

1964

## A Suggested Oil and Gas Lease Form

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### Recommended Citation

Glen L. Houston and Maurice H. Merrill, *A Suggested Oil and Gas Lease Form*, 43 Neb. L. Rev. 471 (1964)

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## A SUGGESTED OIL AND GAS LEASE FORM

Glen L. Houston\* and Maurice H. Merrill\*\*+

### INTRODUCTION

This form is an attempt to draft an oil and gas lease better adapted to realize the legitimate interests of both lessor and lessee than forms presently used. Mr. Houston has been the chief draftsman, aided by comments and suggestions from Professor Merrill, and by consultation and assistance from other lawyers, representing both lessor and lessee interests, who, for obvious reasons, desire to remain anonymous. Their assistance is nonetheless gratefully acknowledged. Some of the provisions already have been used by various lawyers. Hence the innovations made upon the more familiar forms are not wholly untried.

A word or two as to the form in which the lease is presented are in order. The draft has been prepared in the light of the discussion embodied in the article by Professor Merrill appearing in the *Nebraska Law Review* in 1962.<sup>1</sup> To aid the reader in understanding the basis for various provisions, there have been appended to appropriate sections of the proposed lease parenthetical references to that article. In these references, "text" refers to the body of the article, while "note" refers both to the citation in the footnote bearing the corresponding number and to the textual discussion connected with that citation.

In certain instances, where blanks appear in the form, we have inserted numbers enclosed by brackets. We recognize that the

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\*\* Research Professor of Law, University of Oklahoma. Professor Merrill and Mr. Houston have collaborated on this form, Professor Merrill providing the scholastic references and Mr. Houston complementing with views of a practicing attorney.

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<sup>1</sup> Merrill, *The Oil and Gas Lease—Major Problems*, 41 *NEB. L. REV.* 488 (1962).

proper filling in of these blanks may depend upon the circumstances under which the particular lease is negotiated, and that, consequently, this is an area for proper negotiation between the parties. However, where we have supplied the bracketed numbers, we do feel that, in the ordinary situation, these numbers represent what would be an appropriate stipulation.

The modified "Mother Hubbard" clause embraced in the last paragraph of section (1) of the lease is intended to take care of the need of the lessee for a provision that will guard against inaccuracies or omissions in description, or small adjoining tracts which the lessor may have acquired by adverse possession, without throwing open the door to the possible inclusion of separate tracts which the lessor did not intend to grant and the lessee did not intend to acquire.<sup>2</sup>

The draftsmen realize that a neater, more succinct instrument could have been prepared by abandoning the established forms and starting anew. However, against the gains from such procedure are to be set the disadvantages of launching new and completely unfamiliar drafting on the unstable sea of judicial interpretation. Therefore, we shall hope for pardon of whatever sin we may have committed in adapting the language and form of familiar drafts rather than to initiate an entirely new production. So far as simplification seemed practicable, we have made a start in that direction.

The authors realize that the form in its entirety may not be suited to all situations. Quite likely, the lawyers representing particular clients will find it advantageous to omit or to modify some of the suggested paragraphs. We do recommend careful study of the provisions, in the light of the various textual and footnote comments and of the reference materials which we have cited.

### OIL AND GAS LEASE

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\_\_\_\_\_, LESSOR (whether one or more)

and \_\_\_\_\_

LESSEE, agree:

(1) LESSOR, in consideration of \$\_\_\_\_\_, receipt of which is acknowledged, and of the agreements of LESSEE, grants, leases and lets unto LESSEE, for the purpose of exploring and drilling

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<sup>2</sup> See BROWN, *THE LAW OF OIL AND GAS LEASES* § 4.02 (1958).

for and producing oil and gas, and their respective constituent products, laying pipe lines, building tanks, power stations and structures to produce, save, take care of, and treat these products from this land, and conducting therefor secondary recovery operations by injecting gas, water, other fluids, and air into productive subsurface strata, the land in \_\_\_\_\_ County, \_\_\_\_\_, described as:

of Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, and containing \_\_\_\_\_ acres, more or less. In the event a resurvey shall reveal the existence of excess lands lying adjacent to the lands above described and the LESSOR, his heirs or assigns, shall, by virtue of his ownership of the lands above described, have preference right to acquire the excess lands, this lease shall cover all such excess lands as and when they are acquired by the LESSOR; and in the event LESSEE shall take steps to perfect title to such excess lands, it will do so in the name of and for the benefit of LESSOR. The LESSEE shall pay the LESSOR for such excess lands at the same rate per acre as the cash consideration paid for the acreage above described.<sup>3</sup>

This lease is subject to [here insert outstanding mortgages, or other interests not intended to be covered.]

