

2015-21008

08/26/2015 8:56:56 AM

*Floyd J. Dowling*

REGISTER OF DEEDS

COUNTER LM C.E. LM  
VERIFY LM DEI LM  
PROOF Oh  
FEES \$ 58.00  
CHECK # 1803856  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
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AMENDMENT ONE TO MORTGAGE  
(Sarpy County, Nebraska)  
(Loan # 97221)



97221

This Amendment One to Mortgage is made and entered into effective as of July 29, 2015, by and between AVP ENERGY, L.L.C., an Oklahoma limited liability company ("**Grantor**"), and PROSPERITY BANK, a Texas banking association, successor in interest to The F&M Bank & Trust Company ("**Lender**").

RECITALS

A. Reference is made to the Mortgage ("**Mortgage**") dated May 27, 2010 executed and delivered by Grantor to Lender, pursuant to which Grantor, inter alia, granted a mortgage lien on the real property ("**Property**") described on **EXHIBIT A** attached hereto, recorded in the office of the Register of Deeds of Sarpy County, State of Nebraska on June 21, 2010 as Instrument Number 2010-15770, to secure repayment of the Indebtedness described therein including without limitation the \$5,123,227 Promissory Note dated May 27, 2010 from Grantor to Lender with a current maturity date of May 27, 2015.

B. As inducement for Lender to enter into the Amendment One to Business Loan Agreement of even date herewith, Grantor and Lender hereby intend to amend the Mortgage to evidence the modification and extension of the secured Promissory Note defined therein.

AGREEMENT

For good and valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendment to Mortgage.

1.1. The term "Note" defined in the Mortgage shall now mean the \$1,332,247.16 Promissory Note of even date herewith payable by Grantor to Lender maturing July 29, 2025, which constitutes and extension, renewal, reduction and change in form, but not payment or novation, of the \$5,123,227.00 Promissory Note dated May 7, 2010 which was the original promissory note described in and secured by the Mortgage.

2. Ratification and Restatement. All representations, covenants, terms and conditions of the Mortgage, except as expressly modified herein, are hereby ratified, restated, re-granted and confirmed, and shall continue in full force and effect, and Grantor represents to Lender that all representations and warranties set forth therein remain true and correct, and that Grantor is in full

\$58.00

RtR Prosperity Bank  
4631 NW 23rd St  
Oklahoma City OK  
73127-2103

A

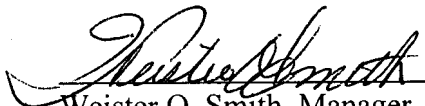
and complete compliance with the terms, covenants and conditions set forth therein.

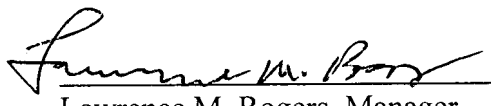
3. Incorporation of Provisions. The provisions, covenants and conditions set forth on **SCHEDULE 1** hereto are hereby incorporated by reference.


4. Counterparts. This Amendment may be executed in multiple counterparts with all such counterparts combined deemed to be one instrument.

“Grantor”

AVP ENERGY, L.L.C.,  
an Oklahoma limited liability company

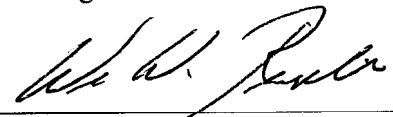
By   
Weister O. Smith, Manager

By   
Lawrence M. Rogers, Manager

By   
Michael Gramm, Manager

“Lender”

PROSPERITY BANK,  
a Texas banking association

By   
Will Richardson,  
Executive Vice President

ACKNOWLEDGMENT

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF TULSA )

This instrument was acknowledged before me on this 10<sup>th</sup> day of Aug, 2015 by Weister O. Smith, as Manager of AVP ENERGY, L.L.C.

Mechell Reeder  
Notary Public



My Commission Expires: Jan 28, 2017  
Commission No. 13000951  
(SEAL)

ACKNOWLEDGMENT

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF TULSA )

This instrument was acknowledged before me on this 6<sup>th</sup> day of August, 2015 by Lawrence M. Rogers, as Manager of AVP ENERGY, L.L.C.

