Scope

This presentation addresses the negotiation and drafting of documents for asset sales of blocks of oil and gas properties in the context of shale development in Ohio. It assumes that a buyer is interested in acquiring substantial acreage for horizontal drilling in deep formations (e.g. Utica/Point Pleasant) from an industry participant.

Scope (continued)

The presentation focuses on issues unique to the oil and gas arena and does not attempt to address issues typical of any asset sale, such as:

- Negotiating warranties and limitations as to knowledge and defining knowledge
- General terms of indemnification
- Payment escrow or holdback
Scope (continued)

Although the presentation touches on some tax issues, it is not intended to provide comprehensive coverage of relevant tax topics. The presentation is not intended to analyze the broad range of title “defects” that may be at issue. The samples of language provided in the exhibits are not intended as forms or recommendations of what should be used. They are examples of what has been used in certain cases.

No Standardized Form of Agreement

Unlike some of the other types of agreements being discussed by the panel for which this material was prepared, there is no industry standard form of agreement or starting place for Purchase and Sale Agreements (“PSAs”).

Practices vary by region/basin.

The Parties

- Seller(s)
  - May be conventional Ohio oil and gas producers that have substantial acreage under lease but do not have the resources to develop deep formations
  - May be “shale” companies that want or need to lay off acreage for cash needs or to diversify
    - Multiple “shale” companies seeking to develop properties jointly is outside the scope of this presentation
  - Special circumstances in bankruptcy
Osbornes hope sale of shale leases eases woes
3 of duo’s oil and gas companies are bankrupt
By DAN SHINGLER
4:30 am, July 9, 2012
The shale gas business taketh away, and the shale gas business giveth back.
That, at least, is the hope of Richard and Gregory Osborne, the father-son duo from Mentor with companies in various industries, including a handful in the business of conventional oil and gas drilling. The two are counting on the sale of oil and gas leases in Pennsylvania to help solve the bankruptcy woes for three of their oil and gas companies.

The Parties (continued)

• More than one seller may be involved if producers have jointly developed large acreage in shallow formations
  – If there is one operator but there are multiple passive owners, the passive owners will not want to give warranties that may be expected of the operator
  – If two operators have effectively joint ventured with active participation, they may be willing to be jointly and severally obligated

The Parties (continued)

• Buyer
  – Generally the buyer will be a large operator with the financial resources and the industry expertise to develop the deep formations
  – The buyer may intend to bring in other industry participants to joint venture in the development, but those other parties may not be direct buyers from the seller(s)
The Properties

• Identification by area
  – The properties to be conveyed are likely to be Seller(s)’ interests as lessee under oil and gas leases
  – The surface area involved may be identified by broad outline for purposes of striking the basic deal (see Exhibit A)
  – The specific leases should be identified by a schedule, but there may be an obligation to convey all properties within the specified area

The Properties (continued)

• Identification by depth or formation
  – Where a conventional (shallow) producer is selling leases to a “shale” company, the properties conveyed may be defined by depth to sell only the “deep” rights
  – There are various ways to define the “deep” rights with Buyers favoring broad descriptions
    • Below the Utica/Point Pleasant (See Exhibit B)
    • Including the Utica/Point Pleasant (See Exhibit C)

The Properties (continued)

• Sellers may have the right to obtain new leases between signing and closing (or even after closing) and propose to include them in the sale (See Exhibit D)
  – The Buyer’s per acre payment to the Seller(s) may vary by location
In addition, assets conveyed generally include:
- Surface leases, permits, rights-of-way, easements and other surface rights agreements to the extent useful with the sold leasehold interests
- Contracts and permits relating to the subject assets
- All geologic and geophysical maps, lease files, title files, and other records regarding the leases conveyed
  - Note that some data may have license or confidentiality issues. Seller should convey what, and only what, it can lawfully convey. Buyer may need to go to, e.g. seismic company, and pay for the right, at its own expense, to use the data.

