ORIGINAL

IN THE SUPREME COURT OF OHIO

14-0423

STATE OF OHIO EX REL. CLAUGUS FAMILY FARM, L.P. Relator, v. SEVENTH DISTRICT COURT OF APPEALS 131 West Federal Street Youngstown, Ohio 44503 and GENE DONOFRIO, in his official capacity as a judge on the Seventh District Court of Appeals 131 West Federal Street Youngstown, Ohio 44503 and JOSEPH J. VUKOVICH, in his official capacity as a judge on the Seventh District Court of Appeals 131 West Federal Street Youngstown, Ohio 44503 and MARY DEGENARO, in her official capacity as a judge on the Seventh District Court of Appeals 131 West Federal Street Youngstown, Ohio 44503 Respondent.	Supreme Court Case No. _____ **ORIGINAL ACTION IN PROHIBITION AND MANDAMUS** **AFFIDAVIT OF BRUCE A. CLAUGUS**

I, Bruce A. Claugus, being first duly sworn and cautioned, hereby depose and state as follows:

1. I am of lawful age, under no disability and have personal knowledge of the matters hereinafter referred to.

2. I am the Managing Partner of Claugus Family Farm, L.P. ("Claugus Family"), a family limited partnership duly organized under the law of the State of Ohio.

3. The Claugus Family purchased a farm encompassing approximately 60.181 acres in Monroe County, Ohio on February 21, 2006. The Claugus Family purchased the entire interest in the property, including the interest in the mineral estate.

4. A prior owner of the property signed an oil and gas lease with Beck Energy Corporation ("Beck Energy") on February 4, 2004 (hereinafter the "Beck Energy Lease"). A true and accurate copy of this lease is attached hereto as Exhibit 1.

5. The primary term of the Beck Energy Lease was ten years; the secondary term was to continue "so much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas."

6. To date, no well has been drilled on the property; oil and gas have not and are not being produced in paying quantities; Beck Energy did not operate the property in search of oil or gas; and Beck Energy expressed no judgment regarding future production; and (pursuant to the terms of the lease) the lease therefore terminated at the end of the primary term as of midnight on February 3, 2014.

7. On September 30, 2013, the Claugus Family signed a Paid-Up Oil & Gas Lease with Gulfport Energy Corporation (hereinafter the "Gulfport Lease") covering the property. A true and accurate copy of this lease is attached hereto as Exhibit 2.

8. The Gulfport Lease provides that the Claugus Family is to receive $7,000 per net mineral acre for which title is confirmed, along with a 20% royalty from any oil and gas produced. Thus, the Claugus Family is to receive bonus money totaling $421,267.00; potential royalties could total millions of dollars.

9. The Gulfport Lease includes a 90 day "title period," during which Gulfport reviewed title to the property for title defects.

10. Oil and gas leases not released of record do not constitute title defects under the Gulfport Lease, provided the primary term of such oil and gas lease has expired by its terms and no producing oil and gas well has been drilled pursuant to the lease.

11. A 180 day "cure period" follows the title period, during which the Claugus Family may attempt to cure any title defects.

12. Because the primary term of the Beck Energy Lease did not expire until midnight on February 3, 2014, the Beck Energy Lease constituted a title defect, which caused Gulfport to reject title to this acreage.

13. The Beck Energy Lease, however, was scheduled to expire during the cure period, absent the events specified in paragraph 5 above. Thus, the expiration of the Beck Energy Lease would cure the title defect, allowing the Claugus Family to receive the bonus money and any royalties from a well drilled under the Gulfport Lease.

14. I have reviewed various filings from Monroe County Common Pleas Court including Case No. 2011-345, a lawsuit filed on September 14, 2011 by Clyde A. Hupp, Molly A. Hupp, Larry A. Hustack and Lori Hustack against Beck Energy.

15. On July 12, 2012, the Common Pleas Court granted summary judgment to the named plaintiffs, holding that the form leases the named plaintiffs signed with Beck Energy were null and void because they constituted leases in perpetuity in violation of Ohio public policy. A true and accurate copy of this decision is attached hereto as Exhibit 3.

16. On July 19, 2012, the named plaintiffs in the aforesaid case moved for class certification under Ohio Civil Rule 23(B)(2). On February 8, 2013, the Common Pleas Court granted class certification. A true and accurate copy of that decision is attached hereto as Exhibit 4.

17. On June 10, 2013, the Common Pleas Court defined the class as:

> "all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)", [sic] where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter."

The Common Pleas Court further decided that its entry granting summary judgment would apply to all members in the class in existence on September 29, 2011, when the complaint was first amended to assert claims on behalf of a class of landowners. A true and accurate copy of this decision is attached hereto as Exhibit 5.

18. On August 8, 2013, the Common Pleas Court denied a motion for approval of notice to class and establishment of method of service along with other motions to compel Beck Energy to identify every lessor who had signed a Form G&T (83) lease.

19. On August 2, 2013, the Common Pleas Court tolled the leases of the named plaintiffs pending the outcome of Beck Energy's appeals. In doing so, the Court discussed (but did not toll) "leases that ***may eventually be included in this class*** if the Plaintiffs prevail and this matter goes forward as a class action." A true and accurate copy of this decision is attached hereto as Exhibit 6.

20. On September 26, 2013, the Seventh District issued a Judgment Entry modifying the Common Pleas Court's Tolling Order of August 2, 2013 as follows:

> The lease terms are also tolled as to the ***proposed*** defined class members. The tolling period for all leases shall commence on October 1, 2012, the date Beck Energy first filed a motion in the trial court to toll the terms of the oil and gas leases. The tolling period shall continue during the pendency of all appeals in this Court, and in the event of a

timely notice of appeal to the Ohio Supreme Court, until the Ohio Supreme Court accepts or declines jurisdiction. At the expiration of the tolling period, Beck Energy, and any such successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease(s) as they had as of October 1, 2012.

A true and accurate copy of this entry is attached hereto as Exhibit 7.

21. I have reviewed the Beck Energy Lease set to expire at midnight on February 3, 2014 and it is a Form G&T (83) lease.

22. Thus, the Claugus Family would be a member of the class as defined by the Common Pleas Court.

23. The Claugus Family never has been provided notice of the class action, never was provided with notice of the order purporting to toll its lease with Beck Energy, and never has been given the opportunity to opt out of the class action.

24. If allowed to stand, the Seventh District's Judgment Entry would prevent the Beck Energy Lease from expiring pursuant to its own terms during the cure period of the Gulfport Lease.

25. The Claugus Family brings this action to insure that due process rights established by the Fourteenth Amendment to the United States Constitution and Article I, §16 of the Ohio Constitution are followed and that the constitutional rights of the Claugus Family and other absent plaintiffs are protected and upheld.

FURTHER AFFIANT SAYETH NAUGHT.

Bruce Claugus

Affirmed and subscribed in my presence this 14 day of March, 2014.

Notary Public
DALE R. WEBER
Notary Public, State of New York
No. 02WE4891257
Qualified in Nassau County
Commission Expires April 6, 2015

EXHIBIT 1

OIL AND GAS LEASE

Form G&T (83)

THIS AGREEMENT, made and entered into this 4 day of FEBRUARY, 20 04, by and between

FRANCIS W. JEFFERS AND BARBARA J. JEFFERS (HU

of 43400 SUGARTREE RD. WOODSFIELD, OHIO 43793 (Phone) (740) 472-1588

hereinafter called the Lessor, and

BECK ENERGY CORPORATION, Box 1879, Akron, OH 44309

hereinafter called the Lessee. WITNESSETH:

1. That the Lessor, for and in consideration of ten dollar ($1.00) and other valuable consideration in hand paid by the Lessee, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, does hereby lease and let exclusively unto the Lessee, for the purpose of drilling, operating for, producing and removing all and gas and all the constituents thereof, and of injecting air, gas, brine and other substances from any source and into any subsurface strata, other than potable water strata and workable coal strata, (including but not limited to the right to inject any wells on the leasehold property and to otherwise conduct all such secondary or tertiary operations as may be required in the opinion of the Lessee,) and to transport by pipelines or otherwise across and through said lands oil, gas and their constituents from the subject and other lands, regardless of the source of such gas or the location of the wells, which right to transport gas from other properties across the leasehold premises shall survive the term of this lease for so long as the transportation of such gas may be desired by the Lessee, and of placing of tanks, equipment, roads and structures thereon to produce and operate for the said products, together with the right to enter into and upon the leased premises at all times for the aforesaid purposes, being all that certain tract of land situated in Section/Lot/District No. 9 of GREEN Township MONROE County, Ohio, bounded substantially as follows:

North by lands of CLAUGUS

East by lands of ROTH AND LAUDER

South by lands of SECTION LINE

West by lands of SECTION LINE

being all the property owned by Lessor or to which the Lessor may have any rights in said Section/Lot/District or adjoining Sections/Lots/Districts, containing 64 acres, more or less, and being the property described in Deed Volume _____, Page _____ of the _____ County Record of Deeds.

2. This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgement of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas and as provided in Paragraph 7 following.

3. This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within -12- months from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of 64.00 Dollars each year, payments to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced.

4. In consideration of the premises the Lessee covenants and agrees:

(A) To deliver to the credit of the Lessor in tanks or pipelines, as royalty, free of cost, the equal one-eighth (1/8) part of all oil produced and saved from the premises, or at Lessee's option to pay Lessor the market price for such one-eighth (1/8) royalty oil at the published rate for oil of like grade and gravity prevailing on the date such oil is run into tanks or pipelines.

(B) To pay to the Lessor, as royalty for the gas marketed and used off the premises and produced from each well drilled thereon, the sum of one-eighth(1/8) of the price paid to Lessee per thousand cubic feet of such gas as marketed and used, measured in accordance with Boyle's Law for the measurement of gas at varying pressures, on the basis of 16 ounces above 14.73 pounds atmospheric pressure, at a standard base temperature of 60° Fahrenheit and adjusted flowing temperature of 60° Fahrenheit, without allowance for temperature and barometric variations less any charges for transportation or compression paid by Lessee to deliver the gas for sale. Payment of royalty for gas marketed during any calendar month is to be on or about the 30th day after receipt of such funds by the Lessee.

(C) Lessee to deduct from payments in (A) and (B) above from receipts of proceeds by Lessee, Lessor's pro-rata share of any tax imposed by any government body.

(D) In the event Lessee does not sell the gas to others, Lessor shall be paid on the basis of the lowest field market price paid by any public utility in the state at the well head for gas of like kind and quality, and on the same basis that such utility would pay for such gas, including any escalation in price that such utility would pay for such gas as if a contract for the sale of same had been entered into at the time of initial production.

5. All money due under this lease shall be paid or tendered to the Lessor by check made payable to the order of and mailed to FRANCIS W. JEFFERS AND BARBARA J. JEFFERS at SAME AS ABOVE and the said named person shall continue as Lessor's agent to receive any and all sums payable under this lease regardless of changes in ownership to the premises, or in the oil or gas or their constituents, or in the rentals or royalties accruing hereunder until delivery to the Lessee of notice of change of ownership as hereinafter provided.

6. The Lessor may, at Lessor's sole risk and cost, lay a pipeline to any one gas well on the premises, and take gas produced from said well for domestic use in one dwelling house on the leased premises, at Lessor's own risk, subject to the use and the right of abandonment of the well by the Lessee, and subject to any curtailments or shut-in by any purchaser of the gas. The first two hundred thousand cubic feet of gas taken each year shall be free of cost, but all gas in excess of two hundred thousand cubic feet of gas taken in each year shall be paid for at the last published rates of the gas utility in the town or area nearest to the leased premises at the field market rate, whichever is higher. Lessor to lay and maintain the pipeline and furnish regulators and other necessary equipment at Lessor's expense. Lessor shall also, at the request of Lessee, install a meter to measure said gas. This privilege is upon the condition precedent that the Lessor shall subscribe to and be bound by the reasonable rules and regulations of the Lessee relating to the use of free gas, and Lessor shall maintain the said pipeline, regulators and equipment in good repair and free of all gas leaks and operate the same so as not to cause waste or unnecessary leaks of gas. If the Lessor shall take excess gas as aforesaid in any year and fail to pay for the same, the Lessee may deduct payment for such excess gas from any rentals or royalties accruing to the Lessor hereunder. Lessor acknowledges that he has been advised as to the risks inherent in the taking of gas in this manner, and Lessor agrees to assume all such risks whether same be caused by Lessor's fixes or equipment, or whether same be caused by Lessee's equipment or well operation; and Lessor agrees to hold Lessee and the well operator and all parties in interest in any well on the leasehold premises harmless from any claims of any nature whatsoever which may rise by the usage of gas from any such well by Lessor, his heirs, executors, administrators and assigns. Lessor further agrees that upon the sale or transfer of the leasehold premises wherein someone other than the Lessor is entitled to take the gas under this Paragraph 6, that the gas supply will be terminated by Lessee until the Buyer of the property executes an agreement regarding the usage of the gas in the same form as the within agreement. In the absence of such an agreement free gas under this provision shall terminate, the within right of free gas not being assignable without the consent of the Lessee.

7. In the event a well drilled hereunder is a dry hole and is plugged according to law, this lease shall become null and void and all rights of either party hereunder shall cease and terminate, unless within twelve (12) months from the date of the completion of the plugging of such well, the Lessee shall commence another well, or unless the Lessee after the termination of said twelve month period resumes the payment of delay rental as hereinabove provided.

8. In the event a well drilled hereunder is a producing well and the Lessee is unable to market the production therefrom, or should production cease from a producing well drilled on the premises, or should the Lessee desire to shut in producing wells, the Lessee agrees to pay the Lessor, commencing on the date one year from the completion of such producing well or the cessation of production, or the shutting in of producing wells, an advance royalty in the amount and under the terms hereinabove provided for delay rental until production is marketed and said all the premises or such well is plugged and abandoned according to law. In the event no delay rentals are stated, the advance royalty payable hereunder shall be made on the basis of $1.00 per acre per year.

9. The consideration, land rentals or royalties paid and to be paid, as herein provided, are and will be accepted by the Lessor as adequate and full consideration for all the rights herein granted to the Lessee, and the further right of drilling or not drilling on the leased premises, whether in offset producing wells on adjacent or adjoining lands or otherwise, as the Lessee may elect.

10. The Lessor hereby grants to the Lessee the right at any time to consolidate the leased premises or any part thereof or strata therein with other lands in form an oil and gas development unit of not more than 640 acres, or such larger unit as may be required by state law or regulation for the purpose of drilling a well thereon, but the Lessee shall in no event be required to drill more than one well on such unit. Any well drilled on said development unit whether or not located on the leased premises, shall nevertheless be deemed to be located upon the leased premises within the meaning and for the provisions and covenants of this lease to the same effect as if all the lands comprising said unit were described in and subject to this lease: provided, however, that only the owner of the lands on which such well is located may take gas for use in one dwelling house on such owner's lands in accordance with the provisions of this lease, and provided further that the Lessor agrees to accept, in lieu of the one-eighth (1/8) oil and gas royalty hereinbefore provided, that proportion of such one-eighth (1/8) royalty which the acreage consolidated bears to the total number of acres comprising said development unit. The Lessee shall effect such consolidation by executing a declaration of consolidation with the same formality as this oil and gas lease setting forth the lessee or portions thereof consolidated, the royalty distribution and recording the same in the recorder's office at the courthouse in the county in which the leased premises are located and by mailing a copy thereof to the Lessor at the address hereinabove set forth unless the Lessee is furnished with another address. If the well on said development unit shall thereafter be shut in, the well rental for shut-in royalty hereinbefore provided for such use shall be payable to the owners of the parcels of land comprising said unit in the proportion that the acreage of each parcel bears to the entire acreage consolidated. Lessee shall have the right to amend, alter or correct any such consolidation at any time in the same manner as herein provided.

11. In case the Lessor owns a less interest in the above described premises than the entire and undivided fee simple therein, then the royalties and rentals herein provided for shall be paid to the Lessor only in the proportion which such interest bears to the whole and undivided fee. If said land is owned by two or more parties, or the ownership of any interest therein should hereafter be transferred by sale, devise or operation of law, said land, nevertheless, may be held, developed and operated as an entirety, and the rentals and royalties shall be divided among and paid to such several owners in the proportions that the acreage owned by each such owner bears to the entire leased acreage.

12. No change of ownership in the leased premises or in the rentals or royalties hereunder shall be binding on the Lessee until after notice to the Lessee by delivery of notice in writing duly signed by the parties to the instrument of conveyance or assignment and delivery of a duly certified copy thereof to the Lessee.

13. The Lessee shall have the right to assign and transfer the within lease in whole or in part, and Lessor waives notice of any assignment or transfer of the within lease. Failure of payment of rental or royalty as any part of this lease shall not void this lease as to any other part. Lessor agrees that when and if the within lease is assigned, the Lessee herein shall have no further obligations hereunder. The Lessor further grants to the Lessee, for the protection of the Lessee's interest hereunder, the right to pay and satisfy any claim or lien against the Lessor's interest in the premises as herein leased and thereupon to become subrogated to the rights of such claimant or lien holder, and the right to direct payment of all rentals and royalties to apply on the payments of any existing liens on the premises.

14. The Lessee shall bury, when so requested by the Lessor, all pipelines used to conduct oil or gas in, on, through and off the premises and pay all damages to growing crops caused by

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15. The Lessee shall have the privilege of using sufficient oil, gas and water for operating on the premises and the right at any time during or after the expiration of this lease to remove all pipe, well casing, machinery, equipment or fixtures placed on the premises. The Lessee shall have the right to surrender this lease or any portion thereof by written notice to the Lessor describing the portion which it elects to surrender, or by returning the lease to the Lessor with the endorsement of surrender thereof, or by recording the surrender or partial surrender of this lease, any of which shall be a full and legal surrender of this lease as to all of the premises or such portion thereof as the surrender shall include and a cancellation of all liabilities under the same of each and all portions hereto relating in any way to the portion or all the premises included on said surrender, and the said rental installments set forth shall be reduced in proportion to the acreage surrendered.

16. In the event the Lessee is unable to perform any of the acts to be performed by the Lessee by reason of force majeure, including but not limited to acts of God, strikes, riots, and governmental restrictions including but not limited to restrictions on the use of roads, this lease shall nevertheless remain in full force and effect until the Lessee can perform said act or acts and to no event shall the within lease expire for a period of ninety days after the termination of any force majeure.

17. In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, either express or implied, Lessor shall notify Lessee in writing setting out specifically in what respects Lessee has breached this contract. Lessee shall then have thirty (30) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of thirty (30) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any part of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder.

18. In consideration of the acceptance of this lease by the Lessee, the Lessor agrees for himself and his heirs, successors and assigns, that no other lease for the minerals covered by this lease shall be granted by the Lessor during the term of this lease or any extension or renewal thereof granted to the Lessee herein.

19. All covenants and conditions between the parties herein shall extend to their heirs, personal representatives, successors and assigns, and the Lessor hereby warrants and agrees to defend the title to the lands herein described. It is mutually agreed that this instrument contains and expresses all of the agreements and understandings of the parties in regard to the subject matter thereof, and no implied covenant, agreement or obligation shall be read into this agreement or imposed upon the parties or either of them. Lessor further agrees to sign such additional documents as may be reasonably requested by Lessee to perfect Lessee's title to the oil and gas leased herein and such other documents relating to the sale of production as may be required by Lessee or others.

20. THE LESSOR AND LESSEE WILL MUTUALLY AGREE ON LOCATIONS OF ALL WELL LOCATIONS AND INGRESS ROADS.

IN WITNESS WHEREOF the Lessors have hereunto set their hands.

Signed and acknowledged in the presence of:	Signatures	Social Security or Tax ID No.
James M. Beck	Francis W. Jeffers	
	FRANCIS W. JEFFERS	
	Barbara J. Jeffers	
	BARBARA J. JEFFERS	

STATE OF OHIO)
COUNTY OF MONROE) SS:

INDIVIDUAL

Before me a Notary Public in and for said county and state personally appeared the above named FRANCIS W. JEFFERS AND BARBARA J. JEFFERS

who acknowledged to me that THEY did execute the foregoing instrument and that the same is THEIR free act and deed for the purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at WOODSFIELD, OHIO

this 4 day of FEBRUARY, 20 04.

