NEGOTIATING AN URBAN NATURAL GAS LEASE; PIPELINES; CONDEMNATION

By

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Presented to

The 18th Annual
Robert C. Sneed
TEXAS LAND TITLE INSTITUTE
December 4 - 5, 2008
San Antonio, Texas
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West grew up in Wichita Falls and graduated magna cum laude from Midwestern University in Wichita Falls in 1969 and with honors from The University of Texas School of Law in 1972, where he was Editor-in-Chief of the *Texas International Law Journal*.

As a practicing attorney West currently handles oil & gas leases and real estate and corporate transactions. He has been a negotiator or counselor for numerous neighborhood groups, businesses, and individuals on Barnett Shale gas leases and gas pipeline easements. Earlier in his career West had over 20 years of experience as a civil trial attorney in state and federal courts.

From 1990 to 2002, West served as legal counsel for the American Association of Professional Landmen, including service as legal advisor to the AAPL Ethics Committee, Board of Directors, and Executive Committee on landman ethics proceedings handled by AAPL.

He has been a speaker, panelist, or moderator at numerous professional education programs on topics of oil & gas law, real estate law, corporate law, notary law, and ethics sponsored by organizations including the Southwestern Legal Foundation, American Association of Professional Landmen, Fort Worth Association of Professional Landmen, Texas Bankers Association, Texas Association of Legal Professionals, Tarrant County Bar Association, and Tarrant County Young Lawyers Association. As a long-time active member of the Tarrant County Bar Association, he has served three terms as Chairman of the Real Estate Section, organizing Chairman of the Brown Bag Seminar Committee, organizing Co-Chairman of the Professionalism and Ethics Committee, and organizing Moderator of the TCBA’s first two Barnett Shale legal seminars, in 2004 and 2005, and was a speaker at the Barnett Shale Symposiums in 2006 and 2007 and the Barnett Shale Expo in 2008. He is also an Instructor in the Professional Land Practices training program for landmen at Texas Christian University.

He has held *Martindale-Hubbell Law Directory*’s highest rating of “AV” for over 25 years; has been listed for several years in *Who’s Who in American Law*, *Who’s Who in America*, and *Who’s Who in Finance and Industry*; has been named a “Texas Super Lawyer” in real estate by *Texas Monthly* magazine the past 6 years; and has been named one of Tarrant County’s Top Attorneys by *Fort Worth, Texas* magazine for the past 8 years. He is also a Fellow of the Texas Bar Foundation and the Tarrant County Bar Foundation and a member of the American Bar Association.

In his “spare” time West serves as the current Chairman of the City of Fort Worth’s Commercial Board of Adjustment, is an advisory director of Camp Bowie District, Inc. (formerly Historic Camp Bowie, Inc.), and is a member, elder, and past trustee of Ridglea Presbyterian Church.
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I. INTRODUCTORY COMMENTS

A. Goals

My view of professional seminars is that the written outline and oral presentation should do three things: (1) reinforce information you already know; (2) remind you of information you once knew but forgot; and (3) give you a few nuggets of new information or wisdom that will help you in your everyday law practice.

B. Perspective

• My information is intended to be more “practical” than “scholarly.”

• This outline and the accompanying presentation will focus more on negotiation points than legal issues.

• This is not intended as a comprehensive outline or presentation on oil & gas law or condemnation law.

• Although I have done a considerable amount of oil & gas work throughout my 36 years of law practice – including oil & gas transactions, litigation, and title opinions – I am primarily a real estate transaction attorney, like most of you, and not an oil & gas specialist.

• My comments reflect my background and experience as an attorney representing real estate developers, neighborhood groups, and individual property owners/lessors, more than as a representative of the gas lessee/operator.

• I am an interested observer of the local and state political process, particularly the Fort Worth Gas Drilling Task Groups and the Fort Worth City Council.

• My comments regarding property owner associations are based on years of experience both as an attorney representing real estate developers and
property owner associations and as an active member and volunteer leader of the voluntary HOA for my neighborhood.

- Much of the information in this outline and presentation was first presented in February 2007 to the Fort Worth League of Neighborhood Associations (www.fwlna.org), an association coordinating group open to all property owner associations in the City of Fort Worth.

C. Usual Disclaimers and Acknowledgements

- The information in this outline and the oral presentation is not intended as legal advice and should not be relied upon as advice. If you or your client needs legal advice, then I would welcome the opportunity to open a project file including the signing of an appropriate retainer agreement.

- The sample forms included in the Appendix to this paper are intended as general guides and checklists of points to be considered in the negotiation and preparation of actual documents and are, of course, subject to negotiation to reach mutual agreement on the terms and customization of the language to fit a specific fact situation.

- I gratefully acknowledge the assistance of associate attorney Eric C. Camp of my law firm in the preparation of this paper and the attached forms, particularly relating to pipeline easements. I also gratefully acknowledge the work by Assistant Fort Worth City Attorney Sarah Fullenwider for information on federal, state, and local regulation of natural gas pipelines; Sarah has been the primary drafter of the City of Fort Worth’s Drilling Ordinance and has staffed the City’s various Gas Drilling Task Groups that have studied and are still studying revisions in that ordinance.

II. Urban Gas Leases

A. Overview and Current Status of Urban Gas Leasing

*What is the Barnett Shale?* The Barnett Shale geological formation is a layer of hard rock situated about 7,500 to 9,000 feet below the surface in north Texas. The formation is about 400 to 600 feet thick in the best part (or “core area”) of Tarrant County (Fort Worth) – about the height of a downtown Fort Worth office building. The Barnett Shale is not a “pocket” of gas like was common in earlier Texas gas fields; rather, the Barnett Shale is a “source rock” from which natural gas migrated upward toward the surface before the gas was trapped in the underground pockets that were the target of earlier gas drilling efforts. Because the drilling is being done into an extensive rock formation, and not seeking a pocket of gas, the success rate of Barnett Shale wells is over 95%, which lowers the gas company’s risk factor.

*Brief History of the Barnett Shale Gas Play.* George P. Mitchell of Mitchell Energy is credited with being the “father” of the Barnett Shale gas play. George Mitchell is also well known to Texas real estate attorneys as the developer of The Woodlands planned development.

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development community north of Houston and as the key financial backer of the redevelopment of the Historic Downtown/Strand District in Galveston starting in the 1980’s.

Mitchell Energy drilled the first Barnett Shale gas well in 1981 in southeast Wise County, known as the C. W. Slay #1 well, a vertical well that is still producing. In the late 1990’s George Mitchell began using the technique of hydraulic facturing or “fracing” as a means of developing the Barnett Shale formation. All of this early drilling and development used “conventional” vertical wells and was generally in rural areas.

**The Beginning of Urban Leasing.** Urban leasing and drilling is not new, as any resident of Beaumont, Kilgore, Wichita Falls, or many other Texas gas towns can attest.

The recent surge in urban gas lease activity in the United States, however, began about 2001 and 2002 in the Barnett Shale formation in far north Fort Worth with the use and refinement of horizontal drilling techniques. These techniques allowed the operator to locate the drilling rig in a pasture or industrial area and then drill up to a mile or more horizontally through the shale formation a mile and a half below ground. Horizontal well bores allow the operator to develop more of the shale formation per well bore, just as if a vertical well bore was drilling though a much tighter production zone.

The use of horizontal drilling allows multiple gas wells to be drilled from a single pad site and beneath the “rooftops” and “civilization” of nearby urban areas. One pad site can support many wells drilled in different directions, similar to spokes extending outward from a wheel’s hub. These drill sites and horizontal wells are expensive, but, with the rise in natural gas prices in the national market over the past several years, urban leasing and drilling rapidly escalated throughout the area and nation.

The early horizontal Barnett Shale wells were still mostly in the rural areas, in pastures adjacent to the newly developing suburbs on the outer edges of the towns. Some of the horizontal drilling extended beneath the nearby residential subdivisions.

**Leasing and Drilling within City of Fort Worth.** The first application to drill a Barnett Shale gas well inside the City of Fort Worth was presented in 2001. Because there was no drilling ordinance in effect at that time, the application was presented as a zoning case to change the zoning of a planned drill site tract to an industrial use category. The City quickly recognized the potential land use issues involved in this application and imposed a moratorium until an appropriate drilling ordinance could be prepared, which was approved in December 2001. At that time the City thought drilling would occur only in the thinly populated areas of far north Fort Worth near Alliance Airport and the Texas Motor Speedway.

The first well I recall being drilled inside of Fort Worth’s Loop 820 was Dale Resources’ Gateway #1H well in May 2005 to develop minerals below the City’s Gateway Park along the Trinity River -- about 2 miles east of downtown Fort Worth. That is still one of the most productive gas wells in Tarrant County.

Petroleum geologists and engineers have determined that the core area of the Barnett Shale formation seems to be directly below the City of Fort Worth and surrounding areas.
suburbs of Tarrant County and north Johnson County. One of the largest tracts to be developed by a single operator is the 11,000 acres of DFW Airport, in northeast Tarrant County and northwest Dallas County; you can see many active drilling rigs out the plane windows as you fly into or out of the airport.

The City of Fort Worth currently has about 1,000 Barnett Shale gas wells in its city limits and it expects to have over 3,000 wells by the end of 2010 – just two years from now.

The Barnett Shale Today. Today the Barnett Shale includes over 8,000 wells in over 20 counties and is expected to produce over 1.5 Trillion Cubic Feet of gas in 2008, about 8% of the United States’ total gas supply this year. Economist Ray Perryman stated in a Report issued this past March that the Barnett Shale activity is generating over $8 Billion per year gross economic product for the north Texas economy, including about 84,000 jobs so far – about 9% of the total jobs in the Tarrant County area.

The “unconventional” drilling and completion techniques developed and perfected in the Barnett Shale are now being applied to other shale and “tight sand” formations in other parts of the United States, including the Fayetteville formation in northwest Arkansas, the Haynesville formation in northwest Louisiana and east Texas, and the Marcellus formation extending from southern New York down through western Pennsylvania, West Virginia, Kentucky, and Tennessee. And the same drilling techniques are being tried in other parts of the world.

Urban gas leasing has expanded throughout the north Texas “Metroplex” and is now seen in almost all parts of Tarrant County and all surrounding counties including the western third of Dallas County. The minerals below Texas Stadium in Irving and even Love Field airport have been leased. During the past year, announcements of new neighborhood group gas lease deals have been made by neighborhood groups in almost every municipality in the area. Even owners of the high-rise office buildings and other properties in downtown Fort Worth have joined together under the umbrella of its neighborhood group called Downtown Fort Worth, Inc., to negotiate a group gas lease on favorable financial and legal terms.

Earlier this year a top executive of one of the largest gas operators described the leasing activity as a “land rush” to sign up as many leases as possible as quickly as possible. The amount paid to property owners to sign leases was $500 to $1,000 per acre just three years ago; then went to about $1,500 to $2,000 per acre about two years ago; then rose to $3,000 to $5,000 per acre in the first half of 2007; then jumped to $10,000 to $15,000 per acre in the fall of 2007, just one year ago, as a result of spirited competition between two large gas companies in several residential neighborhoods along 8th Avenue southwest of downtown Fort Worth; then rose to $20,000 to $25,000 per acre in the first half of 2008; and then to $25,000 to $30,000 per acre in August and September 2008.

