all obligations thereafter arising with respect to the transferred interest, and failure of the transferee to satisfy such obligations with respect to the transferred interest shall not affect the rights of Lessee with respect to any interest not so transferred. If Lessee transfers a full or undivided interest in all or any portion of the Lease Premises, the obligation to pay or tender shut-in royalties hereunder shall be divided between Lessee and the transferee in proportion to the net acreage interest in this lease then held by each.

12. Lessee, at its option is hereby given the right and power at any time and from time to time as a recurring right, either before or after production, as to all or any part of the Leased Premises and as to any one or more of the formations hereunder, to pool, communitize or unitize the leasehold estate and the mineral estate covered by this lease with other land, lease or leases in the immediate vicinity for the production of oil and gas, or separately for the production of either, when in Lessee's judgment it is necessary or advisable to do so, and irrespective of whether authority similar to this exists with respect to such other land, lease or leases. Likewise, units previously formed to include formations not producing oil or gas, may be reformed to exclude such non-producing formations. The pooling or reforming of any unit, pooled area or communitized area shall be accomplished by Lessee executing and filing of record a declaration of such unitization, pooling or communitization or reformation, which declaration shall describe the unit, pooled area or communitized area or communitized area may include land upon which a well has theretofore been completed or upon which operations for drilling have theretofore been commenced. Production, drilling, dewatering or reworking operations on a well shut-in for want of a market anywhere on a unit, pooled area or communitized area which includes all or a part of this lease shall be treated as if it were production, drilling, dewatering or reworking operations on a well shut-in for want of a market under this lease. In lieu of the royalties elsewhere herein specified, including shut-in gas royalties, Lessor shall receive on production from the unit, pooled area or communitized area, royalties only on the portion of such production allocated to this lease: such allocation shall be that proportion of the unit, pooled area or communitized area production that the total number of surface acres covered by this lease and included in the unit, pooled area or communitized area bears to the total number of surface acres in such unit, pooled area or communitized area or as prescribed in such unit, pooling or communitization agreement. In addition to the foregoing, Lessee may, at its option, pool, communitize, or combine all or any part of the Leased Premises as to one or more of the formations thereunder with or entering into a cooperative or unit plan of development or operation approved by any governmental authority and, from time to time change or terminate any such plan or agreement and, in such event, the terms, conditions and provisions of this lease shall be deemed conditions, and provisions of such approved cooperative or unit plan of development or operation and, particularly, all drilling

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Case No. ....14262 Exhibit No. 5
Submitted by:
McELVAIN OIL & GAS PROPERTIES, INC.
Hearing Date: JANUARY 8, 2009



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lease, express or implied, shall be satisfied by compliance with the drilling and development requirements of such plan or agreement, and this lease shall not terminate or expire during the life of such plan or agreement. In the event that the Leased Premises or any part thereof, shall hereafter be operated under any such cooperative or unit plan of development or operation whereby the production therefrom is allocated to different portions of the land covered by said plan, then the production allocated to any particular tract of land shall, for the purpose of computing the royalties to be paid hereunder to Lessor, be regarded as having been produced from the particular tract of land to which it is allocated and not to any other tract of land, and the royalty payments to be made hereunder to Lessor shall be based upon production only as so allocated. Lessor shall formally express Lessor's consent to any pooled area, communitized area, cooperative or unit plan of development or operation adopted by Lessee and approved by any governmental agency by executing the same upon request of Lessee.

13. Anything in this lease to the contrary notwithstanding, Lessee's obligations under this lease shall be subject to all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction, including restrictions on the drilling and production of wells, and regulation of the price or transportation of oil, gas or other substance covered hereby. When drilling, reworking, production or other operations or obligations under this lease are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services material, water, electricity, fuel, access or easements, or by an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood or other act of nature, explosion, governmental action, governmental delay, restraint or inaction, or by inability to obtain a satisfactory market for production, or failure of purchasers or carriers to take or transport such production, or by any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within control of Lessee, this lease shall not terminate because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any provision or implied covenants of this lease when drilling, production, or other operations are so prevented or delayed.

14. No litigation shall be initiated by Lessor for damages, forfeiture or cancellation with respect to any breach or default by Lessee hereunder, for a period of at least 90 days after Lessor has given Lessee written notice fully describing the breach or default, and then only if Lessee fails to remedy the breach or default within such time period. In the event the matter is litigated and there is a final judicial determination that a breach or default has occurred, this lease shall not be forfeited or cancelled in whole or in part unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so.

15. Lessor hereby warrants and agrees to defend the title to the Leased Premises, and agrees that the Lessee shall have the right at any time to redeem from Lessor, by payment, any mortgages, taxes or other liens on the Leased Premises, in the event of default of payment by Lessor and be subrogated to the rights of the holder thereof, and the undersigned Lessor's, for themselves and their heirs, successors and assigns, hereby surrender and release all right of dower and homestead in the Leased Premises described herein, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made, as recited herein. If Lessee redeems any such lien, Lessee may recover any amount expended out of Lessor royalties or shut-in royalties.

16. Should any one or more of the parties hereinabove named as Lessor fail to execute this lease, it shall nevertheless be binding upon all such parties who do execute it as Lessor. The word "Lessor," as used in this lease, shall mean any one or more or all of the parties who execute this lease as Lessor. All the provisions of this lease shall be binding on the heirs, successors and assigns of Lessor and Lessee.

17. If Lessor, during the primary term of this lease, receives a bona fide offer from a third party to purchase from Lessor a lease covering any or all of the substances covered by this lease and covering all or a portion of the Leased Premises, with such lease to become effective upon expiration of this lease, which Lessor is willing to accept from the offering party, Lessor hereby agrees to notify Lessee in writing of said offer immediately, including in the notice the name and address of the offeror, the price offered and all other pertinent terms and conditions of the offer. Lessee, for a period of fifteen (15) days after the receipt of the notice, shall have the prior and preferred right and option to purchase the lease or part thereof or interest therein covered by the offer at the price and on the terms and conditions in the offer. All offers made up to and including the last day of the primary term of this lease shall be subject to the terms and conditions of this paragraph. Should Lessee elect to purchase the lease pursuant to the terms hereof, it shall so notify Lessor in writing by mail, telefax, or telegram prior to expiration of said fifteen (15) day period. Lessee shall promptly thereafter furnish to Lessor the new lease for execution by Lessor along with Lessee's sight draft (or check) payable to Lessor in payment of the specified amount as consideration for the new lease, such draft, if applicable, being subject to approval of title according to the terms thereof. Upon receipt thereof, Lessor shall promptly execute said lease and return same along with the draft to Lessor's bank of record for payment.

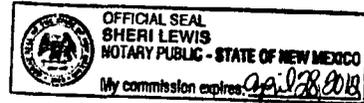
IN WITNESS WHEREOF, this instrument is executed as of the date first above written.

X Louise Thomason

Louise Thomason, Individually & as Trustee

ACKNOWLEDGMENT-INDIVIDUAL

STATE OF New Mexico )  
 COUNTY OF San Juan )



The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 2009, by Louise Thomason.

Witness my hand an official seal.

My Commission Expires April 28, 2013

Sheri Lewis  
 Notary Public