(2) Subject to the other provisions herein, this lease shall be for a term of \_\_\_\_\_ [5] years from this date (called "primary term"), and as long thereafter as oil or gas actually is produced in paying quantities from the land. (notes 102-06, 136-44, 154-60)

(3) The royalties to be paid monthly by LESSEE to LESSOR are:

(a) The value of \_\_\_\_\_ [ $\frac{1}{8}$  to  $\frac{1}{4}$ ] of the gross proceeds from all oil, distillate, condensate, gas, natural gasoline, or other product covered by the lease, produced and sold from the land at the price received therefor or at the best price realizable in the exercise of reasonable diligence, whichever is higher; however, if any oil or gas is produced from any well drilled, whether or not in paying quantities and whether or not sold or used off the premises,

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<sup>3</sup> The "Mother Hubbard" clause is restricted in its operation to lands, not included within the description, to which the lessor has preference rights, due to errors in survey. In some instances, lessees have been known to attempt to secure title for themselves. The clause as drafted is intended to prevent this. Other than as set forth here, we question the utility and the justness of the "Mother Hubbard" clause.

LESSEE agrees to pay LESSOR royalty on the oil or gas produced on the above basis. (notes 249, 275-76)<sup>4</sup>

(b) If gas, of whatsoever nature or kind, including oil well or casinghead gas and any gaseous substance produced from any well, is used, on or off the leased premises, by the LESSEE for purposes (including the manufacture or extraction therefrom of gasoline or other products not covered by the royalty provisions of subparagraph (a) above) other than solely in the development and operation of the premises as provided in this lease, LESSEE shall pay \_\_\_\_\_ [ $\frac{1}{8}$  to  $\frac{1}{4}$ ] of the net proceeds received from the sale or disposition of the manufactured or extracted products and \_\_\_\_\_ [ $\frac{1}{8}$  to  $\frac{1}{4}$ ] of the best price realizable in the exercise of reasonable diligence for all gas used and not sold. On all residue gas sold by LESSEE after manufacture or extraction of products, royalty shall be paid under subparagraph (a) in addition to the royalty on manufactured or extracted products. (notes 277-84)

(c) Where gas from a well producing gas only is not sold or used due to lack of a suitable market, this lease may be maintained in force and effect for successive periods of twelve months each, not to exceed two successive years beyond the expiration date of the primary term, provided LESSEE shall pay or tender to the owners entitled to royalty, the sum of \_\_\_\_\_ DOLLARS [\$10.00] per year per well for each acre of the leased premises, such royalty to be paid on or before (90) days from the date such well is shut in, and, thereafter, annually on or before the anniversary date of such payment. However, if at any time while this lease is being maintained in force and effect under the provisions of this paragraph, gas should be sold or used in paying quantities from a well or wells completed in the same producing reservoir, and draining the leasehold premises, the right to extend this lease by the shut-in gas well royalty payments shall cease at the expiration of the 12-month period for which payment has been made; and thereafter,

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<sup>4</sup> This provision leaves blank the exact amount of royalty.  $\frac{1}{8}$  is the customary amount in wildcat areas or in those in which the chance of production is not outstanding. In proven or highly regarded areas, however, up to  $\frac{1}{4}$  royalty may be obtained for choice tracts. The proviso for royalty in case of *any* production is intended to provide for those situations in which for some reason production is not stabilized and the well is abandoned without making any payment to the lessor for products actually produced and sold. It also is intended to apply to the situation in which the lessee negligently fails to bring under control a gas well which blows out. These comments apply to other royalty provisions.

