

Prepared by
CHARLES A. MORGAN
MORGAN, COOK & BECK, LLP
3512 Texas Blvd.
Texarkana, Texas 75503
Telephone (903) 793-5651
e-mail = camorgan@mcblawfirm.com

BRINE LEASE

THIS AGREEMENT, entered into this 6th day of March, 2020, and to become effective as of 6th of March, 2020 between Polly Ann Foote, Trustee for the Polly Ann Foote Revocable Trust, dated June 22, 1998 herein called Lessor (whether one or more), whose address is 2845 S. Barnes, Springfield, MO 65804 and TWG Land Services llc, P. O. Box 2151 Midland, Texas 79702 (address), herein called Lessee.

WITNESSETH:

§1. Lessor, in consideration of Ten Dollars (\$10.00) cash in hand paid, and other valuable consideration, the receipt of which is hereby acknowledged, of the rental and of the royalty herein provided and of the agreements of lessee herein contained, hereby grants, leases, and lets exclusively to lessee for the purpose of investigating, exploring, prospecting, drilling for and producing brine (as defined in Article 2); conducting exploration, geologic and geophysical tests and surveys; producing and removing brine by drainage, extraction, forced subterranean movement, pumping or other means; injecting gas, water, brine and other fluids and air into subsurface strata; laying pipelines, establishing and utilizing facilities for the disposition of brine; building roads, bridges, tanks, telephone lines, power lines, power stations and other structures thereon and on, over, and across land owned or claimed by Lessor adjacent or contiguous thereto necessary or desirable to Lessee in operations to produce, save, store, take care of, measure, treat, transport and own said brine; for an appliances or structures, equipment easements, and privileges which may be necessary, useful, or convenient to or used in connection with any such operations conducted by Lessee thereon or on land pooled or unitized therewith or on any contiguous or adjacent land, the following described land in Columbia County, State of Arkansas; to-wit:

160.00 Acres, more or less, being the NE/4 of Section 11, Township 18 South, Range 21 West, being the same land described in that certain Quit Claim Deed dated October 15, 2008, from Polly Ann Foote, Daniel D. Foote, Patricia Swanson and Laurence Swanson, Joint Owners to The Polly Ann Foote Revocable Trust, dated June 22, 1998 and The Patricia Swanson Trust, recorded in Volume 364, Page 282 of the Deed Records of Columbia County, Arkansas.

This lease also covers and includes all land owned by Lessor adjacent, or contiguous to the land particularly described above. For the purpose of calculating rental and royalty payments hereunder, said land is estimated to contain 40.00 acres, whether it contains more or less.

§2. Lessor hereby acknowledges receipt of all rentals as cited in §4 of this lease for the first through the fourth anniversary dates, making this lease a five-year paid-up lease as to rentals for the first five years. Whether or not any reduction in rental and/or royalty payments shall have previously been made, this lease, without further evidence thereof, shall immediately attach to and affect any and all rights, title, and interests in the land and brine interest covered by this lease, including reversionary brine interest, hereafter acquired by or inuring to the Lessor and Lessor's successors and assigns. If any reduction in rentals or royalties shall have previously been made, such additional interest shall be considered in the computation of rentals or royalties starting with the rental or royalty payment date next ensuing more than forty-five (45) days after receipt by Lessee of written notice from lessor of the acquisition and extent of such additional interest and the manner of such acquisition.

§3. This lease, subject to the right of Lessee to cancel and surrender it insofar as it covers all or any part of the above mentioned land as hereinafter provided, shall remain in full force and effect for a term of FIVE years from the date hereinbefore first written and as long thereafter as any of the payments specified in §4 hereof continue to be made.

§4. As additional consideration for this lease, Lessee shall pay as rental to Lessor, on or before each anniversary date of this lease a sum to be ascertained by multiplying the number of acres set out in Article 1 above, as follows: (1) by One Dollar (\$1.00) for each of the first through the fourth anniversary dates hereof, (2) by Ten Dollars (\$10.00) for each of the fifth through the fourteenth anniversary dates hereof, and (3) by Twenty Five Dollars (\$25.00) for each of the remaining anniversary dates hereof, provided, however, that, if more than sixty days prior to any such anniversary date hereof Lessee has engaged in the production of brine for the purpose of extracting minerals therefrom or injection of brine from or into any well located on the land covered hereby or on acreage pooled therewith (or any part thereof) or within one-half mile of the land covered by this lease, which brine is not produced incidental to the production of oil, gas or distillate or in the testing of the capacity of a well to produce brine, then, instead of payments as rental, each Lessor shall be paid thereafter a sum either in lieu of royalty or as shut-in royalty, such sum, in case of payments in lieu of royalty, being ascertained by multiplying the number of acres set out above in §1 hereof by Thirty-Two Dollars (\$32.00) and such sum, in case of payments of shut-in royalty, being ascertained in accordance with the provisions of §6 hereof, and provided, further, that if Lessor owns less than the entire undivided interest in all of any portion of the land or mineral and royalty interest relating thereto (whether such interest is herein specified or not) then each payment to be made under this §4 may be reduced to the proportion which the interest, if any, herein covered by this lease bears to the entire undivided interest therein.

