

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
D.J. SIMMONS COMPANY LIMITED)	Case No. 16-11763-JGR
PARTNERSHIP)	
EIN: 85-0413146)	Chapter 11
)	
Debtor.)	
<hr/>		
In re:)	
)	
KIMBETO RESOURCES, LLC)	Case No. 16-11765-JGR
EIN: 85-0473314)	
)	Chapter 11
)	
Debtor.)	
<hr/>		
In re:)	
)	
D.J. SIMMONS, INC.)	Case No. 16-11767-JGR
EIN: 85-0407729)	
)	Chapter 11
)	
Debtor.)	Jointly Administered as
)	Case No. 16-11763-JGR
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**MOTION TO APPROVE SETTLEMENT AGREEMENT
AND SALE OF ASSETS UNDER 11 U.S.C. § 363(f)**

D.J. Simmons Company Limited Partnership and D.J. Simmons, Inc. (collectively, “Debtors”), hereby file this Motion to Approve Settlement Agreement and Sale of Assets Under 11 U.S.C. § 363(f) (this “Motion”). In support, the Debtors state as follows:

A. Pertinent facts.

1. On March 1, 2016 (the “Petition Date”), the Debtors¹ filed their voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

¹ An affiliated entity of the Debtors, Kimbeto Resources, LLC (“Kimbeto”), also filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 1, 2016.

2. On December 12, 2012, the Debtors and WPX Energy Production, LLC (“WPX”) entered into a Purchase and Sale Agreement related to certain oil and gas leases located in San Juan County, New Mexico (the “PSA”). The PSA concerned a 5-year term assignment of 90% of the leasehold Debtors owned in numerous oil and gas leases (including leases held by the related debtor Kimbeto) for \$3,000 per acre. The total came to \$1,475,317 in cash plus a drilling deposit of \$500,000. As of the Petition Date, WPX still holds the Debtors’ drilling deposit for \$90,115.

3. The PSA also included a lease related to a well commonly referred to as the “Kimbeto 13-1 well” (the “Lease”). Because the Lease is part of the oil and gas leases on land owned by the Jicarilla Apache Tribe, the Bureau of Indians Affairs (“BIA”) has jurisdiction, rights, and interests in these leases. Debtors spudded the Kimbeto 13-1 well during the pre-petition period. Thereafter, BIA decided that Simmons missed the first production date and the Lease could technically be called invalid. WPX continued then to talk to the BIA and contacted individual allottees regarding the Lease to negotiate terms to ratify the lease.

4. On May 27, 2016, WPX filed a Proof of Claim asserting a claim against the Debtors’ bankruptcy estates for \$912,000.00 for breach of contract damages WPX incurred as a result of the Debtors’ alleged breach of the PSA (“WPX’s Claim”). *See* Claims Register, Proof of Claim 12-1.

5. WPX and the BIA have now tentatively negotiated a ratification of the Lease if WPX pays \$1,500 per acre for the 160 acre lease, or \$240,000. To resolve litigation between WPX and the Debtors related to the PSA and the alleged issues regarding the Lease, WPX and the Debtors have agreed to resolve all issues and transfer the Lease and the ownership of the Kimbeto 13-1 well from D.J. Simmons, Inc., to WPX.

6. The BIA has required WPX to perform its obligations within a limited timeframe, which also requires the Debtors to seek shortened notice of this Motion. As stated in Debtors' Motion to Shorten Time, the settlement concerns a transfer of Debtors' assets that secure a debt owed to the BOKF, N.A. d/b/a Bank of Oklahoma, formerly Bank of Oklahoma, NA ("BOKF"). BOKF has consented to the transfer of its secured collateral. If the Debtors do not promptly receive Court approval of this Motion and attached Settlement Agreement, WPX cannot comply with its agreement with the BIA and may withdraw its offer under the Settlement Agreement.

7. The parties' proposed Settlement Agreement is attached as **Exhibit A**. The salient terms are:

A. The Debtors shall (a) execute and deliver to WPX an assignment (free and clear of all liens, claims and encumbrances) of all of the Debtors' right, title and interest in Lease and to the Kimbeto 13#001 Well located in the SE/4 of Section 13, T23N-09W, San Juan County, NM; (b) execute and deliver to WPX an assignment of the Debtors' Record Title in the Lease; and (c) execute and deliver to WPX an assignment of the Debtors' ten percent (10%) Operating Rights in the Lease from the base of the Mesaverde to the top of the Greenhorn;

B. Once the Settlement Agreement and related documents are executed with Court approval, WPX shall present an Amendment and Ratification of Lease to the Indian Allottees who own an interest in the Lease. WPX shall thereafter submit all applicable documents to the Director of the Farmington Indian Minerals Office for approval. WPX's must receive this approval no later than August 31, 2016. This deadline is a condition precedent to the withdrawal of the WPX Claim from the Bankruptcy Case and to the payment of \$90,115 to the Debtors.

C. After documents are executed with Court approval and approved by the various persons or entities identified in the Settlement Agreement, WPX will withdraw the WPX Claim from the Debtors' bankruptcy cases and pay the Debtors \$90,115.

D. The parties have agreed to standard releases. In addition, WPX agrees to indemnify, hold harmless and defend Debtors from all claims, liability, loss or damage related to the Lease or the Well assigned to WPX, if brought by the Bureau of Indian Affairs.

