

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

SMITH FAMILY LLC, individually and on
behalf of the Settlement Class,

Plaintiff,

vs.

Case No. D-0101-CV-2003-02311

CONOCOPHILLIPS COMPANY,

Defendant.

**SETTLEMENT AGREEMENT BETWEEN SMITH FAMILY LLC,
AND CONOCOPHILLIPS COMPANY**

This Settlement Agreement is entered into between Plaintiff Smith Family, LLC, individually and on behalf of the Settlement Class (as defined herein) (“**Plaintiff**”) and ConocoPhillips Company, in its individual capacity and on behalf of Phillips-San Juan Partners, L.P. and Phillips-New Mexico Partners, L.P. in its capacity as managing partner (“**COP**” or “**Defendant**”), and is subject to approval by the First Judicial District Court, County of Santa Fe, State of New Mexico (the “**First Judicial District Court**”). This agreement is referred to herein as the “**Settlement Agreement**”.

RECITALS

WHEREAS, Plaintiff filed the Action (as defined herein) in the First Judicial District Court on December 22, 2003. Plaintiff alleged that COP underpaid owners of royalty and overriding royalty interests in coal seam or coalbed methane gas (“**CBM**”) produced from the Fruitland formation in the San Juan Basin in New Mexico and burdening oil and gas leases held by COP. Plaintiff alleged that Defendant improperly deducted certain costs and expenses associated with placing CBM in marketable condition before calculating royalties and overriding royalties and improperly and unjustly underpaid such royalties and overriding royalties to Plaintiff and other similarly situated royalty and

overriding royalty owners during the “**Class Period**,” which runs from December 22, 1997 through December 31, 2015, and did so without properly disclosing the deductions;

WHEREAS, on February 23, 2010, the First Judicial District Court entered its Order on Mandate and Amended Order Certifying Class Action, in which the First Judicial District Court certified a class (“**Initial Certified Class**”), a copy of which is attached as Exhibit 1A to this Settlement Agreement, and incorporated by this reference herein (the “**Class Certification Order**”). On May 30, 2012, the Court entered an order clarifying that the Class Certification Order included former royalty owners. In August 2010 and March 2015, notice of class certification (“**Initial Class Notice**”) was sent to prospective class members pursuant to the order of the First Judicial District Court. Prospective Class Members who were sent the Initial Notice were afforded the opportunity to opt-out of the Action. A list of prospective class members who elected to opt out pursuant to the Initial Class Notice is attached as Exhibit 1B to this Settlement Agreement;

WHEREAS, COP has acted during the Class Period as the managing general partner of Phillips-San Juan Partners, L.P. and Phillips-New Mexico, L.P. (the “**Partnerships**”), and COP calculated royalty payments on CBM produced in the San Juan Basin, New Mexico on behalf of the Partnerships;

WHEREAS, on February 26, 2016, Plaintiff filed The Class Representative’s Expedited Motion to Require ConocoPhillips to Supplement the Class List and Its Damages Data arguing that claims of the Initial Certified Class (“**Expedited Motion to Require Supplementation**”) included claims alleging that the Partnerships underpaid royalties and overriding royalties during the Class Period and that royalty and overriding royalty owners who burden only the working interests of the Partnerships during the Class Period are members of the Initial Certified Class. On March 7, 2016 COP filed an opposition to the Expedited Motion to Require Supplementation, which remains pending;

WHEREAS, COP has denied all material allegations of the complaints filed in the Action and has raised numerous affirmative defenses and denies that claims regarding royalty or

overriding royalty payments of the Partnerships are currently alleged in the case, and denies that royalty or overriding royalty owners burdening only the Partnerships' working interests during the Class Period are members of the Initial Certified Class;

WHEREAS, Class Counsel (as defined herein) have conducted an extensive investigation of the facts, circumstances, and transactions involved in the Action, and the named Plaintiff, being well advised, believes the settlement set forth herein (the "**Settlement**") to be fair, reasonable and acceptable. COP has produced data, information and material to Plaintiff relating to class certification issues and the payment of royalties and overriding royalties to Settlement Class Members (as defined herein). For example, Plaintiff's extensive discovery and investigation includes deposing various corporate representatives of COP and consulting with accounting and economic experts, asking questions of and meeting with COP personnel, obtaining a sworn affidavit from COP, preparing and reviewing the pleadings filed in the Action, and researching the law applicable to this Action;

WHEREAS, Class Counsel believe that the claims brought in the Action have merit and are supported by the evidence. Plaintiff is prepared to vigorously prosecute the claims raised in this action against COP. However, Class Counsel recognize the risks and uncertainties of prosecuting any action and the expense and length of proceedings necessary to prosecute the Action through trial and appeals. Class Counsel believe this proposed Settlement Agreement confers significant benefits to the Settlement Class Members. Based upon their evaluations, and as a result of extensive, lengthy and difficult arms-length negotiations with COP, Class Counsel are satisfied that the terms and conditions of this proposed Settlement Agreement are fair, reasonable, adequate and in the best interests of the Settlement Class Members, as defined herein;

WHEREAS, COP admits no wrongdoing concerning Plaintiff's claims and has in the past and is prepared to continue in the future to vigorously defend against those claims. Nevertheless, taking into consideration the cost and expense of further proceedings, the strengths and weaknesses of the Plaintiff's claims and COP's defenses, the uncertainties and risks associated with further

litigation, and other appropriate factors, COP desires to effectuate the Settlement in order to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the orders contemplated by this Settlement Agreement, and to finally resolve certain claims which were or could have been alleged in the Action against COP or against the Partnerships;

WHEREAS, except for the Reserved Claims, the Settling Parties have reached this Agreement to resolve controversies arising out of COP's and the Partnerships' royalty and overriding royalty payment obligations to and practices with the Settlement Class Members;

WHEREAS, except for the Reserved Claims, the Parties have voluntarily agreed to settle the Action after consultation with competent legal counsel of their own selection; and

WHEREAS, following multiple mediation sessions with the Honorable Judge James Hall, the parties on October 17, 2016 agreed to settle the Action, both accepting a mediator's proposal in a term sheet ("**Term Sheet**") setting forth the essential terms of the Settlement;

WHEREAS, on December 16, 2016, the parties entered into a Confidential Memorandum of Understanding (the "**MOU**") further setting forth the material terms of the Settlement, and agreed that the final terms of the Settlement would be embodied in a definitive settlement agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by the Settling Parties that, subject to final approval by the First Judicial District Court and entry of the Final Order the Released Claims shall be released, settled and dismissed with prejudice and on the merits, subject to the following terms and conditions:

SECTION 1.0 -- DEFINITIONS.

Unless otherwise expressly provided in this Settlement Agreement, the following terms, as used in this Settlement Agreement, have the following meanings:

1.1 "**Action**" means the litigation filed by Plaintiff in the First Judicial District Court as Case No. D-0101-CV-2003-02311.

1.2 "**CBM**" means all natural gas, including coalbed methane and all associated

hydrocarbons, produced from the Fruitland formation in the San Juan Basin in New Mexico during the Class Period. "CBM" shall not be construed to include any gas or hydrocarbons produced from any formation other than the Fruitland formation or natural gas produced from the Fruitland Sands formation.

