

Texas

Sample Oil and Gas Lease and Surface Use Agreement



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Texas

Sample Oil and Gas Lease and Surface Use Agreement



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Introduction

Dear Reader,

We are pleased to provide you with this sample oil and gas lease and surface use agreement. We hope this information will help address many questions you have about oil and gas development on your land. We also encourage you to review our publication, *Oil and Gas At Your Door? A Landowner's Guide to Oil and Gas Development*. Chapter III of this publication contains "Tips for Landowners." The guidebook is available on-line at <http://www.earthworksaction.org/LOguidechapters.cfm>.

Briefly, we want to be sure to point out the following:

SURFACE USE AGREEMENTS: One of the tools available for protecting surface property and surface owner quality of life is the Surface Use Agreement. *Oil & Gas At Your Door?* examines the pros and cons of negotiating these agreements, and provides samples of what others have been able to negotiate.

LEASING: Mineral owners have the option of leasing or not leasing their minerals to oil and gas companies. If they choose to lease, there are some tips contained in *Oil & Gas At Your Door?* to help ensure that the lease meets their needs and protects their interests.

WHAT TO DO WHEN THE LANDMAN COMES CALLING: A landman is the name given to a man or woman who serves as the company's contact person with the public who may be an employee or contractor with the oil or gas company. Some of the tasks that landmen perform include: researching courthouse records to determine mineral ownership; locating mineral/landowners and negotiating oil and gas leases and other agreements with them; and conducting surface inspections before drilling.

What to do if contacted by a landman:

1. When interest develops in your minerals, you may be approached by phone, mail, or in person. The landman or lease broker may determine your interest in leasing by quoting you an offer. You should write the offer down or get it in writing.
2. Do not sign or agree to anything (e.g., a lease or surface use agreement) without understanding the terms of the agreement or getting professional advice. You may want to contact an attorney or organizations that work with landowners. You may want to talk with your neighbors and others who have been in negotiations with oil or gas companies. It may be helpful for you to read through the landowner profiles that are scattered throughout this document. The lessons learned by others may help you to figure out your own strategy for dealing with oil and gas company representatives.
3. Stand your ground. Some landmen may use intimidation tactics or threats to pressure you into signing an agreement. For more information on intimidation tactics, see the story "Threats and Intimidation: This is Negotiation?" and also Peggy Hocutt's story, in Chapter IV in *Oil & Gas At Your Door?*.
4. Put together a list of issues important to you before you begin negotiating with the landman. Remember, everything except your name and the legal description of the property is negotiable.
5. At any meeting with a landman, document as much as you can. Take notes, or better yet, tape record your meetings. Or have someone else sit in as a witness.
6. Understand who it is you are dealing with. Research the oil or gas company's track record. Talk with neighbors and other landowners who have had to deal with the same company. Find out, if you can, details of

agreements reached between the company and other surface owners (e.g., if they offered to test your neighbor's well water, they should do the same for you).

The Texas Railroad Commission (TRC) and the Texas Commission on Environmental Quality each maintain a database of oil and gas violations. To look up violations on the TRC website you first have to know that they are called a "Severance."

- <http://www.rrc.state.tx.us/>
- Look in the right column and scroll down to "Most Popular Links."
- Click on "Online Research (Queries)"
- Find the box titled: "Oil & Gas Data Queries"
- Click "Launch Application." This will open the Severance Query Criteria box
- Fill in Query data (this is not very user-friendly and can be challenging to find all the data required).

To look up violations on the TCEQ website:

- <http://www.tceq.state.tx.us/>
- Look in the middle section and find "How Do I"
- Click on Track complaints, enforcement

7. Consider signing a lease or negotiating a Surface Use Agreement (both are discussed below). If you are going to sign a lease, consider negotiating the Surface Use Agreement either before or at the same time that you negotiate the lease.

KNOWING YOUR LANDMAN: You may want to ask your landman if he or she is a certified landman, and whether or not he or she belongs to any professional landmen associations, the largest one being the American Association of Professional Landmen (AAPL). Many of these associations have codes of ethics that landmen agree to follow. For example, the AAPL Code of Ethics state that:

The Land Professional, in his dealings with landowners, industry parties, and others outside the industry, shall conduct himself in a manner consistent with fairness and honesty, such as to maintain the respect of the public.

If you believe that the land professional has used intimidation tactics, or has lied to you during the negotiations, you should call the landman's association and report the incident. For example, the AAPL has an Ethics Committee to which you may direct complaints. Their address is: American Association of Professional Landmen; Ethics Committee; 4100 Fossil Creek Blvd; Fort Worth, Texas 76137. Phone: 817-847-7700.

Sincerely,

Gwen Lachelt, Director
Earthworks' Oil and Gas Accountability Project

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Surface Use Issues and Brief Explanations

The following table provides a comprehensive list of provisions that a landowner may want to include as components of their oil and gas lease or surface use agreement. A brief explanation of the provisions is included. In a separate document, detailed language is provided as an example for each provision below.

These provisions should be selected carefully to meet each individual landowner’s needs. Many will have to be negotiated, and it may be important for a landowner to set some priorities and then only seek agreement on the most important provisions. These matters are complex and a landowner may want to obtain advice from an attorney with expertise in oil and gas law.

Surface Use Provisions:	Explanations:
Before Drilling	
Surface Owner	This provision defines the legal owner of the leased premises, who will be referred to as the "Surface Owner." The Surface Owner should then designate an agent to receive all notices from the Lessee and make decisions on the Surface Owner's behalf until otherwise stated.
Development Plan	Before commencing any drilling operations or seismic operations on the leased premises, the Surface Owner should review and approve the Lessee's development plan describing any proposed operations.
Location of Facilities	The Lessee agrees to contact the Surface Owner prior to the commencement of each individual separate well, any geophysical operation, or any other operations to place such facilities so that they will interfere as little as reasonably possible with the Surface Owner's surface use.
Compliance with Laws	
Compliance with Laws	This provision requires the Lessee to comply with all federal, state and local laws and regulations in connection with any operations or production from the leased premises. This includes laws governing land use, conservation, pollution control, the protection of human life and health, and general regulations concerning safety of the property.

Disposal of Waste	
Litter	Provides that the Lessee must keep the leased premises free from trash and debris at all times during the term of the lease. It prohibits the Lessee from burning or disposing of any trash on the premises.
No Disposal or Storage Allowed	This provision prevents storage of any equipment and materials on the leased premises not currently used in the Lessee’s operations. It also prevents pit liners and other oil and gas waste from being buried or disposed on the leased premises.
Equipment During Drilling Operations	
Fencing of Equipment During Drilling Operations or Reworking Operations	The Lessee must fence all areas of operations surrounding each well and related facilities prior to the commencement of drilling or reworking. The Lessee must also fence all pits on the premises within one week of the cessation of operations.
Fencing, Firewalling, and Maintenance of Production Equipment	The Lessee agrees to fence all ‘Christmas trees’ (an assembly of valves, spools, and fittings used for various types of wells), pumping units and any other machinery constructed on the leased premises. Firewalls must also be constructed around all tanks, separators, and other receptacles containing liquid. The fences and firewalls must be maintained and kept painted.
Fences and Gates	
Fences and Gates	The Surface Owner may request that the Lessee install and maintain fences, gates, and locks or cattle guards above all pipelines and on all access roads. The Surface Owner shall have a key to all gates and all gates and guards will become the Surface Owner’s property at the termination of the lease.
Gate Guard	During any drilling or reworking operations on the leased premises, the Lessee must post a guard at the outside gate to prevent unauthorized persons from entering the premises.
Lessee’s Employees Activities On-Site	
No Lease Houses	The Lessee has no right to construct any lease housing or lease camps for employee housing on the leased premises.

Notification of Lessee's Employees and Contractors	The Lessee must apprise every contractor, subcontractor, and employee who enters the leased premises of the provisions contained in the lease. Additionally, every employee, contractor, and subcontractor acting under the Lessee's authority must have in their possession written authorization from the Lessee. The Surface Owner has the right to request documentation from any worker at any time.
Removal of Persons	If anyone is found on the premises in violation of provisions in the lease, they will be considered a trespasser and the Surface Owner may file charges against the trespassing party. Further, if any of Lessee's employees or representatives become objectionable to the Surface Owner, the Surface Owner may give written notice to the Lessee, who then has ten (10) days to remove such parties from the property.
Monitoring & Inspections	
Annual Inspections of Surface	At least once every lease year, the Lessee shall inspect all operations and facilities on the lease premises with the Surface Owner to determine compliance with the provisions of the lease. The Lessee will be responsible for paying all monitoring costs and performing any repairs or remedial measures the two parties have agreed upon.
Remedies	
Insurance	The Lessee and all persons acting on Lessee's behalf must carry the following insurance at all times when they are on the leased premises: Worker's Compensation and Employer's Liability Insurance; Commercial General Liability and Umbrella Liability Insurance; and Business Auto and Umbrella Liability Insurance.
Inurement	All provisions in the lease will take effect to the benefit of the Surface Owner and the Surface Owner's respective heirs, successors, representatives, and assigns. This lease will also be binding on the Lessee and its successors and assigns.
Remedies	If the Lessee fails to perform any of the obligations set forth in the Surface Use Agreement or fails to cure any breaches, the Surface Owner may: (i) perform such obligations on Lessee's behalf and recoup the costs, (ii) sue the Lessee for specific performance, or (iii) obtain recovery of damages for the breach.

Roads	
Construction and Maintenance of Roads	The Lessee is prohibited from constructing more than one road to each location on the premises and is required to restrict all travel incident to the production of wells to the single road. The Lessee must consult with the Surface Owner prior to locating any roads, and the Lessee has no right to use any existing roads on the premises without consent from the Surface Owner. The Lessee is responsible for maintaining all roads used in Lessee’s operations and may be responsible for removing the roads after drilling operations are completed.
Surface Damages and Equipment Removal	
Care in Operations	All operations by the Lessee on the leased premises must be conducted so as to not unreasonably interfere with the Surface Owner's use of the surface. The Lessee also agrees to take all necessary steps to prevent its operations from: (i) contributing to soil erosion on the leased premises; (ii) polluting the soil or waters of the premises; (iii) damaging crops, grasses or other foliage or trees; or (iv) harming or injuring the animals or livestock owned by the Surface Owner.
Pits	The Lessee has no right to dig any pits on the leased premises without the Surface Owner's written consent, except if the pits conform to Railroad Commission requirements and are removed promptly after completed operations.
Removing of Equipment and Casing	The Lessee has six months after the termination of the lease to draw casing and remove all property and fixtures placed upon the leased premises. If the Lessee fails to remove such property, the Surface Owner may take legal action to remove such property, at Lessee’s cost, or take possession of the property and dispose of it as he deems fit.
Restoration of Surface after Drilling Operations or Reworking Operations	Within three months after the cessation of any drilling or reworking operations, the Lessee must: remove all pits and dumps; remove all debris and equipment; restore the surrounding land; and generally restore the surface of the land to the same condition and quality it was before the commencement of such operations.

