

Los County, New Mexico  
This BOOK 260 PAGE 778

611

INSTRUMENT OF CONVEYANCE

between

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

and

JOSEPH B. SEAGRAM & SONS, INC.,

Conveyance of

PARAMOUNT PRODUCTION PAYMENT

and

RESERVATION OF RESERVED PRODUCTION PAYMENT  
(Primary Sum \$3,500,000)

and

CONVEYANCE OF NET PROFITS OVERRIDING ROYALTY

Dated as of April 1, 1966

United States Internal Revenue Documentary Stamps required by law in connection with the delivery of this instrument were duly affixed to an original counterpart of this instrument and duly cancelled as required by law, said original counterpart being in the possession of Joseph B. Seagram & Sons, Inc.

BEFORE EXAMINER CATANACH	
OIL CONSERVATION DIVISION	
Chandler	EXHIBIT NO. 5
CASE NO.	8859

THIS INSTRUMENT OF CONVEYANCE dated as of April 1, 1966, between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation (hereinafter called "Prudential"), and JOSEPH B. SEAGRAM & SONS, INC., an Indiana corporation (hereinafter called "Seagram"),

WITNESSETH :

WHEREAS, by that certain instrument entitled "Conveyance of Oil and Gas Properties and Agreement with Respect Thereto" dated January 20, 1961 (herein called the "Original Conveyance") from R. Olsen, Olsen Oils, Inc., a Delaware corporation, and Jal Oil Company, Inc., a New Mexico corporation, as Assignors, to Texas Pacific Coal and Oil Company, a Texas corporation (herein called "Texas Pacific"), as Assignee, said Assignors conveyed to Texas Pacific, among other things, the interests in the oil and gas (or oil, gas and mineral) leases described in Exhibit A attached hereto and hereby made a part hereof (herein called Exhibit "A"), and the mineral, royalty and overriding royalty interests therein described, excepting therefrom and reserving to said Assignors four separate production payments (herein and in the Original Conveyance called the "Paramount Production Payment", the "Secondary Production Payment", the "Tertiary Production Payment", and the "Quaternary Production Payment", respectively); and

WHEREAS, the interests in the oil and gas (or oil, gas and mineral) leases described in Exhibit A and the mineral, royalty and overriding royalty interests therein described, subject, however, to the restrictions, exceptions, reservations, conditions, limitations, interests and other matters, if any, set forth or referred to in the specific descriptions of said properties in Exhibit A, are herein referred to as the "Subject Interests"; and

WHEREAS, by that certain instrument entitled "Conveyance of Paramount Production Payment" dated January 20, 1961 (herein called the

"Paramount Conveyance"), said Assignors (joined in the case of R. Olsen by his wife, Laureada B. Olsen), assigned to Prudential the Paramount Production Payment; and

WHEREAS, by virtue of the Paramount Conveyance, Prudential is the owner of the Paramount Production Payment; and

WHEREAS, the recording data with respect to the Original Conveyance and the Paramount Conveyance is set forth in Exhibit B attached hereto and hereby made a part hereof and reference is hereby made to the Original Conveyance and the Paramount Conveyance and the recording thereof for a more complete description of the Paramount Production Payment and the rights, titles, interests, estates, remedies, powers and privileges constituting and appertaining thereto and for all other purposes hereof; and

WHEREAS, by virtue of that certain Instrument of Conveyance dated as of November 1, 1963, as amended (herein called the "Seagram Conveyance"), consisting of Part I, being a conveyance from Texas Pacific to Seagram of certain oil and gas properties wherein there was reserved and retained by Texas Pacific a production payment (herein and in the Seagram Conveyance called the "Texas Pacific Production Payment"), in the original primary sum of \$216,000,000, and Part II, being a conveyance from Texas Pacific to Glanville Minerals Corp., a Delaware corporation, of the Texas Pacific Production Payment, Seagram acquired, among other things, the Subject Interests subject to the Paramount Production Payment, the Secondary Production Payment, the Tertiary Production Payment, the Quaternary Production Payment and the Texas Pacific Production Payment, all as more particularly set forth and described in the Seagram Conveyance; and

WHEREAS, Prudential desires to transfer, and Seagram desires to acquire, the Paramount Production Payment upon the terms and conditions

and subject to the reservations, agreements and other matters herein contained; and

WHEREAS, Seagram intends to acquire and hold the Paramount Production Payment as a separate interest separately and apart from the Subject Interests; and

WHEREAS, in consideration of the conveyance to it by Prudential of the Paramount Production Payment, Seagram is willing to convey to Prudential the Net Profits Overriding Royalty hereinafter referred to,

NOW, THEREFORE,

#### ARTICLE I

##### Conveyance of Paramount Production Payment and Reservation of Reserved Production Payment

Section 1.01. Prudential, for valuable consideration to it in hand paid by Seagram, the receipt and sufficiency of which are hereby acknowledged, by these presents does, effective as of 7:00 A.M. local time, on April 1, 1966 (said hour and day being herein called the "Effective Date"), grant, bargain, sell, transfer, convey and assign to Seagram, its successors and assigns, the Paramount Production Payment, including, without limitation, all of the rights, titles and interests vested in Prudential by, or which Prudential now has or may become entitled to under or by virtue of, the Paramount Conveyance and all oil, gas and other minerals (all oil, gas and other minerals being herein collectively called "Minerals") which are produced from and after the Effective Date and which shall accrue or be attributable to the Paramount Production Payment and the proceeds thereof, subject, however, to all of the terms, conditions, reservations, exceptions and exclusions hereinafter set forth.