1.3 **"Class"** means the class certified under the Class Certification Order.

1.4 **"Class Members"** means all members of the Class identified in the Initial Class Notices, the Class Settlement Notice, or to whom the Publication Notice is directed who did not opt out of the Action. "Class Members" and "the Plaintiff" does not include any person or entity who was not previously specifically identified on the attached class lists (Exhibits 1C, 1D and 1E, hereto). The Class Members' claims are set forth in the Substitute Plaintiff's Class Action Complaint filed in the Action. As discussed below, the Plaintiff will compile and provide to the First Judicial District a list of additional Class Members, if any, who elect to "opt-out" after mailing of the Class Settlement Notice and publication of the Publication Notice.

1.5 **"Class Counsel"** means Peifer, Hanson & Mullins, P.A.; The Eaves Law Firm, P.A.; Sutin, Thayer & Browne, P.C.; and Mary E. Walta, P.C., counsel to Plaintiff.

1.6 **"Class Period"** means the period from December 22, 1997 to December 31, 2015.

1.7 **"Class Settlement Notice"** means the notice to the Class Members of the Final Approval Hearing and terms of the Settlement, substantially in the form attached as Exhibit 1F to this Settlement Agreement, and as approved by the First Judicial District Court, advising the Class Members of their rights concerning this Settlement and other procedures appropriate for obtaining Final Approval of this Settlement Agreement

1.8 **"COP Released Parties"** means ConocoPhillips Company, Phillips-San Juan Partners, L.P., and Phillips-New Mexico Partners, L.P., and each and all of them, jointly and severally, their respective current and former parents (excepting only COP as set forth in the Reserved Claims), their predecessors, affiliates, assigns, successors, subsidiaries, insurance carriers, attorneys, and their respective members, general and limited partners, officers, directors, agents, representatives,

and employees.

1.9 **“Court Approval”** means the entry by the First Judicial District Court in the Action of a final order of approval, in the form of an order to be agreed upon by the Parties after notice to the Settlement Class Members and a final approval hearing, signifying final approval of this Settlement Agreement in accordance with Rule 1-023(E) NMRA.

1.10 **“Distribution Check”** means a check payable to an Eligible Settlement Class Member (as defined herein) in the net amount that is payable to such Eligible Settlement Class Member pursuant to the Plan of Allocation.

1.11 **“Distribution Date”** means each date on which Distribution Checks are sent to Eligible Settlement Class Members.

1.12 The **“District Court”** means the First Judicial District Court, County of Santa Fe, State of New Mexico.

1.13 **“Eligible Settlement Class Member”** means each of the Settlement Class Members entitled to receive a Distribution Check pursuant to the Plan of Allocation.

1.14 **“Endorsement Language”** means the release language contained on each payment check to an Eligible Settlement Class Member stating that:

By endorsing this Distribution Check, payee represents and warrants that the payee is or was the owner of the Released Claims, has not assigned or otherwise transferred the Released Claims to anyone else, and will indemnify the Class Representatives, Class Counsel for the Settlement Class Members and the COP Released Parties against a claim by anyone else as the owner of that Released Claim.

1.15 **“Escrow Account”** means that special interest-bearing “Qualified Settlement Fund” (as defined in Section 1.468B-1(a) of the U.S. Treasury Regulations) account established at Bank of America by the Settlement Administrator.

1.16 **“Final Approval”** means that the Court Approval has become final, either by exhaustion of any time for a member of the Class who has properly and timely objected to the Settlement to appeal the Court Approval, with no appeal being filed, or by completion of any appeals filed by members of the Class which appeals have been resolved favorably, or, if there

are no objections to the Settlement, by the District Court's entry of the Final Order.

1.17 **"Final Fairness Hearing"** means the hearing before the First Judicial District Court at which the First Judicial District Court shall consider:

A. Whether this Settlement Agreement, including the Exhibits to this Agreement, should be approved as fair, adequate, and reasonable;

B. Whether a Final Order should be entered;

C. Whether the application of Class Counsel for payment of attorneys' fees plus New Mexico gross receipts taxes, costs and expenses, should be approved;

D. Whether the application for payment of an incentive award to the Class Representative should be approved; and,

E. Any other matters addressed by the District Court in conjunction with items (A) - (D) of this paragraph.

1.18 **"Final Order"** means the Final Order, Judgment of Dismissal and Release to be drafted by Class Counsel and counsel for COP.

1.19 **"Initial Certified Class"** means the class certified under the Order on Mandate and Amended Order Certifying Class Action, attached here as Exhibit 1A, as clarified by the Court's Order Granting Motion for Interpretation of the Class Definition, attached here as Exhibit 1G.

1.20 **"Initial Class Notice"** means the notices of class certification sent to members of the Initial Certified Class in August 2010 and March 2015.

1.21 **"MOU"** means the Confidential Memorandum of Understanding entered into by the Settling Parties in this action dated December 16, 2016.

1.22 **"Net Settlement Amount"** means the Settlement Amount less the cost of the settlement notice, claims administration (including any expenses of the Settlement Administrator), the Confirmation Process, Class Representative's incentive award, Class Counsel's attorneys' fees and New Mexico gross receipts taxes (as approved by the First Judicial District Court), reimbursement of Class Counsel of all actual expenses of the Action (as approved by the First

Judicial District Court), any other approved costs and expenses of Plaintiff and all applicable taxes, if any, assessable on the Settlement Amount or any portion thereof.

1.23 “**Parties**” means the Class Members and COP.

1.24 “**Plan of Allocation**” means the document subject to approval by the First Judicial District Court describing the distribution of the proceeds of the Net Settlement Amount.

1.25 “**Preliminary Approval**” means the preliminary approval of the Settlement Agreement by the District Court pursuant to an order granting preliminary approval.

1.26 “**Publication Notice**” means the notice of settlement published to Settlement Class Members after Preliminary Approval of the Settlement Agreement. The Publication Notice is attached as Exhibit 1H to this Settlement Agreement. The Publication Notice will allow Settlement Class Members who were not sent the Initial Class Notice to opt out of the Settlement Class, as well as to object to the Settlement Agreement or to make a claim pursuant to the Plan of Allocation.

1.27 “**Qualified Settlement Fund**” means the \$50,800,000 of the Settlement Amount to settle the Action plus any portion of the additional \$250,000 not used to reimburse the Class Representative for the costs associated with the Confirmation Process set forth in Section 2.2 below which is to be deposited in a Qualified Settlement Fund pursuant to, and within the meaning of, Sections 1.468B-1 et seq. of the Regulations of the United States Department of the Treasury.

1.28 “**Released Claims**” means all claims, that were asserted in the Action or could have been asserted in the Action against COP or the Partnerships by the Settlement Class Members, whether arising from contract, tort, statute or in law or equity, or arising from express or implied duty, related to, directly or indirectly, the Subject Royalty Obligations burdening production of CBM from the Fruitland formation in the San Juan Basin in New Mexico during the Class Period, including facts, omissions, or failures to act related to the Action, excepting only the Reserved Claims. Released claims expressly include claims assertable by Settlement Class Members who were members of the settlement class in *Dichter et al. v. BP America Prod. Co. and ConocoPhillips Company*, Case No. D-0101-CV-200001620 (“**the Dichter Case**”), except to the extent such claims do not relate to the

production of CBM from the Fruitland formation in the San Juan Basin in New Mexico, such as claims relating to the production of natural gas from formations other than the Fruitland formation. Reserved Claims are excluded from the Released Claims.

