Look Before You Lease

www.lookbeforeyoulease.org

Dear Landowner,

Deciding whether to lease your land for oil and gas development is not a decision that comes easily. You have many leasing considerations before you as well as the responsibility to protect your family and your land. Leases created by oil and gas companies by their legal council will favor their interests. This sample lease is provided to you as a starting point. It was developed with you -- the landowner in mind.

About the Lease: This is a sample lease with many sidebar annotations that offer explanation and insight regarding the purpose and the reason various clauses are important and included within this document. The lease was written by Emens & Wolper law firm in Columbus, Ohio. Their firm has specialized in oil and gas matters for over 50 years. In recent years, they have worked with landowners and landowner associations on developing leases in the Marcellus and Utica formations. They have also written a document called "Unusual Ohio Oil and Gas Lease Provisions" that explains how this new wave of development differs from conventional leases and practices Ohio landowners are used to seeing. It is included in section IV of our landowner toolkit.

This document will help familiarize you with various existing and new or unusual provisions. Many provisions included in our sample lease do not appear in "standard leases" provided by oil and gas companies or landsmen. Every tract of land is unique and your requirements for the land may be different than your neighbor. Therefore, it is important to never sign a "cookie cutter lease" but to work with your attorney or landowner association for the best possible terms in your lease and for your land. After all, your family and your community will live with the impact and legacy of this development for many years.

Please note: We hope you find value in the information we have provided, however we will not provide a "fillable" version of this lease document. The sample lease is intended to be used as an educational tool. It is imperative that you work with a qualified attorney that will help you negotiate a landowner friendly lease. There are many oil and gas companies currently working in Ohio. If you decide to lease your land and the company is not willing to work with you, you may choose to work with another company – one that sees you as a valued stakeholder in the project.

Please also visit our website where you can review our landowner toolkit, sign up for electronic updates, or order a CD version of our toolkit. Visit us at: www.lookbeforeyoulease.org

In early 2012, we will add three recorded webinars (video presentations) to our website with Emens & Wolper law firm. The webinars will be an additional resource to understand the information contained in this sample lease.

Redistribution: Redistribution of this sample lease is permitted and encouraged, so long as the lease remains intact and includes this cover letter. If you have a question about use or distribution please contact

Rural Action
P.O. Box 157 Trimble, Ohio 45782
attention: Look Before you Lease
or call 740-767-4938

Thank you for choosing to "Look Before You Lease"

Sincerely,

Look Before You Lease Working Group

Reviewers
LB4UL wishes to recognize and thank the individuals who helped to create and review this document. They include:

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Sample Landowner Friendly Lease for Ohio prepared by Emens and Wolper Law Firm, LPA – created for our client Rural Action, Inc. and its "Look Before You Lease" landowner toolkit. To obtain more information about Look Before You Lease (LB4UL) or to order a toolkit you may visit www.lookbeforeyoulease.org

DRAFT FORM OF OIL AND GAS LEASE*

Lease Date _____, 20____

This is an oil and gas lease (the "Lease") made this _____ day of _____, 20____, between _____, herein called "Lessor" (collectively if there is more than one) whose address is _____, and _____, hereinafter called "Lessee", whose address is _____.

ARTICLE I. GRANT OF LEASE

Lessor in consideration of the payments described herein and the covenants and agreements hereafter contained, does hereby lease to the Lessee the land described below for the sole purpose of exploring for, drilling, operating, producing and gathering the oil, gas, casinghead gasoline and all other gases and their respective vapors, liquid or gaseous hydrocarbons produced in association therewith other than as reserved unto Lessor below (herein called "Leased Products"). Both parties understand that this

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* This Lease was drafted to be used as an example of an oil and gas lease with many landowner friendly terms. This lease is an educational tool and is not intended for use as a legal instrument. Please remember that each term in an oil and gas lease is subject to negotiation. A landowner should hire an attorney knowledgeable about oil and gas leases, to negotiate with oil and gas companies as they will likely wish to negotiate many of the terms. This Form of Lease was prepared for our client, Rural Action, and is not to be relied upon by any other person or entity, without our express, prior, written approval.

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EXPLANATION

ARTICLE I: GRANT OF LEASE

Granting Clause: In an oil and gas lease the granting clause explicitly states the rights being granted by the Lessor (landowner) to the Lessee (expected to be an Oil and Gas Operating Company (OGOC)). Usually this includes both the types of operations that the Lessee can undertake pursuant to the lease as well as the substances covered by the lease.

is a lease, not a working interest of Lessor, and that Lessor shall not be responsible for any costs with respect to Lessee's activities on the Leased Premises. Lessee is prohibited from performing any activity on the Leased Premises which is not expressly permitted pursuant to the terms and conditions of this Lease.

1. **Reservations**
   (a) Lessor's Reserved Rights: Lessor expressly excludes from this Lease and reserves all minerals of every kind and character in, on and under the Leased Premises except only for the Leased Products herein defined. Lessor specifically reserves the rights to all Leased Products contained in any formation from the surface of the Leased Premises to _____ (___) feet above the top of the formation commonly known as the _____, and in any and all formations _____ (___) feet or more below the base of the formation commonly known as the _____, other than such rights allowed to Lessee to drill through such reserved portions as are necessary for Lessee to have access to the _____. Lessor also reserves the right to use the Leased Premises and any improvements thereon or to be constructed thereon for any and all other purposes, and Lessee agrees not to unreasonably

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1. Reservations

a. Lessor's Reserved Rights: In a landowner friendly lease, we recommend explicitly reserving "all rights not specifically granted" in the lease. This is to help protect against a court benefitting the Lessee by reading any implied rights favorable to the Lessee into the granting clause. We also include a clause that allows the landowner to reserve the oil and gas rights in specific formations below the subject property.

interfere with the use and enjoyment of said land by Lessor, and Lessor's family, agents, employees, invitees, and guests and to comply with all other specific provisions herein relating to the use of the land.

(b) Irrigation and Agricultural Activities: Lessor reserves the right to initiate or continue irrigation and agricultural activities (including timbering) on the Leased Premises and Lessee will use all reasonable efforts to accommodate Lessor's agricultural use.

2. **Description of the Land Included in the Lease**: The land included in this Lease (herein called the "Leased Premises") is located in the County of _____, State of Ohio, with a permanent parcel number (or numbers) as follows: _____. The Leased Premises contains _____ (__) acres. A legal description of the Leased Premises is attached hereto as Exhibit A, together with a Prior Deed Reference.

b. Irrigation and Agricultural Activities: A landowner wants to specifically reserve the right to conduct agricultural activities on the leased premises.

2. Description of Land Included in the Lease: We believe a landowner friendly lease should specifically indicate the land covered by the lease (usually through use of tax parcel numbers and/or metes and bounds descriptions). Tax parcel numbers can be found either on real estate tax forms for the Leased Premises or on most county auditor's websites. A current metes and bounds description can usually be found on the deed by which the Lessor received ownership of the property (unless parts of the property have been sold, in which case a "Less & Excepting" clause will need to be added to the description). The county recorder will have copies of deeds.