TO HAVE AND TO HOLD, subject as aforesaid, the Paramount Production Payment, together with said rights, titles, interests and other matters, unto Seagram, its successors and assigns, forever, subject,

however, to the terms, conditions, reservations, exceptions and exclusions hereinafter set forth.

Section 1.02. There is EXPRESSLY EXCEPTED and EXCLUDED from the conveyance contained in Section 1.01 and retained and reserved unto Prudential all of the Minerals which have been produced prior to the Effective Date and which have accrued or may hereafter accrue to the Paramount Production Payment and the proceeds of such Minerals, including all rights to such Minerals and proceeds,

Section 1.03. There is also EXPRESSLY EXCEPTED and EXCLUDED from the conveyance contained in Section 1.01 and retained and reserved unto Prudential, as a production payment (herein called the "Reserved Production Payment") all of the Minerals which may be produced, saved and sold from the Subject Interests from and after the Effective Date and which shall accrue or be attributable to the Paramount Production Payment from and after such date and throughout the period specified in Section 1.04, subject, however, to the terms and provisions herein contained including, without limitation, the terms and provisions of Section 1.05. The Minerals which may be produced, saved and sold from the Subject Interests from and after the Effective Date and which shall accrue or be attributable to the Paramount Production Payment from and after such date throughout the period aforesaid are herein sometimes called the "Subject Minerals".

Section 1.04. The Reserved Production Payment shall continue and remain in effect until Prudential shall have received from the proceeds of the sale of the Subject Minerals, over and above all severance, production or other taxes (except franchise, income and other taxes measured by profits) upon or measured by production, free and clear of all costs and expenses whatsoever, the full net sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

Section 1.05. (a) The Reserved Production Payment shall be suspended from and shall not be dischargeable out of or in any manner affect the Minerals produced from (a) any additional well or wells (herein called "additional well(s)") drilled after the Effective Date upon any of the Subject Interests, or (b) any well or wells (herein called the "waterflood well(s)") existing at the Effective Date on the Subject Interests with respect to which there shall have been instituted after the Effective Date water flood operations, the production from which well or wells is substantially affected by such water flood operations, from the respective dates of completion of any additional well or wells and, in the case of waterflood wells, from the respective dates of response to the water flood operations with respect thereto, as evidenced by increase in production therefrom (said dates being herein referred to as the "cut-off dates"), until such time thereafter (herein called the "payout date") as there shall have been realized, from the sale of Minerals accruing or attributable to the Subject Interests and produced after the respective cut-off dates from all additional wells and all water flood wells, net proceeds in an amount equal to the total of the following:

- (i) All direct costs (capital or otherwise) incurred and paid by Seagram in drilling, completing and equipping and/or plugging and abandoning, all of the additional wells; plus
- (ii) All direct capital expenditures incurred and paid by Seagram in instituting, developing and equipping all of the above mentioned additional waterflood operations instituted after the Effective Date; plus
- (iii) All direct costs (through the district level, determined as hereinafter provided in regard to the net profits account) of operating any and all of the additional wells and waterflood wells from the applicable cut-off dates thereof until the payout date; minus
- (iv) The total amount theretofore realized by Seagram since the Effective Date as net proceeds of all salvage of personal property (being the gross sales price thereof if sold,

or the market value thereof at the time of salvage or discontinuance of use (if not then sold, after deducting in each case the cost of salvage or removal) used or useful in connection with the operation or development of the Subject Interests or any part thereof, to the extent such proceeds are attributable to the Subject Interests (said personal property being herein called the "Personal Property").

(b) As stated in Section 1.05(a) above, the Reserved Production Payment shall not be dischargeable out of the proceeds of the sale of production from any additional wells or waterflood wells prior to the payout date. From and after the payout date (if it occurs before the discharge of the Reserved Production Payment), however, the Reserved Production Payment shall again attach to and be dischargeable out of the Minerals produced from all of such wells and the proceeds thereof. If after the first payout date there shall be drilled further additional wells or there shall be instituted additional waterflood operations, then in like manner the Reserved Production Payment shall be suspended from and shall not be dischargeable out of the Minerals produced from such additional wells or waterflood wells from and after the respective cut-off dates thereof until the subsequent payout date with respect thereto, determined as stated above, except that in determining such subsequent payout date there shall be taken into account only the costs and expenditures referred to above which are incurred by Seagram with respect to such additional wells or waterflood wells subsequent to the preceding payout date, and there shall be taken into account only the net proceeds of salvage which are realized by Seagram subsequent to the preceding payout date. The Reserved Production Payment shall not be dischargeable out of the proceeds of the sale of production from such additional wells or waterflood wells accruing after the applicable cut-off dates and prior to the subsequent payout date; however, from and after such subsequent payout date (if it occurs before the discharge of the Reserved Production Payment), the Reserved Production

Payment shall again attach to and be dischargeable out of the Minerals (including the proceeds thereof) produced from all of such additional wells or waterflood wells commenced subsequent to the preceding payout date. In like manner from time to time the operation of the Reserved Production Payment shall be suspended with respect to new additional wells or waterflood wells until the payout date with respect thereto or until such time as the Reserved Production Payment shall have been completely discharged.