LESSEE may maintain this lease in force and effect only by paying compensatory royalty to the owners of royalty, equal to that which would be realized at the rate provided in this lease, from a well or wells on the leasehold offsetting such draining wells, with an equivalent production, such payments to be made monthly. Provided, further, should the compensatory royalties paid in any 12-month period be less than the annual shut-in gas well royalty payments, LESSEE shall pay a sum equal to the difference within thirty (30) days from the end of the 12-month period.

(4) If drilling operations are not commenced on the leased premises on or before one year from this date, this lease shall terminate as to both parties unless LESSEE on or before the expiration of said period, shall pay or tender to LESSOR, or the credit of LESSOR in \_\_\_\_\_ Bank at \_\_\_\_\_, or any successor bank, the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), hereinafter called "rental," which shall extend for one year the time within which drilling operations may be commenced. Thereafter, annually, in like manner and upon like payments or tenders, the commencement of drilling operations may be further deferred for periods of twelve (12) months each during the primary term. Payment or tender of rental may be made by currency, check or draft of LESSEE delivered or mailed to the authorized depository bank or LESSOR (at address last known to LESSEE) on or before the date for payment, and the payment or tender will be deemed made when the currency, check or draft is so delivered or mailed. If the named or successor bank (or any other bank which may have been designated as depository) should fail or liquidate, LESSEE shall not be held in default for failure to make payment or tender of rental until thirty days after LESSOR shall deliver to LESSEE a proper recordable instrument naming another bank to receive payments or tenders. The cash down payment under paragraph (1) is consideration for this lease according to its terms and shall not be allocated as mere rental for a period. Drilling operations shall be deemed to be commenced when actual drilling is begun with adequate tools. In no case shall the commencement or continuance of drilling operations extend the duration of this lease beyond the primary term without actual production of oil or gas in paying quantities; except that, if drilling of a well has been commenced at least \_\_\_\_\_ [30] days prior to the expiration of the primary term, such well may be completed not later than \_\_\_\_\_ [6] months after the expiration of the primary term; and, if production in paying quantities is obtained, this lease shall continue as specified in paragraph (2); and except that, if production in paying quantities of oil or gas has been obtained during the primary term and such pro-

duction shall cease from any cause during the last sixty (60) days of the primary term, LESSEE shall have sixty (60) days from the expiration of the primary term to achieve such production in paying quantities; and if, at the expiration of said sixty (60) days, LESSEE is producing oil or gas in paying quantities, this lease shall continue in accordance with paragraph (2). (notes 107-27, 131-35, 143-53, 154-60)

(5) If during the primary term and before production is obtained, a well is drilled and completed as a dry hole, or if production is obtained but ceases during the primary term, LESSEE shall:

(a) Commence operations, as herein defined, for drilling a new well or for reworking an existing well before the next ensuing rental paying date and continue such operations with due diligence to completion; or

(b) Pay rentals on the next ensuing rental paying date in conformity with paragraph (4) of this lease.

Unless LESSEE complies with one of these options, this lease shall terminate. Upon the completion of diligent but unsuccessful drilling or reworking operations under (a), or after resumption of rental payments under (b), LESSEE shall have the same options at the next rental paying date. (notes 128-30, 145-48, 149-53, 161-67)

(6) LESSEE may surrender this lease as to any part or parts of the leased premises by delivering or mailing a release thereof to LESSOR, or by recording a release thereof in the proper county; except that LESSEE shall not be relieved from liability accruing prior to such surrender, or from liability for damages for injuries, accruing before or after surrender, resulting from breach of its obligations under this lease. (notes 180-87)

(7) LESSEE agrees to take reasonable steps to prevent its operations from (a) causing or contributing to soil erosion or to the injury of terraces or other soil-conserving structures on said premises; (b) polluting the waters of reservoirs, springs, streams or wells upon the leased premises; (c) damaging crops, timber, or pastures, consistent with the purpose of this lease; or (d) harming or injuring in any way the animals or livestock owned by LESSOR or his tenants and kept or pastured on the premises, including the erection and maintenance of fences, gates and cattle guards where necessary for such purposes.