B. The Settlement Agreement is fair, reasonable, and in the best interests of Debtors' estates.

8. “To minimize litigation and expedite the administration of a bankruptcy estate, ‘compromises are favored in bankruptcy.’” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. 1993)). In assessing a request to approve a compromise under Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, “a court’s general charge is ‘to determine whether the settlement is fair and equitable and in the best interests of the estate.’” *Official Comm. of Unsecured Creditors v. W. Pac. Airlines, Inc. (In re W. Pac. Airlines, Inc.)*, 219 B.R. 575, 579 (D. Colo. 1998) (quoting *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 976 (D. Colo. 1989)).

9. Although the Court may approve a settlement under Rule 9019, its decision “must be an informed one based upon an objective evaluation of developed facts.” *Kaiser Steel*, 105 B.R. at 978; *Reiss v. Hagmann*, 881 F.2d 890, 892 (10th Cir. 1989).

10. Courts have focused on four primary factors in considering approval of bankruptcy settlements: “the probable success of the litigation on the merits, any potential difficulty in collection of a judgment, the complexity and expense of the litigation and the interests of creditors in deference to their reasonable views.” *Kaiser Steel*, 105 B.R. at 977; see *Korngold v. Loyd (In re Southern Medical Arts Companies, Inc.)*, 343 B.R. 250, 256 (B.A.P. 10th Cir. 2006) (same); *Martin*, 91 F.3d at 393 (same). Besides considering those factors, the Court “must carefully weigh the value of the settled claim against the value to the estate by the settlement.” *In re The Hermitage Inn, Inc.*, 66 B.R. 71, 72 (Bankr. D. Colo. 1986).

11. “[S]ome deference to the business judgment” of the Debtors also is appropriate where a proposed settlement otherwise is fair and equitable to the estate. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006).

12. Here, the interests being transferred under the Settlement Agreement are not substantial to the Debtors' estates. Debtors will soon seek confirmation of a plan of reorganization; maintaining possession of these assets requires litigating claims asserted by WPX, precludes the \$90,115 payment on account of BOKF's secured claim, and only detracts Debtors' ability to reorganize. Through this Settlement Agreement, the Debtors will dispose of certain assets, resolve pending claims, and receive a greater benefit than they would receive from selling assets to another person or entity. The proposed settlement benefits BOKF, WPX, all other unsecured creditors due to WPX withdrawing the WPX Claim, and Debtors' estates. The Settlement Agreement with WPX is fair, reasonable and in the best interest of the estate for purposes of approval under Fed. R. Bankr. P. 9019.

C. Debtors' assets may be transferred under § 363(f) with BOKF's consent.

13. The transfer of the Lease and the Kimbeto 13-1 well is essentially a sale of assets between Debtors and WPX. As shown in the Exhibit A, the consideration for the transfers concerns the resolution of certain claims under a pre-petition PSA and claims filed in the bankruptcy cases. Debtors have notified BOKF of their intent to transfer collateral that secures BOKF's debt. BOKF has consented under 11 U.S.C. § 363(f) to the transfers contemplated by the Settlement Agreement for payment of \$90,115.

14. Approval of a sale of property under Section 363 is warranted where there exists a "sound business reason." *Comm. dof Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a 'business judgment test.'" *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward*

Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999); *Castre*, 312 B.R. at 428.

15. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property include (where applicable):

(1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or least the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value.

In re Medical Software Solutions, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted).

16. “[T]he bankruptcy court has considerable discretion” in evaluating and approving a proposed transfer other than in the ordinary course of business under Section 363(b). *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”). 11 U.S.C. § 363(f) provides that a debtor may sell property free and clear of liens if the lienholder consents. See 11 U.S.C. § 363(f)(2).

17. BOKF has consented to the transfer of the secured collateral subject to the Settlement Agreement. Debtors therefore can transfer the assets free and clear under 11 U.S.C. § 363(f). Debtors have agreed to provide BOKF with a \$90,115 payment, and Debtors will deduct this amount from the secured debt owed by the Debtors and Kimbeto to BOKF.

18. The compromise will result in a payment to the Debtors’ bankruptcy estates and release of WPX’s claims asserted against the Debtors’ estates. Moreover, BOKF will receive the

proceeds of its collateral and lessen the total debt owed by the Debtors and Kimbeto. The alternative to this situation is protracted litigation with no parties receiving the benefits from the Settlement Agreement. This compromise is in the best interest of the Debtors and their estates, was entered into in the Debtors' sound business judgment, has received consent from BOKF under 11 U.S.C. § 363(f), and should be approved by the Court.

WHEREFORE, the Debtors respectfully request the Court approve this Motion and the Settlement Agreement attached as Exhibit A.

Dated this 8th day of August, 2016.

LINDQUIST & VENNUM LLP

By: /s/ Ethan J. Birnberg

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Attorneys for Debtors

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2016, the foregoing **MOTION TO APPROVE SETTLEMENT AGREEMENT AND SALE OF ASSETS UNDER 11 U.S.C. § 363(f)**, was served by U.S. Mail, first class postage prepaid, addressed to all parties listed on Limited Service List No. 5, Dated June 10, 2016 (Dkt. #114).