1.29 “**Reserved Claims**” means:

A. Any claims arising out of ordinary course of business mistakes and corrections of mathematical errors by COP or the Partnerships for which COP or the Partnerships may make prior period adjustments as may be necessary and appropriate in the ordinary course of business.

B. Any claims arising from Subject Royalty Obligations burdening production of CBM from the Fruitland formation in the San Juan Basin arising after the Class Period. All claims relating to conventional gas and associated hydrocarbons produced from any formation other than the Fruitland formation in the San Juan Basin of New Mexico during the Class Period are excluded from this settlement and are not released.

C. Any claims arising out of the enforcement of this Settlement Agreement.

D. Any claims arising from Subject Royalty Obligations where the lease, assignment or other agreement of the Settlement Class Member provide for calculation of royalty or overriding royalty payments at the same time and in the same manner used to calculate royalty paid to the federal government (“**Same-as-Fed Provision**”).

E. Any claims by Settlement Class Members regarding royalty or overriding royalty interests that burden oil and gas leases held by COP and producing CBM for which COP has not provided, with respect to such interests, names, addresses, tax identification numbers, and volumes of CBM attributable thereto, and information reasonably necessary in order for the Settlement Administrator and Class Counsel to make an allocation to such interests pursuant to the Plan of Allocation. For the avoidance of doubt, “Reserved Claims” also include any claim of Settlement Class Members against COP or third-parties unrelated to COP (a) where such third-party (i) operates a well in which COP owns a working interest burdened by a Subject Royalty Interest

and (ii) directly remits royalty payments to Class Members on the Subject Royalty Interest, and (b) COP fails to provide the information reasonably necessary to make an allocation to such Subject Royalty Interest pursuant to the Plan of Allocation, including information described above and information regarding volumes, divisions of interest, and deductions taken.

F. Any claims by Settlement Class Members based on Subject Royalty Obligations relating to pricing of gas and associated hydrocarbons downstream of the plant tailgates in the San Juan Basin, and only downstream of such plant tailgates, such as that COP allegedly made improper non-arms-length affiliate sales, allegedly failed to obtain the best price reasonably available, or allegedly used an improper or inadequate weighted average sales price methodology.

1.30 “**Royalty Interests**” means royalty and overriding royalty interests owned by the Settlement Class Members.

1.31 “**Settlement Administrator**” means the person or entity that Class Counsel retains, and the First Judicial District Court approves, to provide any services in connection with performing the terms of this Settlement Agreement.

1.32 “**Settlement Amount**” means the sum of Fifty-One Million Fifty Thousand United States Dollars (\$51,050,000). The Settlement Amount consists of \$50,800,000 to settle the Action plus an additional \$250,000 to reimburse the Class Representative for the Confirmation Process set forth in Section 2.2 below. Any portion of the \$250,000 not used to reimburse the Class Representative for the costs associated with the Confirmation Process set forth in Section 2.2 below shall be added to the remaining settlement funds to be distributed in accordance with the Plan of Allocation.

1.33 “**Settlement Class**” means, except for individuals specifically excluded in this subsection below, all members of the following class, for which the Parties are seeking certification solely for the purpose of settling the Action (and for no other purpose):

All former or present owners of royalty and overriding royalty interests, which have at any time between December 22, 1997 and December 31, 2015 burdened ConocoPhillips Company’s, Phillips-San Juan Partnership’s, or Phillips-New Mexico Partnership’s working interests in the units, leases, and wells which are now or have

been productive of coal bed methane gas from the Fruitland coal formation underlying New Mexico lands, whether now or formerly owned or operated by ConocoPhillips Company, Phillips-San Juan Partnership, or Phillips-New Mexico Partnership.

Excluded from the Settlement Class are the following:

- (a) the Defendant and its affiliates;
- (b) the United States of America;
- (c) the State of New Mexico;
- (d) all Indian Nations and Tribes;
- (e) all individual Native American or Indian lessors;
- (f) The "Florance" interests in the Heritage Conoco properties; and
- (g) The "Hagood" interests in the Heritage Phillips properties.

For the avoidance of doubt, COP is agreeing to this Settlement Class definition for settlement purposes only. It is COP's position that any claims regarding alleged underpayment of royalties or overriding royalties by or on behalf of the Partnerships during the Class Period will become part of the case only upon Final Approval of the settlement by the First Judicial District Court, and that royalty or overriding royalty interest owners who have burdened solely one or both of the Partnerships' working interests during the Class Period will become members of the Settlement Class only upon Final Approval of the settlement by the First Judicial District Court.

1.34 **"Settlement Class Members"** means all members of the Settlement Class excluding those owners of Royalty Interests who elected to "opt out" of the Initial Certified Class after the Initial Class Notice or who elect to "opt out" of the Settlement Class after publication of the Publication Notice pursuant to 1-023(B)(3) and (C)(2)(b) NMRA. A list of all owners of Royalty Interests who elected to opt out of the Initial Certified Class after the Initial Class Notice is attached as Exhibit 1B to this Settlement Agreement. As discussed below, the Parties will compile and provide to the First Judicial District Court a list of additional Settlement Class Members, if any, who elect to "opt out" after publication of the Publication Notice.

1.35 **"Settlement Class Notice"** means the notice to the Settlement Class Members for Final Approval, substantially in the form attached as Exhibit 1F to this Settlement Agreement, and as approved by the First Judicial District Court, advising the Settlement Class Members of their rights concerning this Settlement and other procedures appropriate for obtaining Final Approval of this

Settlement Agreement.

1.36 “**Settling Parties**” means Plaintiff and COP.

1.37 “**Subject Royalty Interest**” or “**Subject Royalty Interests**” means royalty and overriding royalty interests of the Class Members in CBM produced from the Fruitland formation in the San Juan Basin in New Mexico during the Class Period.

1.38 “**Subject Royalty Obligations**” means those leases, assignments or other agreements of the Settlement Class Members containing the terms of the Subject Royalty Interests that burden oil and gas leases held by COP and/or the Partnerships in the San Juan Basin in New Mexico which produce CBM from the Fruitland formation, including without limitation any obligations, whether express, implied, or statutory, relating to the calculation, disclosure, payment or remittance of royalties. All claims relating to conventional gas and associated hydrocarbons produced from any formation other than the Fruitland Formation in the San Juan Basin of New Mexico during the Class Period are excluded from this settlement and are not released. Also excluded from this settlement and not released are claims relating to natural gas produced from the Fruitland Sands formation.

1.39 “**Substitute Complaint**” means the Substitute Plaintiff’s Class Action Complaint filed by Plaintiff in the Action on September 27, 2006.