It is further agreed, that:

- (a) Lessee's right to make any annual payment as above set out shall terminate at the later in time of (i) the end of twenty-five years from the date of this lease or (ii) at the end of any annual period of this lease during which Lessee shall not have been in actual production or injection of brine either from or into land covered hereby or acreage pooled therewith (or some part thereof or production from or injection into a well situated within one-half mile of land covered by this lease); and such right by Lessee to make such annual payments will then continue only so long thereafter as such production or injection shall be continued or so long as shut-in royalty is paid pursuant to §6 hereof.
 - (b) If the mineral or royalty interest of any person named as Lessor under the land covered by this lease has heretofore been reduced by the conveyance of a nonparticipating mineral interest or nonparticipating royalty interest by him, or by his predecessor in title, each payment to be made under the provisions of this Article 3 to that particular person named as Lessor may be reduced proportionately.
 - (c) Each owner of such nonparticipating mineral interest, or nonparticipating royalty interest, executing this agreement, or a counterpart thereof, agrees to accept such payment in lieu of royalty on brine produced or removed from the land covered by this lease and in satisfaction of damages, if any, which he may sustain by drainage or removal of brine from the land covered by this lease.
 - (d) In lieu of making any payment to Lessor under the provisions of this §4, Lessee may pay or tender for deposit to the credit of Lessor at _____ the sum so payable, which shall, for all purposes of this lease, be considered to be a payment to Lessor. If at the time of such deposit any person hereinbefore named as Lessor is dead or is an incompetent such deposit in the name of the deceased or the incompetent shall, for all purposes, be binding upon the heirs, devisees, executor or administrator of the deceased or upon such incompetent or the guardian of the person or of the estate of the incompetent. Should the bank named, or any depository subsequently named by Lessor, fail or liquidate, or if it should for any reason fail or refuse to accept the check or draft of Lessee tendered in payment of any sum payable under the provisions of this §4, the attempted payment in the manner hereinbefore provided shall not thereby be rendered ineffective, nor shall Lessee be in default for failure to pay the sum involved until thirty days after such Lessor shall have furnished to Lessee a recordable instrument naming a new depository. The failure to pay any such sum so due shall not give Lessor the right to cancel this lease as to any land covered by this lease but shall only entitle the Lessor to recover from Lessee the sum so due.
 - (e) Lessee, or any assignee or sublessee, may at any time, and from time to time, execute and file for record in said county, a release of this lease insofar as it affects all or any part or parts of the land covered by this lease, and thereby be relieved, as to the land with respect to which this lease has been released, of any and all obligations of this lease not then accused. Without impairment of Lessee's right to release said land or any part thereof and be thereby relieved of any liability therefor, it is agreed that Lessee shall nevertheless be required to continue to make the annual payments in lieu of royalty or as shut-in royalty above set out for any and all acreage covered hereby and situated within one-half mile of any of Lessee's wells from which brine is being produced or into which brine is being injected so long as such production or injection by Lessee shall be continued. Upon the filling of any such release, each payment shall be reduced in the same proportion as Lessor's interest in the number of acres of land as to which this lease has been released bears to Lessor's interest in the total number of acres stated in the foregoing §1.
- §5. Lessee shall have the right to use, free of cost, fresh water produced from the leased premises, excepting water produced from a well of Lessor, for any of the operations of Lessee on the leased premises.
- §6. No royalty or payment, other than the payment provided in §4, shall be payable by Lessee to Lessor with respect to brine produced or removed from the leased premises or with respect to any product, products, or minerals extracted from such brine by Lessee, or with respect to brine produced from the leased premises, nor shall Lessee in any event be liable to Lessor for failure to protect the leased premises from drainage or removal of brine and its contents. The sums payable to Lessor under the provisions of the foregoing §4 are to be made by Lessee in lieu of any royalty with respect to brine produced or removed from the leased premises and any product or products extracted from the brine and in complete compensation for any drainage or removal of brine from the land hereinbefore mentioned. The parties hereto agree that the annual in lieu of royalty specified in §4 hereof shall be adjusted annually effective June 1, 1996, in the same manner as is provided by Act 1287 of the 1995 General Assembly of the State of Arkansas which amended Ark. Stat. Ann. § 15-76-315. Notwithstanding any other provision hereof relating to rental, royalty, or payments in lieu of royalty, if Lessee at any time or times suspends all production or injection of brine (including its component parts) from or into the land covered hereby or acreage pooled therewith (of any part thereof or from or into wells located within one-half mile of the land covered hereby, for any period of twelve consecutive months prior to sixty days prior to any anniversary date of this lease, then, provided Lessee pays to Lessor (in the manner specified above in §4) on or before such anniversary date as shut-in royalty a sum to be ascertained by multiplying the number of acres set out in §1 hereof by Ten Dollars, this lease shall continue and remain in full force and effect without the obligation by Lessee to make any other payment under the aforesaid §4 hereof, provided, however, that in no event may Lessee make such shut-in royalty payments continuously for a period in excess of three consecutive years.
- §7. Lessee shall have the right to drill, complete, recomplete, deepen, and operate a well or wells for the production of brine from any horizon under the land covered by this lease, or for the injection of brine