LESSEE shall pay to the person beneficially interested in the damaged object all damages caused by its operations to the surface, growing crops, pasture and improvements on said land or to animals or livestock.

Within six (6) months after abandonment of any well, LESSEE

shall remove all machinery, material and structures used in connection with said well and not used in other operations on the leased premises, and shall fill in and level off all excavations, pits or other alterations in the surface of the land caused in connection with said well, and generally shall restore the surrounding land and the means of ingress and egress to their original condition so far as reasonably possible, including the replacing or repairing of all fences which may have been removed or damaged and including resodding range or other grasses where damaged. Within six (6) months after expiration of this lease, LESSEE shall perform specifically all the above obligations which have not been performed. (notes 199-202)<sup>5</sup>

LESSEE agrees to bury all pipe lines below deep plow depth, and no well shall be drilled within two hundred (200) feet of any residence, barn, or irrigation well on said land without LESSOR'S consent.

LESSEE shall have the right within six (6) months after the expiration or termination of this lease to remove all property and fixtures and to draw and remove all casing it has placed on said land, except gates and cattle guards which shall be left on the premises at LESSOR'S option.

(8) The rights of either party 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 the ownership of the land, rentals or royalties shall operate to enlarge the obligations or diminish the rights of LESSEE; and no change or division of such rights shall be binding upon LESSEE until thirty (30) days after LESSEE has been furnished with (a) the original or certified copy of the recorded instrument evidencing the same, or (b) in case of the death of LESSOR with (i) a certified copy of letters of administration issued on his estate by the Probate Court having jurisdiction of the land, or (ii) certified copies of the Last Will of the LESSOR; certificate of proof thereof, order of the Probate Court admitting the Will to probate, and Letters Testamentary or Administration issued to the executor or administrator of his estate, or (iii) if rentals only are involved, an instrument in recordable form satisfactory to LESSEE and executed by LESSOR'S heirs and devisees showing the date of death, names, relationship, identity and addresses of his heirs and devisees, and authorizing and direct-

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<sup>5</sup> The requirement that the lessee perform specifically all obligations assumed is designed to obviate such disappointing results as were reached in *Peevyhouse v. Garland Coal & Mining Co.*, 382 P.2d 109 (Okla. 1963).



ing to whom the payment, deposit or tender of rentals may be made. (text pages 526-32; notes 302-10)

(9) All express or implied covenants of this lease shall be subject to all valid and irremediable Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated in whole or in part, nor LESSEE held liable in damages for failure to comply therewith, if compliance is prevented by, or failure is the result of, any such valid and irremediable Law, Order, Rule or Regulation, or if prevented by an Act of God or of the public enemy. "Irremediable" means that either (a) the LESSEE has sought unsuccessfully to have the law, order, rule or regulation set aside, modified or held unconstitutional or inapplicable insofar as necessary to enable the LESSEE to fulfill its obligations to the LESSOR and has pursued its efforts to the last tribunal having jurisdiction, or (b) a competent lawyer, paying due regard to the interests of both LESSOR and LESSEE, would adjudge such an attempt to be clearly useless.

If oil or gas is discovered but production is prevented by any of the causes in paragraph (9), this lease shall be considered producing and shall continue in full force and effect until LESSEE is permitted to produce the oil or gas, and as long thereafter as oil or gas actually is produced in paying quantities; provided, however, that LESSEE, as an express condition for the extension of the lease without production, shall pay to LESSOR the sum of Ten Dollars (\$10.00) per annum for each acre of the leased premises, payment to be made within ninety (90) days from the date that production is prevented and annually upon such payment date until production is resumed. (notes 396-407)<sup>6</sup>

(10) LESSEE shall have free use, for operations hereunder and solely upon the leased premises, of oil, gas, and water, except water from LESSOR'S wells or from ponds, lakes or reservoirs lo-