(c) If within twenty-one years after the date of death of the last survivor of all living descendants of Joseph P. Kennedy, father of John F. Kennedy, late President of the United States of America, the Reserved Production Payment shall not have again attached and become effective with respect to the Minerals produced from any additional well or wells or any waterflood well or wells, then the Reserved Production Payment shall never again affect or be dischargeable out of such Minerals.

Section 1.06. The amount of all production, severance or other taxes (except franchise, income and other taxes measured by profits) upon or measured by production accruing to the Reserved Production Payment shall be deducted from the proceeds of production available for application on the Reserved Production Payment and only the net amount remaining after deducting such taxes shall be applied toward the reduction of the Reserved Production Payment. (All proceeds of the sale of Subject Minerals which are actually received by Seagram on or before the last day of each current month and after the last day of the preceding month shall on or before the last day of such current month be paid over to Prudential) for application by it upon the Reserved Production Payment and upon such payment having been made the amount thereof shall be deemed to have been so applied on the first day of the succeeding month.



Section 1.07. The Subject Minerals, as produced and saved, shall be delivered by Seagram to the purchasers thereof for the credit of Prudential, free and clear of all operating, development, gathering, producing, treating, marketing and transportation costs and other costs whatsoever into the pipeline or other means of distribution to which the wells producing Subject Minerals may be connected or to such other point of purchase as is reasonably required in the marketing thereof. Seagram shall market the Subject Minerals, on behalf and for the account of Prudential (and it shall not be necessary for Prudential to join in any contract or agreement for the sale of Subject Minerals or any portion thereof), on the same terms and conditions as Seagram markets Minerals produced from the Subject Interests owned by it.

## ARTICLE II

### Conveyance of Net Profits Overriding Royalty Interest

Section 2.01. Upon the terms and provisions and subject to the exceptions and limitations set forth in this Article II, Seagram, for valuable consideration to it in hand paid by Prudential, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the conveyance to it by Prudential of the Paramount Production Payment, does hereby grant, bargain, sell, transfer and assign to Prudential, as a net profits overriding royalty interest (hereinafter called the "Net Profits Overriding Royalty"), an undivided 50% of all of the Minerals that may be produced, saved and sold from the Subject Interests from and after the discharge of the Reserved Production Payment, less, however, that part of such undivided 50% interest in such Minerals, the proceeds of which are equal to 50% of all costs, expenditures and expenses hereinafter specified which have been or

may hereafter be incurred by Seagram in developing, operating, equipping, reworking and maintaining the Subject Interests, it being the intention of the parties that Prudential shall receive, and Seagram hereby sells, transfers, assigns and conveys to Prudential, as the Net Profits Overriding Royalty, 50% of the net profits, if any, as hereinafter specified, that are realized by Seagram from the ownership, maintenance, and operation of the Subject Interests, in accordance with the terms and provisions of, and subject to the modifications, exceptions and limitations hereinafter stated in, this instrument, including, without limitation, Section 2.05 and Section 2.09.

Section 2.02. The Net Profits Overriding Royalty shall not include any right, title or interest in or to any Personal Property, and it is intended to be exclusively an interest in net profits and Prudential shall look exclusively to the Minerals produced from the Subject Interests for the satisfaction and realization of the Net Profits Overriding Royalty.

Section 2.03. From and after the Effective Date, Seagram shall maintain in accordance with good accounting practices a net profits account (the "net profits account"), the books and all supporting data concerning which shall at all reasonable times be open for examination, inspection, copying and audit by Prudential or its accredited representatives,

Section 2.04. Into the net profits accounts shall be credited the following:

- (a) The proceeds of the sale of all Minerals accruing to the Subject Interests from and after the discharge of the Reserved Production Payment;
- (b) All amounts realized by Seagram after the Effective Date as the net proceeds of salvage of Personal Property to the extent such proceeds are attributable to the Subject Interests;
- (c) All amounts received by Seagram after the discharge of the Reserved Production Payment by way of conformance of investment (to the extent attributable to the Subject Interests) in any of the Personal Property if any of the Subject Interests are thereafter from time to time utilized;

- (d) The proceeds of all insurance that are collected by Seagram after the discharge of the Reserved Production Payment as a consequence of the loss of or damage to any of the Subject Interests or any part thereof or interest therein;
- (e) The proceeds of all judgments and claims collected by Seagram after the discharge of the Reserved Production Payment involving the Subject Interests or any part thereof or interest therein, to the extent such proceeds are attributable to the Subject Interests; and
- (f) All other monies and things of value received by Seagram after the discharge of the Reserved Production Payment by virtue of and to the extent attributable to Seagram's ownership of the Subject Interests, except that the proceeds of the sale of all or any part of or interest in any of the Subject Interests shall not be included in the net profits account should Seagram sell such Subject Interests, or a part thereof or interest therein, subject to the Net Profits Overriding Royalty.