We also believe a landowner friendly lease should not include a "Mother Hubbard clause." A Mother Hubbard clause is a provision in an oil and gas lease which indicates that the lease includes land not specifically described in it. For example, "this lease also covers any lands of Lessor adjacent or

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ARTICLE II. TERM OF LEASE

1. **Lease Term**: This Lease shall become effective when Lessor has received the entire lease signing bonus described in Article III Section 1 from the Lessee. If Lessor has not received the entire lease signing bonus within ninety (90) days of the date set forth below the title of this document on page 1 (herein called the "Lease Date"), then this Lease shall automatically become null and void. Subject to the provisions hereinafter contained, this Lease shall be for a term of _____ (__) years from such date (herein called the "Primary Term") and so long thereafter as Leased Products are produced in Commercially Paying Quantities from the Leased Premises or lands pooled or unitized therewith.

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contiguous to the above-described land." We recommend a landowner friendly lease not include this type of clause; if the Lessee wants the right to such additional land it can separately negotiate and pay for it. *Lowe Citation*: 176-179 (John S. Lowe, *Oil and Gas Law in a Nut Shell*, 5th. Edition, (2009))

ARTICLE II: TERM OF LEASE

1. Primary Term (part of "Lease Term"): The primary term sets forth the period of time that the Lessee may hold the Lease without being required to drill if the lease is a "Paid Up Lease" or if delay rental payments are made. The purpose of this period is to give the Lessee adequate time to acquire additional leases, conduct geophysical tests, arrange financing, and conduct other activities in preparation of drilling. The length of the primary term is subject to the negotiations between the Lessor and the Lessee of the cash bonus, the royalty, and the other lease terms. It is usually in a landowner's interest to limit the primary term to as short a period of time as possible (as the sooner the Lessee is obligated to drill and pay royalties, the better for the landowner). *Lowe Citation:* 192-193

1. Secondary Term (part of "Lease Term"): The secondary term follows the primary term beginning with the words "and as long thereafter." It provides the specific circumstances under which the Lease will remain effective after the primary term expires. We believe the secondary term should only extend the lease for as long a period of time as the Lessee is actually producing Leased Products in Commercially Paying Quantities and, thus, paying the landowner royalties on that production. The landowner's reason for granting a secondary term is to continue to receive negotiated royalty payments. Many landowner unfriendly leases allow the secondary term to keep the lease in effect even when the Lessee is not producing or

2. **Option to Extend the Primary Term**: Lessee is given the option to extend the Primary Term of this Lease for one (1) additional _____ (__) year period. To exercise this option Lessee must notify Lessor in writing of Lessee's intent to exercise the option and Lessee must simultaneously pay to Lessor, at any time prior to the termination of the Primary Term, a lease bonus for the renewal period equal to _____.

3. **Removal of Equipment**: The Lessee, upon termination of this Lease, is obligated to remove all fixtures, improvements, pumps, tanks, tubing,

paying royalties. For example, such leases may allow the secondary term to keep the lease in effect if "a well deemed by Lessee to be capable of production is located on the Leasehold" (thus, the well may not be producing and the landowner may not be receiving any payments for the lease to be extended indefinitely) or if "proscribed payments are made" (the Lessee can make gas storage or possibly disposal well payments (both typically are nominal) and extend the lease if appropriate language is included). *Lowe Citation*: 193

2. Option to Extend the Primary Term: It should first be noted that giving any kind of an option to the Lessee is for the benefit of the Lessee not the landowner. Therefore, it is the landowner's business decision whether or not to give an option at all (often the Lessee will try to negotiate one). Usually an option provides that if at the end of the primary term the Lessee has not drilled a commercially producing well but wants to extend the primary term, it can pay another bonus amount per acre to extend the primary term. If a landowner decides to give an option he/she wants it to be for as short a period of time as possible (preferably less than the primary term) and for as high a bonus amount as possible.

3. Removal of Equipment: This is a landowner friendly clause which simply obligates the Lessee to remove its equipment from the Leased Premises within a certain amount of time following

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casing, machinery, unused pipelines, rubbish and debris and all other property it has placed on the Leased Premises. This duty must be performed within _____ (__) months after expiration of this Lease, or the release of any lands covered by this Lease, or Lessor may claim the property, in whole or in part, or have property and fixtures removed, in whole or in part, at Lessee's sole expense including all of Lessor's reasonable attorneys' fees. This provision may not apply if the Lessee sells equipment to Lessor in a separately negotiated agreement.

ARTICLE III. PAYMENTS AND BENEFITS TO LESSOR

1. **Per Acre Bonus Payment**: Lessee agrees to pay Lessor a lease signing bonus of _____ dollars ($_____) for each acre contained within the Leased Premises.

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the termination of the lease or reimburse the landowner for removing the equipment. The Lease also provides that the landowner can negotiate to purchase the equipment from the Lessee, if he/she so wishes, but any landowner considering purchasing the equipment should be aware of all of the obligations involved.

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ARTICLE III: PAYMENTS AND BENEFITS TO LESSOR

1. Per Acre Bonus Payment: Historically bonuses in Ohio have been small ($5 or $10 per acre), but these bonuses have risen dramatically since 2010. Two typical structures of lease bonuses are: (I) "paid up" leases and (II) non-paid up leases that contain a delay rental clause.

(I) A "paid up" lease is a lease in which the Lessee pays a lump sum bonus on the Effective Date to the landowner but pays no additional bonus or rentals during the primary term. Thus, if the primary term of the paid-up lease is 5 years and the Lessee is offering a $2,000 per acre bonus, what the Lessee is really offering is a bonus of $400/year for 5 years which it will pay all at once at the beginning of the lease.

(II) A non-paid up lease is a lease in which the Lessee pays a lease bonus at the beginning of the lease (typically significantly smaller than the lump sum payment in a "paid up" lease) which gives the Lessee a certain period of time to drill

2. **Most Favored Nation Clause**: Lessee covenants that all of the benefits, pricing and terms paid or granted by Lessee herein are at least as favorable to Lessor as the benefits, pricing and terms paid or granted by Lessee to any previous lessor of oil and gas in _____ County within the past eighteen (18) months and should Lessee enter into any subsequent oil and gas lease with any other lessor in _____ County during one-hundred eighty (180) days after execution of this Lease which provides for benefits, pricing or terms more favorable than those contained in this Lease, then this Lease shall be deemed to be modified to provide Lessor with those more favorable benefits, pricing and terms. Lessee shall notify Lessor promptly of the existence of any such more favorable benefits, pricing and terms and Lessor shall have the right to receive the more favorable benefits, pricing and terms immediately. If requested in writing by the Lessor, Lessee shall promptly amend this Lease to contain the more favorable terms, pricing and conditions and make the appropriate payments to Lessor.

3. **Delay Rental Payment**: If Lessee fails to Commence Operations on the Leased Premises, (typically one year); if the Lessee has not drilled in that period of time the lease expires unless the Lessee makes delay rental payments (see below). *Lowe Citation*: Page 278

2. Most Favored Nation Clause: This landowner friendly provision is not usually included in Ohio oil and gas leases, but in a period of rapidly escalating Bonus and Royalty payment terms it can be beneficial to landowners. Oil and Gas companies may strongly resist the inclusion of this type of clause.