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<sup>6</sup> There are sound reasons why a lessor should not execute a clause excusing the lessee for nonperformance due to acts of the government. See Merrill, *The Oil and Gas Lease—Major Problems*, 41 NEB. L. REV. 488, 542 (1962). However, lessees often are insistent upon such a clause. This clause is drafted with the view that it carries the lessee's immunity no farther than the law would carry it, safeguarding him only to the extent that the governmental regulations are valid, and legally irremediable, i.e. cannot be removed or modified by reasonable action taken by the lessee. See MERRILL, COVENANTS IMPLIED IN OIL AND GAS LEASES § 228 (1940, Supp. 1964). The authors do not recommend to lessors the inclusion of any clause upon this subject, but, if lessees are insistent, it is believed that the provision as drawn will hold the excuse to the limits which the law would imply.

cated upon said land. LESSEE shall not drill or operate water wells or take water in such way as to injure the water wells of LESSOR or interfere with or restrict the supply of water to LESSOR or his tenants for domestic, livestock or agricultural use. LESSEE shall not use potable water or water suitable for livestock or irrigation purposes for waterflood operations. Upon abandonment, LESSEE agrees to turn over to LESSOR, at LESSOR'S option, all water wells drilled by it upon the above lands, and LESSOR shall pay LESSEE therefor the salvage value at the top of the ground of the material and equipment in and on said well or wells. In drilling oil or gas wells, LESSEE shall advise LESSOR of any fresh water bearing formations encountered and shall upon request furnish LESSOR any and all logs made by LESSEE from the surface of the ground to the bottom of the surface casing. Upon abandonment of any well drilled for oil or gas, LESSEE shall turn it over to LESSOR, at LESSOR'S option, with the hole in suitable condition to be completed as a water well in a fresh water formation. LESSOR shall have the privilege of using free of charge, at his own risk and expense, gas from any gas well on said land for stoves and inside lights in the dwellings on the land and in appurtenant structures, and also of using gas for pumping water for irrigation or other use upon the premises by paying the same rate which LESSEE receives for gas.

(11) LESSEE agrees to develop the leased premises for oil and gas with due diligence consistent with practical operation and development in accordance with the interests of both LESSOR and LESSEE and in a manner recognized as adequate and proper in order that LESSOR may receive as early as possible the royalties provided in this lease. In the event LESSEE obtains commercial production of oil or gas on the leased premises, and only in such event, LESSEE shall thereafter continuously develop the leased premises with no more than 120 days between the completion of the initial well establishing such commercial production and the commencement of actual drilling operations of a second well, and thereafter shall drill additional wells with no more than ninety (90) days between the completion of one well and the commencement of actual drilling operations of another well until the leased premises are fully developed on forty-acre spacing. The continuous development referred to shall apply separately and simultaneously to each producing horizon. In the continuous development program, LESSEE shall be entitled to accumulate and later use time saved between wells; however, it shall be LESSEE'S duty to inform LESSOR of the amount of time saved and to advise LESSOR prior to using the accumulated time that LESSEE plans to use the same.

Failure to continuously develop shall result in the termination of this lease and any agreements appurtenant hereto as to that particular horizon to which said continuous development was being performed, save and except forty acres in as nearly the form of a square as is possible around each well drilled by LESSEE to that particular horizon whether productive or dry; and, at the expiration of the primary term of this lease, said lease and all agreements appurtenant hereto shall terminate as to all acreage on all horizons save and except forty acres in as nearly the form of a square as is possible around each producing well which has been drilled by LESSEE on the leased premises but such exception shall extend only to the producing horizon and a depth 100 feet below the producing horizon in such well or wells; however, in the event LESSOR, LESSOR'S agents and/or engineers determine that a well should be drilled to test any horizon above a horizon then being held by way of one of the aforementioned wells drilled by LESSEE, then LESSEE shall commence actual drilling operations on said well within one hundred twenty (120) days after notification of such determination or release all of the acreage as to such upper horizon save and except forty acres in as nearly the form of a square as is possible around each well then producing oil and/or gas from that particular horizon. In the event the proration unit is not forty acres, this paragraph shall be modified to conform with the acreage included in the proration unit. LESSEE also agrees to operate all wells and market the products with due diligence and care. (notes 203-10, 232-45, 246-50)<sup>7</sup>