Seismic Operations	In the course of any seismic operations under the lease, the Lessee agrees that no shot holes will be used (a drilled hole in which an explosive charge is placed before detonation). Also, in the event any water wells or tanks are damaged during seismic operations, the Lessee is liable for any damages that result.
Surface Damages	<p>The Lessee must pay the Surface Owner reasonable compensation for all use of or damage to the surface estate. The Lessee's obligation to compensate the Surface Owner for any damage shall exist whether or not the damage is due to the negligence of Lessee, its agents, employees, or independent contractors.</p> <p>This provision allows the Surface Owner to negotiate what the minimum compensation payable to the Surface Owner will be for specific types of surface uses.</p>
Water	
Salt Water Disposal	No salt water disposal well may be drilled on the leased premises without a separate written agreement with the Surface Owner. Additionally, if at any time it becomes known that salt water is escaping onto the property, the Lessee must promptly take the necessary steps to stop the leak.
Water Protection	This provision should be included in a Surface Use Agreement if the leased premises are located within a watershed, aquifer, or area with wetland habitats. This provision seeks to protect the quantity and quality of the water, as well as the habitats and water beds.
Water Wells	No water well may be drilled by the Lessee on the leased premises except with the Surface Owner's prior written consent. If the Surface Owner consents to the drilling of a water well, the Lessee must compensate the Surface Owner for such water at a rate to be decided between the two parties. The Surface Owner shall have access to the water well, but only in amounts not to interfere with the drilling operations. The Surface Owner may request that the Lessee remove the water well when operations cease, but the Lessee has the option to keep it.
Use of Abandoned Wells as Water Wells	In the event that any well drilled on the leased premises is abandoned as a dry hole or ceases to produce in paying quantities, the Surface Owner has the right to request that such a well be turned into a water well. The Lessee will be responsible for plugging the well and turning it over to the Surface Owner to complete a water well.

Wells and Pipelines	
Abandonment of Pipelines	Before the abandonment or removal of any pipeline, the Lessee agrees to offer its purchase to the Surface Owner for the salvage value of the pipeline. If the Surface Owner does not wish to purchase the pipeline, the Lessee must remove the pipeline, restore the surface to its former condition, within ninety (90) days after the termination of the lease.
Location of Wells and Pipelines	This provision allows the Surface Owner to determine how close to any residence the wells and pipelines can be located. The Lessee must also agree to consult with the Surface Owner prior to laying any pipeline so as to locate the lines in an area where it interferes as little as possible with the use of the surface estate and is not less than thirty-six (36) inches below the surface of the ground.
Plugging	The Lessee must: plug and abandon all wells in accordance with the rules and regulations of any governmental agency having jurisdiction; remove all casing and pipe from abandoned wells to a depth of at least three (3) feet below ground level; and remove all other obstructions in such wells. The Lessee also agrees to indemnify and hold the Surface Owner free from any obligation or liability to plug the wells imposed by any governmental regulation.

Wildlife and Natural Features	
Erosion Control	The Lessee shall construct all roads, drilling locations, tank batteries, compressor stations, pipelines and allied installations in such a manner as to prevent erosion.
No Hunting or Fishing or Recreational Use	This provision specifically excludes the Lessee from any rights or privileges of hunting, fishing, and any recreational activities on the leased premises; these rights are expressly reserved to the Surface Owner. If the Lessee or any of the Lessee's agents are found to violate this provision, they will be considered a trespasser and are subject to prosecution under the laws of the State of Texas.
Prevention of Fires	The Lessee agrees that it will use its best efforts to prevent fires on the leased premises. This includes equipping all vehicles and well sites with fire suppression equipment and treating the entire leased premises as a "NO SMOKING AREA."
Removal of Artifacts and Natural Features	The Lessee shall not remove any artifacts (arrowheads, minerals) or natural features (antlers, firewood, plants, cacti, animals, birds) from the leased premises.
Vegetation and Plants	The Lessee must attempt to minimize the clearing of brush and the removal of trees or any other vegetation or plant life in conducting its operations on the leased premises. The Lessee must also not remove or cut any mature trees on the leased premises without the Surface Owner's written consent.
Wildlife and Livestock	Under no circumstances, may any wildlife or animals be intentionally killed, injured, harassed, chased, or disturbed in any way during the operations on the leased premises. However, the Surface Owner agrees to help assist the Lessee in removing potentially dangerous animals from an immediate operation area.

Surface Use Restrictions

1. Surface Owner. The owner of the surface estate of the Leased Premises is _____ (hereinafter referred to as "Surface Owner," whether one or more). Surface Owner hereby designates _____ as Surface Owner's agent to receive all notices, give all consents, and make all decisions regarding use of the surface estate by Lessee until Lessee receives notice from Surface Owner of revocation of such agent's authority. The address of Surface Owner's agent is _____, and Surface Owner's agent's telephone number is _____.

2. Development Plan. Prior to commencing any operations for the drilling of a well or for seismic operations on the Leased Premises, Lessee shall prepare for Surface Owner's review and approval a development plan (the "Development Plan") describing such proposed operations. The Development Plan shall fully describe the operations proposed to be conducted by Lessee, and shall contain at least the following:

(a) If the proposed operations to be conducted are seismic operations:

- (i) a plat of the Leased Premises showing the source and receiver lines proposed to be used, and identifying any houses, barns, lakes, tanks, water wells, subsurface water lines, electric lines and other improvements on the Leased Premises.
- (ii) the name of the contractor that will conduct such operations, and the name and telephone number of personnel of such contractor who can be contacted at all times while such seismic operations are being conducted.
- (iii) a description of the method or methods and equipment to be used to conduct such seismic operations and the time of day such operations are to be conducted.
- (iv) the estimated commencement and completion dates of the seismic operations.
- (v) if Surface Owner consents to the use of shot holes, the depth of the holes, the size of the charges to be used, and the method to be used to plug the shot holes.
- (vii) evidence of liability insurance for the seismic operations.

(b) If the proposed operations are for the drilling of one or more wells on the Leased Premises:

- (i) a copy of the application to drill and drilling permit for each well to be drilled, and of the Water Board Letter showing the estimated depth of fresh water to be protected by surface casing.
- (ii) a schematic of the proposed well location for each well to be drilled, showing the proposed location of the well and of each pit (if pits are allowed) or tank to be used in connection with the drilling and completion of the well.

- (iii) a plat of the Leased Premises showing Lessee's proposed road or roads to be constructed to the well site, and a description of the materials and methods to be used in construction of such roads, and of any proposed improvements to existing roads Lessee proposes to use.
- (iv) a schematic of the wellsite showing how the wellsite will be used in the event of completion of the well, and what portions of the drillsite pad will continue to be used for production operations, the location of tanks, separators and other production facilities; and a plat showing the proposed routes of any gathering lines to be installed for the production and gathering of oil or gas to be produced from the well.
- (v) A description of all methods and construction proposed for the prevention of runoff or erosion from the pad site, pipelines and roads and for the prevention of contamination or pollution by runoff into any tank, lake, stream or other body of water on the Leased Premises.
- (vi) A list of names, addresses and telephone numbers for all contractors and subcontractors to be used in the drilling and completion of the well, with names of personnel who can be contacted in the event of problems or emergencies.
- (vii) The name and telephone number of the employee of Lessee who will be the Lessee's representative at the drillsite during the drilling and completion of the well.

Lessee shall provide the Development Plan to Surface Owner at least sixty (60) days prior to the proposed date for commencement of operations for the construction of the pad site for the well. Surface Owner shall have thirty (30) days from receipt of the Development Plan to review and approve or object to same. Lessee agrees to meet with Surface Owner, if requested, to answer questions and address issues with the proposed Development Plan. If Surface Owner makes no objection to the proposed Development Plan within thirty (30) days after receipt thereof, Surface Owner shall be deemed to have approved the Plan. If Surface Owner objects to any part of the Development Plan, Surface Owner shall do so in writing to Lessee and shall propose reasonable alternatives to any portion of the Plan to which Surface Owner may object.

After approval of the Development Plan, Lessee's activities on the Leased Premises shall be conducted in accordance therewith. If Lessee makes any changes to the Development Plan, Lessee shall communicate such changes in writing to Surface Owner for Surface Owner's review and approval. If and as additional wells are proposed for drilling on the Leased Premises, Lessee shall update and revise the Development Plan as needed, and shall provide the additional information required above for each such new well.

3. Location of Facilities. Lessee agrees to contact Surface Owner prior to the commencement of each separate well and prior to the commencement of each separate geophysical operation or other operation. Except in emergencies, such notice to Surface Owner must be at least 72 hours in advance of such operation. Prior to locating any pump stations, compressors, tank batteries, or separators on the Leased Premises, Lessee shall notify Surface Owner and shall consult with Surface Owner to locate such facilities so that they will interfere as little as reasonably possible with use

of the surface estate. In any event, no wells or other surface equipment or facilities may be located closer than one thousand feet (1,000') to any residence or closer than five hundred feet (500') to any existing barns, pens or other ranching operational facilities located on the Leased Premises without Surface Owner's written consent. It is understood that Lessor grants to Lessee such surface rights as are reasonably necessary for Lessee's operations hereunder; however, notwithstanding any other provision in this Lease to the contrary, Lessee shall not dig canals, drill or use injection wells, place pipelines, establish telephone or electrical lines, employee housing or other structures on the Leased Premises for exploring, drilling for, producing, treating, storing or transporting minerals from any lands other than the Leased Premises. Lessee shall provide to Surface Owner a surveyed centerline description of the location of all roads and underground pipelines and flow lines constructed by Lessee on the Leased Premises, in suitable form for recording, so that all such lines can be located by the Surface Owner by reference to the description.

4. Compliance With Laws. Lessee shall comply with all federal, state and local laws and regulations in connection with Lessee's operations on, and production from, the leased premises, including without limitation, those governing land use, conservation, pollution control, pesticide and herbicide application, endangered or threatened species preservation and irrigation. Moreover, Lessee covenants to comply with all applicable Federal and State laws and regulations regarding safety, protection of the leased premises, protection of property, protection of wildlife (including, without limitation, endangered species), and the protection of human life and health.

5. Litter. During the term of this lease, Lessee shall keep the leased premises free from trash and debris at all times. Under no circumstances shall Lessee bury, burn or otherwise dispose of any trash, debris or foreign material of any nature on the leased premises. Lessee shall provide covered dumpsters at all drill sites while drilling operations are in progress.

6. No Disposal or Storage Allowed. Pit liners and other oil and gas waste shall not be buried or otherwise disposed of on the Leased Premises. All such waste shall be removed from the Leased Premises and properly disposed of in compliance with all Environmental Laws. Lessee may not use the surface of the Leased Premises for storage of pipe, fuel, lubricants, treating compounds, or any Hazardous Materials, or for maintenance yards or facilities. All equipment and materials not being actively used in Lessee's operations shall be stored offsite, and when equipment or materials are no longer being used for operations on the Leased Premises, same shall be immediately removed from the Leased Premises.

7. Fencing of Equipment During Drilling or Reworking Operations. Lessee agrees to fence the area of operations surrounding each well location prior to commencement of operations for drilling or reworking. All pits dug on said land in connection with Drilling or Reworking Operations shall be fenced within one week after cessation of such operations, and the fence surrounding the general area of operations shall, at the option of Surface Owner, be removed.