/s/ Brandon Blessing

Exhibit A

FINAL EXECUTION VERSION

SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Settlement Agreement**”) is entered into effective as of this _____ day of August, 2016, (“**Effective Date**”) by and between DJ Simmons Company Limited Partnership and DJ Simmons, Inc. (collectively “**DJ Simmons**”) and WPX Energy Production, LLC (hereinafter “**WPX**”).

WHEREAS, DJ Simmons and WPX are parties to that certain Purchase and Sale Agreement, dated December 12, 2012 (“**PSA**”). On March 1, 2016, DJ Simmons filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Colorado, Denver Division (“**Bankruptcy Court**”), Case Number 16-11763-JGR (the “**Bankruptcy Case**”).

WHEREAS, pursuant to Article 4.1(b) of the PSA, DJ Simmons represented and specially warranted title to WPX as to various leases located in San Juan and Rio Arriba Counties, New Mexico including that certain oil and gas lease known as the “NOG-0107-1490 Lease” located in San Juan County, New Mexico containing 160 acres (“**Lease**”). Under the terms of the PSA, WPX paid to DJ Simmons \$432,000 for the Lease. WPX has alleged that the Lease is voidable and therefore WPX filed a proof claim against DJ Simmons in the Bankruptcy Case for breach of contract and failure of title related to the Lease (“**WPX Claim**”).

WHEREAS, pursuant to Article 2.4(c) of the PSA WPX was obligated to bear and pay all costs and expenses attributable to DJ Simmons retained interest in the assets sold under the PSA up to \$500,000, such payment being referred to in the PSA as the “**Drilling Deposit**.” DJ Simmons has listed a claim in the Bankruptcy Case against WPX for failure to fulfill its obligation related to the Drilling Deposit which claim totals \$90,115 (“**DJ Simmons Claim**”).

WHEREAS, the Parties desire to settle and seek approval in the Bankruptcy Case of the WPX Claim and the DJ Simmons Claim pursuant to the terms of this Settlement Agreement.

NOW, THEREFORE, for and in consideration set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, and in consideration of the mutual covenants and agreements contained herein, the undersigned parties hereby agree as follows:

1. Within one (1) day of the full execution of this Settlement Agreement, DJ Simmons shall file an appropriate motion in the Bankruptcy Case for approval of this Settlement Agreement. The motion will be filed in time for the transaction herein to be timely completed and DJ Simmons will seek to shorten the notice period if necessary.
2. Within one (1) day of DJ Simmons receipt of approval from the Bankruptcy Court, DJ Simmons shall (a) execute and deliver to WPX an assignment (free and clear of all liens, claims and encumbrances) of all of DJ Simmons’ right, title and interest in and to the Kimbeto 13#001 Well located in the SE/4 of Section 13, T23N-09W, San Juan County, NM on the Assignment, Bill of Sale and Conveyance form attached hereto as **Exhibit A**; (b) execute and deliver to WPX an assignment of DJ Simmons’

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Record Title in the Lease in the form attached hereto as **Exhibit B**; and, (c) execute and deliver to WPX an assignment of DJ Simmons' ten percent (10%) Operating Rights from the base of the Mesaverde to the top of the Greenhorn in the Lease in the form attached hereto as **Exhibit C**.

3. Notwithstanding any recital or agreement above, the WPX and DJ Simmons both agree that the Term Assignment, Bill of Sale, and Conveyance of Assets dated December 27, 2012 ("Term ABOS") from DJ Simmons to WPX related to specific depth intervals which were specifically listed on Exhibit A to such document. WPX and DJ Simmons agree that despite the Term ABOS and assignment contemplated by this Agreement, DJ Simmons still retains 100% ownership of those remaining depths which were not assigned, and this Agreement and the Term ABOS do not impair DJ Simmons' rights to explore for and produce hydrocarbons from the retained depths.
4. Upon WPX's receipt of the foregoing documents from DJ Simmons, WPX shall execute such documents then, WPX shall present the "Amendment and Ratification of Lease" in the form attached hereto as **Exhibit D** to the various Indian Allottees who own an interest in the Lease for their execution. Exhibits A, B, C and D shall collectively be referred to herein as the "**Assignment Documents**." Upon receipt of all necessary Indian Allottees signatures on the Amendment and Ratification of Lease necessary to cure the defect in the Lease, WPX shall submit the Assignment Documents to Johnna Oberly, Director of the Farmington Indian Minerals Office for approval ("**Director Approval**"). WPX's receipt of the Director Approval on a date no later than August 31, 2016, is a condition precedent to the withdrawal of the WPX Claim from the Bankruptcy Case and to the payment of the consideration set forth in Paragraph 4 below. Should the Director Approval not be granted by August 31, 2016, WPX shall have the option but not the obligation, to terminate this Settlement Agreement and if such option is exercised, this Settlement Agreement shall terminate, (i) WPX and DJ Simmons shall be both released from any obligations under this Settlement Agreement and it shall be deemed *void ab initio*; (ii) WPX shall return Exhibits A, B and C to DJ Simmons and they shall not be recorded and shall be deemed *void ab initio*; (iii) both the WPX Claim and the DJ Simmons Claim in the Bankruptcy Case shall remain.
5. **Consideration.** Within one (1) day of WPX's receipt of the Director Approval of the Assignment Documents, WPX shall (i) file the appropriate documentation to withdraw the WPX Claim from the Bankruptcy Case and provide to DJ Simmons evidence of such filing; and, (ii) pay to DJ Simmons (pursuant to the instructions of the Bankruptcy Court) and DJ Simmons shall accept the total sum of **Ninety Thousand, One Hundred and Fifteen Dollars (\$90,115)**. Upon DJ Simmons' receipt of the foregoing consideration from WPX, it shall provide written notice to WPX confirming that the DJ Simmons Claim has been fully satisfied.
6. **DJ Simmons Release.** In exchange for the consideration given by WPX to DJ Simmons herein, and as full and complete consideration for receipt of such release of claim and payment, DJ Simmons, for themselves and DJ Simmons's heirs, successors and assigns does hereby **RELEASE, ACQUIT AND FOREVER**