How should gathering systems be handled?
- Where Seller retains shallow production, gathering systems would not be conveyed
- Buyer may want a partial assignment of rights-of-way so that it can lay its own side-by-side gathering system without needing to acquire new rights-of-way

Purchase price is generally a set dollar amount per “Approved Net Leasehold Acre” (See Exhibit E)
- Subject to adjustment based on due diligence (see Title Issues, below)
- Generally no specific consideration for other included assets (equipment, records, surface rights, etc.)
Retained Interests

- Fundamental to the transaction is whether the Seller(s) will retain any interests in the properties and, if so, what kind of interest
- Items that may be reserved include:
  - All interests in shallow formations or specified depths
  - Existing production
  - Right to develop new wells
  - Existing overriding royalty interests ("ORRI")
  - Newly reserved ORRI (created in the transaction)
  - Working interests
  - Rights to Participate
  - Certain acreage
  - Other leases or portions of leases
  - Other mineral rights

Retained Shallow Rights

- If the Buyer is focused on deep shale, it may allow the Seller to retain all rights in the shallower formations
  - This is not a "reservation" of an interest in what is conveyed, but an exclusion from what is conveyed
  - The shallow rights will generally allow the Seller(s) not only to continue production from existing wells but to develop new shallow wells

Retained Shallow Rights (continued)

- If the Seller(s) are allowed new development of shallow formations, the parties may want to provide for how they will avoid interference with each other’s operations, which is largely a surface issue
Retained ORRI

• The Buyer may allow the Seller(s) to retain whatever ORRI Seller(s) have in the subject properties, deep and shallow
  – The Buyer will generally impose a maximum on the permitted burdens on production, including the retained interests of Seller(s) (See Exhibit E)

New ORRI

• The Buyer may permit the Seller(s) to carve out new ORRIs, subject to the cap on total royalties (See Exhibit F)
  – The IRS position is that a sale in which an ORRI is carved out to Seller(s) is not a sale but is a sublease. Therefore basis does not offset proceeds, and all proceeds are ordinary income.
  • See e.g., Crooks v. Comm., 92 T.C. 816 (1989); Hogan v. Comm., 141 F.2d 92 (5th Cir. 1944).

Retained Working Interests

• The Seller(s) may want to have working interests if the reason for the sale is that Seller(s) cannot develop on their own but are interested in participating
  – If Seller(s) will have a working interest, the joint operating agreement ("JOA") should be agreed to before sale closes (See Exhibit G)
  – See the materials from this panel on the subject of JOAs
Rights To Participate

- The Seller(s) may retain an election of whether to have working interest in certain wells as developed
  - Can the RTP be exercised for some but not all properties?
    - If so, what are the bundles in which it can be exercised? By groups of wells? By identified producing unit? If Seller declines to participate in the first well on a drilling unit, does the Seller forfeit RTP on subsequent wells on the unit?
  - What is provided to Seller(s) to allow decision to exercise? How long does seller have to make a participation decision?

Rights To Participate (continued)

- Can the RTP be assigned?
  - Can it be assigned at all?
  - Can it only be assigned to affiliates?
  - Can the RTP be “sliced and diced” among different parties?
- If the RTP can be assigned, tax treatment to the assignee will affect the process
  - If the assignee wants IDC deduction, the timing and form of assignment are important

Title Issues

- The PSA should establish reasonably clear title standards to be met
- Contracts vary significantly in their specificity (See Exhibit H)
Title Issues (continued)

- The PSA should provide for a pre-closing due diligence process (See Exhibit I)
  - Provide access
    - Seller(s) may want to disclaim any general representation of accuracy of materials provided (See Exhibit J)
    - Buyer should require warranties on specific items
    - Confidentiality issues are critical
  - Specify a cut-off date

Title Issues (continued)

- Provide notice and cure/remedy provisions (See Exhibit K)
  - The Buyer generally should give notices as early as practical on a rolling basis so that Seller has a better chance of curing
  - The sole pre-closing remedy that is completely in discretion of Buyer is usually to exclude properties unless a high specified threshold is exceeded (See Exhibit L)
  - Buyer and Seller may also negotiate an agreed upon price adjustment less than the full per acre price
  - Buyer and Seller may agree that Seller will indemnify Buyer for specified defects

Title Issues (continued)

- Title/lease issues include
  - Does each lease contain “Acceptable Pooling Provisions”? (See Exhibit M)
    - Some old leases do not have pooling or limit it to smaller units than horizontal drilling requires
    - Some Buyers are now looking for even greater than 640 acre pooling right
    - Buyer may insist that Seller negotiate with landowners to get Acceptable Pooling Provisions
Title Issues (continued)

- Title/lease issues include
  - Does each lease have an acceptable remaining primary term or right to extend?
  - Where acreage is held by production (“HBP”) does the production securely hold the entire lease (or is there a “Pugh clause”)?
  - Is the standard for production to hold a lease clear, and is it clearly met?