8. Fencing, Firewalling and Maintenance of Production Equipment. Lessee agrees to fence all Christmas trees, pumping units and other machinery placed on the Leased Premises and to maintain such fences in good repair at all times during the continuation of this Lease. Firewalls must be constructed and maintained around all tanks, separators and other receptacles so as to contain a volume of liquid equal to at least 1.25 times the total volume of such tanks,

separators and other receptacles located within the boundaries of the firewall. Lessee shall keep all tanks and other equipment at each well location painted, and shall keep the wellsite and all roads leading thereto free of all noxious weeds and debris.

9. Fences and Gates. Lessee agrees that Lessee will not cut or go over any fence or fences on the Leased Premises at any time or in connection with any operations on the Leased Premises, without first obtaining Surface Owner's express consent thereto in writing. If Surface Owner consents to the cutting of a fence, the cuts must be made at the place designated by Surface Owner; and Lessee agrees, prior to cutting any fence of Surface Owner, to brace the existing fence adequately on both sides of the proposed cut so that when the fence is cut there will be no slackening of the wires. If the fence cut is an outside fence of Surface Owner's property, Lessee agrees, if requested by Surface Owner, to install and maintain a substantial iron cattle guard capable of turning cattle promptly after making such cut. A welded pipe gate shall be installed across said cattle guard, and when not in actual use, the gate shall be kept locked by Lessee. If Surface Owner does not request a cattle guard, then Lessee shall install a substantial metal gate, which shall be kept locked by Lessee when not in actual use. Surface Owner may install Surface Owner's own lock in addition to Lessee's lock on said gate. If the fence to be cut is an internal fence of Surface Owner's property, Lessee agrees to install a substantial metal gate or cattle guard, whichever shall be designated by Surface Owner, in such opening. Upon termination of this Lease, or the portion thereof on which any cattle guard and gate are located, such cattle guard and gate shall, at the option of Surface Owner, become Surface Owner's property or be removed by Lessee and the fences restored to their original condition. So long as this Lease shall remain in force, such gates and cattle guards shall not be removed and shall be maintained in good condition and repair, capable of turning cattle. Any gates in fences must be installed only at places and in a manner reasonably approved by the Surface Owner. Lessee agrees to promptly close all gates and lock all outside gates which Lessee and Lessee's agents, servants, employees, guests, invitees or independent contractors may use in Lessee's operations on the Leased Premises, to prevent the escape of cattle or stock through any open gate.

10. Gate Guard. While any Drilling Operations or Reworking Operations are being conducted on the Leased Premises, Lessee shall cause a guard to be posted at the outside gate through which Lessee's employees and contractors are passing for access to the drillsite, and such guard shall be responsible for preventing unauthorized persons from entering the Leased Premises.

11. No Lease Houses. Lessee shall have no right to construct any lease housing or lease camps for housing Lessee's employees on the Leased Premises (other than mobile units used during Drilling or Reworking Operations).

12. Notification of Lessee's Employees and Contractors. Lessee shall apprise every contractor, subcontractor and employee who enters upon the Leased Premises, at a minimum, of the provisions of this Lease pertaining to prohibitions against fishing and hunting, vehicle access, and surface use and protection, prior to such party's entry upon the Leased Premises. Every such employee, contractor and subcontractor acting for Lessee under the authority of this Lease shall have in his possession written authorization from Lessee to be present on the Leased Premises, and Surface Owner and his agents and representatives shall have the right to require him to present such written authorization for inspection upon request.

13. Removal of Persons. In the event anyone connected with Lessee's operations is found upon the premises in violation of the provisions of the lease or the Surface Use Agreement, they shall be considered as a trespasser and the Lessor may file such charges as may be appropriate under the laws of the State of Texas against such party or parties. Further, if any of Lessee's employees, agents, representatives or contractors are, or become, objectionable to Lessor, for any reason, Lessor may give written notice thereof to Lessee and, if Lessee does not voluntarily remove or exclude any such party from the leased premises within ten (10) days after receipt of such notice, Lessor shall have the right to eject such party from the leased premises and prohibit such party from thereafter entering upon the leased premises.

14. Annual Inspections of Surface. No less often than once during each Lease Year while this Lease is in force, an inspection of Lessee's operations and facilities on the Leased Premises shall be conducted by Lessee and a designated representative of the Surface Owner, to determine whether Lessee is in compliance with the provisions of this Lease pertaining to the surface estate. Lessee shall provide Lessor with a written copy of the results of such inspection. If there are any respects in which Lessee is not in compliance with this Lease, the parties shall agree upon what measures shall be taken to bring Lessee into compliance and upon a schedule for performing all acts necessary to bring Lessee into compliance. Lessee shall thereafter perform such repairs and remedial measures as the parties have agreed upon, within the time agreed upon. If for any reason Lessee fails to perform such agreed-upon repairs and remedial measures within the time agreed, then Surface Owner shall have the right (in addition to any other remedies) to perform such repairs and remedial measures, and Lessee shall, upon demand by Surface Owner, promptly reimburse Surface Owner for such costs.

15. Insurance. Lessee, at its own expense, shall maintain a general liability insurance policy (covering both bodily injury and property damage and covering its indemnity provisions of this Lease) in an amount of at least \$1,000,000 combined single limit. Lessee shall also, at its own expense, carry worker's compensation insurance as required by law. Said policies shall (i) name Lessor as an additional insured (except for the worker's compensation policy, which instead shall include a waiver of subrogation endorsement in favor of Lessor), (ii) be issued by an insurance company which is reasonably acceptable to Lessor, and (iii) provide that said insurance shall not be canceled unless thirty (30) days prior written notice shall have been given to Lessor. In addition, such insurance provided by Lessee shall be primary coverage for Lessor when any policy issued to Lessor is similar or duplicate in coverage, and Lessor's policy shall be excess over Lessee's policies. Said policy or policies or certificates thereof shall be delivered to Lessor by Lessee upon commencement of the lease and upon each renewal of said insurance.

16. Inurement. The provisions of this Exhibit shall inure to the benefit of Surface Owner, Surface Owner's respective heirs, successors, representatives and assigns, and shall be binding on Lessee, its successors and assigns.

17. Remedies. If Lessee fails to perform any obligation set forth in this Agreement, Surface Owner may, after written notice of such breach and a 30 day period for Lessee to cure such breach, (i) perform such obligation on Lessee's behalf, in which event Lessee shall promptly pay to Surface Owner the cost incurred by Surface Owner in such operations, or (ii) sue Lessee for specific performance of such obligations, or (iii) obtain recovery of damages for such breach. The parties agree that the measure of damages for any breach of the provisions of this Exhibit shall not be limited

to the market value of the property, but shall be not less than the cost of performing the obligations of Lessee for which Lessee is in default. In the event the Surface Owner must resort to legal proceedings to recover any damages payable to Surface Owner hereunder or to enforce any provision or covenant herein contained, Lessee shall reimburse Surface Owner for all costs, including reasonable attorney's and expert witness' fees, incurred by Surface Owner in such proceedings.

18. Construction and Maintenance of Roads. Lessee agrees to construct not more than one (1) road to each location on the Leased Premises and to confine all travel incident to the drilling and production of such well to the single road. Lessee shall consult with Surface Owner prior to locating any road so that they may be located so as to interfere as little as reasonably possible with Surface Owner's use of the surface estate. Lessee shall have no right to use existing roads on the Leased Premises except with Surface Owner's consent. Lessee agrees to maintain all roads used by Lessee in Lessee's operations on the Leased Premises in good condition and repair during the period of Lessee's operations on the Leased Premises. Lessee shall construct and maintain terraces across roads where necessary to prevent erosion. When any roads constructed by Lessee are no longer used by Lessee, if Lessee has constructed any character of topping, such as caliche, blacktop or otherwise, on such roads, Surface Owner shall have the right to require Lessee to remove such topping from the roads and to restore the surface of the land to substantially its former condition. If any employees, contractors, employees of oil or gas purchasers, or others authorized to use lease roads by virtue of this Lease fail to confine their travel on the Leased Premises to the designated lease roads, Surface Owner shall have the right, in addition to any other remedy provided under this Lease or by law, to deny further access by such person to the Leased Premises, to treat such person as a trespasser, and to receive compensation from Lessee for any damages caused by such person to the Leased Premises by reason of his use of portions of the surface of the Leased Premises other than the designated lease roads.

19. Care in Operations.

(i) Lessee shall be responsible for all acts occurring as part of its operations on the leased premises whether they be reasonably foreseen or unforeseen. All operations conducted by Lessee, its agents, contractors, or assigns relative to this Lease shall comply with federal, state and local law, statute, regulation and/or order. Lessee's failure to comply with any federal, state, local law or any regulation or order of any enforcement agency having jurisdiction over Lessee's operation shall be a default of this lease.

(ii) Lessee shall at all times use the highest degree of care and all necessary safeguards to prevent its operations from (a) causing or contributing to soil erosion, or to the injury of terraces, grades, or other soil-conserving structures on the leased premises; (b) polluting or contaminating any environmental medium including the surface or subterranean soils and/or waters and ambient atmosphere in, on, under or about the leased premises and surrounding properties; (c) decreasing the fertility of the soil; (d) damaging crops, native or cultivated grasses, fruit or nut trees, timber, or pastures, consistent with the purpose of the Lease; (e) harming or in anyway injuring the animals, poultry, fish or livestock owned by the Lessor or by his tenants and kept or pastured on the leased premises; including the erection and maintenance of fences, gates, and cattle guards where necessary for such purposes; or (f) damaging buildings, roads,

structures, ensilage pits, improvements, farm implements, or fences. Lessee shall dispose of salt water and waste oil in accordance with the rules and regulations of the Texas Commission on Environmental Quality, Texas Railroad Commission or other governmental authority. Lessee shall clean up, remove, remedy, and repair any soil or ground water contamination and damage caused by its presence or release of any contaminant in, on, under or about the leased premises, whether or not caused by the negligence of Lessee, its agents, employees, licensees or independent contractors. Lessee shall pay to the person beneficially interested in the harmed object all damages caused by its operations.

(iii) Lessee shall not use land application on the leased premises for the disposal of any drill cuttings or residual waste.

(iv) Lessee shall not use, dispose of or release on the leased premises or permit to exist or be used, disposed of or released on the leased premises as a result of its operations, any substances (other than those Lessee has been licensed or permitted to use on the leased premises) which is defined as a “hazardous material”, “toxic substance”, or “solid waste” in applicable federal, state or local laws, statutes or ordinances.

(v) Lessee shall ensure that its operations and equipment do not cause or contribute to a nuisance or contamination, including, but not limited to, noise levels, emissions into the air or discharges into soil or water.

(vi) Prior to any surface excavation, Lessee shall set topsoil aside for the express purpose of recovering any areas to be graded at conclusion of activities requiring excavation. Within ninety (90) days of the conclusion of such activities, weather permitting, Lessee shall grade all areas as nearly as practicable to the original contours following applicable state regulations and spread set aside topsoil evenly to its original depth. Lessee shall purchase and plant graded areas with the desired seeds meeting Texas Commission on Environmental Quality (TCEQ) and Texas Parks and Wildlife Department (TPWD) regulations.