James M. Beck
Notary Public

NOTARIAL SEAL STATE OF OHIO

JAMES M. BECK
Notary Public, State of Ohio
My Commission Expires 12-12-07

21. ALL EXISTING WELLS LOCATED ON THE LEASED PREMISES, AND THE ABOVE GROUND AND BELOW GROUND EQUIPMENT ASSOCIATED THEREWITH, ARE EXPRESSEDLY EXCLUDED FROM WITHIN THIS LEASE. LESSEE SHALL NOT HAVE ANY LIABILITY OR COST OBLIGATION WITH REGARD TO SAID WELLS.

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This instrument was prepared by: **BECK ENERGY CORPORATION,** Box 1378, Reno, OH 45768

OIL AND GAS LEASE

Acres ____ From ____ to ____ 037371 ____ Years ____ Located ____

MONROE CO. RECORD OF Official Records
VOL 118 PAGE 219
RECEIVED
04 MAY 11 PM 12:48
RECORDED 12:48 p.m.
MARTHA LOUISE REID County Recorder
RECORDER FEE $28.00
May 11, 2004

For Record ____ date ____

EXHIBIT 2

COPY

PAID-UP

OIL & GAS LEASE

This Lease made this 3rd day of September 2013, by and between Claugus Family Farm, L.P. of 555 Main Street, Apt S 715, New York, NY 10044, hereinafter collectively called "Lessor," and GULFPORT ENERGY CORPORATION, a Delaware Corporation with a mailing address of 14313 N. May, Suite 100, Oklahoma City, OK 73134, hereinafter called "Lessee."

WITNESSETH, that for and in consideration of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and of the mutual covenants and agreements hereinafter set forth, the Lessor and Lessee agree as follows:

LEASING CLAUSE. Lessor hereby leases exclusively to Lessee all the oil and gas (including, but not limited to coal seam gas, coalbed methane gas, coalbed gas, methane gas, gob gas, occluded methane/natural gas and all associated natural gas and other hydrocarbons and non-hydrocarbons contained in, associated with, emitting from, or produced/originating within any formation, gob area, mined-out area, coal seam, and all communicating zones), and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the land herein leased, together with such exclusive rights as may be necessary or convenient for Lessee, at its election, to explore for, develop, produce, measure, and market production from the Leasehold, and from adjoining lands, using methods and techniques which are not restricted to current technology, including the right to conduct exclusive geophysical and other exploratory tests; to drill, maintain, operate, cease to operate, plug, abandon, and remove wells; to use or install roads, electric power and telephone facilities, and to construct pipelines with appurtenant facilities, including data acquisition, compression and collection facilities for use in the production and transportation of products from the Leasehold or from neighboring lands across the Leasehold, to use oil, gas, and non-domestic water sources, free of cost, to store gas of any kind underground, regardless of the source thereof, including the injecting of gas therein and removing the same therefrom; to protect stored gas; to operate, maintain, repair, and remove material and equipment.

DESCRIPTION. The Leasehold is located in the Township of Green, in the County of Monroe, in the State of Ohio, and described as follows:

Tax Parcel Identification Number; Twp/Section/Twp No/Range/Qtr:
09-013002.0000; Green/9/4/S/NW & SW ¼

and is bounded formerly or currently as follows:

On the North by lands of Claugus Family Farm, L.P ;
On the East by lands of Mark S. Luzader et al;
On the South by lands of Center Twp;
On the West by lands of Section Line;

"See Exhibit "A" attached hereto and made a part hereof for Other Provisions of this lease"

including lands acquired from BVL, Inc., by virtue of Warranty Deed dated March 25th, 2011, and recorded in Deed Book 202, at Page 769, at the Recorder's office of Monroe County, Ohio, and described for the purposes of this agreement as containing a total of 60.181 acres, whether actually more or less, and including contiguous lands owned by Lessor. This Lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to executes any supplemental instrument requested by Lessee for a more complete or accurate description of said land.

LEASE TERM. This Lease shall remain in force for a primary term of Five (5) years from 12:00 A.M. September 3rd, 2013 (effective date) to 11:59 P.M. September 3rd, 2018 (last day of primary term) and shall continue beyond the primary term as to the entirety of the Leasehold if any of the following is satisfied: (i) operations are conducted on the Leasehold or lands pooled/unitized therewith in search of oil, gas, or their constituents, or (ii) a well deemed by Lessee to be capable of production is located on the Leasehold or lands pooled/unitized therewith, or (iii) oil or gas, or their constituents, are produced from the Leasehold or lands pooled/unitized therewith, or (iv) if the Leasehold or lands pooled/unitized therewith is used for the underground

Lessor(s) Initials: PMC
Jeffers

storage of gas, or for the protection of stored gas, or (v) if prescribed payments are made, or (vi) if Lessee's operations are delayed, postponed or interrupted as a result of any coal, stone or other mining or mining related operation under any existing and effective lease, permit or authorization covering such operations on the leased premises or on other lands affecting the leased premises, such delay will automatically extend the primary or secondary term of this oil and gas lease without additional compensation or performance by Lessee for a period of time equal to any such delay, postponement or interruption.

If there is any dispute concerning the extension of this Lease beyond the primary term by reason of any of the alternative mechanisms specified herein, the payment to the Lessor of the prescribed payments provided below shall be conclusive evidence that the Lease has been extended beyond the primary term.

EXTENSION OF PRIMARY TERM. Lessee has the option to extend the primary term of this Lease for one additional term of five (5) years from the expiration of the primary term of this Lease; said extension to be under the same terms and conditions as contained in this Lease. Lessee may exercise this option to extend this Lease if on or before the expiration date of the primary term of this Lease, Lessee pays or tenders to the Lessor or to the Lessor's credit an extension payment of the same consideration as was paid in this lease per Leasehold acre, only insofar as those acres intended to be renewed by Lessee. Exercise of this option is at Lessee's sole discretion and may be invoked by Lessee where no other alternative of the Lease Term clause extends this Lease beyond the primary term.

NO AUTOMATIC TERMINATION OR FORFEITURE.

(A) CONSTRUCTION OF LEASE: The language of this Lease (including, but not limited to, the Lease Term and Extension of Term clauses) shall never be read as language of special limitation. This Lease shall be construed against termination, forfeiture, cancellation or expiration and in favor of giving effect to the continuation of this Lease where the circumstances exist to maintain this Lease in effect under any of the alternative mechanisms set forth above. In connection therewith, (i) a well shall be deemed to be capable of production if it has the capacity to produce a profit over operating costs, without regard to any capital costs to drill or equip the well, or to deliver the oil or gas to market, and (ii) the Lessee shall be deemed to be conducting operations in search of oil or gas, or their constituents, if the Lessee is engaged in geophysical and other exploratory work including, but not limited to, activities to drill an initial well, to drill a new well, or to rework, stimulate, deepen, sidetrack, frac, plug back in the same or different formation or repair a well or equipment on the Leasehold or any lands pooled/unitized therewith (such activities shall include, but not be limited to, performing any preliminary or preparatory work necessary for drilling, conducting internal technical analysis to initiate and/or further develop a well, obtaining permits and approvals associated therewith and may include reasonable gaps in activities provided that there is a continuum of activities showing a good faith effort to develop a well or that the cessation or interruption of activities was beyond the control of Lessee, including interruptions caused by the acts of third parties over whom Lessee has no control or regulatory delays associated with any approval process required for conducting such activities).

(B) LIMITATION OF FORFEITURE: This Lease shall never be subject to a civil action or proceeding to enforce a claim of termination, cancellation, expiration or forfeiture due to any action or inaction by the Lessee, including, but not limited to making any prescribed payments authorized under the terms of this Lease, unless the Lessee has received written notice of Lessor's demand and thereafter fails or refuses to satisfy or provide justification responding to Lessor's demand within 60 days from the receipt of such notice. If Lessee timely responds to Lessor's demand, but in good faith disagrees with Lessor's position and sets forth the reasons therefore, such a response shall be deemed to satisfy this provision, this Lease shall continue in full force and effect and no further damages (or other claims for relief) will accrue in Lessor's favor during the pendency of the dispute, other than claims for payments that may be due under the terms of this Lease.

PAYMENTS TO LESSOR. In addition to the bonus paid by Lessee for the execution hereof, Lessee covenants to pay Lessor, proportionate to Lessor's percentage of ownership, as follows:

(A) DELAY RENTAL: To pay Lessor as Delay Rental, after the first year, at the rate of five dollars ($5.00) per net acre per year payable in advance. **The parties hereto agree that this is a Paid-Up Lease with no further Delay Rental and/or Delay in Marketing payments due to Lessor during the primary term hereof.**

(B) ROYALTY: To pay Lessor as Royalty, less all taxes, assessments, and adjustments on production from the Leasehold, as follows:

1. OIL: To deliver to the credit of Lessor, free of cost, a Royalty of the equal twenty percent (20.00%) part of all oil and any constituents thereof produced and marketed from the Leasehold.

2. GAS: To pay Lessor an amount equal to twenty percent (20.00%) of the revenue realized by Lessee for all gas and the constituents thereof produced and marketed from the Leasehold, less the cost to transport, treat and process the gas and any losses in volumes to point of measurement that determines the revenue realized by Lessee. Lessee may withhold Royalty payment until such time as the total withheld exceeds fifty dollars ($50.00).

(C) DELAY IN MARKETING: In the event that Lessee drills a well on the Leasehold or lands pooled/unitized therewith that is awaiting completion, or that Lessee deems to be capable of production, but does not market producible gas, oil, or their constituents therefrom, and there is no other basis for extending this Lease, Lessee shall pay after the primary term and until such time as marketing is established (or Lessee surrenders the Lease) a Delay in Marketing payment equal in amount and frequency to the annual Delay Rental payment, and this Lease shall remain in full force and effect to the same extent as payment of Royalty.

(D) SHUT-IN: In the event that production of oil, gas, or their constituents is interrupted and not marketed for a period of twelve (12) months, and there is no producing well on the Leasehold or lands pooled/unitized therewith, Lessee shall thereafter, as Royalty for constructive production, pay a Shut-in Royalty equal in amount and frequency to the annual Delay Rental payment until such time as production is re-established (or lessee surrenders

Lessor(s) Initials: MC

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the Lease) and this Lease shall remain in full force and effect. During Shut-in, Lessee shall have the right to rework, stimulate, or deepen any well on the Leasehold or to drill a new well on the Leasehold in an effort to re-establish production, whether from an original producing formation or from a different formation. In the event that the production from the only producing well on the Leasehold is interrupted for a period of less than twelve (12) months, this Lease shall remain in full force and effect without payment of Royalty or Shut-in Royalty.

(E) DAMAGES: Lessee will remove unnecessary equipment and materials and reclaim all disturbed lands at the completion of activities, and Lessee agrees to repair any damaged improvements to the land and pay for the loss of growing crops or marketable timber.

(F) MANNER OF PAYMENT: Lessee shall make or tender all payments due hereunder by check, payable to Lessor, at Lessor's last known address, and Lessee may withhold any payment pending notification by Lessor of a change in address. Payment may be tendered by mail or any comparable method (e.g., Federal Express), and payment is deemed complete upon mailing or dispatch. Where the due date for any payment specified herein falls on a holiday, Saturday or Sunday, payment tendered (mailed or dispatched) on the next business day is timely.

(G) CHANGE IN LAND OWNERSHIP: Lessee shall not be bound by any change in the ownership of the Leasehold until furnished with such documentation as Lessee may reasonably require. Pending the receipt of documentation, Lessee may elect either to continue to make or withhold payments as if such a change had not occurred.

(H) TITLE: If Lessee receives evidence that Lessor does not have title to all or any part of the rights herein leased, Lessee may immediately withhold payments that would be otherwise due and payable hereunder to Lessor until the adverse claim is fully resolved.

(I) LIENS: Lessee may at its option pay and discharge any past due taxes, mortgages, judgments, or other liens and encumbrances on or against any land or interest included in the Leasehold; and Lessee shall be entitled to recover from the debtor, with legal interest and costs, by deduction from any future payments to Lessor or by any other lawful means. In the event the leased lands are encumbered by a prior mortgage, then, notwithstanding anything contained herein to the contrary, Lessee shall have the right to suspend the payment of any royalties due hereunder, without liability for interest, until such time as Lessor obtains at its own expense a subordination of the mortgage in a form acceptable to Lessee.

(J) CHARACTERIZATION OF PAYMENTS: Payments set forth herein are covenants, not special limitations, regardless of the manner in which these payments may be invoked. Any failure on the part of the Lessee to timely or otherwise properly tender payment can never result in an automatic termination, expiration, cancellation, or forfeiture of this Lease. Lessor recognizes and acknowledges that oil and gas lease payments, in the form of rental, bonus and royalty, can vary depending on multiple factors and that this Lease is the product of good faith negotiations. Lessor hereby agrees that the payment terms, as set forth herein, and any bonus payments paid to Lessor constitute full consideration for the Leasehold. Lessor further agrees that such payment terms and bonus payments are final and that Lessor will not seek to amend or modify the lease payments, or seek additional consideration based upon any differing terms which Lessee has or will negotiate with any other lessor/oil and gas owner.

(K) PAYMENT REDUCTIONS: If Lessor owns a lesser interest in the oil or gas than the entire undivided fee simple estate, then the bonus rentals (except for Delay Rental payments as set forth above), royalties and shut-in royalties hereunder shall be paid to Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.

UNITIZATION AND POOLING. Lessor grants Lessee the right to pool, unitize, or combine all or parts of the Leasehold with other lands, whether contiguous or not contiguous, leased or unleased, whether owned by Lessee or by others, at a time before or after drilling to create drilling or production units either by contract right or pursuant to governmental authorization. Pooling or unitizing in one or more instances shall not exhaust Lessee's pooling and unitizing rights hereunder, and Lessee is granted the right to change the size, shape, and conditions of operation or payment of any unit created. Lessor agrees to accept and receive out of the production or the revenue realized from the production of such unit, such proportional share of the Royalty from each unit well as the number of Leasehold acres included in the unit bears to the total number of acres in the unit. Otherwise, as to any part of the unit, drilling, operations in preparation for drilling, production, or shut-in production from the unit, or payment of Royalty, Shut-in Royalty, Delay in Marketing payment or Delay Rental attributable to any part of the unit (including non-Leasehold land) shall have the same effect upon the terms of this Lease as if a well were located on, or the subject activity attributable to, the Leasehold. In the event of conflict or inconsistency between the Leasehold acres ascribed to the Lease, and the local property tax assessment calculation of the lands covered by the Lease, or the deeded acreage amount, Lessee may, at its option, rely on the latter as being determinative for the purposes of this paragraph.

FACILITIES. Lessee shall not drill a well on the Leasehold within 500 feet of any structure located on the Leasehold without Lessor's written consent. Lessor shall not erect any building or structure, or plant any trees within 200 feet of a well or within 25 feet of a pipeline without Lessee's written consent. Lessor shall not improve, modify, degrade, or restrict roads and facilities built by Lessee without Lessee's written consent.

CONVERSION TO STORAGE. Lessee is hereby granted the right to convert the Leasehold or lands pooled/unitized therewith to gas storage. At the time of conversion, Lessee shall pay Lessor's proportionate part for the estimated recoverable gas remaining in any well drilled pursuant to this Lease using methods of calculating gas reserves as are generally accepted by the natural gas industry and, in the event that all wells on the Leasehold and/or lands pooled/unitized therewith have permanently ceased production, Lessor shall be paid a Conversion to Storage payment in an amount equal to Delay Rental for as long thereafter as the Leasehold or lands pooled/unitized therewith is/are used for gas storage or for protection of gas storage; such Conversion to Storage payment shall first become due upon the next ensuing Delay Rental anniversary date. The use of any part of the Leasehold or lands

Lessor(s) Initials: Jeffers

pooled or unitized therewith for the underground storage of gas, or for the protection of stored gas will extend this Lease beyond the primary term as to all rights granted by this Lease, including but not limited to production rights, regardless of whether the production and storage rights are owned together or separately.

TITLE AND INTERESTS. Lessor hereby warrants and agrees to defend title to the Leasehold and covenants that Lessee shall have quiet enjoyment hereunder and shall have benefit of the doctrine of after acquired title. Should any person having title to the Leasehold fail to execute this Lease, the Lease shall nevertheless be binding upon all persons who do execute it as Lessor.

LEASE DEVELOPMENT. There is no implied covenant to drill, prevent drainage, further develop or market production within the primary term or any extension of term of this Lease. There shall be no Leasehold forfeiture, termination, expiration or cancellation for failure to comply with said implied covenants. Provisions herein, including, but not limited to the prescribed payments, constitute full compensation for the privileges herein granted

COVENANTS. This Lease and its expressed or implied covenants shall not be subject to termination, forfeiture of rights, or damages due to failure to comply with obligations if compliance is effectively prevented by federal, state, or local law, regulation, or decree, or the acts of God and/or third parties over whom Lessee has no control.

RIGHT OF FIRST REFUSAL. If at any time within the primary term of this Lease or any continuation or extension thereof, Lessor receives any bona fide offer, acceptable to Lessor, to grant an additional lease ("Top Lease") covering all or part of the Leasehold, Lessee shall have the continuing option by meeting any such offer to acquire a Top Lease on equivalent terms and conditions. Any offer must be in writing and must set forth the proposed Lessee's name, bonus consideration and royalty consideration to be paid for such Top Lease, and include a copy of the lease form to be utilized reflecting all pertinent and relevant terms and conditions of the Top Lease. Lessee shall have fifteen (15) days after receipt from Lessor of a complete copy of any such offer to advise Lessor in writing of its election to enter into an oil and gas lease with Lessor on equivalent terms and conditions. If Lessee fails to notify Lessor within the aforesaid fifteen (15) day period of its election to meet any such bona fide offer, Lessor shall have the right to accept said offer. Any Top Lease granted by Lessor in violation of this provision shall be null and void.

ARBITRATION. In the event of a disagreement between Lessor and Lessee concerning this Lease or the associated Order of Payment, performance thereunder, or damages caused by Lessee's operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive remedy and cover all disputes, including but not limited to, the formation, execution, validity and performance of the Lease and Order of Payment. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

ENTIRE CONTRACT. The entire agreement between Lessor and Lessee is embodied herein and in the associated Order of Payment (if any). No oral warranties, representations, or promises have been made or relied upon by either party as an inducement to or modification of this Lease.

TITLE CURATIVE. Lessor agrees to execute affidavits, corrections, ratifications, amendments, permits and other instruments as may be necessary to carry out the purpose of this lease.

SURRENDER. Lessee, at any time, and from time to time, may surrender and cancel this Lease as to all or any part of the Leasehold by recording a Surrender of Lease and thereupon this Lease, and the rights and obligations of the parties hereunder, shall terminate as to the part so surrendered; provided, however, that upon each surrender as to any part of the Leasehold, Lessee shall have reasonable and convenient easements for then existing wells, pipelines, pole lines, roadways and other facilities on the lands surrendered.

SUCCESSORS. All rights, duties, and liabilities herein benefit and bind Lessor and Lessee and their heirs, successors, and assigns.

FORCE MAJEURE. All express or implied covenants of this Lease shall be subject to all applicable laws, rules, regulations and orders. When drilling, reworking, production or other operations hereunder, or Lessee's fulfillment of its obligations hereunder are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this Lease shall not terminate, in whole or in part, because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall 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 force majeure.

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 shall 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 shall 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.

Lessor(s) Initials: BJE

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COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Lease and all of which, when taken together, will be deemed to constitute one and the same agreement.

EXECUTED this 25th day of September 2013

LESSORS:

Bruce Claugus, Managing Partner

Claugus Family Farm, L.P.
By: Bruce Claugus, Managing Partner

PARTNERSHIP ~~XXXXXXXXXX~~ ACKNOWLEDGMENT

STATE OF OHIO)
) SS:
COUNTY OF MONROE)

On this, the 25 day of September 2013, before me Daniel H. Plumly, the undersigned officer, personally appeared Claugus Family Farm, L.P., known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. by Bruce Claugus, Managing Partner,

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): DANIEL H. PLUMLY

NOTARIAL SEAL STATE OF OHIO

DANIEL H. PLUMLY
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 RC

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2013, by _____, _____, of _____, a _____ corporation, on behalf of the corporation.