Title Issues (continued)

- If HBP acreage is significant, the Buyer may want to negotiate ways to protect its interests by requiring Seller to
  - Provide copies of monthly production reports
  - Notify Buyer of any proposed shut-in
  - Give Buyer a right of first refusal to acquire a well (so that Buyer can rework it to maintain HBP status)

Warranties

- Seller(s) may resist any warranty as to title, insisting that Buyer rely on its own due diligence and the notice and cure provisions
- If any warranty is given to cover properties that are accepted without any price adjustment, it may be limited to a special warranty tied to percentages (See Exhibit N)
EXHIBITS

Exhibit A

• Basic identification of the properties involved; example refers to scheduled descriptions

WHEREAS Seller owns oil and gas leases covering the net mineral acres of land located in ___ County, Ohio more particularly described in Appendix 1 hereto (being not less than ____ net mineral acres) (the “Leases” and the lands covered by the Leases shall be referred to as the “Subject Acreage”); and as depicted on Appendix 3 referred to herein as the “Purchase Area.”

Exhibit B

• “Deep Rights” means below the Utica/Point Pleasant

WHEREAS, the Parties desire to enter into this Agreement to evidence the terms and conditions upon which Seller will sell and Buyer will purchase the following:

___% of 8/8ths of the working interest … in and to the Leases with respect to any and all of the horizons from the surface to 150 feet below the top of the Trenton formation, which includes the Utica Shale formation (the “Shallow Rights”), with the top of the Trenton formation being accurately described as 6,020’ KB (as depicted in the ___ well as depicted on the Litho Density, Compensated Neutron, Gamma Ray open hole well log dated ____________, as well as those certain other open hole well logs described in Appendix ___ hereto that further define the top of the Trenton formation);

___% of 8/8ths of the working interest … in and to the Leases inssofar as the Leases cover and affect any and all of the horizons below the Shallow Rights (the “Deep Rights”), with the Deep Rights being accurately described as 150 feet below the top of the Trenton formation to the center of the earth;
Exhibit C

• The Utica is considered deep and is conveyed; shallower formations retained

WHEREAS, the Parties desire to enter into this Agreement to evidence the terms and conditions upon which: Seller will sell and buyer will purchase all of the interests of Seller in the Leases (as hereinafter defined) (a) in all depths and rock formations between five hundred feet (500') above the Top of the Tully Formation and the Base of the Lockport Formation, and (b) all depths and rock formations below 100 feet below the Top of the Queenston Formation (collectively, the depths and rock formations to be assigned are referred to as the “Subject Horizons,” and for the sake of clarity, and not limitation, it is intended that the Subject Horizons shall include, among other formations, both the Utica/Point Pleasant shale formation and the Marcellus shale formation). The Seller shall retain the following depths (collectively, the “Excluded Depths”): (a) all depths and formations from the surface down to five hundred feet (500') above the Top of the Tully Formation, and (b) all depths between the Base of the Lockport Formation and 100 feet below the Top of the Queenston Formation. For purposes herein, the following terms shall have the following meanings attributed to them: ...
Chapter IV. PURCHASE PRICE

Section 4.01 Purchase Price. The monetary consideration for the sale and transfer of the Leases shall be __ Thousand __ Hundred US dollars ($__X__) per Approved Net Leasehold Acre (the “Purchase Price”). In addition to the monetary consideration payable hereunder, Seller shall reserve the overriding royalties unto itself referred to in Section 2.02. If Seller is unable to deliver an eighty-one percent (81%) Net Revenue Interest in each Lease, in and to any portion of the Subject Horizons in and under a Lease, Buyer, in addition to the remedies described in Article III (which may include excluding the affected Assets from this transaction) shall also have the option to reduce the Purchase Price per Net Leasehold Acre payable for such lease in the proportion that the Net Revenue Interest delivered by Seller bears to an eighty-one percent (81%) net revenue interest in lieu of excluding the Net Leasehold Acres subject to burdens in excess of 19% in determining the Approved Net Leasehold Acres attributable to such Lease. Likewise, the Purchase Price shall be reduced by $___X__ for each Net Leasehold Acre attributed to the Excluded Leases and the Excluded Leases shall remain the property of the Seller.

