RE 75-11

Rev. July 24, 2020

**STATE OF** **OHIO**

**OHIO DEPARTMENT OF TRANSPORTATION**

**OIL AND GAS LEASE**

**R. C. 5501.45**

|  |  |
| --- | --- |
| ODOT OIL & GAS LEASE NO.\_\_\_\_ | County: Choose an item. |
| Manager, Property Management Section | Route |
| **1980 West Broad Street**  **Office of Real Estate 4th Floor**  **Mail Stop 4120**  **Columbus , Ohio 43223-0899**  **(614)** | Section  Parcel(s) |
| \*\*Full Name of Tenant\*\*  Tenant | Commencing: Click or tap to enter a date. |
| \*\*Tenant’s address\*\*  \*\*Tenant’s address\*\*  \*\*Tenant’s address\*\*  \*\*Tenant’s address\*\*  Tenant Address and Phone Number | State Job No. |
| **As Shown On Attached Exhibits A (Legal Description) & B (Plat) Attached To Lease**  Location & Legal Description of State-Owned Property | Acreage: **or**  Sq. Ft. |
| ODNR Permit No. | Well Name: |

ThisLease is made and entered into by State of Ohio, Director of the Ohio Department of Transportation [“State”], and \*\*Full Name of Tenant\*\*,[“Tenant”] on the dates indicated immediately below their respective signatures. The respective mailing addresses for State and Tenant are shown above and listed below in §§ 18.02 and 18.03.

Tenant will at all times during the term of this Lease comply with any and all applicable federal, state and local laws, ordinances, regulations and rules.

State, in consideration of the rents and royalties to be paid and the covenants and agreements to be kept and performed by Tenant, leases to Tenant a certain parcel or parcels of property in **Error! Reference source not found.** County, Ohio, the legal description of which is set forth in Exhibit A attached hereto and is depicted on Exhibit B attached hereto [“Premises”]. State and Tenant agree that for any and all purposes under this Lease, including but not limited to the calculation of State’s proportionate share and payments based thereon, the number of acres comprising the Premises will be deemed equal to the acreage shown in Exhibit A, namely \*\*Insert acreage of ODOT’s parcels\*\*\*.

The sole purpose of this Lease is to enable Tenant to form a drilling or pooling unit as described in Sections 1509.24 and 1509.25, Ohio Revised Code, and § 15 of this Lease [“Production Unit”], to drill, construct, operate and maintain a well for the purpose of extracting oil, gas, condensate and/or liquid hydrocarbons; it is expressly agreed and understood that any such well must be located on property within the Production Unit other than the Premises, provided however the foregoing proscription does not apply to horizontal activities, well stimulation within the subsurface of the Premises or extraction therefrom. The Premises is limited strictly to one of the following geological formations and/or depths, to wit (mark only one):

The distance from the surface of the land to the top of the Onondaga limestone;

The distance from the top of the Onondaga limestone to the bottom of the Queenston formation;

The distance from the bottom of the Queenston formation to the top of the Trenton limestone;

The distance from the top of the Trenton limestone to the top of the Knox formation; or

The distance from the top of the Knox formation to the basement rock.

The above checked formation is hereinafter referred to as “Specified Formation/Depth.”

This Lease does not grant to Tenant any right of any kind whatsoever to explore for and/or extract oil, gas, condensate and/or liquid hydrocarbons from a geological formation and/or depth other than the Specified Formation/Depth. State reserves and retains all oil, gas, condensate and/or liquid hydrocarbons, and all other mineral rights contained within or extractable from any geological formation and/or depth other than the Specified Formation/Depth, excepting those limited rights allowed to Tenant to drill, construct, operate and maintain a well for the purpose of extracting oil, gas, condensate and/or liquid hydrocarbons from the Specified Formation/Depth, and provided that when exercising said limited rights to drill through any geological formation herein reserved unto State Tenant will not interfere with or impair State’s ability to produce from said reserved geological formations.

This Lease does not grant to Tenant any right to use any water, surface or subsurface, in, on or underneath the Premises, including, but not limited to water from State’s wells, ponds, streams, lakes, springs, reservoirs, creeks or any other water bodies located on the Premises, unless Tenant first obtains the prior written permission of State by a separate written agreement. Nor does this Lease grant to Tenant any right whatsoever to drill or operate any water well, to take water, or to inject any substances into the subsurface or otherwise use or affect the water in, on, under or within the Premises without the prior written consent of State as evidenced by a document separate from this Lease. State, in its sole discretion, may withhold its consent to Tenant’s use of water for any reason whatsoever. The foregoing prohibitions do not apply to the act of well stimulation.

This Lease does not contain a “Mother Hubbard” provision, accordingly this Lease does not grant to Tenant any right to include any property contiguous, adjacent or adjoining to the Premises that are owned or claimed to be owned by State (including by limitation, prescription, possession, reversion or unrecorded instrument), or as to which State has a preference right of acquisition.

This Lease does not grant to Tenant any right to use, occupy or enjoy any portion of the State’s highways or any other roads open to the public without charge in any manner other than that enjoyed by the public at large. Nothing contained in this Lease shall be construed to be a permit as described R.C. 5515.01.

This Lease consists of the within document, and Exhibits A and B mentioned above, plus Exhibit C attached hereto which is a Release of Financial Records and Tax Records that will be executed by Tenant and delivered to State prior to or simultaneously with Tenant’s execution of the within document.

State hereby reserves unto itself: (A) All rights not specifically granted to Tenant in this Lease; (B) The right to construct any structure or other improvements at any location selected by State anywhere on the Premises provided the exercise of such reserved rights by State does not unreasonably impair the exercise and enjoyment of rights granted Tenant hereunder; (C) The right to continue all of its current activities and programs and to initiate additional activities and programs including, but not limited to, irrigation and agricultural activities (including timbering) on the Premises; Tenant will accommodate State’s use of the Premises; and (D) all the sulfur, coal, lignite, uranium, and other fissionable material, geothermal energy, base and precious metals, rock, stone, gravel, and any other mineral substances presently owned by State in, under or upon the Premises, together with rights of ingress and egress and use of the Premises by State or its tenants (other than Tenant) or assignees for purposes of exploration for and production and marketing of the materials and minerals reserved hereby.

**1. DEFINITIONS**

As used in this Lease:

**1.01** “Assignment” means any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, to any other party.

**1.02** “Producing in paying quantities” means that the Tenant is deriving at least $2,400.00 per biennium, commencing on the date a well first produces, from the oil and gas over and above operating expenses.

**1.03** “Production Unit” means an area of contiguous lands, oil and gas leasehold interests, and oil and gas interests that will be developed and operated for oil and gas purposes.

**1.04** “Royalty” or “Royalties” means the payment or payments made by Tenant to State for the rights herein granted to Tenant to use the Premises as part of a Production Unit, not including Signing Bonus or Advanced Delay Rental Payment, or Shut-in Fee as described in §§ 4.02 and 4.04 below.

(A) “Royalty” or “Royalties” is further defined as the payment or payments due from Tenant to State that are based on the total or gross amount of all funds received by Tenant from the oil, gas, condensate and/or liquid hydrocarbons produced by a well located within the Production Unit of which the Premises is a part. Said total or gross amount of all funds received will be equal to the greater of (i) the gross amount of money actually paid to Tenant upon the sale and/or transfer of said products, or (ii) the gross amount of money that would have been paid to Tenant if it had sold said products in an arms-length transaction at the highest price available on the open market at the time of such sale within the geographical area in which the Premises is situated. “Total or gross amount” means the total of all funds of any kind whatsoever received by Tenant without any deduction for any tax whatsoever, such as but not limited to Ohio’s severance tax or any other type of tax without regard to whether the same is mentioned in § 11 below, or for any costs of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing the oil, gas and other products produced hereunder.