3. Delay Rental Payment: The purpose of a delay rental clause in a non paid-up lease is to allow the Lessee to delay drilling during the primary term. Delay rental payments are

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or on any land pooled therewith, on or before one (1) year from the Effective Date of this Lease, this lease shall terminate as to both parties unless on or before such date Lessee pays or tenders to Lessor the sum of _____ dollars ($__) per acre on the number of acres covered by this Lease which shall cover the privilege of deferring commencement of drilling operations for a period of twelve (12) months. In like manner and in like payments annually, the commencement of drilling operations may be further deferred for successive periods of twelve (12) months each during the Primary Term. In no case shall the payment of delay rentals be interpreted to keep this Lease in effect beyond the Primary Term.

4. **Royalty Payments**: The Lessee shall pay to Lessor _____ percent (___%) of the higher of market price or gross proceeds received by Lessee at the point of sale for all of the Leased Products produced from each and every well on the Leased Premises or on lands pooled therewith (herein called the "Royalty Payment"). Lessor has no responsibility for any costs or expenses in connection with the activities and operations of Lessee including, but not limited to, drilling, testing, completion, producing or post-production costs, construction, transportation, dehydration, separation, compression, gathering, processing, and marketing; such costs are never to be taken

generally made on a yearly basis starting at the end of the first year of the primary term and are usually smaller than the bonus payment. Be wary of delay rental clauses in "paid-up" leases because such payments are not necessary to delay drilling during the primary term. A landowner unfriendly "paid-up" lease might include a delay rental clause and other language which allows the lease to be extended into the secondary term even if there is not actual production as long as the Lessee makes certain payments equal to the delay rental payments. *Lowe Citation*: Page 203-231

4. Royalty Payments: A "royalty" is the payment the landowner receives based on the production of oil and gas from the Leased Premises. Until recently the royalty in Ohio oil and gas leases was usually 1/8th or 12.5% of production. However, since 2010 many Ohio landowners who have negotiated oil and gas leases in Marcellus and Utica Shale areas have been receiving higher percentages. A landowner should keep in mind that if there is production at the end of the primary term, the royalty is the basic payment the Lessee makes to keep the lease in effect (no additional bonuses or rental payments are usually due if there is production). Therefore, a landowner wants to make sure he/she is receiving as high a royalty as possible.

It is important to the Lessor that the royalty is based on "gross proceeds" and not "net proceeds." A royalty based on

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into account when calculating gross proceeds. If the sale of Leased Products is to an affiliate of the Lessee, royalty will be based upon the higher of gross proceeds or market price at the point of sale. The Royalty Payment shall be paid to Lessor monthly by the last day of the month following the month during which the Leased Products are marketed except when unusual circumstances cause delay (not allowed more than once every three years) and then such payments shall in no event be later than ninety (90) days following the date Leased Products are marketed. Each Royalty Payment shall be accompanied by a stub, schedule, summary, or remittance identifying the Lease and showing the gross amount and disposition of all Leased Products produced. All Royalty Payments shall be paid to Lessor at the address recited above Article I in this Lease, or at such other address as shall be given by Lessor to Lessee in writing.

5. **Shut-in Royalties**: If a well is drilled on the Leased Premises or lands pooled therewith which is capable of producing gas in Commercially Paying Quantities but the production thereof is shut-in, shut-down or suspended for lack of any available market for production, the Lessee shall pay a "shut-in" royalty equal to the sum of _____ dollars ($___) per acre each month. Lessee shall remit all shut-in payments to Lessor

the gross proceeds from production means that the Lessee should not deduct expenses when calculating the royalty percentage. *Lowe Citation*: Page 278-288

5. Shut-in Royalties: A shut-in oil and gas well refers to a well which has been drilled and completed by the Lessee but which is not producing because the control valves at the wellhead are turned to stop production. It may happen with a gas well when there is no pipeline near the well and/or when either there is no market for the gas produced or the market for the gas is so low that the lessee is financially better off not producing the gas (because the price of gas doesn't cover the costs to produce and transport it). This situation rarely comes up with regard to an oil well because a lengthy pipeline is not usually needed for

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at the address provided in the Lease. The shut-in royalty payment may keep this Lease in effect after the Primary Term, however this Lease will not be kept in force solely by the shut-in royalty payment for a period longer than a total of twelve (12) months whether consecutive or not.

6. **Siting/Spud Fee**: Lessee shall pay to Lessor in consideration for use and/or damages to the Leased Premises the sum of twenty-five thousand dollars ($25,000) prior to the commencement of drilling any horizontal well on the Leased Premises (herein called the "Pad Payment") for a well pad not to exceed six (6) acres. The payment for a well pad which exceeds six (6) acres shall be proportionally higher. Lessee shall pay Lessor a separate Pad Payment for each pad constructed on the Leased Premises.

7. **Taxes**: Lessee shall pay all taxes and/or assessments on Leased Products, Leased Product reserves and any increase in other taxes imposed by any local, state, or federal entity or governmental unit attributable to, or resulting from the assessment of Lease Products. Lessee shall, in addition, pay all severance taxes or other excise or personal property taxes arising out of or relating to this Lease and/or Leased Products. In the event real property taxes pertaining to or attributable to the Leased Premises, or any

an oil well. Most Lessees will want some type of shut-in clause included in the lease *Lowe Citation*: 258-264

6. Siting/Spud Fee: A "spud fee" is a fee associated with the land damage caused by the Lessee's construction of a drilling pad on the Leased Premises. Lessee basically occupies the area where the pad is placed and this is a payment to compensate landowners who have the pad placed on their property for the occupation and use by Lessee. Drilling pads or "spudding" pads are usually constructed when horizontal wells are to be drilled and may cover 6 acres or more.

7. Taxes: We believe a landowner friendly lease should place the burden on the Lessee for any additional taxes imposed on a landowner as a result of the Lessee's activities.

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property associated therewith, are increased in any manner by reason of the activities of Lessee on the Leased Premises, Lessee shall be responsible for the amount of any such tax increase and shall reimburse Lessor for the amount of such increase within thirty (30) days after Lessor provides Lessee with written documentation reflecting such increase and the basis thereof.

8. **Damages**: The Lessee shall be liable to Lessor and pay for any and all damages to the Leased Premises or neighboring property caused by or resulting from Lessee's activities. Damages include but are not limited to any damage to Lessor's water, growing crops, trees, livestock, fences, buildings, water springs, agricultural fields and lands, and any other property connected with drilling, operating, producing, gathering, or any other geophysical or exploratory work conducted by or for the Lessee. Lessee shall promptly replace any barriers, including but not limited to, fences, gates and walls removed by the Lessee during its activities on the Leased Premises. Whenever a Pad has been installed or later repaired on the Leased Premises, Lessee, at its sole expense, shall restore the surface of the Leased Premises as near as possible to the condition it was in prior to such work being undertaken. Upon Completion of Operations on

8. Damages: We believe it is very important that the damages clause be broad enough to attempt to cover all of the Lessee's activities.

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the Leased Premises, Lessee will within three (3) months restore the Leased Premises to as near as practicable the pre-drilling condition.

9. **Fresh Water Damage Protection**: In the event any activity carried on by the Lessee pursuant to the terms of this Lease adversely damages, disturbs, or injures the quality or quantity of Lessor's fresh water well or source located on the Leased Premises, Lessee shall at its sole cost and expense take all reasonable steps to correct any such damage, disturbance or injury and to remediate the same to as close to pre-damage status quo as reasonably possible, with all related costs of repair and maintenance to be paid by Lessee.