Exhibit F: Carve out of new ORRI

... Seller shall reserve from its conveyance of Leases to Buyer at Closing an overriding royalty interest in each Lease delivered to Buyer at Closing ... equal to the amount, if positive, by which 19% of 8/8ths of all production from the Subject Horizons in and under each Lease exceeds any and all lease royalties, overriding royalties, net profits interests, production payments and any other burdens covering or affecting such Lease or the Oil and Gas allocable thereto, ...
Exhibit H

Description of good and defensible title

Short version--Good and Defensible Title means, for each Lease, such record title that entitles Buyer to receive throughout the life of any Lease (i) 100% of 8/8ths of the working interest in the Shallow Rights, (ii) 50% of 8/8ths of the working interest in the Deep Rights, (iii) a net revenue interest not less than 81% in the Shallow Rights, (iv) a net revenue interest not less than 40.5% in the Deep Rights, and (v) is free and clear of all Encumbrances covering or affecting the Subject Rights.

Longer version--Good and Defensible Title means, for each Lease, such valid, legal, beneficial and record title that: (i) entitles Seller to receive throughout the life of any Lease described in Appendix 1 an actual net revenue interest in, to and from Oil and Gas in and under the Subject Horizons covered by such Lease, or allocable to the Lease, not less than 81% of 8/8ths (as to all depths), (ii) obligates Seller, throughout the life of any Lease(s), to bear an actual Working Interest not greater than the Working Interest (unless such greater Working Interest also corresponds to a proportionate increase in the applicable Net Revenue Interest) set forth on Appendix 1 for such Lease, or other Asset (and unless expressly stated otherwise on Appendix 1, as to all depths of the Subject Horizons except as stated in the Leases); (iii) entitles Seller to not less than the respective Net Leasehold Acres described for such Lease, described in Appendix 1, and not less than the aggregate Net Leasehold Acres attributable to Seller’s interest in all Assets; (iv) with regard to any Lease, has a remaining primary term that will not terminate sooner than two (2) years after the Effective Time specifically excluding Leases identified in Appendix 1, (v) is free and clear of all Encumbrances covering or affecting the Subject Horizons, except Permitted Encumbrances; (vi) is not subject to and will not subject Buyer to any area of mutual interest, preferential purchase or other preference right, option or similar right; (vii) contains Acceptable Pooling Provisions, and (viii) other than as set forth in the Leases, is free and clear of any other adverse terms, claim, burden, restriction, requirement or imperfection, which if asserted would cause a material impairment of the use and enjoyment of loss of interest in such Lease, Unit or other Assets which would not be acceptable to reasonable and prudent lessees, operators, interest owners or purchasers of oil and gas properties.

Exhibit H (Continued)

Longer version, continued

Access; Notice of title and Environmental Defects; Cure Period

Section 3.01 Access. Seller shall afford to Buyer and its Representatives reasonable access, at Buyer’s sole cost, risk and expense, from the Execution Date until 5:00 p.m. in ________, Ohio on the day that is 45 days from the Execution Date (the “Review Deadline”) during normal business hours to Seller’s geologic and geophysical maps and data, lease files, contract, land, title, well, regulatory, corporate and legal files, records, materials, data and information regarding the Subject Interests including copies of the Leases and all title documentation, assignments, title opinions, abstracts of title, run-sheets, maps and other title information and environmental reports or assessments in Seller’s possession with respect to the Subject Acreage and the Leases (collectively, “Data”). The Data is located in the offices of Seller. Seller shall afford to Buyer and its Representatives reasonable access, at Buyer’s sole cost, risk and expense, from the Execution Date until the Review Deadline to the Subject Acreage to conduct environmental due diligence, including Phase II assessments.