Against the net profits account shall be charged the following:

- (a) All capital costs incurred by Seagram in connection with its owning, operating, exploring, developing, maintaining or abandoning the Subject Interests or any part thereof or any wells thereon which are incurred and paid by Seagram after the Effective Date.
- (b) All direct costs of operation of the Subject Interests (including all wells located thereon) which are incurred and paid by Seagram after the discharge of the Reserved Production Payment.
- (c) That portion of the reasonable district office expenses of Seagram incurred after the discharge of the Reserved Production Payment for any district of Seagram in which any of the Subject Interests are located which is properly allocable to the Subject Interests, such allocation to be made on the basis of the ratio of the number of producing wells in such district subject to the Net Profits Overriding Royalty which are operated by Seagram to the total number of producing wells in such district operated by Seagram, provided, however, that the charges to the net profits account for district expense shall not duplicate any charges for district expense receivable by Seagram as operator under any operating agreement or any charges properly made under any other clause hereof.
- (d) Damages or losses suffered by Seagram after discharge of the Reserved Production Payment with respect to any of the Subject Interests incurred by fire, flood, storm or by any other cause not controllable by Seagram through the exercise of reasonable diligence.

- (e) Expenses of litigation, liens, judgments, and liquidated liabilities and claims incurred and paid by Seagram after the discharge of the Reserved Production Payment involving any of the Subject Interests or incident to the development, exploration, operation or maintenance thereof.
- (f) All taxes (except income taxes) incurred and paid by Seagram after the discharge of the Reserved Production Payment with respect to the Subject Interests, including all ad valorem, property, production, severance, occupation and other taxes assessed against the Subject Interests or any part thereof.
- (g) Insurance premiums incurred and paid by Seagram after the discharge of the Reserved Production Payment for insurance carried with respect to the Subject Interests, together with all expenditures incurred, paid and borne by Seagram in settlement of any and all losses, claims, damages and judgments relating to any of the Subject Interests or the operation thereof.
- (h) All delay rentals, shut-in gas well royalties and other similar payments made by Seagram with respect to the Subject Interests after the discharge of the Reserved Production Payment.
- (i) All amounts paid by Seagram after the discharge of the Reserved Production Payment by way of conformance of investment (to the extent attributable to the Subject Interests) in any of the Personal Property if any of the Subject Interests are thereafter from time to time unitized.
- (j) All other amounts incurred and paid by Seagram after the discharge of the Reserved Production Payment which are incurred directly in connection with the ownership, operation, development, maintenance or abandonment of the Subject Interests.

Anything herein to the contrary notwithstanding, there shall not be credited to the net profits account any proceeds of salvage of Personal Property to the extent such proceeds were actually deducted pursuant to clause (iv) of Section 1.05(a) in connection with a computation thereunder, and there shall not be charged against the net profits account any of the costs or expenditures referred to in clauses (i), (ii) and (iii) of said Section to the extent such costs or expenditures were actually included in any such computation. Except as specifically provided in the immediately preceding sentence, all additional wells and all waterflood wells

(and all charges and credits with respect thereto) shall be treated as all other wells for all purposes of the net profits account.

Section 2.05. At the time of the discharge of the Reserved Production Payment, Seagram shall determine whether there exists in the net profits account a net credit balance or a net debit balance and such net credit balance or net debit balance, as the case may be, shall not be carried forward and no payments or adjustments with respect thereto shall be made except as hereinafter in this Section provided. In the event a net credit balance exists at such time, then, any other provisions hereof to the contrary notwithstanding, Prudential shall be entitled to receive all of the net proceeds (gross proceeds less direct operating expenses) of production accruing to Subject Minerals from and after the discharge of the Reserved Production Payment until Prudential shall have received therefrom a sum equal to 65% of the amount of such net credit balance. When Prudential has received such sum, such net credit balance shall be extinguished and Prudential shall thereafter be entitled to receive 50% of the net profits. In the event a net debit balance exists at such time, then, any other provisions hereof to the contrary notwithstanding, Prudential shall not be entitled to receive any net profits from and after the discharge of the Reserved Production Payment until net profits in an amount equal to the amount of such net debit balance shall have been realized. When net profits have been realized in such amount, such net debit balance shall be extinguished and Prudential shall thereafter be entitled to receive 50% of the net profits.

Section 2.06. It is understood and agreed that credit items (b), (c), (d), (e) and (f) of Section 2.04 shall be taken into account solely to determine whether net profits exist and that Prudential shall have no right, title or interest therein and that all payments made to Prudential on account

of the Net Profits Overriding Royalty shall be made entirely and exclusively out of the proceeds of the sale of Minerals accruing to the Subject Interests.