**1.05** “Tenant” means the party identified above in the opening paragraph of this Lease and all of its subsidiaries, affiliates, assignees, tenants, successors-in-interest or other entities that may in the future claim or exercise rights over the oil, gas, condensate and/or liquid hydrocarbons subject to this Lease. Any reference in this Lease to “Tenant” includes the tenant identified above in the opening paragraph of this Lease and all of its subsidiaries, affiliates, assignees, tenants, successors-in-interest or other entities that may in the future claim or exercise rights over the oil, gas, condensate and/or liquid hydrocarbons subject to this Lease; the use of term “Tenant” without listing any of the other entities may not be interpreted to exclude the other entities from the obligations imposed by this Lease or from the duties and obligations under all applicable law.

**1.06** “Title Defect” means any irregularity, defect, lien, encumbrance, encroachment, right of first refusal, burden or claim of any kind that causes Tenant to not have good and marketable title to the oil and gas rights to be leased and granted pursuant to this Lease, except for covenants, conditions and restrictions of record that do not materially and unreasonably interfere with the use of the Premises for oil and gas development; a “Title Defect” does not include a prior mortgage on the Premises.

**1.07** Except as expressly provided otherwise in this Lease, all the terms and conditions of this Lease will be construed and interpreted in conformity with the provisions of Section 1509.01, Ohio Revised Code.

**2. TERM OF LEASE, COVENANTS, GENERAL DEFAULT AND SURRENDER**

**2.01** This Lease will commence on the date it is last signed by one of the parties, which is the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ [“Commencement Date”] and remain in force for an initial term of \*\*No.\*\* years from the Commencement Date [“Initial Term”], unless otherwise terminated or extended in accordance with the termination and extension provisions of this Lease. If, within the Initial Term, Tenant has drilled and completed a well within the Production Unit of which the Premises is a part that produces in paying quantities oil, gas, condensate and/or liquid hydrocarbons, then Tenant will be granted an extension of this Lease but only for so long as oil, gas, condensate and/or liquid hydrocarbons are produced in paying quantities.

**2.02** Tenant will provide at least 10 calendar days prior written notice to State before Tenant commences any actual drilling (bit in the ground) on the Production Unit of which the Premises is a part.

**2.03** Upon the termination of this Lease for any reason whatsoever Tenant will remain obligated to perform the plugging and reclamation requirements of Chapter 1509, Ohio Revised Code, and the regulations, rules and policies established thereunder and to take any other action required by any applicable federal, state and local laws, ordinances, regulations and rules, within 60 days of the termination of this Lease. During that 60-day period, Tenant will also submit to the appropriate county office for the county or counties in which the Premises is located such documentation needed to reflect the termination of this Lease and the cancellation of any interest Tenant might have in the Premises; Tenant will bear all costs of preparing, filing and recording such documentation and Tenant will provide to State a certified copy of that documentation once it has been filed and/or recorded.

**2.04** If Tenant breaches or defaults on any of the terms or conditions of this Lease, and if the breach or default is not remedied within 30 days after receipt of written notification by State to Tenant of the breach or default, or within such greater period of time as may be specified in such notice by State, then Tenant will pay to State, as liquidated damages and not as a penalty, the sum of $3,000.00 for the first 30 days subsequent to period of time specified in the notice within which Tenant was to remedy the breach or default; if Tenant continues to fail to remedy the breach or default beyond said first 30 days, then Tenant will pay to State, as liquidated damages and not as a penalty, the sum of $6,000.00 for the second 30 days subsequent to period of time specified in the notice within which Tenant was to remedy the breach or default; if after the expiration of the foregoing sixtieth day Tenant has not remedied the breach or default then State may terminate this Lease upon written notice to Tenant, and despite any such termination Tenant will continue to be obligated to pay State the aforementioned liquidated damages ($9,000.00 total) in addition to any other amounts for which Tenant might be held liable to State. All such notices will be sent by State by certified or express United States mail; whereupon Tenant will forthwith surrender possession of the Premises to State; if such notice sent by certified or express United States mail is returned to State by the postal authorities as being “refused” or “unclaimed” by Tenant, then State may give written notice to Tenant by ordinary United States mail, postage prepaid, to the last know business address provided to State by Tenant; with respect to all notices sent by certified or express United States mail pursuant to this Lease, the applicable period within which Tenant is to remedy the breach or default will commence on the date on which the certified or express United States mail receipt is signed by Tenant or any of its employees, attorneys or other agents, and with respect to all notices sent by ordinary United States mail pursuant to this Lease, the applicable time period within which Tenant is to remedy the breach or default will commence on the third day immediately subsequent to the date on which State placed or deposited the notice in the United States mail.

If Tenant fails to deliver documents reflecting termination or expiration of this Lease or if Tenant fails to surrender possession of the Premises as required under this Lease, State may institute proceedings necessary to clear title and to take possession of all oil, gas, condensate and/or liquid hydrocarbons to which it is entitled under this Lease; and State will be entitled to exercise any and all remedies available at law, in equity or otherwise, each such remedy being considered cumulative; no single exercise of any remedy set forth herein will be deemed an election to forego any other remedy. If State prevails in any such proceedings instituted by it, then, in addition to all other relief that may be granted to State, State will be entitled to recover against Tenant any and all attorney fees, investigation charges, court costs, expert fees, costs of removal, costs of reclamation and all other expenses expended by State in the course of preparing for and/or prosecuting any such proceedings. A waiver by State of any breach or default by Tenant under this Lease does not constitute a continuing waiver by State of any subsequent act in breach of or in default hereunder.

**2.05** Tenant will exercise the diligence of a reasonably prudent operator in drilling such additional well or wells as may be reasonably necessary to fully develop the Premises. No payments under this Lease will relieve Tenant from the obligation to reasonably develop the Premises, market the products, and conduct all operations that affect State’s royalty interest with reasonable care and due diligence. Any duty or obligation Tenant might have by virtue of covenants implied by Ohio’s oil and gas laws (statutory or common) to benefit State, including but not limited to, the covenant to operate the Lease with due diligence, the covenant to protect the Premises from drainage, the covenant of reasonable development, the covenant of further exploration, the covenant to market the product, and the covenant to conduct all operations that affect State’s Royalty interest with reasonable care and due diligence will be and are express covenants under this Lease.

**3. USE OF PREMISES**

**3.01** This is a non-surface lease. The purpose of this Lease is to include the Premises in Tenant’s Production Unit containing a maximum of 40 acres, plus 10% for any vertical well with no horizontal drilling component, and a maximum of 640 acres, plus 10% for any well that includes a lateral or horizontal drilling component. Tenant will perform any and all of its activities in conformity with all applicable federal, state and local laws, ordinances, regulations and rules. Tenant will be liable for any and all damages arising from any such violation of federal, state and local laws, ordinances, regulations and rules, and for those arising from any ensuing termination of this Lease.

**3.02** Tenant will furnish to State a copy of: (i) any and all applications or affidavits (including amendments thereto) for drilling permits filed with the Ohio Department of Natural Resources that include all or any part of the Premises, including a copy of all plats, maps and exhibits to such application; and (ii) any and all declarations or orders of pooling or unitization (including amendments thereto) of which any portion of the Premises will be a part that is filed in the county recorder’s office in the county where the property is located, including a copy of all plats, maps and exhibits to such declaration.

**3.03** In addition to any requirements imposed by Sections 1509.24 and 1509.25, Ohio Revised Code, and any rules and regulations promulgated pursuant thereto, Tenant is prohibited from (a) drilling any well or constructing any portion of any pad, or (b) operating or maintaining a storage facility for oil, gas, condensate and/or liquid hydrocarbons within 150' of the right of way of any State highway, such right of way being that which is depicted on the most current right of way plans on file with that district office of the Ohio Department of Transportation within which the Premises is situated.

**3.04** Except and unless specifically provided for in this Lease, Tenant may not enter on the Premises for any reason whatsoever without the prior written permission of State.