10. **Water Testing**: Lessee shall maintain the quality and quantity of Lessor's water supply to be measured by testing the Lessor's supply prior to Commencement of Operations on the Leased Premises or on any lands pooled therewith and upon the Completion of Operations on the Leased Premises or on any lands pooled therewith and as otherwise deemed necessary by Lessor due to changes in yield, quality or other aspects important to Lessor. All testing shall be conducted by an independent testing laboratory agreed to in writing by Lessor and Lessee prior to Lessee Commencing Operations on the Leased Premises

9. Fresh Water Damage Protection: This clause is an attempt to provide protection in case Lessee's activities cause damage to a landowner's water well or other fresh water sources.

10. Water Testing: We believe that it is important that the Lessee test Lessor's water prior to conducting operations on the Leased Premises and that the Lease provide specific requirements as to how such testing must be conducted.

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or on any lands pooled therewith. Testing must be for the entire array of chemicals and agents utilized by Lessee and the burden shall be upon Lessee to provide evidence of all such chemicals and agents in order for the testing agent to adequately test the water. Lessee shall pay all costs of testing and Lessor shall be provided complete copies of any and all testing results and data, and shall have full rights to contact the testing lab for inquiry and information. If Lessor's water supply is polluted, reduced, or is otherwise adversely or materially affected as a result of Lessee's activities, Lessee shall take any and all steps to restore water quality and quantity to its pre-existing condition or fully compensate Lessor for the damage and inconvenience caused thereby. During any period of remediation, Lessee, at its sole expense, agrees to provide Lessor with an adequate supply of potable water consistent with Lessor's use of his/her water supply prior to Lessee's activities on the Leased Premises or on lands pooled therewith. Any pollution or reduction of any water supply after any activities commence will be presumed to be the result of Lessee's operations unless Lessee can so prove otherwise, with Lessee having the burden of proof by a preponderance of the evidence. Until Lessee can prove otherwise as to cause or Lessor and Lessee reach a financial settlement agreeable to Lessor, Lessee shall

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provide the required replacement supply beginning immediately upon Lessor's providing evidence to Lessee of the water quality and/or quantity condition causing concern.

11. **Agricultural Programs**: In the event the Leased Premises are subject to any federal, state, local and/or agricultural program (e.g. CAUV, CREP, CRP, Forest Land Program, etc.), and any roll-back or reimbursement or recoupment or retroactive assessment (including interest and penalties therefrom) is made against the Leased Premises on account of, arising out of, or relating to the activities of Lessee on the Leased Premises, Lessee shall be responsible for paying Lessor any and all such amounts, but only insofar as such amounts imposed result from activities on the portion of the Leased Premises actually utilized by Lessee's Operations.

12. **Lien to Secure Payment and Performance**: In addition to any statutory lien in Lessor's favor, Lessor shall have and Lessee hereby grants to Lessor, a lien and perfected security interest on Lessee's Leasehold Estate and all property including Leased Products which have been or may be produced and not yet removed from the Leased Premises to secure payment of all amounts due to Lessor under the terms of this Lease.

11. Agricultural Programs: This clause is to ensure that a Lessee's activities will not adversely affect a landowners' participation in an agricultural program such as CAUV.

12. Lien to Secure Payment and Performance: The purpose of this clause is to give the Lessor additional security in the event that the OGOC declares bankruptcy or does not make payments due to Lessor.

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13. **Monies Paid**: Any monies paid to Lessor under the terms of this Lease are nonrefundable and under no circumstances will Lessee initiate any kind of action to recover any monies paid to Lessor.

ARTICLE IV. DEFINITIONS

1. **Commercially Paying Quantities**: "Commercially Paying Quantities" shall mean production of quantities of Leased Products sufficient to yield a profit to the Lessee over operating, marketing and related overhead expenses.

2. **Operations**: "Operations" shall only mean (a) production of Leased Products in Commercially Paying Quantities, or (b) the actual drilling, testing, completing, reworking, producing or plugging back of a well to obtain or increase production of Leased Products.

3. **Commence Operations**: "Commence Operations" shall only mean the actual initiation of a drilling bit turning in the ground for drilling of a validly permitted well being drilled under power of a drilling rig capable of drilling to the anticipated total horizon of the well. Commencement does not include preliminary actions associated with drilling such as staking locations, digging a slush pit,

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13. Monies Paid: This provision is to protect a landowner in the event that a Lessee tries to recoup money paid out under the lease which the landowner may no longer have or in the event of a dispute regarding payments by the Lessee to the Lessor.

ARTICLE IV: DEFINITIONS

Purpose: This section sets out terms in the lease that we recommend a landowner specifically define.

moving equipment, drilling for material that is not oil or gas, erecting rigs, etc.

4. **Completion of Operations**: "Completion of Operations" shall mean the completion of drilling operations as to equipment and facilities relating to drilling, including any associated pits, tanks, or other facilities no longer needed for production, or in the event of a dry hole, all such facilities.

5. **Affiliate**: An "Affiliate" is any entity in which Lessee, or any parent company, subsidiary, or affiliate of Lessee, owns an interest of more than ten percent (10%) or exercises any degree of control, directly or indirectly, by ownership, interlocking directorate, or in any other manner; and any corporation or other entity which owns an interest in or exercises any degree of control, directly or indirectly, over Lessee.

6. **Pad**: "Pad" is defined as any construction designed to facilitate one or more wells in a concentrated surface area.

7. **Production Unit**: "Production Unit" is defined as a unit of one or more tracts which are brought together by the Lessee for the purpose of forming a drillsite complying with the state requirements for drilling one well in order to develop the lands as if they were under a single lease.

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8. **Pooled Unit**: "Pooled Unit" is defined as land described in this Lease which Lessee has pooled, prior to drilling, with contiguous land covered with other leases so as to establish one or more pooled development units. A Pooled Unit may also be a production unit.

ARTICLE V. ASSIGNMENT OR TRANSFER OF LESSEE INTEREST

1. **Assignment of Lease**: The rights of either party hereunder may be assigned or otherwise transferred, in whole or in part and as to any horizon, and the provisions hereof shall extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor to be effective and Lessor agrees not to unreasonably withhold such consent. When considering whether to give consent to a proposed assignment it will not be unreasonable for Lessor to consider the proposed assignees working capital, past financial performance, and experience and reputation in the industry as well as other information and beliefs. No assignment by Lessee (or any assignee of Lessee) of all or any part of or interest in this Lease shall relieve Lessee (or any assignee of Lessee) of any liability for breach of any covenant, warranty, or other

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ARTICLE V: ASSIGNMENT OR TRANSFER OF LESSEE INTEREST

1. Assignment of Lease: Most oil and gas leases contain an assignment clause allowing Lessee to transfer and/or assign its interest without any limitation. We believe a key to a landowner friendly lease is making sure the assignment clause does not undermine what the landowner negotiated for. A prudent landowner will only sign an oil and gas lease with a Lessee whom the landowner has determined to be both reputable and financially capable of meeting the Lessee obligations set forth in the lease. However, this due diligence will not accomplish its purpose if the Lessee can assign the lease to any other company without the landowner's WRITTEN consent. We also believe a landowner friendly assignment clause should provide that the Lessee can not limit its liability by assigning.

obligation of Lessee hereunder, whether theretofore or thereafter accrued unless Lessor consents thereto in writing. Each assignee of all or any portion of the rights of Lessee hereunder agrees to be bound by the provisions of this Lease to the same extent as if such assignee were an original party to this Lease. Lessee and any assignee shall provide to Lessor a true copy of any assignment with recording information reflected thereon (if recorded) and addresses of all assignees within thirty (30) days of making such assignment. Failure by Lessee to satisfy any of the above stated obligations shall constitute a default on this entire Lease.