Section 2.07. On or before the expiration of forty-five (45) days after the last day of each calendar month after the discharge of the Reserved Production Payment Seagram shall furnish to Prudential a detailed statement in a form approved by Prudential clearly reflecting the condition of the net profits account as of the close of business on the last day of such month. Any deficit or loss reflected by any such statement shall be carried forward (except, in the case of a net debit balance existing at the time of the discharge of the Reserved Production Payment as provided in Section 2.05) for the next succeeding months until such deficit or loss has been wiped out and liquidated. In case a net profit in the net profits account is reflected by any such statement, payment to Prudential of 50% (or, in the case of payments pursuant to the second sentence of Section 2.05, 65%) of the amount of such net profit shall be enclosed with such statement, and the remaining portion thereof shall be credited to Seagram so as to extinguish any credit balance existing at the end of any month. In the event that it is determined that Prudential shall not be entitled to receive any net profits during any period pursuant to the fourth sentence of Section 2.05, the amount of all of the net profits realized during such period shall also be credited so as to extinguish any debit balance with respect thereto. If at the expiration of two (2) years from the rendition of a particular statement Prudential has not raised any objection to the items therein reflected or as to debits or credits upon which such items are based, such statement shall be conclusively deemed to be correct for all purposes and Seagram shall no longer be required to maintain any records in connection therewith. No change in ownership of the Net Profits Overriding Royalty shall be binding upon Seagram until it is furnished with certified or photo copies of the original recorded documents evidencing

such change. Notwithstanding any change in ownership of the Net Profits Overriding Royalty, Seagram shall never be required to make payments or to render reports required hereunder with respect to the Net Profits Overriding Royalty to more than one party. In the event the Net Profits Overriding Royalty is owned by more than one party, Seagram may withhold further payments and reports with respect to the Net Profits Overriding Royalty until all owners thereof have designated a single party to act for all of them hereunder in all respects, including, but not by way of limitation, the giving and receiving of all notices and the receipt of all payments and reports.

Section 2.08. It is recognized by the parties hereto that in addition to the other matters referred to in Exhibit A, the Subject Interests are also and will continue to be subject to the Paramount Production Payment, the Secondary Production Payment, the Tertiary Production Payment, the Quaternary Production Payment and the Texas Pacific Production Payment. For all purposes of this instrument, however, including, without limitation, the determination of net profits pursuant to this Article II and production in paying quantities pursuant to Section 3.01 hereof, the Subject Interests shall be deemed not to be subject to such production payments or any of them and all charges and credits with respect to the net profits account shall be made as if such production payments were not in existence.

### ARTICLE III

#### Covenants of Seagram

Section 3.01. Seagram covenants and agrees with Prudential as follows:

- (a) Seagram will cause the Subject Interests to be continuously operated for the production of Minerals in a good and workmanlike manner and in accordance with all applicable federal and state laws, rules and regulations



and in accordance with approved practices in the industry and in accordance with the terms and provisions of the instruments described or referred to in Exhibit A, and will not, without the prior written consent of Prudential, permit to be surrendered, abandoned or released, in whole or in part, any of the Subject Interests capable of producing Minerals in paying quantities;

(b) Seagram will cause to be paid all costs and expenses incurred after the Effective Date in developing, operating, equipping and maintaining the Subject Interests, and will cause to be maintained in a good state of repair all equipment thereon necessary to the efficient operation thereof, and will cause to be promptly replaced all worn out or obsolete equipment, and will not permit any mechanic's, materialman's, laborer's or operator's lien for unpaid bills to attach to any of the Subject Interests;

(c) Seagram will cause to be rendered and will cause to be paid prior to delinquency all ad valorem and other taxes and assessments of every kind and character whatsoever levied upon or assessed against the Subject Interests (including the Reserved Production Payment) and the equipment thereon, and Seagram agrees to indemnify and hold harmless Prudential from and against all such taxes and any liens securing the same;

(d) Seagram upon request by Prudential, but not more often than once during any twelve (12) month period, will obtain from an independent petroleum engineer, selected and designated by Seagram and approved by Prudential, an evaluation of the reserves underlying or attributable to the Subject Interests and a projection of the income and expenses incident to the production of such reserves in such detail as may be requested by Prudential, and will promptly forward such report to Prudential;

(e) Seagram will keep, in addition to the net profits account, true and correct books and records showing the amount of production from the Subject Interests and will report to Prudential each month in a form satisfactory to Prudential the amount of production from each Subject Interest during the preceding calendar month and, until the discharge of the Reserved Production Payment, the amount thereof applicable to the Reserved Production Payment;

(f) Seagram shall comply with and perform for the benefit of Prudential all express and implied covenants of each lease described in Exhibit A insofar as Seagram has the right and power to do so;

(g) Seagram will permit the accredited agents and nominees of Prudential, at their own risk, at all times to go upon, inspect and remain on the Subject Interests, and during all reasonable hours to examine, audit and make excerpts from any and all books and records of Seagram pertaining to the Subject Interests; and



(h) After the liquidation of the Reserved Production Payment, Seagram shall make no single expenditure in excess of Five Thousand Dollars (\$5,000.00) in connection with any producing well located upon any of the Subject Interests without the prior written consent of Prudential.

Provided, however, that Seagram shall have the right, without obtaining the consent of Prudential, to surrender, abandon or release any Subject Interest (or any portion thereof) when there is no well located on such Subject Interest (or such portion thereof) which is capable of producing Minerals in paying quantities and when Seagram has reasonably determined that (i) no existing well may be recompleted, and no additional well may be completed, thereon which would be capable of producing Minerals in paying quantities and (ii) no pressure maintenance or secondary recovery operations may be instituted with respect to any well located on such Subject Interest (or such portion thereof) which would result in the production from such well of Minerals in paying quantities; and further provided that Seagram shall promptly notify Prudential in writing of any such surrender, abandonment or release.