(vii) Lessee shall notify Lessor prior to the removal of any standing timber in a sufficiently timely manner so as to allow Lessor to obtain an appraisal of such timber by a qualified forester. Lessor shall have the option to take payment from Lessee for said timber prior to its removal or to take possession of said timber after its removal by Lessee. If Lessor opts to take possession, Lessee shall cut and set aside logs so as to be accessible, exercising due care in cutting and handling said timber so as to preserve its market value. Lessee shall remove any uprooted stumps from the leased premises at Lessor’s request.

(viii) Lessee shall plan surface operations in a manner that will reduce or minimize the intrusion to crop fields. In the event that such intrusion cannot be avoided, Lessee shall compensate Lessor for the damage at current market value for the projected yield at full maturity.

(ix) Should any “pollutant”, “hazardous material”, “toxic substance”, or “contaminated waste” be released on the leased premises requiring the notification of the TCEQ or other governmental entity, Lessee shall notify Lessor immediately after notifying the governmental body using the same means communication.

20. Pits. Lessee shall have no right to dig any pits on said land except with Surface Owner’s written consent.

21. Removal of Equipment and Casing. Lessee shall have the right at any time while this lease is in force and effect and for six (6) months after its termination, but not thereafter, to draw casing and remove all property and fixtures placed thereon and, if Lessee fails to remove such property and fixtures within said six (6) months it shall be conclusively considered that such property and fixtures have been abandoned by Lessee, and the Lessor may take possession thereof and dispose of same as it deems appropriate without accounting to Lessee; it is provided, however, that Lessee shall not be relieved of its responsibility and obligations provided elsewhere in this lease to plug any well so abandoned and to clean up and restore all well sites and other locations on said lands.

22. Restoration of Surface after Drilling Operations or Reworking Operations. Within a reasonable time after cessation of any Drilling or Reworking Operation, not to exceed three (3) months, Lessee shall level all disturbed areas remove all debris and all of Lessee's equipment and material, restore the surrounding land so that it will support the crops or natural range vegetation thereon, and generally shall restore the surface of the land to the same condition and quality as it was before the commencement of such operations. All remaining cleanup of the drillsite shall be completed within four (4) months after completion of operations. Lessee shall remove any caliche or other topping used in the construction of the location and shall, if Surface Owner requests, spread and properly compact any such removed topping on any road or roads on the Leased Premises or access roads thereto.

23. Seismic Operations. In the conduct of seismic operations under this Lease, Lessee agrees that no shot holes will be drilled or used. All seismic operations shall be conducted using the Vibroseis method. In the event any water wells or tanks shall be damaged or ruined as a result of such seismic operations, Lessee shall be liable for the damages occasioned thereby, and shall be obligated to redrill any water wells so damaged to replace the water supply. Upon completion of seismic operations, Lessee agrees to promptly and properly rake and pile all debris, and restore the surface of the land to the same condition as it was before the commencement of such operations. Lessee and Surface Owner's designated representative shall make a joint inspection of the premises before Lessee commences any seismic operations thereon, to determine the location of the proposed lines and the condition of all fences, gates, roads, water wells, buildings and other improvements in the vicinity of the operations and to agree upon the most convenient means of access to the property for both parties. Lessee shall notify Surface Owner's representative again when seismic operations are completed, and such representative and Lessee shall again inspect the property.

24. Surface Damages. Lessee agrees to pay Surface Owner reasonable compensation for all use of, or damage to, the surface estate (or any incident of the surface estate) owned by the Surface Owner, which use is made or which damages are incurred in the exercise of the rights granted to Lessee by this Lease. LESSEE'S OBLIGATION TO COMPENSATE SURFACE OWNER FOR SUCH USE OR DAMAGE SHALL EXIST WHETHER OR NOT SUCH USE OR DAMAGE IS DUE TO THE NEGLIGENCE OF LESSEE, ITS AGENTS, EMPLOYEES, INVITEES OR INDEPENDENT CONTRACTORS. If the surface estate is leased, Lessee agrees to pay the surface tenant prior to Lessee's entry on the property for all damages to crops, cattle, livestock, grass and other property of the tenant situated on the Leased Premises resulting from Lessee's operations thereon, and for costs of agricultural activity on the Leased Premises, including costs of land preparation, where the surface tenant has expended funds and efforts preparing lands for crops but has not yet planted the crops. In any event, the minimum compensation payable to Surface Owner for Lessee's use of the surface shall be:

(i) for well locations, tank batteries or other surface locations used or operated by Lessee, _____ and No/100 Dollars (\$ _____) per acre;

(ii) for pipelines and flowlines on the Leased Premises (with no above-ground facilities) shall be _____ and No/100 Dollars (\$ _____) per rod;

(iii) as compensation for use and damage caused by roads constructed or used by Lessee, the sum of _____ and No/100 Dollars (\$ _____) per mile; such payment shall be due within thirty (30) days before Lessee's commencement of construction of any road;

(iv) for reasonable and necessary damages to the surface estate resulting from seismic operations: for 2-D seismic operations, _____ and No/100 Dollars (\$ _____) per mile of seismic line, and for 3-D seismic operations, _____ and No/100 Dollars (\$ _____) per acre of lands included within the seismic survey. In addition, prior to entering the property, Lessee shall pay for any damages to growing crops, and for any costs of re-cultivating farmland necessitated by Lessee's seismic operations.

In addition, if the surface estate is enrolled in the Conservation Reserve Program ("CRP") or any similar program limiting the use of the surface, and if Lessee's use of the surface disqualifies any part of the surface estate from participation in the program, Lessee agrees to reimburse Surface Owner for any refunds or penalties Surface Owner may be required to make as a result of such disqualifications. Payment of such compensation shall not relieve Lessee of its obligation to restore the surface estate as nearly as possible to its original condition, and Surface Owner shall be entitled to obtain specific performance of Lessee's obligations to fully restore the surface estate and/or such other remedies as are provided in **Paragraph 17**. Payment shall be due prior to commencement of construction at any location.

The stated amounts of minimum use and damages payable for roads and other facilities and for seismic damages as provided above shall increase on each anniversary date of this Lease by the same percentage as the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor, from the most recent prior anniversary date of this Lease to the then current anniversary date of this Lease. If such Index ceases to be published, the parties shall agree upon a similar published index for use hereunder. Lessee shall have no obligation to calculate or pay any amounts attributable to the increase provided for under this Paragraph until thirty (30) days after Lessor has notified Lessee of the dollar amount of any such increase and the Consumer Price Index statistics used by Lessor or Surface Owner to calculate such increase. Upon Lessor's receipt of any payment from Lessee hereunder to which a price increase is applicable, Lessor shall notify Lessee of the additional amount due by reason of such increase and of the method used by Lessor to calculate such amount, and such additional amount shall be due and payable thirty (30) days thereafter.

25. Salt Water Disposal. No salt water disposal well may be drilled on the leased premises without a separate written agreement with the Lessor. If at any time it becomes apparent that salt water is escaping (whether into subsurface formations or onto the surface of the ground) Lessee shall promptly take all necessary steps to stop the escape thereof.

26. Water Protection. The leased premises are located within the watershed of the _____ River, one of Texas' pristine rivers, and near the head springs located _____. The _____ River and associated habitats are home to a number of unique plant and animal species including the federally listed _____. The _____ River is supported from the outflow of _____ Aquifer located underneath the said property, and is dependent on this underground system for its water quantity and quality. Canyons and creek beds within said land drain into this sensitive aquatic system and unique river. Lessee shall prevent the contamination of the _____ River watershed and any and all waters in, under or on the leased premises, whether in surface tanks or any other type of storage, in creek beds or river beds, and any and all surface and subsurface water bearing strata or formations. Lessee shall not use water from Lessor's wells, stock tanks, streams, lakes, ponds, water pipelines, storage tanks or other water sources existing on the leased premises.

27. Water Wells. No water well may be drilled by Lessee on the Leased Premises except with Surface Owner's prior written consent. Any water well drilled by Lessee on the Leased Premises shall be drilled, cased and completed in compliance with all rules and regulations of state or local authorities applicable to the drilling and completion of water wells to be used for livestock or domestic purposes. If Surface Owner consents to the drilling of a water well to supply Lessee's drilling or completion or hydraulic fracturing operations, Lessee agrees to pay Surface Owner for such water at the rate of \$_____ per barrel used, and Lessee agrees to install and properly calibrate and operate a meter to measure the water used. At Surface Owner's election, any water well drilled by Lessee upon the Leased Premises shall become the property of Surface Owner upon termination of this Lease as to that portion of the Leased Premises upon which such water well is located, or sooner upon written request of Surface Owner, if in the judgment of Lessee such water well is no longer needed in connection with Lessee's development operations on the Leased Premises. If Surface Owner so elects, the casing in any such water well or wells shall not be removed by Lessee, and Surface Owner shall thenceforth assume all risk and obligations attendant to Surface Owner's ownership and use of such water well or wells. Surface Owner may use water from any water well drilled by Lessee at any time, as long as Surface Owner's use does not interfere with Lessee's use of such well. Lessee may not use any fresh water from the Leased Premises for any waterflood or secondary recovery operations. If Surface Owner does not elect to assume ownership of such well, then Lessee agrees to plug and abandon same in accordance with applicable laws and regulations.

28. Use of Abandoned Wells as Water Wells. Lessee agrees, immediately after the surface casing is set in each well drilled under this Lease, to run a gamma-ray neutron logging survey from the surface of the ground to the total depth of the surface casing to be set in such well, to determine the presence of the water sands and other minerals in such interval. Lessee shall pay the cost of such logging survey. In the event any well drilled on the Leased Premises is abandoned as a dry hole or shall cease to produce in Paying Quantities, Lessee agrees, before plugging such well, to tender such well to Surface Owner; and if Surface Owner shall elect to accept same for completion as a water well, Lessee agrees to install a cement plug in the bottom of such well, at such depth as Surface Owner shall designate, and a removable swage at the top, and shall turn over such well to Surface Owner for completion as a water well; but Surface Owner shall first execute the necessary forms and applications to the Railroad Commission of Texas or other regulatory agencies relieving Lessee of any further liability. If Surface Owner shall not accept such well, Lessee shall plug and

abandon such well in accordance with the Rules and Regulations of the Railroad Commission of Texas.

29. Abandonment of Pipelines. If Lessee shall construct any pipeline on the Leased Premises, Lessee agrees, before the abandonment or removal of such pipeline, to offer same to Surface Owner; and Surface Owner shall have the right to purchase same by paying therefor the salvage value of such pipeline. If Surface Owner does not elect to purchase the pipeline, then Lessee agrees (if Surface Owner requests) to remove the pipeline, and to restore the surface of the land to its former condition, within one hundred eighty (180) days after substances have ceased being transported through the pipeline, and in any event within ninety (90) days after this Lease has expired as to the lands upon which the pipeline is located.

30. Location of Wells and Pipelines. No well shall be drilled or associated pipeline installed within one thousand two hundred feet of any residence or within five hundred feet (500') of any barn or other improvement now in existence or hereafter constructed on the Leased Premises. Lessee agrees to consult with the Surface Owner prior to laying any pipelines directly associated with a well so as to locate such lines to interfere as little as possible with the use of the surface estate; to bury and maintain all pipelines to a depth of not less than thirty-six inches (36") below the surface of the ground, so as not to interfere in any way with the clearing or cultivation of such land; and to "double-ditch" all pipelines, keeping the surface soil segregated and returning it to the top of the ditch after the line is laid. Upon payment of reasonable compensation for damages caused to the surface estate or improvements thereon, Lessee shall have the right to construct pipelines on the Leased Premises in connection with the production from the Leased Premises, but such right to construct pipelines on the Leased Premises may not be assigned to a pipeline company or anyone else who owns no interest in the Leased Premises. Lessee's right to construct such pipelines shall not include the right to construct any pipeline compressors.