Exhibit I

Due diligence procedures

Access; Notice of Title and Environmental Defects; Cure Period

Section 3.01 Access. Seller shall afford to Buyer and its Representatives reasonable access, at Buyer’s sole cost, risk and expense, from the Execution Date until 5:00 p.m. in ________, Ohio on the day that is 45 days from the Execution Date (the “Review Deadline”) during normal business hours to Seller’s geologic and geophysical maps and data, lease files, contract, land, title, well, regulatory, corporate and legal files, records, materials, data and information regarding the Subject Interests including copies of the Leases and all title documentation, assignments, title opinions, abstracts of title, run-sheets, maps and other title information and environmental reports or assessments in Seller’s possession with respect to the Subject Acreage and the Leases (collectively, “Data”). The Data is located in the offices of Seller. Seller shall afford to Buyer and its Representatives reasonable access, at Buyer’s sole cost, risk and expense, from the Execution Date until the Review Deadline to the Subject Acreage to conduct environmental due diligence, including Phase II assessments.
Exhibit I (continued)

Section 3.02 Costs of Title and Environmental Due Diligence. The costs of title run sheets, title reports, title opinions and environmental assessments prepared for Buyer will be the sole responsibility of Buyer.

Section 3.03 Determination of Approved Net Leasehold Acres. On or before five Business Days after the Review Deadline, Buyer must determine the number of Net Leasehold Acres attributable to each of the Leases that are acceptable to Buyer (the “Approved Net Leasehold Acres”). In its determination of the Approved Net Leasehold Acres attributable to a Lease, Buyer will use the formula set forth in the definition of Net Leasehold Acres above; provided, however, that Buyer may exclude from such determination Leases (collectively referred to herein as the “Excluded Leases”):

(i) lacking Acceptable Pooling Provisions;
(ii) having terms, conditions or provisions that include express drilling obligations;
(iii) the title to which is not of record;
(iv) that Buyer determines, in the exercise of its reasonable discretion, to be subject to a Title Defect; and
(v) that Buyer determines, in the exercise of its reasonable discretion, to be subject to an Environmental Defect; and
(vi) lacking the ability to extend the primary term by an additional five years for a per acre cost of $1,000 or less.

Exhibit J

• Disclaimer of warranty

BUYER RECOGNIZES AND AGREES EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THAT ALL MATERIALS MADE AVAILABLE TO IT IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY, WHETHER MADE AVAILABLE PURSUANT TO THIS SECTION OR OTHERWISE, ARE MADE AVAILABLE TO IT AS AN ACCOMMODATION, AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE ACCURACY AND COMPLETENESS OF SUCH MATERIALS. NO WARRANTY OF ANY KIND IS MADE BY SELLER AS TO THE INFORMATION SUPPLIED TO BUYER OR WITH RESPECT TO PROPERTIES TO WHICH THE INFORMATION RELATES, AND BUYER EXPRESSLY AGREES THAT ANY CONCLUSIONS DRAWN THEREFROM SHALL BE THE RESULT OF ITS OWN INDEPENDENT REVIEW AND JUDGMENT.
Exhibit K

• Process for notices of defects

Section 3.04 Notice of Title and Environmental Defects and Cure Period. On or before five Business Days after expiration of the Review Deadline, Buyer may send Seller one or more notices identifying Title Defects and/or Environmental Defects that will be taken into account in determining the Approved Net Leasehold Acres, any Excluded Leases and the reasons for such exclusion (each, a ‘Defect Notice’). Subject to the conditions to closing hereunder, the Parties shall consummate the transactions contemplated hereby at the Initial Closing as set forth in Article XI with respect to all Approved Net Leasehold Acres, and Seller shall have 60 days after each Defect Notice to attempt to cure the Title Defect(s) and/or Environmental Defect(s) referred to in such Defect Notice and to attempt to remediate or remove any facts or circumstances that caused one or more Leases to be Excluded Leases (the ‘Cure Period’). On or before the expiration of the Cure Period, Seller will furnish Buyer with any evidence Seller desires to furnish reflecting that Title Defects and/or Environmental Defects have been cured or that the facts or circumstances that caused one or more Leases to be Excluded Leases have been remediated. Buyer will evaluate such evidence and notify Seller within ten business days as to the number of Net Leasehold Acres, if any, that Buyer determines, in the exercise of its reasonable discretion, are no longer deemed by Buyer to be covered by Excluded Leases or subject to Title Defects and/or Environmental Defects. Unless (i) Buyer elects to waive its right to exclude an Excluded Lease from the purchase and sale transaction contemplated hereby, (ii) Seller remedies or removes the facts or circumstances that caused such Lease to be an Excluded Lease during the Cure Period, or (iii) the purchase price of such Excluded Leases is adjusted pursuant to the terms of this Agreement, such Excluded Lease shall not be conveyed to Buyer and will remain the property of Seller. Likewise, unless (i) Buyer elects to waive one or more Title Defects and/or Environmental Defects included in its Defect Notices affecting all or a portion of Seller’s interests in a Lease, (ii) Seller cures such Title Defects and/or Environmental Defects during the Cure Period, or (iii) an adjustment is made to the purchase price of such Lease or interest therein affected by such Title Defect and/or Environmental Defect as provided in this Agreement, then such Lease or interest therein that is subject to the uncured Title Defect and/or Environmental Defect shall not be conveyed to Buyer and will remain the property of Seller.