Given under my hand and seal this ____ day of _____ 2013.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

Recorder Return To & Prepared By:
GULFPORT ENERGY CORPORATION, 14313 N. May Ave., Suite 100, Oklahoma City, OK 73134

Lessor(s) Initials: BCJ
Jeffers

EXHIBIT "A"

This Exhibit "A" is attached to and made a part of that certain Oil and Gas Lease dated September 30th, 2013, by and between Claugus Family Farm, L.P., as Lessor, and Gulfport Energy Corporation, as Lessee.

1. **Conflict of Terms:** Notwithstanding anything to the contrary considered in the Oil and Gas Lease to which this Addendum is attached and made a part of, the provisions of this Addendum shall prevail whenever in conflict with the provisions of the Oil and Gas Lease.

2. **Property Description:** Notwithstanding any other provision in the Lease, including that provision being what is commonly known in lease terminology as a "Mother Hubbard Clause", it is understood and agreed that the Lease is valid only as to the specific parcels described and identified in the Lease. Lessor and Lessee intend that only Lessor's property consisting of acres described on Warranty Deed, Volume 202, Page 769, is to be leased and no other property of Lessor is to be affected by this Lease. This Lease does not include parcels adjacent or contiguous to the land described in the Lease that is also owned or claimed by Lessor, which is not specifically described in the Lease. The Lease, to which this Addendum is attached, shall be deemed to cover the lands intended to be covered by and described in this Lease without regard for the correctness of the legal description herein, and without regard for any acreage discrepancies in the parcels listed; however, Lessor agrees to execute an supplemental instrument requested by Lessee for a more complete or accurate description of said land should any discrepancies arise.

3. **Reservation:** Lessor and Lessee hereby agree that Lessor's mineral rights from the surface to the base of the Berea Shale Formation and Lessor's mineral rights as to the Clinton Sandstone Formation are specifically excluded from this lease. To the extent that Lessor owns wells located on its property, this Lease shall not apply to the formation(s) into which such wells are completed.

4. **Oil and Gas Only:** This Lease covers only oil and gas. The term "oil and gas" means oil, gas, and other liquid and gaseous hydrocarbons and their constituents and by-products produced through a well bore. Thus, this Lease does not include and there is hereby excepted and reserved unto Lessor all the sulfur, coal, lignite, uranium and other fissionable material, geothermal energy, base and precious metals, rock, stone, gravel, and any other mineral substances (excepting those described above) presently owned by Lessor in, under, or upon the Leased Premises, together with right of ingress and egress and use of the Leased Premises by Lessor or its lessees or assignees for the purpose of exploration for and production and marketing of materials and minerals reserved hereby; provided, however, Lessor's right to develop the reserved minerals shall not interfere with the rights herein granted to Lessee.

5. **Activity:** Lessee shall engage in no other activity on the Leased Premises except those directly related to the drilling and production of oil, gas and related hydrocarbons. Notwithstanding anything herein contained to the contrary, Lessee agrees the herein described Leased Premises shall **NOT** be used for:

A) **No Gas Storage.** Notwithstanding anything to the contrary contained in the Lease, Lessee is not granted any right whatsoever to use the Leased Premises, or any portion thereof, for gas, oil, or, brine storage purposes except for those surface tanks required for the temporary storage of produced liquids to be timely hauled off the Leased Premises;

B) **No Disposal.** Lessee is not granted any right whatsoever to use the Leased Premises, or any portion thereof, for construction and/or operation of any disposal well, injection well, or the construction and/or operation of water disposal facilities;

C) **No Compressor.** This Lease does not grant Lessee the right to construct compression facilities on the Leased Premises;

D) **No Foreign Pipelines.** Without a separate written agreement, pipelines shall not be constructed over, across, or through the Leased Premises except for those used to transport oil and/or gas from a well(s) drilled on the Leased Premises or lands pooled therewith;

E) **No Laydown Privileges.** Lessee agrees that the Leased Premises described herein will not be used as a central processing facility or storage area for equipment and materials;

F) **Hunting.** Lessee agrees that its employees, agents, subcontractors, and independent contractors shall have no right to and are prohibited from firing any firearms, hunting or fishing, on the Leased Premises, without the written

permission of the Lessor; and,

G) Non-Disturbance. Lessee and its employees and authorized agents shall not disturb, use or travel upon any of the land of Lessor not being used in accordance with this Lease.

6. Commencement of Operations: The term "operations" as used in this Lease shall mean only (a) the production of oil, gas, or other liquid hydrocarbons in paying quantities subsequent to drilling or (b) the actual drilling, fracturing, fracking, hydrofracing, completing, reworking, recompleting, deepening, plugging back or repairing of a well to obtain production of oil or gas, conducted in good faith and with due diligence, whether on the Leased Premises or any lands unitized or contiguously pooled therewith. The term "operations" shall not include conducting seismic or other testing, or the laying of pipeline across the Leased Premises.

7. Notice of Operations and Agency Actions: Lessee shall give Lessor advanced written notice of the spud date, commencement and completion of drilling or other well bore completion operations, temporary abandonment, and plugging and final abandonment of any well on the Leased Premises or in a drilling Unit which contains all or a portion of the Leased Premises. Such notice shall be provided or delivered to Lessor no less than thirty (30) business days prior to such an event. Lessee shall give Lessor written notice of any hearings or actions, whether by a governmental agency or a court, affecting the Leased Premises; such notice shall be provided or mailed to Lessor within two (2) business days following the date that Lessee learns the same.

8. Conduct of Operations: Lessee shall cooperate with Lessor conducting its operations to minimize any interference with the commercial, agricultural or residential use of the Leased Premises. If Lessee in the course of its operations hereunder interferes with Lessor's ingress and egress routes, Lessee will provide reasonable alternate temporary access to help minimize the disruption. In addition:

A) Lessee shall not use Lessor's existing roadways without Lessor's written consent. All ditching and grading shall be to the standards as established by the township in which the Leased Premises are located for road construction and maintenance. Any roadway constructed by or for Lessee shall not exceed twenty (20) feet in width for the actually traveled roadbed and following the existing contours of the surrounding surface, together with a reasonable width, not to exceed six (6) feet from either edge of the actually traveled roadbed for fills, shoulders, and crosses. Lessee shall maintain said roadways to the reasonable satisfaction of Lessor, which maintenance may include shaling, ditching, graveling, blading, installing, and cleaning culverts, suppressing dust and spraying for noxious weeds. To the degree practicable, operations shall be designed and laid out to be concentrated in a single area so as to avoid unnecessary utilization of surface areas. To the degree practicable, pipelines, and roadways are to be within the same corridor. Lessee shall make every effort to use existing logging and township roads. No roadways shall be permitted on the Leased Premises for wells, or operations not located on the Leased Premises or lands contiguously pooled or unitized therewith.

B) Lessee shall be responsible for any damages caused by Lessee's operations to above ground and underground utilities, sanitary sewers, storm drains, catch basins, drainage tile, and drainage ditches. Lessee shall promptly and immediately replace any barriers, including, but not limited to, fences and stonewalls removed by Lessee during its operations on said land. Lessee shall promptly replace any drain tile removed or damaged by Lessee during its operation on the Leased Premises.

C) Lessee shall bury all pipelines to a depth not less than thirty-six (36) inches from the surface to the top of the pipelines. All pipelines shall be conspicuously marked by Lessee. If Lessee chooses to lay plastic lines, said lines shall be marked by a tracer wire for purposes of electronically locating such lines. This right may not be assigned to a utility company, pipeline company or anyone else who owns no interest in the Leased Premises or not otherwise contracted or affiliated with Lessee for the purpose of carrying out the rights and obligations under this Lease. No right is granted to piggyback or expand on this term of the Lease to install electric, telephone or data lines. The right to use said pipelines terminates when production from the Leased Premises permanently ceases.. After Lessee's right to use a pipeline on the Leased Premises terminates, Lessee shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the pipeline environmentally safe and fit for abandonment in place. All such clean up and mitigation shall be performed in compliance with all applicable federal, state, and local laws and regulations, including without limitation, environmental laws. Lessee is to allow Lessor unrestricted access to and crossing of the surface by equipment typically utilized in local agricultural and timbering activities,

including but not limited to tractors, plows, combines, harvesters, forwarders, loaded trucks and loaded trailers. Lessor may construct livestock fences on the Leased Premises so long as such fences do not interfere with Lessee's operations. Lessee shall "double ditch" all soil disturbances so that all topsoil will be replaced on the surface. The width of the graded pipeline right-of-way shall not exceed thirty (30) feet, with reasonable additional width required for construction, reclamation, repair and maintenance purposes. Lessee agrees that the location of any and all pipelines shall be subject to the mutual agreement as provided for elsewhere in this Addendum, and in any case shall be subject to the prior consent of the Lessor. All pipelines on the Leased Premises shall be located in the same thirty (30) foot right of way. Any pipelines constructed pursuant to the terms of this Lease shall be for transporting oil and/or gas from a well(s) drilled on the Leased Premises or lands contiguously pooled therewith unless Lessor and Lessee enter into a separate written agreement.

D) Lessee shall, during the operation of the drilling and afterward, clean the site and all appropriate areas, including areas of ingress and egress, spread the appropriate gravel, road fabric, plastic culverts, properly maintain all approaches and driveways, maintain all areas in a clean and orderly manner, maintain all tanks and equipment in a clean, painted condition, mow all grass and weeds (as needed) and grade all areas to the reasonable and prudent satisfaction of Lessor. All roads shall be appropriately crowned to foster drainage.

E) All motors used in the operation of any wells shall be electrical, where practical and economical. Lessee will use its best efforts to minimize noise caused by Lessee's operations on the Leased Premises.

F) All access roads used by Lessee pursuant to its drilling and production operations on the Leased Premises shall be kept in passable condition, free of significant ruts. Lessee and its employees and authorized agents shall not disturb, use or travel upon any of the land of Lessor not being used due to this Lease.

G) Prior to use of Lessee's means of ingress or egress, Lessee shall receive all proper permits and post all bonds required by any governmental authority relative to the use of said roadways.

H) Lessee will consult with Lessor and with the independent power company supplying power to Lessee with respect to the location of overhead power lines prior to construction. Overhead power lines will be constructed so as to cause the least possible interference with Lessor's visual landscape and Lessor's existing and future use of the Leased Premises, and to the maximum extent possible overhead power lines will be constructed along fence lines or property lines. All overhead lines shall not hang lower than fourteen (14) feet above the terrain. All power lines constructed by Lessee downstream of the independent power company's meters shall be buried and all power line trenches shall be fully reclaimed and reseeded to the satisfaction of Lessor. For buried lines, Lessee shall pay Lessor a one-time payment of Twenty-Five Dollars ($25.00) per rod (16.5 ft.) unless such power line is installed in the same ditch and the same time as the pipelines described herein. Any lines authorized under this paragraph shall be buried to a depth of at least thirty-six (36) inches below grade, and at a location consented to by Lessor, however such consent shall not be unreasonably withheld, conditioned or delayed.

I) Subject to economic reasonableness, Lessee agrees to plan surface operations in a manner that will reduce or minimize the intrusion to crop fields. Lessee shall compensate Lessor or Lessor's tenant (but not both) for the damage to or loss of growing crops caused by Lessee's operations at the greater of (i) current market value, or (ii) contract price.

J) Lessee shall promptly: (i) upon written request of Lessor, construct gates on all access roads on the Leased Premises, and provide a key to the gate and allow free use by Lessor or in lieu of gates, install cattle guards; (ii) upon written request of Lessor, fence all producing wells, tank batteries, pits, separators, drip stations, pump engines, and other equipment placed on the Leased Premises, with a fence capable of turning sheep, goats, and cattle; (iii) keep fences constructed by Lessee on the Leased Premises in good repair; and (iv) keep all gates and fences constructed by Lessee closed at all times.

K) Lessee shall construct or install all well sites, access roads, and pipeline rights-of-way in a manner which would minimize any related soil erosion.

Further, any related reclamation shall be done in a manner which restores said land as nearly to original contours as reasonably possible.

L) No well shall be drilled nearer than five hundred (500) feet of any building, water well, spring, pond, or septic system on the Leased Premises without the written consent of Lessor. No pipeline, tanks, or separators shall be constructed nearer than two hundred fifty (250) feet of any building, water well, spring, pond, or septic system on the Leased Premises without the written consent of Lessor. For purpose of this paragraph, the distance restrictions contained herein, as it pertains to well pad, shall be measured from the edge of the well pad nearest to the structure in question, and not from the bore hole.

M) Lessee and Lessor agree that prior to the removal of any and all timber resulting from Lessee's operations under this Lease, an appraisal shall be constructed by a qualified third party forester, and Lessee shall pay Lessor the said appraisal value prior to harvesting. The independent timber appraisal shall include in the valuation of timber the future value, if any, of trees not yet marketable. Lessee shall notify Lessor prior to the removal of any standing timber in a sufficiently timely manner, and in no event later than thirty (30) calendar days prior to any removal of timber, so as to allow Lessor to obtain an appraisal of such timber. Lessor shall have the option to take payment from Lessee for said timber at the appraised value prior to its removal or to take possession of said timber after its removal by Lessee, or at the option of Lessor, the timber may be harvested by Lessor.

If Lessor opts to take possession after Lessee removes any timber, Lessee shall cut and set aside logs so as to be accessible, exercising due care in cutting and handling said timber so as to preserve its market value. Lessee shall remove any uprooted stumps from the Leased Premises at Lessor's request.

N) Lessee shall not use water from Lessor's wells, ponds, lakes, springs, creeks, reservoirs ("Water") located on the Leased Premises or be permitted to drill any water wells on the Leased Premises, without written consent of the Lessor under a separate agreement. Lessee also agrees to compensate Lessor for water in said separate agreement. In drilling oil and/or gas wells, Lessee shall advise Lessor, upon written request of Lessor, of the depth of any fresh water bearing formations encountered by Lessee during drilling operations in order to assist Lessor in identifying the location of potable water.

Lessee shall have Lessor's current water supply sampled and tested prior to the drilling of any well within 1,000 feet of Lessor's water supply located on the leased premises. Should Lessor experience a material adverse change in the quality of Lessor's water supply as the result of the drilling of any well by Lessee within 1,000 feet of Lessor's water supply located on the leased premise, during or immediately after the completion of Lessee's drilling operations; Lessee shall, within forty-eight (48) hours of Lessor's written request, sample and test Lessor's water supply at Lessee's expense. Should such test reflect a material adverse change as the result of Lessee's drilling operations of any well drilled within 1,000 feet of Lessor's water supply located on the leased premises, Lessee, at Lessee's expense, agrees to provide Lessor with potable water until such time as Lessor's water source has been repaired or replaced with a source of substantially similar quality. The water testing shall be conducted to Ohio EPA standards for potable non-transient use. In the event the Leased Premises are used for agricultural purposes where the quality of water is regulated and Lessee's operations negatively impact the water supply for such operations, Lessee shall immediately provide water meeting such requirements as to quality and within a time period necessary to fully comply with all regulations relating thereto. Lessor agrees that should any pollution or reduction of any water supply after drilling operations commence and for six (6) months thereafter occur on the Leased Premises, Lessee will as soon as reasonably practicable enlist the help of an independent engineer or consultant to remedy the pollution.

O) Dikes, firewalls or other methods of secondary containment must be constructed and maintained at all times around all tanks, separators and other receptacles so as to contain a volume of liquid equal to at least 1.25 times the total volume of such tanks, separators and other receptacles located within the boundaries of the firewall and comply with State of Ohio regulations. Lessee shall keep all tanks and other equipment at each well location painted, and shall keep the well site and all roads leading thereto free of all noxious weeds and debris.

P) Lessee shall have no right to dig any pits on the Leased Premises except with Lessor's prior written consent; provided, however, that Lessee may, without Lessor's consent, dig and use pits or impoundments for drilling and completion

operations if (i) such pits or impoundments conform to State of Ohio requirements, (ii) such pits are used for water fresh storage only and not for frac fluid storage, (iii) each pit or impoundment is planned to be deep enough to allow at least thirty-six (36) inches of backfill over the liner after grading to the surrounding pre-drill contours, and (iv) pits or impoundments are drained and all pit liners and pit contents are removed from the Leased Premises and disposed of at Lessee's cost within ninety (90) days (weather permitting) promptly after completion of operations. Lessee shall immediately notify Lessor and the State of Ohio if any pit lining is torn, punctured, or otherwise breached, allowing any fluid contained in or designated to be contained in, a pit or impoundment to seep, leak or overflow through or around the liner. All of the provisions set forth in this Addendum, including the acreage fee and acreage limitation, shall apply to this Paragraph. No pits shall be permitted on the Leased Premises for wells or operations not located on the Leased Premises or lands contiguously pooled or unitized therewith.

Q) Lessee shall not use, dispose, or release on the Leased Premises or to permit to exist or be used, disposed of or released on the Leased Premises as a result of its operations, any substances (other than those Lessee has been licensed or permitted by applicable public authorities or governmental entities with jurisdiction to use on the Leased Premises) which are defined as a "hazardous material" or "toxic substance" or "solid waste" in applicable federal, state, or local laws, statutes or ordinances. Should any hazardous material, toxic substance, or solid waste be released on the Leased Premises, for any reason, in any quantity, Lessee shall notify all appropriate governmental entities of such an event, and then immediately thereafter notify the Lessor.

R) All reseeding shall be done with suitable grasses selected by Lessor and during a planting period selected by Lessor. Reseeding shall be performed in a manner to place the Leased Premises in a condition that is as close as possible to its pre-drilling condition. In the absence of direction from the Lessor, no reseeding (except for borrow pits) will be required on any existing access roads. It shall be the duty of Lessee to insure that a growing ground cover is established upon the disturbed soils and Lessee shall reseed as necessary to accomplish that duty, Lessee shall inspect disturbed areas at such times as Lessor shall reasonably request in order to determine the growth of ground cover and/or noxious weeds, and Lessee shall reseed ground cover and control noxious weeds from time to time to the extent necessary to accomplish its obligations hereunder.

S) Lessor may request in writing to move or relocate Lessee's access road(s) and pipeline(s) to reasonably facilitate Lessor's use of the Leased Premises, provided however that such relocation i.) is approved in writing by Lessee, and ii.) shall be at Lessor's sole cost and expense, and iii.) relocation work is performed by Lessee or Lessee's designated contractor working at the direction of Lessee, and iv.) does not interfere with Lessee's operations on the Leased Premises.

T) Lessee's operations on said Leased Premises shall comply with all applicable federal, state, and local law and regulations.

U) Lessee's rights hereunder may include burying or otherwise constructing necessary phone, electric, and data collection lines on the Leased Premises in connection with production from the Leased Premises, but such rights may not be assigned to a utility company, pipeline company, or anyone else who owns no interest in the Leased Premises or is otherwise not contracted or affiliated with Lessee for the purpose of carrying out the rights and obligations under the Lease. The right to use said pipelines terminates when the Lease expires or terminates.

9. **Lessor's Use of Lessee's Roads:** Upon Lessee's written permission Lessor shall be permitted to utilize any leasing road and/or access road constructed by Lessee upon the Leasehold pursuant to the terms and conditions of this Lease for personal, agricultural, non-commercial, use and enjoyment. Lessor agrees and acknowledges that any such use and enjoyment shall be done at their sole risk and hereby agrees to release Lessee from any and all damages, whether personal or real, suffered as a result of such use and enjoyment. Lessor further agrees and acknowledges that the rights and benefits provided for in this paragraph are intended for the sole and exclusive use and enjoyment of Lessor and their immediate family and in no way creates rights in a third party beneficiary.