FINAL EXECUTION VERSION

DISCHARGE WPX and its/their subsidiaries, divisions, related business entities, officers, directors, indemnitors, shareholders, representatives, agents, affiliates, employees, successors, assigns, attorneys, insurers, and any of its insurer's subsidiaries, affiliates, officers, directors, and shareholders, from all claims, demands, and causes of action of any nature, whether in contract or in tort, known or unknown, fixed or contingent, liquidated or unliquidated, now existing or that might arise hereafter related to the DJ Simmons Claim.

7. **WPX Release.** In exchange for DJ Simmons execution of the assignments set forth in Paragraph 1, WPX, for themselves and WPX's heirs, successors and assigns does hereby **RELEASE, ACQUIT AND FOREVER DISCHARGE** DJ Simmons and its/their subsidiaries, divisions, related business entities, officers, directors, indemnitors, shareholders, representatives, agents, affiliates, employees, successors, assigns, attorneys, insurers, and any of its insurer's subsidiaries, affiliates, officers, directors, and shareholders, from all claims, demands, and causes of action of any nature, whether in contract or in tort, known or unknown, fixed or contingent, liquidated or unliquidated, now existing or that might arise hereafter related to the WPX Claim. Further, WPX agrees to indemnify, hold harmless and defend DJ Simmons from any and all claims, liability, loss or damage whatsoever (including claims for damages, fees (whether attorneys fee or otherwise), and costs) which are caused by, in any way result from, arise out of, or are relate to the Lease or the Well assigned pursuant to the terms of this Settlement Agreement, which may be brought by the Bureau of Indian Affairs.
8. **No Waiver.** Nothing in this Settlement Agreement, however, shall waive or release any rights any Party may have to seek enforcement of, or make a claim for breach of, the express covenants, promises, and provisions of this Settlement Agreement.
9. **Fees and Expenses.** Each party will bear its own costs and attorney fees related to negotiation of this Settlement Agreement.
10. **No Admission of Liability.** The recitals, terms and provisions of this Settlement Agreement are for the purposes of memorializing a settlement and are not intended to be admissions of liability by either party.
11. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral understandings or agreements with respect to the subject matter hereof and the WPX Claim and the DJ Simmons Claim hereby settled.
12. **Representations and Warranties.** The parties warrant and represent that none of them previously assigned any portion of any claims to be discharged hereunder and that no other person or entity owns any interest in any such claims. Further, DJ Simmons represents and warrants that it has all requisite approvals from the United States Bankruptcy Court for the District of Colorado, Denver Division to enter into this Settlement Agreement. Each person who executes this Settlement Agreement warrants and represents to each party hereto that he or she has the authority to do so

FINAL EXECUTION VERSION

and agrees to indemnify and hold harmless the other party from any claim that such authority did not exist.

13. **Assignment.** This Settlement Agreement shall not be assigned by the Parties absent prior, written consent. This Settlement Agreement shall be binding upon the Parties and each of their respective successors and permitted assigns. Should any Party to this Settlement Agreement institute any action or proceeding to enforce any provision hereof or for damages by reason of any breach of any provision of this Settlement Agreement, the prevailing party in any such action or proceeding shall be entitled to all reasonable attorney fees and court costs incurred in connection with such action or proceeding.
14. **Severability.** In the event that any condition or covenant herein contained in this Settlement Agreement is either deemed to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect any other covenant or condition herein contained. If such a condition, covenant, or other provision shall be deemed invalid due to scope or breadth, then such provision shall be valid to the extent and scope permitted by law.
15. **Amendments.** This Settlement Agreement may not be amended or modified, except in a written agreement signed by both Parties to this Settlement Agreement.
16. **Further Assurances.** In the event that it becomes necessary to prepare and execute any additional documents in order to effectuate the purposes of this Settlement Agreement, the Parties hereto agree to do so as soon as reasonably possible.
17. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
18. **Bankruptcy Case.** The terms and conditions of this Settlement Agreement may be filed in the Bankruptcy Case and are subject to final approval by the Bankruptcy Court.

This Settlement Agreement shall be effective as of the Effective Date.

[Signature Pages on Following Pages]

FINAL EXECUTION VERSION

DJ SIMMONS:

DJ Simmons Company Limited Partnership

By Rodney L Seale

Its President

Printed Name: Rodney L. Seale

DJ Simmons, Inc.

