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2 **ARTICLE 5 – FORCE MAJEURE AND SUSPENDING EVENTS**

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4 **EXISTING LEASE LANGUAGE (REV. 2000)**

5  
6 Article No. 13.

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8 “If at any time this Lease is being validly maintained under any of its provisions and  
9 Lessee is in the process of either: A) commencing lease operations which are herein defined as  
10 spudding a well [turning-to-the-right], downhole drilling, or downhole reworking operations, or  
11 B) diligently, timely and in good faith performing requisite tasks to commence lease operations  
12 including, but not necessarily limited to, towing the required type of rig to a drill site, obtaining  
13 permitting from all necessary parties, or satisfying conditions and obligations under any validly  
14 enacted law, statute or regulation of an agency of the Federal Government, the State of Louisiana  
15 or any of its political subdivisions having proper jurisdiction, or C) producing in commercial  
16 quantities, and Lessee is prevented from continuing A, B, or C by the occurrence of a Force  
17 Majeure event, as herein below defined, and Lessee cannot maintain this Lease beyond any  
18 critical date under any other operative provisions of this Lease — such as the payment of a pro-  
19 rata rental based on the number of months remaining until the next anniversary date divided by  
20 twelve (12) and/or the full rental for a year if the force majeure effect prevails for an entire rental  
21 period [all during the primary term of the lease and only where rental payments may hold the  
22 lease], payment of deferred development or payment of shut-in/in-lieu royalty — then, and only  
23 then, shall the critical date be postponed on a day-for-day basis for so long as the effects of the  
24 Force Majeure prevail, providing that Lessee: i) has given the Office of Mineral Resources  
25 reasonable, timely written notice of the Force Majeure event occurrence [notice given beyond  
26 three months shall be deemed unreasonable barring consequential extenuating circumstances]  
27 which shall contain the date and type of the occurrence of the Force Majeure event, its effects in  
28 preventing continuation of A, B, or C above, the steps being taken to mitigate and eliminate  
29 those effects and an estimated time for resuming of A, B, or C above, and ii) is diligently,  
30 reasonably and in good faith attempting to mitigate and eliminate the effects of the fortuitous  
31 event and resume A, B, or C above, and iii) has exhausted Lease provisions other than Force  
32 Majeure which may serve to maintain the Lease in full force and effect. The interpretation and  
33 operation of any term of this Force Majeure clause is at the sole, reasonable discretion of the  
34 Mineral Board and/or its duly authorized staff. The operation of Force Majeure alone shall not  
35 maintain this Lease in full force and effect for more than one year from date of the fortuitous  
36 event unless extended by, and at the sole discretion of, the State Mineral and Energy Board.  
37

38 Force Majeure, as herein utilized shall be defined as a fortuitous event such as: 1) a major  
39 storm, major flood, or other, similar natural disaster, or 2) a major accident such as a blowout,  
40 fire, or explosion beyond Lessee’s control and not ultimately found to be the fault of Lessee [that  
41 is, due to Lessee’s negligent or intentional commission or omission, or failure to take reasonable  
42 and timely, foreseeable preventative measures which would have mitigated or negated the effects  
43 of the fortuitous event], or 3) the lack of availability of any required equipment — such as the  
44 specific type of rig necessary to accomplish the task or specific types of casing or drill stem pipe

1 — after Lessee has diligently, timely and in good faith attempted to secure same, or 4) the  
2 unreasonable delay by the Federal Government or any of its agencies, or the State of Louisiana  
3 or any of its agencies or political subdivisions (including, but not limited to, various departments,  
4 boards, commissions, parish governments and municipalities, each having proper authority and  
5 jurisdiction) in granting necessary permits, or 5) a valid order of any Federal or State court of  
6 competent jurisdiction, or 6) the act of a third party not under the control or at the instigation of  
7 Lessee in shutting down and unreasonably refusing to reopen any facility through which  
8 hydrocarbons from the Lease are necessarily passed as part of production [and providing there is  
9 no other reasonably economical method of carrying on production]”.