10. **No Interference with Alternative uses Prior to Leases:** Lessee agrees that any operations conducted pursuant to the terms and conditions of this Lease shall not unreasonably interfere with Lessor's usage of the premises including, but not limited to, raising of livestock, transmission towers, windmills, housing, harvesting timber,

recreation or other alternative use of the Leased Premises for the financial benefit or enjoyment of Lessor. Lessor acknowledges at times there may be temporary inconveniences affecting Lessor's surface usage and the parties shall mutually cooperate to minimize the inconvenience. The parties also agree to provide reasonable notice to each other of any intended change or increase in the use of surface that might affect the other party. Lessee acknowledges all recorded leases upon the premises prior to the date hereof. Lessor may fully and freely use the Leased Premises for any purpose, excepting such parts as are used by Lessee in operation hereunder.

11. **Shut-In Limitation:** Lessee agrees that the shut-in royalty payment provided for in the Lease will be increased to Fifteen Dollars ($15.00) per acre per year. It is understood and agreed that this lease may not be maintained in force for a continuous period of time longer than thirty-six (36) consecutive months, or sixty (60) cumulative months after the expirations of the primary term hereof solely by the provision of the shut-in royalty clause. The shut-in status of any well shall persist only so long as it is necessary to correct, through the exercise of good faith and due diligence, the condition giving the rise to the shut-in of the well.

12. **Lease Term:** The Lease shall continue beyond the primary term for so long thereafter as any well drilled on the Leasehold or lands pooled or unitized therewith ("Well") produces oil, gas, or their constituents in paying quantities. For purposes of this Lease, a Well produces in "paying quantities" when receipts from the sale of Oil and Gas produced from the Well exceeds the Well's total operating expenses (including all overhead, general and administration costs traceable to the expense of operating and marketing production from the Well). Subject to the limitations contained within the Shut-In royalty provisions of the Lease, the term of the Lease shall continue for any period during which Shut-In royalties are being paid. Additionally, Lessee shall have the option to extend the primary term of this Lease according to the extension described on page two of the Oil and Gas Lease.

13. **Royalty and Gas Measurement:**

As royalties, Lessee covenants and agrees:

A) Oil, Gas and Hydrocarbons. Lessee shall pay Lessor Twenty Percent (20%) of the gross proceeds of all oil, gas, other liquid hydrocarbons and by-products ("Hydrocarbons") produced from or on the Leased Premises and sold by Lessee in an arms' length transaction. In the event that Lessee sells all or part of the Hydrocarbons produced from the Leased Premises to an Affiliated Entity (as defined herein), the value thereof shall be the higher of (i) the sales price received by Lessee, or (ii) the sale price received on all of the Affiliated Entity's sales of the aggregated production volumes, where such aggregated production volumes include production from the Leased Premises during applicable months of sales. Lessee may withhold royalty payment until such time as the total withheld exceeds Fifty Dollars ($50.00).

B) Market Enhancement Clause. It is agreed between the Lessor and Lessee that all royalties or other proceeds accruing to the Lessor under this lease or by state law shall be without deduction directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing ("Costs") the Hydrocarbons produced hereunder; except that Lessee shall be entitled to deduct from Lessor's royalty a proportionate share of the Costs attributable to converting or processing natural gas liquids or condensate into butane, propane, ethane, pentane, etc. However, in no event shall Lessor receive a price per unit that is less than the price per unit received by Lessee after such conversion or processing based on an arms' length transaction.

C) For purposes of this Lease, and "Affiliated Entity" is any corporation, firm, or other entity in which the Lessee, or any parent company, subsidiary or affiliate of Lessee, that owns an interest of more than ten percent (10%) whether by stock ownership or otherwise, or over which Lessee or any parent company, or Affiliated Entity exercises any degree of control, directly or indirectly, by ownership, interlocking directorate, or an any other manner; and any corporation, firm or other entity which owns any interest in Lessee, whether by stock ownership or otherwise, or which exercise any degree of control, directly or indirectly, over Lessee, by stock ownership, interlocking directorate or in any other manner. The provision shall apply to all successors and assigns of Lessee.

14. **Governmental Programs, Real Estate Taxes:** Lessee agrees that if any penalty, charge, withdrawal, reimbursement, rollback, or re-capture of tax abatements created or imposed under any governmental program or legislation such as, but not limited to, CAUV, CREP, CRP, and Clean and Green that is levied on Lessor solely as a result of Lessee's operations on Leased Premises, Lessee will reimburse Lessor, upon written request, and Lessor will provide Lessee with a copy of the penalty notice. In the event Lessor's real estate taxes are increased due to Lessee's operation, Lessee agrees to pay yearly to Lessor an amount equal to such increase.

15. **Payments:** Payments of all monies due under this Lease may be made by check, to Claugus Family Farm, L.P., and made payable to 555 Main Street, Apt S 715, New York, NY 10044, or such other location or person as Lessor may notify Lessee, in writing.

16. **Domestic Wells:** Lessee shall take such commercially reasonable precautions necessary to protect the use and operation of any existing oil and gas wells, the wells operations, tanks, lines and equipment on the Leased Premises, regardless of the drilling date. Lessor reserves all rights to any production from any existing oil and gas well. No domestic well shall be plugged except by prior written agreement of the parties hereto. In the event that any domestic well is damaged by Lessee's operations, Lessee shall pay as damages the value of said domestic well as determined by a qualified, independent appraiser.

17. **Prudent Operator:** Subject to economic reasonableness, Lessee will protect the property from drainage, will develop the property after drilling an initial well which is an established producer, will conduct all operations as a reasonably prudent operator, and will attempt to secure a market for production from a well. Lessee agrees to keep all surface disturbances to the minimum area necessary to conduct its operations.

18. **Surface Damage Fee:** Provided that Lessor is the current surface owner of the affected lands at the time of Lessee's surface operations, Lessee agrees to pay Lessor Twenty-Five Thousand Dollars and 00/100 ($25,000) as a supplemental surface damage payment for each pad site built on the herein described leased premises with each well pad to be limited to five (5) acres of disturbed land. In addition, the Lessee is to pay Lessor an additional Five Thousand Dollars ($5,000.00) for each additional disturbed acre beyond five (5) acres, but in no event shall the total disturbed land on the Leased Premises exceed ten (10) acres without the prior written consent of the Lessor. Said compensation does not include damages to Lessor's surface area for loss of crops or timber, or for any catastrophic incidents (i.e., fires, sinkholes, etc.) caused by operations of Lessee, its employees, contractors, subcontractors, agents, or representatives.

19. **Restore Premises to Pre-Drilling Conditions:** Within a reasonable time after completion of all wells to be drilled on any well pad, Lessee shall restore the Leased Premises as nearly as practicable to pre-drilling conditions, remove all debris, equipment, and personal property which Lessee placed on the Leased Premises not needed for the operation of producing wells. In no event, absent extraordinary circumstances, shall such restoration be delayed beyond eighteen (18) months from completion of any well drilled on any well pad. The area containing the wellhead equipment needed for the operation of producing wells (after the drill site location has been restored) shall not be greater than five (5) acres without payment to Lessee of an additional damage amount equal to Five Thousand Dollars ($5,000.00) per additional acre used. All wellhead equipment shall be removed within six (6) months after a well permanently ceases to produce or when this Lease terminates. When the well site is restored, the subsoil shall be replaced first and the topsoil shall be placed on the top.

20. **Location Approval:** In order to minimize disruption of the Lessor's current or future use of the Leased Premises and to maintain the aesthetic value of the Leased Premises, in the opinion of the Lessor, and before Lessee commences surface disturbing operations, the final location of well pads, access roads, pipelines, fences, telephone and power lines, or other structures, facilities or surface disturbances shall be approved by the Lessor in writing.

Without a separate written agreement between Lessor and Lessee, no roadways, pipelines, tank battery, utilities or other surface disturbances shall be located, constructed or maintained on the Leased Premises unless they are for the sole purpose of producing and transporting produced materials from the Leased Premises or lands contiguously pooled or unitized therewith.

21. **Pooled Production Unit Limited:**

A) The production of oil or gas under the terms of this Lease will maintain this Lease beyond its primary term including any extensions thereto only as to that portion of the Leased Premises that is actually included within a well plat pooled production unit or units that contain a well or wells then producing in paying quantities for so

long as such well(s) are producing in paying quantities. In the absence of well spacing units, a spacing order or other density requirements issued by ODNR's Mineral Resources Management (or other government entity with jurisdiction) for a particular well, Lessee shall designate and file a "well plat production unit", which for the purpose of this Lease, shall contain only the acreage overlaying that portion of the target formation or pool under a well that a prudent operator would deem capable of being most efficiently drained by that well while utilizing the best production technology in common use at the time of drilling. Notwithstanding any density rules applicable to any well, however, no production unit or pooled acreage assigned to any well shall exceed the following unit acreage sizes:

(i) If the well is classified as a vertical oil or gas well, the maximum size of the pooled production unit shall be 40 contiguous acres, without the written consent of Lessor. The well shall be located in the center of the production unit to the extent practical, and such unit shall be of a square or rectangular shape consistent with state regulations.

(ii) If the well is classified as a horizontal oil or gas well drilled to any geologic formations containing a horizontal component of the drain hole in the target formation, whether oil or gas, then the maximum size of the pooled production unit shall not exceed 640 contiguous acres, except said pooled production unit may exceed 640 contiguous acres, but in no event larger than 1,000 contiguous acres, if the lateral extent of horizontal bore hole(s) in said formation shall extend beyond the boundary of a 640 contiguous acre unit and such that a reasonably prudent operator would expect that the entire acreage within such larger unit will be effectively and efficiently developed and drained from a central pad site location. The pooled production unit shall, to the extent practical, parallel and be centered on the lateral boreholes to be drilled within the unit, and such unit shall be of a square or rectangular shape consistent with state regulations.

B) Upon termination of this Lease as to any portion of the Leased Premises, Lessee shall promptly deliver to Lessor a plat showing the designated pooled production unit(s) or well(s), acreage around each well and a partial release containing a satisfactory description of the acreage not retained, suitable for recording.

22. **Declaration of Production Unit:** At the time of the filing of the declaration of consolidation of record Lessee shall furnish to Lessor, a declaration of a production unit of which the Leased Premises shall be part, including a copy of all plats, maps, and exhibits of said unit.

23. **Reasonable Development:** If oil or gas is discovered on the Leased Premises, Lessee shall develop the Leased Premises as a reasonable and prudent operator and exercise due diligence in drilling such additional well or wells as may be necessary to fully develop the Leased Premises. Lessee shall protect the oil and gas in and under the Leased Premises from drainage by wells on adjoining or adjacent tracts or leases, including those held by the Lessee or any Affiliate of Lessee.

24. **Pugh Clause:** Provided this Lease is in its secondary term by operation of the provisions of this Lease, at the end of one (1) year past the expiration of the primary term hereof, this lease shall automatically terminate as to 1) all of the leased premises except lands located within the boundaries of a proration unit, drilling unit, spacing unit, or pooled unit, as the case may be on which is then located a well producing in paying quantities, whether actually producing or shut-in, or upon which operations are then being conducted in accordance with this lease; and 2) as to all depths deeper than two hundred feet (200') below the stratigraphic equivalent of the deepest formation producing on the Leased Premises or on land pooled therewith.

25. **Liability Issues:**

A) **Hold Harmless.** Lessee shall indemnify and hold Lessor harmless from any and all liability, liens, demands, judgments, suits, and claims of any kind or character arising out of, in connection with, or relating to Lessee's operations under the terms of this Lease, including, but not limited to, environmental issues, claims for injury to or death of any persons, or damage, loss or destruction of any property, real or personal, under any theory of tort, contract, or strict liability. Lessee further covenants and agrees to defend any suits brought against Lessor on any claims, and to pay any judgment against Lessor resulting from any suit or suits, together with all costs and expenses relating to any claims, including attorney's

fees, arising from Lessees operations under the terms of this lease. Lessor, if it so elects, shall have the right to participate, at its sole expense, in its defense in any suit or suits in which it may be a party, without relieving Lessee of the obligation to defend Lessor. The terms hereof do survive the expiration or surrender of this lease and/or the completion of operations.

B) **Insurance.** Lessee shall at all times maintain in full force and effect liability insurance in compliance with the requirements set forth under Ohio Revised Code Section 1509.

26. **No Warranty of Title:** This Lease is made without warranty of title express, implied or statutory. Lessee agrees that this Lease is made and accepted subject to all easements, rights-of-way, oil and gas leases, and other mineral leases recorded prior to the recording of this Lease. Lessee further agrees that Lessor Leases to Lessee only the oil and gas rights, as defined herein. Lessor makes no representations as to its right, title or interest in the Leased Premises, and does not warrant title or agree to defend title to the Leased Premises. Lessee will bear all costs and expenses incurred in curing any title defect or defending title to said lands. Any payments of the Lease bonus, royalty and rental are non-refundable.

27. **Bonus Consideration, Title Defects and Cure:**

A) **Bonus Consideration.** Lessee shall pay to the Lessor the sum of Seven Thousand Dollars ($7,000.00) per net acre of each net acre for which title is confirmed as hereinafter provided. Payment shall be in accordance with that certain Paid-Up Order of Payment and Bonus Agreement executed in conjunction with Lease to which this Addendum is attached. Lessee shall not conduct any operations pursuant to this lease until the Bonus Consideration is paid to Lessor. Any Bonus Consideration paid shall not be refundable for any reason, except in instances of fraud.

B) **Notice of Defect.** Lessee shall have ninety (90) days from the date of this Lease to review title to the Leased Premises (the "Title Period"). At the end the Title Period Lessee shall pay Lessor the Bonus Consideration unless Lessee's review of title to the Leased Premises reveals a title Defect or Defects in which case Lessee shall reject the Lease by providing Lessor with a letter specifically identifying the Defect giving rise to the rejection with a copy of all documentary evidence giving rise to such defect(s). Lessee shall not be obligated to pay Bonus Consideration on the Leased Premises if they are deemed defective.

C) **Definition of Defects.** "Defects" shall mean any lien or encumbrance on the oil and gas rights that render the Lease title other than a good, safe leasehold title for oil and gas purposes. The following liens and encumbrances shall not be a Defect:

i. Mortgages, liens (excluding tax liens), claims or encumbrances the foreclosure of which would not extinguish Lessee's lease of the oil and gas rights under the provisions of Section 1509.31(D) of the Ohio Revised Code;

ii. Liens of real estate taxes not yet due and payable;

iii. Any mortgage, lien, claim or encumbrance filed for record subsequent to Lessee's lease of the oil and gas rights;

iv. Easements and rights-of-way provided that such easements and rights-of-way do not adversely affect the ability of Lessee to develop the oil and gas estate consistent with the rights and privileges granted in this Lease;

v. All recorded leases other than oil and gas leases relating to the Leased Premises;

vi. Any deeds severing coal rights from the Leased Premises;

vii. Any mortgage, lien, claim or encumbrance on the surface estate where the oil and gas rights have been severed from the surface and the person executing the Lease is not the surface owner;

viii. Oil and gas leases not released of record for which: a) the primary term of such oil and gas leases have expired by their terms; b) no producing oil and gas wells drilled pursuant to such oil and gas leases exist on the Leased Premises; c) oil and gas leases that have

complied with the Ohio statutory forfeiture procedures;

ix. Lands which the Lessor is owner of the surface and where the oil and gas rights have become vested in the Lessor pursuant to the provisions of Ohio Revised Code Section 5301.56.

D) **Curative Action.** If Lessee rejects title to the Leased Premises and provides Lessor with written notice as required in this section, then Lessor shall have one hundred eighty (180) days from the end of the Title Period in which to take corrective action (the "Cure Period"). If the defect is cured during the Cure Period, Lessee shall accept the Lease and pay the Bonus Consideration. Whether or not Lessor elects to take corrective action shall be in Lessor's sole discretion. Lessor may waive the Cure Period by giving written notice to Lessee at any time during the Cure Period. If at the end of the Cure Period, Lessor gives notice that it is not curing Defects or does not cure Defects to Lessee's satisfaction Lessee shall have three (3) days to accept and pay the bonus for such leases at its sole discretion. Any time utilized by Lessor during the Cure Period shall be added to Primary Term of the Lease.

28. **Right of Purchase:** Lessor shall have the first option to purchase any vertically drilled well located upon the Leased Premises and such well equipment necessary to operate the same at fair market salvage value, less estimated plugging costs, when any well has ceased to produce in Paying Quantities as defined herein. Lessor shall have thirty (30) days, after receiving written notice, to exercise its option to purchase. Should Lessor purchase any well or wells, it shall assume the responsibility of eventually plugging the same and shall execute such documents to this end with the State of Ohio as the State may require to effect proper well transfer.

29. **Right of First Refusal:** Lessee shall not have any right of first refusal with respect to renewing or extending this Lease.

30. **Assignment Notice:** Lessee shall notify Lessor in writing within thirty (30) days if Lessee assigns all or a majority portion of this Lease to a third party or if there is an assignment that affects the control of the Lease: (a) to an affiliate, subsidiary, joint venture or internal partners; (b) in consequence of a merger or amalgamation; or (c) the sale of all or substantially all of its assets of Lessee to a third party.

31. **Partial Release:** Lessee shall have the right at any time during this Lease to release from the lands covered hereby any lands subject to this Lease and thereby may be relieved of all obligations hereafter accruing to the acreage so released, provided that (a) Lessee may not release any portion of the Lease prior to the payment of the Initial Bonus Payment as set forth herein, (b) Lessee may not release any portion of this Lease included in a pooled unit so long as operations are being conducted on such unit, and (c) any such partial release must release all depths in and under the lands so released.

32. **Compliance:** Lessee's operations on said Leased Premises shall comply with all applicable federal and state regulations.

33. **Coal:** Lessee acknowledges that certain rights to mine or extract coal may be applicable to or affect the Leased Premises subject to this Lease. Lessor makes no representation or warranty and provides no assurance that Lessee's ability to extract oil and gas will be unaffected by such coal rights. Lessee shall rely solely on its evaluation of the exploration and extraction rights granted hereby and shall not rely on Lessor regarding such rights. In the event the right to extract coal and/or other mineral is granted or conveyed by Lessor subsequent to the date hereof, Lessee agrees to cooperate with such lessee or grantee in the mining or extraction of such coal or mineral in order to permit Lessor to obtaining the economic benefit of all coal and minerals located on the leased Premises. In any event, this provision shall always adhere and be under and subject to the Force Majeure provisions in this Lease.

34. **Audit:** Lessee further grants to Lessor the right, once in a twelve (12) month period, to examine, audit, or inspect the books, records, and accounts of Lessee pertinent to the purpose of verifying the accuracy of the reports and statements furnished to Lessor, and for checking the amount of payments lawfully due the Lessor under the terms of this Lease. In exercising this right, Lessor shall give written notice to Lessee of the intended audits and such audits shall be conducted during normal business hours at the office of Lessee on a date specified by Lessor.

35. **Force Majeure:** In the event Lessee claims that any duties or obligations of Lessee as contained in the Lease may not be fulfilled as a result of force *majeure* as defined in the Lease, Lessee shall provide notice to Lessor of the nature of the *force majeure*, indicate the expected length of delay, and work diligently to remove or resolve the *force majeure event*. The Lease

shall never be extended longer than twenty-four (24) cumulative months, due to the terms contained in the *Force Majeure* Clause of the Lease.

36. **Notice of Violation:** Except as provided below, in the event that Lessee has not complied with all its obligations hereunder, either express or implied, Lessor shall give Lessee or its assigns written notice thereof describing specifically the respects in which Lessee has breached this Lease. Lessee shall have thirty (30) days after receipt of such notice within which to cure or commence to cure the breaches alleged by Lessor. After the expiration of thirty (30) days if Lessee has not commenced cure, Lessor shall have the right to exercise all rights and remedies granted it by law or equity, including, but not limited to, the filing of an affidavit of forfeiture pursuant to Ohio Revised Code, it being expressly agreed that Lessor may claim a forfeiture of this Lease for the breach of any covenant, express or implied, contained herein. Lessor shall further have the right to pursue any claim for damages it may have in addition to claiming forfeiture, it being agreed that such right of forfeiture or damage shall be cumulative remedies and not exclusive. Lessor shall have no obligation to notify Lessee of a breach of this Lease that relates to the expiration of the terms of the Lease (either primary or secondary).

37. **Surrender:** In the event of the surrender of a portion of the Lease, pipelines, pole lines, roadways, and other facilities on the land surrendered" shall be limited to those in existence at the time of surrender and shall not be expanded or enlarged without the prior written consent of Lessor.