8/6/16

Its President

Printed Name: Rodney L Seale

FINAL EXECUTION VERSION

WPX

WPX ENERGY PRODUCTION, LLC

By  _____

Title Chad Odegaard VP San Juan Asset



JEB

San Juan County, New Mexico

Exhibit A to Settlement Agreement
Form of Assignment, Bill of Sale and Conveyance

When Recorded Return to:
WPX Energy Production, LLC c/o Brennan West
3500 One Williams Center, Suite 2500
Tulsa, Oklahoma 74172

Assignment, Bill of Sale, and Conveyance of Assets

This Assignment, Bill of Sale, and Conveyance of Assets (“**Assignment**”), effective as of 7:00 AM MST _____, 2016 (“**Effective Time**”), is by and between **DJ SIMMONS COMPANY LIMITED PARTNERSHIP**, a Delaware limited partnership, whose address is 1009 Ridgeway Place, Farmington, NM 87401 (“**Assignor**”), and **WPX ENERGY PRODUCTION, LLC**, a Delaware limited liability company, whose address 3500 One Williams Center, Suite 2500, Tulsa, OK 74172 (“**Assignee**”). Assignor and Assignee are known collectively as the “parties.”

For \$100.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, assigns, transfers, grants, bargains and conveys to Assignee all of Assignor’s right, title and interest whether present, contingent or reversionary, in and to the following real and personal property but specifically excluding the Excluded Assets as defined below (collectively, the “**Assets**”):

(1) The oil and gas lease to the depths specifically described on **Exhibit A**, including all leasehold estates, royalty interests, overriding royalty interests, net profits interests (collectively the “**Lease**”) and the **Land** INsofar AND ONLY INsofar AS SAID LEASE COVERS THOSE DEPTHS AS DESCRIBED IN EXHIBIT “A”;

(2) The oil, gas or water well identified on Exhibit B (“**Well**”);

(3) the oil, gas, casinghead gas, coal bed methane, condensate and other gaseous and liquid hydrocarbons or any combination thereof, sulphur extracted from hydrocarbons and all other lease substances (“**Hydrocarbons**”) from the Well and under the Lease and that may be produced and saved under the Lease;

(4) the unitization, pooling and communitization agreements, declarations, orders, and the units created thereby relating to the properties and interests described in Paragraphs (1), (2) and (3) and to the production of Hydrocarbons, if any, attributable to said properties and interests;

(5) all surface leases, permits, rights-of-way, licenses, easements, fee surface estates and other surface rights agreements used in connection with the production, gathering, treatment, processing, storing, sale or disposal of Hydrocarbons or produced water from the interests described

San Juan County, New Mexico

in paragraphs (1) through (5) which are specifically listed on Exhibit C (collectively, the “*Surface Contracts*”);

(6) the existing contracts and effective sales, purchase contracts, operating agreements, exploration agreements, development agreements, balancing agreements, farmout agreements, service agreements, transportation, processing, treatment or gathering agreements, equipment leases and other contracts, agreements and instruments insofar as they directly relate to the properties and interests described in paragraphs (1) through (5) and which are specifically described on Exhibit C (collectively, the “*Contracts*”); and

(7) to the extent transferable without payment of additional consideration, originals, to the extent available, or copies of all the files, records, and data relating to the items described in paragraphs (1) through (6) above, which records shall include, without limitation: lease records; division order records; title records (including abstracts of title, title opinions and memoranda, and title curative documents); correspondence; litigation, administrative and regulatory files; electronic data files (if any) (collectively, the “*Records*”).

(8) Subject to Assignor exception and reservation of such rights as may be reasonably necessary or convenient for its development of the Excluded Assets not conveyed by this Assignment, Assignor further grants to Assignee all rights as are reasonably necessary or convenient to carry out the terms of this Assignment, including but not limited to the right of surface access, use and occupancy, the right of ingress and egress, the right to conduct geophysical and other exploratory activities, and the right to drill through said depths and to conduct operations therein.

The Assets shall not include, and there is excepted, reserved, and excluded from the purchase and sale contemplated hereby, the following excluded assets (“Excluded Assets”):

(a) (i) all corporate, financial, income, Tax and legal records of Assignor that relate to Assignor’s business generally (whether or not relating to the Assets) and (ii) all books, records and files that relate to the Excluded Assets; (b) vehicles not used on the Assets, (c) equipment, inventory, machinery, fixtures and other tangible personal property and improvements that are leased by Assignor or located at or used in connection with any field office or yard of Assignor that are not used solely in connection with the Assets, and (d) any computers and related peripheral equipment that are not located on the Assets or not used solely in connection with the Assets, (e) all rights to any refunds for Taxes or other costs or expenses borne by Assignor or Assignor’s predecessors in interest and title attributable to periods prior to the Effective Time; (f) Assignor’s area-wide bonds, permits and licenses or other permits, licenses or authorizations used in the conduct of Assignor’s business generally; (g) all trade credits, account receivables, note receivables, take or pay amounts receivable, and other receivables attributable to the Assets with respect to any period of time prior to the Effective Time; (h) (i) contracts or surface contracts not listed on Exhibit B unless Assignee accepts assignment and delivery of same in writing; (j) any refunds due Assignor by a third party for any overpayment of rentals, royalties, excess royalty interests or production payments attributable to the Assets with respect to any period of time prior to the Effective Time. (

TO HAVE AND TO HOLD the Assets unto Assignee and its successors and assigns for the term specified herein.

