ARTICLE 5 – FORCE MAJEURE AND SUSPENDING EVENTS

EXISTING LEASE LANGUAGE (REV. 2000)

Article No. 13.

“If at any time this Lease is being validly maintained under any of its provisions and Lessee is in the process of either: A) commencing lease operations which are herein defined as spudding a well [turning-to-the-right], downhole drilling, or downhole reworking operations, or B) diligently, timely and in good faith performing requisite tasks to commence lease operations including, but not necessarily limited to, towing the required type of rig to a drill site, obtaining permitting from all necessary parties, or satisfying conditions and obligations under any validly enacted law, statute or regulation of an agency of the Federal Government, the State of Louisiana or any of its political subdivisions having proper jurisdiction, or C) producing in commercial quantities, and Lessee is prevented from continuing A, B, or C by the occurrence of a Force Majeure event, as herein below defined, and Lessee cannot maintain this Lease beyond any critical date under any other operative provisions of this Lease — such as the payment of a pro-rata rental based on the number of months remaining until the next anniversary date divided by twelve (12) and/or the full rental for a year if the force majeure effect prevails for an entire rental period [all during the primary term of the lease and only where rental payments may hold the lease], payment of deferred development or payment of shut-in/in-lieu royalty — then, and only then, shall the critical date be postponed on a day-for-day basis for so long as the effects of the Force Majeure prevail, providing that Lessee: i) has given the Office of Mineral Resources reasonable, timely written notice of the Force Majeure event occurrence [notice given beyond three months shall be deemed unreasonable barring consequential extenuating circumstances] which shall contain the date and type of the occurrence of the Force Majeure event, its effects in preventing continuation of A, B, or C above, the steps being taken to mitigate and eliminate those effects and an estimated time for resuming A, B, or C above, and ii) is diligently, reasonably and in good faith attempting to mitigate and eliminate the effects of the fortuitous event and resume A, B, or C above, and iii) has exhausted Lease provisions other than Force Majeure which may serve to maintain the Lease in full force and effect. The interpretation and operation of any term of this Force Majeure clause is at the sole, reasonable discretion of the Mineral Board and/or its duly authorized staff. The operation of Force Majeure alone shall not maintain this Lease in full force and effect for more than one year from date of the fortuitous event unless extended by, and at the sole discretion of, the State Mineral and Energy Board.

Force Majeure, as herein utilized shall be defined as a fortuitous event such as: 1) a major storm, major flood, or other, similar natural disaster, or 2) a major accident such as a blowout, fire, or explosion beyond Lessee’s control and not ultimately found to be the fault of Lessee [that is, due to Lessee’s negligent or intentional commission or omission, or failure to take reasonable and timely, foreseeable preventative measures which would have mitigated or negated the effects of the fortuitous event], or 3) the lack of availability of any required equipment — such as the specific type of rig necessary to accomplish the task or specific types of casing or drill stem pipe
— after Lessee has diligently, timely and in good faith attempted to secure same, or 4) the unreasonable delay by the Federal Government or any of its agencies, or the State of Louisiana or any of its agencies or political subdivisions (including, but not limited to, various departments, boards, commissions, parish governments and municipalities, each having proper authority and jurisdiction) in granting necessary permits, or 5) a valid order of any Federal or State court of competent jurisdiction, or 6) the act of a third party not under the control or at the instigation of Lessee in shutting down and unreasonably refusing to reopen any facility through which hydrocarbons from the Lease are necessarily passed as part of production [and providing there is no other reasonably economical method of carrying on production].”

**AUGUST 2016 DRAFT LANGUAGE**

(A) If, at any time this Lease is being maintained, Lessee is prevented from continuing Acceptable Lease Operations and/or Production in Paying Quantities by the occurrence of a Force Majeure or Suspending Event (herein “Incident”), both hereinbelow defined, and Lessee cannot maintain this Lease under any other operative provision hereof, such as the payment of annual rental, Deferred Development Payment or Shut-In Payment, then and only then shall the date for Lessee to re-commence Acceptable Lease Operations and/or Production in Paying Quantities be postponed on a day-for-day basis for so long as the adverse effects upon Lessee’s Acceptable Lease Operations and/or Production in Paying Quantities prevail.