38. **Non-Drilling Lease:** In the event that the Leased Premises is less than fifteen (15) acres, then Lessee shall not have the right to use the Leased Premises for drill sites, tank batteries, driveways, or any other surface activity without written permission from the Lessor.

39. **No Arbitration.** The arbitration provision of the Lease is hereby deleted. Jurisdiction and venue of disputes arising under this Lease shall be submitted to the Court of Common Pleas of Monroe County, Ohio.

40. **Memorandum of Lease:** The parties agree that this Lease shall not be recorded, but that the parties will instead record a Memorandum of Lease.

MEMORANDUM OF PAID UP OIL AND GAS LEASE

This Memorandum of Paid Up Oil and Gas Lease made this 30 day of September 2013 but effective the 30th day of September,2013, by and between **Claugus Family Farm, L.P.** of 555 Main Street, Apt S 715, New York, NY 10044, hereinafter called "Lessor(s)", and **GULFPORT ENERGY CORPORATION** ("Gulfport"), a Delaware Corporation with a mailing address of 14313 N. May Avenue, Suite 100, Oklahoma City, OK 73134, hereinafter called "Lessee."

WITNESSETH, that for and in consideration of the sum of One Dollar ($1.00) cash in hand paid, and other good and valuable consideration, Lessor did make and execute in favor of Lessee an Oil and Gas Lease dated and effective September 30, 2013, which provides for a five (5) year primary term covering Lessor's interest in the following described lands:

Tax Parcel Identification Number; Twp/Section/Twp No/Range/Qtr:
09-013002.0000; Green/9/4/5/NW & SW ¼

and is bounded formerly or currently as follows:

On the North by lands of Claugus Family Farm, L.P.;
On the East by lands of Mark S. Luzader et al;
On the South by lands of Center Twp;
On the West by lands of Section Line;

Containing **60.181** acres, more or less, and located in the Township of Green, in the County of Monroe, State of Ohio, for the purpose of drilling, operating for, producing and removing oil and gas and all the constituents thereof. Said lands were conveyed to Lessor from BVL, Inc., by virtue of Warranty Deed dated March 25, 2011, and recorded in Deed Book 202, at Page 769, at the Recorder's office of Monroe County, Ohio. This lease may be extended for an additional term of five (5) years upon additional consideration paid to Lessor pursuant to the terms of the Oil and Gas Lease.

This Memorandum of Oil and Gas Lease is being made and filed for the purpose of giving third parties notice of the existence of the Lease described above. The execution, delivery and recordation of this Memorandum of Oil and Gas Lease shall have no effect upon and is not intended as an amendment of the terms and conditions of the Lease. It is the intent of the Lessor to lease Lessor's interest in and to the properties described herein, whether or not the tracts recited herein are properly described.

EXECUTED this 30th day of September, 2013.

LESSOR:

Bruce Claugus, Managing ~~Member~~ Partner
Claugus Family Farm, LP

PARTNERSHIP ~~INDIVIDUAL~~ ACKNOWLEDGMENT

STATE OF OHIO)
) SS:
COUNTY OF MONROE)

On this, the 3rd day of September, 2013, before me Daniel H. Plumly, the undersigned officer, personally appeared Bruce Claugus, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained. managing partner of Claugus Family Farm, LP,

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

NOTARIAL SEAL STATE OF OHIO

DANIEL H. PLUMLY
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 RC

CORPORATE ACKNOWLEDGMENT

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2013, by _____, _____, of _____, a _____ corporation, on behalf of the corporation.

Given under my hand and seal this _____ day of _____ 2013.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

Recorder: Prepared By and Return To:
Gulfport Energy Corporation
14313 N. May Ave., Suite 100
Oklahoma City, OK 73134

EXHIBIT 3

COMMON PLEAS COURT
MONROE COUNTY, OHIO

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No. 2011-345
vs.	:	Judge Ed Lane Sitting by Assignment
Beck Energy Corporation,	:	
Defendant.	:	DECISION (On Pending Motions)

The above styled action is before the Court on the Complaint of the Plaintiff, Clyde A. Hupp and Molly A. Hupp, et al., for declaratory judgment and quiet title. This action was filed on September 14, 2011 and the two subsequent Complaints for Class Action and Amended Class Action were filed on September 29, 2011 and September 30, 2011, respectively. The Defendant, Beck Energy Corporation, has not filed an answer in this action, but has made an appearance. This action has not been certified as a class action as of the date of this decision. The Court is considering the pending motions prior to undertaking the required hearings in regard to class certifications. **Clyde A. and Molly Hupp are parties of record in this case and the correct style of the case is as set forth above. For some reason, unknown to this Court, the parties in this case have changed the style of this case. All future filings in this case will be correctly titled or subsequently stricken by Court order.**

The Defendant filed a Motion to Dismiss and/or Change Venue on November 30, 2011 with a brief in support. The Plaintiffs filed a Brief in Opposition to the Defendant's Motion to

Dismiss on January 5, 2012. On the same date, the Plaintiffs also filed a response to the Defendant's Motion to change venue. On February 16, 2012 the Plaintiffs filed a Motion for Summary Judgment with a supporting brief. On March 19, 2012 Chief Justice Maureen O'Connor of The Ohio Supreme Court assigned the case to the undersigned, Judge Norman Edward Lane, Jr., Judge of the Washington County Court of Common Pleas. On March 19, 2012 the Plaintiffs filed a Reply Brief in Support of their Motion for Summary Judgment. Thereafter, on March 23, 2012, the Court ordered the matter set for a Status Conference. The purpose of the Status Conference was to establish a briefing schedule for all of the motions that were being filed in this action. All attorneys of record participated in the Status Conference. A Status Conference was held by means of telephone conferencing on April 20, 2012. A Journal Entry was entered on April 25, 2012 establishing a briefing schedule for the pending motions. The briefing schedule required all responses to be filed by April 30, 2012 and replies to responses by April 13, 2012. All motions and replies have been timely filed either pursuant to an extension of time granted by the Court or within the original deadlines. The Defendant filed its Brief in Opposition to the Plaintiff's Motion for Summary Judgment on April 30, 2012 and the Plaintiffs filed a reply to that Brief on May 14, 2012. The matter has been under review by the Court since that date. The Court has reviewed all of the pleadings, all of the motions, memorandums and supporting affidavits provided to this Court and filed in this action. At present there are six named individual plaintiffs in this action. One plaintiff, Donald W. Yonally, was voluntarily dismissed without prejudice on April 12, 2012.

The Court will address all of the issues presented in the parties' various motions in this decision.

FACTUAL BACKGROUND

The Plaintiffs own various tracts of land in Monroe County, Ohio. The Defendant, Beck Energy, is an Ohio oil and gas producer that develops oil and gas interests in Ohio. Beginning in 2003 the Defendant entered into a number of oil and gas leases in Monroe County, Ohio. The Plaintiffs maintain that they have a potential class of 248 lessors. The leases that are involved in this action are leases generated by the Defendant. All leases are identical except as to a few blanks on each of the form leases that were filled in by the Defendant's representatives. These variations are: the date of the lease, the names and addresses of the lessors, and a rough description of the land by township and county. All leases have written in the blank in paragraph three a twelve month primary period/term. The delayed rental payment varies per lease and the name of the lessors varies with each lease. To date, no wells have been drilled in Monroe County pursuant to any of the leases that are involved in this action.

There are certain provisions of the form lease (see Plaintiffs' Exhibit 2 as attached to Plaintiffs' Complaint) that are at issue in this case. The key paragraphs are set forth below:

> 2. This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the Lessee for a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas and as provided in Paragraph 7 following.
>
> 3. This ease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within -12- months from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of $108.00 Dollars each year, payments to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced.
>
> * * *

7. In the event a well drilled hereunder is a dry hole and is plugged according to law, this lease shall become null and void and all rights of either party hereunder shall cease and terminate, unless within twelve (12) months from the date of the completion of the plugging of such well, the Lessee shall commence another well, or unless the Lessee after the termination of said twelve month period resumes the payment of delay rental as hereinabove provided.

8. In the event as well drilled hereunder is a producing well and the Lessee is unable to market the production therefrom, or should production cease from producing well drilled on the premises, or should the Lessee desire to shut in producing wells, the Lessee agrees to pay th Lessor, commencing on the date one year from the completion of such producing well or the cessation of production, or the shutting in of producing wells, an advance royalty in the amount and under the terms hereinabove provided for delay rental until production is marketed and sold off the premises or such well is plugged and abandoned according to law. In the event no delay rentals are started, the advance royalty payable hereunder shall be made on the basis of $1.00 per acre per year.

9. The consideration, land rentals or royalties paid and to be paid, as herein provided, are and will be accepted by the Lessor as adequate and full consideration for all the rights herein granted to the Lessee, and the further right of drilling or not drilling on the leased premises, whether to offset producing wells on adjacent or adjoining lands or otherwise, as the Lessor may elect.

***

16. In the event the Lessee is unable to perform any of the acts to be performed by the Lessee by reason of force majeure, including but not limited to acts of God, strikes, riots, and governmental restrictions including but not limited to restrictions on the use of roads, this lease shall nevertheless remain in full force and effect until the Lessee can perform said act or acts and in no event shall the within lease expire for a period of ninety days after the termination of any force majeure.

17. In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, either express or implied, Lessor shall notify Lessee in writing setting out specifically in what respects Lessee has breached this contract. Lessee shall then have 30 days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of 30 days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any part of the alleged breaches

shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder.

***

19. . . . no implied covenant, agreement or obligation shall be read into this agreement or imposed upon the parties. . . .

MOTION TO CHANGE VENUE

At the present time, no jury demand has been filed in this action. If this matter proceeds as an action to the Court, there has been a de facto change of venue by reason of Judge Selmon recusing herself from this case and The Chief Justice of The Supreme Court of Ohio assigning this case to the undersigned. If a jury demand is timely filed in the future, the Court will revisit the issue of venue should it be brought to the Court's attention in a subsequent motion. The motion to change venue is denied without prejudice.

DEFENDANT'S MOTION TO DISMISS

On November 30, 2011 the Defendant filed a combined Motion to Dismiss and/or Change Venue. Pursuant to Oh. Civ. R. 12(B)(6) the Defendant seeks to have this Court dismiss this action pursuant to the provisions of paragraph 17 of the lease.

The Plaintiffs admit that they have not complied with paragraph 17 of the subject lease.

A motion to dismiss for failure to state a claim upon which relief can be granted is a procedural motion that tests the sufficiency of a complaint. Dowdy v. Jones, 7th Dist. No. 10-CO-21, 2011-Ohio-3168, ¶14. For a trial court to dismiss a complaint pursuant to Civ.R.

12(B)(6), it must appear beyond doubt that the plaintiffs can prove no set of facts that would entitle them to the relief sought. Ohio Bureau of Workers' Comp. v. McKinley, 130 Ohio St.3d 156, 2011-Ohio-4432, __ N.E.2d __, ¶12. "The allegations in the complaint must be taken as true, and those allegations and any reasonable inferences drawn from them must be construed in the nonmoving party's favor." *Id.* Moreover, a complaint should not be dismissed for failure to state a claim merely because the allegations do not support the legal theories on which the plaintiffs rely. Fahnbulleh v. Strahan, 73 Ohio St.3d 666, 667, 653 N.E.2d 1186 (1995). Instead, the Court must examine the complaint to determine whether the allegations provide for any relief on any possible theory. *Id.*

Defendant's motion to dismiss herein is predicated on a single proposition: that Plaintiffs did not provide thirty days written notice to this Defendant prior to commencing this action. The Plaintiffs maintain that the Leases which form the contractual basis for these parties are void as against public policy and unenforceable, and under any reasonable construction of said Leases, were materially and substantially breached by the Defendant reducing the contractual requirement of a notice to a meaningless act from which no benefit could be derived.

Public policy analysis requires a Court to consider the impact of a contract at issue in a case upon society as a whole. Eagle v. Fred Martin Motor Co., 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶63 (9th Dist.).

> Public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy.

Brown v. Gallagher, 179 Ohio App.3d 577, 2008-Ohio-6270, 902 N.E.2d 1037, ¶10 (4th Dist.). Courts will reject any effort to enforce a contract that is against public policy, either directly or

indirectly, or to claim benefits thereunder. Taylor Building Corp. v. Benfield, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶61; Polk v. Cleveland Railway Co., 20 Ohio App. 317, 320-21, 151 N.E. 808 (8th Dist. 1925); Buoscio v. Lord, 7th Dist. No. 98-C.A.-151, 1999 Ohio App. LEXIS 6204, *4 (Dec. 17, 1999); Conny Farms, Ltd. v. Ball Resources, 7th Dist. No. 09 CO 36, 2011-Ohio-5472, ¶26.

"[A]ctual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations." Eagle at ¶64. Unlike a contract that is merely voidable at the election of one of the parties, a contract is void *ab initio* if it seriously offends public policy. Walsh v. Bollas, 82 Ohio App.3d 588, 593, 612 N.E.2d 1252 (11th Dist. 1992); Dunn v. Bruzzese, 172 Ohio App.3d 320, 2007-Ohio-3500, 874 N.E.2d 1221, ¶81 (7th Dist.).

"It is the public policy of the state of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio." Newbury Township Board of Trustees v. Lomak Petroleum (Ohio), Inc., 62 Ohio St.3d 387, 389, 583 N.E.2d 302 (1992); Northampton Building Co. v. Board of Zoning Appeals, 109 Ohio App.3d 193, 198, 671 N.E.2d 1309 (9th Dist. 1996). *See also* State v. Baldwin Producing Corp., 10th Dist. No. 76AP-892, 1977 WL 199981, *2 (Mar. 10, 1977). To this end, political subdivisions - entities representing all persons within their territorial boundaries and not simply promoting the private interests of individual contracting parties - are prohibited from enacting ordinances, rules and regulations restricting oil and gas production that are more stringent than state requirements. Newbury Township at 389-90; *Northampton Building Co.* at 198-99.

Historically, the ultimate duration of oil and gas leases has been the subject of tension

between lessors, lessees and the courts. Jacobs v. CNG Transmission Corp., 332 F.Supp.2d 759, 786 (W.D. Pa. 2004). Because fixed-term leases were disadvantageous to lessees if production was not achieved until the end of the term, the initial term was shortened and supplemented with (1) what became known as an "unless" drilling clause, under which the lessee had the right to postpone development by paying a delay rental, and (2) a surrender clause under which the lessee could terminate his obligations as to unproductive property. *Id.*, n.15 (citing 2 Summers, *The Law of Oil and Gas*, §289). Lessees then devised leases under which the lessee could extend the exploration period for as long as they considered payment of delay rentals worthwhile. *Id.* This was effected by what became known as a "no-term lease," featuring a habendum clause that simply conveyed the premises subject to a list of conditions, one of which was the payment of a rental. *Id.*

However, the no-term lease was not favored by the courts. *Id.* One line of cases held that, because the lease failed to establish a time beyond which the lessee could not delay development and the payment of royalties, it was unfair and unenforceable against the lessor. *Id.* The other line of cases read into the no-term lease an implied condition compelling the lessee to drill within a reasonable time, the breach of which was cause for forfeiture. *Id.*

The Plaintiffs' position in this matter is that their leases with the Defendant are a no-term leases: through the boilerplate embedded in their leases, exemplified by Defendant's failure to commence any drilling on any of the Plaintiffs' lands, the Defendant has the unilateral right to indefinitely postpone development and extend the time in which it may develop the acreage in perpetuity, either by making nominal delay rental payments pursuant to paragraph 3 of the Lease, or by determining in its own judgment that the premises are capable of producing oil or gas in

paying quantities pursuant to paragraph 2.

> "[T]he presumption is that a lease is made for the purpose of immediate development, unless the contrary appears in the contract of the parties."*** The implied covenant to develop the leasehold for mineral production with due diligence and for the mutual benefit of both parties grew out of "the public interest which is concerned with the development of the natural resources of the state."

Jacobs, 332 F.Supp.2d at 779. Upon a lessee's failure to develop the leasehold within a reasonable time, "both public and private interests demanded judicial termination of the lease to make possible the use and alienation of the land for oil and gas or for other purposes." *Id.* at 782.

The mineral leases in Ionno v. Glen-Gery Corp., 2 Ohio St.3d 131, 443 N.E.2d 504 (1983), contained no time limitation during which mining operations were to be commenced, but required the lessees to pay advance minimum royalties each year, to be applied against amounts anticipated to become due from future mining operations. In concluding that the lessees had breached their implied obligations under their lease, the Ohio Supreme Court enunciated the policy in Ohio:

> The fact that the lessees have continued to make annual payments for a period of over eighteen years does not alter their responsibility to develop the land within a reasonable time. The questions of working diligently and of paying rent or royalties cannot be viewed as a substitute for timely development. To hold otherwise would be to reward mere speculation without development, effort, or expenditure on the part of the lessees. It would allow a lessee to encumber a lessor's property in perpetuity merely by paying an annual sum. ***Such long-term leases under which there is no development impede the mining of mineral lands and are thus against public policy.***

This Court must, under the current state of Ohio law, consider the allegations in the Plaintiffs' Complaint as true, and must draw any reasonable inferences from them in favor of the Plaintiffs. When doing so, this Court cannot say beyond doubt that the Plaintiffs can prove no set of facts that would entitle them to the relief sought. Therefore, for all of the reasons set forth

herein above and hereafter, the Defendant's Motion to Dismiss is not well taken and the same shall be denied.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiffs filed their Motion for Summary Judgment in this action on February 16, 2012. The Defendant filed its Brief in Opposition on April 30, 2012. The Plaintiffs further filed a reply to the Defendant's opposition on May 14, 2012 and on March 19, 2012 filed a reply brief in support of their Motion for Summary Judgment.

The Plaintiffs' Motion for Summary Judgment sets forth several distinct issues. First, the Plaintiffs maintain that their lease with the Defendant is a lease in perpetuity and as such is void and unenforceable as against the public policy of The State of Ohio. Secondly, the Plaintiffs maintain that the Defendant breached the implied covenant to reasonably develop their land and by doing so the leases are now null and void. Thirdly, the Plaintiffs maintain that the lease provisions for foregoing development by the payment of delayed rentals has expired because the Defendant failed to commence a well within the required times. The Defendant has countered the Plaintiffs' assertions by stating that it had not received the written notice required from the Plaintiffs setting forth any alleged noncompliance by the Defendant with the lease's terms. Plaintiffs maintain that they do not have to give notice because the leases were void *ab initio*. The Defendant also maintains that the sole remedy that the Plaintiffs are entitled to is damages and not forfeiture of the leases. The Plaintiffs maintain that because the leases are void and unenforceable from the beginning they are entitled to forfeiture of the lease.

A Summary judgment is a procedural vehicle used to terminate legal claims without factual foundation." Gross v. Western-Southern Life Ins. Co., 85 Ohio App.3d 662, 667, 621 N.E.2d 412 (1st Dist. 1993). A Summary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the [civil rules] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." Todd Development Co. v. Morgan, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, &22. *See also* Civ.R. 1(B).

Civ.R. 56(C) mandates that a court enter summary judgment if the evidence shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.* When a motion for summary judgment has been made and properly supported, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine issue for trial. *Id.* The parties moving for summary judgment need only prove their own case: the movants do not bear the initial burden of addressing any affirmative defenses the nonmovant may assert. *Id.*, syllabus and &13.

"Summary judgment is appropriate where no genuine issue of material fact remains to be litigated which could establish the existence of an element essential to the nonmoving party's claim or defense." Gross, 85 Ohio App.3d at 667. The mere existence of a factual dispute is insufficient to preclude summary judgment only disputes over material facts that might affect the outcome of the suit under the governing law will properly preclude summary judgment. *Id.* "The construction of written contracts and instruments of conveyance is a matter of law." Alexander v. Buckeye Pipe Line Co., 553 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus. This Court finds that the instant case involves the construction of written leases

and in light of the Defendant's undisputed failure to commence any development activity pursuant to those leases, the clear public policy of Ohio has been violated. There is no dispute as to any material fact; reasonable minds can reach no conclusion other than one reached herein by this Court that is adverse to the Defendant; and Plaintiffs are entitled to judgment as a matter of law on this issue.

