Attached are selected pages from the proceedings of Amaroado Oil Company, LTD. v. Davis et al, 5:2012cv00627, a lawsuit filed earlier this year in the United States District Court for the Northern District of Ohio. These pages present an example of an informal “purchase and sale agreement” and the lawsuit that resulted when the seller (the defendant) was unable to transfer all of the deep rights that the purchaser (the plaintiff) believed it was purchasing.
Option Letter:
Defendant offers an option to the Plaintiff
June 15, 2011

Mr. Dean Davis
Green Gas Company
6630 E. Lincoln Way
Wooster, OH 44691
(330) 264-7995 – Office
(330) 465-5989 – Cell
(330) 264-9846 – Fax

RE: Forty-five day “Due Diligence” Option Offer (ie Option) covering the Leasehold Interest of Mr. Dean Davis et al (Approximately 10,000 Acres +/- located in Noble, Morgan, Muskingum and Guernsey Counties, OH)

Dear Mr. Davis:

Please accept this letter as our agreement to a forty-five day exclusive option to purchase your sub-Clinton HBP leasehold as follows:

- $50,000.00 non-refundable payable by check within 5 business days of Optionor’s acceptance.
- Said $50,000.00 payment is non-refundable but will apply to the first confirmed leasehold acres payment.
- 30 days after confirmation of leasehold acres capable of Horizontal Drilling, Optionee will pay Optionor $1000/Net Mineral Acre for each confirmed acre.
- Option covers all rights below the Clinton Formation
- Optionor will deliver 82.5% Net Revenue Interest (NRI)
- Optionee will deliver free of cost - copies of all tracts worked by Optionee with the completed research information on all Leasehold acres
- Optionee will cure all title defects and provide ratifications of all leases as required by Optionor to allow horizontal drilling. Reasonable costs for performing these tasks will be split between Optionor and Optionee.
- Subject to a mutually agreeable form of assignment without warranties of title (Optionee having done the title research) by Optionor
- Optionor will extend, renew or produce for a minimum of a 5 years term on all acreage confirmed and delivered to Optionee, to the extent reasonably possible. Should Optionor be unable to maintain any lease by extending, renewing or producing during the five year period, he would return the $1,000/NMA to Optionee.
- Optionor, subject to mutually agreeable language and terms, agrees to give Optionee preferential right or first right of refusal to purchase wells
- Option begins upon date of acceptance and execution as evidence by signature of Optionor
- Upon exercising this “Option to Purchase” and entering into an assignment of said Leasehold interest of Optionor, Optionee will purchase any confirmed leasehold acreage which has been confirmed to hold a clear title.

Please return via Fax to (866) 384-6790.

Amarado Oil Company, Ltd.
Powell Road, Suite 12
Powell, OH 43065

Bob Pickle, Agent

Dean Davis, individually and as agent 3982
for S & D, Green Gas Co, Noble Gas Co

Signed this date: 6-15-11

Composite
Exhibit
A
Plaintiff Exercises the Option
July 27, 2011

Mr. Dean Davis  
Green Gas Company  
6630 E. Lincoln Way  
Wooster, OH 44691  
(330) 264-7995 – Office  
(330) 465-5890 – Cell  
(330) 264-9846 – Fax

Subject: Offer to Purchase

Dear Mr. Davis:

The purpose of this letter is to exercise the purchase of leasehold as outlined in the attached Option to Purchase Agreement, dated June 15, 2011. Per the agreement, Amarado Oil Company, Ltd. ("Optionee") will purchase from you and/or your company(s) ("Optionor") all leasehold matching the conditions and requirements stated in said Agreement.

This letter effectuates the Optionee's Offer to Purchase, as of the above mentioned date, and is binding as to the conditions and requirements of the attached Agreement.

Please evidence your acceptance of this Offer to Purchase by signing below as Optionor, and returning in the envelope provided.

For further discussion or questions, please contact me at (979) 412-0231.

Sincerely,

Michael L. Wilson, Agent  
Amarado Oil Company, Ltd.

Attached:
Option to Purchase Agreement

I, Optionor, accept the Optionee’s offer as stated above.