The “land rush” quickly turned to a “leasing bust” in mid-October 2008, however, as most of the major gas companies involved with the urban leasing and drilling in north Texas suddenly halted their lease negotiations, revoked their outstanding lease offers and unsigned or partially signed lease contracts, cancelled scheduled lease signing parties, dropped their lease offers to $5,000 per acre or less, or withdrew their lease offers completely. These revocation
actions were taken not just against neighborhoods still negotiating the terms of their lease, but also against those neighborhoods that had agreed in writing to all lease terms and were mostly complete with the lease signings in their particular neighborhoods.

**What caused the sudden leasing halt and price reduction in October?** The written communications from the gas companies to the property owners and neighborhood groups in mid-October stated that they took these actions because of the “financial realities” of the worst financial crisis since the Great Depression and the drastic reduction in the sales price of natural gas in the national market since early July. We are all certainly aware of these developments since they have impacted us also. As investors and hopeful retirees, we are greatly distressed about the recent loss of value in our 401-K plans. And as energy consumers, we are pleased to pay less for gasoline at the local service station and to pay less for the natural gas that we will use this winter to heat our homes and offices and to generate over half the electricity in Texas. The publicly-traded stock of the gas companies also dropped drastically and rapidly in early October, even leading to involuntary sales of the stock owned by some gas company executives to cover their unexpected margin calls.

But if you read the lease offer revocation letters and e-mails from the gas company representatives closely, you will notice that the gas companies did not say that they could not continue to pay gas lease signing bonuses of $20,000 to $30,000 per acre; they just said they would not continue to pay those bonuses. In fact, on the afternoon of Wednesday, October 15, 2008, at the same time that its company landmen and independent leasing agents were busy notifying neighborhood groups and property owners of the company’s revocation of outstanding lease offers, top executives of one leading gas company were meeting with a group of its stock analysts to discuss the results of the company’s third quarter fiscal period that ended September 30, and the following statements were made to the stock analysts regarding the company’s leasing activities and plans:

One of the great advantages of a time like this is that we can drive down the cost of our business. That’s not only going to be true soon on the drilling side but it’s especially true today on the leasing side as we are continuing to be very, very aggressive in driving down prices in areas of shale plays so we can acquire leases we think at a lower price going forward. …

The neat thing is leasehold is always cheap in a play whether you pay $5,000 an acre or $10,000 or $20,000 or $30,000. In most of these shale plays it matters hardly at all as to what you pay for leasehold because you consume so much leasehold at 88 acres generally a well and these wells can cost $3 million to $6.5 million. So you put some leasehold on top of that it’s just not much money at the end of the day. …

[I]t’s my goal that in places like the Haynesville and the Barnett, we’ll in 60 to 90 days be at acreage values that may be half to a quarter of where they are today. …

I really believe that every lease we buy today has an embedded resale value of somewhere between 3 and 10 to 1. …
[T]he days of $20,000 and $25,000 an acre of values in the Barnett and Haynesville are gone and I think probably gone forever. I hope that will allow us to save enormous amounts of money that we just haven’t yet reflected in our budget but I think will happen. …


A phrase that I have heard a number of times recently, with regard to leasing and various other gas company decisions, is “economic self-interest.” The lesson to be learned, if it was not already known, is that the gas company will act for its own economic self-interest, which may be different from what the mineral owner, surface owner, or local municipality hopes.

It is my opinion that the actions by the gas companies in mid-October to halt leasing in the Barnett Shale region were taken to lower their overall costs per acre and thereby to increase their operating profit per acre going forward, which will improve the overall financial numbers for the gas companies in order to increase their stock price, not because the value of the mineral lease has declined or that the gas companies are not able to pay the higher financial terms for new leases. I am not saying there is anything wrong with this from a corporate perspective – it is appropriate for a publicly-traded company or any business to take advantage of opportunities to lower its costs and to maximize profits and raise stock values for the benefit of its owners. I believe that the action to revoke lease offers was taken in mid-October, however, as a carefully calculated tactical move so that the national financial situation and lower price of natural gas could be used as the “cover” for the revocation actions in communications by the gas companies to the public and to affected mineral owners.

Will the signing bonuses go back up? There is still a significant amount of land to be leased in the urban “core area” of the Barnett Shale. Less than a month after the leasing “crash” of mid-October, some of the gas company leasing agents resumed their negotiations with some neighborhood groups and property owners in areas where there are established drill sites and pipelines to serve the area to be leased, and the bonus prices have started to increase again. I do not know whether the signing bonus will ever get back to $25,000 per acre or more, but that is possible if there is competition between gas companies for particular lease areas and if the price of natural gas goes back up on the national market.

B.  Tips for Urban Gas Lease Negotiation Process

The following tips have been developed from representing numerous neighborhood groups and private property owners on their Barnett Shale leases.

1. Negotiate as a group, not as individuals, to increase leverage. A single lot owner has no leverage, but a group of many lot owners has significant leverage if they work together. The larger the area that is represented by the group, the better the lease terms can be for the benefit of all property owners involved.
During the past year, we have seen not just single neighborhoods working together, but several adjoining neighborhood associations or other property owners (businesses, churches, golf courses, etc.) working together to form larger negotiating groups called coalitions, alliances, super-groups, or “mega-hoods” sometimes encompassing thousands of property owners and thousands of acres. Even governmental entities like cities and school districts are now cooperating to achieve greater bargaining strength on lease negotiations.

The basic rule is that **MORE ACRES = MORE LEVERAGE.** But there must be available drill sites to allow horizontal wells to be drilled below the subject properties; if no drill site is available, then leasing is premature, or the lease negotiation will not bring a top dollar offer.

*A key point to understand is that the group negotiation process is a WIN – WIN situation for both sides.* The neighborhood group gets better financial and legal terms than if they were negotiating as individuals; and they get a greater “comfort level” with the gas lease document. For its part, the gas company gets a higher percentage of lease signers in a shorter time without its landmen or leasing agents having to make contacts with hundreds or thousands of individual owners. This lowers the overhead factor for the gas company, and the terms of the lease document are not as likely to require modifications for individual owners.

2. **Organize quickly; treat it like a local election.** No matter how much information has been distributed ahead of time or published in the local paper, most property owners do not pay attention to the gas lease issue until the gas company makes an actual contact with that owner, which is usually by a letter or by a direct contact by a landman, and the owner may sign a lease from that initial contact. Even if your neighborhood has organized ahead of time, when this first contact is received from the gas company, the neighborhood should get the word out immediately that a meeting will be held to discuss the matter; most owners will not sign a lease if they know that there is a meeting sometime soon to get more information. Most owners would like to receive a better lease offer and are willing to wait at least a short time to see if they can get a better offer.

3. **Use a committee of knowledgeable volunteers but recognize that owners make final decision for their own property.** Neighborhood groups usually use a committee of volunteer members including members knowledgeable in contract negotiation. This keeps the neighborhood active in the details of the lease negotiations and also usually saves on attorney’s fees.

The committee should be careful to state in all of its materials and at each meeting that it will use its best efforts to get a better lease offer from the gas company but that any owner may sign a lease at any time if the owner decides to do so.

The final decision on a lease for a particular property is made by the owner of that property, not by the committee, and the owner certainly may decide not to sign a gas lease. If a property owner, for whatever reason, decides not to sign a gas lease, that decision should be respected and not ridiculed by the committee or by the rest of the group. This is a
wonderful country in which we live, and each property owner is entitled to make the right decision for him or her.

4. **Try to get competing offers.** The best financial and lease terms result from aggressive competition between gas companies, so owners should try to encourage competition if possible. Many property owners and groups are now requesting bids from different companies, particularly those companies known to already have other leases in the area.

5. **Use a knowledgeable gas lease attorney as a consultant or negotiator.** A knowledgeable gas leasing attorney may be used as a consultant and should be involved early in the process, not just at the time the final lease document is being prepared. The attorney can advise the property owner or committee on what the issues are and what the current financial terms are in that particular area. If the group does not have any experienced negotiators, then the attorney can be the negotiator for the group.

In order to avoid conflicts of interest and potential grievance complaints, the attorney should be careful to exactly identify the client and have an appropriate engagement and retainer agreement setting forth the client, whom the attorney should (and should not) contact at the group, what the attorney will (and will not) do, and how and when the attorney will be compensated. I recommend that the client be the group, not individual property owners; that the attorney try to specify that communications from the attorney will be with only one or two contact persons within the group; and that the group is then responsible for communicating with the rest of its members. Any contacts from individual property owners directly to the attorney should be discouraged and should be referred by the attorney to the designated contact person(s). The attorney’s fees may be paid by the group or even by the gas company so long as it is clear that the attorney is working for the group and not the gas company.

6. **A group should communicate with its members often.** The group may have educational meetings; send written messages by e-mail or flier; establish its own website; and put up yard signs (subject to applicable municipal ordinances or restrictive covenants) like for a political campaign saying in effect “Don’t Sign Gas Lease Yet.” Frequent communication keeps the group together. It is better for the group to send small bits of information frequently, rather than waiting for everything to get resolved. If property owners do not hear anything for a while, they are more likely to sign a lease on their own without waiting for the group negotiations to be concluded.

Property owners are keenly interested and want information about gas leases. Serving as an attorney for property owner associations is often called the “family law of real estate,” because of the personal and emotional issues involved. I have worked with property owner groups for many years on various issues, including controversial zoning cases, but I have never seen an issue bring out as many people to a neighborhood meeting as the gas lease topic. Speakers are usually available from the gas companies, municipalities, or volunteer attorneys. Be prepared for a large crowd with lots of questions!

When the leases are signed – usually at a group signing party – celebrate the event appropriately. The gas company may even be willing to provide barbeque and lemonade.
7. Accept a lease offer that is “good enough.” Particularly since mid-October, when many very good lease offers were suddenly and unexpectedly revoked by the gas companies, it has become clear that members of a group often have very different expectations and tolerances, and “hindsight is always perfect.” Gas leases are seldom perfect, but a lease negotiated by a committee for a group is usually much better than any single owner could have obtained on their own. The committee and the owner should be willing to accept a lease that is “good enough” without waiting for it to be perfect.

8. BE PATIENT! The neighborhoods that are having the greatest success are taking several months, sometimes over a year, to negotiate the terms of their lease. This seems to be the hardest tip to follow since most property owners are eager to sign a gas lease.

C. Tips on Urban Gas Lease Terms

Neighborhoods and all other property owners obviously want to get the best possible signing bonus, royalty, and other terms. The following tips are intended to help in negotiations on several key financial and other terms. (This is not intended as a complete list of all the provisions that may need to be negotiated.)

1. Lease Forms. Every word and every sentence of the gas lease is subject to negotiation. There is not a “standard form” of lease. Even the so-called “Producer’s 88” gas lease form will usually vary significantly from one gas company to another, and often will vary from landman to landman within the same gas company. Not every provision of the gas lease needs to be negotiated, but each proposed lease should be read carefully and understood and negotiated as needed.

Urban leases may use the gas company’s “standard” form with an addendum attached for changes and additional provisions, or the lease form may be specially prepared to incorporate all the revisions into the main lease document with no addendum.

Some gas companies prefer to file of record the full lease for each property owner. Other gas companies prefer to get both a signed lease which is not filed for record and a short Memorandum of Lease that is filed for record. Other gas companies prefer to get a single lease form with multiple signature pages from many property owners and with each signature page (usually called a “Schedule”) also containing the legal description for that particular property owner.