ARTICLE VI. POOLING AND UNITIZATION

1. **Pooling and Unitization**: Subject to the limitations below, Lessee is granted the right to pool or unitize, prior to drilling, all or part of the land covered by this Lease with any contiguous land so as to establish a pooled unit or units (herein called "Pooled Units"). When designating Pooled Units the Lessee shall make reasonable efforts to avoid excluding small or irregular shaped portions of the Leased Premises and to form Pooled Units in the shape of a square or rectangle. Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases included in the Pooled Unit,

ARTICLE VI: POOLING AND UNITIZATION

1. Pooling and Unitization: An oil and gas lease pooling or unitization clause can be beneficial or disadvantageous to a landowner depending on the circumstances. This type of clause allows part or all of the Leased Premises to be pooled or consolidated with other leases or lands and considered one Pooled Unit for the purposes of drilling, producing and determining whether or not a "producing well" is located on the landowner's premises. In Ohio in 2011, an oil/gas producer needs 40 acres to obtain a state permit to drill a well for oil and gas to a depth below 4,000 feet. For example, if the OGOC leases several 10 acre tracts and wishes to drill a 5,000 foot well on one of the tracts, it needs to pool at least 4 such tracts to have enough acreage to drill the well.

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the formations and depths covered by the Pooled Unit, and the substance being drilled for (either oil, gas or both) and file such instrument for record in the county or counties in which the pooled land is situated prior to drilling on the Pooled Unit. The Pooled Unit shall be effective on the date such instrument is recorded in the office of the County Recorder and a copy of such recorded instrument, and all amendments thereto, is furnished to the Lessor. No Pooled Unit for any vertical well with no horizontal drilling component which includes any portion of the Leased Premises shall exceed eighty (80) contiguous acres without the written consent of Lessor. No Pooled Unit for any well that includes lateral or horizontal drilling shall exceed six hundred forty (640) acres without the written consent of Lessor. If Lessee can demonstrate that a greater amount of acreage, than that set forth in the designated limits provided herein, is necessary to adequately drain the area being drilled then the designated number of acres may be increased with the written consent of Lessor who will not unreasonably withhold such consent. There shall be at least fifty percent (50%) of the Leased Premises included in a Pooled Unit unless the Lessor provides written consent to a lesser percentage. There shall be allocated to the Leased Premises included in a Pooled Unit the proportion of the production from the Pooled Unit that the number of surface acres

In order to drill one horizontal well that extends 5,280 feet, a Lessee will need more than 100 acres. Since more than one horizontal well is often drilled on a production pad, and many Ohio landowners own less than 100 acres, the necessity of including a pooling clause becomes apparent. In Ohio in 2011, few, if any, OGOC's will enter into a lease without a pooling clause unless the Leased Premises are extremely large. Since most landowners will not be able to negotiate a lease without a pooling clause, this lease focuses on making the pooling clause as landowner friendly as possible by including size, time, and notice requirements.

Ohio currently does not place any maximum size restrictions on such Pooled Units. However, the smaller the percent of a landowner's acres that are included in a Pooled Unit, the lower the percent of royalty that will be received by that landowner from the Pooled Unit. The size of pooling units and the percent of a landowner's acreage to be included in the Pooled Unit are terms that are typically negotiated in leases. The numbers included in this lease are recommendations for minimum acreages.

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covered by the Leased Premises and included in the Pooled Unit bears to the total number of surface acres in such Pooled Unit; and royalties shall be paid hereunder upon that portion of such production so allocated.

ARTICLE VII. TITLE AND WARRANTY

1. **Lessor Limited Warranty**: Lessor makes no representation or warranty as to Lessor's title to the Leased Premises other than that Lessor represents that Lessor is not aware of any unrecorded encumbrances or encroachments or conditions affecting title to the Leased Premises, and Lessee agrees that no claims will be made against Lessor pertaining to warranty of title.

2. **Title Curative**: Lessee assumes primary responsibility for taking the curative steps required to resolve any issues regarding Lessor's title to the Leased Premises as may be necessary to carry out the purposes of this Lease. Lessor agrees to take reasonable steps to cooperate with the Lessee in resolving title issues.

3. **Use of Leased Premises**

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ARTICLE VII: TITLE AND WARRANTY

1. Lessor Limited Warranty: We believe the landowner should explicitly set forth that he/she does not make any representation or warranty as to title of the Leased Premises. If the lease contains a general warranty clause (as many do) the Lessor may be liable to the Lessee if title defects unknown to the Lessor at the time of the lease are discovered in the future.

2. Title Curative: In a landowner friendly lease we recommend including a title curative provision.

3. Use of Leased Premises: Pursuant to the granting clause, unless specified otherwise, oil and gas laws usually give the Lessee implied rights to use the surface of the Leased Premises in any way reasonably necessary to obtain the minerals when the Lessee is actually operating on and/or producing from the

a. Agricultural Activities: In addition to the Damages Provision contained in Article III Section 8 of this Lease, in the event that the Lessee needs to remove marketable timber or injure crops in order to conduct Operations or activities, Lessee shall fully compensate Lessor for all timber, damages and loss of crops at current market value.

b. Mutual Agreement as to Location of Operations: Before Commencing Operations on the Leased Premises or any lands pooled therewith, Lessee and Lessor shall mutually agree in writing on the location and size of all wells, pads, roads, pipelines, gates, electrical wires, and other equipment, supplies and facilities which Lessee wishes to locate on any Leased Premises. Courts have interpreted this implied right broadly giving Lessee's discretion to build roads, construct drilling sites, erect oil storage tanks and power stations to power pumping sites, conduct pipelines, etc. (John Lowe 179-180). However, landowner friendly leases will include requirements for the landowner's benefit allowing the landowner to retain much control over the Lessee's use of his/her land. Much Oil and Gas activity in Ohio in 2011 contemplates drilling to produce in the Marcellus and Utica Shale which will often involve horizontal wells. Therefore, this lease attempts to accommodate such activities which necessitates more landowner protective terms and provisions than a typical Ohio Berea or Clinton well lease. Some of the important land use provisions are set forth below.

a. Agricultural Activities: It may be necessary for the Lessee to cut timber and intrude on crop land in order to produce from the Leased Premises. While the Lessee does have the right to do this absent contrary language, the landowner should be compensated for the damage caused to crops and marketable timber by Lessee's activities.

b. Mutual Agreement as to Location of Operations: The landowner should have some say in the size and/or location of wells, pads, roads, pipelines, gates, electrical wires, and other equipment, supplies and facilities on the Leased Premises. At the time of determining the location and size of a pipeline a landowner will likely wish to obtain additional compensation especially if the pipelines is a transmission pipelines. Furthermore, the Lessee should only be permitted to build structures on the Leased Premises if they are used for