produced by Lessee from land covered by this lease or from any other land into any horizon which lies below the depth of **4,000 feet subsurface** under the land covered by this lease.

- §8. Lessee, at its option, is hereby given the right and power without any further approval from Lessor, at any time and from time to time, to pool or unitize the land or interests therein covered by this lease or any portion thereof with other land, lease, leases or interests therein in the vicinity thereof when in Lessee's judgment it is necessary or advisable to do so in order to properly explore or develop or operate said leased premises or to comply with the orders, rules and regulations of any Regulatory Body of the State of Arkansas or the United States having jurisdiction. The term "Regulatory Body" shall include any governmental officer, tribunal, or group (civil or military) issuing orders governing the drilling of wells or the production of minerals. Such pooling shall be of tracts which will form a reasonably compact (but not necessarily contiguous) body of land for each unit, and the unit or units so created shall not exceed substantially three thousand two hundred (3,200) acres for each well for brine exploration, production or injection, plus a tolerance often percent (10%) thereof in each instance, unless a larger spacing pattern or larger drilling or production units (including a field or pool unit) shall have been fixed and established by an order of a Regulatory Body of the State of Arkansas or of the United States, in which event the unit or units shall be the same as fixed by said order. Lessee shall execute and file for record in the appropriate Records of the County in which the land and/or mineral interest herein leased is situated a declaration describing the pooled acreage, and, upon such filing, the unit or units shall thereby become effective; except that when a unit is created by order of a Regulatory Body the pooling shall be effective as of the effective date of such order, and no declaration shall be required in connection therewith.
- §9. With regard to the payments in lieu of royalty as provided in §4 hereof, payments shall continue to be made upon an acreage basis and specifically not based upon the proportionate part of production from any pooled unit. Any unit formed by Lessee hereunder may be created either prior to or during or after the drilling of the well, which is then or thereafter becomes the unit well. Separate units may be created for separate stratum or strata of brine even though the areas thereof overlap; and the creation of a unit as to one strata or stratum shall not exhaust the right of Lessee (even as to the same well) to create different or additional units for other strata or stratum of the same or other minerals. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be land or mineral, royalty, and/or leasehold interests in land within the unit which are not pooled or unitized, or even though there may be a failure of the leasehold title (in whole or in part) to any tract or interest therein included in a pooled unit. Any unit created by Lessee hereunder may also be revised so as to conform with an order of a Regulatory Body issued after said unit was originally established; such revision shall be effective as of the effective date of such order. Also, any pooled unit designated by Lessee in accordance with the terms hereof may be dissolved by Lessee by instrument filed for record in the appropriate Records of the County in which the land or interests therein are situated at any time prior to the commencement of drilling or after the completion of a dry hole or the cessation of production on said unit. It is specifically understood and agreed that Lessor does hereby grant to Lessee the right and authority to consent to or otherwise comply with any order, rule or regulation of any Regulatory Body of the State of Arkansas or of the United States having jurisdiction with regard to the creation of any pool, unit or district for the production and injection of brine which shall be binding upon Lessor without Lessor's further consent, provided only that Lessee shall never decrease the amount of the annual payments herein specified to be paid in lieu of brine royalty which would otherwise have been required to have been paid in the absence of such pool, unit or district. Notwithstanding the limitation that a production unit for brine cannot exceed 3200 acres, Lessee, as the agent for Lessor, is granted the right to execute all necessary ratifications of any unit agreement and/or unit operating agreements as may be necessary to obtain the approval of the Arkansas Oil & Gas Commission for the creation of a field-wide unit without regard to the size of such field-wide unit.
- §10. Lessee shall have the right to construct, erect, maintain, replace and use on the land mentioned in the foregoing §1, all storage tanks, separators, pipelines, buildings, pumps, shafts, hoists, machinery, boilers, engines, electric lines, telephone and telegraph lines, roads, bridges, and other equipment reasonably necessary for conducting, on the land covered by this lease, operations hereunder of any nature whatsoever. Lessee shall have the right to remove all equipment, materials, and supplies placed upon the leased premises at any time while this lease is in effect as to the land on which such material, equipment and supplies are located, or within a period of two years after this lease has terminated for any reason with respect to the land on which such materials, equipment and supplies is or are located. Lessor grants to Lessee the right to lay, maintain, repair and replace, from time to time, upon the land covered by this lease, a pipeline or pipelines for the purpose of transporting brine and associated gas onto and across the land covered by this lease.
- §11. When requested by Lessor in writing, Lessee shall bury any pipe below plow depth. Lessee agrees to pay all damages to timber and growing crops on the leased premises caused by its operations. Lessee further agrees to pay to surface owner annually \$50.00 for each surface acre hereof which Lessee has used during the previous year in such manner that surface owner was thereby prevented from having the normal use thereof; provided, however, Lessee's failure to make payment of such surface rental shall not be cause for termination of Lessee's rights hereunder but shall entitle owner to recover from Lessee any such rental so due. Further, it is specifically agreed that if Lessee shall have constructed or placed roads, pipelines or power lines upon land covered by this lease and Lessee has ceased to make any of the payments required to be made in §4 or hereof, then Lessee may, nevertheless, execute a partial release of this lease as provided under the terms of §4 or §6 hereof which partial release shall retain to lessee the right to continue to hold for such surface use purposes only the land then being so used for such road, pipeline or power line purposes by continuing to make such above specified annual surface rental payments to Lessor which payments shall be continued only as long as said surface is so used by Lessee. Notwithstanding any other provision of this §11, Lessee shall not drill any well or construct any structure, other than a pipeline, within 200 feet of any dwelling house now upon land affected by this lease. Lessee recognizes that the lands covered by this Lease are owned by a third party