Get all agreements in writing, either in the lease or in a side agreement. A gas lease is a contract that is likely to last for many years, so take time to do it right. There are no “do-overs” or “mulligans” on gas leases. The nice landman that you deal with to negotiate and sign the lease may well be working for some other company or in some other gas play by the time that the first well is drilled under the lease. If you need good sample language, look at leases being signed by cities, school districts, and other public bodies, which are a matter of public record or subject to the Public Information laws, or look at the leases of other neighborhood groups that are often posted on their websites. In the Appendix at the end of this paper are a couple of lease forms that may be of assistance as guides.
2. **Legal Description.** Like any document relating to real estate, make sure the gas lease has a legally sufficient legal description; in a platted urban subdivision that usually means you need the lot and block number and the name of the subdivision. The tax tract number assigned to an *unplatted* tract by the county’s central appraisal district for its administrative purposes is usually *not* a legally sufficient legal description. Unfortunately, many landmen, real estate agents, paralegals, and even some lawyers do not know this! Make sure there is no language that will unintentionally include other properties of that owner.

3. **Term.** The most common primary term for an urban lease is 3 years, but I have seen it as short as 18 months (if the property will be included in a unit that is about to be drilled from an established drill site) and as long as five (5) years. I suggest trying to get a shorter term – like two (2) years – since gas companies tend to be optimistic about how fast they will get a well drilled. If they run out of time in the primary term, then the gas company will need to pay new compensation to the owner for an extension of the lease or to sign a new lease.

   Try to include clear language that what is required by the end of primary term is the actual commencement of drilling (“spudding” the well) and not just commencement of work to prepare the pad site.

4. **Option to Extend.** Most urban leases also grant the gas company a unilateral option to extend the lease by paying a specified fee, often the same amount as the original signing bonus. Try to negotiate out the unilateral option to extend the lease for a predetermined fee, particularly if the signing bonus and predetermined extension fee is significantly lower than was being paid before the mid-October “crash,” since the price for such a lease renewal may increase again later.

5. **Limit the lease to oil, gas, and other hydrocarbons, rather than just “all minerals.”**

6. **No Surface Use.** Make sure the lease provides for no surface use and no water use.

7. **Calculation of Acreage “to the Middle of the Street”**. When calculating the area of a particular lot or tract for purposes of calculating the amount of the signing bonus, royalty, and delay rental, make sure the owner’s mineral interest in any adjoining street, alley, or easement area is included in the acreage. This is based on state statutes that provide that an abandoned or vacated street or road is allocated one-half to each adjoining property owner, but occasionally there is an old fee title conveyance of the land to the state, county, or municipality that will prevail. The property owner should assume that he or she is entitled to payment “to the middle of the street” unless the gas company landman can show a title document requiring a different result.

   Reach an agreement with the gas company as to how the acreage will be determined and include that agreement in the lease, an accompanying side agreement, or at least by letter or email. If the amount of acreage in a particular lot or tract has not been resolved by the time the lease is to be signed, I suggest that the owner not sign at that time but wait until after
the big group signing has been completed and then go back to the gas company or its lease signing agent to discuss the matter again since there will be more time then to address the issue and the gas company will probably be more motivated to get the “holdouts” signed.

8. **Royalty and Charges Against Royalty.** The royalty is the amount the mineral owner is paid out of the production from the well or unit. The traditional royalty in Texas was 1/8 of the production, but that has changed over the years and now in urban leases the royalty is most commonly 25%, but may be less or more as negotiated.

Watch out for lease provisions that charge expenses against the royalty and try to exclude or limit those expenses. *Other than the key financial terms, this is usually one of the most heavily negotiated provisions of the urban lease.* Most gas companies are now insisting on including in the royalty provision a charge against royalty for transportation of the gas to a market other than the local market if needed to receive a higher price. I have seen at least one large neighborhood group accept a slightly lower royalty (23% instead of 25%) in exchange for a lease provision that absolutely no charge of any kind would be made against the royalty; I think that may be wise since most neighborhood groups do not have the expertise from its volunteer leaders or even from outside consultants to effectively monitor the charges against royalty.

9. **All or Nothing Pooling.** In the pooling provision, include language that if any of the lessor’s property is included in the pooled unit, then all of the property must be included in the unit.

10. **Pugh Clause.** Include a vertical severance clause (“Pugh Clause”) to provide that the lease applies only to the Barnett Shale formation, or not more than a certain depth (like 50 or 100 feet) below the bottom of the Barnett Shale formation. This allows the owner to negotiate again later for a new lease if “deep gas” or oil is found.

11. **Warranty of Title.** The owner/lessor should try to delete the warranty of title or at least limit it to a special warranty. Part of the landman’s job is to check the title.

12. **Special Limitations.** Consider putting limitations in the lease on drill site locations, setback requirements, compressor sites, noise levels, lights, truck traffic, and other matters of particular interest to the owner or group. Even though these matters may be addressed by the municipal ordinance, remember that the ordinance may be amended by later City Council action, or the city procedure may allow a variance to be granted to the strict requirements of the ordinance.

13. **Protection for Association.** Include language in the lease to protect the volunteer members of the neighborhood association or committee and to expressly state that the owner is making his or her own decision regarding whether and when to sign the lease.

14. **Subordination Agreement.** An owner’s signing a gas lease for a primary term of several years will usually trigger the need to obtain consent from that owner’s mortgage lender under the “due on sale or lease” provisions of the deed of trust. That is usually done by obtaining a subordination agreement from the lender, to confirm that the mortgage lien is
subordinate to the gas lease; otherwise the gas company is at risk for losing its gas lease in the event of a foreclosure under the prior mortgage. Lender typically charge for preparing or processing such a subordination request, in an amount of $50 to several hundred dollars. Ask the gas company to agree in the lease that it will not require a subordination agreement before making royalty payments or that if a subordination agreement is required (particularly if the gas company’s well bore is actually beneath the subject property), then the gas company will pay any fee required to get the subordination agreement.

15. **Extra Consideration.** Some neighborhood groups have obtained an agreement from the gas company lessee to make a payment or contribution to the association to pay legal fees and other costs (postage, website, signs, etc.) relating to the leasing project, or for a particular project for the neighborhood area such as improvements to the local park, or similar extra consideration. Some of these extra consideration agreements are tied to the success level of the group leasing – a certain amount to be paid if 70% sign, a higher amount to be paid if 80% sign, etc.

III. PIPELINES

A. **Overview of Natural Gas Pipelines Regulation**

1. **Federal and State Laws.** The transportation and sale of natural gas in interstate commerce is subject to the Federal Natural Gas Act, 15 USC Section 717(b). Under that federal Act, however, the states retain jurisdiction over intrastate transportation, local distribution, distribution facilities, production of natural gas, and gathering of natural gas.

   At the federal level, the Office of Pipeline Safety (“OPS”) has been established within the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“PHMSA”), to exercise overall regulatory responsibility for hazardous liquid and gas pipelines under its federal jurisdiction. The OPS has authority to regulate, inspect, and enforce safety requirements for interstate gas and liquid pipelines.

   At the state level, the State of Texas, through a certification by OPS, has authority to regulate, inspect, and enforce safety requirements for intrastate gas and liquid pipelines. This work is performed by the Pipeline Safety Section, Gas Services Division of the Railroad Commission of Texas.

   The Railroad Commission of Texas has primary jurisdiction over all persons owning or operating pipelines in Texas under a 1917 Act designed primarily to prevent monopolistic practices, unfair pricing, and discrimination in oil and gas pipelines. That 1917 Act declared oil and gas pipelines to be “common carriers” and gave the RRC the power to establish and enforce common carrier provisions relating to the pipelines. Two years later, in 1919, the RRC’s authority over the oil and gas industry was extended by the Texas Legislature to the regulation of oil and gas production in order to prevent waste in drilling and production operations.

2. **Categories of Pipelines**
Production/Flow Lines – wholly within the gas lease; unregulated

Gathering Lines – extend from the well site to other well sites and/or to a compressor station. Gathering lines located before the point of sale are not regulated.

Transmission Lines – transport gas from a gathering line or storage facility to a distribution center. The US DOT regulates interstate transmission lines; the RRC regulates intrastate transmission lines.

3. Design Criteria. Design criteria for a particular pipeline are based on the “class” of that pipeline, depending on the “Class Location Units” (“CLU”) within the area that extends 220 yards on either side of the centerline of a continuous mile length of pipe. The greater the number of buildings intended for human occupancy located within the continuous mile of the pipe length, the higher the class of the pipeline and the more stringent are the design criteria. The design criteria set specifications for wall thickness and yield strength.

4. Width Requirements for Pipeline Easements. There is no particular width requirement for pipeline easements, but the statute sets the width at 50 feet unless a different width is specified by agreement.

5. Depth Requirements. Pipelines are required to be buried at a depth of at least 3 feet, but after the initial construction the depth is not required to be maintained even if erosion occurs.

6. Setback Requirements. There are no distance setback requirements from buildings or other uses required under federal or state law.

7. Pipeline Entities.

Common Carrier – a pipeline that transports gas “for hire.” Texas Natural Resources Code, Section 111.002.

Gas Utility – an entity engaged in the business of transporting or distributing gas for public consumption. Texas Utilities Code, Section 181.021(2).

Gas Corporation – a gas corporation includes partnerships, limited partnerships, corporations, and limited liability companies that operate gas pipelines. A gas corporation can be a gas utility. Texas Utility Code, Sections 181.001 and 181.002.

B. Eminent Domain/Condemnation for Pipeline Entities

Common Carriers have the right of eminent domain and the power of condemnation. Texas Natural Resources Code, Section 111.019.
Gas Corporations and Gas Utilities also have the right of eminent domain and the power of condemnation. Texas Utility Code, Section 181.004.

C. Tips for Gas Pipeline Easements or Right of Way Agreements

1. **Compensation.**

   The landowner is entitled to compensation for (a) the value of the easement itself and (b) the damages to the landowner’s property from the burden of the easement. Factors in determining the compensation for the easement include the “going price” in the area, the current and proposed future uses of the property, the property’s zoning, width of the permanent easement, restrictions on the landowners’ use of the surface over the easement, and other specially negotiated provisions. The damages to the property resulting from the burden of the easement usually are measured by the difference in the market value of the property before and after the establishment of the easement.

   In urban environments, the price for the easement is usually priced “per linear foot”; in rural environments the compensation is priced “per linear rod.” One (1) linear rod = 16.5 linear feet.

   When negotiating the compensation, and to the extent possible, it is usually beneficial to the landowner for income tax purposes for as much of the total compensation as possible to be allocated to the damages to the property since that is treated under federal income tax law as a reduction in the tax basis of that property and is not taxable in the year the damage payment is received (except to the extent that the payment for damages exceeds the owner’s tax basis in the property). The payment for the easement itself it usually taxable in the year it is received. For tax documentation purposes, it is best for the owner to receive separate checks from the pipeline company for the easement and for the damages.

2. **Specify the nature, location, and number of any surface facilities.**

   The pipeline company will have to install certain surface facilities along the pipeline route. Unless the Easement Agreement specifies differently, the pipeline company can install whatever surface equipment it deems necessary along its Easement – even if the landowner was told that only an underground pipeline would burden the property.

