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A FORM OF MORTGAGE AND ASSIGNMENT OF OIL AND GAS PRODUCTION

BY DONALD W. HOAGLAND

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Subjecting an interest in land to the lien of a security instrument is common practice and is a routine operation for most practitioners. When the subject-matter involved is an interest whose value lies in oil or gas production, some special problems arise that call for special treatment. The purpose of this article is to tender a suggested form of mortgage designed to meet these special problems.

The form is intended for use in Colorado, and would probably be considered acceptable by our brethren in most of the surrounding states. This reference to jurisdictions activates a warning that must be issued about the form: Whether the law governing the validity and priority of the lien is the law of the state whose rocks produce the mineral may depend on whether or not that state characterizes the interest being mortgaged as in interest in land. For this purpose Colorado is, unfortunately, in mid-air about this with reference to the lessee's interest and most related interests, so that the form attempts to pass muster as a chattel mortgage as well as a real estate mortgage. However, if the interest being mortgaged is characterized as personal property for this purpose, then a conflict of laws problem may exist and the draftsman should hedge his position as well as possible.

The form is also intended to accommodate mortgaged properties in many counties and states. This is one reason why it is a mortgage and not a deed of trust to the public trustee. It provides for future advances, to establish a continuing basis for financing the development of a producing field. It contemplates that the purchaser of production will pay the mortgagor's share directly to the mortgagee. If used to encumber the interest of the lessee under any reasonably conventional oil and gas lease, on Colorado lands, it would be the better part of valor to record it as a mortgage of real estate and have it indexed in both the real estate and chattel mortgage indices. Consideration should also be given to the applicability of statutes dealing with assignments of accounts receivable and mortgaging of personal property held for sale.

This is the suggested form:

Mortgage and Assignment of Production

(THIS INSTRUMENT SECURES FUTURE ADVANCES)

THIS MORTGAGE AND ASSIGNMENT OF PRODUCTION (hereafter referred to as the "Mortgage") is made as of the _____ day of _____, 19 _____, between _____ of _____ hereafter called "Mortgagor" (whether one or more), and _____ hereafter called "Mortgagee."

It evidences that:

(1) Mortgagor is justly indebted to Mortgagee in the sum of \$ _____, and as evidence of such indebtedness has made, executed and delivered to Mortgagee a certain promissory note of even date herewith payable to the order of Mortgagee, due on or before _____, bearing interest at _____% per annum, and payable as follows: (Here insert payment provisions).

(2) Mortgagor has also promised, for value received, to pay any further advances which Mortgagee or the holder of said note may, at its option, make to Mortgagor, the amount of such further advances to become a part of the principal indebtedness secured hereby, the total of which principal indebtedness shall not exceed \$ _____, such further advances to be advanced on or before _____, 19 _____, to bear interest at a rate not to exceed _____% per annum and to be due and payable on or before _____, 19 _____.

NOW THEREFORE, (a) to secure the payment when due and payable of the principal and interest of the promissory note described above, and any and all renewals or extensions thereof or any part thereof; and (b) to secure the payment when due and payable of all further advances which Mortgagee may, at its option, make to Mortgagor as described above, together with interest thereon; and (c) to secure to Mortgagee the payment of all other loans or advances to Mortgagor and of all other indebtedness, liabilities or obligations of Mortgagor to Mortgagee, actual, direct or contingent, and now existing or hereafter arising, however created and wherever or however acquired by Mortgagee (all of which is hereafter referred to as the "Indebtedness") all of which shall be secured equally and ratably with the payment of the amount evidenced by the promissory note described above.

MORTGAGOR DOES GRANT, SELL, CONVEY, ASSIGN, PLEDGE, AND MORTGAGE to Mortgagee, its successors and assigns forever, all of the following property: (Here insert property descriptions, or make reference to an exhibit or schedule, to be attached, which will describe the Mortgaged property).

Together with:

(a) all further rights, interests and estates of whatsoever kind or character now held or hereafter acquired by Mortgagor in and to the lands or leases described above and in and to all oil, gas and other minerals therein and thereunder or which may be produced therefrom; and

(b) all of Mortgagor's right, title, interest and claim in and to all oil, gas, oil wells, gas wells, equipment, buildings, structures, derricks, compressors, engines, boilers, pumps, lines, tanks, meters, pipe lines, tubing, casing, rods, pipe fixtures, oil in storage, machinery, supplies, appliances and other personal property of every kind and character whatsoever, now or hereafter located upon, connected with, appurtenant to or used or obtained in connection with the lands or leases described above, and any and all improvements, betterments, replacements and substitutions therefor and additions thereto; and