Dean Davis, Individually and as Agent for  
Parties Modify the Purchase Terms
September 1, 2011

Dean Davis
Green Gas Company
6630 E. Lincoln Way
Wooster, Ohio 44691


Dear Mr. Davis:

This letter is to document the modifications relating to the agreements previously reached between the undersigned parties. The parties agree that the letter agreements dated June 15, 2011, granting an option to purchase certain leasehold interests in Noble, Morgan, Muskingum and Guernsey Counties, Ohio ("Leases") and the exercise of that option dated July 27, 2011 ("Previous Agreements") are hereby modified as follows:

1. Optionee shall commit up to Five Hundred Dollars ($500.00) with respect to each Lease to obtain consents, ratifications, and/or modifications of the Leases to satisfy title concerns of Optionee. Optionor shall not be obligated to share in the costs associated therewith.

2. Optionor shall cause Critchfield, Critchfield & Johnston, Ltd. ("CC&J") to provide reasonable assistance to Optionee in efforts to address Optionee's concerns regarding title issues. Reasonable assistance shall consist of record review, preparation of affidavits, attending conferences, and providing services to address title defect issues raised by Optionee relating to the Leases. Reasonable assistance shall not include any matters relating to litigation.

3. Optionor shall cause CC&J to submit to Optionee a status report on or before the end of business of the last business day of each month detailing the steps taken and status of each title defect issue raised and submitted to CC&J for action. Optionee, at its sole discretion may elect to: (i) permit CC&J to continue with curative measures, (ii) take action on its own to take title curative measures or (iii) notify Optionor that it will not purchase a particular Lease.

4. For each net acre conveyed to Optionee in addition to One Thousand Dollars ($1,000.00) per mineral acre to be paid to Optionor, Optionee shall pay to CC&J the sum of One Hundred Twenty-Five Dollars ($125.00) per net acre for CC&J's
assistance on behalf of Optionor in performing title curative work and other services related to the conveyance of the partial assignment of Leases from Optionor to Optionee.

5. Optionee shall provide to Optionor written notice accepting or rejecting each Lease on or before December 31, 2011 ("Final Determination Date"). As of the Final Determination Date if Optionor has not received the notice called for in this paragraph 5, any Lease not previously accepted or rejected by Optionee shall be deemed rejected and to any rejected Lease shall be free and clear of any obligations or claims of Optionee.

In all of their respects the Previous Agreements are ratified in their entirety.

Amarado Oil Company, Ltd.
Powell Road, Suite 12
Powell, Ohio 43605

Dean Davis, individually and as agent 3982 for S & D, Green Gas Co, Noble Gas Co.

Signed this date: 9/8/11

Michael Wilson, Agent

Signed this date: 9/8/11

Dean Davis
Lease Assignment Instrument
ASSIGNMENT OF OIL & GAS LEASE(S)

KNOW ALL MEN BY THESE PRESENTS THAT this Assignment is made and entered into as of December 16, 2011 ("the Effective Date") and that:

For One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned Dean Davis, a married individual, individually and as sole proprietor of Green Gas Company, Noble Oil Company, An Car Oil Company (also known as An Car Wells), S&D Producing and Davis Frac Tank & Supply, whose address is 6630 East Lincoln Way, Wooster, Ohio 44691, and Roger D. Proper, Jr., as Trustee of the Dean Davis Dynasty Trust u/a dated effective September 19, 2011, whose address is 225 North Market Street, Wooster, Ohio 44691, known herein as "Assignor(s)", hereby grant, convey, assign and transfer to Amarado Oil Company, Ltd., whose address is 3982 Powell Road, Suite 12, Powell, Ohio 43065, their successors, heirs and assigns, known herein as "Assignee" all of their right, title and interest in the lease(s) listed in the attached "Exhibit A", hereinafter referred to as the "Lease(s)".

The Conveyed Interest shall specifically exclude the following (the "Reserved Interests"):

1. **Reserved Depths**: Roger D. Proper, Jr., as Trustee of the Dean Davis Dynasty Trust u/a dated effective September 19, 2011, known herein as the "Dean Davis Dynasty Trust", reserves unto himself, his successors, heirs and assigns, all right, title and interest in the Lease(s) from the surface of the earth to the top of the Queenston Shale as encountered at a measured depth of 4,958' (KB) on the Schlumberger Litho Density/Comp. Neutron/Gamma Ray Log dated May 22, 2007, for the well that was formerly known as the Ohio Geological Survey CO2 1 Well and is now known as the Beldon Brick Unit 9 Well, API Permit No. 34-157-25334, located in Salem Township, Tuscarawas County, Ohio (the "Marker Well"). The Dean Davis Dynasty Trust retains all rights and all states not specifically herein assigned. The Dean Davis Dynasty Trust also retains all operating rights in the wells currently producing in and above the current producing formation on said Lease(s).

