

liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, arising out of, or in connection with Grantee's drilling and producing operations for the well, including claims and damages arising in part from the negligence of Grantor (and Grantor's officers, agents, representatives, and employees). Grantee further agrees to defend, at its own expense, and on behalf of Grantor and Grantor's officers, agents, representatives and employees and in the name of Grantor and Grantor's officers, agents, representatives and employees, any claim or litigation brought in connection with any such injury, death or damage. It is the express intent of the parties to this Agreement that the indemnity provided for in this paragraph is an indemnity extended by Grantee to indemnify and protect Grantor and Grantor's officers, agents, representatives and employees from the consequences of Grantor's and Grantor's officers, agents, representatives and employees own negligence, provided, however, that the indemnity provided for in this paragraph shall apply only when the negligent act of Grantor (and Grantor's officers, agents, representatives and employees) is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of Grantor (and Grantor's officers, agents, representatives and employees) is the sole cause of the resultant injury, death, or damage.

15. It is further expressly agreed that if Grantor be compelled to pay any expenses, including reasonable attorney's fees, necessarily incurred in instituting, prosecuting or defending any action or proceeding instituted to compel performance of, or to recover breach of any covenant, provision, or condition herein contained, or for declaratory relief hereunder, the sum or sums so paid by Grantor, with all interest, costs, and damages shall be paid by Grantee to Grantor.

16. This instrument contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it and shall be binding on Grantor, Grantee and their respective heirs, successors and assigns. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent writing, signed by the party to be charged.

17. Grantee may take caliche from the ridge adjoining the original location of this well for its operations hereunder; provided, however, in mining the caliche Grantee shall do so in such a manner