Exhibit K (continued)

cured or that the facts or circumstances that caused one or more Leases to be Excluded Leases have been removed or remediated. Buyer will evaluate such evidence and notify Seller within ten business days as to the number of Net Leasehold Acres, if any, that Buyer determines, in the exercise of its reasonable discretion, are no longer deemed by Buyer to be covered by Excluded Leases or subject to Title Defects and/or Environmental Defects. Unless (i) Buyer elects to waive its right to exclude an Excluded Lease from the purchase and sale transaction contemplated hereby, (ii) Seller remedies or removes the facts or circumstances that caused such Lease to be an Excluded Lease during the Cure Period, or (iii) the purchase price of such Excluded Leases is adjusted pursuant to the terms of this Agreement, such Excluded Lease shall not be conveyed to Buyer and will remain the property of Seller. Likewise, unless (i) Buyer elects to waive one or more Title Defects and/or Environmental Defects included in its Defect Notices affecting all or a portion of Seller’s interests in a Lease, (ii) Seller cures such Title Defects and/or Environmental Defects during the Cure Period, or (iii) an adjustment is made to the purchase price of such Lease or interest therein affected by such Title Defect and/or Environmental Defect as provided in this Agreement, then such Lease or interest therein that is subject to the uncured Title Defect and/or Environmental Defect shall not be conveyed to Buyer and will remain the property of Seller.

Exhibit L

• Termination for X% lease defects or exclusion

(b) The purchase and sale transaction contemplated hereby shall be effective as of 12:01 a.m., local time at the location of the Subject Interests on the date of the Applicable Closing (the ‘Effective Time’). Once signed, this is an irrevocable agreement but for (i) the failure of more than 15% of the Leases failing for title (based on the value thereof), or to the extent that adjustments to the Purchase Price attributable to Excluded Leases (as defined in Section 3.03 below) (or the adjustments described in Section 4.01 or otherwise under Article III) equals or exceeds an aggregate of twenty percent (20%) of the Assets (or an aggregate dollar adjustment which equals or exceeds $3,750,000), in which case, Buyer shall have the right to terminate in this Agreement, as further described in Article III), or (ii) the other terms and conditions of Closing and/or termination of this Agreement, as set forth in this Agreement.
Exhibit M

• Definition of “Acceptable Pooling Provisions”

Acceptable Pooling Provisions means, with respect to a Lease, provisions in such Lease that grant the lessee the right to pool or unitize any land covered thereby with any other land, lease or leases as to any and all minerals or horizons so as to establish units containing not less than 640 acres.

Exhibit N

• Title warranty

Special Warranty of Title. Seller warrants that Seller has made no transfers, assignments, conveyances or encumbrances which would cause Seller’s ownership of Properties to be such that, with respect to a Well or behind pipe or undeveloped location listed on Schedule I hereto, (A) Seller is entitled to receive a decimal share of the oil, gas and other hydrocarbons produced from currently producing completions in such Well, or from currently producing formations in such unit, or from the projected objective formation (as shown on Schedule I) for any behind pipe or undeveloped location listed on Schedule I, which is less than the decimal share set forth on Schedule I in connection with such Well or behind pipe or undeveloped location as the “Net Revenue Interest” or (B) Seller is obligated to bear a decimal share of the cost of operation of such Well (as to such completions) or the behind pipe interval or undeveloped location specified on Schedule I greater than the decimal share set forth on Schedule I in connection with such Well or behind pipe interval or undeveloped location as the “Working Interest” (without at least a proportionate increase in the share of production to which Seller is entitled to receive). It is understood and agreed that a claim or other matter arising other than, by, through or under Seller, will not result in a breach of the foregoing representation and warranty.