

***Assisting Clients With  
Mineral Lease  
Negotiations  
And  
Providing Protection  
Of  
Surface Rights***

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## *INTRODUCTION*

The average consumer in the United States receives volumes of information concerning the oil and gas industry on a daily basis. Most of this information is used to mentally calculate what impact that day's news cycle may have on the price of gasoline and how it will affect a family's budget. But that same consumer, standing on the edge of a real estate transaction, will often process only small grains of the energy industry data. The flow of information from the media about oil and gas production may cloud their judgment. Conversations about oil, gas and mineral rights may leave the consumer with many unanswered questions. If that takes place, their sudden demand for answers may very well leave them to seek the advice of a real estate professional.

It doesn't matter if this consumer finds they are on the buying side or selling side of a real property transaction. The impact of mineral rights can have a large impact of the value of the transaction.

When a consumer hears from media sources that homeowners in suburban areas of are receiving payments for "mineral rights," they want to know if their property might have the potential for the same economic gain? If they are involved in buying or selling rural property, the impact of mineral rights is often discussed early in the transaction when value is being determined. Yet few land owners or land buyers have a working knowledge of how to conduct a transaction that involves the transfer of minerals to a second party or an end user.

Both buyers and sellers, unless they have the resources of an oil company's private data, have a hard time finding answers to many of their questions. That is why today's real estate professional needs to be armed with a basic working knowledge of oil and gas leases, surface rights issues and factors that benefit the consumer in dealing with the complex transactions that protect the landowner long-term when they are involved in the commerce of minerals on and under the surface of their property.

While the bulk of any documents prepared for the transfer of mineral rights are enforceable in courts, the preparation and negotiation of the details in these documents do not require a consumer to retain an attorney. Consumers should be reminded that real estate brokers and sales representatives are not licensed to give legal advice but they can carry out a valuable role in helping structure oil and gas lease transactions and surface rights transactions.

When a real estate professional is armed with the working knowledge of mineral leases and surface rights, they can guide a consumer through the maze of questions and complex issues and help insure that the consumer is treated fairly in a transaction.

Speaking at the 2016 Realtor's Land Institute National Land Conference on March 13, 2016, Ezra Johnson – an attorney with extensive experience in the oil and gas industry in Texas – called on real estate practitioners to improve their knowledge of mineral and surface rights, to better serve both sellers and buyers of unimproved property and prime development real estate. According to Johnson, the reach of mineral rights into all sectors of land has created a new type of consumer who is concerned with the value of property above the ground, as well as the value of what may be, or is, below the ground as well.

“The critical issue that remains on the consumer's mind is how can I not be burdened with any risk associated with mineral rights, yet also benefit, if possible from the value of what may be under the surface of my property,” said Johnson. “Needless to say, the answers to the consumer's questions are never the same from one location to the next, but the real estate practitioner who can answer some, if not all of these questions, is of increasing value to both the land owner and the land buyer.”

Johnson pointed out that negotiating mineral leases does not require a license to practice law, or a license to sell real estate. The preparation of most documents is better left in the hands of an attorney, the ACL speaker noted, but that has not always been the case. What is needed is a strong “working knowledge” of the mineral lease function and how a consumer can be both protected and also benefit from an agreement to work with a mineral producer.

Johnson also outlined four areas of important consideration when assisting a landowner or prospective landowner with oil and gas or “mineral” lease negotiations:

- All parties must agree on “implied” covenants. The area in question needs to be stated as well as the “development” method and time period when the development will take place. Each party must also agree on any and all management and administrative costs and responsibilities.
- “Drainage” issues must be addressed. Drainage in the case of minerals is not a “water or waste water above the ground” issue. “Drainage” in this case is the term used to describe or determine the mass of the body of minerals below the surface.
- All parties to any mineral lease must agree in advance to the terms of which party bears the responsibility of any or all pre-production and post-production costs.
- All parties should agree on how surface rights will be addressed. A lease that is silent concerning surface rights cannot be enforced in a court of law for the protection or benefit of either party because “mineral ownership trumps surface rights” by long-standing legal tradition in most legal systems.

Johnson's training focused around the use of a "Producer's 88" standard oil and gas lease form and how it could best be adapted for the producer as well as the landowner. He did note that as the "Producer's 88" form as drafted does favor the production company, not the mineral rights owners or surface estate owners, so changes should be considered in all negotiations.