This Assignment is made subject to the following terms and conditions:

A. SPECIAL WARRANTY OF TITLE. ASSIGNOR REPRESENTS AND WARRANTS TO ASSIGNEE THAT THE ASSETS ARE FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES AND ASSIGNOR WARRANTS TITLE TO THE ASSETS AGAINST ALL PERSONS CLAIMING BY, THROUGH AND UNDER ASSIGNOR, BUT NOT OTHERWISE, AND EXCEPT FOR THE FOREGOING REPRESENTATIONS AND WARRANTY, THIS ASSIGNMENT IS MADE WITHOUT WARRANTY OF TITLE OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY.

B. Subrogation. To the extent permitted by law, Assignee will be subrogated to Assignor's rights in and to representations, warranties, and covenants given with respect to the Assets. Assignor hereby grants and transfers to Assignee, its successors and assigns, to the extent so transferable and permitted by law, the benefit of and the right to enforce the covenants, representations and warranties, if any, which Assignor is entitled to enforce with respect to the Assets, but only to the extent not enforced by Assignor.

C. No Third-Party Beneficiaries. The references in this Assignment to liens, encumbrances, burdens, defects and other matters will not be deemed to ratify or create any rights in third parties or merge with, modify or limit the rights of Assignor or Assignee, as between themselves, as set forth in documents they have executed in connection with this Assignment.

D. Separate Governmental Forms. Assignor and Assignee may execute separate governmental form assignments of the Assets on officially approved forms in sufficient counterparts to satisfy applicable statutory and regulatory requirements. Those assignments will be deemed to contain all of the exceptions, reservations, warranties, rights, titles, power and privileges set forth in this Assignment as fully as though they were set forth in each assignment. The interests conveyed by each separate assignment are the same, and not in addition to, the Assets conveyed by this Assignment.

E. Successors and Assigns. This Assignment binds and inures to the benefit of Assignor and Assignee and their respective successors and assigns.

F. Entire Agreement; s Settlement Agreement. The foregoing sets forth the entire agreement between the parties and there are no oral agreements between the parties not set out in writing. This Assignment supersedes all other prior written or oral agreements, except the Settlement Agreement between Assignor and Assignee dated August __, 2016 ("**Settlement Agreement**"), which this Assignment is made subject to. If there is a conflict between the terms of this Assignment and the terms of the Settlement Agreement, the terms of the Settlement Agreement will control to the extent of the conflict. Assignor and Assignee intend that the terms of the Settlement Agreement not merge into the terms of this Assignment.

G. DISCLAIMERS. THE PARTIES HEREBY EXPRESSLY DISCLAIM, WAIVE AND RELEASE ANY EXPRESS WARRANTY OF MERCHANTABILITY, CONDITION OR SAFETY AND ANY EXPRESSED WARRANTY OF FITNESS FOR A PARTICULAR

PURPOSE; AND ASSIGNEE ACCEPTS THE LEASE AND LANDS, “AS IS, WHERE IS, WITH ALL FAULTS, WITHOUT RECOURSE.” ASSIGNEE EXPRESSLY WAIVES THE WARRANTY OF FITNESS IMPOSED BY ANY APPLICABLE STATE OR FEDERAL LAW. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW, THE DISCLAIMERS CONTAINED IN THIS ASSIGNMENT ARE “CONSPICUOUS” FOR THE PURPOSES OF SUCH APPLICABLE LAW.

H. Counterpart Execution. This Assignment may be executed in any number of counterparts. All counterparts together constitute only one Assignment, but each counterpart is considered an original.

I. Amendment and Waiver. This Assignment may be altered, amended, or waived only by a written agreement executed by the parties hereto. No waiver of any provision of this Assignment will be construed as a continuing waiver of the provision.

[Remainder of page left intentionally blank. Signature page follows.]

San Juan County, New Mexico

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the dates set forth in the Acknowledgements below, but this Assignment shall be effective as of the Effective Time.

ASSIGNOR

DJ SIMMONS COMPANY LIMITED
PARTNERSHIP BY DJ SIMMONS, INC, ITS
GENERAL PARTNER

BY: _____
ITS: _____

ASSIGNEE

WPX ENERGY PRODUCTION, LLC

By: _____
ITS: _____

[Remainder of page left intentionally blank. Acknowledgment page follows.]

ACKNOWLEDGEMENT

STATE OF _____ §
 COUNTY OF _____ §

This instrument was acknowledged before me this _____ day of _____, 2016, by _____ as _____ of DJ Simmons, Inc. as General Partner of DJ Simmons Company Limited Partnership on behalf of the limited partnership.

 Notary Public

My commission expires: _____

(S E A L)

ACKNOWLEDGEMENT

STATE OF OKLAHOMA §
 COUNTY OF TULSA §

This instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ for WPX Energy Production, LLC, a Delaware limited liability company, on behalf of the limited liability company.