The Plaintiffs also maintain that their leases with the Defendant are perpetual leases under which there has been no development of oil and gas and therefore the leases are void and unenforceable as against public policy. Central to the understanding of this issue are paragraphs two and three of these parties' leases. Paragraph two provides as follows:

> "This lease shall continue in force and the rights granted hereunder be quietly enjoyed by the lessee for a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the lessee, or as the premises shall be operated by the lessee in the search for oil and gas and as provided in paragraph 7 following."

Paragraph 7 of the parties' leases deal with the event that if a well is drilled that is a dry hole. Paragraph number 3 of the parties' lease is also central to an understanding of the issue at hand. Paragraph 3 of the parties' leases provide that:

> "This ease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within -12- months from the date hereof, a well shall be commenced on the premises, or unless the Lessee shall thereafter pay a delay rental of _____ Dollars each year, payment to be made quarterly until the commencement of a well. A well shall be deemed commenced when preparations for drilling have been commenced."

The Defense maintains that a reasonable interpretation of these form leases is that they shall drill a well within twelve months or have the right to pay the delayed rental for a period of ten years and drill the well within that period. The Defendant wrote all of the leases involved

herein. If that was their intention then they should have stated it in their leases. That was never their intention or they would have written this language into their leases. It probably only became their intention when they were confronted with this lawsuit and law of Ohio on this issue. The Plaintiffs maintain that this is a lease in perpetuity and violates public policy. The lease by its term requires that a well be drilled within twelve months or that delayed payments be made quarterly to preserve the right to drill at a later date. This Court does not find in either paragraph 2 or 3 any limitation on the number of years that the delayed rental can be paid. Further, paragraph 2 provides that the leases have a term of ten years and as much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities. They have no provision for a well to be drilled. It also leaves the determination of what paying quantities means up to the Defendant. It gives no deadline for the time in which once a well is commenced that it be completed. A well is deemed "commenced" when preparations for drilling have been commenced. There is no deadline for the completion of a well. Some of the cases cited to the Court by the Defendant refer to the term "well" and not "lease". This case is not dealing with a situation where a well has been drilled. No wells have been drilled on any of the Plaintiffs' leases in Monroe County per the allegations of the Plaintiffs in their briefs.

Public policy analysis requires this Court to consider the impact of the contract at issue upon society as a whole. Eagle v. Fred Martin Motor Co., 157 Ohio Spp.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶63 (9th Dist.).

> "Public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good.

> Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy."

Brown v. Gallagher, 179 Ohio App.3d 577, 2008-Ohio-6270, 902 N.E.2d 1037, ¶10 (4th Dist.). Courts will reject any effort to enforce a contract that is against public policy, either directly or indirectly, or to claim benefits thereunder. Taylor Building Corp. v. Benfield, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12 ¶61; Polk v. Cleveland Railway Co., 20 Ohio App. 317, 320-321, 151 N.E. 808 (8th Dist. 1925); Buoscio v. Lord, 7th Dist. No. 98-C.A.-151, 1999 Ohio App. LEXIS 6204, *4 (Dec. 17, 1999); Conry Farms, Ltd. v. Ball Resources, 7th Dist. No. 09 CO 36, 2011-Ohio-5472, ¶26.

"[A]ctual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations." Eagle at ¶64. Unlike a contract that is merely voidable at the election of one of the parties, a contract is void *ab initio* if it seriously offends public policy. Walsh v. Bollas, 82 Ohio App.3d 588, 593, 612 N.E.2d 1252 (11th Dist. 1992); Dunn v. Bruzzese, 172 Ohio App.3d 320, 2007-Ohio-3500, 874 N.E.2d 1221, ¶81 (7th Dist.).

The Ohio Supreme Court has clearly and unequivocally articulated the public policy of the State of Ohio in regard to the extraction of oil and gas. "It is the public policy of the state of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio." Newbury Township Board of Trustees v. Lomak Petroleum (Ohio), Inc., 62 Ohio St.3d 387, 389, 583 N.E.2d 302 (1992); Northampton Building Co. v. Board of Zoning Appeals, 109 Ohio App.3d 193, 198, 671 N.E.2d 1309 (9th Dist. 1996). See also State v. Baldwin Producing

Corp., 10th Dist. No. 76AP-892, 1977 WL 199981, *2 (Mar. 10, 1977). To that end, political subdivisions - entities representing all persons within their territorial boundaries and not simply promoting the private interests of individual contracting parties - are prohibited from enacting ordinances, rules and regulations restricting oil and gas production that are more stringent than state requirements. Newbury Township at 389-90; Northampton Building Co at 198-99. It would be inconsistent to permit a private operator to unilaterally ban the development of significant oil and gas resources indefinitely, solely for personal gain and over the objection of its lessors.

The Plaintiffs are entitled to summary judgment in this matter because the leases in question clearly, unequivocally and seriously offend public policy in that they are perpetual leases that, by their terms and the payment of a nominal delayed rental may never have to be put into production. The Plaintiffs are also entitled to summary judgment because of the Defendant's breach of the implied covenant to reasonably develop the land by failing to drill any wells on any of the Plaintiffs' acreage. This provision violates the implied covenant to reasonably develop.

The leases in this case are, in effect, a no-term leases: through the boilerplate prepared by the Defendant and contained in the leases, the Defendant has the unilateral right to indefinitely postpone development and extend the time in which it may develop the Plaintiffs' acreage in perpetuity. Paragraph 2 provides that the leases shall continue in force for a term of ten years "and so much longer thereafter as oil or gas. . . are capable of being produced on the premises in paying quantities, in the judgment of the Lessee . ." but does not impose a time limitation as to how long this Defendant can extend the duration of the leases by exercising its judgment. Paragraph 3 provides that the leases shall become null and void if a well is not commenced

within twelve (12) months, "...unless lessee shall thereafter pay a delay rental of ____ Dollars each year, ..." but likewise does not impose a limitation as to how long this Defendant can avoid termination by paying delay rentals. Furthermore, pursuant to the language contained in paragraph 13 of the leases ("failure of payment of rental or royalty on any part of this lease shall not void this lease as to any other part"), Defendant could ostensibly cease making the delay rental payments referenced in paragraph 3; but still retain the ability under paragraph 2 to extend the leases indefinitely by exercising its unfettered subjective judgment. Also, only Defendant has the unilateral right to terminate the leases, or any part thereof, by surrender. Lease, paragraph 15.

> "[T]he presumption is that a lease is made for the purpose of immediate development, unless the contrary appears in the contract of the parties." *** The implied covenant to develop the leasehold for mineral production with due diligence and for the mutual benefit of both parties grew out of "the public interest which is concerned with the development of the natural resources of the state."

Jacobs, 332 F.Supp.2d at 779 . Upon a lessee's failure to develop the leasehold within a reasonable time, "both public and private interests demanded judicial termination of the lease to make possible the use and alienation of the land for oil and gas or for other purposes." *Id.* at 782.

The coal leases in *Ionno v. Glen-Gery Corp.*, 2 Ohio St.3d 131, 443 N.E.2d 504 (1983), contained no time limitation within which mining operations were to be commenced, but required the lessees to pay advance minimum royalties each year, to be applied against amounts anticipated to become due from future mining operations. In concluding that the lessees had breached their implied obligations under their lease, the Ohio Supreme Court enunciated the policy in Ohio:

> The fact that the lessees have continued to make annual payments for a period of over eighteen years does not alter their responsibility to develop the land within a reasonable time. The questions of working diligently and of paying rent or royalties cannot be viewed as a substitute for timely development. To hold otherwise would be to reward mere speculation without development, effort, or expenditure on the part of the lessees. It would allow a lessee to encumber a lessor's property in perpetuity merely by paying an annual sum. Such long-term leases under which there is no development impede the mining of mineral lands and are thus against public policy.

Id. At 134.

The "long term" lease in *Ionno* and the Beck Leases in this case are no-term leases bestowing upon the lessees the unilateral right to extend in perpetuity the time within which to develop the leased premises. As in *Ionno*, there has been no development of Plaintiffs' acreage over a period of years. Like the lease in *Ionno* under which there had been no development, the leases herein are unenforceable as against public policy.

The Plaintiffs are entitled to summary judgment in this matter because the leases in question seriously offend public policy in that they are perpetual leases. The Plaintiffs are also entitled to Summary judgment because of the Defendant's breach of the implied covenant to reasonably develop the land and by failing to drill any wells on any of the acreage that implied covenant has been violated.

"[T]he only material inducement which influences a lessor to grant a lessee the power to exercise extensive rights upon his land is his expectation of receiving *** royalties based upon the amount of minerals derived from the land." Ionno, 2 Ohio St.3d at 133 n.2, 443 N.E.2d 504. "[W]here a lease fails to contain any specific reference to the timeliness of development, the law will infer a duty to operate with reasonable diligence." *Id.* At 133. In *Ionno,* the Ohio Supreme Court found a lease to be subject to the implied covenant to reasonably develop where it set forth

no time period in which mining operations were required to commence, and contained "no express disclaimer of the covenant to develop within a reasonable time." *Id.* At 133.

The leases in this case contain neither a "specific reference to the timeliness of development" no "a time period in which mining operations were required to commence." Paragraph 3 of the lease provides that the lease shall "terminate" if a well is not commenced within the twelve-month period, the remainder of that paragraph ostensibly permits the Defendant to delay development indefinitely by paying annual delay rentals. Paragraph 2 of the lease also permits the Defendant to delay development indefinitely by determining in its judgment that oil or gas is "capable of being produced on the premises in paying quantities." A lease in which the development period can be delayed into perpetuity at the option of the lessee clearly satisfies the *Ionno* criteria under which an implied covenant will arise.

The implied covenant to develop the land with reasonable diligence serves to allow lessors "to secure the actual consideration for the lease, *i.e.*, the production of minerals and the payment of a royalty on the minerals mined." *Ionno* at 134. To allow lessees to hold land under a mineral lease without making any effort to mine would contravene the nature and spirit of the lease. *Id.*

Ohio courts have recognized a number of implied covenants that arise in oil and gas leases, including both the covenant to drill and initial exploratory well and the covenant of reasonable development, as well as covenants to explore further, to market the product and to conduct all operations that affect the lessor's royalty interest with reasonable care and due diligence. *American Energy Services, Inc. V. Lekan,* 75 Ohio App.3d 205, 215, 598 N.E.2d 1315 (5th Dist. 1992); *Moore v. Adams,* 5th Dist. No. 2007AP090066, 2008-Ohio-5953, ¶32-37.

The United States Supreme Court recognized the implied covenant to reasonably develop in *Sauder v. Mid-Continent Petroleum Corp.*, 292 U.S. 272, 279, 54 S.Ct. 671, 78 L.Ed. 1255 (1934). The court saw no need to resort to the law of the state in which the case arose, stating that the covenant to develop the tract with reasonable diligence "is to be implied from the relation of the parties and the object of the lease." *id.* At 278-79.

> The object of the operations being to obtain a benefit or profit for both lessor and lessee, it seems obvious, in the absence of some stipulation to that effect, that neither is made the arbiter of the extent to which or the diligence with which the operations shall proceed, and that both are bound by the standard of what is reasonable.

Id. at 280. The court criticized the lessee's assumption that it could hold its lease indefinitely without commencing any operations to discover or extract the minerals to which its lease applied.

> The [lessee's] officers state that they desire to hold this tract because it may contain oil; but they assert that they have no present intention of drilling at any time in the near or remote future. This attitude does comport with the obligation to prosecute development with due regard to the interests of the lessor.

Id. At 281.

The Defendant maintains that its lease clearly disclaims all implied covenants. The lease does contain a general disclaimer of implied covenants. However, the lease also later refers to implied covenants.

In Ohio, as elsewhere, "[a]bsent express provisions to the contrary, an oil and gas lease includes an implied covenant to reasonably develop the land." *Beer v. Griffith*, 61 Ohio St.2d 119, 399 N.E.2d 1227 (1980), paragraph two of the syllabus; *Ionno*, 2 Ohio St.3d at 132, 443 N.E.2d 504. The covenant to reasonably develop arises in the absence of an "express disclaimer of the covenant to develop within a reasonable time." *Ionno* at 133.

Ambiguities in contracts are to be construed against the proponent of the instrument. *Doe v. Ronan*, 127 Ohio St.3d 188, 2010-Ohio-5072, 937 N.E.2d 556, ¶49. "Any ambiguities in the document setting forth the rights and responsibilities of each party must be construed against the drafter of the document. Otherwise the nondrafter of the document may ultimately forfeit far more than he or she reasonably contemplated at the time the agreement was signed." *Id.* "In determining whether contractual language is ambiguous, the contract must be construed as a whole *** so as to give reasonable effect to every provision in the agreement." *Savedoff v. Access Group, Inc.*, 524 F.3d 754, 763 (6th Cir. 2008) (applying Ohio law). Where a contract as a whole can be reasonably interpreted to support either party's position regarding the scope of a particular clause, the contract is ambiguous as to that issue, and must be construed against the drafter. *Mead Corp. V. ABB Power Generation, Inc.* 319 F.3d 790, 798 (6th Cir. 2003).

In this case, the parties' lease first provides the lessor with the right to bring an action against the lessee for breach of an implied obligation. Lease, paragraph 17. Two paragraphs later, the lease purports to disclaim any implied covenants. Permitting the lessor to sue based on the breach of an implied obligation cannot be reconciled with a blanket disclaimer of all implied obligations or covenants. Because the lease can reasonably be interpreted to allow or disallow a lessor to maintain an action for breach of an implied obligation, the lease is ambiguous and must be construed against the Defendant, the proponent of the language at issue.

This lease contains contradictory provisions permitting the Plaintiffs to bring legal action against the Defendant for breaching implied obligations while at the same time disclaiming all implied obligations. Moreover, the provisions ostensibly vesting discretion in the Defendant to drill or not to drill either (1) renders the lease illusory unless coupled with an implied covenant to

reasonably develop, or (2) is ambiguous with respect to whether the discretion to drill or not to drill applies only to "further" drilling beyond what is required to produce oil or gas, or (3) is unenforceable as against public policy if construed to indefinitely allow Beck to elect to drill or not to drill for all purposes. Accordingly, in that all of these provisions are ambiguous, all provisions must be construed against the Defendant, rendering the general disclaimer of implied obligations ineffective.

Where general provisions of a contract conflict with specific provisions of the same document, the specific provisions generally control. *Edmondson v. Motorists Mutual ins. Co.*, 48 Ohio St.2d 52, 53, 356 N.E.2d 722 (1976); *Hoepker v. Zurich American Inc., Co.*, 3d Dist. No. 140318, 2003-Ohio-5138, ¶11; *Monsler v. Cincinnati Cas. Co.*, 74 Ohio App.3d 321, 330, 598 N.E.2d 1203 (10th Dist. 1991). Paragraph 17 of the Beck Lease sets forth specific procedures to be followed in the event a lessor believes Beck to have breached either an express or implied obligation. Paragraph 19 generally disclaims all implied obligations. In that the specific provision in paragraph 17 setting forth a lessor's rights in the event Beck breaches an implied condition controls over the general disclaimer in paragraph 19, the disclaimer is ineffective.

The stated purpose of this lease is "drilling, operation for, producing and removing oil and gas and all the constituents thereof." The lease contains no suggestion that either defendant or lessor had any other objective. The implied covenant to reasonably develop the land effectuates the parties' intent as reflected by the express purpose of the lease.

To give effect to the fundamental purpose of an oil and gas lease as well as to the implied covenant to reasonably develop the land, provisions in the lease bearing on the extent of development may modify or reflect the standard of reasonableness in the implied covenant.

Streck v. Reed, 9th Dist. No. 1221, 1983 WL 4132, *3 (June 8, 1983). The lease must be construed in a manner that will give effect to all the provisions in the lease, both express and implied. *Id.*

The provision in a mineral lease for annual advance payments does not relieve the lessee of its obligation to reasonably develop the land. *Ionno*, 2 Ohio St.3d at 134, 443 N.E.2d 504.

> The questions of working diligently and of paying rent or royalties are entirely separately matters. An annual advance payment which is credited against future royalties cannot be viewed as a substitute for timely development. To hold otherwise would reward mere speculation without development, effort, or expenditure on the part of the lessees. It would allow a lessee to encumber a lessor's property in perpetuity merely by paying an annual sum.

Paragraph 3 of this lease specifies that the Lease "shall become null and void" and the rights of the parties "shall cease and terminate" unless a well is commenced within twelve months (subject to the effect of paying delay rentals). The parties necessarily determined that twelve months was a reasonable time in which to commence a well. In construing this lease, the Court hereby finds that the implied covenant to reasonably develop the land required the Defendant to commence a well within one year. As the Defendant failed to do so, and in fact, has failed to commence a single well on any portion of any of the Plaintiffs' acreage, even though more than three years have elapsed since the lease covering the Hustacks' property was executed, almost six years have elapsed since the Hubbards executed their lease, nine years have elapsed since Donald Yonley executed his Lease, and more than six years have elapsed since David Majors executed his Lease, it has breached the implied covenant to reasonably develop Plaintiffs' Acreage.

When construing the evidence most strongly in favor of the Defendant as required by the Ohio Rules of Civil Procedure, this Court is convinced that reasonable minds can come to but one conclusion, and that conclusion is adverse to the Defendant. This Defendant's lease clearly and unequivocally breaches the implied covenant to reasonably develop the Plaintiffs' land and violates the public policy of the State of Ohio and the Plaintiffs are entitled to summary judgment on this issue. As stated herein above, the lease involved in this action is a lease in perpetuity. By paying delayed rentals, this land could potentially never be developed by the Defendant's payment of a very minimal payment to the Plaintiffs.

While not controlling, our neighboring state of Pennsylvania has decided the issues presented by this course. It is interesting because Pennsylvania has taken the same position taken by the Ohio Supreme Court on the issues presently before this Court in this matter. *Hite v. Falcon Partners*, 2011 Pa.Supr. 2, 13 A.3d 942 (2011), is in many respects similar to the instant case. The *Hite* lease and this lease are both "unusual" types of no-term leases. 13 A.3d at 947. They do not contain traditional habendum clauses which definitively designate a primary term (the time period in which the lessee has the right to develop the leased premises) and a secondary term (the period following the primary term in which the lessee can reap a long-term return on the efforts and funds expended to develop the premises.) The *Hite* lease and this lease each contain language purporting to enable the lessee to indefinitely extend the primary term at the lessee's option.

The *Hite* lease provided for a one-year primary term that the lessees could extend indefinitely either by continuing operations for production of oil or gas, or by paying annual delay rentals of two dollars per acre. 13 A.3d at 944. The lessees in *Hite* simply paid delay

rentals for years without commencing any drilling, depriving the lessors of the royalties they would have received from the production of their oil or gas.

The court noted that "[r]oyalty-based leases are to be construed in a manner designed to promote the full and diligent development of the leasehold for the mutual benefit of both parties." *Id.* At 945. The court reviewed the history of mineral leases, noting the evolution from a definite term that left the lessee at a disadvantage if minerals were discovered near the end of the term, to a variable term expressed by a habendum clause providing for a fixed period for development, with an option to extend the lease for "as long thereafter" or "so long as" the specified minerals were produced in paying quantities, enabling the lessee to continue to reap a return for the money spent to develop the property. *Id.* At 946.

Even if a written lease did not expressly require the lessee to develop the property in a timely manner or suffer forfeiture, courts recognized an implied obligation to develop the leasehold. *Id.* As a result, leases specifying a fixed primary term with a "thereafter" clause began to incorporate "delayed rental" clauses relieving lessees of the obligation to immediately develop the property. *Id.* "[C]ourts have interpreted delay rentals to be 'limited to the initial term of the lease.'" *Id* at 947; *Jacobs*, 332 F.Supp.2d at 786.