- ("Surface Owner"). Lessee agrees to obtain all consents required for surface access and surface use and to comply with all provisions within any surface use agreement held by the Surface Owner or any other party.
- §12. If the estate of either party hereto is assigned or sublet, and the privilege of assigning or subletting in whole or in part is expressly allowed, the covenants hereof shall extend to the sublessees, successors and assigns of the parties; and in the event of an assignment or subletting by Lessee, Lessee shall be relieved and discharged as to the leasehold rights so assigned or sublet from any liability to Lessor thereafter accruing under any of the covenants or conditions of this lease. No change in the ownership of the land or mineral interests covered by this lease or in the ownership of any royalty, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee or require separate measuring or installation of separate measuring tanks by Lessee. Notwithstanding any actual or constructive knowledge of or notice to Lessee, no change in the ownership of land, or of any mineral interest, covered by this lease, or of the right to receive any payment to be made under the foregoing §4, or of any interest therein, by reason of death, or conveyance, or in any other manner, shall be binding on Lessee until ninety days after Lessee has been furnished written notice thereof, together with the original or certified copies of all documents and affidavits necessary to establish the change in ownership involved.
- §13. Lessor hereby warrants and agrees to defend the title to the land covered by this lease, but if the interest of Lessor covered by this lease is expressly stated to be less than the entire fee simple mineral estate, Lessor's warranty shall be limited to the interest so stated. Lessee may purchase or lease the rights of any person claiming any interest in the land covered by this lease and exercise such rights as may be obtained thereby and Lessee shall not suffer any forfeiture nor incur any liability to Lessor by reason thereof. Lessee, shall have the right at any time to pay for Lessor, taxes or any indebtedness secured by a mortgage or other lien on said land, in the event of default of payment by Lessor, and be subrogated to the rights of the holder thereof. Any such payment made by Lessee for Lessor may be deducted from any amounts of money which may become due Lessor under this lease.
- §14. So long as each payment which Lessee is obligated to make in accordance with §4 or §6 hereof is made, Lessee shall not be obligated, whether or not there has previously been production from or injection into land covered hereby or on acreage pooled therewith (or any part thereof) or from or into any well located within one-half mile of the land covered hereby, either expressly or impliedly, to drill or operate on land covered by this lease any well for the production of brine or for the injection of brine into said land.
- §15. The term "brine" as used in this lease shall mean subterranean salt water and all other chemical substances produced with or extracted therefrom, except brine produced incidentally to the production of oil or gas, unless such brine is saved or sold for the purpose of extracting the chemical substances therein.
- §16. In the event the Lessor at any time considers that Lessee is not fulfilling its express or implied obligations (including the payment of royalties due hereunder), Lessor shall notify Lessee in writing of the facts relied upon as constituting a breach of said obligations; and Lessee shall have sixty (60) days after receipt of such notice in which to take such action as is then legally necessary to comply with the requirements hereof. The service of said notice and the lapse of sixty (60) days without Lessee meeting or commencing to meet the alleged breaches shall be a condition precedent to any action by Lessor for any cause hereunder. It is provided, however, that alter production of brine has been obtained from the land covered hereby or land in part, for failure to comply with the express or implied obligations of this contract, except after final judicial ascertainment of such failure and after Lessee has been given a period of sixty (60) days after such final judicial ascertainment to prevent such loss or forfeiture by complying with and discharging the obligations as to which Lessee has been judicially determined to be in default.
- §17. The requirements hereof shall be subject to any State and/or Federal law or order regulating operations on or under the land. It is further agreed that should Lessee be prevented from complying with any express or implied covenants of this lease, from conducting drilling or reworking operations thereon, or from producing brine therefrom by reason of scarcity or inability after effort made in good faith to obtain equipment or material or authority to use same, or by failure of carriers to transport or furnish facilities for transportation, or by operation of force majeure, any Federal or State law, or any order, rule or regulation of governmental authority, or by any other cause beyond Lessee's control, then while so prevented, Lessee's obligation to comply with such covenants shall be suspended; and Lessee shall not be liable for damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing brine from the leased premises; and the time while Lessee is so prevented shall not be counted against Lessee; provided, however that if such suspension occurs, Lessee shall pay or tender the appropriate annual sum in payment of rental or in lieu of royalty as provided in §4 or §6 thereof.
- §18. Lessee shall also have the right to produce, remove, and appropriate such oil, gas and other minerals as may be necessarily produced incidentally with the production of salt water (brine); provided, however, that **three-sixteenths** ($\frac{3}{16}$ ^{ths}) of the value of all such oil, gas, and other minerals produced, saved, and marketed by Lessee shall be paid as royalty thereon to those persons entitled thereto based upon the spacing pattern therefor as established by the Arkansas Oil and Gas Commission or alternatively upon the basis of the regular governmental quarter section upon which such well is located if no spacing pattern has otherwise has been established.
- §19. This lease and all provisions thereof shall be applicable to and binding upon the parties and their respective herein, successors and assigns. If any one or more of the persons named as Lessor does or do not execute this lease, it shall nevertheless be binding upon each of the persons executing it.