Along with Johnson's outline, there is much to be offered in the way of advice for a real estate practitioner to consider when helping a client with lease negotiations. Some of the advice flows from sources that have made their living in the oil and gas production industry for many years; some comes from attorneys who have extensive knowledge of the oil and gas industry. Other advice comes from landowners who have had both "good" and "bad" experiences with negotiations of oil and gas leases. The sum of this collective knowledge provides a good platform for the real estate practitioner to feel more comfortable stepping into a role of offering guidance to the consumer.

Houston's Oil and Gas Mineral Services company website may very well offer some of the most basic advice that can be employed when helping a client negotiate a mineral lease:

- Make a determination if another family member, or co-owner, has been contacted by a producer who is offering to lease the mineral rights from a landowner or mineral rights owner. Such contact causes communication problems between all parties involved. Before moving forward, parties who own the land in question, or actually own mineral rights, should find a way to speak with one voice.
- Be sure you know who is representing the producer. That individual may be a contract leasing agent or broker, an employee of an oil company or an independent entrepreneur who intends to "flip" the lease to another party. Each type of "agent" has his or her own motivation, and often a set of instructions to follow, but keep in mind they are not working in the "field" to represent the best interest of the landowner or mineral rights owner. Their duty is to represent the producer's side of the transaction.
- If your client owns multiple tracts of land, especially if the tracts are geographically contiguous, insist that separate leases be prepared for each tract of land. Development of an oil and gas field is a dynamic process that unfolds over time – often many years. This will eliminate problems if any drilling takes place at different times and in different locations.
- Have all legal documents related to the ownership of the land and mineral rights reviewed by an attorney in order that a legal determination of ownership is conducted. These documents should include deeds, deeds of trust, maps, wills, previous leases, mineral and royalty conveyances, easements, ratifications and receipts for income from leases, royalties, etc. No expense should be spared to document ownership and the legal rights to benefit from revenue produced from mineral leases.

- Conduct as much research as possible concerning oil and gas drilling and production in for the area in question. A great deal of knowledge can be gained with some state agency assistance and asking landowners in the area a few simple questions.
- Remember that good manners can go a long way in any negotiation. Courtesy and integrity always count.
- If economic implications warrant, direct your client to consult a financial adviser or tax adviser. The sudden receipt of a large sum of money offers problems well past the issues associated with the negotiation of a lease. Help your client understand the financial direction they need to take after the lease is resolved.

Oil and Gas Mineral Services also offers insight into some common mistakes that are made when negotiating mineral leases. According to information from their company website, they offer this advice:

- Consumers should never sign any document concerning leasing minerals until they consult with someone who can review the document and explain all parts of the transaction to them in terms they can understand. The real estate practitioner may be the one who is contacted by the mineral rights owner, but if legal questions develop, the consumer should promptly be referred to an attorney.
- Consumers should be advised to keep communication open with the party representing the producer. Parties who do not respond can eventually be “forced pooled” and forfeit their rights to negotiate terms that are in their best interest.
- Advise the consumer to delete the warranty clause from any mineral lease. Chain of title in real estate is best protected by careful research and by title insurance. Mineral rights, on the other hand, may not “run with the land” and can often be hard to validate. Allowing a party to obtain a working interest in the mineral rights under a “warranty” could set the stage for expensive legal complications. The consumer must also be warned that title insurance does not cover mineral rights because the two can be bought, sold, transferred or traded separately.
- Advise the consumer not to allow unrestricted use of “fresh water” for production and post-production operations. Such agreements can lead to expensive liability for all parties.

Oil and Gas Mineral Services’ basic outline establishes a firm foundation for further negotiation. If the real estate practitioner has worked through most of the key considerations listed above with the consumer, they are then ready to work together toward more specific details in the lease agreement.

Austin attorney John McFarland has published an article that provides a second, more complex level of assistance in moving forward with the mineral lease negotiations.

In his article, McFarland states, "The term 'lease' is in some ways a misnomer. In fact, an oil and gas lease is a conveyance by the lessor of the fee mineral estate to the lessee, for a term." Naturally, McFarland starts his article by advising that the first item to negotiate is the period of time when the lease will be in force. In oil and gas leases there should be a primary term and a secondary term. The primary term should drive the period of time when exploration and development should take place. The secondary term should detail how long production proceeds should be shared. Both should be expressed in terms of years or months.