As noted in Plaintiffs' public policy argument, section II.B., *supra*, lessees began crafting leases permitting the lessee to extend the exploration period for as long as he considered payment of the delay rental worthwhile, giving rise to the "no term lease," which courts rejected under one of two rationales. *Hite* at 947. One rationale was that because the lease did not fix a time beyond which the lessee could not delay actual development and the payment of royalties-the consideration for the lease-the lease was unfair and therefore unenforceable against the lessor. *Id.*

The other rationale was that no-term leases contained an implied condition requiring the lessee to drill within a reasonable time or forfeit the lease. *Id.*

The *Hite* court observed that to a landowner unsophisticated in the legalities of leasing minerals the terms of the lease indicated a one-year term during which the lessee was to commence development. 2011 Pa.Super.2, 13 A.3d at 948. "If the lease could be extended in perpetuity though the payment of $2.00 per acre per year, there would be little need for the parties to agree on a one-year lease term." *Id.* Rejecting the lessee's contention that the leases enabled it to maintain production rights indefinitely as long as delay rentals were paid, the court opined that delay rentals relieve the lessee of the obligation to develop the land during the primary term only. *Id.* Accordingly, a single two-dollar-per-acre delay rental relieved the lessee of any obligation to develop the leasehold during the one-year primary term. *Id.* Once that primary term expired, the mere payment of delay rentals could not preserve the lessee's drilling rights. *Id.*

Permitting the lessee to pay delay rentals indefinitely, thereby denying the lessors the financial benefits of actual production, would contravene the presumed intention of the parties in executing the leases in the first place, as well as the notion that delay rentals are intended to "spur the lessee toward development." *Id.* Moreover, construing the leases as creating an indefinite term would provide the lessee with vested property rights for the mere payment of a nominal delay rental, a concept at odds with the traditional construction of the property rights conveyed by an oil and gas lease. 13 A.3d at 949. Accordingly, the *Hite* court held that the terms of the leases being construed limited the privilege of foregoing production by paying delay rentals to

the one-year primary term; once the primary term ended and the lessee failed to commence production, the leases expired. *Id.*

Like the *Hite* lease, this lease is a no-term lease which, on its face, purports to enable the Defendant to extend the term indefinitely, without any development, by simply paying nominal delay rentals and/or determining that the leased acreage is capable of producing.

A contract is illusory when, by its terms, the promisor "retains an unlimited right to determine the nature or extent of his performance; the unlimited right in effect destroys his promise and thus makes it merely illusory." *Century 21 v. McIntyre*, 68 Ohio App.2d 126, 129-30, 427 N.E.2d 534 (1st Dist. 1980); *Thomas v. Am. Elec. Power Co.*, 10th Dist. No. 03AP1192, 2005-Ohio-1958, ¶32. Courts generally disfavor interpretations that render contracts illusory, preferring a meaning that gives the contract vitality. *Thomas*, ¶32.

Construing this lease consistently with *Hite*, limiting the Defendant's ability to forego development to the twelve-month primary term set forth in paragraph 3, would prevent the Defendant's promise to drill from being illusory and would promote public policy and the expressed intent of the parties to develop the Acreage.

For all the reasons set forth herein above the Plaintiffs are entitled to summary judgment. The remaining issue is whether or not forfeiture is an appropriate remedy for the Plaintiffs and whether or not the Defendant is entitled to a 30 day notice of cure as provided for in the lease. For the reasons set forth herein after, this Court believes that forfeiture of these leases is the appropriate remedy because they were void *ab initio* and as such the Plaintiffs do not have to give the Defendant the contractual notice to cure notice.

When causes of forfeiture are specified in an oil and gas lease, other causes cannot be implied. *Beer*, 61 Ohio St.2d at 119, 399 N.E.2d 1227, paragraph three of the syllabus. However, "[w]here legal remedies are inadequate, forfeiture or cancellation of an oil and gas lease, in whole or in part, is an appropriate remedy for a lessee's violation of an implied covenant." *Id.*, paragraph four of the syllabus. Forfeiture will be granted when necessary to do justice to the parties, even where specific grounds for forfeiture are set forth in the lease. *Ionno*, 2 Ohio St.3d at 135, 443 N.E.2d 504. Even where the lessee has made minimum rental or royalty payments, a lessor's claim for forfeiture based upon breach of an implied covenant to reasonably develop the land is not precluded, provided the lessor can show that damages are inadequate. *Id.*

"The rationale for allowing forfeiture is the fact that the real consideration for the lease is the expected return derived from the actual mining of the land, not the rental income." *Moore*, 2008-Ohio-5953, &48. Where a lessee's failure to drill or mine within a reasonable period of time would allow the lessee to encumber the lessor's property in perpetuity, without any return of income to the lessor arising from drilling or mining operations, breach of the implied covenant to develop the land could result in forfeiture. *Id.* The decision to order a forfeiture of an oil and gas lease is within the trial court's discretion. *Id.*, ¶51.

In *Beer*, the court upheld a partial forfeiture (or cancellation) where the lessee had performed no work on the leased property for over a year, and had financial and operating difficulties. 61 Ohio St.2d at 121-22, 399 N.E.2d 1227. The court stated that even if the lessee had sufficient resources from which to pay damages, forfeiture of the lessee's continued interest in unexploited acreage was warranted to assure the development of the land and the protection of the lessor's interests. *Id.* at 122, 399 N.E.2d 1227. In *Lekan*, the court upheld a forfeiture where

the lessee had limited experience; had drilled but never sold gas from a well on the lessor's property, even though he had placed three wells on other lessors' property into production; and functioned as a "mom and pop" operation without employees. 75 Ohio App.3d at 216-17, 598 N.E.2d 1315.

In the instant case, the parties' lease does not specify any grounds for forfeiture. The Defendant has held leases to Plaintiffs' lands for years without drilling even an initial exploratory well, encumbering Plaintiffs' property for nominal delay rental payments. Forfeiture is warranted to assure the protection of Plaintiffs' interests in their lands. Moreover, even if damages could do justice to the parties, calculating a damage award would be speculative at best because no exploration or drilling has ever taken place. Accordingly, forfeiture is warranted in this case because legal remedies are clearly inadequate.

Plaintiffs did not provide written notice to the Defendant pursuant to paragraph 17 of the lease, "setting out specifically in what respects lessee has breached this contract," and affording the Defendant thirty days to cure any breach. However, the Defendant lacks the means to cure either the defects in or its breaches of the lease. Plaintiffs' compliance with the technical requirement of providing notice prior to commencing this action would serve no purpose.

A lessee's "midnight-hour attempts to save the lease" are insufficient to preserve the lessee's rights under an oil and gas lease that has been breached. *American Energy Services v. Lekan*, 75 Ohio App.3d 205, 214, 598 N.E.2d 1315 (5th Dist. 1992); *Moore v. Adams*, 5th Dist. No. 2007AP090066, 2008-Ohio-5953, ¶50; *Gisinger v. Hart*, 115 Ohio App. 115, 184 N.E.2d 240 (4th Dist. 1961). In *Lekan*, the court found that once the conditions of the lease had ceased to

be met, the lease terminated "by the express terms of the contract *** and by operation of law and revest[ed] the leased estate in the lessor." 75 Ohio App.3d at 212, 214.

In *Gisinger,* the lessees made no effort to develop the leasehold until ten days before expiration of the primary term. Finding it improbable that gas or oil would be produced before the end of the term, the court held the effort was "too little too late," and rejected the lessees' claim for an extension of the term. 115 Ohio App. At 117.

Moreover, it is well settled that the law will not require a vain act. *E.g., State ex rel. Marcolin v. Smith*, 105 Ohio St. 570, 603, 138 N.E. 881 (1922); *Gerhold v. Papathanasion*, 130 Ohio St.342, 346, 199 N.E.353 (1936); *Coleman v. Portage County Engineer*, 191 Ohio App.3d 32, 2010-Ohio-6255, 944 N.E.2d 756, ¶38 (11th Dist.). In the instant case, the purpose of the notice requirement in paragraph 17 of the lease is to provide the Defendant with an opportunity to cure any breach. However, the lease is void as against public policy. The Defendant cannot cure its breach in a timely manner. The Plaintiffs are entitled to summary judgment as requested and to the forfeiture of all rights of the Defendant to the oil and gas under the Plaintiff's properties. The Defendant's rights in the subject bases are forfeited. Court costs shall be assessed against the Defendant.

ENTER AS OF DATE OF FILING:

/s/ Ed Lane
Judge Ed Lane

c: Attorney Zurz/Ropchok/Peters
Attorney Bauerle/Hirsch

EXHIBIT 4

COMMON PLEAS COURT
MONROE COUNTY, OHIO

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No.: 2011-345
-vs-	:	Judge Ed Lane Sitting by Assignment
Beck Energy Corporation,	:	
Defendant.	:	DECISION AND ORDER (On Plaintiff's Motion for Class Action Certification)

The above styled action is before the Court on the Motion of Plaintiffs for Class Action Certification. The Plaintiffs filed their motion in this action on July 19, 2012. The Defendant, Beck Energy, filed a Memorandum of Law in Opposition to this motion on August 2, 2012. The Plaintiffs filed a Reply Brief in Support of their motion on August 7, 2012. There are affidavits and exhibits attached to the Plaintiffs' Motion also. The Court has reviewed all matters submitted by the parties in this regard.

This case arises out of a form oil and gas lease ("Beck Lease") utilized by the Beck Energy Corporation of Ravenna, Ohio (hereinafter "Beck"), which Beck executed with approximately 415 landowners in Monroe County and approximately 200 to 300 landowners in other South East Ohio counties. These form leases cover approximately 32,280 acres in Monroe County. The leases were entered into over the past approximately 21 years. Plaintiff alleges that Beck has not drilled an oil or gas well on approximately 21,000 acres in Monroe County and several thousand acres in other counties.

This Court has held in this matter that Beck's leases are void on their face as has already been held by this Court. Accordingly, the Plaintiffs are requesting that a class be certified of landowners in Ohio who executed leases with Beck where Beck did not drill a well on their property. The Plaintiffs herein request a certification from this Court to proceed as a Class Action under Civ.R. 23(B)(2). The leases of the Plaintiffs herein have already been declared void against public policy, violative of implied covenants and forfeited.

In entering into leases in Eastern Ohio Beck used a pre-printed lease that it refers to as "Form G&T (83)." These leases were recorded by the Defendant, Beck Energy.

Beck argues that these leases are not all identical, as some of the leases have certain paragraphs crossed out in its standard form and the amount of delayed rental varies.

The Plaintiffs call the Court's attention to Beck's assignment of the deep drilling rights to XTO. Beck made this assignment after this action was filed and recorded it on December 21, 2011. The assignment includes a list of lessors or landowners whose mineral rights Beck sold to XTO.

The Plaintiffs note that for these landowners, they will undoubtedly receive none of the "upfront" money on the lease, nor will they receive any increase in royalty over the base 12.5% in their Beck leases, and whatever new rate Beck negotiated for himself in the assignment, perhaps as much as 17-18%. Thus, Beck may potentially pull $70-80,000,000 in up front money out of Monroe County alone, while the landowners of the County receive nothing. In any event, the assignment is evidence for class certification purposes, as that all of these cases are identical and thus subject to class treatment.

The standard for deciding whether to grant class action certification is set forth in Civ.R.

23(A) which provides that:

RULE 23. Class Actions

(A) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if
(1) the class is so numerous that joinder of all members is impracticable,
(2) there are questions of law or fact common to the class,
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
(4) the representative parties will fairly and adequately protect the interests of the class.
(B) Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision (A) are satisfied, and in addition:
(1) the prosecution of separate actions by or against individual members of the class would create a risk of
(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:
(a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
(b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
(d) the difficulties likely to be encountered in the management of a class action.

In summary, a Court may exercise its discretion to certify a class when Plaintiff establishes the required prerequisites of Ohio Civil Rule 23 by a preponderance of the evidence.

See *Cleveland Board of Education v. Armstrong World Industries Inc.*, 22 Ohio Misc 2d 18.

Civil Rule 23 provides that one or more members of a class may sue as representative parties

only if:

(1) the class is so numerous the joinder of all members is impracticable,
(2) there are questions of law or fact common to the class,
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
(4) the representative parties will fairly and adequately protect the interest of the class.

Plaintiffs satisfy the requirements for class certification as the class is so numerous that joinder is impracticable, there are legal and factual issues common to the class, the claims of the parties are typical of the class and the representative parties will protect the interests of the class.

A motion for class certification is not an occasion for examination of the merits of the case. *Caridad v. Metro-North Commuter R.R.*, 191 F3d 283, 291 (2nd Cir. 1999). There is "nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action..." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Instead, the Court must determine if the Plaintiffs have proffered evidence to meet each of the requirements of Rule 23. No weighing of competing evidence is appropriate at this stage of the litigation. *Caridad*, 191 F.3d at 293. See also *Cleveland Board of Education v. Armstrong World industries, Inc.* (C.P 1985) 22 Ohio Misc.2d 18. (Holding in ruling on class certification the Court may take the allegations of the complaint as true and the Court should not examine the merits of the case during the certification hearing).

The policy behind class action is to protect members of even a small class from being deprived of their day in Court. See *Blumenthal v. Medina Supply Co.* (2000) 139 Ohio.App.3d 283 citing Amchem Prods., Inc. v. Windsor (1997), 521 U.S. 591, 117 S.Ct. 2231, 138, L.Ed.2d 689; Marks v. C.P. Chem. Co., Inc. (1987), 31 Ohio St.3d 200 31 OBR 398, 509 N.E.2d 1249;

7A Wright, Miller & Kane, Federal Practice and Procedure (2 Ed. 1986), Section 1777; 5 Moore's Federal Practice (3 Ed 1997), Section 23.44.

Correspondingly, the United States Supreme Court has found that a class action is appropriate to "vindicate the rights of individuals who otherwise might not consider it worth the trouble to embark on litigation in which the optimum result might be more than consumed by the cost." *Guaranty National Bank v. Roper*, 445 U.S. 3326, 338 (1980).

a) Joinder of All Members is Impracticable.

Joinder of all plaintiffs is impracticable. Impracticability of joinder is left to the trial court judge's discretion based on the particular facts of the case. See *Logsdon v. National City Bank* (1991), 62 Ohio Misc.2d 449; *Grubbs v. Rine* (1974), 39 Ohio Misc. 67. The requirement is that the class be so numerous that joinder of all members is impracticable. "Impracticable" does not mean "impossible." See *Planned Parenthood Association of Cincinnati v. Project Jericho* (1990) 52 Oliio.St.3d 56, 64, citing Gentry v. C & D Oil Co. (W.D.Ark.1984), 102 F.R.D. 490, 493.

In this regard, there is no "magic number" for determining the number of parties that make joinder impractical. *Schmidt v. Avco Corp.* (1984), 15 Ohio St.3d 310, *Grubbs v. Rine* (1974), 39 Ohio Misc. 67. Federal Courts have ruled that "[g]enerally, the numerosity requirement is satisfied where the class exceeds 100 members. Fox v. Prudent Resources Trust, 69 F.R.D. 74, 78 (E.D.Pa.1975); see, also, *Krominick v. State Farm Ins. Co.*, 112 F.R.D. 124, 126 (E.D. Pa. 1986).

The numerosity requirement in the instant action is satisfied. Based upon a review of the public records of the recorder's office by the Plaintiffs' attorneys, the instant action pertains to approximately 415 Monroe County landowners, who entered into leases with Beck, wherein

Beck did not drill an oil and gas well. A similar review of neighboring counties revealed perhaps 2-300 more. Thus, the number of putative Plaintiffs is so numerous, the numerosity requirement for class action purposes has been satisfied, as the class is so numerous that joinder of all members would be impracticable.

b) Putative Plaintiffs Have Common Questions of Law and Fact.

Plaintiffs also satisfy the requirement that there are questions of law or fact common to the class, as the class consists of Lessors under Beck oil/gas leases on whose property Beck did not drill a well. This Court has already determined that the leases are all void, yet as encumbrances of record in the Lessors' land title, they prohibit the landowners from re-leasing and exploiting the mineral wealth of their lands.

Wide discretion is afforded trial courts in deciding commonality, Caruso v. Celsius Insulation Resources, Inc. (M.D.Pa.1984), 101 F.R.D. 530, 533, but its resolution may be satisfied by the allegations contained in the complaint. Miles v. N.J. Motors, supra, 32 Ohio App.2d at 356, 291 N.E.2d 758. The commonality requirement of a class action does not require that all questions of law or fact which are in dispute be common. *Planned Parenthood Assn. of Cincinnati v. Project Jericho* at 64 citing, Marks v. C.P. Chemical Co. (1987), 31 Ohio St.3d 200; see, also, *Estate of Reed v. Hadley* (2005), 163 Ohio App.3d 464. The commonality requirement does not require that all questions of law or fact be common to every single member of the class; rather, at least one issue must be common to the claims of all the class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); 5 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §3.10 at 154 (3d ed. 1992); 7A Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2d, §1763, at 198 (1986). Courts have not considered

commonality a difficult hurdle; the requirement should be "construed permissively." *Hanlon*, 150 F.3d at 1019. Generally courts in Ohio have ruled that the commonality requirement is satisfied when the plaintiffs demonstrate a "common nucleus of operative facts." See *Warner v. Waste Management Inc.* (1988), 36 Ohio St.3d 91.

c) Typicality of Claims and Defenses.

All of the Lessors, i.e. putative Plaintiffs, are governed by the same lease/contract, and will be subject to the same Beck defenses. Specifically, Beck leased mineral rights from the Plaintiffs. All of the deep drilling rights under the leases have been assigned to Exxon under one instrument. Thus, Mr. Beck himself is treating these leases as a "class." The question common to all Plaintiffs as has already been answered by this Court is: is that lease void? In the instant action, Plaintiffs satisfy the commonality of questions of law and/or fact in that every single member of the class was governed by the same operative lease terms.

The claims of the class members and the representative parties are typical. Similarly, the defenses of the Defendant as to the class members and class representatives are also typical.

"Typical" has been held to mean a "lack of adversity between the class members." Tober v. Charnita, Inc., (M.D.Pa.1973), 58 F.R.D. 74, 80. Ohio courts have held that plaintiffs' claims satisfy the typicality requirement when the claim arises from the same event, practice, or course of conduct from which the claims of other class members arise and if the plaintiffs' claims are based on the same legal theory. *Baughman v. State Farm Mutual Auto Insurance Company* (2000), 88 Ohio St.3d 480. However, the claims or defenses need not be identical in granting class certification. See *Cincinnati Planned Parenthood, Inc. v. Project Jericho* at 64 citing Federal Class Actions, at 204; 7A Wright & Miller, *supra*, Section 1764; see, also, Twyman v.

Rockville Hous. Auth. (D.C.Md.1983), 99 F.R.D. 314, 321.

In the present matter, the Plaintiffs' claims all arise from the same lease, and the same conduct of Beck in not drilling a well on the Plaintiffs' properties. Correspondingly, Plaintiffs' claims are all based on the same legal theories, which is that the Beck leases are void due to their terms being perpetual, and due to Beck's violation of the implied covenant to drill, and other express and implied covenants. Beck engaged in the same conduct against each of the class members by signing them to perpetual leases and not drilling on their property during the lease's primary term, and in also violating the same express and implied covenants with each of the Plaintiffs. Thus, the class representatives' claims are identical to those of the putative class plaintiffs.

d) Representative Parties Will Fairly and Adequately Protect Class Interests.

In this action Plaintiffs also satisfy the fourth requirement for a class action in that the representative parties will fairly and adequately protect the interests of the class.

Adequacy of representation essentially has two (2) components designed to ensure absent class members' interests are pursued: (1) that the interests of plaintiffs and class members are aligned, and (2) class counsel is qualified to serve the interests of the entire class. See Rule 23(a). They and their counsel have displayed diligence and competence in their handling of this matter to date. Beck's counsel has made a vain attempt to delay these proceedings by the filing of an appeal when no appealable order had been entered by this Court. XTO's counsel attempted to engage in the unauthorized practice of law by appearing at a pretrial without following the proper procedure for admission to the Ohio Bar "pro hoc vice."

(1) Interests of the Class are Aligned.

First, "the interests of the named plaintiffs must be sufficiently aligned with those of the absentees" *Amchem Products v. Windsor*, 521 U.S. 591, 625 (1997). A class representative is generally considered adequate as long as his interests are not antagonistic to that of the other class members. See *Marks v. C.P. Chemical Company, Inc.* (1987), 31 Ohio St.3d 200, see also *Vinci v. American Can Company* (1984), 9 Ohio St.3d 98.