(c) all of Mortgagor's right, title, interest and claim now held, or hereafter acquired, in and to all income, rents, royalties, profits and proceeds of every kind and character arising from the lands or leases described above, including Mortgagor's proportionate share or shares of all moneys and proceeds realized from the sale, use or marketing of all oil, gas, casing-head gas and other minerals produced, saved, marketed or sold therefrom on and after the 1st day of _____, 19 _____, at 7:00 o'clock a.m.;

All of which is hereafter referred to as the "Mortgaged Property" and all of which shall be subject to the lien of this Mortgage for the benefit and

security of Mortgagee, its successors and assigns, for the purposes and upon the terms and conditions herein set forth;

TO HAVE AND TO HOLD all of said Mortgaged Property unto Mortgagee, its successors and assigns forever; PROVIDED, ALWAYS, that these presents are upon the express condition that if Mortgagor shall pay or cause to be paid promptly when due and payable the Indebtedness and all other sums at any time secured hereby and shall fully keep and perform the covenants, conditions and agreements herein contained, then, but only in such event, these presents shall be satisfied and this Mortgage shall be released by the Mortgagee; otherwise, the same shall remain in full force and effect. The indemnities of Mortgagor to Mortgagee under this Mortgage shall survive any such satisfaction or release.

ARTICLE I

Mortgagor's Covenants and Warranties

Mortgagor covenants and warrants that:

1. Mortgagor has good and merchantable title to the Mortgaged Property, free and clear of any and all prior liens or encumbrances, and has full right and authority to make this instrument; all leases and leasehold interests included in the Mortgaged Property are valid and subsisting and that all payments, rentals, royalties and obligations thereunder have been duly paid and performed; and that Mortgagor will forever defend all and singular the Mortgaged Property unto Mortgagee, its successors and assigns forever, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

2. Mortgagor is entitled to receive all proceeds from the present and future production of the oil, gas and other mineral interests described above, and that such interests, including all such proceeds, are free and clear of all liens, encumbrances, overriding royalty interests or production payments of whatsoever kind or character, excepting only as may otherwise be expressly stated herein.

3. Mortgagor will not at any time during the existence of this Mortgage, without first obtaining the written consent of Mortgagee thereto, sell, assign, transfer, dispose of, encumber or collect any of the Mortgaged Property, or attempt to sell, assign, transfer, dispose of, encumber or collect any of the income or proceeds at any time constituting a part of the Mortgaged Property or remove or permit the removal of any of the Mortgaged Property from the premises upon which the same may be situated.

4. Beginning with production on and after the 1st day of _____, 19____, at 7:00 o'clock a.m., Mortgagee shall receive directly from any purchaser of production of oil, gas or other minerals attributable to the Mortgaged Property, sold or to be sold, _____ % of the moneys due or to become due for and on account of such production and Mortgagor will, whenever and as often as requested by Mortgagee, promptly execute, acknowledge and deliver such division and transfer orders and all other instruments, documents or assurances required by pipeline companies or others as may be necessary or desirable in causing direct payments of such moneys to be made to Mortgagee or in fully preserving and vesting in Mortgagee all of the rights conferred or intended to be conferred upon Mortgagee by this Mortgage.

A COPY OF THIS MORTGAGE LODGED WITH ANY PURCHASER OF PRODUCTION ACCRUING TO THE MORTGAGED PROPERTY SHALL BE SUCH PURCHASER'S FULL AND COMPLETE AUTHORITY TO MAKE DIRECT PAYMENTS TO MORTGAGEE IN THE FULL AMOUNT OR AMOUNTS DUE MORTGAGOR UNTIL WRITTEN NOTICE FROM MORTGAGEE TO SUCH PURCHASER ADVISING SUCH PURCHASER TO MAKE PAYMENTS OTHERWISE OR ADVISING SUCH PURCHASER THAT THE INDEBTEDNESS SECURED HEREBY HAS BEEN FULLY DISCHARGED.

5. To the extent of Mortgagor's power to do so, and without respect to who may be the operator of the leases, Mortgagor will cause compliance with all of the covenants, express or implied, of all oil and gas leases, assignments, farmout agreements, operating agreements and similar agreements covering the Mortgaged Property and will not declare, or cause or assert the termination or breach of any such lease, assignment or agreement without the written consent of Mortgagor; will keep and maintain the Mortgaged

Property in a good state of repair and condition and will not remove or tear down any part thereof without the prior written consent of the Mortgagee; and will pay all taxes with respect to the Mortgaged Property, including ad valorem and excise taxes, and whether levied upon the Mortgaged Property or upon the oil, gas or other minerals produced or upon their production or severance, before they become delinquent.