The next item to be negotiated is the royalty. The lessor of a mineral lease reserves a royalty interest in all production from the lease. It should be paid to the lessor without deduction for the cost of drilling or development. It should be expressed as a fraction or percentage of production revenue. In addition, a bonus should be negotiated that will pay the lessor for his or her execution of the lease. This bonus should be paid when the lease is signed by the lessor. A signing bonus is generally expressed as a number of dollars per net mineral acres, but the amount of the bonus can be determined by other factors if all parties agree to the terms.

McFarland's article points out that an important factor for current mineral lease agreements is the consideration of a "delay rental" clause. The delay rental is paid at the end of each year during the primary term if no production has commenced on the lease. In most cases the "delay rental" term is expressed in dollars per leased acre. The other option is to negotiate a "paid-up" lease, which provides for no delay in production penalty and requires no additional payments during the primary term of the lease.

The final key factor in the negotiation is the "shut-in royalty." After the primary term, a lease will expire unless mineral is being produced. However, in some circumstances a lessee may not be able to immediately sell production after a well has been completed. As a result, a lease should contain a "shut-in royalty" agreement where the lessee will make payments to the lessor in lieu of actual production.

The consumer must understand that the lease document also has to offer benefits and protections for the developer and producer. With that in mind, the consumer should expect certain items in a mineral lease. The most common item found in a mineral lease to protect developers is the "operations" clause. This part of the document outlines when certain phases of drilling and production will be completed or extended. They may also detail when "re-working" of the well will be allowed.

The addition of a “pooling” clause is also found in many current mineral leases. This clause grants rights to the lessee to pool the economic effect of the development and production from other adjacent properties and leases. If the size of the leased tract is very large (in acres) the pooling clause may not be needed in the agreement. If the tract being leased is very small, a pooling clause may be the only way a producer can make the venture profitable.

In addition to the pooling clause, producers may also need to add a “Pugh” clause to help manage the pooling consideration and variations of lease periods from adjacent production. The “Pugh” clause is a complicated document and would merit review from attorneys and field engineers before a mineral owner should agree to the terms.

Oil and gas leases should provide protection for all parties involving issues of “surface rights.” If the lessor owns no interest in the surface estate of the leased premises but only a mineral interest, then the oil and gas lease does not protect the owner of the surface estate. Some general observations should be made to protect all parties, because extensive litigation can take place if the surface estate is damaged.

It is best for all parties to address surface rights in the oil and gas lease to provide levels of protection and responsibility. Surface rights issues can also be resolved with agreements concerning access to property, particularly addressing who can have ingress and egress, and at what times. Surface rights should also include use of subsurface water, construction of drilling pads and roads, geophysical testing agreements, tree clearing and the use of explosives. Ranch “rules” can also be added to leases so that there is clear notice of using gates, locks, trash collection, hunting and fishing and firearm use.

The most comprehensive document available to the real estate practitioner in learning to assist clients with mineral leases has been prepared by Judon Fambrough, senior lecturer and an attorney for The Real Estate Center at Texas A&M University. Fambrough’s document has been revised on an annual basis since 2009 and published under the heading of “Hints on Negotiating an Oil and Gas Lease.”

All of the topics and recommendations stated above can be found in Fambrough’s works, with the addition of some informative advice and suggestions.

Only Fambrough, in my research, detailed that “minerals” include: oil, gas, salt, sulfur and uranium. Coal lignite and iron ore are included as minerals, but only when they can be produced without destroying or depleting the surface estate. Therefore, Fambrough advised mineral leases be defined to only include oil and gas exploration and production in a lease.

Finally, this paper returns to the advice of Ezra Johnson in his message delivered to those in attendance at the 2016 Land Conference in Dallas. Johnson highly recommended that a clause be added to any mineral lease requiring an audit of production on an annual basis by an independent source such as a certified public accountant, and that such audit include all royalty payments related to the lease agreement.



## *CONCLUSION*

A property owner or mineral rights owner is often handed an oil and gas lease along with a check for several thousand dollars when he opens his door and a “representative” from an oil company smiles and tells him he has, “some good news.”

It is good news, but it can be even better news if the property owner has a good conversation with the oil company’s representative, then tells him he’ll get back to him in a day or two after he’s had some time to process the papers.

Of course, what we’d like to see him do if he is a friend or client of our real estate practice is bring the papers to us as his broker or agent and sit down and discuss the financial transaction he or she is about to enter into with the oil producers. In most cases, armed with some training and experience, we can help the landowner negotiate a better lease.