(B) Lessor may recognize the Incident provided that Lessee has submitted:

1. Written notice of the occurrence within ninety (90) days of the Incident onset;
2. An affidavit containing:
   1. The onset date, description and nature of the Incident;
   2. The effects preventing continuation of Acceptable Lease Operations or Production in Paying Quantities;
   3. The steps being taken to mitigate and eliminate those effects; and
   4. An estimated time for resumption of Acceptable Lease Operations or Production in Paying Quantities.
3. Evidence of Lessee’s diligent, reasonable and good faith efforts to mitigate and eliminate the effects of the Incident and to resume Acceptable Lease Operations and/or Production in Paying Quantities; and
4. Any other information or documentation evidencing the existence of the Incident requested by Lessor.
(C) If Acceptable Lease Operations and/or Production in Paying Quantities cease prior to the Incident onset (or during the period in which the Incident is still in effect), and the Incident prevents Lessee from re-establishing Acceptable Lease Operations and/or Production in Paying Quantities, then the date for Lessee to re-establish Acceptable Lease Operations and/or Production in Paying Quantities shall be extended by the period of time during which Lessee was prevented from re-establishing Acceptable Lease Operations and/or Production in Paying Quantities.

(D) The occurrence of an Incident shall not maintain this Lease for more than twelve (12) months from the date of the Incident onset unless extended by Lessor. To utilize Article 5, Lessee shall be required to submit written, detailed reports on a monthly basis to OMR and demonstrate the ongoing efforts by Lessee to mitigate the effects of the Incident.

(E) A “Force Majeure” event, as herein utilized, shall be a fortuitous event that is beyond Lessee’s control and is not ultimately determined to be caused by Lessee or due to Lessee’s negligent or intentional commission or omission, or failure to take reasonable and timely foreseeable preventative measures that would have mitigated or negated the effects of the event. A Force Majeure event may include (1) a major storm, major flood or other similar natural disaster, or (2) a major accident such as a blowout, fire or explosion.

(F) A “Suspending Event”, as herein utilized, shall be (1) the lack of availability, after Lessee has diligently, timely and in good faith attempted to secure same, of any required equipment and/or personnel, such as the specific type of rig or specific type of casing or drill pipe, or (2) the unreasonable delay by any government agency or political subdivision in granting permits necessary for Acceptable Lease Operations or Production in Paying Quantities, or (3) an order of any federal or state court of competent jurisdiction preventing Acceptable Lease Operations or Production in Paying Quantities, or (4) the act of a third party, not under the control or at the instigation of Lessee, in shutting down and unreasonably refusing to reopen any facility through which hydrocarbons from this Lease are necessarily passed as part of production (and provided there is no other reasonably economical method of carrying on production), or (5) other events not described herein that are recognized by Lessor.

(G) If the reports are not timely submitted or if Lessee did not attempt in good faith to mitigate the effects of the Incident, Lessor, after notice and opportunity to be heard, may declare the Incident recognition to be ended and that Lessee may not after such failure utilize this provision to excuse any failure to comply with any obligations of this Lease relating to the particular Incident involved.

(H) For purposes of this Article:

(1) An increase in costs of performing the obligations set forth in this Lease shall not
constitute circumstances beyond Lessee’s control;

(2) Lessee’s financial inability to comply with any of the obligations of this Lease shall not be grounds for an extension of time;

(3) Notice (as required under Article 5(B)(1) above) given beyond ninety (90) days shall be deemed unreasonable barring consequential extenuating circumstances; and

(4) The interpretation and operation of any term of this Force Majeure and Suspending Event provision are at the sole, reasonable discretion of Lessor.