Seth Hendrix  
Notary Public



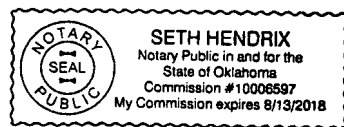
My Commission Expires: 8/13/2018  
Commission No. 10006597  
(SEAL)

ACKNOWLEDGMENT

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF TULSA )

This instrument was acknowledged before me on this 6<sup>th</sup> day of August, 2015 by Michael Gramm, as Manager of AVP ENERGY, L.L.C.

Seth Hendrix  
Notary Public



My Commission Expires: 8/13/2018  
Commission No. 10006597  
(SEAL)

C

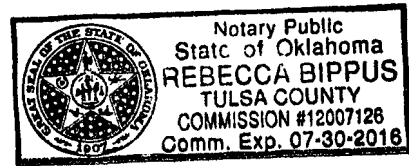
ACKNOWLEDGMENT

STATE OF OKLAHOMA )  
                                    ) ss.  
COUNTY OF TULSA )

This instrument was acknowledged before me on this 13<sup>th</sup> day of ~~July~~ <sup>August</sup>, 2015 by Will Richardson, as Executive Vice President of Prosperity Bank, a Texas banking association.

Rebecca Bippus

Notary Public  
My Commission Expires: 7-30-2016  
Commission No. 12007126  
(SEAL)



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**EXHIBIT A**

(Real Property)

Lot 1354, in La Vista, Sarpy County, Nebraska

E

## SCHEDULE 1

### ADDITIONAL COVENANTS

#### PROSPERITY ADDITIONAL COVENANTS ADDENDUM

This Addendum is attached to and made a part of the Amendment One to Mortgage between AVP ENERGY, L.L.C., as Grantor, and PROSPERITY BANK, as successor in interest of The F&M Bank & Trust Company, as Lender. Any conflict between this Addendum and the Mortgage shall be controlled by this Addendum.

#### **Due on Sale:**

Other than as permitted in any Loan Agreement and/or in the Loan Documents, if, without the prior written consent of Lender, which consent may be given or withheld by Lender in the exercise of its sole and absolute discretion, (a) all or any part of the Fee Lands, or any interest therein, or any beneficial interest in Borrower or Grantor (if Borrower or Grantor is not a natural person or persons, but is a corporation, partnership, trust or other legal entity) is sold, transferred or otherwise conveyed, or (b) Grantor enters into any contract agreeing to sell, transfer or otherwise convey the Property, or any interest therein, or (c) there is a sale or exchange of the majority of the stock of Borrower or Grantor (if Borrower or Grantor is not a natural person or persons, but is a corporation), or (d) Borrower or Grantor creates any lien or encumbrance subordinate or allegedly superior to the Mortgage, or (e) Borrower or Grantor grants any easement, right-of-way or any other right whatsoever with respect to the Property, or (f) Borrower or Grantor conveys any leasehold interest for any purpose whatsoever covering all or any portion of the Property, including without limitation, one or more oil, gas or other mineral leases covering the Property or any portion thereof, for a period longer than one (1) year (all and any of the above being hereinafter collectively called "**Transfers**"), and irrespective of whether any such Transfers are evidenced by written instruments, and irrespective if such a written instrument is filed for record, then Lender, at Lender's option, has the right to declare the same to be a default under this Agreement, the Note, the Mortgage and the Loan Documents.