**3.05** If State, in its sole discretion, determines the exercise of the rights and privileges herein granted to Tenant by this Lease will affect adversely the construction, operation, maintenance or repair of State’s highway system, or any portion thereof, then State may:

(A) Suspend this Lease for such period of time as State determines is convenient; or

(B) Revoke and declare this Lease null and void.

**3.06** In the exercise of the rights and privileges herein granted to Tenant by this Lease, Tenant will comply with the rules and regulations of State of Ohio, Department of Natural Resources, Division of Oil and Gas.

**4. PAYMENTS TO STATE**

**4.01 Payment Instructions**

All payments due from Tenant to State under the terms of this Lease will be made payable to “Treasurer, State of Ohio” and mailed to the Ohio Department of Transportation, Office of Real Estate, Property Management, 1980 West Broad Street, 4th Floor, Mail Stop 4120, Columbus, Ohio 43223. All payments will be paid in U.S. Dollars by business check, cashier’s check, certified check or money order. Tenant may not tender any payment of any kind by third-party check or in cash without the prior written consent of State. If payment is made by a business check that is returned for any reason, including non-sufficient funds, stop payment order, or similar act or event, then in addition to any other late charges that may be due State, Tenant will be charged and required to pay a fee of $35.00; furthermore, if any such business check is returned as aforesaid, then Tenant forfeits the right to tender payments by business check and will thereafter tender all payments by cashier’s check, certified check, money order, or by such other means as State may otherwise expressly authorize in writing.

Any and all payments of any kind whatsoever, including but not limited to Signing Bonus or Advanced Delay Rental Payment and Royalties, by Tenant to State under this Lease are non-refundable; provided, that with respect only to any actual overpayment of Royalties paid for a given month, Tenant may offset such actual overpayment against the future Royalties to be paid State for the subsequent months, as needed.

**4.02 Signing Bonus and/or Advanced Delay Rental Payment – Cure Period for**

**Title Defects**

Tenant agrees to pay within 90 calendar days of the Commencement Date, in proportion to State’s percentage of ownership of the oil and gas estate and related interests in the Premises, as a pre-paid signing bonus and/or advanced delay rental payment, the sum of \*\*$\*\* per net acre of the Premises, subject to Tenant’s determination that title to the Premises is acceptable to Tenant as provided herein below (the “Signing Bonus and/or Advanced Delay Rental Payment”). Upon payment of the appropriate amount of the Signing Bonus and/or Advanced Delay Rental Payment, the parties hereto stipulate and agree that this is a “Paid Up” Lease with no further delay rental payments due to State during the Initial Term hereof, and that any and all bonuses and delay rentals due or payable hereunder have been prepaid to State for the purpose of keeping this Lease in effect during and for the entirety of the Initial Term.

(A) The only reason for non-payment of any portion of the Signing Bonus and/or Advanced Delay Rental Payment will be the identification by Tenant of a Title Defect relating to the Premises.

(B) For a period of 60 calendar days from the Commencement Date (the “Title Due Diligence Period”), Tenant will be entitled to conduct a title review to determine whether State has sufficient title to the oil, gas and other related rights and interests in and to the Premises. On or before the expiration of the Title Due Diligence Period, Tenant will deliver to State a written notice that identifies any matter that it believes in good faith to be a Title Defect, said notice will include: (i) a description of the matter being asserted as a Title Defect’ (ii) a description of the Premises Tenant asserts is affected by the said Title Defect; and (iii) any supporting documentation (a “Notice of Title Defects”). Within 30 calendar days of receipt of the Notice of Title Defects, State will either (i) elect in writing to Tenant to attempt in good faith and with reasonable diligence to cure the asserted Title Defect; or (ii) elect not to cure the asserted Title Defect, and in such event, Tenant will not be obligated to pay the Signing Bonus and/or Advanced Delay Rental Payment in proportion to the net acres affected by the uncured Title Defect, and the Lease will become null and void and all rights of Tenant and State under this Lease will cease and terminate as to all net acres affected by the uncured Title Defect. In the event that State elects in writing to attempt to cure the asserted Title Defect, the State will have a period of 120 calendar days from the date on which it received the Notice of Title Defects to cure the asserted Title Defects (the “Cure Period”). If State elects to cure a Title Defect and that Title Defect is cured by State within the Cure Period, then Tenant will refund and pay to State any and all costs, including reasonable attorney’s fees, incurred by State in curing the said title defect, and Tenant will pay to State the Signing Bonus and/or Advanced Delay Rental Payment in proportion to the net acreage with cured title within seven calendar days of the date it is determined that such Title Defect has been cured. If a Title Defect cannot be cured within the Cure Period, Tenant will not be obligated to pay the applicable Signing Bonus and/or Advanced Delay Rental Payment to State as to the net acreage affected by the uncured Title Defect, and this Lease will become null and void and all rights of State and Tenant under the Lease will cease and terminate as to all net acreage affected by an uncured Title Defect or Defects. In all cases, State will be obligated to lease to Tenant all net acres covered by this Lease having sufficient title, and State and Tenant each agree to execute and deliver any appropriate modification or revisions of this Lease to account for any changes in net acres as a result of uncured Title Defects.

(1) With respect to Tenant’s obligation to refund and pay to State any and all costs, including reasonable attorney’s fees, incurred by State when it successfully cures a Title Defect, the maximum amount Tenant may be obligated to refund and pay to State is $15,000.00 for each Title Defect cured. Whenever a given Title Defect is cured, State will provide Tenant with written notice thereof, which notice will include a copy of the costs and attorney’s fees incurred by State in effectuating the subject cure; and Tenant shall refund and pay to State such costs and attorney’s fees on the same date it pays the hereinabove required Signing Bonus and/or Advanced Delay Rental Payment.

(2) During the Title Due Diligence Period, State will provide any documents in the possession of State and cooperate with Tenant as may be reasonably requested by Tenant to facilitate the conduct of Tenant’s title diligence review.

(C) All signing bonuses and/or advanced delay rental payments paid to State under this Lease are nonrefundable.

(D) Failure by Tenant to pay the appropriate amount of the Signing Bonus and/or Advance Delay Rental Payment within the time described herein will render this Lease null and void. State reserves its rights and remedies available under Ohio law for non-payment by Tenant of the Signing Bonus and/or Advanced Delay Rental Payment.

**4.03 Royalties**

1. For the purposes of this Lease and the calculation of Royalties payable by Tenant to State, the parties agree that (i) the Production Unit of which the Premises is a part contains that number of acres to be determined in accordance with § 15 below, and (ii) the ratio the Premises bears to said Production Unit will be equal to the Premise Area divided by the Production Unit Area, expressed as a percentage [“State Area Percentage”]. It is further agreed that the rate of royalties to be paid to State equals \_\_\_\_\_ %, and that as soon as the Production Unit Area has been determined the State Area Percentage will be calculated, and thereupon the State’s Proportionate Share will be calculated by multiplying the State Area Percentage by the said rate of royalties.
2. Tenant will pay to State the following Royalties; said payments will be calculated as provided for above in §1.04(A) of this Lease.