The reality of the situation is that in most cases the lease being offered the landowner or mineral rights owner is “fair.” But the document is “more fair” for the oil or gas driller and producer. The lease first offered has limited protections for the lessor in the transaction, but, if requested, will generally be added or revised. Protections for the surface estate owner are also generally missing from most “standard” mineral lease agreements. Finally, an audit of revenue when a well is in production is certainly not detailed in a “Standard 88” lease document.

As real estate practitioners we can arm ourselves with basic knowledge that can be used to benefit our clients. It may be that our role in the transaction is very limited and does not lead to economic gain, but it does establish us as a party with professional knowledge that can be of benefit to the consumer. That is the type of experience that leads to the same consumer calling us days, months or years later to help them with the sale of their property. It may be the type of experience that leads the consumer to suggest a friend consult with us before they purchase a piece of property because we’ve proven we have professional skills and knowledge that will help them make well informed decisions.

The investment of time and effort to learn how to help our clients negotiate a mineral lease and protect surface rights can bring the real estate practitioner many returns in the long term. In the short term, we will learn to stay more “in tune” with industry changes that affect the oil and gas industry and its relationship with the real estate industry. After a real estate broker or agent has gained a working knowledge of how to negotiate a mineral lease, he or she can only hope that tomorrow’s first phone call will be from a client seeking information about oil and gas issues.

Knowledge brings confidence and now we can feel prepared, armed and ready to sit at the table and work out a good “deal” with the man from the oil company. Our clients should expect no less from us if we are claiming the title of a “land consultant.”

## ***WORKS CITED***

1. Ezra Johnson, Esq., partner at Uhl, Fitzsimons, Jewett & Burton, PLLC, San Antonio, Texas. Presentation before Realtor's Land Institute 2016 National Land Conference, Dallas, Texas. March 12, 2016.
2. "Oil & Gas Leasing: Top 10 Things To Do." Company website document. Oil and Gas Services Company, 2503 Robinhood, Suite 110, Houston, Texas.
3. "Oil & Gas Leases: 10 Common Mistakes During Mineral Lease Negotiation." Company website document. Oil and Gas Services Company, 2503 Robinhood, Suite 110, Houston, Texas.
4. "Hints on Negotiating an Oil and Gas Lease." Revised document from Texas Real Estate Center, Texas A&M University. Written and presented by Judon Fambrough, Senior Lecturer and Attorney at Law, College Station, Texas.

## *INCLUSIONS*

### Exhibit "A"

"Standard 88" Oil, Gas and Mineral Lease agreement between the City of Keller, Texas and Quicksilver Resources, Inc. Document undated.

# EXHIBIT "A"

Producers 88 (4/76) Revised Paid Up  
With 640 Acres Pooling Provision

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

## OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, between the **CITY OF KELLER, TEXAS**, Lessor (whether one or more), whose address is **1100 Bear Creek Parkway, Keller, Texas 76248** and **QUICKSILVER RESOURCES INC.**, Lessee, whose address is **777 West Rosedale Street, Suite 300, Fort Worth, Texas 76104**, WITNESSETH:

1. Lessor in consideration of Ten and no/100 and other good and valuable consideration Dollars (\$ 10.00 & OVC ), in hand paid, of the royalties herein provided, and of the agreements of Lessee here contained, hereby grants, leases and lets exclusively unto Lessee for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas and all other minerals, conducting exploration, geologic and geophysical surveys by seismograph, core test, gravity and magnetic methods, injecting gas, water and other fluids, and air into subsurface strata, ~~laying pipe-lines, building roads, tanks, power stations, telephone lines and other structures thereon and on, over and across lands owned or claimed by Lessor adjacent and contiguous thereto, to produce, save, take care of, treat, transport and own said products, and housing its employees,~~ the following described land in Tarrant County, Texas, to-wit:

All that certain tract or parcel of land situated in the W. McCowan Survey, A-999, Tarrant County, Texas, containing 0.344 acres, more or less, and being the same lands described in a Warranty Deed dated April 15, 1974 from John R. Sandstrom and Paul B. Sandstrom, Grantors, to Keller Rural Water Supply Corporation, Grantee, recorded in Volume 5628, Page 242 of the Deed Records of Tarrant County, Texas.

This lease also covers and includes all land owned or claimed by Lessor adjacent or contiguous to the land particularly described above, whether the same be in said survey or surveys or in adjacent surveys, although not included within the boundaries of the land particularly described above.

2. This is a paid up lease and subject to the other provisions herein contained, this lease shall be for a term of **Three (3) years** from this date (called "primary term") and as long thereafter as oil, gas or other mineral is produced from said land or land with which said land is pooled hereunder.