For all purposes of this Section an existing well located on any Subject Interest shall be deemed to be capable of producing Minerals "in paying quantities" unless a condition not of a temporary nature shall exist whereby the aggregate value of the Minerals produced from such well and accruing to such Subject Interest (including the Existing Production Payments, as herein-after defined) is less than the direct costs of operating such well and preparing the production thereof for marketing allocable to such Subject Interest. For all purposes of this Section, a well on any Subject Interest which may result from additional drilling or which may be the subject of recompletion, pressure maintenance or secondary recovery operations shall be deemed to be capable of producing Minerals "in paying quantities" if, in the light of conditions existing at the time of the determination and which are not of a temporary nature, it is estimated that the aggregate value of the Minerals to be produced from such well and accruing to such Subject Interest (including the Existing

Production Payments) shall exceed the then estimated direct costs of operating such well and preparing the production thereof for marketing, as well as the direct costs of providing the necessary installations for, and carrying out, any pressure maintenance or secondary recovery operations properly allocable to such well and the direct costs of recompleting such existing well or drilling, completing and equipping such additional well, in each case to the extent such direct costs are allocable to such Subject Interest,

Notwithstanding any covenant of Seagram to the contrary, Seagram, with respect to those Subject Interests which are operated by operators other than Seagram, shall not be obligated to perform undertakings performable only by such operators and which are beyond the control of Seagram; provided, however, that Seagram will promptly take all such action legally available to it to enforce or secure the performance of any such undertakings required to be performed by such operators,

Section 3.02. Should Seagram, prior to the discharge of the Reserved Production Payment, willfully fail in any respect promptly to perform and observe any of the covenants, conditions, promises or undertakings herein provided to be performed and observed by Seagram, and such failure continue for sixty (60) days after demand for performance in writing by Prudential, or in the event there is appointed a receiver or trustee for the Subject Interests or for any substantial part of Seagram's properties, or in the event Seagram is adjudged bankrupt, or any proceedings are commenced by Seagram under any bankruptcy, receivership, reorganization arrangement, readjustment of debt, insolvency or liquidation law or statute of the federal or any state government, or if any such proceedings shall be commenced against Seagram and Seagram by any act shall indicate its consent to, approval or acquiescence to any such proceedings or such proceedings shall remain undischarged for thirty (30) days, or in the event Seagram makes

an assignment for the benefit of its creditors, then, upon the occurrence of any such event, Prudential shall thereupon and thereafter have the continuing and absolute right, privilege and option (but shall be under no duty), until the Reserved Production Payment has been fully discharged, to succeed to and exercise all of the rights of Seagram (as the owner of the Paramount Production Payment) under and with respect to the Paramount Production Payment, including, without limitation, the rights granted to the holder and owner of the Paramount Production Payment under Paragraph 2 of Heading II of the Original Conveyance and, in connection therewith, to apply all of the proceeds accruing to the interest of Seagram in Subject Interests to the Reserved Production Payment. All rights to which Prudential shall have succeeded under the provisions of this Section shall terminate either (1) when the Reserved Production Payment shall have been fully discharged, or (2) at such earlier date when all defaults of Seagram shall have been remedied, without prejudice, however, to the exercise of any such rights upon any subsequent failure of Seagram, prior to the discharge of the Reserved Production Payment, to perform and observe any of such covenants, obligations, promises or undertakings. Neither the aforesaid rights nor the exercise thereof shall relieve Seagram of any of its obligations herein or heretofore undertaken, nor relieve Seagram of liability in damages or by way of specific performance for breach of any obligation of Seagram undertaken herein which arise after the discharge of the Reserved Production Payment.

Section 3.03. Seagram agrees that, until the discharge of the Reserved Production Payment, Prudential shall have, and there are hereby reserved to Prudential until such discharge, the rights vested in the holder of the Paramount Production Payment to exercise the elections and rights and to give the notices referred to in Paragraph 3 of Heading II of the Original Conveyance.

Section 3.04. As part of the consideration for the conveyance of the Paramount Production Payment, and for the benefit of Prudential as holder of the Reserved Production Payment and the Net Profits Overriding Royalty, Seagram hereby covenants and agrees to make additional capital expenditures upon the lands described in Exhibit A by additional drilling and development of Minerals to the extent of not less than One Million Dollars (\$1,000,000.00) during the period commencing with the Effective Date and ending upon expiration of four (4) years from the Effective Date, in a good faith effort to develop additional reserves of Minerals upon said lands.

#### ARTICLE IV

##### Miscellaneous

Section 4.01. Seagram shall have the right to exercise each and every right conferred upon the lessee and/or the operator by each of the leases described in Exhibit A, as well as by any other existing contract or instrument affecting the same, without the joinder of Prudential. In addition, Seagram shall have, as an irrevocable power coupled with an interest, the full and exclusive right, power and authority (but without imposing hereby any duty to exercise such power) at any time and from time to time to commit any of the Subject Interests, including Prudential's interests therein, or any part of or interest in any of the Subject Interests, to any communitization, pooling, unitization or unit plan of operation or development which Seagram in its absolute discretion shall choose to approve. The interest in any unit accruing or attributable to any of the Subject Interests (or any portion thereof) included therein shall become a part of the Subject Interests in the same manner and with the same effect as though such unit and such interest were specifically described in Exhibit A.