(1) All Royalties will be paid monthly. The Royalty due for any given month will equal the sum of separate calculations for (i) oil, (ii) gas and (iii) condensate and/or liquid hydrocarbons for each well and/or unit. Provided, however, the monthly payment of Royalties due State for the first month during which Royalties become due and owing to State may be delayed by Tenant for not longer than 60 days. Provided further if the amount of Royalties due State for any given month is $99.00 or less, then Tenant may defer the payment thereof until such time as at least $100.00 is due and owing to State for Royalties. In all events, and without regard to the amount of Royalties due and owing to State, Tenant will pay Royalties to State at least once a year. For payments due under this provision, Tenant will pay all Royalties to State within 60 days after Tenant receives payment for each product (i.e., oil, gas, condensate and/or liquid hydrocarbons) produced. Royalties will be paid on such product used, consumed, wasted or lost by Tenant

(C) Other than the exception provided for below in § 4.03(D), if oil, gas, condensate and/or liquid hydrocarbons are used or consumed by Tenant, or lost by leakage, fire or for other reasons, then the Royalty payments required by this Lease will include payments for the lost oil, gas, condensate and/or liquid hydrocarbons. As soon as Tenant learns of leakage, fire or any other event resulting in loss of product involving the oil, gas, condensate and/or liquid hydrocarbons subject to this Lease, Tenant will contact State. Tenant will provide State all internal and external reports regarding such incident and resulting loss within 10 days of the conclusion of the leakage, fire or other reason for the loss of oil, gas, condensate and/or liquid hydrocarbons. Tenant may flare where it deems appropriate for purposes of testing wells in the Production Unit, and no royalty will be due on such gas flared for the sole purpose of testing the wells. Tenant will use its best efforts to minimize the frequency of any flaring, including but not limited to using high efficiency flares. As soon as gathering lines and other infrastructure are in place, Tenant will use its best efforts to minimize, and eliminate if possible, all flaring. Tenant will use redundant separators or both a high- and low-pressure separator to reduce potential emissions. Tenant will not flare any gas solely for the purpose of oil production.

(D) Tenant may not allow a well on the Production Unit of which the Premises is a part to blow open for over 48 hours after Production, except in the case of emergency not caused by action or inaction of Tenant unless otherwise approved by State. Except in the case of emergency not caused by the negligence of Tenant, after this initial 48-hour period, Tenant will pay State the Royalty rate for any gas allowed to escape. Such escaped gas will be estimated by a method approved by State. No venting of gas will be allowed at any time.

(E) Royalties will be paid on the gross funds paid to Tenant as described in § 1.04(A) specified above without any deductions, direct or indirect, of any type or kind whatsoever, including but not limited to any taxes, costs or expenses of exploration, production, gathering, manufacturing, marketing, compression, dehydration, treatment, transportation of the oil, gas, condensate and/or liquid hydrocarbons derived from the Production Unit of which the Premises is a part, and without any deductions, direct or indirect, for taxes of any type or kind.

(F) If Tenant is assessed a tax penalty, interest charge or any other assessment for non-compliance with any governmental statute, regulation, policy or similar provision, then there will not be any reduction for such penalty, charge or assessment subtracted from any Royalty payment due State.

(G) If Tenant fails to remit any payment of Royalties on or before the last day of the month in which such payment is due, then Tenant will pay to State a late fee calculated in the following manner:

(1) If the amount of unpaid Royalty is not greater than $250.00, then the late fee will be $25.00 per calendar month, or part thereof, that such Royalty remains unpaid.

(2) If the amount of unpaid Royalty is greater than $250.00, then the late fee will be $40.00 per calendar month, or part thereof, that such Royalty remains unpaid.

(H) State hereby retains a security interest in:

(1) The portion of the oil, gas, condensate and/or liquid hydrocarbons produced and saved from the Premises or property pooled with the Premises pursuant to this Lease.

(2) the proceeds of sale of such oil, gas, condensate and/or liquid hydrocarbons and all accounts arising therefrom associated with the royalty payments due under this Lease (the “Collateral”).

The purpose of this security interest is to secure Tenant’s payment of royalties and compliance with the other terms and provisions of this Lease. If Tenant defaults, then State will have the right to take possession of the Collateral, and to receive the proceeds attributable thereto and to hold same as security for Tenant’s obligations or to apply it to the amounts owing to State hereunder. This Lease, when filed in the county or counties’ real property records where the Premises or property pooled with the Premises are located, will constitute a financing statement. Additionally, Tenant agrees to cooperate with State to execute any UCC-1 filing requested by State to evidence the security interest created under this § 4.03(H).

**4.04 Shut-in Fee**

Upon the expiration of the Initial Term (or, if applicable, an Additional Term), if a well on the Production Unit is shut-in, shut-down or suspended for lack of a market, lack of an available pipeline, or Tenant applies or gives notice to the Ohio Department of Natural Resources to temporarily abandon the well, or because of government restrictions [“Shut-In”], and there is no other producing well, then Tenant will pay a fee to State [“Shut-in Fee”] until Tenant resumes paying Royalties on the well or Tenant plugs and abandons the well. The Shut-in Fee will be $50.00 per month per acre for the first year the well is shut-in or temporarily abandoned and $100.00 per month per acre for the second year and every year thereafter that the well remains Shut-In. Tenant will pay such a Shut-in Fee not later than the last day of the month immediately following the month during which Tenant first shut-in or temporarily abandoned the well, with a like amount due each and every month thereafter so long as the well is Shut-In. Provided, however, this Lease may not be maintained in force for any continuous period of time longer than 24 consecutive months or 36 cumulative months solely by provision of the Shut-in Fee. The Shut-In status of any well will persist only so long as it is necessary to correct, through the exercise of good faith and due diligence, the condition giving rise to the Shut-In of the well. Provided, however, that a Shut-In of a well for the sole purpose of reworking the well, for a period of time not to exceed 60 days, will be exempt from the foregoing Shut-in Fee; and provided, further, only one such 60-day period for reworking the well during a three-year period of time will be exempt as foresaid.

**5. MONTHLY STATEMENTS, RECORDS, LOGS AND AUDIT**

**5.01** Tenant will provide State monthly statements for every month this Lease is in effect. A monthly statement will be provided even in months when there is no production. In months of no production, Tenant will indicate the reason for no production and place zeros in the production columns of the statement. At a minimum, each monthly statement will contain the following information:

(A) The ODOT Oil & Gas number and/or well identification, as shown in the heading of this Lease;

(B) State’s Royalty interest, expressed in decimals rather than in fractions;

(C) The period for which Tenant is paying Royalties;

(D) The total volume of each product on which Tenant is paying Royalties (i.e., a separate listing for oil, a separate listing for gas, a separate listing for condensate and liquid hydrocarbons);

(E) The identity of each of the products on which Tenant is paying Royalties including the grade, quality or other classification rating for each product;

(F) The price or value on which Tenant is calculating its royalty payments; and

(G) The Royalty payment amount.

**5.02** For each calendar year this Lease is in effect, Tenant will provide to State, not later than the first day of March of the calendar year immediately following the calendar year for which such an annual report covers, a written annual report to State that, at a minimum, will contain the following information:

(A) The name and address of all entities to which Tenant sold or otherwise transferred any and all product subject to this Lease. Included will be the name, telephone number, email address or other contact information of an agent for each entity authorized to provide additional information to State;

(B) If product was sold or otherwise transferred to more than one entity in any given month, the annual report will provide a breakdown as to the amount of product by each category that was sold or otherwise transferred to each entity; and

(C) An address and telephone number State can use to contact Tenant regarding questions about its royalty checks.

(D) If requested in writing, Tenant will provide any and all additional information requested by State.

**5.03** Tenant, at its exclusive expense, will install and properly maintain at each Production Unit of which the Premises is a part discrete meters, or other devices or instruments, to accurately and separately measure the oil, gas, condensate and/or liquid hydro-carbons production and flows from the each Production Unit, provided the Ohio Department of Natural Resources permits the use of the same; otherwise, Tenant, at its exclusive expense, will install and properly maintain at each well in the Production Unit of which the Premises is a part a discrete meter, or other device or instrument, to accurately and separately measure the oil, gas, condensate and/or liquid hydrocarbons production and flows from each well.

**5.04** Upon written request of State, Tenant will provide the data needed to verify the oil, gas, condensate and liquid hydrocarbons production and flows of a well, with such data gathered and put into report form by an independent third-party that is competent to accurately measure and report such oil, gas, condensate and/or liquid hydrocarbons or oil production and flows. Upon written request of State, Tenant will furnish to State or its authorized agents the meter charts covering the production of each well subject to this Lease. Tenant will provide State with such other additional information as may from time to time request in writing.