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portion of the Leased Premises so as to minimize disruption of Lessor's use of the Leased Premises; provided, however, that Lessor's consent shall not be unreasonably withheld. Any wells, pads, roads, pipelines, gates, electrical wires, and other equipment, supplies and facilities Lessee locates on the Leased Premises will be maintained in good repair by Lessee, at its sole expense.

c. Restrictions on Location of Operations Without a separate written agreement between the Lessor and the Lessee, no pump stations, tank batteries, pipelines, roads, electrical lines, dryers, separators or other equipment or facilities shall be located on the Leased Premises unless they are for the sole purpose of transporting, processing or treating oil or gas from the Leased Premises or lands pooled or unitized therewith, and the afore listed **items** shall not be located nearer than (and no well shall be drilled nearer than) six hundred (600) feet from any dwelling or residential structure or four hundred (400) feet from any barn or other non-residential structure then on the Leased Premises, without the Lessor's written consent. There shall be no natural gas compressors located on the Leased Premises unless Lessor consents in a prior separate

production on that property or property pooled with the Leased Premises (unless the Lessor receives sufficient additional compensation). Many landowner unfriendly leases use "over, through and across" or similar language that allows the Lessee to build pipelines, structures, etc. on the landowner's property for production from a well not on the Leased Premises. On-site compressors can be a special problem as they may be large and loud.

c. Restrictions on Location of Operations: See comment at (b) above.

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written agreement. Any compressor permitted hereunder shall be designed and installed utilizing means to minimize noise, including but not limited to, sound enclosures and barriers, and quiet motors.

d. Restrictions on Lessee's Use of Leased Premises: Unless Lessor consents in a separate written agreement, the Lessee shall under no circumstances:
   i. Use the Leased Premises for the disposal of any drill cuttings, brine or other liquids or the storage or disposal of any liquids or solids.
   ii. Use the Leased Premises of any portion thereof, surface or subsurface, for gas or oil storage purposes.
   iii. Use any water from the Leased Premises, surface or subsurface, or drill any well to take water from or inject any substance into the Leased Premises
   iv. Install or dig any pits other than drilling pits (not storage pits) on the Leased Premises

e. Construction of Pipelines: In addition to the restrictions set forth in Article VII Sections 3(b) and 3(c) of this Lease, Lessee agrees to bury any pipelines constructed on the Leased Premises to a depth below thirty-six (36)

d. Restrictions on Lessee's Use of Leased Premises: This clause specifically restricts land uses which are not necessary for the operations and production of oil/gas. If the landowner wishes to give the Lessee those rights described in Section 3(d) we recommend a separate written document be negotiated with the landowner receiving appropriate compensation.

e. Construction of Pipelines: Landowner unfriendly leases allow gas companies to put pipelines across the Leased Premises even when there is only production on "neighboring lands" which are not part of a production unit which includes the Leased Premises.

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inches (i.e., minimum of thirty-six inches from the surface to the top of any pipeline, pipe union, joint or other protruding item affixed to any pipelines) and Lessee agrees to restore the surface to as near as practicable the condition it was in prior to such installation. Lessee shall comply with all applicable rules, regulations, and statutes regarding pipeline construction, maintenance, and operation.

f. Fencing: Upon Lessor's written request, Lessee is required, at its sole cost and expense, to fence all wells, well sites, tank batteries, pits, separators, drip stations, pump engines, or other equipment placed on the Leased Premises. All fences must be kept in good repair by the Lessee.

g. Gates: Upon Lessor's written request, Lessee is required, at its sole cost and expense, to install a gate at the entrance of any road constructed by the Lessee and at all other points of ingress or egress to the property and Lessee must provide an access key or double lock system allowing access by both Lessor and Lessee. Gates must be closed and locked at all times when equipment is not being accessed.

f. Fencing: This provision is to protect a landowner with animals or other concerns by allowing the landowner to request that the Lessee construct fences around wells or other equipment that may be on the Leased Premises.

g. Gates: This provision is to protect against anyone other than the Lessee (or those working under the direction of the Lessee) from accessing your land.

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h. Hazardous and Other Materials: Lessee shall not use, dispose of or release on the Leased Premises or permit to exist or to be used, disposed of or released on the Leased Premises as a result of its activities any substances (other than those Lessee has been licensed or permitted by applicable public authorities to use on the Leased Premises) which are defined as "hazardous materials," toxic substances" or "solid wastes" in federal, state or local laws, statutes or ordinances. Should any pollutant, hazardous material, toxic substances, contaminated waste or solid waste be accidentally released on the Leased Premises, Lessee shall promptly notify Lessor and any applicable governmental body of such event. Lessee shall be responsible for and timely pay all costs of clean-up, remediation, and other costs related to and arising from the event, including but not limited to penalties. Upon Lessor's written request, Lessee shall provide a list of chemicals and materials used or to be used during any hydraulic fracturing or related process.

4. **Lessor Encumbrances**: Any mortgage, lease, easement, or other interest granted by Lessor voluntarily after the Effective Date of this Lease shall be subject to this Lease. If Lessor defaults on any obligation secured by any lien or

h. Hazardous and Other Materials: In a landowner friendly lease a clause should be included that limits Lessee's ability to use hazardous substances in its operations.

4. Lessor Encumbrances: The Lessee needs this protection by order to prevent a mortgage or other lien holder from becoming the owner of a well or the Leased Premises.

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encumbrance on the Leased Premises during the term of this Lease, Lessee may pay and discharge such obligation on behalf of Lessor but only if Lessee gives Lessor at least forty-five (45) calendar days prior written notice of such intention to pay and after receipt of said notice Lessor makes no arrangements to address the amount in default. If Lessee makes such payment in compliance with the terms outlined above, the Lessee shall be entitled to recover from Lessor by deduction from any future payments to Lessor, with interest at Ohio's legal rate for judgments, amounts actually paid by Lessee to discharge such obligations.

5. **Liens Against Lessee**: If any lien or encumbrance is filed against the Leased Premises arising out of or pertaining to any activities by Lessee or anyone contracting with Lessee, Lessee shall within forty-five (45) calendar days following the date such lien or encumbrance is recorded cause such lien or encumbrance to be released from record, and Lessee shall provide Lessor written evidence of such release. Lessee's contention that the lien or encumbrance arises from a bona fide dispute shall not be grounds for Lessee's failure or refusal to remove the lien or encumbrance as required herein.

5. **Liens Against Lessee**: This provision helps prevent the title to the leased premises from being adversely affected by the Lessee's activities.

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6. **Lesser Interest**: If Lessor owns an interest in the Leased Premises that is less than the entire fee simple estate, then all royalties, rentals, and other payments payable under this Lease shall be paid in the proportion that Lessor's interest in the Leased Premises bears to the entire undivided fee simple estate.

ARTICLE VIII. TERMINATION AND RELEASE

1. **Pugh Clause**: This Lease shall automatically terminate and be of no further force or effect as to any acreage of the Leased Premises not included within any Production Unit at the expiration of the Primary Term or any time thereafter, whichever is applicable. In addition, at the end of the Primary Term or any time thereafter, whichever is applicable, this Lease shall terminate as to all depths and horizons under and above each Production Unit from which oil and gas is not being produced in Commercially Paying Quantities.