1.40 “**Term Sheet**” means the mediator’s proposal term sheet agreed to by the Parties on October 17, 2016 following mediation with the Honorable Judge James Hall, which includes terms set forth on a term sheet executed by the parties on March 18, 2016.

SECTION 2.0 -- MUTUAL INTENT TO IMPLEMENT THIS SETTLEMENT AGREEMENT PROMPTLY.

2.1 It is the mutual intent of the Settling Parties to consummate this Settlement Agreement promptly.

A. The Settling Parties will cooperate in good faith and exercise their reasonable best efforts to effectuate and implement all of the terms and conditions of this Settlement Agreement within the time periods set out herein. The Settling Parties agree to use their reasonable best efforts to prepare any other documents necessary to implement and consummate this Settlement including,

but not limited to, a proposed Settlement Class Notice and Publication Notice to Class Members, Preliminary and Final Approval Orders, and related documents to be submitted to the District Court for Preliminary and Final Approval as may be necessary to effectuate the purposes and intent of this Settlement Agreement;

B. The Settlement Class Members shall be bound by the Settlement Agreement and all proceedings, orders and judgments in the Action if the Settlement Agreement is approved and becomes Final;

C. The Settling Parties shall jointly submit this Settlement Agreement, including the Exhibits attached to this Agreement, to the District Court for preliminary approval as soon as is reasonably practical;

D. Upon submission of the Settlement Agreement for Preliminary Approval, the Settling Parties shall request that the District Court enter an Order of Preliminary Approval;

E. In proceedings before the District Court (and before any appellate courts, if necessary), the Settling Parties shall take all steps reasonably necessary to obtain final approval of the Settlement;

F. The Settling Parties shall agree to entry of a Final Order by the District Court following the Final Fairness Hearing; and

G. Within fifteen (15) business days after Preliminary Approval of the Settlement Agreement, to the extent it has not already done so, COP shall provide a complete and accurate list of the current and former owners of the Settlement Class Members' royalties and overriding royalties for CBM from the Fruitland formation in the San Juan Basin in New Mexico burdening the working interests of COP and the Partnerships during the Class Period. Class Counsel may request information reasonably available that it believes would be used for purposes of calculating payments pursuant to the Plan of Allocation. To the extent that such other information is required to identify Settlement Class Members or to calculate payments pursuant to the proposed Plan of Allocation and provided that the information is reasonably available to COP, then COP will cooperate in good faith

to provide that information, subject to COP's right to object as provided in the first paragraphs of Section 3.3 below. The Settling Parties specifically agree to cooperate and share information reasonably available in the ordinary course of business to locate Settlement Class Members or their lawful successors or assigns. For the avoidance of doubt, ConocoPhillips need not provide the current decimal ownership percentages unless Class Counsel determines, in good faith, that such information is necessary for the Plan of Allocation, and in that case Class Counsel shall request that information from COP. If COP disagrees, the Settling Parties will submit the issue of whether current decimal ownership percentage information should be provided to Judge James Hall for decision pursuant to the first paragraph of Section 3.3 below.

2.2 Confirmation Process. Prior to execution of the MOU, the parties engaged in an exchange of information to confirm the accuracy of the actual monetary and volumetric deductions taken by COP and the Partnerships when calculating royalties paid on production of coalbed methane gas from the Fruitland Formation underlying New Mexico lands during the Class Period. In response to the Class Representative's requests, questions and inquiries, COP made personnel available who responded to questions and inquiries, and provided documentation regarding the accuracy of the COP deduction amounts (both volumetric and dollar-denominated) for the Class Period, and provided other information about how costs and deductions were taken, how COP records and maintains information about royalty calculations, how class members and royalty interests were identified, and other matters. COP further represented that mainline transportation charges are not disproportionately imposed on CBM in comparison with other types of gas, including purchased gas, transported over mainline pipelines. The accuracy of the information and representations provided by COP in the Confirmation Process has been verified under oath. Prior to execution of the Settlement Agreement, COP provided sworn affidavit(s) of COP personnel confirming the accuracy of the information and representations provided during the Confirmation Process. Included in the Settlement Amount is \$250,000 which COP has agreed to pay associated with the Confirmation Process set forth in this Section 2.2. If the case ultimately does not settle, the parties' July 21, 2016 agreement governs COP's payment of the

Class Representative's costs associated with the Confirmation Process set forth in this Section 2.2.

2.3 Confirmation Process Affidavit. Prior to execution of the Settlement Agreement, COP provided sworn affidavit(s) of COP personnel confirming the accuracy of the information and representations provided during the Confirmation Process ("Affidavit"). Plaintiff agrees that because the Affidavit contains detailed internal accounting information of COP, Plaintiff shall not disclose the Affidavit or its contents to any person, except the following: a) the First Judicial District Court; b) the Class Representative; c) any expert or consultant retained by the Plaintiff for purposes of using or relying upon the testimony contained in the Affidavit to attest to the fairness and reasonableness of the settlement, including allowance for expert(s) to identify and describe the Affidavit in any testimony or report submitted by such expert(s); d) any Class Member who requests either the Affidavit, information regarding the Settlement or the Confirmation Process; e) any Class Member who objects to the Settlement pursuant to Rule 1-023 NMRA and Section 5.6 of this Settlement Agreement and who requests the Affidavit; and f) counsel for the Plaintiff and the Class. For avoidance of doubt, the Affidavit is not deemed to be "confidential" or "attorneys' eyes only" as those terms are defined in the Amended Confidentiality and Protective Order entered in this case on February 10, 2011, and therefore is subject only to the disclosure restrictions set forth in this Settlement Agreement.

SECTION 3.0 -- RELIEF FOR THE CLASS.

3.1 Settlement Amount. In consideration for this Settlement Agreement, and in full and final settlement of the Released Claims (and excluding the Reserved Claims), COP shall make payment of the Settlement Amount in good funds as provided in Section 3.4 of this Settlement Agreement.

3.2 Costs, Fees, Expenses and Taxes Included. The Settlement Amount includes the full and complete cost of the settlement notice, claims administration (including any expenses of the Settlement Administrator), Confirmation Process, Settlement Class Members' compensation, the Class Representative's incentive award, Class Counsel's attorneys' fees plus New Mexico gross receipts taxes (as approved by the District Court) and reimbursement of Class Counsel of all actual

expenses of this Action (as approved by the District Court), any other litigation costs of Plaintiff, and all applicable taxes, if any, assessable on the Settlement Amount or any portion thereof. All such costs, compensation, awards, fees, expenses and applicable taxes, if any, assessable on the Settlement Amount shall be deducted from the Settlement Amount, and shall not be COP's responsibility. In no event will the Settlement Amount exceed \$51,050,000.00, nor will the Settlement Amount be reduced below \$51,050,000.00 due to future opt outs from the Settlement Class or for any other reason.