**5.05** State will have the right to examine the records, books, logs and all other data storage/retrieval systems of Tenant relative to the production, sale, and valuation of any oil, gas, condensate and/or liquid hydrocarbons derived from the Production Unit.

**5.06** Tenant will at all times permit State to exercise any and all of the same rights Tenant has to enter upon any part of the Production Unit of which the Premises is a part on which a well is located, or on which is located a storage facility, meter, pipeline, or any other device or apparatus related to the Production Unit of which the Premises is a part. State will provide to Tenant written notice of State’s intention to enter upon the subject Production Unit not less than 24 hours prior to such entry. The written notice required under this § 5.06 is exempt from any limitation imposed by § 18.01 below; rather, such written notice may be provided by whatever reasonable means are available (e.g., hand delivery, e-mail, fax). Any such entry by State will be at State’s sole risk.

**5.07** Upon 10 days written notice, State, may in its sole discretion, require Tenant to submit to an audit of all transactions, contractual relationships, volumes, productions, flows, sales, valuations, or other records as State may determine appropriate, which records are relevant to establishing the gross proceeds from a well on the Production Unit of which the Premises is a part, State’s Proportionate Share therein, and corresponding payments of Royalties or any other types of payments due to State. Any such audit may be performed by State personnel, or by persons contracted for by State. If the final report of such an audit reveals that Tenant has, for the period of time covered by the audit, underpaid Royalties or any other type of payment due State by more than five percent (5%), then Tenant will pay and be responsible for the cost of the audit.

**5.08** Tenant agrees that State or its authorized employees or agents may conduct an audit of any and all records in the possession of Tenant or any of its employees, officers, accountants, attorneys, or other agents relating to exploration, production, processing, sale, marketing, taxes, gathering, dehydration, compression, transportation, treating, other post-production costs and/or any cost for any related activity for the product subject to this Lease. Within 30 days of a request being submitted to Tenant by State, Tenant or the applicable assignee or successor-in-interest will provide any and all documents relevant to these matters.

**5.09** At the time of Tenant’s execution of this Lease, Tenant will execute a Release (a copy of the Release form being attached hereto as Exhibit C). That Release will instruct any and all entities to which Tenant sold or otherwise transferred product subject to this Lease, upon presentment by State of the original Release or a photocopy of that Release, to provide State or its authorized agent any and all records in the possession of such entity or such entity’s employees, accountants, attorneys or other agents regarding such transactions. The Release will also indicate that any and all taxing authorities are instructed to release any and all records regarding taxes assessed, paid or refunded to Tenant, its assignee or successor-in-interest or any of their agents. If a tax authority will not accept this Release as sufficient authorization to release tax information, then Tenant will execute any additional documents necessary for release of all relevant tax information by that tax authority. The Release will indicate there is no time limitation for the presenting and honoring of the Release and will also state that Tenant waives any legal cause of action or other action that may be claimed for the release of such records to State.

**5.10** If an audit discloses a deficiency of equal or greater to 5% of reported volume of oil, gas, condensate, and/or liquid hydrocarbons for any reporting period or fraud by Tenant in payment of Royalties, Tenant will pay the cost and expense of the audit together with the deficiency plus maximum interest allowed by Ohio law. In the event of fraud, State reserves the right, at its sole discretion, to terminate this Lease. State also reserves the right, in the event of fraud, to seek any other legal remedy, criminal and/or civil, provided by law.

**6. TENANT’S SALES, ASSIGNMENTS, SUBLEASES, REORGANIZATIONS AND**

**NAME CHANGES**

**6.01** If Tenant intends to sell its business, or sublet or assign its interests in the property forming the Production Unit, or any portion thereof, including this Lease of the Premises, to a third party, then prior to entering into a contract for such a sale, subletting or assignment to a third party Tenant will deliver to the third party a copy of this Lease and obtain from the third-party written acknowledgement of its receipt of that copy of this Lease. Within five regular business days of entering into a contract for such a sale, subletting or assignment to a third party, Tenant will provide to State (i) written acknowledgment of receipt of this Lease by that third party, and (ii) written notice of the name, address, and other contact information relative to that third party.

(A) Tenant may not sell, sublet or assign its interests in this Lease, or any portion thereof, to a third party without the prior written consent of State, which consent will not be withheld unreasonably.

(1) Any sale, subletting or assignment of this Lease by Tenant to a third party will include the express provision that the third party will be bound by the terms and provisions of this Lease.

(B) Tenant may, without the prior written consent of State, assign a portion of its interests in this Lease to an affiliate, a subsidiary, a joint venture partner, or an internal partner, provided Tenant retains a majority or controlling interest of any and all well operations within the Production Unit of which the Premises is a part. Within five regular business days of any such assignment under this provision, Tenant will provide written notice thereof to State.

**6.02** If Tenant reorganizes its business or changes the name under which it does business (such as, by way of example only, if Tenant reorganizes itself by converting from a corporation to a limited liability company, or if Tenant changes its corporate name with the Secretary of State of Ohio), then Tenant will provide forthwith to State written notice of such reorganization or name change together with the name, address, and other contact information relative to Tenant’s reorganized or differently named business, including but not limited to any statutory agent Tenant designates pursuant to any applicable federal, state and local law, ordinance, regulation or rule.

**6.03** An assignment of this Lease or any part thereof will not relieve Tenant, its assignees, or any sub-assignees of any obligations hereunder theretofore accrued; and any assignee of Tenant will, by acceptance of such assignment, be bound by all terms and provisions hereof. Tenant will not be relieved of any of its obligations under this Lease if such an assignment is to an affiliate, subsidiary, joint venture partner, or internal partner as provided for in § 6.01(B) above.

**6.04** If Tenant fails to furnish State a copy of any assignment complying with the requirements of this paragraph within 30 calendar days after Tenant’s receipt of State’s written demand, then failure to comply with this provision will constitute a default under this Lease.

**7. RELEASE OF LEASE**

Upon termination, expiration or surrender of this Lease, in whole or in part, Tenant will prepare and record with the appropriate governmental real estate recording offices an appropriate release of lease or discharge suitable in form and provide State with a copy upon recordation of the same. If Tenant fails to cancel this Lease upon termination by recording an appropriate release, and continues to fail to cancel this Lease for a period of 30 calendar days following Tenant’s receipt of State’s written demand to record such an appropriate release, then State may proceed to quiet title as to this Lease, and if State is successful in such action, State will thereafter recover from Tenant, all costs, including reasonable attorney’s fees, incurred in such action by State. Tenant also agrees to promptly submit to the appropriate county office for the county or counties in which the Premises is located any and all required documentation reflecting termination of the Lease.

**8. TERMINATION**

**8.01** Tenant will monitor the well(s) on the Production Unit of which the Premises is a part to ensure that oil, gas, condensate and/or liquid hydrocarbons are produced in paying quantities as defined in § 1.02, above.

(A) State will perform reviews of this Lease to determine if the Production Unit of which the Premises is a part is producing in paying quantities. If production appears to be less than paying quantities, then State will require Tenant to provide cost and production data to demonstrate whether the Production Unit of which the Premises is a part is capable of producing in paying quantities.

(B) If State determines that the Production Unit of which the Premises is a part is not capable of producing in paying quantities, then Tenant will be divested of any and all rights granted herein, and this Lease will be null and void in its entirety. State will provide written notice to Tenant of State’s determination that the Production Unit of which the Premises a part is not capable of producing in paying quantities.

**8.02** If a well is not Plugged and Abandoned in conformity with all applicable federal, state and local laws, ordinances, regulations and rules, then Tenant will remain exclusively responsible for Plugging and Abandoning the well in accordance with such laws, ordinances, regulations and rules, and until such time as Tenant complies with said laws, ordinances, regulations and rules Tenant will pay State the Shut-in Fee described in § 4.04 above.

**9. INDEMNIFICATION AND LIABILITY**

**9.01** “Representatives” means all of Tenant’s employees, agents and other persons or entities under Tenant’s direct control. Tenant will be responsible for all of the actions of its Representatives under the obligations imposed by this Lease.