31. Plugging. Lessee shall plug and abandon all wells in accordance with the rules and regulations of any governmental agency having jurisdiction, shall remove all casing and pipe from abandoned wells down to a depth of at least three (3) feet below ground level and three (3) feet below the bottom of any water bottom in which same may be located, and shall remove all other obstructions in such water bottom. Lessee agrees to indemnify and hold Lessor harmless from any obligation or liability to plug imposed by any governmental regulation or agency order.

32. Erosion. The construction of roads, drilling locations, tank batteries, compressor stations, pipelines and allied installations by Lessee shall be in such manner as to prevent erosion.

33. No Hunting or Fishing or Recreational Use. This agreement does not include any right or privilege of hunting with firearms or with dogs or otherwise on the Leased Premises, nor of fishing on the Leased Premises, nor of any recreational use of the Leased Premises, all such hunting and fishing and recreational rights being expressly reserved to Surface Owner. Lessee agrees that none of Lessee's officers, agents, servants, employees, representatives or contractors will bring any dog, firearm, fishing tackle, alcoholic beverages or illegal drugs or other illegal substances upon the Leased Premises and will not fire any weapon or firearm or consume alcoholic beverages or illegal drugs or other illegal substances thereon. Lessee's agents, officers, employees, representatives and contractors shall not bring any recreational-type vehicle on the Leased Premises, except vehicles used solely for Lessee's operations, or bring

motorcycles, dune buggies, or similar vehicles on the Leased Premises. If any such person shall violate the provisions of this Paragraph, such person shall no longer have any right to go on, or to be on, the Leased Premises, and if such person shall go on or be on the Leased Premises, he shall be a trespasser and subject to prosecution under the trespass laws of the State of Texas. At all times while on the Leased Premises, Lessee's officers, agents, employees, representatives and contractors must carry such identification as Surface Owner shall reasonably require, and may be required to place such identifying marks on any vehicles brought by them upon the Leased Premises as Surface Owner may require. Any person on the Leased Premises without such identification may be required to leave the Leased Premises immediately.

34. Prevention of Fires. Lessee agrees that it will avoid causing any fires on the leased premises. Lessee shall equip all vehicles and well sites with fire suppression equipment sufficient to prevent and extinguish wildfires. Lessee shall consider and treat the leased premises to be a NO SMOKING AREA.

35. Removal of Artifacts and Natural Features. Lessee, and its agents, employees or contractors shall not remove any antlers, arrowheads, artifacts, rocks, plants, firewood, cacti, animals, birds, minerals or other natural features from the leased premises.

36. Vegetation and Plants. Lessee shall minimize the clearing of brush or the removal of trees or other any other vegetation or plant life in its operations on the leased premises. Lessee shall not remove or cut any mature trees in its operations on the leased premises without Lessor's prior written consent.

37. Wildlife and Livestock. Absolutely no wildlife or animals (including, but not limited to, snakes) shall be intentionally killed, injured, harassed, chased or disturbed in any way during the operations or production from the leased premises. Lessor shall assist in removing potentially dangerous animals from an immediate operation area, if requested.

19. Care in Operations. All operations by or for Lessee on the Leased Premises shall be conducted in such a way as not to unduly interfere with Surface Owner's or Surface Owner's tenants' operations on the premises, it being understood that the Leased Premises are owned and held by Surface Owner primarily for cattle and livestock ranching and farming purposes. Lessee agrees that all operations hereunder will be conducted having due regard for the continued use of the Leased Premises by Surface Owner and his/her other lessees and assigns. Lessee agrees to take all reasonable steps to prevent its operations from:

- i. Causing or contributing to soil erosion or to the injury of terraces or other soil conserving structures on the Leased Premises;
- ii. Polluting the soil of the premises or the waters of the reservoirs, springs, streams, or wells on the premises or adjacent thereto;
- iii. Damaging crops, grasses or other foliage or trees whether natural or improved, cultivated or not, of whatsoever nature; or

iv. Harming or injuring in any way the animals or livestock owned by Surface Owner or Surface Owner's tenants and kept or pastured on the Leased Premises.

Lessee shall at all times use reasonable care in all of Lessee's operations on the premises, to prevent injury or damage to the grass, crops, cattle, livestock, buildings or other property situated thereon, or to water wells or tanks located thereon. Lessee agrees not to allow any waste oil or salt water to flow over the surface of the Leased Premises, nor to allow same to drain down any draws, drains, creeks or ravines, nor allow same to contaminate any tanks, ground water or underground water thereon; but Lessee shall dispose of such salt water and waste oil in accordance with the Rules and Regulations of all governmental agencies and authorities having jurisdiction. Lessee may not "land farm" any contaminated soils or produced substances without Surface Owner's written consent. Lessee shall pay for any damages resulting from any contamination of the premises by salt water or waste oil or any other substance resulting from Lessee's operations, whether caused by Lessee's negligence or otherwise. The measure of such damages shall be the greater of (i) the difference between the Market Value of the property before and after such contamination or (ii) the cost of remediation of such contamination. If any well, pipeline, tank or other receptacle or facility of Lessee on the Leased Premises spills, leaks or discharges water, oil or other fluids, Lessee shall not permit such fluids to flow unrestrained over the Leased Premises but shall contain same, preventing it securely from penetrating, seeping or flowing into any fresh water on or under the premises or into any creek, tank, reservoir or water course on the Leased Premises. Lessee shall have the duty of seeing that no such fluid shall injure the surface of the Leased Premises or penetrate fresh water formations beneath the surface. Any water bearing stratum encountered in the drilling of any well will be securely cased and/or cemented off in accordance with state and/or federal regulations so that the waters therein will not be contaminated.

Sample Oil and Gas Lease

THIS AGREEMENT made this _____ day of _____, 20__, between

Lessor (whether one or more), whose address is

and

Lessee, whose address is

WITNESSETH:

1. **Grant of Lease.** Lessor, in consideration of Ten and No/100 Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the sole purpose and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and other liquid or gaseous hydrocarbons produced in association with oil or gas, together with the right to make surveys on said land, lay pipe lines, **[establish and utilize facilities for the subsurface disposal of salt water and other liquid wastes produced from the leased premises,]** construct roads and bridges, build tanks, and other structures on said land reasonably necessary for Lessee's operations in exploring, drilling for, producing, treating, and transporting said minerals produced from the land covered hereby[, **and the non-exclusive right to conduct seismic surveys thereon**].

The land covered hereby, herein called the "Leased Premises," is located in the County of _____, State of Texas, and is described as follows:

For the purpose of determining the amount of any bonus or other payment hereunder, the Leased Premises shall be deemed to contain _____ acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof.

2. **Term.** Except as expressly provided below, and unless sooner terminated under other provisions hereof, this Lease shall remain in force for a term of _____ years from the date hereof, hereinafter called "Primary Term", and as long thereafter as

Operations, as defined in **Paragraph 5**, are conducted upon the Leased Premises with no cessation of more than sixty (60) consecutive days. This is a "paid-up" lease, and no delay rental payments are necessary to maintain this Lease in effect during the Primary Term.

3. **Royalty.**

(a) **Delivery and Payment.** As royalty, Lessee covenants and agrees:

(i) to deliver or cause to be delivered to the credit of Lessor, into the pipe line or other receptacle to which Lessee may connect its wells, _____ of all oil, condensate and liquid hydrocarbons produced and saved by Lessee from the Leased Premises, or from time to time, at the option of Lessor, Lessee shall sell Lessor's share of such oil, condensate or liquid hydrocarbons with Lessee's share and shall pay Lessor _____ of the Gross Proceeds (as hereafter defined) received by Lessee or any Affiliate of Lessee (as hereafter defined) from the sale of all oil, condensate and liquid hydrocarbons produced and saved from the Leased Premises;

(ii) to pay Lessor on gas and casinghead gas produced from the Leased Premises, payable on a well by well basis:

(1) when sold by Lessee in an arms-length sale to an unaffiliated third party, _____ of the Gross Proceeds received by Lessee from the sale of such gas and casinghead gas, or

(2) when sold to an Affiliate of Lessee, _____ of the Gross Proceeds, computed at the point of sale, from the sale of such gas by such Affiliate of Lessee; and

(3) when used by Lessee (other than for Operations on the Leased Premises as hereafter provided), _____ of the market value at the point of use.

(b) **Affiliate of Lessee.** For purposes of this Lease, an "Affiliate of Lessee" is any corporation, firm or other entity in which Lessee, or any parent company, subsidiary or affiliate of Lessee, owns an interest of more than ten percent (10%), whether by stock ownership or otherwise, or over which Lessee or any parent company or Affiliate of Lessee exercises any degree of control, directly or indirectly, by ownership, interlocking directorate, or in any other manner; and any corporation, firm or other entity which owns any interest in Lessee, whether by stock ownership or otherwise, or which exercises any degree of control, directly or indirectly, over Lessee, by stock ownership, interlocking directorate, or in any other manner.

(c) **Gross Proceeds.** For purposes of this Lease, "Gross Proceeds" means the total consideration paid by the first purchaser which is not an Affiliate of Lessee for oil and gas produced from the Leased Premises, except that (1) Lessor's royalty shall bear its proportionate part of severance taxes actually paid by Lessee attributable to production from the Leased Premises, and (2) no royalty shall be payable on gas used on the Leased Premises for production operations or compression or dehydration of gas produced from the Leased Premises [**and (3) Lessor's royalty shall bear Lessor's proportionate part of any costs of transporting oil, gas or liquid hydrocarbon products paid to any third party which is not an Affiliate of Lessee.**]. In addition:

(i) If gas produced from the Leased Premises is processed for the recovery of liquefiable hydrocarbon products prior to sale, and if such processing plant is not owned by Lessee or any Affiliate of Lessee, "Gross Proceeds" shall include (a) the consideration received by Lessee (or any Affiliate of Lessee) from Lessee's (or any Affiliate of Lessee's) sale of such liquefiable hydrocarbons plus (b) the total consideration received by Lessee (or any Affiliate of Lessee) from the sale of all residue gas, less Lessor's proportionate part of severance taxes thereon.

(ii) If gas produced from the Leased Premises is processed for the recovery of liquefiable hydrocarbon products prior to sale, and if such processing plant is owned by Lessee or an Affiliate of Lessee, "Gross Proceeds" shall include (a) [**80% of**] the total consideration received by Lessee (or any Affiliate of Lessee) from the sale of all products extracted from such gas, plus (b) the total consideration received by Lessee (or any Affiliate of Lessee) from the sale of all residue gas, less Lessor's proportionate part of severance taxes thereon.

(d) **Duty to Market.** Lessee shall place oil and gas produced from the Leased Premises in marketable condition and shall market same as agent for Lessor, at no cost to Lessor (except as provided in (c) above).