(12) Should oil or gas be found and be produced or be capable of being produced in paying quantities on any adjoining lease, LESSEE agrees to drill all offset wells on this land whether or not the leased premises are being drained, such offset well or wells to be started within sixty (60) days after the date of completion of the well or wells on the adjoining lease. Such well shall be considered an offset regardless of footage distance from the lease line if such well is located on a drillsite approved by the regulatory commission, which drillsite adjoins or corners on this lease. Failure to drill such offset well shall result in the termination of this lease in the manner provided under the continuous development clause

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<sup>7</sup> Mr. Houston expresses the opinion that, if this continuous drilling clause, with its application to varying horizons, is incorporated in the lease, the "Pugh" clause (21) may not be necessary. Professor Merrill is in doubt, as the application of this 11th clause to units created by government order may be questionable. In any event, if the lessee balks at the continuous drilling provision, the inclusion of the "Pugh" clause is highly desirable, from the lessor's standpoint.

above; however, if such well produces gas only, LESSEE, in lieu of drilling an offset well, may pay to the owners of the royalty the same amount of royalty and within the same time from completion of said well as is herein provided for a shut-in gas well on the leased premises. (notes 251-57)

(13) No express obligation imposed upon LESSEE shall relieve it of any otherwise existing duty of exploration, development, operation, marketing or protection, except to the extent of direct conflict with such express obligation, and all such express obligations shall be construed as providing minimal standards only. In case of ambiguity, this lease always shall be construed in favor of LESSOR and against LESSEE. (notes 256-57)<sup>8</sup>

(14) In determining whether LESSEE has complied with its obligations, the acts of corporations or associations bearing the relation to LESSEE of parent, subsidiary, affiliate or associate shall be treated as the act of LESSEE.

(15) This lease is granted without warranty of title, either express or implied, and covers only LESSOR'S present interest in said land. It is agreed that if LESSOR owns an interest in said

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<sup>8</sup> There are reasons why this is a very important clause for insertion in a lease containing provisions designed for the protection of lessor interests. (1) The first sentence is designed to counteract the unfortunate tendency of many courts to transform what really are intended as minimal standards of performance into general provisions superseding completely implied obligations. See MERRILL, COVENANTS IMPLIED IN OIL AND GAS LEASES 200 ff. (1940, Supp. 1964). (2) The second sentence will obviate the tendency of some courts to reverse the usual construction against the lessee when confronted by provisions clearly designed for the lessor's benefit, *Briggs v. Waggoner*, 375 P.2d 896 (Okla. 1962). (3) There is a tendency in some quarters to argue generally for a reversal of the standard of construction in favor of the lessor. See *Moses, The Habendum Clause in Oil and Gas Leases*, 7 So. Tex. L.J. 12, 18-21 (1963). This clause will be an anchor to the windward in the event that courts are seduced by these arguments. There are, of course, sound societal policy considerations favoring construction against the lessee. Despite such chaffering as may go on, the lease forms basically come from the lessees' draftsmen and reflect their interests. Lessors and their representatives, at best, can achieve only sporadic departures from this general characteristic. Only by construction favoring the lessors is it possible to assure that their aims will be realized. Also, the whole oil and gas operation fundamentally is inconsistent with most other profitable uses of the land. See *Merrill, supra* note 1, at 491. It is sound social engineering to construe the leases, in case of doubt, to promote the landowner's interest so as to preserve the general usefulness of the land rather than to subordinate everything else to a special and partial use. A stipulation binding the lessee to observance of the implied covenants was employed in the agreement litigated in *Baker v. Collins*, 29 Ill. 2d 410, 194 N.E. 2d 353 (1963).

land less than the entire fee simple estate, the royalties, compensatory royalties, and rentals to be paid LESSOR shall be reduced proportionately. LESSEE shall have the right at any time to redeem for LESSOR, by payment, any mortgage, taxes, or other liens on the above described lands in the event of default of payment by LESSOR, and be subrogated to the rights of the holder thereof to enforce same and apply rentals and royalties accruing hereunder toward satisfying the same. (note 285)<sup>9</sup>

(16) LESSOR shall have the right of free access to all drilling or reworking operations conducted on said land, and LESSEE shall furnish to LESSOR within thirty (30) days after such are available to LESSEE, one (1) copy of all electrical well log surveys or core analyses made in any well drilled hereunder.