6. Mortgagor will neither suffer nor permit the creation of any lien or encumbrance of any kind or character against any part of the Mortgaged Property; will permit Mortgagee's representatives, at all times to have access to, go upon, examine, inspect and remain upon the Mortgaged Property and to go upon the derrick floor of any well at any time drilled or being drilled thereon and will furnish to Mortgagee and Mortgagee's representatives all pertinent information with respect to the development and operation of the Mortgaged Property; and will promptly notify Mortgagee, in writing, of the commencement of any action or legal proceeding affecting any part of the Mortgaged Property.

7. To the extent of Mortgagor's power to do so, Mortgagor will (a) cause the Mortgaged Property to be developed and operated prudently and economically in accordance with the best approved practice in the field in which it is located, (b) pay Mortgagor's share, if any, of all expenses of development and operation, (c) comply with all applicable laws affecting the operation and development of the Mortgaged Property, including workmen's compensation laws, (d) keep the Mortgaged Property insured against fire and all other hazards in such amounts and with such companies as may be required by Mortgagee and with loss payable to Mortgagee, so that, in the event of foreclosure of this Mortgage, all such insurance shall pass to the purchaser at the foreclosure sale; provided, however, that nothing herein contained shall be construed as a waiver of the lien of this Mortgage as a first and prior lien against the Mortgaged Property, now or hereafter, nor shall anything herein contained be construed to empower Mortgagor to bind Mortgagee in any contract or obligation or render the Mortgagor in any way liable or responsible for any bill or obligation incurred by Mortgagor.

8. Upon request of Mortgagee, Mortgagor will promptly take such action as may to Mortgagee seem necessary or advisable for the purpose of removing, remedying or curing any defect in or cloud upon the title to the Mortgaged Property or any part thereof, including any defect in this Mortgage or any note which it secures, whether now existing or hereafter developing, and will fully indemnify Mortgagee against and save Mortgagee harmless from any and all loss, cost, damage or expense, including attorneys' fees, which Mortgagee may incur by reason of any such defect or cloud, or by reason of any action taken by Mortgagee in the exercise of any right or power conferred upon Mortgagee by this Mortgage. This covenant of indemnity shall in all respects continue and remain in full force and effect even though all indebtedness and other sums secured hereby may be fully paid and this Mortgage released.

9. Mortgagor will pay all costs, expenses, recording fees and taxes incident to the preparation, execution, filing and recording of this Mortgage and all reasonable costs and expenses of engineering or geological reports.

10. Mortgagor will keep, perform and observe each and all of the covenants, warranties, terms and conditions of the Loan Agreement, if any, between Mortgagor and Mortgagee. The terms of any such Loan Agreement are incorporated herein by reference.

11. Mortgagor will pay all taxes which may be levied on the Mortgaged Property by any state in which any part of the Mortgaged Property may be situated, together with any other taxes or assessments which may be levied by any such state against Mortgagee on account of this Mortgage or the Indebtedness.

12. Mortgagor will make, execute, acknowledge and deliver to Mortgagee, promptly upon demand, all such further mortgages, assignments, pledges, transfers and assurances as may be required by Mortgagee for the better securing of the lien of the Indebtedness upon the Mortgaged Property, whether hereby conveyed or intended to be conveyed or hereafter acquired in connection with the development or operation of the Mortgaged Property, and Mortgagor will do or cause to be done all such other acts and things as may be necessary or proper to carry out the intent hereof.

ARTICLE II**Default and Remedies for Default**

1. The following are defaults: (a) failure of Mortgagor to pay the Indebtedness secured hereby or any part thereof promptly when due and payable, whether by lapse of time or by declaration or otherwise; or (b) failure, or refusal, of Mortgagor to keep and perform each and all of the covenants, agreements and conditions contained herein, or in the note or notes or any Loan Agreement executed in connection herewith, to be performed and observed by Mortgagor; or (c) the making, by Mortgagor, of an assignment for the benefit of creditors; adjudication of Mortgagor as insolvent or bankrupt; filing of a petition or answer for an adjudication as a bankrupt, or seeking any other relief under any bankruptcy, indebtedness relief or insolvency law now or hereafter existing, by Mortgagor; or (d) any levy against any of the Mortgaged Property by execution, attachment or otherwise; or (e) actual or threatened litigation which may, in the opinion of Mortgagee, result in impairment or loss of the security herein provided; or (f) appointment of a Receiver of Mortgagor or of the Mortgaged Property or any substantial part thereof.