(e) **Post-Production Costs.** Lessor's royalty shall not be charged directly or indirectly with any of the following: expenses of production, gathering, dehydration, transportation, fractionation compression, manufacturing,

processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom. If any contract by which Lessee or an Affiliate of Lessee sells oil or gas produced hereunder makes deductions or adjustments to the price to account for costs of production, gathering, dehydration, transportation, fractionation, compression, manufacturing, processing, treating or marketing of oil or gas produced from the Leased Premises, or any liquefiable hydrocarbons extracted therefrom, then such deductions shall be added back to the price received for purposes of computing the Gross Proceeds upon which royalties are to be paid hereunder.

(f) **Due Dates of Royalty.** All royalties that may become due hereunder shall commence to be paid on the first well completed on the Leased Premises within ninety (90) days after the first day of the month following the month during which any well commences production. On each subsequent well, royalty payments must commence within sixty (60) days after the first day of the month following the month during which any well commences production. Thereafter, all royalties on oil shall be paid to Lessor on or before the last day of the month following the month of production, and all royalties on gas shall be paid to Lessor on or before the last day of the second month following the month of production. Royalties not paid when due shall bear interest at five percent (5%) above the prime rate quoted in the Wall Street Journal as the base rate on corporate loans at large U.S. Money Center Commercial Banks, commencing at the rate as quoted on the date such payment was due, and fluctuating thereafter as such rate fluctuates. Interest charges shall commence on the date payment is due and shall continue until payment is made in full. In no event shall the interest rate charged be greater than the maximum allowed by law.

(g) **Right to Terminate for Non-Payment of Royalty.** If royalty is not paid by the date due, Lessor may give Lessee written notice of nonpayment of royalty, by certified mail, return receipt requested, and if Lessor's royalty is not paid on or before expiration of thirty (30) days from Lessee's receipt of such notice, Lessor may terminate this Lease and evict Lessee forthwith. However, if there is a bona fide dispute or a good faith question of royalty entitlement (either as to ownership or as to amount), based on an attorney's written opinion furnished to Lessor prior to the expiration of such thirty (30) days, Lessee may pay the disputed portion of Lessor's royalty to a trustee to be selected by both parties, to be retained by such trustee and invested in interest-bearing accounts pending resolution of the entitlement issue, with the interest to belong to the successful party. If the parties do not or cannot agree on a trustee, Lessee may tender the royalty into a court of competent jurisdiction by Bill of Interpleader, to be so held and invested by the clerk under the direction of the court. If the royalty is so paid to such trustee or to the court within the time provided, then Lessor shall not have the right to terminate this Lease for nonpayment of royalty.

(h) **No Division Or Transfer Order.** It shall not be necessary for Lessor to execute any division or transfer order in order to be entitled to payment of royalties due under this Lease. Lessee and any purchaser of oil or gas produced from the Leased Premises hereby waive the provisions of Section 91.402(c)(1) of the Texas Natural Resources Code which entitle a payor of royalties to require a signed division order as a condition to payment.

(i) **Third Party Payments.** If Lessor agrees to accept payment of royalties from a purchaser of oil or gas produced from the Leased Premises, or from another party designated to distribute royalties other than Lessee, Lessor's acceptance of such payments shall not relieve Lessee of its obligation to pay royalty hereunder except to the extent of payments actually received by Lessor from such third party, and if such third party fails to pay any sums due as royalty under this Lease, Lessee shall remain fully liable therefor, whether or not Lessee has received payment for production from such purchaser or third party.

(j) **Right to Audit.** Without limiting Lessor's rights or Lessee's obligations under any other provision of this Lease, commencing on the completion date of the first well drilled on the Leased Premises as a producing well, no more often than once in any three-year period during the term of this Lease Lessor shall have the right to have an audit of the books, accounts, contracts, records, and data of Lessee pertaining to the development, production, saving, transportation, sale, and marketing of the oil, gas, and sulphur produced from or attributable to the Leased Premises conducted. If the exceptions or deficiencies in royalty payments by Lessee as revealed by the audit (the "audit exceptions") are, either by agreement of Lessor and Lessee or by a final, non-appealable judgment binding on the parties, determined to be more than the cost and expense of such audit to Lessor, then Lessee shall reimburse Lessor for the cost of such audit within thirty (30) days after the earlier of (i) the date of the agreement of the parties respecting the amount or amounts of the audit exceptions or (ii) the date upon which a judgment binding on the parties and determining the amount or amounts of the audit exceptions becomes final and non-appealable. If the audit exceptions are, either by agreement of Lessor and Lessee or by a final, non-appealable judgment binding on the parties, determined to be less than the cost and expense of the audit to Lessor, such cost and expense shall be borne by Lessor.

(k) **Security Interest.** Lessor hereby retains a lien and security interest in all rights of Lessee in the Leased Premises granted by this Lease to secure Lessee's payment of royalties and compliance with the other terms and provisions of this Lease. Lessor also retains, and Lessee grants to Lessor, a security interest in (i) all of the oil and gas produced and saved

from the Leased Premises or lands pooled therewith, under and pursuant to this Lease, and (ii) all proceeds of sale of such oil and gas and all accounts arising therefrom (the "Collateral"), to secure Lessee's payment of royalties and compliance with the other terms and provisions of this Lease. In addition to any other remedies provided in this Lease, Lessor, as a secured party, may in the event of Lessee's default in any obligation of Lessee under this Lease proceed under the Texas Uniform Commercial Code (the "Code") as to the Collateral, in any manner permitted by the Code. In the event of default by Lessee, Lessor shall have the right to take possession of the Collateral, and to receive the proceeds attributable thereto and to hold same as security for Lessee's obligations or to apply it on the amounts owing to Lessor hereunder. The Collateral includes as-extracted collateral, including minerals to be financed at the well head of the wells and accounts from the sale thereof. This Lease, when filed in the real property records where the Leased Premises are located, shall constitute a financing statement under the Code.

(l) **Single Payer.** If, by reason of assignments of undivided interests in Lessee's interest in this Lease, more than one party becomes entitled to a portion of Lessee's share of gas produced from any well on the Leased Premises, and if any or all of such co-owners elect to take their share of gas in kind, resulting in split-stream deliveries of gas to different purchasers, Lessor shall be entitled, at Lessor's election, to require the operator of the Leased Premises to pay and account to Lessor for all royalties due on gas production from the well or wells from which split-stream deliveries are being made, so that Lessor shall not be required to receive royalties from more than one (1) purchaser or party on the same gas stream. If Lessor exercises such election, the operator of the Leased Premises (or of that portion of the Leased Premises upon which the split-stream production is located) shall pay to Lessor all royalties due on such gas production and shall provide production statements from all purchasers of such gas showing the amounts sold and the price paid therefor, with any applicable adjustments. Such election, if made, shall not relieve any party otherwise liable for payment of royalties from such liability, and all parties owning an undivided interest in all or any portion of the Leased Premises shall be and remain jointly and severally liable for the payment of all royalties due on production therefrom..

4. **Shut-In Royalty.** If there shall be a well on the Leased Premises capable of producing gas or gas and condensate in paying quantities, but from which neither gas nor condensate is sold or used off the Leased Premises for lack of a satisfactory market (which well is herein sometimes called a "shut-in" gas well), Lessee may pay or tender to Lessor, as shut-in gas well royalty, a yearly sum equal to Fifty and No/100 Dollars (\$50.00) multiplied by the number of acres subject to this Lease at the time such payment is made. The first such payment of shut-in gas well royalty is to be made on or before sixty (60) days after the day on which (i) such well was shut in or (ii) this Lease ceases to be in force by any other provision hereof, whichever is later. Succeeding payments may be made annually thereafter on or before the anniversary of the due date of such payment; and if such shut-in gas well royalty shall be paid or tendered as above provided, it shall be considered for purposes of this Lease that such well is producing gas in paying quantities for a period of one (1) year from the due date of such payment, and for like annual periods thereafter; provided, however, that the payment of shut-in gas well royalty shall not prevent the termination of this Lease as to portions of acreage covered hereby, in accordance with the provisions of **Paragraph 6** hereof. Notwithstanding the making of such shut-in gas well royalty payments, Lessee shall be and remain under the continuing obligation to (i) use all reasonable efforts to find a market for said gas and to commence or resume marketing same when a market is available, (ii) reasonably develop the lands then subject to this Lease and (iii) drill all such wells on the lands then subject to this Lease as may be reasonably necessary to protect same from drainage by wells on adjoining or adjacent lands. All payments or tenders provided for in this Paragraph shall be made to Lessor. This Lease may not be maintained in effect solely by the payment of shut-in royalty for any one period of more than two (2) years or for a cumulative time of more than two (2) years in the aggregate.

5. **"Operations," "Drilling Operations," and "Reworking Operations".**

(a) The term "**Operations**" as used in this Lease shall mean only (i) the production of oil, gas or other hydrocarbons in paying quantities, (ii) Drilling Operations (as hereafter defined) or (iii) Reworking Operations (as hereafter defined).

(b) The term "**Drilling Operations**" as used in this Lease shall mean the actual drilling of a well, together with such work in the hole as is necessary to properly complete or abandon the well, conducted with good faith and due diligence and in a good and workmanlike manner. Drilling Operations shall be deemed to have commenced when a derrick, a rig and machinery capable of drilling to a depth sufficient to test a prospective oil or gas horizon have been erected, and when such well has been spudded in and the rotary bit is rotating under power. Sidetracking, re-entering, reworking, recompletion, plugging back or repairing of an existing well shall not constitute Drilling Operations. Drilling Operations shall be deemed to have been completed (whether as a dry hole or as a producing well) on the earliest of the following dates: (i) the date on which the initial potential test is run; (ii) the date on which a dry hole is plugged; (iii) the date thirty (30) days after the date on which the total depth has been reached in Drilling Operations; (iv) the date certified to the Railroad Commission of Texas as the date a well has been completed as a producing well; or (v) the date the completion rig moves off location.

(c) The term “**Reworking Operations**” shall mean actual work in the hole of a well previously completed as a producer, in a good and workmanlike manner, prosecuted with reasonable diligence, in an attempt to recomplete or repair said well to return it to production or to enhance production. "Reworking Operations" shall not include swabbing of a well or applying soap sticks or other chemical treatment to increase or restore production.

6. **Partial Termination.** Upon expiration of the Primary Term, or upon cessation of “Continuous Drilling Operations” (as hereinafter defined), whichever is later, this Lease shall terminate as to all the lands and depths then covered thereby except lands and depths then designated by Lessee, in accordance with the requirements of this Paragraph, to be within a "Production Unit" (as hereinafter defined) assigned to each well then producing in paying quantities on the Leased Premises or lands properly pooled therewith.

(a) **Continuous Drilling Operations.** Lessee shall be considered to be engaged in “**Continuous Drilling Operations**” at the end of the Primary Term for purposes of this Paragraph if Lessee is engaged in Drilling Operations on the Leased Premises at the end of the Primary Term, or if Lessee has completed or abandoned a well within ninety (90) days prior to the end of the Primary Term; and Lessee shall be deemed to be engaged in Continuous Drilling Operations for as long thereafter as Lessee conducts Drilling Operations on the Leased Premises with due diligence and with intervals of not more than ninety (90) days between the date of completion or abandonment of one well and the date of commencement of actual drilling of the next well. If Lessee is engaged in Continuous Drilling Operations at the end of the Primary Term, then such Continuous Drilling Operations will be deemed to have ceased when Lessee fails to commence actual drilling of a well within ninety (90) days after the completion or abandonment of the preceding well, and this Lease shall thereupon terminate except as to Production Units assigned to wells then producing in paying quantities from the Leased Premises or lands pooled therewith, as provided in this Paragraph.