   The Agreement should specify the nature, location, and number of any surface facilities that will or may burden the tract. If there are going to be surface facilities, the landowner can likely demand more compensation for the Easement.
3. **Specify the width of the pipeline easement.**

A pipeline company wants the most width possible, particularly since it is paying the landowner based on the length of the Easement, not the width. Typically a pipeline company needs about 50 feet of width to construct the pipeline and then 20 to 30 feet of width for the permanent Easement once the pipe is in the ground.

The Agreement should set forth two Easements – one for a temporary construction easement up to 50 feet in width and one for the permanent pipeline easement between 20 and 30 feet in width. The Easement Agreement should also set forth a construction timetable, so that the temporary easement terminates no later than a definite date.

4. **Specify the depth of the pipeline.**

Unless the Easement Agreement provides otherwise, the pipeline is required to be buried only 3 feet below the surface and that depth is not required to be maintained after the initial construction even if erosion occurs.

The Agreement should specify that the pipe must be buried at least 42 inches below the surface, since that is the requirement of FHA guidelines for financing houses near the pipeline. I recommend asking for a depth of 48 inches below the surface so that there will not be a problem even if some erosion later occurs.

5. **Specify the substances to be transported and excluded in the pipeline.**

Unless the Easement Agreement specifies differently, the pipeline company can transport whatever substances it wishes through the pipeline, including salt water waste, sewage, etc.

The Easement Agreement should state that only natural gas will be transported in the pipeline.

6. **The Easement should be limited to a single pipeline.**

Unless the Easement Agreement specifies differently, the pipeline company can put as many pipelines in the easement at any time without paying additional damages to the landowner.

The Agreement should state that the Easement is for a single pipeline. That way, if the pipeline company wants to lay additional lines (and do additional damage to the property), the pipeline company must get an additional easement from the landowner and pay the landowner accordingly.
7. **State the right to recover damages for disruption due to maintenance, repair, replacement, and other activities in the easement area in the future.**

Unless the Easement Agreement specifies differently, the pipeline company can conduct all maintenance, repair, replacement, and other activities necessary to the pipeline without paying additional compensation to the landowner. These operations frequently disrupt the property as much as the initial pipe laying.

The Agreement should state that the landowner has the right to recover damages for disruption of the property due to maintenance, repair, replacement, and other activities. That way, if the pipeline company does have to tear up the property again, at least the landowner owner is paid additional damages.

8. **State whether and when the Easement is abandoned and reverts back to the property owner.**

Unless the Easement Agreement specifies differently, the easement is a perpetual burden on the property, whether or not it is ever utilized or continually utilized, until legally abandoned.

The Easement Agreement should state that after a certain period of either no use of the easement (i.e., not laying the pipeline within two years of the grant of the Easement) or no use of the pipeline (i.e., two years of no substances running through the pipeline), the Easement is considered abandoned and reverts back to the landowner.

9. **Include a legal description of the proposed Easement area.**

If the only property description in the Easement Agreement is the legal description of the entire property (a “blanket easement”), then the pipeline company can lay the pipeline wherever it wants across that property – even if it is a different location than the right-of-way agent told the landowner.

The Agreement should include a proper legal description of the agreed easement area to ensure that the Easement is for that specific area only and not the entire tract.

10. **Specify whether and how the surface will be restored upon completion of the project.**
Unless the Easement Agreement specifies differently, the pipeline company can restore the surface however it chooses – the cheapest and easiest way possible.

The Agreement should specify how the pipeline company is to handle settling soil, re-seeding with desired grasses (require this annually until the grass is permanent), double-ditching to get the good topsoil back on top, etc.

11. **State the rights and restrictions on the landowner’s use of the easement area.**

Unless the Easement Agreement specifies differently, the landowner cannot do anything on the Easement area that might interfere with the Easement.

The Agreement should specify what the landowner can and cannot do over the Easement (roads, parking, landscaping, fences, other easements, structures, etc).

12. **Additional points for possible consideration.**

   a. The extent to which the easement area will be maintained and by whom;
   b. Access to the easement area;
   c. Damages caused by contractors;
   d. Restrictions on contractors’ activities (i.e., no guns or fishing poles, no trash, no pictures, etc.);
   e. Restrict or specify activities outside of the easement area;
   f. List special issues (saving a favorite tree, not disturbing or boring under a sensitive area);
   g. Explain environmental responsibilities;
   h. State whether or not ponds or lakes built in the future may intrude on the easement without permission;
   i. List restrictions on the pipeline company granting other easements within the easement area;
   j. List hours when inspections can occur;
   k. Whether and how the pipeline company is obligated to remove its structures in the event of termination of the easement;
   l. Where warning signs will be located (preferably in one place);
   m. The size of the pipe;
   n. Whether there is a secrecy agreement;
   o. Landowner is NOT warranting title;
   p. Right to move pipeline at landowner’s expense, if needed;
   q. The pipeline company’s specific routes of ingress and regress;
   r. That all roads used by the pipeline company will be repaired to their former condition or improved when the construction is finished;
s. Whether temporary crossings will be provided across open trenches or ditches;
t. The maximum pressure the line can transmit;
u. Whether there is an established maintenance or inspection schedule;
v. Whether there is an indemnity provision in the Easement Agreement to protect the landowner against any future lawsuits;
w. Whether the terms of the Easement Agreement state the pipeline company’s right to assign interest in the easement to a third party (If such provisions are present, some procedure to notify the landowner of such assignment may be included. Further, the Easement Agreement should state that any assignment of the company’s rights must comply strictly with the original Easement Agreement and may not increase its burden.);
x. That the pipeline company is liable for potential payment of damages for up to three years after the work is completed (the usual statute of limitations period for this is only two years);
y. Whether pipeline company is liable for the payment of all survey, filing, and attorney fees incurred incidental to the condemnation.

IV. CONDEMNATION

As mentioned at the outset, this paper and presentation is not intended to be a comprehensive study of either oil and gas law or condemnation law, and I particularly claim no real expertise in condemnation law. There are other attorneys at my firm that handle the condemnation matters. There are, however, a few general points that I would like to make regarding condemnation.

A. Condemnation is not available for leases, but is allowed for pipelines. (But see discussion below in the Trends and Recent Developments section about the Order recently issued by the Railroad Commission in the Finley Resources matter.)

B. The pipeline company has the right, even without express consent of the property owner and without any compensation, to enter upon the property for the purpose of surveying and conducting non-invasive soil density, anthropological, and ecological tests, but not to perform core boring. The pipelines will usually ask the owner for such consent, however, in order to reduce controversies.

C. The pipeline company determines the route of the planned pipeline and obtains necessary easements through negotiated easement agreements or, if needed, condemnation proceedings.

D. The municipality has no authority to determine the pipeline route except that the municipality’s consent is required for the pipeline to cross beneath a city street. (Texas Transportation Code, Section 311.001) A municipality or county may not adopt or enforce an ordinance that establishes a safety
standard or practice. (Texas Utilities Code, Section 121.002) This does not, however, impair the ability of a municipality to adopt an ordinance that establishes conditions for mapping, locating, or relocating pipelines over, under, along, and across a public street, alley, or private residential area in the boundaries of the municipality, and does not prevent the municipality from assessing a charge for the placement and use of a pipeline in a city street if the street incurs damage.

Notwithstanding the municipality’s lack of actual authority over many aspects of the pipeline, it is not uncommon for a municipality and its elected officials to become involved in the negotiation process between the pipeline company and property owners in an attempt to encourage the pipeline company to consider an alternate route or to improve the payment offer or other terms of the easement agreement.

E. The pipeline companies do not like to initiate condemnation proceedings, especially against homeowners, since such proceedings are public relations nightmares, which the gas companies and their pipeline affiliates are trying very hard to avoid. The pipeline company will send the required notices and will say that they will initiate a condemnation proceeding if an agreement is not reached, but usually an agreement is in fact reached before the proceeding is actually initiated. Even after a condemnation proceeding is initiated and before a hearing before the three court-appointed condemnation commissioners is held, the matter is usually resolved by a negotiated mutual agreement before the hearing is actually held. Very few cases actually go through the hearing process and the cases that do go through the hearing process tend to involve owners of large tracts or valuable commercial properties.

F. As a result of changes in the statutes relating to condemnation a few years ago, the property owner seldom is entitled to recover its attorney’s fees in a condemnation proceeding. This obviously encourages most property owners to settle their claims before incurring the legal expenses of a condemnation hearing or trial.

G. The best legal advice for most owners of platted lots and small tracts of land is to negotiate the financial and legal terms of the pipeline company’s offer, even after a condemnation proceeding is filed and before the hearing before the condemnation commissioners, but to eventually settle the matter before the hearing is held.

V. TRENDS AND RECENT DEVELOPMENTS

A. Leasing. The recent halt in leasing in mid-October and subsequent lower bonus offers from the gas companies are still being evaluated by the neighborhoods and other property owners. Most owners seem inclined to wait a few months to see if the lease offers improve, but some owners are ready to
move forward now with their lease. In my opinion, it will take several more months to fully evaluate the impact of the new leasing dynamics. I think that neighborhoods that were already mostly leased up when the “crash” hit will be able to finish up their leasing on good terms since the gas company will want to sign leases with those remaining lots in order to drill a well in that area. But the best terms for those remaining lots may not be seen until nearer the end of the primary term of the leases that have already been signed and paid for, but before a significant extension payment must be made on the expiring leases.

B. **Drilling.** The gas companies now have sufficient lease inventory to keep them busy drilling for many years, especially since the gas companies have announced plans to cut back on the number of drilling rigs they are using while the price of natural gas is low. The new focus of the gas companies will be on drilling and getting wells into production since that will generate cash flow.

C. **Pipelines.** Now that drilling has occurred and is rapidly expanding inside the urban areas, there must be pipelines to get the gas from the drill sites to the market. Pipelines will be constructed as needed and where needed, using the power of eminent domain when required.

D. **Revisions in Municipal Drilling Ordinance.** The City of Fort Worth has had a Gas Drilling Task Force meeting for several months to study many issues relating to gas drilling. The official majority report and a minority report were recently submitted and are currently being discussed by the City Council, with final action expected before the end of December. Changes appear likely on noise issues to refine the procedures for conducting ambient noise level tests and to require a noise management plan for wells near occupied areas; new pipeline requirements such as filing a route plan and notice to nearby residents of planned pipeline construction and issues; and other matters.

E. **Coastal Oil & Gas Corp. et al v. Garza Energy Trust, et al,** Slip Opinion No. 05-0466 (Tex., August 29, 2008). The long-awaited, significant oil and decision from the Texas Supreme Court was finally rendered August 29, 2008, with a ruling in favor of Coastal finding that the “rule of capture” precludes a landowner (Garza) from obtaining damages for a subsurface trespass from hydraulic fracturing operations on an adjoining property (leased by Coastal) that crack the shale and allows production of natural gas from below the surface of the complaining landowner.