**9.02** Tenant will indemnify and save harmless State from and against any and all claims, demands, actions, or causes of action, together with any and all losses, costs, or related expenses asserted by any person or persons for bodily injury, death, or property damage arising out of or in connection with Tenant’s use and occupation of the Premises and/or the Production Unit of which the Premises is a part. Furthermore, Tenant agrees to protect and indemnify and hold harmless State from and against all liabilities, claims, demands, damages and causes of action, including but not limited to attorney's fees incurred by State for the defense thereof, arising directly or indirectly out of the use, occupation, and activities of Tenant hereunder; and, further, including, but not limited to claims, demands and causes of action brought by either party’s employees, agents, subcontractors, licensees, invitees, guests, or any other third party claiming personal injury, death, or property damage arising directly or indirectly out of the activities of Tenant hereunder, or equipment furnished in connection therewith.

**9.03** Notwithstanding anything herein to the contrary, State and Tenant agree that Tenant will be fully and exclusively responsible for and pay any and all damage and repair to the land or underground water table or system, any diminution thereof, and/or contamination or pollution on the Premises as a result of Tenant’s activities. Tenant will assume all responsibility for, including control, repair, removal and remediation of any such diminution contamination or pollution, and will protect and defend State against all claims, demands, and causes of action of every kind and character arising directly or indirectly from damage to the land, underground water table or system, any diminution thereof, or from contamination or pollution which originates below, within, on or above the surface of the land or water from spills any substance, including but not limited to fuels, lubricants, motor oils, natural water-base Production, fluids and attendant cuttings, pipe dope, paints, solvents, ballast, bilge and garbage, hazardous substance or any other material in the possession and control of Tenant and directly or indirectly associated with the activities of Tenant.

**9.04** In the event a third party commits an act or omission that results in contamination, pollution or water diminution and such third party is performing work for or on behalf of Tenant, the responsibility therefore will be considered as between State and Tenant to be the same as if the work were performed by Tenant.

**9.05** The provisions of this § 9 will survive the expiration, surrender or termination of this Lease.

**9.06** THE FOREGOING INDEMNITY PROVISIONS WILL APPLY TO ANY AND ALL CLAIMS ARISING OUT OF TENANT’S OPERATIONS CONDUCTED UNDER THE TERMS OF THIS LEASE, HOWSOEVER CAUSED.

**10. INSURANCE**

During the term of this Lease, Tenant will, at its sole cost and expense, carry and maintain for the mutual benefit of itself and State and anyone claiming by, through, or under State insurance coverage as follows:

**10.01** Tenant will maintain commercial general liability (CGL) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than $5,000,000.00 per occurrence covering liability arising from the premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The aggregate limit in the CGL policy, if any, will be at least twice the amount of the per occurrence limit. The CGL policy will have an endorsement adding coverage for sudden and accidental pollution and for blowout, cratering, and underground resources damage, including any surface or groundwater contamination. Tenant agrees to add State as an insured under the CGL policy, and if necessary, commercial umbrella liability insurance. The Tenant’s insurance will apply as primary insurance with respect to any other insurance or self-insurance programs afforded to State. There will be no endorsements or modifications of the CGL policy to make it excess over other available insurance. Alternatively, if the CGL policy states that it is excess or pro rata, the Tenant agrees to have the policy endorsed as primary with respect to State, as an insured. There will be no modification or endorsements of the CGL policy limiting the scope of coverage for liability arising from oil, gas, condensate and/or liquid hydrocarbons producing operations. Tenant waives all rights against State and its agents, officers, directors, and employees for recovery of damages to the extent the damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this section.

A. In addition to the foregoing CGL policy, Tenant will maintain an Excess/umbrella liability insurance coverage policy of at least $10,000,000.00.

**10.02** If any well operated by Tenant under this Lease contains a lateral or horizontal drilling component, then Tenant will maintain control of well insurance with a limit of not less than $5,000,000.00 per occurrence. Tenant’s control of well insurance will cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage; and damage to property in the Tenant’s care, custody, and control. Tenant agrees to add State as an insured under the control of well policy. Payment of any deductible applicable to the control of well insurance purchased in compliance with this section will be the responsibility of the Tenant and may not exceed $250,000.00 unless approved by State. Tenant waives all rights against State and its agents, officers, directors, and employees for recovery of damages to the extent the damages are covered by the control of well insurance maintained pursuant to this section. On all wells drilled under this Lease, the Tenant will have a blowout preventer of standard make installed, tested, and in compliance with the usual industry standards.

**10.03** Prior to exercising any rights conferred by this Lease, Tenant will furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Tenant will provide 45 days written notice to State prior to the cancellation of any insurance referred to herein, except for ten days written notice of cancellation for non-payment of premium. Failure of State to demand such certificate or other evidence of full compliance with the insurance requirements or failure of State to identify a deficiency from evidence that is provided may not be construed as a waiver of Tenant’s obligation to maintain such insurance. Tenant’s failure to maintain the required insurance may result in termination of the Lease at State’s option. All insuring companies will have and maintain at least an A- (Excellent) rating from A.M. Best. Tenant may meet the foregoing insurance requirements with a combination of self-insurance, primary and excess insurance policies; provided, however, State reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing Tenant may use to comply with any insurance requirement. By requiring insurance herein, State does not represent that the coverage’s and limits will necessarily be adequate to protect Tenant and such coverage’s and limits may not be deemed as a limitation on Tenant’s liability under the indemnities granted to State in this Lease

**10.04** Not less than 45 days prior to the expiration date of any of the above described policies of insurance, Tenant will provide State with evidence satisfactory to State of the renewal of such a policy of insurance.

**11. TAXES** **AND ASSESSMENTS**

**11.01** Tenant will be responsible for the payment of all real estate taxes and assessments during the Rental term. State will forward tax bills and/or assessments received from the County Treasurer to Tenant, and Tenant will pay the County directly such tax bill or assessments when due and payable. Tenant will provide proof of payment to State within 30 calendar days of payment.

**11.02** Tenant will pay all Ad Valorem, Commercial Activity, Income Tax, and all other taxes or assessments on the oil, gas, condensate and/or liquid hydrocarbons produced under this Lease that are assessed by any federal, state or local entity or governmental unit attributable to, or resulting from the assessment of the oil, gas, condensate and/or liquid hydrocarbons from the Premises regardless of the percentage of Royalty paid to State. Tenant will, in addition, pay any and all severance taxes or other excise taxes arising out of or relating to this Lease and the oil, gas, condensate and/or liquid hydrocarbons produced on the Production Unit of which the Premises is a part.

**12. SUBCONTRACTORS**

Subcontracting does not relieve Tenant of its responsibility and liability for any work performed by its subcontractor. Tenant will cause all of its contractors and subcontractors to carry and maintain proper insurance and comply with all of the provisions of this Lease, laws, rules, and regulations, whether federal, state, or local, which now or in the future may be applicable to this Lease. Tenant further represents that its contractors and subcontractors will be skilled and would have been trained to follow all applicable laws, rules, and regulations and work safety guidelines, and that all of their equipment has been thoroughly tested and inspected.

**13. INDEPENDENT CONTRACTORS**

In making and performing under this Lease, the parties are acting and will act as independent contractors and not that of master and servant or partnership. Neither party is, nor will be deemed to be, an agent, legal representative, joint venture, or partner of the other party for any purpose. Neither party will have any authority to act for or to bind the other party in any respect, nor will either party hold itself out as having such authority. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employer’s liability, worker’s compensation, social security, unemployment insurance, Occupational Safety and Health Administration requirements, and all other applicable federal, state and local laws, ordinances, regulations and rules.

**14. ASSIGNMENT BY STATE**

State reserves the right to assign any or all of its rights or interests under the terms of this Lease, without the consent of the Tenant, to any individual, corporation, firm or other entity, public or private or any governmental agency, municipal, county, state or federal. State will provide prior written notice to Tenant of any such assignment.