(b) **Production Unit.** A "Production Unit," for purposes of this Lease, is a designated area of land around a well having the minimum amount of acreage necessary to obtain a regular permit for the drilling of a well, as required by the field rules of the Railroad Commission of Texas applicable to the field from which such well is producing. Each Production Unit shall be limited in depth to one hundred (100) feet below the deepest perforation in any well on such Production Unit.

(c) **Maximum Sizes of Production Units.** Notwithstanding any density rules applicable to any well, however, no Production Unit assigned to any well shall exceed the following sizes:

(i) If the well is classified as an oil well under the Rules and Regulations of the Railroad Commission then in effect, the maximum size of the Production Unit shall be _____ acres [if the well is producing in whole or in part from formations less than _____ feet beneath the surface, and _____ acres if the well is producing from formations located wholly below _____ feet beneath the surface].

(ii) If the well is classified as a gas well under the Rules and Regulations of the Railroad Commission of Texas then in effect, the maximum size of the Production Unit shall be _____ acres [if the well is producing in whole or in part from formations less than _____ feet beneath the surface, and _____ acres if the well is producing from formations located wholly below _____ feet beneath the surface].

(iii) If the well is classified as a horizontal oil well under the Rules and Regulations of the Railroad Commission then in effect, then the maximum size of the Production Unit shall be determined by the following formula: $40 + .05 \times L$, where L = the length of the horizontal lateral component of the drainhole of the well, from the first take point to the last take point.

(iv) If the well is classified as a horizontal gas well under the Rules and Regulations of the Railroad Commission then in effect, then the maximum size of the Production Unit shall be determined by the following formula: $80 + .05 \times L$, where L = the length of the horizontal lateral component of the drainhole of the well, from the first take point to the last take point.

If at the time Lessee must designate Production Units in accordance with this Paragraph there is a well or wells on the Leased Premises producing from a field for which no field rules have yet been adopted, then Lessee shall designate a Production Unit complying with the size requirements listed in (i), (ii), (iii) or (iv) above, as applicable, and Lessee shall, if and when requested by Lessor, proceed with diligence to apply for field rules for such field; and when such field rules are adopted by the Commission, if such field rules provide for proration units smaller than the maximum Production Unit sizes provided for above, Lessee shall designate a Production Unit for such well complying with such field rules, and shall release the lands no longer included in the Production Unit for such well or wells; provided, however, that Lessee may maintain this Lease as to such excluded lands if Lessee commences Drilling Operations on such lands within sixty (60) days from the final adoption of

such field rules, and continues such Drilling Operations with no cessation of more than sixty (60) consecutive days until production is established, in which event Lessee shall designate Production Units and this Lease shall remain in force as to the units so designated as provided in this Paragraph.

(d) **Configuration of Production Units.** Insofar as possible, taking into consideration the productive limits of the producing interval and the configuration of the Leased Premises, the lands included within the Production Unit for a well shall be in the form of a square or rectangle. Every effort shall be made in designating Production Units to avoid releasing small or irregularly shaped portions of the Leased Premises, or portions not contiguous with other released portions. Acreage assigned to wells producing from different zones may overlap, and shall overlap when necessary to comply with the requirements of this Paragraph. If a well is producing from more than one formation, its Production Unit's size and configuration shall conform to the Railroad Commission rules applicable to the well which provide the largest Production Unit (subject to the size limitations stated above). If all or a portion of the Leased Premises is included in a pooled unit, then for purposes of this Paragraph all the lands within the pooled unit shall be considered a part of the Leased Premises, and the size and configuration of the pooled unit must conform to the requirements of this Paragraph for a Production Unit.

(e) **Maintenance of Lease after Designation of Production Units.** As to acreage and depths which are included within a Production Unit, this Lease may be held in force after the termination of the Primary Term or cessation of Continuous Drilling Operations, whichever is later, only by Operations conducted (as provided in this Lease) on such Production Unit (or lands pooled therewith); and Operations conducted on one Production Unit (or lands pooled therewith) will not maintain this Lease in force as to any other acreage included within any other Production Unit, but such production or Operations will maintain this Lease only as to the acreage within the Production Unit or Production Units upon which such Operations are being conducted.

(f) **Recordable Release.** Upon termination of this Lease as to any portion of the Leased Premises, Lessee shall deliver to Lessor a plat showing the designated Production Units around each well (and designating the depth) and a partial release designating such Production Units in compliance with the requirements of this Paragraph, suitable for recording. Such release shall include a release of the depths below 100 feet below the deepest perforation of the well with paying production in each Production Unit, respectively.

7. **Partial Releases.** Lessee shall have the right at any time and from time to time during the term of this Lease to release from the lands covered hereby any lands subject to this Lease and thereby be relieved of all obligations thereafter accruing as to the acreage so released, provided that (1) Lessee may not release any portion of this Lease included in a pooled unit as long as Operations are being conducted on such unit, and (2) any such partial release must release all depths in and under the lands so released.

8. **Holding Over.** If Lessee continues in possession of the Leased Premises after termination or expiration of this Lease (whether such termination occurs by the lapse of production or otherwise), other than for the purpose of plugging abandoned wells, removing equipment, and restoring the Leased Premises as required by this Lease, Lessee shall be considered a tenant at will. The terms of this Lease shall continue to apply to Lessee's continued possession, provided that (i) if Lessee produces and sells oil or gas from the Leased Premises, Lessee shall owe to Lessor royalties from the sale or use of such oil or gas in accordance with **Paragraph 3** above, except that royalties on such production shall be 50%; (ii) Lessor shall have the right to evict and remove Lessee and Lessee's property from the Leased Premises at any time; and (iii) Lessee shall be liable to Lessor for any and all damages suffered by Lessor as a result of Lessee's continued possession of the Leased Premises.

9. **Pooled Units.**

(a) **Right to Pool.**

[Lessee shall have no right to pool the Leased Premises with other lands without Lessor's prior written consent. If such consent is given, then pooling shall be subject to the following provisions:]

OR

[Subject to any limitations provided below, Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this Lease with any other land covered by this Lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish pooled units.]

(b) **Manner and Effect of Exercise of Right to Pool.** Lessee shall exercise said option as to each desired pooled unit by executing an instrument identifying such pooled unit and filing it for record in the public office in which this Lease is recorded, and furnishing a copy to Lessor. Each of said options may be exercised by Lessee at any time and from time

to time while this Lease is in force, and whether before or after production has been established either on the Leased Premises, or on the portion of the Leased Premises included in the pooled unit, or on other land unitized therewith. A pooled unit established hereunder shall be valid and effective for all purposes of this Lease even though there may be mineral, royalty, or leasehold interests in lands within the pooled unit which are not effectively pooled or unitized. Any Operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, Operations conducted upon that portion of the Leased Premises included in the pooled unit.

(c) **Allocation of Pooled Minerals.** There shall be allocated to the land covered by this Lease within each such pooled unit (or to each separate tract within the pooled unit if this Lease covers separate tracts within the pooled unit) that proportion of the total production of unitized minerals from the pooled unit which the number of surface areas in such land (or in each such separate tract) covered by this Lease within the pooled unit bears to the total number of surface acres in the pooled unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty under this Lease, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this Lease. The formation of any pooled unit hereunder which includes land not covered by this Lease shall not have the effect of exchanging or transferring any interest under this Lease (including, without limitation, any shut-in royalty which may become payable under this Lease) between parties owning interests in land covered by this Lease and parties owning interests in land not covered by this Lease. Neither shall it impair the right of Lessee to release as provided in **Paragraph 7** hereof, except that Lessee may not so release as to lands within a pooled unit while there are Operations thereon for unitized minerals. At any time while this Lease is in force Lessee may dissolve any pooled unit established hereunder by filing for record in the public office where this Lease is recorded a declaration to that effect, if at that time there is no well located on the pooled unit which is producing or capable of producing oil or gas in paying quantities.

(d) **Separate Tracts.** If this Lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this Lease but Lessee shall nevertheless have the right to pool or unitize as provided in this **Paragraph 9** with consequent allocation of production as herein provided. As used in this **Paragraph 9**, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the Leased Premises.

(e) **Size of Pooled Units.** Pooled units created hereunder shall not exceed the size limitations set forth in **Paragraph 6(c)** for Production Units.

(f) **Termination of Pooled Units.** In the event that this lease terminates for any reason as to any lands that are then included in a pooled unit, then at Lessor's election (i) Lessor may terminate the pooling authority granted by this lease as to such tract, thereby removing such tract from the pooled unit, or (ii) Lessor may continue the effectiveness of such pooled unit as to such tract, in which event Lessor shall become a tenant in common with all other interest owners in such unit and in all production therefrom, effective as of the date of termination of this lease as to the tract included in such pooled unit. In the latter event, Lessor's interest in revenues from production from the pooled unit shall not be reduced by any drilling, completion or operating costs incurred prior to termination of this lease as to the lands included in such pooled unit.

(g) **Limitation on Right to Pool.** Lessee shall have no right to pool the Leased Premises with other lands for the production of oil or gas unless either (i) all of the Leased Premises are included within the pooled unit thereby created, or (ii) it is not possible to form a proration unit which would be entitled to the maximum allowable under the rules of the Railroad Commission of Texas from "excess" acreage within the Leased Premises (acreage which is not already assigned to a proration unit for a well or wells located on the Leased Premises); and in the latter event, all of the excess acreage within the Leased Premises must be included in the pooled unit so created.]

(h) **Outstanding Royalty Interests.** If there are royalty interests in oil and gas in the Leased Premises now owned by parties other than Lessor, Lessor makes no warranty or representation that this Lease grants Lessee the power or authority to pool such royalty interests, but in the event of pooling hereunder Lessor's royalty on production from the pooled unit shall be calculated and paid as if Lessee had the power, and had exercised the power, to pool such royalty interests, whether or not Lessee in fact has such authority.

(i) **Pooling of Less Than All Of Leased Premises.** In the event a portion or portions of the Leased Premises is pooled or unitized with other land so as to form a pooled unit or units, Operations on, completion of a well upon, or production from such pooled unit will not maintain this Lease in force as to the land not included in such pooled unit or units. This Lease may be maintained in force as to any land covered hereby and not included in such pooled unit or units in any manner provided for herein.

(j) [Insert here any special limitations on pooling.]

10. **Assignment.** The terms "Assign" and "Assignment" as used in this Paragraph include any transfer of a legal or equitable interest in the operating rights in all or any part of the Leased Premises, whether by sale, sublease, farmout, or otherwise, or through a participation agreement, pooling agreement, operating agreement, area-of-mutual-interest provision, or any other type of Assignment or agreement to Assign. A mortgage of Lessee's interest shall not constitute an Assignment requiring Lessor's consent, but any sale made pursuant to a power of sale granted in any mortgage shall be subject to the terms of this provision and shall require Lessor's consent to the assignment to the purchaser at such sale.