3.3 Plan of Allocation. The distribution of the Net Settlement Amount shall be administered pursuant to a Plan of Allocation, a copy of which is attached as Exhibit 1I to this Settlement Agreement, and is subject to the approval of the First Judicial District Court. COP shall have no participatory or approval rights with respect to the Plan of Allocation, provided however that if the Plan of Allocation requires additional information not previously provided to Class Counsel in the Action, Class Counsel shall confer with COP counsel regarding the existence of such information and any burden on COP to provide the information, prior to adopting the Plan of Allocation. COP reserves the right to object to providing any such information on the basis of burden or expense. COP's objections will be submitted to Judge James Hall for decision. Judge James Hall's determination shall be binding on the parties. Subject to the First Judicial District Court's authority to disapprove the Settlement, the Court's refusal to approve a particular Plan of Allocation shall not affect the validity or enforceability of the MOU or this Settlement Agreement. With respect to the Plan of Allocation:

A. As part of the Confirmation Process set forth in Section 2.2, COP has provided, and to the extent reasonably available will provide, Class Counsel and the Settlement Administrator with a complete and accurate list of the owners of the Settlement Class Members' royalties and overriding royalties for CBM from the Fruitland formation in the San Juan Basin in New Mexico. Class Counsel may request information reasonably available that it believes would be used for purposes of calculating payments pursuant to the Plan of Allocation. To the extent that such other information is

required to identify Settlement Class Members or to calculate payments pursuant to the proposed Plan of Allocation and provided that the information is reasonably available to COP, then COP will cooperate in good faith to provide that information, subject to COP's right to object as provided in first paragraph of Section 3.3 above;

B. In the event of the death or disability of a Settlement Class Member, the Settling Parties will establish reasonable procedures for the reissuance of settlement checks to the Settlement Class Member's estate, heirs, trustees, guardians or conservators;

C. Class Counsel, and the Settlement Administrator under direction of the First Judicial District Court, will be responsible for the general supervision and administration of this Settlement with respect to notification to Settlement Class Members. The Settlement Administrator will be responsible for issuing the checks from the Net Settlement Amount to the Settlement Class Members, though the Settlement Administrator is excused from issuing checks to any Settlement Class Member if the Net Settlement Amount payable to such Settlement Class Member for the entirety of the Class Period is less than ten dollars (\$10.00);

D. Each Distribution Check issued by the Settlement Administrator shall include the Endorsement Language. The Settlement Administrator will provide to Class Counsel and COP copies of the endorsements on the distribution checks;

E. The Plan of Allocation shall contain provisions for additional distributions to Settlement Class Members and/or the *cy pres* of undistributed Settlement Amounts; and

F. None of the Settlement Amount is allocated to increase the prices, values, or volumes of CBM produced by COP Released Parties during the Class Period for tax purposes.

3.4 **Escrow.** Within ten (10) business days of Preliminary Approval, COP shall deposit \$50,800,000 of the Settlement Amount into a special interest-bearing "Qualified Settlement Fund" (as defined in Section 1.468B-1(a) of the U.S. Treasury Regulations) account (the "**Escrow Account**") established by the Settlement Administrator at Bank of America. Within ten (10) business days of Preliminary Approval or receipt of \$250,000 from COP (whichever is later) to reimburse the

Class Representative for the Confirmation Process, Class Counsel shall deposit into the Escrow Account any portion of the remaining \$250,000 of the Settlement Amount (which will be separately invoiced to COP by Class Counsel) not used to reimburse the Class Representative for the costs associated with the Confirmation Process set forth in Section 2.2 above. The Settlement Amount shall be held in the Escrow Account and subject to the terms and conditions of an escrow agreement and instructions, a copy of which is attached as Exhibit 1J to this Settlement Agreement (the “**Escrow Agreement and Instructions**”). COP and the named Plaintiff shall have the right to audit amounts paid from the Escrow Account. The cost of settlement notice and claims administration (including any expenses of the Settlement Administrator) shall be paid from the Escrow Account following Preliminary Approval as needed. The Class Representative’s incentive award, Class Counsel’s attorneys’ fees (as approved by the First Judicial District Court), reimbursement of Class Counsel of all actual expenses of the Action (as approved by the First Judicial District Court), reimbursement of Class Counsel for the Confirmation Process, any other litigation costs of Plaintiff and all applicable taxes (including without limitation to New Mexico gross receipts taxes), if any, shall be paid from the Escrow Account after Final Approval. The balance of the Net Settlement Amount shall be disbursed to Settlement Class Members as provided in the Court-approved Plan of Allocation after Final Approval. In no event, however, shall any money be disbursed to Settlement Class Members or paid out for the Class Representative’s incentive award, Class Counsel’s attorneys’ fees, reimbursement of Class Counsel of actual expenses, reimbursement of Class Counsel for the Confirmation Process, reimbursement of other litigation costs of Plaintiff, applicable taxes, if any, until the time for the Parties to exercise their termination rights pursuant to Section 5.4 has passed without the Parties exercising such rights. Following COP’s deposit of \$50,800,000 of the Settlement Amount into the Escrow Account in full, COP and the Partnerships shall have no liability, under any circumstances, to the Plaintiff, Settlement Class Members, Class Counsel, or any other person in connection with the administration or distribution of such Settlement Amount.

3.5 **Interest on Settlement Amount.** In the event that COP does not deposit

\$50,800,000 of the Settlement Amount in the Escrow Account and pay the \$250,000 to reimburse the Class Representative for the Confirmation Process within ten (10) business days of Preliminary Approval by the First Judicial District Court of the Settlement Agreement, then, beginning on the eleventh (11th) business day after such preliminary approval, COP shall bear interest at the rate of 6% per annum on that portion of the Settlement Amount and the \$250,000 for reimbursement to Class Representative for the Confirmation process until paid into the settlement Escrow Account or to the Class Representative. In the event of any appeal from the Final Approval of the Settlement Agreement, any portion of the Settlement Amount or the \$250,000 for reimbursement of the Confirmation Process held by COP shall continue to bear interest at the rate of 6% per annum until deposited in the settlement Escrow Account or paid to Class Representative.

SECTION 4.0 -- ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARD.

4.1 **Attorney Fee Application.** Class Counsel intend to apply to the District Court for an award of attorneys' fees plus applicable New Mexico gross receipts taxes thereon incurred in prosecuting the Class Claims and for services rendered up to and including the date this Settlement is final, with such award to be paid out of the Escrow Account. Any such application for an award of attorneys' fees shall not exceed one-third (33 and 1/3 percent) of the total Settlement Amount, plus applicable New Mexico gross receipts taxes thereon. If the Final Order is appealed, Class Counsel's attorneys' fees and litigation and other expenses as awarded by the District Court shall be increased by their proportionate share of any interest earned on, or earnings derived from the Escrow Account from the date the Final Order is entered by the District Court, until the attorneys' fees and litigation expenses are paid. For purposes of the foregoing sentence, the phrase "proportionate share" means the ratio of the sum of Class Counsel's attorneys' fees and litigation expenses to the total of the principal amount of the Settlement Amount.

4.2 **Costs and Expenses.** At the Final Fairness Hearing, Class Counsel may apply to the District Court for reimbursement of reasonable out of pocket litigation expenses, to include expenses incurred up to the Final Fairness Hearing, distribution of the Settlement Amount to the

Settlement Class and completion of the administration of this Settlement as ordered by the District Court. Such litigation expenses shall be paid from the Escrow Account at the time specified in Section 4.4.