F

**Cross Default and Cross Collateralization:**

If default shall be made in the payment of principal or interest on any other promissory note or notes executed by Borrower or any guarantor hereof and held by Lender as the same become due and payable (each an "Other Note"), or if there is a default in any of the terms, covenants, agreements, conditions or provisions set forth in this Agreement, the Promissory Note (which term includes the Note expressly secured by the Mortgage), the Security Instruments (which term shall include any instruments, documents or agreements securing payment of the Promissory Note), or any other instrument relating to this Agreement or the Promissory Note, or should the Lender conclude, in its sole discretion, that the prospect of payment of the Promissory Note, as modified by this Agreement, or of any Other Note, is impaired for any reason, then in any such event Lender, at its option, may declare the entirety of the Promissory Note, as modified by this Agreement, and any Other Note, together with all accrued but unpaid interest thereon, immediately due and payable without notice, demand or presentment, or notice of intent to accelerate to the Borrower or any other person or party, all of which are hereby waived. Lender's failure to exercise said option shall not constitute a waiver on the part of Lender of the right to exercise said option at any other time. Upon the occurrence of a default, Lender shall also have the right to exercise any and all other rights, remedies and recourses now or hereinafter existing in equity, at law, by virtue of statute or otherwise, including, but not limited to, the right to foreclose any and all liens and security interests securing the Promissory Note, this Agreement and/or any Other Note. Except as may be limited or prohibited by applicable law, Grantor agrees and acknowledges that the Security Instruments secure (a) the Promissory Note, as extended and/or modified, including interest, late charges, fees, expenses and other amounts as provided in the Promissory Note, the Security Instruments and this Agreement, (b) all other debts, obligations and liabilities of Borrower and/or Grantor to Lender of whatever kind or character, whether now existing or hereafter arising, secured or unsecured, direct or indirect, fixed or contingent, primary or secondary, joint or several or both, including, without limitation, all present and future debts, obligations and liabilities of Grantor and/or Borrower (i) as principal, surety, endorser, guarantor, accommodation party or otherwise, (ii) arising by operation of law or otherwise, (iii) as a member of any partnership, joint venture, company, firm, trust or other association or (iv) payable to or in favor of third parties and hereafter acquired by Lender with or without the knowledge, consent or insistence of Grantor and/or Borrower, it being contemplated that Grantor and/or Borrower may from time to time become additionally indebted to Lender, all of which indebtedness is secured by the Security Instruments, and (c) all renewals, rearrangements, modifications and extensions of any of the foregoing.

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**Payment of Property Taxes:**

Grantor shall pay all taxes and assessments against the Fee Lands as the same become due and payable, and prior to delinquency. Grantor shall furnish proof, satisfactory in form and substance to Lender, of such payment. Grantor shall not authorize any person or entity to pay current or delinquent ad valorem taxes due or to become due on the Fee Lands if such person or entity is entitled to receive a transfer of tax lien under Section 32.06 of the Texas Tax Code (as it may be amended or modified). In the event any transfer of a tax lien is executed by a tax collector pursuant to Section 32.06 of the Texas Tax Code (as it may be amended or modified) with respect to the Fee Lands, Grantor shall, within ten (10) days of the date written notice is sent from Lender to Grantor, fully and finally pay the transferee of said tax lien the entirety of all principal, interest and expenses (whether or not then due and payable, or to become due and payable) owing to said transferee with respect to said transferred tax lien, and deliver proof, satisfactory in form and substance to Lender, of such payment, along with a signed and notarized release of said tax lien executed by said transferee. Grantor shall not defer the collection of taxes on the Fee Lands (which term includes the property affected by the Mortgage), in the event deferral of such taxes is permitted under applicable law. In the event of the passage of any law, ordinance, or regulation, deducting from the Fee Lands for the purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or indebtedness secured thereby, or the manner of the operation of any such taxes so as to affect the interest of Lender, then and in such event, Grantor shall bear and pay the full amount of such taxes, unless the payment thereof by Grantor would be unlawful or if the payment thereof would constitute usury or render the indebtedness due Lender wholly or partially usurious; provided, however, that if for any reason payment by Grantor or by Lender of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the indebtedness due Lender wholly or partially usurious, Lender may, at Lender's option, declare said unpaid indebtedness with all accrued interest thereon to be immediately due and payable, or Lender may, at Lender's option, pay the amount or portion of such taxes which would otherwise render said indebtedness unlawful or usurious, in which event Grantor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes. If Grantor fails to pay any taxes and assessments (including interest, penalties, costs and expenses) against the Fee Lands, enters into a tax lien loan to any person or entity, allows any person or entity to receive a transfer of an ad valorem tax lien, or defers the payment of taxes or assessments, Lender may in Lender's sole discretion, in addition to Lender's other rights as provided in the Security Instruments, elect to advance and pay the same at Grantor's expense.