No conflicts exist between Plaintiffs and the class members in this case. The named Plaintiffs challenge the same unlawful conduct and seek the same relief as the class. The right to relief of the named Plaintiffs, like that of the absent members, depends on demonstrating that Beck executed and recorded void perpetual leases with the landowners, while not drilling a well on their property, and/or by violating any other express or implied duties which arose by the lease/contract, or by operation of law.

In the instant matter, the Hustacks, Hubbards and Mr. Majors are adequate representatives of the class. All of them signed the same Beck lease and did not have wells drilled on their property. The proposed class representatives have taken an active role and control in the litigation to protect the class' interests. Further, the Hustacks, Hubbards and Mr. Majors have participated in selection of counsel, communicated with class members, monitored the litigation and vigorously prosecuted the case on behalf of the class.

(2) Counsel is Qualified.

Secondly, class counsel must be qualified to serve the interests of the entire class. Civil Rule 23(a) (4). Ohio courts have held that an attorney is competent to handle a class action if the attorney has experience in handling litigation of the type involved in the case before the class certification is allowed. See *Warner v. Waste Management Inc.* (1988), 36 Ohio St.3d 91, 98.

Plaintiffs' counsel consists of Attorneys Mark Ropchock, Richard Zurz and James Peters. All three of these attorneys have been previously appointed class counsel by this Court in *John Lucio,* et al. v. *Safe Auto Insurance Co.*, et al., Monroe Co. Common Pleas Case No.: 2007-09, which resulted in a multi-million dollar recovery for the class members.

Mark Ropchock, has significant trial experience in handling hundreds of cases in multiple states, has tried multi-million dollar cases to verdict and has over twenty five (25) years of practice as a litigator, most recently receiving a three million dollar ($3,000,000.00) verdict in Portage County, Ohio.

Richard Zurz is a leading personal injury attorney with offices in Akron, Canton and Columbus, Ohio. Richard V. Zurz has thirty (30) years of trial experience and is an active member in good standing with the Akron Bar Association, the Ohio State Bar Association, the American Bar Association, the Ohio Academy of Trial Lawyers, and American Association for Justice_ Mr. Zurz practices in business and commercial litigation, personal injury, employer intentional torts and numerous other areas of the law. He has tried many cases.

James W. Peters also represents Plaintiffs. Mr. Peters is an attorney in Woodsfield, Ohio with over thirty (30) years experience practicing law. Mr. Peters is admitted to the Ohio Supreme Court, West Virginia Supreme Court, U.S. Court of Appeals, Fourth Circuit, U.S. Court of Appeals, Sixth Circuit, both of the U.S. District Courts in Ohio, and both U.S. District Courts in West Virginia. Mr. Peters has served as Special Counsel to the Ohio Attorney General and in private practice. Additionally, Mr. Peters is approved counsel for a number of corporations. Mr. Peters currently serves as a Judge in Monroe County Ohio. Mr. Peters has received a verdict of three million five hundred thousand dollars ($3,500,000.00).

In addition to satisfying the prerequisites set forth in Civil Rule 23(A), Plaintiffs also satisfy the requirements set forth in Civil Rule 23(B). Civil Rule 23(B) requires Plaintiffs to satisfy one (1) of the requirements of subdivision (B) (1)-(3) for certification to be deemed appropriate.

Civ.R. 23(B) provides that:

> An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and, in addition, * * * (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole * * *

This is the exact situation presented in this case. The party opposing the class herein, Beck Energy, has acted on grounds generally applicable to the entire class, [form lease, no well drilled] and declaratory relief with respect to the class as a whole is appropriate.

In this case, all of the putative plaintiffs herein are landowners in Monroe and its neighboring counties, whose property is subject to and impaired by an oil and gas mineral lease with Beck Energy. Beck Energy will presumably defend every case in an identical fashion since whatever defenses are available under the lease would be applicable to all of the putative plaintiffs since the sume terms would control. Beck has not drilled wells on any of the properties within the lease term. All the putative plaintiffs would find it impossible to lease their land to a new driller with the Beck Energy lease presenting a cloud upon the title of their property.

Likewise, meeting the second requirement of Rule 23(B) (2), the Plaintiffs are requesting declaratory relief from the court in the form of a quiet title action in favor of the landowners against Beck Energy. The Plaintiffs are simply requesting that the court hold the Beck leases void (which it has already done), and clear the landowners' title to the property, once again

vesting in them their full mineral rights. As the Complaint does not even request any form of monetary damages, the second requirement is easily met.

In *Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538, 817 N.E. 2d 59, a 2004 case, the Ohio Supreme Court had the opportunity to address the requirements of class certification ender Rule 23(B) (2). The Supreme Court held that certification under the B (2) subdivision of Rule 23 entailed two requirements: (1) The action must seek primarily injunctive relief, and, (2) the class must be cohesive. *Wilson*, at 541, 63.

a. Injunctive Relief

As outlined above, Plaintiffs' Complaint consists of two counts. Count 1 is a request for declaratory judgment stating at paragraph 20, "Plaintiffs are entitled to a declaratory judgment that the Hustack lease, the Hubbard lease and the Majors lease are therefore forfeited, canceled, unenforceable, voided and held for naught, for reasons including but not limited to, the following * * *. Count II is a quiet title action which states in paragraph 21 (b), "Plaintiffs are entitled to a judgment, pursuant to Ohio Revised Code § 5303.01 quieting their title as to the Hustack acreage, the Hubbard acreage and the Majors acreage as against Defendant by and through the forfeiture, release and cancellation of the Hustack, Hubbard and Majors leases as valid encumbrances of record and by extinguishing any interests which Defendant has or may claim to have in the Hustack, Hubbard and Majors acreage."

These allegations clearly meet the first requirement of *Wilson* that the action must seek primarily injunctive relief. As the *Wilson* case and others have generally described, in making this determination, there is oftentimes confusion as to whether the Complaint specifically

is requesting injunctive relief or damages. The distinction is often difficult to make. In *Wilson*, for instance, Plaintiffs sought medical monitoring. This presented a difficult analysis for the Court as to whether future medical monitoring was primarily in the form of damage or injunctive relief.

In the present action, no such dilemma or difficulty in analysis exists. There simply is no claim in the Complaint for any sort of monetary damages whatsoever. The Complaint exclusively requests declaratory and quiet title relief. Accordingly, the first requirement of 23(B) (2) is satisfied.

b. Cohesiveness

The second requirement for 23(B) (2) certification as discussed in the *Wilson* case is that the class must be cohesive. In discussing the cohesiveness standard, the *Wilson* court noted, although this court has not had an opportunity to address the cohesiveness requirement of Civil Rule 23(B) (2) class certification, there are a "myriad federal cases providing us guidance," *citing Barnes v. Am. Tobacco Co.* (C.A. 3, 1998), 161 F.3d 127, 142-143. The federal cases indicate the cohesiveness analysis is essentially the same as a predominance analysis, which is discussed with much more frequency in the case law.

The predominance inquiry pertains to the focus on legal or factual questions that qualify each class member's case as a genuine controversy. See Hoang v. E*Trade Group Inc. (2003), 151 Ohio App.3d 363, 2003-Ohio-301.

> The predominance test...involves an attempt to achieve a balance between the value of allowing individual actions to be instituted so that each person can protect his own interests and the economy that can be achieved by allowing a multiple party dispute to be resolved... [as] a class action.... Schmidt v. Avca Corp. (1984), 15 Ohio App.3d 81.

Plaintiffs must show that common or generalized proof will predominate at trial. See *Lumco Industries, Inc. v..Ield-Wen, Inc.*, 171 F.R.D. 168 (E.D. Pa 1997). Common questions must be able to be resolved for all members of the class in a single adjudication. *Marks v. C.P. Chemical Co., Inc.* (1987), 31 Ohio St.3d 2000. "While potential dissimilarity in remedy is a factor to be considered in determining whether individual questions predominate over common questions, that alone does not prevent a court from certifying a cause as a class action." *Vinci v. American Can Company* (1984), 9 Ohio St.3d 98. See also Lowe v. Sim Refining & Marketing Co. (1992), 73 Ohio App_3 d 563, 572, 597 N.E.2d 1189.

It would be difficult to imagine a case in which the prospective plaintiffs are more cohesive as a class than the within action. As noted, all of these individuals are landowners who are unable to lease their land to new drillers. The court cannot imagine why these landowners would not wish to obtain thousands of dollars per acre for their property in up front money, and potentially hundreds of thousands of dollars in royalties versus the present arrangement with Beck Energy, wherein they are receiving a few dollars per acre per year and no royalties whatsoever.

This group is cohesive to the extent of near identity of interest. Their properties are all covered by the same leases with Beck Energy with the same basic terms. As noted, other than the fact that the names are different on the leases and the acreage and its location are different, the terms of the lease were boilerplate and, thus, since the Court has already found the lease void in one instance, the lease would clearly be void in all. The reverse is also true. There are few individual claims or defenses available in the within action. If certain plaintiffs do have other claims against Beck, those are not part of this lawsuit. Accordingly, the cohesiveness analysis of

the present action under the *Wilson* case is easily established.

There are additional reasons why this case is appropriate for class treatment, such as under a Rule 23(b) (1) analysis. Rule 23(b) (1) defines two related types of class actions, both designed to prevent prejudice to the parties arising from multiple potential suits involving the same subject matter. See *Feret v. Corestates Financial Corp.* 1998 WL 512933 (ED. Pa. 1998), at * 13 citing 1 NEWBERG § 4.03, at 4-10. Rule 23(b) (1) (A) is used to "obviate the actual or virtual dilemma which would ... confront the party opposing the class" if separate lawsuits were decided differently so as to result in "incompatible standards" for that opposing party. See *Feret* at *13, citing WB Music Corp. V. Rykodisc, Inc., 1995 WL 631690, at *3 (E.D.Pa. Oct. 26, 1995) (quoting Fed.R.Civ.P. 23(b) (1) (A) advisory committee notes). Conversely, Rule 23(b) (1) (B) is used when separate actions might lead to adjudications that could be dispositive of nonparty class members' interests or substantially impair their ability to protect their interests.

Correspondingly, Ohio courts have held that there is a risk of inconsistent adjudications when the validity of a lease contract could be found valid in one action and invalid in another, this would lead to incompatible standards of conduct for the defendant. See, *Warner v. Waste Management*, (1988), 36 Ohio St.3d 91, 95. Footnote 2.

In the instant action, there is a risk that the validity of the Beck lease and course of conduct with the landowners could be valid in one action but invalid in another, thereby leading to inconsistent adjudications. Consequently, conflicting decisions regarding the legality of the Beck lease would affect the interests of all putative Plaintiffs. This is an additional reason why class treatment is needed.

This is an appropriate case for class action status. Therefore, Plaintiffs' Motion for Class

Certification is hereby granted.

SO ORDERED.

ENTER AS OF DATE OF FILING:

Judge Ed Lane

c: Attorney Ropchock/Zurz
Attorney Zurakowski
Attorney Kincaid
Attorney Abbott

THIS IS A FINAL APPEALABLE ORDER
AND THERE IS NO JUST REASON
FOR DELAY.

EXHIBIT 5

COMMON PLEAS COURT
MONROE COUNTY, OHIO

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No.: 2011-345
-vs-	:	Judge Ed Lane Sitting by Assignment
Beck Energy Corporation,	:	
Defendant.	:	JOURNAL ENTRY

The above styled action is before the Court on remand from The Court of Appeals of Ohio, Seventh District, for Monroe County, Ohio. The Court of Appeals remanded this case by a Judgement Entry filed on April 19, 2013. This remand is limited to two issues. This Court is to clearly define the class and review Defendant's counter claims.

On May 6, 2013 this Court conducted a pre-trial by phone with the attorneys for the respective parties. Thereafter, this Court entered a scheduling order for the filing of briefs. That order has been complied with.

The first issue this Court must address is the definition of the class. The Plaintiffs assert that the class should be defined to include all persons who are lessors of property in the State of Ohio, or who are successors in interest, under the standard form oil and gas lease with the Defendant, Beck Energy Corporation, known as "G&T (83)." The Defendant notes that the Plaintiffs in their amended Motion for Class Certification, only sought to have the class consist of Monroe County landowners.

For a lawsuit to be maintained as a class action under Civ.R. 23, an identifiable class

must exist and the definition of the class must be unambiguous. *Warner v. Waste Mgt., Inc.* (1988), 36 Ohio St.3d 91. A description of a class is sufficiently definite if it is administratively feasible for the Court to determine whether a particular individual is a member. *Hamilton v. Ohio Sav. Bank* (1998), 82 Ohio St.3d 67. A trial court has wide discretion in describing a class and can sua sponte modify a class description requested by a party, as long as the chosen description is unambiguous such that all plaintiffs are sufficiently identifiable. *Ritt v. Billy Blanks Enterprises,* 2003 Ohio 3645 (8th Dist.). (Also, see *Baughman v. State Farm Mutual Automobile Insurance Company* (2000), 88 Ohio St.3d 480, where the Ohio Supreme Court sua sponte modified a class description). In fact, the law in Ohio not only permits but encourages a trial court to modify a class. *Konarzewski v. Ganley, Inc.*, 2009 Ohio 5827 (8th Dist.).

Accordingly, this Court has discretion to describe the certified class in any manner which complies with Civ. R. 23 and the interpretive case law. Therefore, this Court hereby determines that the definition of the class in this action shall be as follows:

> "all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)", where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter."

This decision, this Court's prior summary judgment, declaratory judgment and quiet title relief applies in this case to all members of the class in existence on September 29, 2011, the date of filing the original class action complaint in this action.

This is the class delineation that best serves the interests of finality, judicial economy and justice. Determination of the members of this class will not be difficult. This is a clear and unambiguous class definition. It will resolve these issues once and for all and prevent years of

numerous and protracted litigation.

The Plaintiffs seek this Court to strike the Defendant Beck Energy Corporation's Answer and Counter Claims for being filed out of rule. The Defendants Memorandum in Opposition to Plaintiff's Motion For a Further Order in Aid of Appeal sets out in detail what this Court finds to be an accurate time line of the relevant dates on this issue. This Court finds that Beck Energy Corporation's Answer and Counter Claims were timely filed. However, this Court specifically finds that the Defendant's Counter Claims for declaratory judgment, permanent injunction, and quiet title are moot and res judicata as all of the issues raised in the Defendant's answer and counter claims have already been decided by this Court in its prior decisions. The Defendant has fully participated and argued its position in regard to these issues. Additionally, Defendant's counter claim for estoppel fails to state a viable claim as the doctrine of estoppel does not create a cause of action, it prevents a party from raising a claim it would otherwise have.

It is hereby ORDERED that:

(1) The class which was certified in the February 8, 2013 Decision and Order on Plaintiffs' Motion for Class Certification is now defined as follows:

> "all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)", where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter."

and;

(2) The Decision On Pending Motion of July 12, 2012, the Journal Entry of July 31,

2012, the Decision And Order on Plaintiffs' motion for Class Action Certification of February 8, 2013, the Decision And Order on XTO's Motion to Intervene of February 8, 2013, and any and all prior Docket and Journal Entries entered herein, including the declaratory, quiet title and other relief granted therein, shall apply to each and every member of the certified class; and

(3) The Answer and Counterclaims of the Defendant are moot in as much as the issues raised therein are now moot and res judicata; and

(4) The Journal Entry of July 31, 2012 is a final appealable order and there is no just reason for delay.

(5) This Journal Entry is a final appealable order and there is no just reason for delay.

ALL OF WHICH IS ORDERED AND ADJUDGED ACCORDINGLY.

ENTER AS OF DATE OF FILING:

Judge Ed Lane

c: Attorney Ropchock/Zurz
Attorney Zurakowski/Reaves
Attorney Kincaid/Taylor
Attorney Abbott
Attorney Peters
Attorney Pollis

EXHIBIT 6

COMMON PLEAS COURT
MONROE COUNTY, OHIO

Clyde A. Hupp, et al.,	:	
Plaintiffs,	:	Case No.: 2011-345
-vs-	:	Judge Ed Lane Sitting by Assignment
Beck Energy Corporation,	:	
Defendant.	:	DECISION AND ENTRY

This matter is before this Court on the Motion of the Defendant, Beck Energy Corporation, to toll the operation of the original Plaintiff's leases pending this appeal. This motion was filed in this Court October 1, 2012, three months after this court's decision granting the Plaintiffs' Summary Judgment. That decision is currently on appeal. The Court of Appeals for Monroe County, Ohio, Seventh Judicial District, recently remanded the case for this Court to decide two very limited issues. This Court has now dealt with the issues presented on remand.

It is this Court's desire that all matters in controversy be presented to the Court of Appeals so that this case be processed as expeditiously as possible. The Plaintiffs note that this Court's failure to toll the provisions of these leases is one of the issues presented to the Court of Appeals by this Defendant.

The Defendant notes that the Monroe County Common Pleas Court has recently tolled lease provisions involving leases that may eventually be included in this class if the Plaintiffs prevail and this matter goes forward as a class action. This Court has recently granted a stay in this action, provided the Defendant posts an appellant bond.

This court believes the leases of the original Plaintiffs in this action should be tolled pending the Defendant's appeal. This is the relief previously requested by the Defendant and not decided by this court. This decision is in keeping with the current line of decisions of the Monroe County Common Pleas Court. If the Defendant desires to have this order expanded it can present that issue to the Court of Appeals.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED ACCORDINGLY.

ENTER AS OF DATE OF FILING:

Judge Ed Lane

c: Attorneys of record

NOTICE TO CLERK'S OFFICE
FINAL APPEALABLE ORDER

EXHIBIT 7

STATE OF OHIO	)	IN THE COURT OF APPEALS OF OHIO
	)	
MONROE COUNTY	) SS:	SEVENTH DISTRICT
CLYDE A. HUPP, et al.,	)	
	)	
PLAINTIFFS-APPELLEES,	)	CASE NOS. 12 MO 6, 13 MO 3
	)	13 MO 11
VS.	)	
	)	
BECK ENERGY CORPORATION,	)	JUDGMENT ENTRY
	)	
DEFENDANT-APPELLANT.	)	

This matter came on for hearing before this Court on September 23, 2013 on three pending motions: 1) Appellant Beck Energy Corporation's August 16, 2013 emergency motion for injunctive relief pursuant to App.R. 7; 2) Beck's August 30, 2013 emergency motion to set aside supersedeas bond; and 3) The Individual Landowners' September 12, 2013 motion to dismiss this appeal on the grounds of mootness.

On consideration of the parties' respective filings, the responses thereto and their arguments before this Court it is ORDERED:

1. The trial court's August 16, 2013 stay order is hereby modified and continued. The requirement of posting bond is hereby set aside; no bond is required. This stay of execution applies to the named plaintiffs and proposed defined class members for the following judgments: (1) the July 12, 2012 decision granting summary judgment in the Landowners' favor, including the journalization of the trial court's decision on July 31, 2012; (2) the trial court's February 8, 2013 judgment granting class certification; and (3) the trial court's June 10, 2013 judgment defining the class and finding Beck Energy's counterclaims moot and barred by res judicata.
2. The trial court's August 2, 2013, order tolling the lease terms as to the named plaintiffs only is hereby modified and continued. The lease terms are also tolled as to the proposed defined class members. The

tolling period for all leases shall commence on October 1, 2012, the date Beck Energy first filed a motion in the trial court to toll the terms of the oil and gas leases. The tolling period shall continue during the pendency of all appeals in this Court, and in the event of a timely notice of appeal to the Ohio Supreme Court, until the Ohio Supreme Court accepts or declines jurisdiction. At the expiration of the tolling period, Beck Energy, and any successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease(s) as they had as of October 1, 2012.

3. The Motion to Dismiss is denied.

Consistent with this Court's September 16, 2013 order setting a briefing schedule in these consolidated appeals, oral argument on the merits is tentatively set for November 20, 2013 before this Court.

All until further order of this Court.

JUDGE GENE DONOFRIO

JUDGE JOSEPH J. VUKOVICH

JUDGE MARY DeGENARO