Section 4.02. If at any time, either before or after the receipt by Prudential of the full amount of the Reserved Production Payment, Prudential shall be compelled, for any reason whatsoever, to refund or to make restitution of any proceeds of the Subject Minerals theretofore received by Prudential, then there shall be restored to the Reserved Production Payment, and it shall not be liquidated and discharged until Prudential receives, an amount equal to all such refunds and restitutions of such proceeds, together with all amounts which Prudential shall be compelled to pay as interest, damages and penalties. In the event that it is determined at any time or from time to time, pursuant to a duly entered order or orders of the Federal Power Commission, that any Refundable Proceeds (as hereinafter defined) must be refunded to pipeline purchasers of natural gas, Prudential agrees to pay the amount thereof, together with (notwithstanding, in the case of Refundable Proceeds attributable to the Paramount Production Payment, the provisions of Paragraph 3 of Heading I of the Original Conveyance) all interest, damages and penalties payable in connection therewith, either directly to the pipeline purchaser or purchasers or, upon written demand by the party, including Seagram, required to make such refund, to such party. Prudential agrees and confirms that any increases in the principal sum of the Paramount Production Payment after the Effective Date of this instrument pursuant to Paragraph 3 of Heading I of the Original Conveyance and all rights with respect thereto shall be for the benefit of Seagram and are intended to be assigned to and vested in Seagram pursuant to Article I hereof. The term "Refundable Proceeds" as used herein shall mean all proceeds from the sale of natural gas produced either prior to or after the Effective Date which have accrued or may hereafter accrue to the Paramount Production Payment or to the Reserved Production Payment and which have heretofore been or may

hereafter be paid to Prudential as the prior owner of the Paramount Production Payment or as the owner of the Reserved Production Payment. Prudential agrees to hold Seagram harmless from and against any claims for Refundable Proceeds, including any claims for interest, damages or penalties payable in connection therewith.

Section 4.03. Prudential shall look solely to the Subject Minerals for the discharge of the Reserved Production Payment, and Seagram shall never be personally liable for such discharge thereof; provided, however, that nothing in this Section or in Section 3.02 shall relieve Seagram of its liability to respond in damages for any breach of any of the covenants, agreements and undertakings herein made by Seagram. If any manufacturing, processing or refining operation is conducted by or for the benefit of Seagram with respect to any Minerals which accrue either to the Reserved Production Payment or the Net Profits Overriding Royalty, only that portion of the proceeds received from the sale thereof which represents the fair market value at the well-head of such Minerals shall be applied upon the Reserved Production Payment or the Net Profits Overriding Royalty.

Section 4.04. When the full amount of the Reserved Production Payment as specified in Section 1.04 has been received by Prudential, then, subject to the provisions of Section 4.02 hereof, the Reserved Production Payment shall be fully discharged and in that event Prudential agrees, upon request, to execute and deliver all necessary and proper acquittances.

Section 4.05. So long as and to the extent that the same may be required by applicable laws or regulations, in the case of any lease from the United States of America included in the Subject Interests, from which lease the average production of oil per well per day averaged on the monthly basis is 15 barrels or less, the right of Prudential to receive, and the obligation of Seagram to pay to Prudential, the proceeds of oil produced from such lease (whether attributable to the Reserved Production Payment or the Net Profits Overriding Royalty) shall be suspended until said average production of oil per well per day exceeds said minimum amount and such suspension shall apply separately to any zone or portion of such lease segregated for computing government royalty.

Section 4.06. There shall be included in the Subject Interests any extensions, renewals or substitutions of any of the leases or interests therein specifically described in Exhibit A and the same shall be subject to all of the terms and provisions hereof in the same manner and to the same extent as if such extensions, renewals or substitutions had been specifically described in Exhibit A. It is expressly understood and agreed, however, that the term "Subject Interests" shall not include any interests (or any extensions, renewals or substitutions thereof) in the leases described in Exhibit A other than the specific interests described therein, it being the intention hereof that any additional interests in said leases heretofore or hereafter acquired by Seagram are not intended to be and shall not be subject in any way to this instrument.

Section 4.07. Prudential and Seagram will execute and deliver all such other and additional instruments, notices, releases, acquittances and other documents, and will do all such other acts and things, as may be necessary more fully to assure to each other party or its successors or

assigns all of the respective estates, rights and interests herein and hereby granted or retained and reserved or intended so to be.

Section 4.08. Any notices, requests, demands, reports or other instruments at any time required or permitted to be given or furnished to or served upon either party hereto or any successor to all or any part of the interests of either party hereto shall be deemed sufficiently given or furnished or served if in writing and delivered to such party or to any officer thereof or deposited in the United States mail in a sealed envelope, registered or certified, with sufficient postage prepaid, addressed to such party at its address stated in this instrument or to such other address as the party to be addressed shall have designated by written notice to the party giving such notice or furnishing such report or making such request or demand.

Section 4.09. Subject to the provisions of Section 3.01, Seagram agrees that it will not sell, transfer, convey or assign the Subject Interests or any part or portion thereof unless the instrument evidencing such sale, transfer, conveyance or assignment contains an express provision by which the grantee, assignee or other transferee assumes and agrees to be bound by all of the obligations of Seagram under the terms of this instrument. No sale, transfer, conveyance or assignment by Seagram of the whole or any part of its interest in the Subject Interests shall relieve it of any of its obligations hereunder, however, except as specifically consented to in writing by Prudential.