2. **Termination**: Upon termination of this Lease or any portion thereof for any reason, or upon expiration of this Lease, Lessee shall provide Lessor with a surrender or other written cancellation of this Lease in recordable form,

6. Lesser Interest: If a Lessor does not own all the oil and gas in connection with the Leased Premises, he/she should not be able to claim all the royalties, rents and other payments provided for in the Lease.

ARTICLE VIII: TERMINATION AND RELEASE

1. Pugh Clause: A "pugh clause" is an important provision to have because it encourages a Lessee to develop all of the Leased Premises and it limits a Lessee's claims under a pooling provision in an oil and gas lease. Under most oil and gas leases if *any part* of the Leased Premises is included in a Production Unit at the end of the primary term, the lease may, subject to the implied covenants that benefit landowners, be extended to its secondary term as to the *entire* Leased Premises (not just the portion that is contained in the Production Unit). Thus, because 20 of the acres in a 300 acre lease are part of a Production Unit, the entire 300 acre lease may (subject to the implied covenants benefiting landowners) be held in effect for as long as there is production from that Production Unit.
Lowe Citation: 253

2. Termination: It is important that a landowner obtain evidence of the cancellation of the Lease after it is terminated so that the title is marketable and the landowner can enter into a new lease.

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cause such document to be promptly recorded and deliver such document to Lessor within sixty (60) calendar days after the date of termination or expiration. In the event that the Lessee does not comply with the terms of this provision, Lessee grants to Lessor the right and authority, to take any other steps to evidence the said termination or expiration of this Lease, including but not limited to following the Ohio Affidavit of Forfeiture statute and/or initiating proceedings to quiet Lessor's title, and Lessee shall be obligated to pay all of Lessor's costs, including but not limited to reasonable attorneys' fees as well as any damages accruing to Lessor from Lessee's non compliance therewith.

3. **Plugging**: Lessee shall promptly, properly and effectively plug all wells on the Leased Premises in accordance with the regulations of the State of Ohio.

ARTICLE IX. LESSOR'S INFORMATION RIGHTS, ETC.

1. **Audit Rights**: Lessee grants to Lessor or Lessor's authorized agent, the right to audit, inspect, examine and make copies of the Lessee's books, accounts, contracts, and all other records pertaining to production, transportation, sale, and marketing of Leased Products from the Leased Premises at any time during normal business

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SAMPLE FORM

3. Plugging: It is important that a Lessee plug a well in accordance with the state's plugging requirements (if not then the landowner could be responsible for plugging the well). Requiring Lessee to plug wells also protects against damage to a person or property which may be caused if an unplugged well leaks.

ARTICLE IX: LESSOR'S INFORMATION RIGHTS, ETC.

1. Audit Rights: Audit rights are an important component of a landowner friendly lease. A landowner should have the ability to verify that he/she is receiving all of the royalties and other payments the lease provides for.

hours. If as a result of such audit Lessor discovers a deficiency in payment of royalties or other amounts due to Lessor under this Lease, Lessee will be liable for the amount of the deficiency plus interest at the maximum rate allowed by law as well as any reasonable costs incurred by Lessor in conducting the audit that led to discovery of the deficiency. In addition, the Lessor shall have the right at any time during the term of this Lease to verify the accuracy of the meters or other devices being used by Lessee to measure its production. If any meters or devices are found to be inaccurate, Lessor shall have the right to cause their replacement at Lessee's expense.

2. **Division Order**: The Lessor will not be required to execute any division order or division orders for the purpose of receiving the payments due under this Lease which amend, modify, or are inconsistent with any term or provision set forth in this Lease. No division order will operate to amend or modify any provision contained in this Lease.

2. Division Order: Once the Leased Premises are productive a landowner may be presented with a division order. A division order is a document sometimes required by a purchaser of oil and/or gas from those who expect to receive royalties and rental payments, which stipulates how proceeds of production are to be distributed. Division Orders are often utilized by OGOC's especially when several landowners form a pooled production unit and split the royalties. The problem with many division orders is that they contain a variety of provisions objectionable to landowners and may contain language which contradicts the language in the negotiated lease. Landowner unfriendly leases may stipulate that a division order is a precondition to the distribution of royalties. *Lowe Citation*: 301, 407-409

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ARTICLE X. RIGHT OF FREE GAS

1. **Payment in Lieu of Free Gas**: In the event any gas well is drilled upon the Leased Premises or any portion thereof, Lessee shall pay annually to Lessor, in lieu of any right to free gas, a sum equal to the value of the first three hundred fifty thousand (350,000) cubic feet of natural gas produced from each such well. Said amount shall be paid in quarterly installments, with the value based upon the prior three (3) months average gross price received by Lessee for gas sold from the Leased Premises.

ARTICLE XI. LESSEE COMPLIANCE

1. **Laws**: Lessee agrees that everything done by it in connection with this Lease shall be done in a good and workmanlike manner and in accordance with all applicable laws, orders, rules, and regulations, including, without limitation, all applicable environmental rules and regulations. In addition to other requirements herein provided, in all instances, Lessee shall restore the Leased Premises to the condition required under the applicable laws of the State of Ohio prior to or within three (3) months following expiration or other termination of this Lease. Lessee shall also use the highest degree of care known in the industry, and all reasonable safeguards to prevent its operations from: (i) causing or contributing to

ARTICLE X: RIGHT OF FREE GAS

1. Payment in Lieu of Free Gas: Often Ohio oil and gas leases provide that the landowner can, at its own expense and risk, connect a pipeline to a gas well and receive as much as 350,000 cubic feet of free gas each year. Many landowners do not actually use the full amount of free gas allowed by the lease or do not go to the trouble, danger or expense of connecting a pipeline in order to take advantage of any free gas. To try and help each landowner receive the full value of this provision, this lease, in lieu of the actual gas, provides that the Lessee will pay to the Lessor the fair market value of 350,000 cubic feet of gas. *Lowe Citation*: 450

ARTICLE XI: LESSEE COMPLIANCE

1. Laws: It is important to spell out these Lessee obligations.

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soil erosion, (ii) polluting or contaminating any environmental medium, (iii) decreasing the fertility of the soil, (iv) damaging crops, native or cultivated grasses, trees, or pastures, (v) harming or in any way injuring persons or animals, and (vi) damaging buildings, roads, structures, improvements, farm implements, gates or fences. Lessee shall dispose of salt water, flow back or liquid waste oil and other waste in accordance with the rules and regulations of the Ohio Department of Natural Resources and all other applicable governmental authorities.

2. **Insurance**: At any and all times the Lessee or any person acting on Lessee's behalf is on or about the Leased Premises, Lessee agrees that it will carry at least the following insurance coverage with one or more financially sound insurance carriers: a.) Commercial General Liability and Umbrella Liability Insurance of $5,000,000 minimum coverage, b.) Workers Compensation and Employer's Liability Insurance, c.) Environmental Liability Insurance of $5,000,000 minimum coverage, and d.) Business auto and Umbrella Liability Insurance of $5,000,000 minimum coverage. Such insurance policies shall waive all rights of subrogation against Lessor. Upon request, Lessor shall be furnished proof, whether by Certificate of Insurance or otherwise, of such coverage prior to Commencement of

2. Insurance: This provision is included in order to provide the landowner with adequate information about the Lessee's insurance. Please note the Lessor needs to make a request to obtain the information.