**PROPOSED RE-WRITE (TRACK CHANGES)**

(A) If, at any time this Lease is being maintained, Lessee is prevented from continuing Acceptable Lease Operations and/or Production in Paying Quantities by the occurrence of a Force Majeure or Suspending Event (herein “Incident”), both herein below defined, and Lessee cannot maintain this Lease under any other operative provision hereof, such as the payment of annual rental, Deferred Development Payment or Shut-In Payment, then and only then shall the date for Lessee to re-commence Acceptable Lease Operations and/or Production in Paying Quantities be postponed on a day-for-day basis for so long as the adverse effects upon Lessee’s Acceptable Lease Operations and/or Production in Paying Quantities prevail.

(B) Lessor may recognize the Incident provided that Lessee has submitted:

(1) Written notice of the occurrence within ninety (90) days of the Incident onset;

(2) An affidavit containing:

   (a) The onset date, description and nature of the Incident;

   (b) The effects preventing continuation of Acceptable Lease Operations or Production in Paying Quantities;

   (c) The steps being taken to mitigate and eliminate those effects; and

   (d) An estimated time for resumption of Acceptable Lease Operations or Production in Paying Quantities.

(3) Evidence of Lessee’s diligent, reasonable and good faith efforts to mitigate and eliminate the effects of the Incident and to resume Acceptable Lease Operations and/or Production in Paying Quantities; and

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(4) Any other information or documentation evidencing the existence of the Incident requested by Lessor.

(C) If Acceptable Lease Operations and/or Production in Paying Quantities cease prior to the Incident onset (or during the period in which the Incident is still in effect), and the Incident prevents Lessee from re-establishing Acceptable Lease Operations and/or Production in Paying Quantities, then the date for Lessee to re-establish Acceptable Lease Operations and/or Production in Paying Quantities shall be extended by the period of time during which Lessee was prevented from re-establishing Acceptable Lease Operations and/or Production in Paying Quantities.

(D) The occurrence of an Incident shall not maintain this Lease for more than twelve (12) months from the date of the Incident onset unless extended by Lessor. To utilize Article 5, Lessee shall be required to submit written, detailed reports on a monthly basis to OMR and demonstrate the ongoing efforts by Lessee to mitigate the effects of the Incident.

(E) A “Force Majeure” event, as herein utilized, shall be a fortuitous event that is beyond Lessee’s control and is not ultimately determined to be caused by Lessee nor due to Lessee’s negligent or intentional commission or omission, or failure to take reasonable and timely foreseeable preventative measures that would have mitigated or negated the effects of the event. A Force Majeure event may include (1) a major storm, major flood or other similar natural disaster, or (2) a major accident such as a blowout, fire or explosion.

(F) A “Suspending Event”, as herein utilized, shall be (1) the lack of availability, after Lessee has diligently, timely and in good faith attempted to secure same, of any required equipment and/or personnel, such as the specific type of rig or specific type of casing or drill pipe, or (2) the unreasonable delay by any government agency or political subdivision in granting permits necessary for Acceptable Lease Operations or Production in Paying Quantities, or (3) an order of any federal or state court of competent jurisdiction preventing Acceptable Lease Operations or Production in Paying Quantities, or (4) the act of a third party, not under the control or at the instigation of Lessee, in shutting down and unreasonably refusing to reopen any facility through which hydrocarbons from this Lease are necessarily passed as part of production (and provided there is no other reasonably economical method of carrying on production), or (5) other events not described herein that are recognized by Lessor.

(G) If the reports are not timely submitted or if Lessee did not attempt in good faith to mitigate the effects of the Incident, Lessor, after notice and opportunity to be heard, may declare the Incident recognition to be ended and that Lessee may not after such failure utilize this provision to excuse any failure to comply with any obligations of this Lease relating to the particular Incident involved.
For purposes of this Article:

(1) An increase in costs of performing the obligations set forth in this Lease shall not constitute circumstances beyond Lessee’s control;

(2) Lessee’s financial inability to comply with any of the obligations of this Lease shall not be grounds for an extension of time;

(3) Notice (as required under Article 5(B)(1) above) given beyond ninety (90) days shall be deemed unreasonable barring consequential extenuating circumstances; and

(4) The interpretation and operation of any term of this Force Majeure and Suspending Event provision are at the sole, reasonable discretion of Lessor.