2. If any default occurs, then at the option of Mortgagee and without notice, Mortgagee may declare the Indebtedness due and payable and Mortgagee shall have and may exercise each and all of the following remedies, each and all of which shall be cumulative of each other and of all other rights and remedies which Mortgagee has or may have as security for the Indebtedness under applicable laws now or hereafter existing:

(a) Mortgagee may take possession of the Mortgaged Property or any part thereof and maintain, control and operate the same, without any liability to Mortgagor, and apply all the net proceeds therefrom, after payment of royalties, current charges and operating expenses, to the payment of the Indebtedness until all obligations secured hereby are fully paid; and Mortgagor agrees upon demand, to the extent of Mortgagor's power to do so, to give Mortgagee immediate peaceable possession.

(b) Mortgagee may obtain, from any court having jurisdiction, the appointment of a Receiver of all or any part of the Mortgaged Property to handle, maintain and operate the same and apply the net proceeds to the payment of the Indebtedness or to sell and dispose of the same under orders of court.

(c) Mortgagee may proceed pursuant to law to sell all or any part of the Mortgaged Property at public or private sale, with or without notice, power of sale being hereby expressly granted to Mortgagee. Mortgagor agrees that in the event of such sale the Mortgaged Property, or any part thereof, may be sold with or without appraisal as Mortgagee may elect; that the Mortgaged Property may be sold together or in separate parcels; that the holder of this Mortgage may be the purchaser of the Mortgaged Property or any part thereof; and that the proceeds of such sale or sales, after payment of the costs advanced or incurred by Mortgagee and all expenses incurred in connection with the operation of the Mortgaged Property, shall be applied first to the expenses of sale, including reasonable attorney's fees; second, to payment of the amount due on the Indebtedness; third, the balance, if any, to Mortgagor. As to all personal property and equipment used, obtained or found on or in connection with (or constituting part of) the Mortgaged Property, Mortgagee may take possession thereof and may sell all or any part thereof at public or private sale under the laws of the state in which such property is located applicable to the foreclosure of chattel mortgages or any other applicable laws.

(d) Mortgagee may declare the entire Indebtedness due and foreclose the lien hereof in the manner provided under the laws of the state in which the property is located, or any other applicable laws and Mortgagor hereby agrees to pay all costs of foreclosure proceedings, including reasonable attorneys' fees, which shall become a part of the Indebtedness.

(e) With or without acceleration of the maturity of the Indebtedness, Mortgagee may receive the proceeds from the sale of oil, gas or other mineral production from the Mortgaged Property directly from the purchaser and apply the entire proceeds to the Indebtedness until it is fully paid.

**ARTICLE III
Miscellaneous**

1. Failure of Mortgagee to insist upon strict compliance with any provision of this instrument, or any note, Loan Agreement or other instrument evidencing or securing the Indebtedness shall not operate as a waiver of any right of Mortgagee.

2. Mortgagee, or the holder of any note evidencing the Indebtedness may, by agreement with the maker or makers of the note, and without notice to any other person, from time to time extend the time of payment of the note or of any installments thereof, or may accept a new note or new notes in the same or different form in renewal of or in substitution for such a note and any advances and future advances as herein provided may be made and repaid and again made without impairing or affecting the lien hereby granted or any rights of Mortgagee hereunder, and this Mortgage in any such event shall continue in full force and effect as security for the payment of said Indebtedness according to the terms and provisions of the note or notes or other evidences of the Indebtedness.

3. Mortgagee may from time to time release any part of the Mortgaged Property from the lien hereof and may likewise release or surrender any other security then held by Mortgagee as security for the payment of the Indebtedness, and any such release or surrender may be given without notice to or consent by any person having an interest in or lien upon any of the remainder of the Mortgaged Property, and without affecting the lien of this Mortgage upon the remainder of the Mortgaged Property for the full amount of the Indebtedness.

4. With respect to all personal property constituting a part of the Mortgaged Property, this Mortgage shall also be effective as a Chattel Mortgage.

5. This Mortgage is binding upon Mortgagor, and Mortgagor's heirs, executors, administrators, legal representatives, successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns, and the provisions hereof shall be covenants running with the land.

6. This Mortgage may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and shall be deemed and may be enforced from time to time as a Real Estate Mortgage, Chattel Mortgage or Assignment, or as one or more thereof.

This Mortgage has been executed by Mortgagor as of the date indicated at the beginning.

..... Seal
..... Seal
..... Seal
..... Seal

(Here add appropriate acknowledgment forms).

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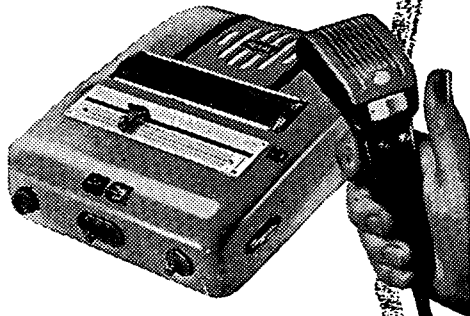
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