This administrative ruling by the RRC grants an Application by a gas company (Finley Resources) to “force pool” 26 unleased tracts consisting of 5.704 acres into the gas company’s 96.32 acre Proposed Unit located about a mile east of downtown Fort Worth, pursuant to the Mineral Interest Pooling Act (“MIPA”) (Texas Natural Resources Code, Section 102.001 et seq.). Finley Resources claimed that it could not locate the owners of 25 tracts and 1 tract owner refused to sign a lease; that it would not be able to drill around the unleased lots even with a Rule 37 Exception Permit; and that the public policy of the MIPA supported the forced pooling in order to avoid the drilling of unnecessary wells, to protect correlative rights, and to prevent waste. The Application was uncontested by the unleased property owners affected. This is the first time that the RRC has granted an application for formation of a pooled unit against an owner that refuses to sign a lease (“forced pooling”). The ruling was on a split vote, with Commissioners Victor Carrillo and Elizabeth Ames Jones voting to approve the Application and Commissioner Michael Williams voting to deny the Application. One of the terms and conditions of the Final Order states:

The owners [of] all unleased tracts within the unit are pooled as owners of a 1/5th royalty and 4/5ths working interest, proportionately reduced. These owners share of expenses, subject to a zero risk penalty, are payable only from 4/5ths of production rather than from their entire mineral interests.

The 1/5th royalty interest was the highest royalty offered during lease negotiations before the Application was filed in June 2007. The Final Order states that the period for filing a motion for rehearing is extended until 90 days from the date the parties are notified of the order, which will be a deadline of about December 1, 2008.

This ruling gives gas companies much greater leverage in their lease negotiations with owners in the urban area.

Links to the Application by Finley Resources, the Amended Proposal for Decision, and the RRC’s Final Order can be found at http://www.rrc.state.tx.us/meetings/ogpfd/ogpomipa/mipaindx.php.

G. Possible State Licensing of Landmen. The American Association of Professional Landmen (AAPL), the 10,000 member voluntary national professional association for landmen, has been studying the possible licensing of landmen for the past year and is scheduled to vote at its Board of Directors meeting in December whether to support the introduction of a bill into the Texas Legislature to require state licensing of landmen.

H. “Dish” Resolution Regarding Greater Municipal Regulation of Pipelines. The small town of Dish, in Denton County, the crossing point for several gas pipelines, has passed a Resolution to request the Texas Legislature to grant
municipalities greater regulatory control over pipelines located in their boundaries. Several other municipalities have recently passed similar resolutions, so this is likely to become an issue in the legislative session that begins in January.

VI. CONCLUSION

Oil and gas leasing is expected to continue in urban areas in the Barnett Shale area of north Texas, the Haynesville Shale in east Texas and north Louisiana, and perhaps other areas of Texas for the foreseeable future. The three key points for leasing in the typical urban setting are (1) to work together, (2) try to get competing offers, and (3) BE PATIENT!

As the leases are formed into pooled units and actually drilled, the gas produced from the wells must be transported through pipelines from the drill site and to a market so it can be sold. The payment of royalties to mineral owners is dependent upon the sale of the gas, so the mineral owners that signed the leases have a financial incentive to cooperate with the gas companies in getting the necessary pipelines constructed. The pipeline companies usually want to avoid a condemnation proceeding as much as the property owners do, to avoid the bad public relations of such a proceeding. But if an agreement simply cannot be reached, then a condemnation proceeding will be initiated.

I hope that this paper, presentation, and accompanying sample documents will assist you and your clients effectively negotiate the terms of gas leases and pipeline easement documents.

VII. RESOURCES

Railroad Commission of Texas website: www.rrc.state.tx.us – maps and general information

City of Fort Worth website: www.fortworthgov.org – information including maps regarding drilling in the City of Fort Worth, the Drilling Ordinance, and reports regarding pending proposals to revise the Drilling Ordinance

Fort Worth League of Neighborhood Associations website: www.fwlna.org – good general information about gas leasing, drilling, and local issues of concern to neighborhoods, with helpful links to other websites

Barnett Shale Energy Education Council website (an industry sponsored educational group): www.bseeec.org


Barnett Shale Blog: www.star-telegram.com -- information about various cities, neighborhoods, companies, and topics, including helpful links to other websites including the neighborhood association websites where negotiated lease forms may be found
Powell Barnett Shale Newsletter:  www.barnettshalenews.com – news clippings, summaries, and analysis.  Subscription required after initial free trial period.  Includes information on shale areas such as Fayetteville Shale, Haynesville Shale, and Marcellus Shale

Texas A&M University’s Real Estate Center website:  http://recenter.tamu.edu/pubs/ -- includes publications on topics such as “Oil & Gas,” “Condemnation,” and “Easements”

Fort Worth Basin Oil & Gas, a monthly magazine devoted to Barnett Shale topics: www.fwbog.com

Gas company websites
APPENDIX A – SAMPLE ADDENDUM TO “STANDARD LEASE”

ADDENDUM
EXHIBIT “A”

Attached to and made a part of that certain PAID UP OIL AND GAS LEASE dated ______________, 2008, by and between ___[PROPERTY OWNER]__, as Lessor, and _[GAS COMPANY]_, as Lessee.

1. AGREEMENT SUPERSEDED
   The provisions of this Exhibit “A” supersede any provisions to the contrary contained in the lease to which this Exhibit is attached.

2. ADDITIONAL ACREAGE
   In addition to the described land, this lease also covers all of Lessor’s interest in all strips and gores, accretions, streets, easements, highways, rights-of-way and alleyways contained in the described land and adjacent thereto. The bonus paid for the primary term, the bonus paid for any agreed extension of the primary term, and the royalty shall be based on the area of the leased premises as calculated to the middle of the adjoining streets, alleys, easements, and rights-of-way, unless minerals in those adjoining areas are owned by a different party.

3. PRIMARY TERM
   Subject to the other provisions herein contained, this lease is for a term of three (3) years from this date and so long thereafter as oil or gas is produced from the land in paying quantities or this lease is continued in effect as otherwise provided in said lease.

   Lessee is hereby given an option, to be exercised prior to the date on which this lease would expire, to extend the term of this lease for one (1) additional period of two (2) years as to the land described and covered herein. To exercise said option and in order to extend this lease, Lessee must pay or tender to Lessor prior to the end of the initial primary term an additional bonus consideration of $________ per net mineral acre, and with the extension to otherwise be on other terms and conditions as granted for the primary term of this lease.

4. LEASE BONUS
   The cash consideration for Lessor’s signing of this lease is a sum equal to $________ for each acre of land covered by this lease, to be paid in cash, bank wire, or cashier’s check concurrently with the signing of this lease. Also, a notarized and executed copy of this lease will be provided to Lessor at the time this lease is executed.

5. OIL AND GAS ONLY FROM PRODUCING FORMATIONS
   Notwithstanding any other provision of this lease, this lease covers and includes oil and gas only (including with oil and gas, all constituent elements thereof and all other liquefiable hydrocarbons and products of every kind or character derived therefrom and produced therewith from the well bore, including sulphur) and that all minerals other than oil and gas are excepted from this lease and reserved by Lessor. Solid minerals, such as iron, coal, sand, gravel, clay, uranium and sulphur (apart from sulphur produced through the well bore) are excluded from this lease.
At the expiration of the primary term, this lease shall terminate as to all depths and formations lying below 100 feet below the stratigraphic equivalent of the deepest producing formation.

6. ROYALTY CLAUSE

It is agreed between the Lessor and Lessee that, notwithstanding any language herein to the contrary, all oil, gas or other proceeds accruing to the Lessor under this lease or by state law shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting or marketing the oil, gas and other products produced hereunder to transform the product into marketable form; however, any such transportation costs incurred on an unaffiliated regulated interstate or intrastate gas pipeline which result in enhancing the value of the marketable oil, gas or other products to receive a better price may be deducted from Lessor’s share of production so long as they are based on Lessee’s actual cost of such enhancements. In no event shall Lessor ever receive a price that is less than the price to be received by Lessee, or a price less than the price that could have been obtained from a sale in the local market.

7. SHUT-IN ROYALTY

The lease may not be maintained in force and effect after the end of its primary term (as it may be extended) solely by the payment of shut-in royalties for a longer period of time than two (2) years, or for shorter periods of time at various intervals not to exceed in the aggregate four (4) years in all.

8. POOLING

Notwithstanding the provisions of Paragraph 6 of this lease, if the leased premises are included in a pooled unit or units, then Lessee agrees to pool all lands (and not just part) of the lands covered by this lease.

9. NO USE OF SURFACE OR WATER

Notwithstanding any other provision of this lease, Lessee shall not enter upon nor use any of the leased premises for drilling on the surface or for any other surface or pipeline operations such as (but not limited to) storing any equipment, materials, or supplies related to drilling operations or pipelines, or for any staging, housing, or transportation of personnel. Any subsurface drilling or operations by Lessee shall in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the land covered herein. Lessee shall not use any water located on or beneath the surface of the leased premises for drilling, water injection, saltwater injection, secondary recovery, or other operations.

Lessee shall not transport gas of a third party or gas produced below the leased premises across the leased premises without a separate written right-of-way agreement.

10. LEGAL COMPLIANCE

Lessee shall conduct all operations under this lease in accordance with the rules and regulations of the Railroad Commission of Texas and the city in which the leased premises is located, and Lessee shall strictly observe and comply with all local, state and federal environmental laws and regulations dealing with its operations below or relating to the leased premises.

11. INDEMNITY

Lessee, at its sole cost and expense, agrees to defend, indemnify and hold Lessor and Lessor’s representatives, successors, and assigns, harmless from and against any and all liabilities, actions, claims, demands, causes of action, damages (including, but not limited to, remedial actions), fines, administrative and judicial proceedings, judgments, orders, enforceable actions, expenses and costs of any kind or character, including (but not limited to) reasonable attorney fees and costs, arising
out of or in any way connected with operations by Lessee or its assigns, or their agents, employees, contractors, or invitees, on the leased premises or on the land with which the leased premises are pooled or unitized.

12. **NO WARRANTY OF TITLE**
The lease is entered into by the parties without any warranty of title by, or recourse upon, Lessor whatsoever, not even for the return of the considerations paid for or under this lease. This lease shall be subject to all outstanding liens, restrictions, covenants, easements and other matters appearing of public record in Tarrant County, Texas. Lessee must satisfy itself as to title and acquire all necessary abstracts and other title information at its own expense.

13. **PRODUCTION INFORMATION**
Whenever Lessee files a report with the Railroad Commission of Texas or other governmental authority having jurisdiction, including, but not limited to, applications to drill, well tests, well logs, completion reports, plugging records, production reports and unit designations, Lessee shall, upon written request of Lessor, deliver a copy of said documents to Lessor.

14. **NOISE**
Noise levels associated with Lessee’s operations within one mile of the leased premises related to drilling, completion and reworking of wells shall be kept to a reasonable minimum, taking into consideration reasonably available equipment and technology in the oil and gas industry, the level and nature of the development and surface use elsewhere in the vicinity of Lessee’s drill sites and the fact that Lessee’s operations are being conducted in or near an urban residential area. If Lessee utilizes any non-electric-powered equipment in its operations, Lessee shall take reasonable steps to muffle the sound therefrom by installing a noise suppression muffler or like equipment. Lessee will require any gathering company with whom it contracts to gather gas produced from the leased premises to the same noise abatement standards set forth by this paragraph.

15. **BONA FIDE OFFER**
Paragraph 12 of this lease shall be removed and not applicable in said lease.

16. **SUBSURFACE EASEMENT**
The subsurface easement granted in Paragraph 14 of this lease shall not be perpetual but shall terminate upon termination of this lease.

17. **BINDING EFFECT**
This lease shall be binding on the parties hereto and their successors, assigns, heirs and legal representatives.

