

# NOTICE OF CONFIDENTIALITY RIGHTS: A NATURAL PERSON MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION BEFORE IT IS FILED IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

XTO REV PROD 88 (7-69) PAID UP (01/31/12)

## OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 3rd day of May, 2012, between John C. Bogard, III, dealing in his sole and separate non-homestead property, Lessor (whether one or more), whose address is: 3420 Lake Court SW, Calgary, Alberta, Canada, T3E6K1, and XTO Energy Inc., whose address is: 810 Houston St., Fort Worth, Texas 76102, Lessee, WITNESSETH:

1. Lessor, in consideration of ten dollars and other valuable consideration, receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, employee houses and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Shelby, State of Texas, and is described as follows:

Being 80.24 acres of land, more or less, in the R. B. McCary Survey, Abstract No. 1097, Shelby County, Texas and being the same land more fully described in that certain Warranty Deed dated August 24, 1966 from Frances Bogard Garrett and husband, Zinn Garrett, to Calcasieu Paper Company, Inc., and recorded in Volume 442, Page 502 of the Deed Records of Shelby County, Texas.

### SEE EXHIBIT "A" ATTACHED HERETO FOR ADDITIONAL LEASE PROVISIONS.

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by limitation, prescription, possession, reversion, after-acquired title or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or payments hereunder other than royalties, said land shall be deemed to contain 80.24 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof for these purposes. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of Three (3) years from the date hereof, hereinafter called "primary term," and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal One-Fifth (1/5) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such One-Fifth (1/5) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear One-Fifth (1/5) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, One-Fifth (1/5) of the amount realized by Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of One-Fifth (1/5) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or value at the well or mine at Lessee's election, except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If larger units than any of those herein permitted, either at the time established, or after enlargement, are permitted or required under any governmental rule or order, any such unit may be established or enlarged not to exceed the size permitted by such governmental order or rule for units containing horizontal or vertical wells. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in such bank as directed by Lessor, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are permitted or required under any governmental rule or order, any such unit may be established or enlarged not to exceed the size permitted by such governmental order or rule for units containing horizontal or vertical wells. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Such unit shall become effective as of the date provided for in said instrument or instruments but if said instrument or instruments make no such provision, then such unit shall become effective on the date such instrument or instruments are so filed of record. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after operations or production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time there is no unitized minerals being produced from such unit. Any unit formed may be amended, re-formed, reduced or enlarged by Lessee at its election at any time and from time to time after the original forming thereof by filing an appropriate instrument of record in the public office in which the pooled acreage is located. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean operations for and/or any of the following: drilling, testing, completing, reworking, recompleting, deepening, sidetracking, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than from Lessor's water wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet to the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns. No change or division in the ownership of said land, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until sixty (60) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained and shall not be required to move or remove any existing surface facilities necessary or convenient for current operations.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

12. Lessor agrees that this lease covers and includes any and all of Lessor's rights in and to any existing well(s) and/or wellbore(s) on said land, other than existing water wells, and for all purposes of this lease the re-entry and use by Lessee of any existing well and/or wellbore shall be deemed the same as the drilling of a new well.

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

John C. Bogard, III  
dealing in his sole and separate non-homestead property

PROVINCE OF ALBERTA }  
} ss.  
COUNTRY OF CANADA }

This instrument was acknowledged before me on the 4th day of June, 2012 by John C. Bogard, III, dealing in his sole and separate non-homestead property.

My commission expires: n/a

Signature

Notary Public

Printed

THOMAS W. HARRISON  
BARRISTER AND SOLICITOR, NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF ALBERTA

Seal

CORNERSTONE LAW GROUP LLP  
420, 10655 Southport Road S.W.  
Calgary, Alberta T2W 4Y1

## EXHIBIT "A"

Attached to and made a part of for all purposes that certain Oil, Gas and Mineral Lease dated **May 3, 2012**, by and between **John C. Bogard, III, dealing in his sole and separate non-homestead property**, as Lessor, and **XTO Energy, Inc.**, as Lessee;

### ADDITIONAL PROVISIONS

The provisions of the hereinafter paragraphs shall supersede and govern the provisions in the printed form text of this lease and shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

13. Notwithstanding anything to the contrary contained herein, it is understood and agreed that this lease covers only oil and gas, which includes sulphur, dry gas, casinghead gas, distillate, condensate, and all other gaseous substances, but does not include any other minerals, of any kind or character, whether metallic, non-metallic or otherwise.

14. Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Lessor and Lessee herein that in calculation of Lessor's royalty, in no event shall the price of oil and gas utilized for calculation of Lessor's royalty be less than the price actually received by Lessee upon the sale of any product produced from the unit which includes all or any part of the leased premises. Lessor's royalty shall be subject to their proportional share of any ad valorem severance or other excise taxes assessed against Lessor in said oil and gas minerals. Lessee shall act as fiduciary of Lessor and in utmost good faith in the marketing and sale of said minerals. Royalties payable under this lease shall be made without deductions for the costs of producing, gathering, storing, separating, treating, dehydrating, compressing, transporting and otherwise making the oil and gas produced from the leased premises for sale or use. All royalty oil and gas shall be delivered free of cost into the tank or pipeline (for oil) and into the pipeline (for gas) with the exception of Lessor's pro rata share of all applicable taxes on such royalty production. The provisions outlined in this paragraph shall apply to and be consistent with any division orders issued to Lessor pursuant to this lease.

15. Notwithstanding anything to the contrary contained herein, this lease cannot be held, maintained, nor extended under and by virtue of the shut-in gas well provisions of this lease for a longer term than two (2) years beyond the primary term. The payment of the shut-in royalty as set forth in paragraph 3, or elsewhere in the lease, shall maintain this lease in effect only as to that portion of the lands covered by this lease that has been assigned to a pool or unit.

16. Notwithstanding anything to the contrary contained herein, the Lessee shall not have an option to extend the primary term by the payment of an additional per acre bonus or fee.

17. Notwithstanding anything to the contrary contained herein, drilling operations on or production from a pooled unit or units established under the provisions of this lease embracing land covered hereby and other land shall maintain this lease in force after the primary term only as to the land included in such pooled unit or units. As to any portion of the leased premises not included in a pooled unit or units, after expiration of the primary term this lease may be maintained only by production or by operations or other provisions herein which pertain to reworking operations, drilling operations, or any additional operations in force and effect in any manner elsewhere provided for in this lease at or after the expiration of the primary term.

18. One (1) year after the expiration of the primary term and any extension thereof which may occur in accordance with any provision contained in this lease, all rights of Lessee under this lease shall terminate as to all depths one hundred (100') below the stratigraphic equivalent of the base of the deepest formation produced during the primary term or extension thereof. Lessee will prepare, execute, and properly record the necessary instruments to indicate the depth earned and will furnish lessor with a copy within sixty (60) days.

19. Lessee hereby agrees to indemnify, protect, save, defend, and hold Lessor harmless against all claims, actions, causes of actions resulting from loss, damage, or injury to any person or persons or property caused by, connected with or resulting from Lessee's operations on the leased premises, or lands pooled therewith, or any activities by the Lessee's agents, servants, employees or invitees thereon.

20. Notwithstanding anything to the contrary contained herein, this lease carries with it no warranties of title from Lessor which includes the exclusion of all warranties that might arise by common law, as well as warranties arising under the Texas Property Code.


21. As used herein in connection with the drilling or reworking of a well or commencement of the same, the word "operations", means the actual drilling or reworking of a well by a complete drilling rig capable of drilling the depth specified in the application for a drilling permit from the Railroad Commission of Texas, and with the derrick, motors, and equipment erected, installed and in place on the ground and the drill bit rotating.

22. It is understood by and between the parties that this lease only covers and includes land owned or claimed by Lessor which is located in the R. B. McCary Survey, A-1097, Shelby County, Texas. Any and all land owned or claimed by Lessor which is not located in the R. B. McCary Survey, A-1097, Shelby County, Texas, whether contiguous or adjacent to or adjoining said land located in the R. B. McCary Survey, A-1097, Shelby County, Texas is expressly excluded from this lease.

# Texas Royalty Brokers

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

SIGNED FOR IDENTIFICATION:

  
\_\_\_\_\_  
John C. Bogard, II, dealing in his sole  
and separate non-homestead property

# Texas Royalty Brokers

# Texas Royalty Brokers

**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*Allison Harbison*

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June 08, 2012 01:31:52 PM

FEE: \$28.00

Allison Harbison, County Clerk  
Shelby County, Texas