 Notary Public

My commission expires: _____

(S E A L)

Exhibit A-Lease and Lands

Attached to and made a part of that certain Assignment, Bill of Sale and Conveyance between DJ Simmons Company Limited Partnership, Assignor, and WPX Energy Production, LLC, Assignee

Lessor	Lessee	Date	County, State	Recording	Sec	Twn	Rng	Grid Description	Depths Assigned
NOG-0107-1490	DJ Simmons Company Limited Partnership	6/1/2000	San Juan County, NM	Book 1325 Page 380	13	23N	9W	SE/4	Base of Mesaverde to base of Greenhorn Limestone

Exhibit B-Well

Attached to and made a part of that certain Assignment, Bill of Sale and Conveyance between DJ Simmons Company Limited Partnership, Assignor, and WPX Energy Production, LLC, Assignee

API Number	Legal Description	Well Name	Well Number
30-045-33792	P-13-23N-9W	Kimbeto	13-1

Exhibit C-Contracts and Surface Contracts

Attached to and made a part of that certain Assignment, Conveyance and Bill of Sale between DJ Simmons Company Limited Partnership, Assignor, and WPX Energy Production, LLC, Assignee

NONE

Exhibit B to Settlement Agreement
Form of Assignment of Record Title

5-154e (August 2012)

LEASE No. N0-G-0107-1490

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF MINING LEASE

WHEREAS, the Secretary of the Interior or his authorized representatives has approved Oil and Gas Mining Lease dated June 1, 2000, entered into by and between the Heirs of Allotment No. 791-26 of the Navajo Tribe of Indians, Lessor, and D.J. Simmons Company Limited Partnership of Delaware, Lessee, covering the following described allotted lands in San Juan County, New Mexico:

TOWNSHIP 23 NORTH, RANGE 9 WEST, NMPM
Section 13: SE/4
containing 160.00 acres

NOW, THEREFORE, for and in consideration of one-hundred dollars (\$100.00), the receipt of which is hereby acknowledged, the said **D.J. Simmons Company Limited Partnership of Delaware** the owner of the above described lease, hereby bargains, sells, transfers, assigns, and conveys all record title interest (operating rights having been previously severed) in and to said lease, subject to the approval of the Secretary of the Interior or his authorized representative to **WPX Energy Production, LLC**, a Delaware limited liability company, with an address of 3500 One Williams Center, Suite 4400, Tulsa, OK 74172.

Said assignment to be effective from date of approval hereby by the Secretary of the Interior or his authorized representative.

IN WITNESS WHEREOF, the said assignor has hereunto set its hand and seal, this _____ day of _____, 2016.

D.J. SIMMONS COMPANY LIMITED PARTNERSHIP

By: _____

San Juan County, New Mexico

ACCEPTANCE BY ASSIGNEE

WPX Energy Production, LLC, the Assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment, assumes full liability under the lease from its effective date and agrees to fulfill all the obligations, conditions, terms, restrictions and stipulations in said described indenture of lease, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement. In addition Assignee is in compliance with all regulations and authorizing acts.

IN WITNESS WHEREOF, the said Assignee has hereto set his hand and seal this ____ day of _____, 2016.

WPX ENERGY PRODUCTION, LLC
a Delaware limited liability company

By: _____
Thomas E. Black, Jr. – Attorney-in-fact

ACKNOWLEDGEMENT OF LIMITED PARTNERSHIP

STATE OF _____)
) ss
COUNTY OF _____)

Before me, a notary public, in and for said county and state this ____ day of _____, 2016, personally appeared _____, as _____ of D.J. Simmons Company Limited Partnership of Delaware, on behalf of the limited partnership, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein set forth.

Notary Public

My Commission Expires: _____

ACKNOWLEDGEMENT OF LIMITED LIABILITY COMPANY

San Juan County, New Mexico

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

Before me, a notary public, in and for said county and state this ____ day of _____, 2016, personally appeared Thomas E. Black, Jr., as Attorney-in-fact of WPX Energy Production, LLC, a Delaware limited liability company, on behalf of the limited liability company, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Notary Public

My Commission Expires: _____

UNITED STATES DEPARTMENT OF THE INTERIOR

Date Approved

Director, Federal Indian Minerals Office

APPROVED: PURSUANT SECRETARY
REDELEGATION ORDER 209 DM 8, SECRETARY
TRUST RESPONSIBILITY AS DEFINED BY 303 DM 2,
FEDERAL INDIAN MINERALS OFFICE RECOGNITION
AND AUTHORITIES GRANTED UNDER 303 DM 4, 10
BIAM BULLETIN 13 AND 10 BIAM 3.3E., ADDENDUM
NO. 2

San Juan County, New Mexico

Exhibit C to Settlement Agreement
Form of Assignment of Operating Rights

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Federal Indian Minerals Office

Lease Number N0-G-0107-1490

ASSIGNMENT OF OIL AND GAS LEASE
OPERATING RIGHTS

WHEREAS, for and in consideration of Ten and No/100 dollars (\$10.00), the receipt of which is hereby acknowledged, the said **D.J. Simmons Company Limited Partnership**, of Delaware, the owner of the above-described lease (hereafter called Assignor), with an address of 1009 Ridgeway Place, Farmington, New Mexico 87401 does hereby bargain, sell, transfer, assign, and convey to **WPX Energy Production, LLC**, a Delaware limited liability company (hereafter called Assignee), with an address of 3500 One Williams Center, Suite 4400, Tulsa, OK 74172, 100% of its right, title and interest in and to said operating rights, subject to the approval of the Secretary of the Interior, the following described interest to wit:

WHEREAS, the Secretary of the Interior or his authorized representatives has approved Oil and Gas Mining Lease dated June 1, 2000, entered into by and between the Heirs of Allotment No. 791-26 of the Navajo Tribe of Indians, Lessor, and D.J. Simmons Company Limited Partnership of Delaware, Lessee, covering the following described allotted lands in San Juan County, New Mexico:

TOWNSHIP 23 NORTH, RANGE 9 WEST, NMPM
Section 13: SE/4
containing 160.00 acres

That Assignors interest in the lands is ten percent operating rights (10%) INsofar AND ONLY INsofar as the lease covers the following depths: from the base of the Mesa Verde Formation to the base of the Greenhorn Limestone Formation and the interest being retained is zero percent operating rights (0%).