2. **Overriding Royalty Interests**: The Dean Davis Dynasty Trust reserves unto itself, its successors, heirs and assigns an Overriding Royalty Interest (the "ORRI") in and to the Lease(s). The ORRI with respect to each lease shall be equal to a net revenue interest:
   
a) Equal to the positive difference between
   i) 17.500%; and
   ii) The royalty rate provided for in each Lease, plus any other burdens on the net revenue interest in existence as of the date this instrument is executed
   
b) The ORRI shall be on all oil and gas production on which a royalty interest has been reserved by the landowner granted to the lease(s) and the ORRI will be computed on the same basis as the underlying lease. The payment of the ORRI shall be payable to Assignee on or about the 30th day after receipt of such funds by the Assignee.

This assignment is subject to that certain Due Diligence Option Offer Contract Letter Agreement dated June 15, 2011 and modified on both July 27, 2011 and September 2, 2011, by and between Dean Davis, individually, and as sole proprietor of Green Gas Company, Noble Gas Company, An Car Oil Company (also known as An Car Wells), S & D Producing and Davis Frac Tank & Supply and Amarado Oil Company, Ltd, known herein as the "Contract Letter Agreement". Assignor(s) agree to extend, renew or produce each oil or gas well holding the Lease(s) for a minimum of a five-year period from the date this
instrument is executed. Should Assignor(s) be unable to maintain any lease by extending, renewing, or producing during the five year period, Assignee shall receive such relief as specified in the Contract Letter Agreement.

Assignor(s), subject to a mutually agreeable language and terms, agrees to give Assignee preferential right or first right of refusal to purchase in part or in whole Assignor(s) right, title and interest not conveyed herein in the Lease(s), including operating rights in the wells producing on said Lease(s) in the event Assignor(s) decides to convey any interest in same.

Assignor(s) grant Assignee and their assigns, free of additional costs, the right to use and to access the same rights Assignor(s) hold or control (if any) with regard to the use and enjoyment of all transmission lines operated on subject lands, by Assignor(s) or a third party, as well as any separate easements and/or rights-of-way, including meter site agreements to these pipelines held privately by Assignor(s) or a third party on the subject lands. Assignor(s) further agree to execute any and all necessary documents required to provide Assignee with all rights herein specified. Assignor(s) agree that Assignee and their assigns may use said easements or rights-of-way for all operations necessary for the transmission of production, including but not limited to, the right to lay new pipeline.

Assignor(s), Dean Davis, a married individual, individually and as sole proprietor of Green Gas Company, An Car Oil Company (also known as An Car Wells), S & D Producing and Davis Frac Tank & Supply, and Roger D. Proper, Jr., as Trustee of the Dean Davis Dynasty Trust u/a dated effective September 19, 2011, hereby covenants unto Assignee, Amarado Oil Company, Ltd., that they are the lawful owner of said Lease(s) and that, they have good right and authority to sell and convey the same and that said Lease(s) are free and clear from all liens and encumbrances and that said Lease(s) are perpetuated by virtue of a producing well(s) thereon and that all rentals and royalties due and payable thereunder have been duly paid, and that the undersigned agrees to warrant and defend the same against the lawful claim and demands of all persons whomsoever, by, through and under Assignor, but not otherwise.

Assignor’s spouse, Martha Davis, does hereby remise, release and forever quit-claim unto Assignee (including Assignee’s successors and assigns) all her right and expectancy of dower in the Leases.

IN WITNESS WHEREOF, the undersigned owner and Assignor(s) have caused this Instrument to be executed on the date of the acknowledgement, but effective for all purposes as of the Effective Date.

Assignor(s):

[Signature]
Dean Davis, individually and as sole proprietor of Green Gas Company, An Car Oil Company (also known as An Car Wells), S & D Producing and Davis Frac Tank & Supply

[Signature]
Martha Davis, spouse of Assignor

[Signature]
Roger D. Proper, Jr., as Trustee for The Dean Davis Dynasty Trust u/a Dated effective September 19, 2011
Before me, the undersigned authority, personally appeared Dean Davis, a married individual, individually and as sole proprietor of Green Gas Company, Noble Oil Company, An Car Oil Company (also known as An Car Wells), S&D Producing and Davis Frac Tank & Supply who acknowledged that he executed the foregoing instrument and that the same is his free act and deed.