(17) LESSEE shall have the right to investigate and explore for oil and gas upon the above land by seismograph or any other method desired by it. Such right is not assignable by LESSEE separate and apart from its other rights, title and interest under this lease.

(18) The words, "gas," or "gaseous substance," as used herein, do not include helium or carbon dioxide, or any other non-hydrocarbonic compound or substance, and this lease does not confer upon the LESSEE any right to take substances not expressly enumerated in paragraph (1).<sup>10</sup>

(19) The above described land shall not be pooled or unitized with other lands except upon first securing the consent of LESSOR and upon negotiating a new royalty basis. [Should LESSEE apply

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<sup>9</sup> Because lessees customarily make thorough title searches, and know as much or more concerning the state of the title than does the lessor, it is suggested that the lessor not warrant his title.

<sup>10</sup> In regions where helium or other non-hydrocarbonic substances are not known to occur in association with gas, this provision will safeguard against the type of dispute currently in litigation in some states. Cf. *Gilmore v. Superior Oil Co.*, 388 P.2d 602, 605 (Kan. 1964). In areas where the encounter of such products is to be anticipated, the provision will exclude them from the coverage of the lease. To the extent that they must be produced in order to exploit properly the oil or gas, implied covenant principles then will protect the lessor. See MERRILL, COVENANTS IMPLIED IN OIL AND GAS LEASES § 79 (2d ed. 1940). In such areas, however, it well may be that both the lessor and the lessee will desire to bring a particular substance within the coverage of the lease, in which case royalty and other clauses should be drawn with great care and the products covered thereby should be eliminated from this paragraph.

for or secure compulsory pooling or unitization of the land, this lease shall thereupon terminate.]<sup>11</sup>

(20) This lease shall be binding on each of the parties who sign it, regardless of whether it is signed by any of the other parties.

All of the provisions of this lease shall inure to the benefit of and be binding upon the parties hereto, their heirs, administrators, successors and assigns.

(21) In the event the leased premises shall be separated or divided into two or more horizons, levels or formations by assignments, or shall be pooled or unitized with other premises, in whole or in part, by agreement or governmental order, such event or events shall constitute a severance of the leased premises, and thereafter the acreage, or horizons, or the acreage and horizons so separated, or the acreage, or horizons, or the acreage and horizons included in each separate pool or unit and the acreage, or horizons, or the acreage and horizons not included within any pool or unit each shall be treated as though covered by a separate lease containing the provisions and stipulations of this instrument. (notes 408-10)<sup>12</sup>

(22) As used in this lease the term, "produced in paying quantities," means that the receipts from the sale or other authorized commercial use of the substance covered exceed out of pocket expenses of operation for the [six] months last past.<sup>13</sup>

DATED: \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<sup>11</sup> The authors feel that it is unwise for the lessor to give advance authority to the lessee to pool or to unitize the land. See Merrill, *supra* note 1, at 532-40. There may be some doubt as to the effectiveness of the second sentence of this paragraph, which, therefore, is bracketed. Compulsory pooling or unitization is purely a creation of statute, and it very well may be that a provision terminating the lease because of the lessee's exercise of a statutory privilege would be invalid on grounds of public policy.

<sup>12</sup> This "Pugh" clause seems especially desirable, in view of the decision in *Rist v. Westhoma Oil Co.*, 385 P.2d 791 (Okla. 1963).

<sup>13</sup> This clause (22) has been drawn to prevent application of the mischievous uncertainties created by such cases as *Clifton v. Koontz*, 160 Tex. 82, 325 S.W.2d 684, 79 A.L.R. 2d 774 (1959) and all its "brood of folly without father bred." See MERRILL, COVENANTS IMPLIED IN OIL AND GAS LEASES 62 (1940, Supp. 1964).