**Insurance:**

Borrower or Grantor shall promptly obtain and deliver to Beneficiary (which term means the Lender) insurance policies with premiums paid providing extended coverage for all buildings and other property covered by the Mortgage against damage by fire and lightning and against such other risks as Beneficiary may require (Builder's Risk insurance shall be acceptable as to any improvements to be constructed on the Fee Lands during the construction phase of any construction loan), all in amounts approved by Beneficiary not less than 100% of full replacement cost of all improvements located on the Fee Lands, such that Grantor and/or Beneficiary shall not become a co-insurer under



any required insurance policy, such insurance to be written on a replacement cost form promulgated by the Texas State Board of Insurance and with companies having a Best's Insurance Guide Rating of A, Class XIV or higher, as approved by Beneficiary, with (i) loss made payable to Beneficiary pursuant to the standard mortgagee clause promulgated by the Texas State Board of Insurance, without contribution; (ii) provision that (a) each of said policies shall not be terminated, reduced or limited regardless of any breach of the representations and agreements set forth therein, and (b) no such policy shall be canceled, endorsed or amended to any extent unless the issuer thereof shall have first given Beneficiary at least 15 days' prior written notice. In case Grantor fails to furnish such policies, Beneficiary, at Beneficiary's option, may procure such insurance at Grantor's expense. All renewal and substitute policies of insurance shall be delivered to the office of Beneficiary, premiums paid, at least ten (10) days before expiration of the insurance protection to be replaced by such renewal or substituted policies. In case of loss, Beneficiary, at Beneficiary's option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same toward payment of the Indebtedness in such manner as Beneficiary may elect, or at Beneficiary's option, Beneficiary may pay the same over wholly or in part to Grantor for the repair of said improvements or for the erection of new improvements in their place, or for any other purpose satisfactory to Beneficiary, but Beneficiary shall not be obligated to see to the proper application of any amounts so paid to Grantor. If Beneficiary elects to allow such payments to Grantor, disbursement shall be on such terms subject to such conditions as Beneficiary may specify. Regardless of whether any insurance proceeds payable to them are sufficient to pay the costs of repair and restoration of the Fee Lands and Improvements, Grantor shall promptly commence and carry out the repair, replacement, restoration and rebuilding of any and all of the improvements damaged or destroyed so as to return same, to the extent practicable, to the same condition as immediately prior to such damage to or destruction thereof. Grantor shall not permit or carry on any activity within or relating to the Fee Lands that is prohibited by the terms of any insurance policy covering any part of the Fee Lands or Improvements or which permits cancellation of or increase in the premium payable for any insurance policy covering any part of the Fee Lands or Improvements. In the event of a foreclosure of the Mortgage, the purchaser of the Fee Lands shall succeed to all the rights of Grantor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to Beneficiary pursuant to the provisions of this instrument. Regardless of the types or amounts of insurance required and approved by Beneficiary, Grantor shall assign and deliver to Beneficiary all policies of insurance that insure against any loss or damage to the Fee Lands or Improvements, as collateral and further security for the payment of the Obligations. Grantor shall also obtain and maintain in force and effect at Grantor's expense such liability and other insurance policies and protection as Beneficiary may from time to time require. Furthermore, if any portion of the Fee Lands is situated in an area, or is subsequently designated in an area, having special flood hazards (as defined in the Flood Disaster Protection Act of 1973, as amended from time to time, or any similar legislation), Grantor shall provide flood insurance to Beneficiary in an amount equal to the replacement cost of the improvements or the maximum amount of flood insurance available, whichever is the lesser.