In Testimony Whereof, I have hereunto affixed my signature and official seal this 10th day of December, 2011 in Wooster, Ohio.

Dawn M. Stump
Notary Public, State of Ohio
My Commission Expires
February 26, 2013

State of Ohio
County of Wayne

Before me, the undersigned authority, personally appeared Martha Davis, spouse of Assignor, Dean Davis, who acknowledged that she executed the foregoing instrument and that the same is her free act and deed.

In Testimony Whereof, I have hereunto affixed my signature and official seal this 10th day of December, 2011 in Wooster, Ohio.

Dawn M. Stump
Notary Public, State of Ohio
My Commission Expires
February 26, 2013

State of Ohio
County of Wayne

Before me, the undersigned authority, personally appeared Roger D. Proper, Jr., as Trustee of the Dean Davis Dynasty Trust (a) dated effective September 19, 2011, who acknowledged that he executed the foregoing instrument and that the same is his free act and deed.

In Testimony Whereof, I have hereunto affixed my signature and official seal this 10th day of December, 2011 in Wooster, Ohio.

Dawn M. Stump
Notary Public, State of Ohio
My Commission Expires
February 26, 2013

State of Ohio
County of Wayne

Prepared By: Amadoro Oil Company, Ltd.
3982 Powell Road, Suite 12
Powell, Ohio 43065
Exhibit A

Oil and Gas Lease from Alta M. Gorrell to Liberty Petroleum Corporation, containing 130 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 71, Page 347 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Cecil Brownrigg and Junella Brownrigg, husband and wife, to Liberty Petroleum Corporation, containing 193 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 68, Page 206 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Charles G. Irwin and Ruth Irwin, husband and wife, to D.B. Schaffer & Associates, containing 160 acres, more or less, in Brookfield Township, Noble County, Ohio, and filed for record in Volume 86, Page 369 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Edith McNutt, a widow, to Liberty Petroleum Corporation, containing 102 acres, more or less, in Brookfield Township, Noble County, Ohio, and filed for record in Volume 68, Page 222 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Clayton Burrier and Elta Burrier, husband and wife, to Liberty Petroleum Corporation, containing 109 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 68, Page 256 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Wiley W. Stringer and Beasie M. Stringer, husband and wife, to L. G. Salladay, containing 157 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 69, Page 555 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Rufus B. Wiley, by Earl Wiley as legal guardian and Earl B. Wiley and Velma Wiley, husband and wife, and Doris A. Greiner and Fred K. Greiner, husband and wife, to Chief Petroleum Inc., containing 75 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 80, Page 211 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Charles G. Irwin and Ruth Irwin, husband and wife, to Liberty Petroleum Corporation, containing 160 acres, more or less, in Brookfield Township, Noble County, Ohio, and filed for record in Volume 86, Page 369 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Clayton Burrier and Elta Burrier, husband and wife, to Liberty Petroleum Corporation, containing 109 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 68, Page 256 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Wiley W. Stringer and Beasie M. Stringer, husband and wife, to L. G. Salladay, containing 157 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 69, Page 555 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from R.E. Salladay, husband and wife, and Marion Earnhart and Lamar Earnhart, husband and wife, to Liberty Petroleum Corporation, containing 316 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 70, Page 345 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from H.M. Reed, a widow, to Liberty Petroleum Company, containing 330 acres, more or less, in Brookfield Township, Noble County, Ohio, and filed for record in Volume 75, Page 939 of the Lease Records of Noble County, Ohio;

Oil and Gas Lease from Wiley D. Bigley and Roberta Bigley, husband and wife, to Mohawk Oil Corporation, containing 72 acres, more or less, in Sharon Township, Noble County, Ohio, and filed for record in Volume 69, Page 125 of the Lease Records of Noble County, Ohio;
Oil and Gas Lease from The B. C. Farms Company to Liberty Petroleum Corporation, containing 380 acres, more or less, in Brookfield Township, Noble County, Ohio, and filed for record in Volume 70, Page 263 of the Lease Records of Noble County, Ohio.
Caption Page of the Resulting Lawsuit: Identifying the Plaintiff and Defendants
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMARADO OIL COMPANY, LTD.
3001 Ranch Road 620 South,
Suite 323
Austin, TX 78738