4.3 **Class Representative's Compensation.** Subject to approval and modification by the District Court, COP will not object to the Class Representative seeking court approval of a payment no greater than \$120,000 out of the Settlement Amount for services as Class Representative, within fourteen (14) days after Final Approval, in addition to any amounts due to it as Settlement Class relief to be paid by the Settlement Administrator from the corpus of the Escrow Account. District Court approval of Class Representative's compensation in an amount less than stated herein shall not negate any other provisions of this Settlement Agreement, which shall remain fully effective and enforceable.

4.4 **Fees, Costs and Expenses.** Any costs of suit or attorneys' fees approved by the District Court shall, within fourteen (14) business days after Final Approval and the expiration of the time for the Parties to exercise their termination rights pursuant to Section 5.4 without the parties exercising their termination rights, be paid from the Escrow Account. District Court approval of an attorneys' fee and/or costs in an amount less than the amount requested by Class Counsel—or the District Court's disallowance of any award of fees or expenses—shall not negate any other provisions of this Settlement Agreement, which shall remain fully effective and enforceable.

4.5 **Approval by the District Court.** All fees, costs and expenses to be deducted from the Settlement Amount must be approved by the District Court. COP agrees that it will take no position on the amount or appropriateness of attorneys' fees, reimbursement of costs or class representative incentive awards requested by Class Counsel or the Plaintiff from the Settlement Amount. This Settlement Agreement is not contingent on the District Court's approval of any application for such fees, expenses or awards out of the Settlement Amount.

SECTION 5.0 -- ADMINISTRATION.

5.1 **Settlement Administrator.** Class Counsel has selected KCC Class Action Services

LLC (together with its affiliates) to act as Settlement Administrator, and COP has consented to such appointment. The Settlement Administrator, acting pursuant to the Escrow Agreement and Instructions, shall be responsible for the general supervision and administration of the Settlement Amount deposited in the Escrow Account, the allocation (in accordance with the Plan of Allocation) and distribution of the Settlement Amount and any required notification of Settlement Class Members regarding the Settlement. All fees, costs and expenses to be disbursed from the Escrow Account must be approved by the District Court. The Settlement Administrator shall be permitted, with the approval of the Parties, to retain accountants and legal counsel to assist in its administration of the Settlement and the Escrow Agreement and Instructions. Subject to satisfaction of its duties and obligations under this Settlement Agreement, Settlement Administrator, or any successor hereafter appointed, may resign and shall be discharged of its duties upon the appointment of a successor Settlement Administrator, as Class Counsel, with the consent of COP, shall determine. Each such successor Settlement Administrator shall have all the power, authority, rights and privileges hereby conferred upon the original Settlement Administrator, and the term "Settlement Administrator" as used herein shall be deemed to include such successor Settlement Administrator. For the avoidance of doubt, COP must approve of and, only for good cause shown, shall have the right to reject Class Counsel's chosen Settlement Administrator or any successor.

Class Counsel and the Settlement Administrator shall be responsible for communicating distributing, allocating and administering any matters pertaining to the settlement and the Settlement Amount among or with Class Members or any persons claiming to be a part of the Class. COP shall refer all inquiries concerning the Settlement Agreement to the Settlement Administrator or Class Counsel.

In accordance with the settlement approval provisions of Rule 1-023 NMRA, notice of this settlement, as approved by the District Court, will be provided to all Class Members as ordered by the District Court.

5.2 **Court Approval.** Promptly after the execution of this Settlement Agreement, the

Parties shall submit this Settlement Agreement and supporting papers, including the Plan of Allocation, to the District Court. The Parties shall (i) file with the District Court a Joint Motion for Order of Preliminary Approval, (ii) submit to the District Court an Order Granting Preliminary Approval in the form attached as Exhibit 1K to this Settlement Agreement, and (iii) jointly request the District Court to enter an Order establishing procedures for notice to the Settlement Class Members for Final Approval, and other procedures appropriate for obtaining Court Approval of this Settlement Agreement.

5.3 **Reasonable Best Efforts.** The Parties agree to use their reasonable best efforts to secure Preliminary Approval and Final Approval of this Settlement Agreement by the District Court at the earliest possible date, including providing an adequate Settlement Class Notice and publication of the Publication Notice, and to effectuate immediately such Court Approval, if granted; provided that the foregoing shall not require COP or the Partnerships to provide any additional consideration or to take or forebear from taking any action for the benefit of the Settlement Class Members. The Settling Parties specifically agree to cooperate and share information reasonably available in the ordinary course of business to locate Class Members or their lawful successors or assigns.

5.4 **Termination.** If the substance of this Settlement Agreement or a material provision of the Settlement Agreement does not receive Final Approval or is materially modified by the District Court, then Class Counsel, the Class Representative or COP may, at his, her or its option, declare the Settlement Agreement null and void by written notice to the District Court and to counsel for the other parties filed and served within ten (10) business days of the entry of an order not granting court approval or Final Approval or having the effect of disapproving or materially modifying the terms of the Settlement Agreement. If this Settlement Agreement is terminated pursuant to this Section 5.4, or for any other valid reason under the MOU or the Settlement Agreement before payment of claims to Settlement Class Members, then the parties will be restored to their respective positions in the Action as of the date of this Settlement Agreement. In that event, the litigation will proceed as if this Settlement Agreement, MOU, and Term Sheet had never been executed, with the exception

of the reimbursement for the Confirmation Process as provided in Section 2.2; this Settlement Agreement or representations made in conjunction with this Settlement Agreement may not be used in the Action or otherwise for any purpose.

Except for termination of the settlement, no portion of - the Settlement Amount or the interest thereon shall be returned to COP. The funds and interest thereon shall be disbursed pursuant to the terms of the Settlement Agreement and the Plan of Allocation.

5.5 **Stay.** The Parties agree that on and after the date of this Settlement Agreement, (i) neither Party shall pursue litigation of the Released Claims, and (ii) all proceedings other than those directed toward settlement of this Action shall be held in abeyance.

5.6 **Settlement Class Notice of Settlement; Objections.** In accordance with the settlement approval provisions of Rule 1-023 NMRA, the Settlement Class Notice and publication of the Publication Notice (along with a website link to this Settlement Agreement, exhibits and the First Notice) shall be provided to all Settlement Class Members by the Settlement Administrator [no later than , 2017]. Any Settlement Class Member may object to the Settlement by filing a written objection with the District Court and mailing it to Class Counsel and to COP's Counsel, by first-class mail postmarked no later than fifteen (15) calendar days prior to the Final Fairness Hearing. The objection must set forth: (a) an identification of the action, *e.g.*, *Smith Family LLC v. ConocoPhillips Company*; (b) the Settlement Class Member's full name and address, (c) information sufficient to identify the Settlement Class Member's ownership interest; and (d) in clear and concise terms, the legal and factual arguments supporting the objection.