**LESSOR**

By (signature): ________________________________
Name (printed): _______________________________________

**LESSEE**

[Gas Company]

By (signature): ________________________________
Name (printed): _______________________________________
As: ___________________________ of [Gas Company]
ACKNOWLEDGMENTS

STATE OF TEXAS
COUNTY OF TARRANT

This instrument was acknowledged before me on the _______ day of ______________________, 2008, by _______________________________________.

________________________________
Notary Public of the State of Texas

STATE OF TEXAS
COUNTY OF TARRANT

This instrument was acknowledged before me on the _______ day of ______________________, 2008, by ___________________________________ as __________________________ of [GAS COMPANY], a ______________________________, on behalf of said ____________________________________.

________________________________
Notary Public of the State of Texas
APPENDIX B – SAMPLE LEASE FOR NEIGHBORHOOD ASSOCIATION

TX – PAID UP

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.

NO SURFACE USE
PAID UP OIL AND GAS LEASE
(Blackacre Estates)

THE LEASE AGREEMENT (this “Lease”) is made as of the ___ day of ____________, 2008, by and between __________________________ whose address is __________________________, as Lessor, and __________________________, a ______________, whose address is ______________, ______________, ______________, _____________ __________, as Lessee.

1. Leased Premises. In consideration of a cash bonus paid upon execution of this Lease, and the covenants herein contained, Lessor hereby grants, leases and lets exclusively to Lessee the following described land, hereinafter called the leased premises:

Lot ____, Block _____, __________________________ ADDITION, to the City of ____________,
in __________ County, Texas, containing __________ gross acres, more or less (including any interests therein which Lessor may hereafter acquire by reversion, prescription or otherwise), for the purpose of exploring for, developing, producing and marketing oil and gas. For purposes of this Lease, “oil and gas” means oil, gas and other liquid and gaseous hydrocarbons and their constituent elements produced through a well bore. “Oil” includes all condensate, distillate and other liquid and gaseous hydrocarbons produced through a well bore. “Gas” includes helium, carbon dioxide and other commercial gases, as well as hydrocarbon gases. Expressly excluded from this Lease are lignite, coal, sulfur and other like minerals. The leased premises shall include all strips and gores, streets, easements, highways and alleyways adjacent thereto. Lessor agrees to execute at Lessee’s request any additional or supplemental instruments reasonably necessary for a more complete or accurate description of the leased premises. For the purpose of determining the amount of any shut-in royalties hereunder, the number of gross acres specified above shall be deemed correct, whether actually more or less.

2. Term. This Lease is a “paid up” lease requiring no rentals. Subject to the other provisions contained herein, this Lease shall be for a term of thirty-six (36) months from the date hereof (the “primary term”), and for as long thereafter as oil or gas or other substances covered hereby are produced in commercial paying quantities from the leased premises or from lands pooled therewith, or this Lease is otherwise maintained in effect pursuant to the provisions hereof. By the end of the primary term, and subject to other provisions of this Lease, Lessee must commence actual drilling (as defined in Paragraph 5 below) on the leased premises or lands pooled therewith, and thereafter continue with diligence and in a good and workmanlike manner in a good faith effort to reach the anticipated total depth.

Lessee, for itself and its successors and assigns, hereby grants Lessee an option to extend the primary term of this Lease for one additional period of two (2) years from the end of the primary term by paying or tendering to Lessor prior to the end of the primary term bonus consideration of $20,000 per net mineral acre as calculated to the center of adjoining streets, alleys, and easements, and with the extension to otherwise be on other terms and conditions as granted for the primary term of this Lease.

3. Royalty. Royalties on oil, gas and other substances produced and saved hereunder shall be paid by Lessee to Lessor as follows: (a) for oil and other liquid hydrocarbons separated at Lessee’s separator facilities, the royalty shall be twenty-five percent (25%) of such production, to be delivered at Lessee’s option to Lessor at the wellhead or to Lessor’s credit at the oil purchaser’s transportation facilities, provided that Lessee shall have the continuing right to purchase such production at the wellhead market price then prevailing in the same field (or if there is no such price then prevailing in the
same field, then in the nearest field in which there is such a prevailing price) for production of similar grade and gravity; and (b) for gas (including casinghead gas) and all other substances covered hereby, the royalty shall be twenty-five percent (25%) of the proceeds realized by Lessee from the sale thereof, computed at the point of sale, less a proportionate part of production, severance or other excise taxes, provided that Lessee shall have the continuing right to purchase such production at the prevailing wellhead market price paid for production of similar quality in the same field (or if there is no such price then prevailing in the same field, then in the nearest field in which there is such a prevailing price) pursuant to comparable purchase contracts entered into on the same or nearest preceding date as the date on which Lessee commences its purchases hereunder. If at the end of the primary term or any time thereafter one or more wells on the leased premises or lands pooled therewith are capable of producing oil or gas or other substances covered hereby in paying quantities, but such well or wells are either shut-in or production therefrom is not being sold by Lessee, such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this Lease. A well that has been drilled but not fraced within eighteen (18) months following the completion of drilling shall be deemed incapable of producing in paying quantities. If for a period of ninety (90) consecutive days such well or wells are shut-in or production therefrom is not being sold by Lessee, then Lessee shall pay shut-in royalty of twenty five dollars ($25.00) per acre then covered by this Lease on or before the end of said 90-day period and thereafter on or before each anniversary of the end of said 90-day period while the well or wells are shut-in or production therefrom is not being sold by Lessee; provided, however, that if this Lease is otherwise being maintained by operations, or if production is being sold by Lessee from another well or wells on the leased premises or lands pooled therewith, no shut-in royalty shall be due until the end of the 90-day period next following cessation of such operations or production. This Lease may not be maintained in force and effect after the end of its primary term solely by the payment of shut-in royalties for a longer period of time than one (1) year, or for shorter periods of time at various intervals not to exceed in the aggregate three (3) years in all.

It is agreed between the Lessor and Lessee that, notwithstanding any language herein to the contrary, all oil, gas or other proceeds accruing to the credit of lessor under this Lease or by state law shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, or marketing the oil, gas and other products to be produced under the Lease; however, in the event Lessee determines in good faith that it can obtain a higher price at a market located outside of the local market, and Lessee incurs transportation costs charged by an unaffiliated interstate or intrastate gas pipeline in order to enhance the value of the oil, gas or other products, Lessor’s pro rata share of such costs may be deducted from Lessor’s share of production. In no event shall Lessee ever receive a price that is less than the price to be received by Lessee, or a price less than the price that could have been obtained from a sale in the local market. Lessee agrees to provide and make available to Lessor upon written request Lessee’s records maintained or utilized in connection with any efforts to enhance the value of the oil, gas or other products to be produced pursuant to and in connection with this Lease together with any costs paid or proceeds received by Lessee hereunder.

4. Payments. All shut-in or other royalty payments under this Lease shall be paid or tendered to Lessor at the above address, or at such address or to Lessee’s credit at such depository institution as Lessor may provide written notice of from time to time. All payments or tenders may be made in currency or by check. Lessee shall pay all royalties on or before within 60 days succeeding the month of production; provided however, royalties on the first month’s production from any well shall not be due and payable until one hundred twenty (120) days from the date of first production. If Lessee shall fail to pay royalties as and when required, Lessee shall pay Lessor interest at the rate if one and a half percent (1.5%) per month (but in no event at a rate greater than the highest rate allowed by law) on the unpaid royalties from the date such royalties were due to be paid until such royalties are actually paid in full. Initial bonus monies shall be paid to Lessor by currency or check by Lessee upon Lessee’s receipt of Lessor’s executed lease.

5. Continuous Development Obligations. If Lessee drills a well which is incapable of producing in paying quantities (a “dry hole”) on the leased premises or lands pooled therewith, or if all production (whether or not in paying quantities) permanently ceases from any cause, including a revision of unit boundaries pursuant to the provisions of Section 6 or the action of any governmental authority, then in the event this Lease is not otherwise being maintained in force it shall nevertheless remain in force if Lessee commences operations for reworking an existing well or for drilling an additional well or for otherwise obtaining or restoring production on the leased premises or lands pooled therewith within ninety (90) days after completion of operations on such dry hole or within ninety (90) days after such cessation of all production. If at the end of the primary term, or at any time thereafter, this Lease is not otherwise being maintained in force but Lessee is then engaged in drilling, reworking or any other operations reasonably calculated to obtain or restore production therefrom, this Lease shall remain in force so long as any one or more of such operations are prosecuted with
no cessation of more than ninety (90) consecutive days, and if any such operations result in the production of oil or gas or other substances covered hereby, as long thereafter as there is production in paying quantities from the leased premises or lands pooled therewith. After completion of a well capable of producing in paying quantities hereunder, Lessee shall drill such additional wells on the leased premises or lands pooled therewith as a reasonably prudent operator would drill under the same or similar circumstances (a) to develop the leased premises as to formations then capable of producing in paying quantities on the leased premises or lands pooled therewith, or (b) to protect the leased premises from uncompensated drainage by any well or wells located on other lands not pooled therewith. If this Lease is maintained beyond the expiration of the primary term by production or otherwise, it will remain in force as to all acreage and depths as long as there is no lapse of more than 180 days between the completion of one well and the commencement of the actual drilling of another well. The commencement of actual drilling means the penetration of the surface with a drilling rig capable of drilling to the anticipated total depth of the well. After a well is commenced, drilling operations must continue with diligence and in a good and workmanlike manner in a good faith effort to reach the anticipated total depth. A well will be deemed to have been completed on the date of the release of the completion rig from the drillsite. The permitted time between wells shall be cumulative so that if a well is commenced prior to the date it is required to be commenced, the number of days prior to the date on which the well should have been commenced shall be added to the time permitted for the next well. There shall be no covenant to drill exploratory wells or any additional wells except as expressly provided herein.

6. **Pooling.** Lessee shall have the right but not the obligation to pool all or any part of the leased premises or interests therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of production, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands or interests; provided, however, that the entire leased premises covered by this Lease shall be included in any unit created pursuant to the pooling authority granted herein. The unit formed by such pooling for an oil well which is not a horizontal completion shall not exceed eighty (80) acres plus a maximum acreage tolerance of ten percent (10%), and for a gas well or a horizontal completion shall not exceed three hundred and twenty (320) acres plus a maximum acreage tolerance of ten percent (10%); provided that a larger unit may be formed for an oil well or gas well or horizontal completion to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purpose of the foregoing, the terms “oil well” and “gas well” shall have the meanings prescribed by applicable law or the appropriate governmental authority, or, if no definition is so prescribed, “oil well” means a well with an initial gas-oil ratio of less than 100,000 cubic feet per barrel and “gas well” means a well with an initial gas-oil ratio of 100,000 cubic feet or more per barrel, based on 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment; and “horizontal completion” means a well in which the horizontal component of the gross completion interval in the reservoir exceeds the vertical component thereof. In exercising its pooling rights hereunder, within ninety (90) days of first production, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling which may be retroactive to first production. In the event Lessor’s acreage is included in a well, all of Lessor’s acreage shall be included. Production, drilling or reworking operations anywhere on a unit which includes the leased premises shall be treated as if it were production, drilling or reworking operations on the leased premises, except that the production on which Lessor’s royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this Lease and included in the unit bears to the total gross acreage in the unit. Pooling in one or more instances shall not exhaust Lessee’s pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. In making such a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. If the leased premises are included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. In the absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lessee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.