- §20. And for the consideration aforesaid, each of the undersigned persons does hereby join in this instrument for all purposes and does hereby release and relinquish unto the Lessee herein all of his and/or her rights of curtesy and/or dower and homestead in and to the above described property to the extent necessary to effectuate the purposes of this instrument.
- §21. In the event that Lessor, during the primary term of this lease, receives a bona fide offer which Lessor is willing to accept from any party offering to purchase from Lessor a lease covering any or all of the substances covered by this lease and covering all or a portion of the land described herein, with the lease becoming effective upon expiration of this lease, Lessor hereby agrees to notify Lessee in writing of said offer immediately, including in the notice the name and address of the offer or, the price offered and all other pertinent terms and conditions of the offer. Lessee, for a period of fifteen days after receipt of the notice, shall have the prior and preferred right and option to purchase the lease or part thereof or interest therein, covered by the offer at the price and according to the terms and conditions specified in the offer.

IN WITNESS WHEREOF, this instrument is executed as of the date hereinbefore first mentioned, which date shall be the basis for ascertaining the first and each succeeding anniversary date of the execution of this lease.

Polly Ann Foote, Trustee

ACKNOWLEDGEMENT

State of _____

County of _____

BE IT REMEMBERED, that on this day came and appeared in person before me, the undersigned, a Notary Public in and for the County and State aforesaid, duly commissioned and acting, _____, to me well known as the Lessor (whether one or more) whose name is subscribed to the foregoing instrument of writing, and stated that said Lessor had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS MY HAND AND SEAL AS SUCH Notary Public on this the _____ day of _____, 2020.

Notary Public

My Commission Expires:

Notary's Printed Name

AFTER RECORDING RETURN TO:

TWG Land Services llc
P.O. Box 2151
Midland, Texas 79702