

or in the ownership of, or right to receive, royalties or shut-in royalties, however accomplished shall operate to enlarge the obligations or diminish the rights of lessee; and no such change or division shall be binding upon lessee for any purpose until 30 days after lessee has been furnished by certified mail at lessee's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may, at its option, pay or tender any royalties or shut-in royalties in the name of the deceased or to his estate or to his heirs, executor or administrator until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. An assignment of this lease in whole or in part shall, to the extent of such assignment, relieve and discharge lessee of any obligations hereunder and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of royalty or shut-in royalty due from such lessee or assignee or fail to comply with any of the provisions of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall properly comply or make such payments.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and lessee shall not be liable for failure to comply therewith; and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder; and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby warrants and agrees to defend the title to said land and agrees that lessee at its option may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so it shall be subrogated to such lien with the right to enforce same and to apply royalties and shut-in royalties payable hereunder toward satisfying same. Without impairment of lessee's rights under the warranty, if this lease covers a less interest in the oil and gas in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not) then the royalties, shut-in royalty, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its or his successors, heirs and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs, successors, and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon lessee shall be relieved from all obligations, expressed or implied, of this agreement as to acreage so surrendered, and thereafter the shut-in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

#### ADDITIONAL PROVISIONS

12. Notwithstanding anything contained herein to the contrary, at the end of the primary term, this lease will terminate as to all said lands not then included in or allocated to a spacing or proration unit allocated to a producing well (which shall include shut-in wells) unless:

a) Lessee has drilled, deepened, reworked or recompleted a well on said lands above described or on lands pooled therewith and within one hundred eighty (180) days prior to the expiration of the primary term, completed said well as a producer of oil and/or gas, or plugged said well as a dry hole, or

b) At the expiration of the primary term, Lessee is engaged in drilling, deepening, reworking or recompletion operations on said lands or on lands pooled therewith;

and thereafter Lessee commences a continuous drilling program whereby operations for the drilling of a new well, or the deepening, reworking or recompletion of an existing well, are commenced within one hundred eighty (180) days after the later to occur of (i) the expiration of the primary term, or (ii) the completion or plugging of any well drilled, deepened, reworked or recompleted across or subsequent to the expiration of the primary term. For the purposes hereof, "completion" shall be the date of the filing of the potential test report with the appropriate governmental authority having jurisdiction, if a producer, or, if a well is plugged as a dry hole, the "plugging" shall be the date of filing the plugging report with the appropriate governmental authority having jurisdiction.

13. When Lessee ceases said continuous drilling program, this lease shall terminate as to all acreage not then included in a spacing or proration unit allocated to a producing well (which shall include shut-in wells) under special field rules promulgated by the appropriate governmental authority having jurisdiction, at the time of termination, or, in the absence of special field rules established in the field for which any given well is located, then each gas well (which shall include shut-in wells) shall be allocated 320 acres plus a tolerance of 10%, for a spacing or proration unit, and each oil well (which shall include shut-in wells) shall be allocated 80 acres plus a tolerance of 10%, for a spacing or proration unit. Each such spacing or proration unit shall be as nearly as practicable in the shape of a square or rectangle surrounding such well.

14. Notwithstanding such termination, Lessee shall have a continuing right of way and easement on, over and across all the land covered hereby for the construction, use, maintenance, replacement, or removal of pipelines, roads, telephone lines, electric lines, tank and other facilities for its operations hereunder on land remaining covered by this lease following such termination.

15. This oil and gas lease is subordinate to that certain "Prior Lease" dated August 25, 1997, effective December 7, 1997, recorded in Book 827, page 124, Lea County Records, as amended by instrument dated \_\_\_\_\_, 2000, recorded in Book \_\_\_\_\_, page \_\_\_\_\_, Lea County Records, but only to the extent that said Prior Lease is currently a valid and subsisting oil and gas lease. Notwithstanding any other provisions of this oil and gas lease next following expiration of the continuous development provision contained in added Paragraph No. 12 on Exhibit "A" attached to the Prior Lease, provided that in no event shall the primary term hereof expire later than the 20<sup>th</sup> anniversary date of this oil and gas lease. Execution of this oil and gas lease by Lessor shall never be construed as a ratification or revivor of the Prior Lease. Lessor specifically agrees not to enter into any agreement of any form that would extend or continue the primary term or the continuous development provision of the Prior Lease, or modify any of the existing provisions of the Prior Lease.

Executed the day and year first above written.

Erma Hamilton 459-80-8359  
Erma Hamilton 338

4-4-01