Lessee shall include all properties within the Blackacre Estates neighborhood area (as defined below) that have signed leases with Lessee within a unit formed by Lessee by the end of the primary term and as it may be extended pursuant to the option granted in Paragraph 2 of this Lease, whether or not an actual well bore is located beneath that
particular property. If Lessee is unable to include all the properties in a unit, then (i) the properties left out of a unit must not have a combined area less than 160 acres and must have a regular shape (such as rectangle, square, or trapezoid, as reasonably practical), and (ii) Lessee shall not form its units (such as by having strips less than 1000 feet wide adjacent to the area left out of its unit) so as to prevent the area left out of a Lessee’s unit from being developed as a separate unit by a different lessee with a drill site in or near that area. This provision may be enforced by the Lessor of this Lease only if Lessor is left out of a unit formed by Lessee. For purposes of this Paragraph and Lease, the “Blackacre Estates neighborhood area” means the residential properties within the area bounded by Blackacre Boulevard on the north, Sunnyside Street on the west, Hyatt Hill Country Drive on the south, and Lonesome Dove Avenue on the east.

7. **Partial Interests.** If Lessor owns less than the full mineral estate in all or any part of the leased premises, the royalties and shut-in royalties payable hereunder for any well on any part of the leased premises or lands pooled therewith shall be reduced to the proportion that Lessor’s interest in such part of the leased premises bears to the full mineral estate in such part of the leased premises.

8. **Assignment Clause.** Prior to any assignment of this lease or any rights thereunder Lessee agrees to notify Lessor of the name and address of the proposed assignee(s) and to obtain Lessor’s prior written consent, which consent shall not be unreasonably withheld or delayed, provided that assignments of working interests to officers, directors and subsidiaries of [Gas Company] may be made without such consent so long as the aggregate working interest in this lease conveyed by all such assignments does not exceed a ten percent (10%) working interest. Every such assignment or sublease which shall be made without the written consent of Lessor first had and obtained shall be void, and although made with the written consent of Lessor, any such assignment or sublease shall, nevertheless, be void unless it also contains a limitation in favor of Lessor requiring that the written consent of Lessor must be obtained prior to any further assignment or subletting of the rights of Lessee hereunder.

9. **Vertical Pugh Clause.** After the expiration of the primary term, this lease shall terminate as to all lands 100’ feet below the base of the stratigraphic equivalent of the deepest depth drilled.

10. **Waiver of Surface Use.** Notwithstanding anything to the contrary in this Lease, Lessee shall not enter upon the surface of, cross over, place any structure or building upon or conduct any operations (including but not limited to geophysical/seismic operations) on the leased premises. Lessee shall only develop the leased premises by pooling, as provided herein, or by directional or horizontal drilling commenced from a surface location on other lands. Lessee shall make all reasonable efforts not to use residential or neighborhood streets or thoroughfares in developing the leased premises, any lands pooled therewith or otherwise. Lessee will make reasonable efforts to screen any drill sites being used to develop the leased premises or any property pooled therewith from public view during drilling operations and after drilling operations have been completed.

Lessee shall have the right to conduct geophysical/seismic operations, but only by utilizing the vibroseis method, and Lessee shall pay for all actual damages incurred to the leased premises that directly result from such geophysical/seismic operations.

11. **Water.** Lessee shall not have or acquire any rights in and to the water from the leased premises. No surface water or underground fresh water from the leased premises will be used for any reason, including water flood or pressure maintenance purposes. Lessee shall comply with all applicable rules in disposition of salt water, brine, or other fluids utilized in or resulting from operations, and shall not cause or permit any such substances to damage or pollute the surface of the leased premises or any fresh water sands lying thereunder. The leased premises shall not be used for salt water disposal.

12. **Noise.** Noise levels associated with Lessee’s operations related to the drilling, completion and reworking of wells shall be kept to a reasonable minimum, taking into consideration reasonably available equipment and technology in the oil and gas industry, the level and nature of development and surface use elsewhere in the vicinity of Lessee’s drill sites and the fact Lessee’s operations are being conducted in or near an urban residential area. If Lessee utilizes any non-electric-powered equipment in its operations, including but not limited to compression equipment, Lessee shall take reasonable steps to muffle the sound therefrom by installing a noise suppression muffler or like equipment.
13. Regulatory Requirements and Force Majeure. Lessee’s obligations under this Lease, whether express or implied, shall be subject to all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction, including environmental regulations, setback requirements, restrictions on the drilling and production of wells, and the price of oil, gas and other substances covered hereby. To the extent any such laws, rules, regulations or orders are less restrictive than the terms of this Lease, this Lease shall control. When drilling, reworking, production or other operations are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee’s control, this Lease shall not terminate because of such prevention or delay, and at Lessee’s option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any express or implied covenants of this Lease when drilling, production or other operations are so prevented, delayed or interrupted.

14. Indemnity. LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR, AND LESSOR’S REPRESENTATIVES, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, LOSSES AND DEMANDS FOR DAMAGE TO PROPERTY, PERSONAL INJURY OR DEATH, AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES, EXPERT FEES AND COURT COSTS, ARISING DIRECTLY OR INDIRECTLY FROM ACTIONS, INACTIONS OR OCCUPANCY OF THE LEASE PREMISES OR LANDS POOLED THEREWITH OF AND BY LESSEE OR ITS ASSIGNS OR THE AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES OF EITHER OF THEM.

15. Notices. All notices required or contemplated by this Lease shall be directed to the party being notified at the address identified above, unless notice of another address has been provided in writing. All such notices shall be made by registered or certified mail, return receipt requested, unless another means of delivery is expressly stated.

16. No Warranty of Title. Lessor makes no warranty of any kind with respect to title to the surface or mineral estate in the leased premises or any portion of or interest therein. All warranties that might arise by common law or by statute, including but not limited to Section 5.023 of the Texas Property Code (or its successor), are excluded. By acceptance of this Lease, Lessee acknowledges that it has been given full opportunity to investigate and has conducted sufficient investigation to satisfy itself as to the title to the leased premises. Lessee assumes all risk of title failures. Lessee shall not require a “subordination” or other mortgage company approval or agreement before paying royalties to Lessor from a well, if the Land is not used as a drill site location and/or located directly above the actual wellbore.

17. Top Leasing Permitted. There shall be no prohibition or limitation on top leasing.

18. Venue and Legal Fees. Venue for any dispute arising under this Lease shall lie in __________ County, Texas, where all obligations under this Lease are performable.

19. Communications. Upon Lessor’s written request, Lessee will allow free access to books, records and drilling data (except for Lessee’s proprietary seismic data) accumulated pursuant to operations conducted on the leased premises for up to two (2) years prior to such a request provided it has the authority to do so. Such request shall be limited to one request per year during the Lessee’s normal business hours, provided that, if the response by Lessee contains information that reasonably leads to a request by Lessor for additional follow-up information, then Lessee will allow free access to such additional information. All information provided by Lessee or obtained by Lessor according to this paragraph that Lessee identifies or designates as proprietary and confidential shall be deemed proprietary and confidential during the primary term of this lease and for as long as oil and gas is produced therefrom, and for a period of one (1) year thereafter, all such information shall remain strictly confidential and Lessor shall not disclose such information to any third party (other than to financial advisors, accountants, and counsel of Lessor, or as required to comply with any legal requirement for production of such information) without the prior written consent of Lessee; provided, however, the foregoing obligations of Lessor shall not apply to such portions of such information which (i) are currently possessed by or available to Lessor, (ii) are or become generally available to the public other than as a result of a disclosure by Lessor, (iii) come into the possession of Lessor from a source which is not prohibited from disclosing such information to Lessor by a legal, contractual, or fiduciary obligation to Lessee, or any other person, or (iv) is required to be disclosed in order to enforce the terms of this lease or Lessee’s obligations hereunder.
20. **Division Orders; Amendments.** It is agreed that neither this Lease nor any of its terms or provisions shall be altered, amended, extended or ratified by any division order or transfer order executed by Lessor or Lessor’s successors, agents or assigns. If Lessee requires the execution of a division order for payment of royalty under this Lease, then it shall follow and be in compliance with Section 91.402(d) of the Texas Natural Resources Code, as amended from time to time. Any amendment, alteration, extension or ratification of this Lease, or any term or provision of this Lease, shall be made only by an instrument clearly denoting its purpose and effect, describing the specific terms or provisions affected and the proposed change or modification hereof, and executed by the party against whom any such amendment, alteration, extension or ratification is sought to be enforced. Any purported amendment, alteration, extension or ratification not so drafted shall be of no force or effect.

21. **Waiver of Claims and Neighborhood Association and Committee Members.** Lessor acknowledges that the terms of this Lease, the amount of the royalty and bonus paid hereunder, and all other terms negotiated with Lessee (herein the “Negotiated Terms”) with respect to this Lease, were obtained as a result of negotiations between Lessee and the Blackacre Estates Neighborhood Association Negotiating Committee consisting of a committee of unpaid volunteers including [insert names], and (hereafter called the “Committee Members”). In consideration of the efforts spent by the Committee Members in negotiating and obtaining the Negotiated Terms on behalf of Lessor and other property owners, Lessor, on behalf of the Lessor and the Lessor’s agents, spouses, co-owners, predecessors, parents, subsidiaries, affiliated corporations or other affiliated entities, successors, partners, principals, assigns, attorneys, servants, employees, heirs, consultants, and other representatives, does hereby release and forever discharge the Committee Members and the Blackacre Estates Neighborhood Association from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorney’s fees, and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, past present, or future, which Lessor has, has had, or claims to have against the Committee Members and the Blackacre Estates Neighborhood Association which relate to, arise from, or are in any manner connected to (i) the Negotiated Terms, (ii) the negotiation of the Negotiated Terms, (iii) the inclusion and/or omission of any terms within the Negotiated Terms, or (iv) any and all representations made prior, during, and subsequent to Lessor’s execution of this Lease.

22. **Decision of Lessor.** By signing this Lease, Lessor acknowledges and stipulates that Lessor was not obligated to sign this Lease based on the terms negotiated by the Blackacre Estates Neighborhood Association Negotiating Committee with Lessee and that Lessor had the right to negotiate its own terms and with any company prior to signing this Lease. Additionally, Lessor acknowledges that it is Lessor’s obligation to investigate this Lease, all negotiated terms, to take such action as necessary to make an informed decision prior to signing this Lease, and that the decision made by Lessor in signing this Lease is made after fully researching this matter independent of any other information provided by the Blackacre Estates Neighborhood Association Negotiating Committee or its Committee Members. It is ultimately the responsibility of Lessor to (i) determine if Lessor wants to negotiate with Lessee, (ii) fully investigate the issues and facts related to signing an oil and gas lease, and (iii) determine what terms are acceptable to Lessor to be included in this Lease.

23. **Miscellaneous.** This Lease is entered into in the State of Texas and shall be construed, interpreted and enforced in accordance with the laws of the State of Texas without reference to choice-of-law rules. Should any of the provisions herein be determined to be invalid by a court of competent jurisdiction, it is agreed that this shall not affect the enforceability of any other provision herein and that the parties shall attempt in good faith to renegotiate that provision so determined to be invalid to effectuate the purpose of and to conform to the law regarding such provision. The section titles appearing in this Lease are for convenience only and shall not by themselves determine the construction of this Lease. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Singular and plural terms, as well as terms stated in the masculine, feminine or neuter gender, shall be read to include the other(s) as the context requires to effectuate the full purposes of this Lease.
IN WITNESS WHEREOF, this Lease is executed to be effective as of the date first written above, but upon execution shall be binding on each signatory and the signatory’s heirs, devisees, executors, administrators, successors and assigns, whether or not this Lease has been executed by all parties hereinabove named as Lessor.