[The rights and estate of Lessee (or any permitted Assignee of Lessee) hereunder may not be Assigned without the prior written consent of Lessor, which shall not be unreasonably withheld. Lessor's consent shall be deemed to be 'reasonably withheld' if Lessor reasonably determines that the proposed assignee or transferee is not likely to have the ability to perform the obligations imposed on Lessee by this Lease, including, without limitation, obligations concerning payment for damages and injury, restoration of the Leased Premises and indemnification. Lessee shall provide Lessor reasonably sufficient information concerning the proposed assignee or transferee to allow Lessor to make such determination. Any Assignment by Lessee without Lessor's prior written consent shall constitute a material breach of this Lease.]

OR

[The rights and estate of Lessee hereunder may be Assigned from time to time in whole or in part and as to any mineral or horizon.]

No Assignment by Lessee (or any assignee of Lessee) of all or any portion of or interest in this Lease shall relieve Lessee (or any assignee of Lessee) of any liability for breach of any covenant, warranty or other obligation of Lessee hereunder, whether theretofore or thereafter accrued. Each assignee of all or any portion of the rights of Lessee hereunder agrees to be bound by the provisions of this Lease to the same extent as if such assignee were an original party to this Lease. Notwithstanding any Assignment by Lessee of a segregated portion of this Lease, default by Lessee or any assignee or subassignee of Lessee in any covenant or condition in this Lease shall constitute default as to the entire Lease. Lessee shall within thirty (30) days of the Assignment of this Lease or any part thereof notify Lessor of such Assignment and furnish Lessor a true copy of any Assignment. All notices to Lessee hereunder may be given to the Lessee named herein, notwithstanding the Assignment of part or all of this Lease. No change or division in the ownership of the Leased Premises, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof to Lessee, its successors or assigns, no change or division in the ownership of the Leased Premises or of the royalties or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this Lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may nevertheless pay or tender such royalties or other moneys, or part thereof, to Lessor.

11. **Proportionate Reduction.** This Lease is made without warranty of title, express, implied or statutory. It shall be the responsibility of Lessee to make title examinations sufficient to satisfy itself as to Lessor's right, title and interest in the Leased Premises and the rights of Lessor to execute this Lease. In no event shall Lessor be obligated to refund or repay any amounts paid to Lessor in consideration for the granting of this Lease. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on the Leased Premises, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this Lease. If this Lease covers a less interest in the oil or gas in all or any part of the Leased Premises than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this Lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered

by this Lease, bears to the whole and undivided fee simple estate therein. Except as provided in **Paragraph 9**, all royalty interest covered by this Lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided.

12. **Force Majeure.** Should Lessee be prevented from complying with any express or implied covenant of this Lease (except payment of money), from conducting drilling or reworking operations thereon or from producing oil or gas therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith; and this Lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas from the Leased Premises. However, no event or cause stated in the preceding sentence shall be effective to extend the Primary Term of this Lease more than ninety (90) days beyond the end of the Primary Term of this Lease specified in **Paragraph 2** above.

13. **Indemnity.** Lessee agrees to defend, indemnify, protect and hold harmless Lessor and Lessor's heirs, successors, representatives, agents and assigns ("Indemnitees"), from and against any and all claims, demands, causes of action, liability, loss, damage or expense of any and every kind and nature, including without limitation attorneys' fees (hereinafter "Claims and Losses") for injury (including death) or damage to persons or property (including environmental damage to the surface or subsurface estates of any person, firm or corporation) arising out of, incidental to or resulting from (i) the operations of or for Lessee or Lessee's servants, agents, employees, guests, licensees, invitees or independent contractors, (ii) the enjoyment of this Lease, (iii) the exercise of any right granted hereunder, and/or (iv) any obligation imposed hereby), and from and against all costs and expenses incurred by Indemnitees by reason of any such Claims and Losses; and each assignee of this Lease, or an interest therein, agrees to indemnify, defend, protect and hold harmless Indemnitees in the same manner provided above. Any assignee of any rights of Lessee in this Lease shall likewise be obligated to defend and indemnify Indemnitees in the same manner as the original Lessee herein. Such indemnity shall apply to any Claims and Losses arising out of operations conducted under or pursuant to this Lease, howsoever caused. **LESSEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES SHALL APPLY WHETHER OR NOT INDEMNITEES MAY BE GUILTY OF ANY NEGLIGENT ACT OR OMISSION WHICH RESULTED IN OR CONTRIBUTED TO THE COST, EXPENSE OR LIABILITY AGAINST WHICH LESSEE IS OBLIGATED TO INDEMNIFY INDEMNITEES HEREUNDER, AND WHETHER OR NOT INDEMNITEES MAY BE SUBJECT TO SUCH LIABILITY BY STATUTE OR BY APPLICATION OF PRINCIPLES OF STRICT LIABILITY.** The provisions of this Paragraph shall survive the termination of this Lease.

14. **Access to Information.** Lessee shall provide written notice to Lessor of Lessee's entry upon the Leased Premises to drill. Lessee agrees to furnish Lessor, upon request, copies of all title opinions covering the Leased Premises, copies of all filings made by Lessee with the Railroad Commission of Texas pertinent to drilling and completing wells, copies of all daily drilling reports, full information as to the production and sales from wells on the Leased Premises, and a copy of all gas contracts or any other agreements pursuant to which Lessee shall sell, use, transfer or dispose of any hydrocarbon substance or product extracted therefrom which was produced from the Leased Premises. Lessor shall have the right to inspect, audit and copy all records of Lessee pertaining to the production and sale of oil and gas from the Leased Premises and the calculation and payment of Lessor's royalty hereunder.

15. **Reasonable Development.** If oil or gas is discovered on the Leased Premises, Lessee shall develop the Leased Premises as a reasonable and prudent operator. Lessee shall protect the oil and gas in and under the Leased Premises from drainage by wells on adjoining or adjacent tracts or leases as a reasonable and prudent operator. Neither the rentals, royalties nor the shut-in gas well royalties paid or to be paid hereunder, nor any other provision of this Lease, shall relieve Lessee of the obligation to reasonably develop the Leased Premises and to reasonably protect the oil and gas in and under the Leased Premises from drainage by wells on adjoining lands or leases. Lessee agrees to notify Lessor of the need to sue an adjoining owner, lessee or operator for damages resulting from drainage or for damage to a common reservoir. If Lessee intends to make a claim or to file suit for such drainage or damage, Lessee will notify Lessor and will represent Lessor in such claim or cause of action without cost to Lessor unless Lessor notifies Lessee in writing to the contrary. If Lessee recovers damages as a result of such claim, either by settlement or judgment, Lessor shall be entitled to share in such recovery pro rata in accordance with Lessor's interest in production from the Leased Premises whether or not Lessor is a party to such settlement or judgment.

16. **Ratification.** Neither the acceptance of royalties, shut-in royalties or other payments by Lessor (regardless of any notation thereon or instrument accompanying same), nor Lessor's execution of any division order or transfer order or similar instrument, shall ever constitute or be deemed to effect (a) a ratification, renewal or amendment of this Lease or of any pooled unit designation filed by Lessee purporting to exercise the pooling rights granted to Lessee in this Lease, or (b) a waiver of the rights granted to Lessor, or the obligations imposed upon Lessee, express or implied, by the terms of this Lease, or remedies for Lessee's breach thereof, or (c) an estoppel against Lessor preventing Lessor from enforcing Lessor's rights or Lessee's obligations hereunder, express or implied, or from seeking damages for Lessee's breach thereof. Lessor's agreement to accept royalties from any purchaser shall not affect Lessee's obligation to pay royalties pursuant to this Lease. No instrument executed by Lessor shall be effective to constitute a ratification, renewal, extension or amendment of this Lease unless the instrument is clearly titled to indicate its purpose and intent.

17. **Seismic Operations.** Lessee shall have the right to conduct seismic operations on the Leased Premises, and to contract with third parties to conduct seismic operations, for Lessee's own account and use. If Lessee contracts with an independent contractor third party to perform seismic operations on Lessee's behalf, Lessor shall nevertheless be entitled to deal only with a representative of Lessee in connection with such operations, and shall not be required to contract or negotiate with such independent contractor. Lessee shall have no right to grant permits to any third party for the conduct of seismic operations on the Leased Premises, or to divulge, license or sell the results of Lessee's own seismic surveys on the Leased Premises to any third party who has no interest in the Leased Premises. Lessor shall have the right to conduct seismic operations on the Leased Premises, and to grant permits to third parties for the conduct of such operations, and Lessor shall be entitled to all consideration paid by any third party for such right, and Lessee shall have no interest in or right to such seismic information.

18. **Surface Provision.** [choose alternative A or B]:

Alternative A:

Lessor is not the owner of the surface estate, and Lessor makes no warranty with respect thereto. Lessee agrees to defend, indemnify and hold harmless Lessor from and against any and all liability for injury or damages to person or property caused by or resulting from the operations of Lessee, its employees, agents, invitees or independent contractors, whether such injury or damage results from negligence, strict liability, or statutory liability of such parties or otherwise.

Alternative B:

Lessee agrees to perform and comply with all obligations pertaining to use and protection of the surface estate of the Leased Premises set forth in Exhibit A – Surface Use Restrictions, attached to and made a part of this Lease. Lessee agrees to cause all its employees, independent contractors and invitees who are present upon the Leased Premises under the authority of this Lease to comply with such provisions, and Lessee will be responsible for such compliance. Lessee agrees to provide its employees, independent contractors and invitees who are present on the Leased Premises with a copy of such Surface Use Restrictions and to ensure that they are fully familiar with same.

19. **Notice of Breach.** In the event Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on the Lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. Notwithstanding the foregoing, the notice and remedy for failure to pay royalties when due shall be as provided in **Paragraph 3(f)** above.

20. **Notices.** All notices which are permitted or required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by registered or certified mail, return receipt requested, or sent by special carrier (such as Federal Express or UPS), with signature required, to the Lessors and to Lessee at the addresses set forth at the beginning of this Lease or the last changed address of which parties hereto have received written notice in compliance with this Paragraph. Notice shall be deemed received on the earlier of (i) the date delivery is made or refused, (ii) the date a third attempt is made by special carrier to deliver and obtain a signature, or (iii) the fifth business day following the day on which a United States Postal Service notice is left in a mailbox or office with respect to such notice stating that it requires a signature to be delivered and giving instructions as to how the addressee can obtain delivery. Any changes of address by Lessor or Lessee shall be delivered by giving written notice to the other in compliance with this Paragraph.

21. **Place of Performance.** This Lease shall be governed by the laws of the State of Texas. All obligations of Lessee shall be performable in the county or counties in which the Leased Premises are situated.

22. **Severability.** Should any one or more of the provisions in this Lease become, or be determined to be, void, invalid, or wholly or partially unenforceable, the remainder of this Lease shall remain in full force and effect despite such determination(s).

23. **Binding on Heirs, Successors and Assigns.** All of the covenants, obligations, and considerations of this Lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR:

THE STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, _____,
by _____.

NOTARY PUBLIC, State of Texas

EXHIBIT A
TO OIL AND GAS LEASE OF _____
SURFACE USE RESTRICTIONS

This Exhibit is attached to the Oil and Gas Lease referenced above, and shall govern all matters pertaining to the Lessee's use of and operations on the surface of the Leased Premises.



**TEXAS
OGAP**



Texas Oil & Gas Accountability Project
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