Any Settlement Class Member who previously did not receive the Initial Class Notice may opt out of the Settlement Class and Settlement Agreement by mailing a written request to opt out to Class Counsel, by first-class mail post-marked no later than fifteen (15) calendar days prior to the Final Fairness Hearing. The request to opt out must set forth: (a) an identification of the action, *e.g.*, *Smith Family LLC v. ConocoPhillips Company*; (b) the Settlement Class Member's full name, address, and (c) a certification signed by the Settlement Class Member that the Settlement Class Member did not

receive the Initial Class Notice. However, if Class Counsel's records indicate that the Settlement Class Member was sent the Initial Class Notice but did not opt out at that time, the Settlement Class Member will not be allowed to opt out.

5.7 Allocation and Distribution. To the extent practicable and consistent with the principle that only actual Settlement Class Members should be paid, the distribution of the Net Settlement Amount will be made in accordance with the procedures to be set forth in this Settlement Agreement and the Plan of Allocation, subject to approval by the District Court. The Plan of Allocation, when approved by the District Court, shall govern distribution of the Net Settlement Amount.

5.8 Sole Recourse. Except as otherwise provided in this Settlement Agreement, all approved payments to Eligible Settlement Class Members, the Class Representative, Class Counsel, and any other payments in connection with this Settlement, after the Effective Date, shall be made exclusively from the Escrow Account. In no event shall the COP Released Parties be liable for any payments other than the \$51,050,000 payment. The sole recourse of any person claiming any payment from the Settlement, any right to payment under or in any way related to this Settlement Agreement or to any matter related in any way to the Released Claims including, without limitation, Settlement Class Members, Class Counsel, or any person claiming by, through, or on behalf of any of the foregoing, or any costs of litigation or resulting from a dispute among the Eligible Settlement Class Members regarding the distributions of the Settlement Amount shall be against the Escrow Account.

5.9 Termination; Refunds. If the Settlement Agreement is terminated pursuant to Section 5.4 or for any valid reason by the First Judicial District Court, then the balance of the Settlement Amount in the Escrow Account will be returned immediately to COP by wire transfer of good funds, as further described in the escrow agreement, with the exception of the reimbursement for the Confirmation Process as provided in Section 2.2. In the event that the Settlement Agreement is terminated, then COP shall bear the cost of funds already expended from the Settlement Amount for the costs of administration. Except for termination, the entire balance of the Settlement

Amount and interest thereon shall be disbursed pursuant to the terms of the Settlement Agreement and the Plan of Allocation.

SECTION 6.0 -- RELEASE IN FAVOR OF THE COP RELEASED PARTIES. Upon the later to occur of Final Approval, expiration of the time for the Parties to exercise their termination rights without the parties exercising their termination rights, and deposit by COP of the Settlement Amount into the Escrow Account, the Class Representative and each Settlement Class Member shall be conclusively deemed to have fully, finally, completely, irrevocably, unconditionally and forever released and discharged the COP Released Parties from liability on and for all of the Released Claims. Such release will be effective as of the date of Final Approval.

SECTION 7.0 -- DISMISSAL.

In connection with the motion for Final Approval, Class Counsel shall provide to COP's counsel a Final Order that includes an order dismissing with prejudice the Released Claims. The proposed order of dismissal shall dismiss all Released Claims (but not the Reserved Claims) in the Action with respect to the COP Released Parties with prejudice and such order of dismissal will extinguish any liability of the COP Released Parties with respect to such Released Claims. Once the parties in good faith agree on the form of the proposed Order of Dismissal, COP and Plaintiff shall file the proposed Order of Dismissal with prejudice of the Released Claims with the First Judicial District Court.

SECTION 8.0 -- NO ADMISSION OF LIABILITY.

This Settlement Agreement represents the proposed settlement of disputed claims and does not constitute, nor shall it be construed as, an admission of the correctness of any position asserted by any party, nor an admission of liability or of any wrongdoing by any party or the Partnerships or as an admission of any strengths or weaknesses of the claims of the Plaintiff or COP's or the Partnerships' defenses. In addition, neither the MOU, the Settlement Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution, or implementation of the MOU or this Settlement Agreement will be intended to be or construed as or deemed to be evidence

of an admission or concession by COP or the Partnerships of any liability or wrongdoing or of the truth of any allegations against COP or the Partnerships, and none of them shall be admissible in evidence for any such purpose in any proceeding. In addition, neither the MOU, this Settlement Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of the MOU or this Settlement Agreement will be intended to be or construed as or deemed to be evidence of an admission or concession by COP or the Partnerships that a class should be or should have been certified for any purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding. In addition, neither the MOU, this Settlement Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of the MOU or this Settlement Agreement will be intended to be or construed as or deemed to be evidence of an admission or concession by COP or the Partnerships that claims regarding alleged underpayments of royalty or overriding royalty obligations on working interests owned by the Partnerships are currently part of the case, were pleaded in the Substitute Complaint, or that royalty and overriding royalty owners burdening only working interests owned by the Partnerships are members of the class as pleaded in the Substitute Complaint and previously certified by the First Judicial District Court in Exhibit A, and none of them shall be admissible in evidence for any such purpose in any proceeding. Likewise, neither the MOU, this Settlement Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of the MOU or this Settlement Agreement will be intended to be or construed as or deemed to be evidence of an admission or concession by Plaintiff or Class Counsel that claims regarding alleged underpayments of royalty or overriding royalty obligations on working interests owned by the Partnerships are not currently part of the case, that COP is not liable for such underpayments, were not pleaded in the Substitute Complaint, or that royalty and overriding royalty owners burdening only working interests owned by the Partnerships are not members of the class as pleaded in the Substitute Complaint and previously certified by the First Judicial District Court in Exhibit 1A, and none of them shall be admissible in

evidence for any such purpose in any proceeding.

The Settling Parties agree that, except as agreed to herein, this settlement in no way impairs or alters the Settlement Class Members' rights to future royalties or overriding royalties from the production of oil or gas from their respective Subject Royalty Interests.

SECTION 9.0 – MISCELLANEOUS.

9.1 **Confidentiality.** The Parties will not make use of or disclose to any third party the content, nature, or subject matter of the MOU, any information disclosed and/or discussed in the MOU or this Settlement Agreement and/or in subsequent negotiations to any third party without the express written consent of all other parties. Notwithstanding the foregoing, a party may disclose such information if it (a) was publicly known prior to the time of disclosure, (b) becomes publicly known after disclosure through no act or omission of the receiving party, (c) was already in the possession of the receiving party without confidentiality obligations, (d) is obtained by the receiving party without confidentiality obligations from a third party, (e) is permitted to be disclosed under this Settlement Agreement, or (f) was disclosed by either party prior to the date of this Settlement Agreement to the extent that the third-party receiving such information was not under enforceable obligations of confidentiality. Each party may disclose confidential information (i) if legally compelled to disclose, subject to reasonable notice to the other party and an opportunity to seek appropriate limits and/or restrictions on such disclosure, and (ii) to its affiliates, experts and advisors, subject to reasonable non-use and non-disclosure requirements; provided that all information deemed confidential shall remain subject to the Amended Confidentiality and Protective Order entered in this case on February 10, 2011.