PROPOSED RE-WRITE (CLEAN VERSION)

(A) If, at any time this Lease is being maintained, Lessee is prevented from continuing Acceptable Lease Operations and/or Production in Paying Quantities by the occurrence of a Force Majeure or Suspending Event (herein “Incident”), both herein below defined, and Lessee cannot maintain this Lease under any other operative provision hereof, such as the payment of annual rental, Deferred Development Payment or Shut-In Payment, then and only then shall the date for Lessee to re-commence Acceptable Lease Operations and/or Production in Paying Quantities be postponed on a day-for-day basis for so long as the adverse effects upon Lessee’s Acceptable Lease Operations and/or Production in Paying Quantities prevail.

(B) Lessor may recognize the Incident provided that Lessee has submitted:

(1) Written notice of the occurrence within ninety (90) days of the Incident onset;

(2) An affidavit containing:

(a) The onset date, description and nature of the Incident;

(b) The effects preventing continuation of Acceptable Lease Operations or Production in Paying Quantities;

(c) The steps being taken to mitigate and eliminate those effects; and

(d) An estimated time for resumption of Acceptable Lease Operations or Production in Paying Quantities.

(3) Evidence of Lessee’s diligent, reasonable and good faith efforts to mitigate and eliminate the effects of the Incident and to resume Acceptable Lease Operations.
and/or Production in Paying Quantities; and

(4) Any other information or documentation evidencing the existence of the Incident requested by Lessor.

(C) If Acceptable Lease Operations and/or Production in Paying Quantities cease prior to the Incident onset (or during the period in which the Incident is still in effect), and the Incident prevents Lessee from re-establishing Acceptable Lease Operations and/or Production in Paying Quantities, then the date for Lessee to re-establish Acceptable Lease Operations and/or Production in Paying Quantities shall be extended by the period of time during which Lessee was prevented from re-establishing Acceptable Lease Operations and/or Production in Paying Quantities.

(D) The occurrence of an Incident shall not maintain this Lease for more than twelve (12) months from the date of the Incident onset unless extended by Lessor. To utilize Article 5, Lessee shall be required to submit written, detailed reports on a monthly basis to OMR and demonstrate the ongoing efforts by Lessee to mitigate the effects of the Incident.

(E) A “Force Majeure” event, as herein utilized, shall be a fortuitous event that is beyond Lessee’s control and is not ultimately determined to be caused by Lessee or due to Lessee’s negligent or intentional commission or omission, or failure to take reasonable and timely foreseeable preventative measures that would have mitigated or negated the effects of the event.

(F) A “Suspending Event”, as herein utilized, shall be (1) the lack of availability, after Lessee has diligently, timely and in good faith attempted to secure same, of any required equipment and/or personnel, such as the specific type of rig or specific type of casing or drill pipe, or (2) the unreasonable delay by any government agency or political subdivision in granting permits necessary for Acceptable Lease Operations or Production in Paying Quantities, or (3) an order of any federal or state court of competent jurisdiction preventing Acceptable Lease Operations or Production in Paying Quantities, or (4) the act of a third party, not under the control or at the instigation of Lessee, in shutting down and unreasonably refusing to reopen any facility through which hydrocarbons from this Lease are necessarily passed as part of production (and provided there is no other reasonably economical method of carrying on production), or (5) other events not described herein that are recognized by Lessor.

(G) If the reports are not timely submitted or if Lessee did not attempt in good faith to mitigate the effects of the Incident, Lessor, after notice and opportunity to be heard, may declare the Incident recognition to be ended and that Lessee may not after such failure utilize this provision to excuse any failure to comply with any obligations of this Lease relating to the particular Incident involved.
For purposes of this Article:

1. An increase in costs of performing the obligations set forth in this Lease shall not constitute circumstances beyond Lessee’s control;

2. Lessee’s financial inability to comply with any of the obligations of this Lease shall not be grounds for an extension of time;

3. Notice (as required under Article 5(B)(1) above) given beyond ninety (90) days shall be deemed unreasonable barring consequential extenuating circumstances; and

4. The interpretation and operation of any term of this Force Majeure and Suspending Event provision are at the sole, reasonable discretion of Lessor.