LESSOR:

Printed Name: _____________________________________

LESSOR:

Printed Name: _____________________________________

LESSEE: [GAS COMPANY]

By: _____________________________________________
Printed Name:  ____________________________________
Title:  ___________________________________________

STATE OF TEXAS §
COUNTY OF TARRANT §

This instrument was acknowledged before me by the person whose signature appears above as Lessor on the _____ day of __________________, 2008.

_________________________________________________
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TARRANT §

This instrument was acknowledged before me by the person whose signature appears above as Lessor on the _____ day of __________________, 2008.

_________________________________________________
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of __________________, 2008, by __________________________, the __________________________ of [GAS COMPANY], a _______________ on behalf of said __________________________

_________________________________________________
Notary Public, State of Texas
APPENDIX C – SAMPLE PIPELINE EASEMENT FORM

PIPELINE EASEMENT AND RIGHT OF WAY

STATE OF TEXAS §

COUNTY OF _____________ §

KNOW ALL MEN BY THESE PRESENTS:

This Pipeline Easement and Right of Way Agreement ("Agreement") is by and between ________________ whose address is ____________________________, with a home phone of ___________________ ("Grantor") and ____________________________________ whose address is __________________________________ ("Grantee").

RECITALS

A. Grantor is the owner of the surface of certain lands (the "Lands") in ________ County, Texas to wit:

[INSERT PROPERTY DESCRIPTION]

B. Grantee wishes to receive a pipeline easement and rights of way ("Pipeline Easement") and a temporary construction easement ("Construction Easement") (collectively "Easements") across the Lands as such Easements are more particularly depicted on Exhibit A attached hereto and made a part hereof for all purposes ("Easement Area").

C. Grantor wishes to grant the Easements to Grantee and Grantee wishes to accept the Easements and use the Easements, all pursuant to the terms of this Agreement.

GRANT OF EASEMENT AND AGREEMENT

Now therefore, for and in consideration of $10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Construction Easement. Grantor hereby grants, sells, and conveys to Grantee, its successors, and assigns, a Construction Easement as depicted on Exhibit A and having a width of fifty feet (50’), to lay and construct a single pipeline for the transportation of natural gas ("Pipeline"). This Construction Easement will expire at the earlier of the completion of installation of the Pipeline under the Lands or three (3) months from the date this Agreement is executed.

2. Grant of Pipeline Easement. Grantor hereby grants, sells, and conveys to Grantee, its successors, and assigns, a Pipeline Easement as depicted on Exhibit A, having a width of twenty feet (20’), to lay, construct, inspect, maintain, repair, operate, alter, replace, relocate, change the size of, and remove the single Pipeline. This Pipeline Easement will expire if it is ever abandoned as defined in Paragraph 24 below.
3. **Single Pipeline.** Grantee may install one (1) Pipeline in the Pipeline Easement for the purposes described in Paragraph 2. Grantee may install no other pipelines, either for the purposes described in Paragraph 2 or any other purpose, under this Agreement.

4. **Pipeline Depth.** Grantee will bury the Pipeline a minimum of forty-eight inches (48") underground with the forty-eight inches (48") being measured from the top of the Pipeline.

5. **Pipeline Width.** Grantee agrees its Pipeline will be no more than four inches (4") wide. Grantee has no right to install a Pipeline wider than four inches (4").

6. **Allowable Pressure in the Pipeline.** Grantee may only transport natural gas through the Pipeline at a maximum pressure of _____________.

7. **Surface Facilities.** Grantee will install no surface facilities on the Lands. Prohibited surface facilities include but are not limited to valves, risers, meters, communication wires, cables, conduits, anodes, and compressors.

8. **Initial Construction.** Grantee agrees to place sixteen feet (16') metal gates and to H-Brace with Kickers all cut fences. Such braces and kickers will be metal and of at least four inch (4") welded pipe. Posts will be set at least thirty inches (30") deep in concrete. During the construction of the Pipeline, Grantee will maintain the heavy truck access road and keep all gates, gaps, and fences closed at all times. Grantor will repair the road to its former condition or improve the road after construction and installation of the Pipeline. Grantee will build temporary crossings across all open trenches and ditches during construction and installation. Grantee will either burn and bury, chip, or remove any and all trees or undergrowth cut by Grantee within ten (10) days of such cutting. Grantee will haul off all rocks three inches (3") in diameter or larger and will clean up all debris off the Easements. Grantee will double ditch during construction by placing topsoil to one side and non-topsoil to the other side and replacing such soil the same way. Grantee will make every effort to avoid the cutting of trees and will not be permitted to cut any live oaks located on the Construction Easement without the approval of the Grantor, which approval will not be unreasonably withheld. Grantee warrants that it will complete initial construction no later than three (3) months from the date of this Agreement being the same time as the termination of the Temporary Construction Easement granted herein.

9. **Surface Restoration.** Grantee agrees to resprig the Easement Area annually with tifton Bermuda grass until the grass has permanently returned.

10. **Access to the Easement Area.** Unless an emergency, Grantee may only access the Easement Area Mondays through Fridays from 8 am to 6 pm. Grantee’s rights of ingress and egress to the Easement Area are exclusively limited to those depicted on Exhibit A attached hereto. Grantee has no right to access any of the Lands outside the Easement Area at any time. Should Grantee wish to access portion of the Lands outside the Easement Area, Grantee must obtain Grantor’s written permission and compensate Grantor for such access.
11. **Easement Area Maintenance.** Grantee is exclusively responsible for maintenance of the Easement Area including managing vegetation overgrowth. Grantor is not liable to Grantee should Grantee neglect this responsibility and the Easement Area becomes overgrown with vegetation.

12. **Covenants Running With The Land.** This Agreement, together with the other provisions of this grant of Easements, will constitute covenants running with the land, binding upon Grantor, its heirs, legal representatives, successors, and assigns, for the benefit of Grantee, its successors, and assigns.

13. **Surface Damage Payments.** After the original construction of the Pipeline, Grantee will pay to the owner of the Lands and, if leased, to his tenant, actual damages done to the Lands and any road, creek, railroad, cattle crossing, timber, fences, and growing crops by reason of entry to repair, maintain, and remove said Pipeline, or for any future construction within the Easements done by Grantee.

14. **Warning Signs.** Grantee agrees to place all required warning signs in places designated by the Grantor to the extent allowed by applicable laws and regulations.

15. **No Warranty of Title.** No warranty of title, either express or implied, is made by Grantor by the execution of this instrument whatsoever.

16. **Prohibited Activities.** Grantee may not hunt, fish, or bring firearms, alcoholic beverages, or illegal drugs on the Easements or utilize the property for any other purpose than those set out herein. Grantee agrees to conduct its activities in accordance with all applicable laws and to comply with any required rules of any regulatory agency with authority over the activities of Grantee.

17. **Future Easements Across the Easement Area.** Grantor reserves the exclusive right to grant all future easements across the Easement Area. Grantor can grant any and all future easements across the Easement Area that will not substantially prevent or interfere with the Grantee’s exercise of its rights hereunder.

18. **Future Easements In and Through the Easement Area.** Grantee has the exclusive right to grant all future easements in and through the Easement Area. Grantor can grant any and all future easements in and through the Easement Area that will not substantially prevent or interfere with the Grantee’s exercise of its rights hereunder.

19. **Entire Agreement.** This Agreement constitutes the entire understanding among the Grantor and Grantee, their respective partners, members, trustees, shareholders, officers, directors, and employees with respect to the subject matter hereof, superseding all negotiations, prior discussions, and prior agreements and understandings relating to such subject matter.

20. **Reservations by Grantor.** Grantor hereby reserves the right to use the Easements in any manner, including paving, building roads, planting seasonal landscaping, and building wooden fences that will not substantially prevent or interfere with the Grantee’s exercise of
its rights hereunder. Grantor reserves the right to move the Pipeline at its own expense.

21. **Indemnity.** Grantee will maintain and/or restore the Lands to as near as possible to its same condition after the original construction or in the event of any additional construction or upon the termination or abandonment of the easement and right of way granted herein and will indemnify and hold Grantor, its agents and employees, harmless from any claims for damage to property or injury to persons that may arise due to Grantee’s, its agents, contractors, subcontractors, and employees presence on the Lands or the use or operation of the Pipeline.

22. **Notice to Grantor.** Grantee will give to Grantor at least twenty-four (24) hours notice of Grantee’s intent to enter upon the land for regular maintenance or inspection of the Pipeline and prior to initial construction. Nothing will prevent Grantee from immediate access without notice to Grantor in the event of any emergency, leak, spill, or any circumstance requiring immediate action.

23. **Environmental.** Grantee agrees to reimburse Grantor for any and all damages Grantor or any tenant of Grantor may suffer as a result of any spill, leak, explosion, fire, or any other release of oil, gas, or any other substance being transported by or used by Grantee. Grantee agrees to be responsible for and to pay for any and all costs associated with any cleanup or decontamination of Grantor’s lands as a result of any spill, leak, explosion, fire, or any other release of oil, gas, or any other substance being transported by or used by Grantee. Grantee warrants it will conduct all operations in compliance with all local, state, and federal environmental laws and regulations.

24. **Abandonment.** Abandonment occurs when no natural gas or associated hydrocarbons flow through the Pipeline. Should Grantee abandon the rights herein for said Pipeline and such abandonment last for a continuous period of twenty-four (24) consecutive months, all Grantee’s rights herein will terminate and revert to Grantor, his heirs, legal representatives, and assigns. Grantee will have the right for five (5) years following any termination of the Pipeline Easement to remove its pipes and all other property. If the Grantee removes its Pipeline or other property, it will compensate Grantor for damages caused to the Lands during such removal. Following the expiration of such period any such property remaining on said Lands will be and become the property of Grantor.

25. **Permitted Substances.** Only natural gas may flow through the Pipeline. Grantee is prohibited from transporting sewage, crude oil, salt water, and all other substances except natural gas in the Pipeline.

26. **Time Limitations.** Grantee is liable for all potential damages owed to Grantor or any third party injured by Grantee’s operations on the Lands for up to three (3) years after the abandonment of the Pipeline.

27. **Apportionment of Consideration.** Grantor and Grantee mutually acknowledge that the initial consideration tendered by Grantee to Grantor is apportioned fifty-percent (50%) for the grant of the Easements and fifty-percent (50%) as compensation for the damage to the Lands now burdened by these Easements.
In witness whereof, Grantor and Grantee have executed this Agreement on the dates set forth in the acknowledgments below.

GRANTOR:

[INSERT GRANTOR’S NAME]

GRANTEE:

[PIPELINE COMPANY’S NAME]

By: _____________________________________
Name: _______________________
Title: _______________________

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF _____________ §

This instrument was acknowledged before me on the __ day of __________, 20__, by ____________________.

_______________________________________
Notary Public, State of Texas

STATE OF ____________ §
COUNTY OF __________ §

This instrument was acknowledged before me on the __ day of __________ 20__, by ________________, of __________________________, a ________________________, on behalf of said ________________________.

_______________________________________
Notary Public, State of Texas