9.2 **Public Statements.** Unless otherwise agreed to by the Settling Parties, no Party shall make any public statements concerning the Settlement (other than providing a no comment response) prior to the execution of the Settlement Agreement. Thereafter, COP will have the ability in its sole discretion to approve or reject any press releases or any other public statements that may be made by Class Counsel and the Class Representatives relating in any way to the MOU or this

Settlement Agreement, excepting the Settlement Class Notice, any notice submitted to or approved by the Court or any filing made by Class Counsel in connection with the Preliminary or Final Approval of the settlement by the First Judicial District Court. Class Counsel and the Class Representatives will have the ability in their sole discretion to approve or reject any press releases, notices or any other public statements that may be made by COP, the Partnerships, or counsel for COP relating in any way to the MOU or this Settlement Agreement. The Parties shall be entitled to make any public statement if they reasonably determine that such public statement is required by law, rule, accounting rule, or regulation, including federal securities law or the rules or regulations of any securities exchange. Class Counsel and the Settlement Administrator are permitted to communicate without restriction with Settlement Class Members and to respond to inquiries from them regarding the Settlement. Nothing in this Section 9.2 shall be deemed to prohibit COP, Settlement Class Members or Class Counsel from making statements or arguments concerning or relating to the Action, the Settlement or this Settlement Agreement in the course of any legal or administrative proceedings, including without limitation the dissemination of the Settlement Class Notice, publication of the Publication Notice, motion for Preliminary Approval and Motion for Final Approval.

9.3 **Jurisdiction; Governing Law.** The District Court will retain exclusive and continuing jurisdiction with respect to implementation and enforcement of the terms and conditions of this Settlement Agreement, and for the sole purpose of assuring that all benefits hereunder are properly provided, and all Parties to hereto submit to the jurisdiction of the District Court for such purpose. This Settlement Agreement shall be interpreted and enforced under and in accordance with the laws of the State of New Mexico. For the avoidance of doubt, the District Court does not have and shall not assert or retain jurisdiction over any Reserved Claims.

9.4 **Authority.** Each Party represents (a) that he, she or it has authority to enter into this Settlement Agreement, (b) that the signatory below signing on his, her or its behalf is authorized to sign on behalf of such Party for which he or she has signed, subject to Final Approval of this Settlement Agreement by the District Court, and (c) assuming the due authorization, execution, and

delivery of this Settlement Agreement by the other Parties, this Settlement Agreement constitutes the legal, valid, and binding obligations of such Party, enforceable against such Party in accordance with its terms.

9.5 **Binding Agreement.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns. Neither this Settlement Agreement nor any of the rights, interests, or obligations hereunder shall be assigned, in whole or in part, by any of the Parties without the prior written consent of each of the other Parties, other than an assignment by will or by the laws of descent and distribution, and any attempted assignment in violation of this provision shall be null and void.

9.6 **Non-Disparagement.** No Party will knowingly disparage the litigation or the Settlement, the application for attorney fees or the application for incentive awards, provided that this provision does not prohibit COP, Settlement Class Members or Class Counsel from making statements or arguments concerning or relating to the litigation or the Settlement in the course of any legal or administrative proceedings. COP will take no position on any application for fees and reimbursement of expenses made by Class Counsel or by the Settlement Class or any application for awards out of the settlement fund to Plaintiff.

9.7 **Reliance.** The Plaintiff's willingness to enter into this Settlement is, in part, made in reliance upon the accuracy of the data and other information COP has provided during discovery, settlement negotiations and during due diligence in the Action, as well as the Confirmation Process in Section 2.2. COP represents that the data and information COP has provided during discovery and the Confirmation Process to Class Counsel and experts engaged by Plaintiff is the same data and information that COP has provided to its own experts engaged in connection with the Action. COP represents that to the best of its knowledge the information it has provided is accurate and complete. COP also represents to the best of its knowledge that it has disclosed the identity of all affiliates on whose behalf COP pays royalties on the production of CBM from the Fruitland formation underlying the San Juan Basin of New Mexico, that COP has disclosed the deductions (both

volumetric and monetary) attributable to the Settlement Class members' royalty and overriding royalty burdening those affiliates, and that no other such affiliates exist or have existed at any time during the Class Period, with the exception of Burlington Resources Oil & Gas Company LP.

9.8 **Nature of Settled Claims.** The Settling Parties expressly recognize that none of the Settlement Amount is allocated to increase for tax purposes the prices, values, or volumes of CBM produced by COP Released Parties during the Class Period from the Fruitland formation underlying the San Juan Basin of New Mexico from which deductions were taken from the royalties and overriding royalties due to the Class Members.

9.9 **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which is hereby deemed an original, but all of which together shall constitute one and the same instrument.

9.10 **Entire Agreement.** This Settlement Agreement and the exhibits hereto (the "**Exhibits**"), constitute the entire agreement and obligation between and among the Parties with respect to the claims and defenses in the Action and Released Claims, and supersede all prior oral and written settlement negotiations, agreements, understandings, discussions and communications between and among the Parties with respect to the subject matter hereof, and specifically replace and supersede the Term Sheet and MOU. Except for this Settlement Agreement and the Exhibits, there are no other warranties, representations, covenants, promises, undertakings or understandings by or among the Parties to this Settlement Agreement related in any way to the Settlement. Any modification or waiver of, deletion or addition to the terms of this Settlement Agreement must be in writing, mutually agreed upon, signed by or on behalf of all Parties or their successors in interest and approved by the District Court in this Action.

9.11 **Incorporation by Reference.** All of the Exhibits are material and integral parts of this Settlement Agreement and are fully incorporated herein by reference.

9.12 **Advice of Counsel.** Each Party acknowledges that he, she or it has been and is being fully advised by competent legal counsel of such Party's own choice and fully understand

the terms and conditions of this Settlement Agreement, and the meaning and import thereof, and that such Party's execution of this Settlement Agreement is with the advice of such Party's counsel and of such Party's own free will.

9.13. **Construction.** The terms, provisions, and conditions of this Settlement Agreement shall be interpreted and construed in accordance with their usual and customary meanings. Each of the Parties expressly, knowingly, and voluntarily waives the application, in connection with the interpretation and construction of this Settlement Agreement, of any rule of law or procedure to the effect that ambiguous or conflicting terms, conditions, or provisions shall be interpreted or construed against the Party whose legal counsel prepared the executed version or any prior drafts of this Settlement Agreement. The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall be deemed to be followed by the words "without limitation."

9.1 **Manner of Interpretation.** The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

9.15 **Statements Regarding COP's Capacity.** The Settling Parties understand and agree COP is executing this Settlement Agreement in its capacity as managing partner of the Partnerships on the condition that Final Approval of the settlement by the District Court shall be obtained. COP does not otherwise agree that claims related to alleged underpayment of royalties by the Partnerships have been certified, or that individuals with claims related only to alleged underpayment of royalties by the Partnerships, and not by COP, are members of the Class.

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THIS SETTLEMENT AGREEMENT has been executed by the undersigned as of _____, 2017.

SMITH FAMILY, LLC

By: William A. Smith
Name: William A. Smith
Title: Manager
3-23-17

APPROVED:

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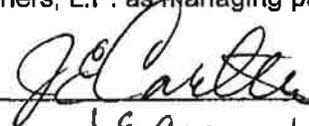
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By: 

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Title: ATTORNEY-IN-FACT

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