**15. UNITIZATION AND POOLING**

**15.01** Subject to the terms and conditions set forth herein, State grants Tenant the right to pool, unitize or combine all or parts of the Premises with other lands or leases adjacent to or contiguous with the Premises, whether owned by Tenant or others, at a time before or after drilling to create a Production Unit, or more than one if applicable. Pooling or unitizing in one or more instances will not exhaust Tenant’s pooling and unitizing rights hereunder. Tenant will furnish to State prior to any application for the formation of such a Production Unit, a copy of the declaration or proposed declaration of the Production Unit of which any portion of the Premises will be a part, including a copy of all plats, maps and exhibits to such application or declaration.

**15.02** Size of Unit: If a well is classified as a horizontal well, then the maximum size of the Production Unit may not exceed \_\_\_\_\_\_ contiguous acres, plus a ten percent (10%) tolerance. If a well is classified as a vertical well drilled to any geologic formation, then the maximum size of the Production Unit may not exceed 40 contiguous acres, plus a ten percent (10%) tolerance. State and Tenant agree to abide by any state pooling or unitization orders.

**15.03** Shape of Unit: The shape of any unit in which the Premises is included will be as nearly as practicable in the form of a square or rectangle.

**15.04** Proportional Share of Royalties: Upon production from any part of a Production Unit in which all or part of the Premises is included, State agrees to accept and receive out of the production or the revenue realized from the production of that Production Unit, a proportional share of the royalties from each well based on the percentage that the number of acres of the Premises included in a Production Unit bears to the total number of acres in a Production Unit.

**15.05** Horizontal Pugh Clause; Release of Other Acreage: If a Production Unit is created by the Tenant that includes all or a part of the Premises, any operations on or production in paying quantities from a well located on that Production Unit will continue this Lease in full force and effect, but only as to that portion of the Premises included in such Production Unit. Specifically, this Lease will automatically terminate any time after the expiration of the Initial Term for acres in the Premises that are not contained within a Production Unit and the excess acreage will automatically revert to State. For any portion of the Premises that reverts to the State under this paragraph, Tenant will promptly execute and file with the appropriate county recorder’s office a release of this Lease as to such acreage released under this § 15.04, and promptly provide State with a copy of that document after it has been recorded.

**16. No Warranty of Title**

**16.01** State does not warrant the title to the premises, and the rights, privileges, and authority granted herein will be subject to any easements, rights-of-way, mineral reservations or other rights upon, within, over, through, across, above or under the premises now outstanding in third persons.

**16.02** In the event of a determination by compromise or by a non-appealable final judgment of a court of competent jurisdiction that State does not have title to all or part of the oil, gas, condensate and/or liquid hydrocarbon rights on or under the Premises, Tenant will pay State Royalties and other payments thereafter accruing in proportion to State’s ownership as determined by the compromise or non-appealable final order. Any sums of money previously paid pursuant to the terms of the Lease will not be reimbursable to Tenant and Tenant agrees it will not seek reimbursement from State for the previously paid money.

**16.03** If Tenant is notified of an adverse claim potentially affecting title to all or a portion of the oil, gas, condensate, and/or liquid hydrocarbon rights under the Premises, Tenant will give notice of such claim to State which may, with the approval of the Ohio Attorney General, enter into an escrow arrangement for future royalties and shut-in fees accruing to such disputed portion under terms and conditions proper to safeguard the rights and interests of all parties. If an adverse claimant files suit against State or against Tenant claiming title to all or a portion of the oil, gas, condensate and/or liquid hydrocarbon rights on or under the Premises, or if Tenant, after receiving notice of an adverse claim, institutes litigation in a court of competent jurisdiction to secure an adjudication of the validity of the claim, the Royalties accruing to the litigated portion will be placed in an escrow account until such time as the ownership of the disputed interest will be determined by compromise or a non-appealable final judgment of a court of competent jurisdiction. The Royalties placed in escrow will be distributed as determined by compromise or at the direction set forth in a non-appealable final order of the court of competent jurisdiction. Tenant will not seek reimbursement from State for any Royalty payments made prior to a determination of mineral ownership or rights under this provision, nor will Tenant seek any attorney fees, expert fees, court costs or other payments or reimbursement as a result of any legal, administrative or other action subject to this provision.

If an escrow arrangement is entered into, then the escrow agent will be agreed upon by the parties in a writing signed by each of them. The parties will cooperate fully with each other when preparing the terms and conditions of any such escrow arrangement, and the selection of an escrow agent. If the parties cannot agree on an escrow agent, then the escrow agent will be a financial institution, insured by FDIC, selected by State, which will provide written notice of its selection of the escrow agent to Tenant.

The foregoing proportionate reduction clause does not apply to and may not reduce the payment due State for any Signing Bonus or any other type of payment due State under this Lease except those payments mentioned specifically in said clause.

**16.04** This Lease does not in any manner whatsoever limit the right of State, its nominees and assigns, to grant additional property rights of any kind whatsoever across and upon the Premises, so long as such additional property rights do not interfere with the rights and privileges herein granted to the Tenant. State also retains to itself, its nominees or assigns, the right to use the Premises for its own purposes, so long as such use does not interfere with the rights and privileges herein granted to Tenant.

**17. FORCE MAJEURE**

Except for delays caused by actions or inactions of Tenant or a subcontractor or agent of Tenant, this Lease will not be subject to termination, forfeiture of rights, or damages due to failure to comply with obligations if compliance is effectively prevented by an event set forth in this paragraph. When Tenant’s fulfillment of its obligations hereunder (except for the payment ofmoney) are prevented or delayed by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot or by any other cause not reasonably within Tenant’s control (any of which is hereinafter referred to as a “Force Majeure Event”), this Lease will not terminate, in whole or in part, because of such prevention or delay, and, at Tenant’s option, the period of such prevention or delay will be added to the term hereof. Tenant will not be liable in damages for breach of any express or implied covenants of this Lease for failure to comply therewith, if compliance is prevented by, or failure is the result of any applicable laws, rules, regulations or orders or operation of a Force Majeure Event. If this Lease is the subject matter of any lawsuit or other action (except for a lawsuit or action brought by Tenant for the sole purpose of invoking a Force Majeure Event in order to extend the term of this Lease), and Tenant is ordered to forego or suspend its operations on the Premises or lands pooled/unitized with the Premises, or Tenant, in its discretion, foregoes or suspends operations solely by reason of such lawsuit or action, then this Lease will not expire during the pendency of such lawsuit or action, or any appeal thereof, and the period of the lawsuit or action, or any appeal thereof, will be added to the term of this Lease. The period of extension by reason of force majeure will be limited to a cumulative total of 24 months. The term “Force Majeure Event” does not include a lack of available markets for production, or any other events affecting only the economic or financial aspects of drilling, development, production, or marketing oil, gas, condensate and/or liquid hydrocarbons.

**18. NOTICES**

**18.01** Except as may be specifically provided for herein, all notices or other documents required or permitted to be given pursuant to this Lease will be deemed to have been properly given if sent by certified or express United States mail, Return Receipt Requested, to the parties at their respective addresses.

**18.02** For purposes of notification, Tenant’s address is:

\*\*Full Name of Tenant\*\*

\*\*Tenant’s address\*\*

\*\*Tenant’s address\*\*

\*\*Tenant’s address\*\*

\*\*Tenant’s address\*\*

\*\*Tenant’s E-mail Address\*\*

**18.03** For purposes of notification, State’s address is:

Ohio Department of Transportation

Office of Real Estate, Property Management Section

1980 West Broad Street, 4th Floor

Mail Stop 4120

Columbus, Ohio 43223-0899

\*\*State’s E-mail Address\*\*

**18.04** If either party to this Lease changes its address, it will provide at least 15 days written notice thereof to the other party in the manner provided for in § 18.01.