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Operations on the Leased Premises. In the event drilling is to occur on the Leased Premises, Lessee shall furnish Lessor, prior to drilling, with a Certificate of such insurance naming Lessor as an additional insured.

3. **Indemnity**: Lessee agrees to indemnify, defend, and hold harmless Lessor and Lessor's heirs, successors, agents, assigns, and any other person acting under Lessor's direction and/or control against any and all claims, damages, costs, losses, liabilities, expenses (including but not limited to any reasonable attorneys' fees, expert fees, and court costs) arising out of, incidental to or resulting from the Lessee's activities and actions, and the activities and actions of Lessee's servants, agents, employees, guests, licensees, invitees, independent contractors, assigns, or any other person acting under Lessee's direction and control. Lessee's obligations hereunder shall survive the termination of this Lease.

4. **Severability**: If any portion of this Lease is held invalid or unenforceable, the other provisions shall remain in full force and effect.

ARTICLE XII. NOTICES AND DEFAULT

1. **Notices**: Any notices required under this Lease shall be deemed sufficiently given if personally

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3. Indemnity: This provision is to provide additional protection to the landowner from incurring liability due to operations and actions by the Lessee or parties related to or acting on behalf of the Lessee.

4. Severability: In a negotiated lease, neither the Lessor nor the Lessee will want the entire lease negated because one clause is held unenforceable.

ARTICLE XII: NOTICES AND DEFAULT

1. Notices: The requirements of notice need to be clearly spelled out.

delivered or mailed by certified mail, return receipt requested, to the Lessor and/or the Lessee, whichever is applicable, at their respective addresses recited above Article I, or to such other address as either shall notify the other in writing. In the event Lessee assigns all or any part of this Lease without properly providing Lessor with a copy of such recorded assignment which includes the assignee's address, the Lessee shall be jointly and severally liable for all of assignee's obligations under this Lease notwithstanding any language to the contrary.

2. **Default on Payment Terms**: Failure of Lessee to timely pay Lessor any amounts required under this Lease shall be deemed a default by Lessee.

3. **Default on All Other Terms**: Notwithstanding the language contained in Article XII Section 2 of this Lease, if Lessee or its agents, employees, or assigns breach any of the non-payment terms of this Lease, express or implied, and Lessor elects to send written notice of such breach which Lessee fails to correct within forty (40) days from mailing of such notice, Lessee shall be deemed to be in default under this Lease and the Lease shall automatically terminate. This provision is in addition to all other rights Lessor may have under this Lease and applicable law and imposes no obligation on Lessor to send any notice.

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2. Default on Payment Terms: This provision is to assist the landowner in getting all payments provided for under the Lease.

3. Default on All Other Terms: A landowner friendly oil and gas lease includes a provision which explicitly sets forth that the lease can be terminated if the Lessee breaches non-payment terms under the lease and the landowner gives notice of such breach which is not corrected in a set period of time.

ARTICLE XIII. FORCE MAJEURE

1. **Force Majeure**: Should the Lessee be prevented from producing Leased Products on the Leased Premises in Commercially Paying Quantities by an Act of God or governmental action, then while so prevented Lessee's obligations to comply with this Lease shall be suspended, but such suspension shall in no event exceed one (1) year.

ARTICLE XIV. LESSEE COVENANTS

1. **Lessee Covenants**: Any duty Lessee has under covenants implied to benefit landowners in Ohio Oil and Gas law including but not limited to the covenant to operate the lease with due diligence, the covenant to protect the lease 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 the Lessor's royalty interest with reasonable care and due diligence are express covenants under this Lease.

ARTICLE XIII: FORCE MAJEURE

1. Force Majeure: A force majeure clause, like an option clause, is for the benefit of the Lessee not the landowner. However, most oil and gas leases include a force majeure clause. A force majeure clause provides for suspension of Lessee's obligations during the time specified that unforeseen events (natural disasters) prevent the Lessee from conducting operations. These should only be events which are out of the Lessee's control. *Lowe Citation*: 255

ARTICLE XIV: LESSEE COVENANTS

1. Lessee Covenants: Implied covenants are designed to protect the landowner and to ensure the Lessee performs diligently under the lease. Courts read these covenants into oil and gas leases unless the lease expressly negates them. For many years courts in oil and gas producing states have recognized that landmen, usually representing OGOCs, are much more knowledgeable about oil and gas leases than most landowners so the courts have implied covenants in oil and gas leases to protect the landowners. In recent years, many landowner unfriendly leases have attempted to specifically negate these implied covenants. This oil and gas lease expressly includes these implied covenants because under the Ohio Affidavit of Forfeiture statute (Ohio Revised Code Section 5301.332) an affidavit of forfeiture procedure can only be used if a Lessee fails "to abide by specifically described covenants provided for in the lease, or because the term of the lease has expired." By expressly including such covenants in the lease, a landowner can use the affidavit of forfeiture statute (as opposed

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ARTICLE XV. HEADINGS

1. **Section Headings**: The Section Headings contained herein are inserted for convenience only and shall not control or affect the meaning or construction of any provision.

to having to bring a legal action) if the Lessee fails to comply with one or more of the covenants.

ARTICLE XV: HEADINGS

1. Section Headings: This provision is inserted for clarification purposes if a court is ever asked to interpret the lease.

DRAFT FORM

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IN WITNESS WHEREOF, the parties have signed this Lease.

WITNESS: _____

_____

WITNESS: _____

_____

LESSOR: _____

_____

LESSEE:
[*Name of* OGOC]

_____

By: _____
Title: _____

By: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF OHIO)
)
COUNTY OF _____)

On this _____ day of _____, 2011, before me, the undersigned Notary Public, personally appeared _____, the _____ of [*Name of OGOC*] and _____, the _____ of [*Name of OGOC*] who acknowledged that they did sign the foregoing instrument for and on behalf of Lessee, and swear that they are duly authorized to sign on behalf of said Lessee, and that the same is their free act and deed individually and as such officer and the free act and deed of such Lessee.

In witness whereof, I have hereunto set my hand and official seal.

_____
Notary Public
Printed Name: _____
My Commission Expires:
_____

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Signatures

Lessee: Even though many oil and gas leases are not signed by Lessee, a landowner friendly lease should require the Lessee to sign. Landowners should not be surprised or feel obligated to sign when a landman presents the landowner with an oil and gas lease and tells the landowner, "This is a standard form lease and the Lessee never signs." The landowner will want to understand every provision of the lease and know that every provision is negotiable.

STATE OF OHIO)
)
COUNTY OF _____)

On this _____ day of _____, 2011, before me, the undersigned Notary Public, personally appeared _____and_____, the Lessors, who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed individually.

In witness whereof, I have hereunto set my hand and official seal.

_____
Notary Public

Printed Name:_____

My Commission Expires:
_____

This instrument was prepared by:

Instrument Prepared by
Reason for Provision: Required under Ohio law. A landowner will likely wish to have his or her, own attorney who is knowledgeable in oil and gas law review and revise this lease in accordance with the landowner's wishes. When this occurs, that attorneys name and address should be recited.

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