3. As royalty, lessee covenants and agrees: (a) To deliver to the credit of lessor, in the pipelines to which lessee may connect its wells, the equal one-fourth (1/4) part of all oil produced and saved by lessee from said land, or from time to time, at the option of lessee, to pay lessor the average posted market price of such one-fourth (1/4) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, lessor's interest, in either case, to bear one fourth (1/4) of the cost of treating oil to render it marketable pipe line oil; (b) to pay lessor for gas and casinghead gas produced from said land (1) when sold by lessee, one fourth (1/4) of the amount realized by lessee, computed at the mouth of the well, or (2) when used by lessee off said land or in the manufacture of gasoline or other products, one fourth (1/4) of the amount realized from the sale of gasoline or other products extracted therefrom and one fourth (1/4) of the amount realized from the sale of residue gas after deducting the amount used for plant fuel and/or compression; (c) To pay lessor on all other minerals mined and marketed or utilized by lessee from said land, one-tenth either in kind or value at the well or mine at lessee's election, except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize, or market the minerals capable of being produced from said wells, but in the exercise of such diligence, lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, lessee shall pay or tender, by check or draft of lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be paid directly to Lessor at the above address, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, lessee may, in lieu of any other method of payment herein provided, pay or tender shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as lessee may elect. Any payment hereunder may be made by check or draft of lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owners of this lease, severally as to acreage owned by each.

4. Lessee, at its option, is hereby given the right and power to pool or combine the acreage covered by this lease or any portion thereof as to oil and gas, or either of them, with any other land covered by this lease, and/or with any other land, lease or leases in the immediate vicinity thereof to the extent hereinafter stipulated, when in Lessee's judgment it is necessary or advisable to do so in order properly to explore, or to develop and operate said leased premises in compliance with the spacing rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of oil and gas in and under and that may be produced from said premises. Units pooled for oil hereunder shall not substantially exceed 40 acres each in area, and units pooled for gas hereunder shall not substantially exceed in area 640 acres each plus a tolerance of ten percent (10%) thereof, provided that should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, for the drilling or operation of a well at a regular location or for obtaining maximum allowable from any well to be drilled, drilling or already drilled, units thereafter created may conform substantially in size with those prescribed or permitted by governmental regulations. Lessee under the provisions hereof may pool or combine acreage covered by this lease or any portion thereof as above provided as to oil in any one or more strata and as to gas in any one or more strata. The units formed by pooling as to any stratum or strata need not conform in size or area with the unit or units into which the lease is pooled or combined as to any other stratum or strata, and oil units need not conform as to area with gas units. The pooling in one or more instances shall not exhaust the rights of the Lessee hereunder to pool this lease or portions thereof into other units. Lessee shall file for record in the appropriate records of the county in which the leased premises are situated an instrument describing and designating the pooled acreage as a pooled unit; and upon such recordation the unit shall be effective as to all parties hereto, their heirs, successors, and assigns, irrespective of whether or not the unit is likewise effective as to all other owners of surface, mineral, royalty, or other rights in land included in such unit. Lessee may at its election exercise its pooling option before or after commencing operations for or completing an oil or gas well on the leased premises, and the pooled unit may include, but it is not required to include, land or leases upon which a well capable of producing oil or gas in paying quantities has theretofore been completed or upon which operations for the drilling of a well for oil or gas have theretofore been commenced. In the event of operations for drilling on or production of oil or gas from any part of a pooled unit which includes all or a portion of the land covered by this lease, regardless of whether such operations for drilling were commenced or such production was secured before or after the execution of this instrument or the instrument designating the pooled unit, such operations shall be considered as operations for drilling on or production of oil or gas from land covered by this lease whether or not the well or wells be located on the premises covered by this lease and in such event operations for drilling shall be deemed to have been commenced on said land within the meaning of paragraph 5 of this lease; and the entire acreage constituting such unit or units, as to oil and gas, or either of them, as herein provided, shall be treated for all purposes, except the payment of royalties on production from the pooled unit, as if the same were included in this lease. For the purpose of computing the royalties to which owners of royalties and payments out of production and each of them shall be entitled on production of oil and gas, or either of them, from the pooled unit, there shall be allocated to the land covered by this lease and included in said unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) a pro rata portion of the oil and gas, or either of them, produced from the pooled unit after deducting that used for operations on the pooled unit. Such allocation shall be on an acreage basis - that is to say, there shall be allocated to the acreage covered by this lease and included in the pooled unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that pro rata portion of the oil and gas, or either of them, produced from the pooled unit which the number of surface acres covered by this lease (or in each such separate tract) and included in the pooled unit bears to the total number of surface acres included in the pooled unit. Royalties hereunder shall be computed on the portion of such production, whether it be oil and gas, or either of them, so allocated to the land covered by this lease and included in the unit just as though such production were from such land. The production from an oil well will be considered as production from the lease or oil pooled unit from which it is producing and not as production from a gas pooled unit; and production from a gas well will be considered as production from the lease or gas pooled unit from which it is producing and not from an oil pooled unit. The formation of any unit hereunder shall not have the effect of changing the ownership of any shut-in production royalty which may become payable under this lease. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest 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 as provided above with consequent allocation of production as above provided. As used in this paragraph 4, 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.