**19. RELEASE**

Tenant will not be deemed released from its duties and obligations under this Lease until (A) All the records and reports, and other data described in this Lease have been provided to State, (B) All wells required to be have been plugged and plugging certificates have been provided to State, (C) All other terms of this Lease have been met, and (D) Tenant and State have signed a Statement of Release that indicates their agreement that all of the terms of this Lease have been met and the each of them fully releases any and all claims it might have against the other arising from this Lease, and each of them agrees not to unreasonably withhold its approval of such a Statement of Release.

**20. STORAGE**

Notwithstanding anything to the contrary herein, Tenant is not granted any right whatsoever to use the Premises, or any portion thereof, for the injection or storage of any oil, gas, brine, constituents thereof or any other substances or materials whatsoever in, on, under or within the Premises without the prior written permission of State. The foregoing prohibitions do not apply to the act of well stimulation.

If State wishes to enter into an agreement with a third party regarding the use of the Premises for gas storage, State will first give Tenant written notice of the identity of the third party, the price or the consideration for which the third party is prepared to offer, the effective date and closing date of the transaction and any other information regarding the transaction which Tenant believes would be material to the exercise of the offering. State does hereby grant Tenant the first option and right to purchase the gas storage rights by matching and tendering to State any third party’s offering within 30 days of receipt of notice from State.

**21.** **SIGNATURES**

Any person executing this Lease in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal’s behalf.

**22. WAIVER**

**22.01** The waiver of State of, or the failure of State to take action with respect to, any breach of this Lease, will not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term of this Lease.

**22.02** The subsequent acceptance of any payment hereunder by State may not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease.

**23.** **SALE OF PREMISES BY STATE**

**23.01** If State intends to sell or otherwise dispose of the Premises during the term of this Lease, then State will notify Tenant thirty (30) days prior to such sale or disposal.

**23.02** If State sells the Premises during the term of this Lease, it will have the right to assign any or all of its rights under this Lease to the new owner.

**24. SUCCESSORS AND ASSIGNS**

This Lease will extend to and be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

**25. SEVERABILITY**

This Lease is intended to comply with all applicable laws, rules, regulations, ordinances and governmental orders. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will survive and continue in full force and effect to the maximum extent allowed by law. If a court of competent jurisdiction holds any provision of this Lease invalid, void, or unenforceable under applicable law, the court will give the provision the greatest effect possible under the law and modify the provision so as to conform to applicable law if that can be done in a manner which does not frustrate the purpose of this Lease.

**26. GOVERNING LAW AND INTERPRETATION**

**26.01** This Lease will be governed in accordance with the laws of State of Ohio except to the limited extent the same are preempted by federal statute, regulation or rule.

**26.02** If a court of competent jurisdiction determines there is an ambiguity in any of the terms and provisions of this Lease, then State and Tenant agree that the terms and provisions of this Lease will in all events be construed in favor of State and against Tenant.

**27. ETHICS**.

Tenant, by its signature on this document, certifies that Tenant: (A) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (B) will take no action inconsistent with those laws. Tenant acknowledges that failure to comply with Ohio’s ethics and conflict of interest laws is, in itself, grounds for termination of this Lease and may result in the loss of other contracts, leases or grants with State of Ohio.

**28. DRUG-FREE WORKPLACE**

Tenant agrees to comply with all applicable federal, state and local laws, ordinances, regulations and rules regarding the maintenance of a drug-free workplace. Tenant will make a good faith effort to ensure that all of Tenant’s employees, while present on the Premises, will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**29. MULTIPLE ORIGINALS**

Two counterparts of this Lease will be executed by State and Tenant, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. The party who last signs this Lease will provide a fully executed counterpart thereof to the other.

**30. MODIFICATION**

The terms of this Lease may not be modified in any manner except as evidenced by a writing executed by State and Tenant, which writing will make reference to this Lease.

**31. RECORDATION**

Attached hereto, and by this reference incorporated herein, is a Memorandum of ODOT Oil & Gas Lease No. \_\_\_\_ [“Memorandum of Lease”]. At the same time as State and Tenant execute this Lease, each of them will execute two counterparts of the Memorandum of Lease, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. The party who last signs the Memorandum of Lease will provide a fully executed counterpart thereof to the other. Tenant will record an original of the Memorandum of Lease, to which Tenant will attach true and accurate copies of both Exhibit A and Exhibit B described above in the third paragraph of page 2 of this Lease, in the county in which the Production Unit of which the Premises is a part is, or will be, located within five business days of the date on which this Lease is last signed by one of the parties. Tenant will pay and be responsible for any and all recording fees. Tenant will provide State with a copy of the recorded Memorandum of Lease, with all relevant recording data (e.g., date recorded, index, volume and page numbers) clearly legible, within ten days of the date on which the recorded Memorandum of Lease is returned by the county recorder to Tenant.

**32. NONDISCRIMINATION**

**32.01** No person on the grounds of race, color, national origin, sex, age, disability, low-income status or limited English proficiency will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the above described property.

**32.02** In the construction of any improvements on, over, or under the above described property and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, age, disability, low income status or limited English proficiency will be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination.

**32.03** The above described property will be used in a manner that at all times is in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. DOT – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**32.04** In the event that this instrument grants a lease, license, or permit and any of the above nondiscrimination covenants is breached, then State of Ohio, Department of Transportation, will have the unfettered right to terminate the lease, license or permit and to re-enter and repossess the above-described property and hold the same as if said lease, license or permit had never been made or issued.

**32.05** In the event that this instrument grants a fee or easement interest and any of the above nondiscrimination covenants is breached, State of Ohio, Department of Transportation, will have the unfettered right to re-enter the above described property, and said property will thereupon revert to and vest in and become the absolute property of State of Ohio and its successors and assigns for the use and benefit of the Department of Transportation.

**32.06** In the event that this instrument grants a lease, fee or easement interest, all of the foregoing nondiscrimination covenants will be and are covenants running with the land.

In Witness Whereof, the parties hereto have executed this Lease on the dates indicated immediately below their respective signatures; this Lease will be in full force and effect on the date last signed by one of the parties. Tenant acknowledges it has received a copy of this Lease and agrees to comply with the provisions herein contained.

\*\*FULL NAME OF TENANT\*\*

\*\*Legal nature of Tenant – e.g., an Ohio corporation\*\*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*\*Name of Person Signing for Tenant\*\*

\*\*Signer’s Office/Title with Tenant – e.g., President\*\*

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20 \_\_\_

State Of OHIO

ss:

County Of Choose an item.

Be It Remembered, that on the \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me the subscriber, a Notary Public in and for said state and county, personally appeared \*\*Name of Person Signing for Tenant\*\*, who acknowledged being the \*\*Signer’s Office/Title with Tenant – e.g., President\*\* and duly authorized agent of \*\*Full Name of Tenant\*\*, and who acknowledged the foregoing instrument to be the voluntary act and deed of said entity.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid. No oath or affirmation was administered with regard to the notarial act.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

My Commission expires: \_\_\_\_\_\_\_\_\_

*REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY*

STATE OF OHIO

DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JACK MARCHBANKS, PH.D., Director

By, \*\*Name and Title of Person Signing for Director\*\*

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20 \_\_\_

State Of Ohio

ss:

County Of Franklin

Be It Remembered, that on the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me the subscriber, a Notary Public in and for said state and county, personally came the above named \*\*Name and Title of Person Signing for Director\*\*, who acknowledged being the duly authorized representative of State of Ohio, Department of Transportation, and who acknowledged the foregoing instrument to be the voluntary act and deed of State of Ohio, Department of Transportation. No oath or affirmation was administered to \*\*Name and Title of Person Signing for Director\*\* with regard to the notarial act.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

My Commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

This form RE 75-11 was updated to conform to new notarial language requirements as per Revised Code 147.542.

This document was prepared by or for the State of Ohio, Department of Transportation, on a form approved by the Attorney General of Ohio.