Section 4.10. Seagram agrees that it will not sell, transfer, assign or release the Paramount Production Payment without the prior written consent of Prudential and that it will own and hold the Paramount Production Payment as a separate interest, separate and apart from its other interests in the Subject Interests, and keep accurate books and



records reflecting the status of the Paramount Production Payment. It is the intent of the parties hereto that nothing herein contained shall result in the merger of the Paramount Production Payment with Seagram's other interests in the Subject Interests.

Section 4.11. Prudential covenants and warrants as follows: that it has the legal right and authority to grant, bargain, sell, convey, assign, transfer, set over and deliver the Paramount Production Payment and all its rights, titles, interests, estates, remedies, powers and privileges appurtenant or incident thereto; that as of April 1, 1966, \$6,374,744.08 of the Primary Sum of the Paramount Production Payment was outstanding and undischarged; that subsequent to April 1, 1966, and prior to August 27, 1966, Prudential has received proceeds accruing to the Paramount Production Payment in the amount of \$131,871.91 attributable to production prior to April 1, 1966, and proceeds in the amount of \$256,249.74 attributable to production subsequent to April 1, 1966; and that Prudential has received no other amounts since April 1, 1966 and prior to August 27, 1966, on account of the Paramount Production Payment. Subject to the provisions of Article I hereof and to the reservations therein contained, Prudential hereby binds itself and its successors and assigns to warrant and forever defend the Paramount Production Payment and all rights, titles, interests, estates, remedies, powers and privileges appurtenant or incident thereto unto Seagram, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Prudential, but not otherwise, subject to the provisions hereof.

Section 4.12. Seagram covenants and warrants as follows: that it is the owner of the Subject Interests, subject only to (i) the overriding royalties, production payments or other burdens which are set out fully and precisely in the description of the Subject Interests in Exhibit A, (ii) division orders, transfer orders, contracts for sale of production and operating agreements entered into by Seagram or its predecessors in the normal course of business, and (iii) the Paramount Production Payment, the Secondary Production Payment,

the Tertiary Production Payment, the Quaternary Production Payment, and the Texas Pacific Production Payment (herein collectively referred to as the "Existing Production Payments"); that the oil, gas and mineral leases and the mineral, royalty and overriding royalty interests described in Exhibit A are valid and subsisting and in full force and effect and are free and clear of all liens and encumbrances of every kind except those hereinabove described or created hereby; that all rentals and royalties due and payable with respect to such oil, gas and mineral leases have been paid; that Seagram is the owner of all personal property and equipment located upon the lands described in Exhibit A or used or useful in connection with operations conducted thereon which is attributable to Subject Interests; that Seagram is entitled to receive, after deducting all royalties and overriding royalties payable out of production from the properties described in Exhibit A, but inclusive of all Minerals accruing to the Existing Production Payments, not less than the decimal share of the gross oil, gas and other hydrocarbons produced from the respective tracts of land described in Exhibit A, as limited by its preamble, or allocated thereto if unitized, that are set forth in Exhibit A under the description of the respective properties described in Exhibit A; that Seagram has good right and authority to convey to Prudential the Net Profits Overriding Royalty; and that Seagram will forever warrant and defend the Net Profits Overriding Royalty unto Prudential, its successors and assigns, against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof.

Section 4.13. All the covenants and agreements of Prudential and Seagram herein contained shall be deemed to be covenants running with the land. All the provisions hereof shall inure to the benefit of and be binding upon the respective successors and assigns of Prudential and Seagram, and all references herein to Prudential or Seagram shall include their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date in the acknowledgments annexed hereto, in several counterparts (one of which with all the property descriptions included in Exhibit A is on file at the office of Joseph E. Seagram & Sons, Inc., one of which with all of said property descriptions is on file at the office of The Prudential Insurance Company of America, one of which with all of said property descriptions is to be recorded in Lea County, New Mexico, and one of which with all of said property descriptions is to be recorded in Cochran County, Texas), each of which counterparts is an original and all of which are identical, except that, to facilitate recordation or filing in counties other than those specifically aforementioned, there are omitted from certain counterparts those property descriptions in Exhibit A which contain specific descriptions of property located in recording or filing jurisdictions other than the jurisdiction in which the particular counterpart is to be recorded. Each of the counterparts hereof so executed shall for all purposes be deemed to be an original, and all of such counterparts shall together constitute but one and the same instrument.

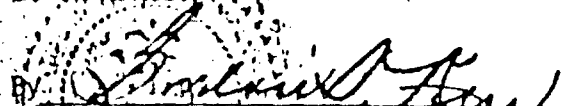
Attest:

  
Assistant Secretary  
A. F. Fitch


The address of THE PRUDENTIAL INSURANCE COMPANY is:

Prudential Plaza  
Newark, New Jersey

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA

By   
Vice President  
Gordon S. Kerr

JOSEPH E. SEAGRAM & SONS, INC.

By   
Attorney in Fact

The address of JOSEPH E. SEAGRAM & SONS, INC. is:

Box 747  
Dallas, Texas