The Assignor reserves an overriding royalty in the amount of zero percent (0%). Said assignment to be effective from the date of approval hereby by the Secretary of the Interior.

And for the same consideration the Assignor covenants with the Assignee, heirs, successors or assigns: That the Assignor is the lawful owner of and has good title to the interest above assigned in and to said lease, free and clear from all liens, encumbrances or adverse claims; That said lease is a valid and subsisting lease on the lands above described, and all rentals and royalties due thereunder have been paid and all conditions necessary to keep the same in full force have been duly performed.

Attach all appropriate documentation relevant to this document.

IN WITNESS WHEREOF, the said assignor has hereunto set its hand and seal, this _____ day of _____, 2016.

D.J. SIMMONS COMPANY LIMITED PARTNERSHIP

San Juan County, New Mexico

By: _____

ACCEPTANCE BY ASSIGNEE

WPX ENERGY PRODUCTION, LLC, the Assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment, assumes full liability under the lease from its effective date and agrees to fulfill all the obligations, conditions, terms, restrictions and stipulations in said described indenture of lease, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement. In addition Assignee is in compliance to with all regulations and authorizing acts.

IN WITNESS WHEREOF, the said Assignee has hereto set his hand and seal this ____ day of _____, 2016.

WPX ENERGY PRODUCTION, LLC
 a Delaware limited liability company

By: _____
 Thomas E. Black, Jr. – Attorney-in-fact

ACKNOWLEDGEMENT OF LIMITED PARTNERSHIP

STATE OF _____)
) ss
 COUNTY OF _____)

Before me, a notary public, in and for said county and state this ____ day of _____, 2016, personally appeared _____, as _____ of D.J. Simmons Company Limited Partnership of Delaware, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

 Notary Public

My Commission Expires: _____

ACKNOWLEDGEMENT OF LIMITED LIABILITY COMPANY

San Juan County, New Mexico

STATE OF _____)
) ss
COUNTY OF _____)

Before me, a notary public, in and for said county and state this ____ day of _____, 2016, personally appeared Thomas E. Black, Jr., as Attorney-in-fact of WPX Energy Production, LLC, a Delaware limited liability company, on behalf of the limited liability company, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Notary Public

My Commission Expires: _____

UNITED STATES DEPARTMENT OF THE INTERIOR

Date Approved

Director, Federal Indian Minerals Office

**APPROVED: PURSUANT SECRETARY
REDELEGATION ORDER 209 DM 8, SECRETARY
TRUST RESPONSIBILITY AS DEFINED BY 303 DM 2,
FEDERAL INDIAN MINERALS OFFICE RECOGNITION
AND AUTHORITIES GRANTED UNDER 303 DM 4, 10
BIAM BULLETIN 13 AND 10 BIAM 3.3E., ADDENDUM
NO. 2**

San Juan County, New Mexico

Exhibit D to Settlement Agreement
Form of Amendment and Ratification of Lease

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Farmington, NM 87402

AMENDMENT AND RATIFICATION OF OIL AND GAS MINING LEASE

Name of Lessor: _____

Address: _____
N/A _____

The undersigned hereby acknowledges the receipt of a bonus, in the amount of **\$1,500.00 per acre** or fair market value, whichever is greater, or their proportionate share thereof, from **WPX Energy Production, LLC** for the Amendment and Ratification of Oil and Gas Lease Contract No. NO-G-0107-1490, approved on July 11, 2001, for Navajo Allotment No. 26, covering the land described below,

Legal Land Description: Township 23 North, Range 9 West, New Mexico Principal Meridian
Section 13: SE/4
San Juan County, New Mexico 160.00 Acres

This Amendment modifies the terms of Oil and Gas Lease Contract No. NO-G-0107-1490 by increasing the annual rental rate to \$5.00 and modifying the primary lease term from five (5) years to six (6) years.

The undersigned further agrees to extend, revive, renew and ratifies Oil and Gas Lease Contract No. NO-G-0107-1490 as approved by the Director of the Federal Minerals Office on July 11, 2001, in accordance with the terms stated above.

The undersigned further agrees that this amendment and ratification shall be attached to the formal lease contract and become a part thereof, with the same effect and in lieu of my signature thereon.

IN WITNESS THEREOF, I have hereunto set my hand and seal this _____ day of _____, _____.

Two witnesses to execution by Lessor:

Lessor

Address: _____

Address: _____ Interest in Tract: _____

This form to be executed before 2 witnesses or a Notary Public with the acknowledgment completed.

STATE OF _____)

ACKNOWLEDGMENT-INDIVIDUAL

COUNTY OF _____)

On this _____ day of _____, _____, before me personally appeared _____

_____ known to me (or proved to me on the oath of _____

_____) to be the person(s) who is/are described in and who executed the within and

San Juan County, New Mexico

foregoing instrument, and acknowledged to me that _____ executed the same.

WITNESS MY HAND AND OFFICIAL SEAL

My Commission Expires:

Notary Public

APPROVED : _____, 2016

Director, Federal Indian Minerals Office