5. If at the expiration of the primary term, oil, gas, or other mineral is not being produced on said land, or from the land pooled therewith, but Lessee is then engaged in drilling or reworking operations thereon, or shall have completed a dry hole thereon within 60 days prior to the end of the primary term, the lease shall remain in force so

6. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by Lessee on said land, including the right to draw and remove all casing. When required by Lessor, Lessee will bury all pipe lines below ordinary plow depth, and no well shall be drilled within two hundred (200) feet of any residence or barn now on said land without Lessor's consent.

7. The rights of either party hereunder may be assigned in whole or in part, and the provisions hereof shall extend to their heirs, successors and assigns; but no change or division in ownership of the land, or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee; and no change or division in such ownership shall be binding on Lessee until thirty (30) days after Lessee shall have been furnished by registered U.S. mail at Lessee's principal place of business with a certified copy of recorded instrument or instruments evidencing same. In the event of assignment hereof in whole or in part, liability for breach of any obligation hereunder shall rest exclusively upon the owner of this lease or of a portion thereof who commits such breach. If six or more parties become entitled to royalty hereunder, Lessee may withhold payment thereof unless and until furnished with a recordable instrument executed by all such parties designating an agent to receive payment for all.

8. The breach by Lessee of any obligation arising hereunder shall not work a forfeiture or termination of this lease nor cause a termination or reversion of the estate created hereby nor be grounds for cancellation hereof in whole or in part. No obligation reasonably to develop the leased premises shall arise during the primary term. Should oil, gas or other mineral in paying quantities be discovered on said premises, then after the expiration of the primary term, Lessee shall develop the acreage retained hereunder as a reasonably prudent operator, but in discharging this obligation it shall in no event be required to drill more than one well per forty (40) acres of the area retained hereunder and capable of producing oil in paying quantities and one well per 640 acres plus an acreage tolerance not to exceed 10% of 640 acres of the area retained hereunder and capable of producing gas or other mineral in paying quantities. If after the expiration of the primary term, Lessor considers that operations are not at any time being conducted in compliance with this lease, Lessor shall notify Lessee in writing of the facts relied upon as constituting a breach hereof, and Lessee, if in default, shall have sixty days after receipt of such notice in which to commence the compliance with the obligations imposed by virtue of this instrument.

~~9. Lessor hereby warrants and agrees to defend the title to said land and agrees that Lessee at its option may discharge any tax, mortgage or other lien upon said land, either in whole or in part, and in event Lessee does so, it shall be subrogated to such lien with right to enforce same and apply royalties accruing hereunder toward satisfying same. Without impairment of Lessee's rights under the warranty in event of failure of title, it is agreed that if this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land 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 monies 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. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. Should any one or more of the parties named above as Lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same. This paragraph 9 has been intentionally stricken.~~

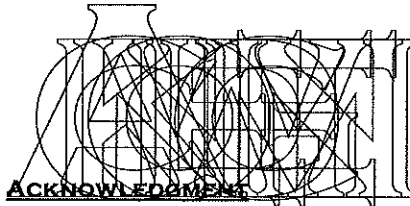
10. Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations thereon or from producing any oil, gas or other minerals therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, and 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 lease premises; and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

11. Notwithstanding any of the foregoing, this shall be a subsurface only lease, and Lessee shall not conduct any operations whatsoever on the surface of the leased premises without the prior consent of Lessor.

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

City of Keller, Texas

By:  
Its:



STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_, as \_\_\_\_\_ of the City of Keller, Texas, on behalf of the City.

\_\_\_\_\_  
Notary Public, State of Texas