Plaintiff,

-vs-

DEAN DAVIS, Individually and
Sole Proprietor of GREEN GAS
COMPANY, NOBLE GAS, AN CAR
OIL COMPANY, aka AN CAR
WELLS, S&D PRODUCING, DAVIS
FRAC TANK & SUPPLY
6630 E. Lincoln Way
Wooster, OH 44691

Defendant

And

ROGER PROPER JR., TRUSTEE OF
THE DEAN DAVIS DYNASTY
TRUST U/A DATED EFFECTIVE
SEPTEMBER 19, 2011
225 N. Market Street
P.O. Box 599
Wooster, OH 44691-0599

Defendant

And

DANIEL H. PLUMLY, ESQ.
225 N. Market Street
P.O. Box 599
Wooster, OH 44691-0599

Defendant

Case No.

Judge:

COMPLAINT: BREACH OF
CONTRACT, RECISSION, UNJUST
ENRICHMENT, LEGAL
MALPRACTICE

Jury Demand endorsed hereon
Count One by the Plaintiff:

Breach of Contract

Not included are additional claims by the plaintiff for partial and full rescission of the contract, unjust enrichment, estoppel, legal malpractice, and breach of fiduciary duty. The defendants also included a counterclaim in their answer.
22. While Amarado was taking inventory of the Failed Leases, it concluded the last purchase of acreage and then in January of 2012 after it had concluded inventorying all of the Failed Leases, Amarado called Davis for the customary adjustments for failed acreage which, because all transfers had been made at such time and money paid, would need to come in the form of cash reimbursement. However, Davis has failed and refused to provide reimbursement by refund in breach of the Contract. CCJ has failed to provide reimbursement of the applicable contingent attorney fees paid by Amarado on the Failed Leases.

23. Davis and CCJ’s refusal to refund these cash amounts provide Davis and CCJ an unjust windfall of $2,389,000.00 and $298,672.50 respectively.

COUNT I
(Breach of Contract –Davis Defendants and CCJ)

A.) Failure to return purchase price and fees on leases that could not be held by production.

24. The allegations contained in the above paragraphs are incorporated herein by this reference.

25. Each of the letter agreements made clear that the subject of the sale was the transfer of the Sub-Clinton HBP leases. In the initial letter agreement, the first sentence states: “Please accept this letter as our agreement to a forty-five day exclusive option to purchase your Sub-Clinton HBP leaseholds as follows:”

26. One of the terms and conditions of the Contract was that the Davis Defendants would return the price paid for any such HBP Sub-Clinton leasehold that Davis was unable to maintain by extending, renewing, or producing for a five year term.

27. Defendant, Plumly acknowledged the same in correspondence he sent on January 24, 2012. He stated in pertinent part "the agreement and assignment required my client
(referring to Davis) to take reasonable steps to maintain the HBP deep rights to the extent they existed and no more."

28. The Davis Defendants were unable to maintain the leasehold interest in the Failed Leases as they related to the subject matter of the contract (to wit: the Sub-Clinton Strata Leaseholds) by renewing or producing for a five year term and therefore were bound to return the purchase price.

29. Amarado requested return of the purchase price paid for the Failed Leases and the Davis Defendants refused to return the purchase price in breach of the Contract all to Amarado’s damage in the amount of $2,389,000 plus interest on all damages at the maximum legal rate from the date of payment.

30. Amarado requested return of the contingent legal fees paid for the transfer of the failed leases and CCJ refused to return the fees in breach of its contract with Amarado all to Amarado’s damage in the amount of $298,672.50, plus interest at the maximum legal rate from the date of payment.

B.) Breach of established contractual course of conduct.

31. The allegations contained in the above paragraphs are incorporated herein by this reference.

32. Amarado and the Davis Defendants entered a contract defined by i) correspondence between them dated June 15, 2011, July 27, 2011, and September 1, 2011 (see composite Exhibit A) and ii) a course of conduct and dealing consistent with the Contract whereby it was established that any money paid for leaseholds which failed to convey Sub-Clinton HBP rights and which could not be cured, or to which the Davis Defendants could not maintain or extend, would be reimbursed through credits made to the price and to the contingent attorney fees.

33. Amarado requested return of the purchase price paid for the Failed Leases and requested return of the contingent legal fees and contrary to the established course of