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11 **AUGUST 2016 DRAFT LANGUAGE**  
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- 14 (A) If, at any time this Lease is being maintained, Lessee is prevented from continuing  
15 Acceptable Lease Operations and/or Production in Paying Quantities by the occurrence  
16 of a Force Majeure or Suspending Event (herein “**Incident**”), both hereinbelow defined,  
17 and Lessee cannot maintain this Lease under any other operative provision hereof, such  
18 as the payment of annual rental, Deferred Development Payment or Shut-In Payment,  
19 then and only then shall the date for Lessee to re-commence Acceptable Lease  
20 Operations and/or Production in Paying Quantities be postponed on a day-for-day basis  
21 for so long as the adverse effects upon Lessee’s Acceptable Lease Operations and/or  
22 Production in Paying Quantities prevail.  
23
- 24 (B) Lessor may recognize the Incident provided that Lessee has submitted:  
25
- 26 (1) Written notice of the occurrence within ninety (90) days of the Incident  
27 onset;
  - 28 (2) An affidavit containing:
    - 29 (a) The onset date, description and nature of the Incident;
    - 30 (b) The effects preventing continuation of Acceptable Lease Operations or  
31 Production in Paying Quantities;
    - 32 (c) The steps being taken to mitigate and eliminate those effects; and
    - 33 (d) An estimated time for resumption of Acceptable Lease Operations or  
34 Production in Paying Quantities.
  - 35 (3) Evidence of Lessee’s diligent, reasonable and good faith efforts to mitigate and  
36 eliminate the effects of the Incident and to resume Acceptable Lease Operations  
37 and/or Production in Paying Quantities; and
  - 38 (4) Any other information or documentation evidencing the existence of the Incident  
39 requested by Lessor.  
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2 (C) If Acceptable Lease Operations and/or Production in Paying Quantities cease prior to the  
3 Incident onset (or during the period in which the Incident is still in effect), and the  
4 Incident prevents Lessee from re-establishing Acceptable Lease Operations and/or  
5 Production in Paying Quantities, then the date for Lessee to re-establish Acceptable  
6 Lease Operations and/or Production in Paying Quantities shall be extended by the period  
7 of time during which Lessee was prevented from re-establishing Acceptable Lease  
8 Operations and/or Production in Paying Quantities.  
9
- 10 (D) The occurrence of an Incident shall not maintain this Lease for more than twelve (12)  
11 months from the date of the Incident onset unless extended by Lessor. To utilize Article  
12 5, Lessee shall be required to submit written, detailed reports on a monthly basis to OMR  
13 and demonstrate the ongoing efforts by Lessee to mitigate the effects of the Incident.  
14
- 15 (E) A ***“Force Majeure”*** event, as herein utilized, shall be a fortuitous event that is beyond  
16 Lessee’s control and is not ultimately determined to be caused by Lessee or due to  
17 Lessee’s negligent or intentional commission or omission, or failure to take reasonable  
18 and timely foreseeable preventative measures that would have mitigated or negated the  
19 effects of the event. ~~A Force Majeure event may include (1) a major storm, major flood  
20 or other similar natural disaster, or (2) a major accident such as a blowout, fire or  
21 explosion.~~  
22
- 23 (F) A ***“Suspending Event”***, as herein utilized, shall be (1) the lack of availability, after  
24 Lessee has diligently, timely and in good faith attempted to secure same, of any required  
25 equipment and/or personnel, such as the specific type of rig or specific type of casing or  
26 drill pipe, or (2) the unreasonable delay by any government agency or political  
27 subdivision in granting permits necessary for Acceptable Lease Operations or Production  
28 in Paying Quantities, or (3) an order of any federal or state court of competent  
29 jurisdiction preventing Acceptable Lease Operations or Production in Paying Quantities,  
30 or (4) the act of a third party, not under the control or at the instigation of Lessee, in  
31 shutting down and unreasonably refusing to reopen any facility through which  
32 hydrocarbons from this Lease are necessarily passed as part of production (and provided  
33 there is no other reasonably economical method of carrying on production), or (5) other  
34 events not described herein that are recognized by Lessor.  
35
- 36 (G) If the reports are not timely submitted or if Lessee did not attempt in good faith to  
37 mitigate the effects of the Incident, Lessor, after notice and opportunity to be heard, may  
38 declare the Incident recognition to be ended and that Lessee may not after such failure  
39 utilize this provision to excuse any failure to comply with any obligations of this Lease  
40 relating to the particular Incident involved.  
41
- 42 (H) For purposes of this Article:  
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44 (1) An increase in costs of performing the obligations set forth in this Lease shall not

1 constitute circumstances beyond Lessee's control;

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- 3 (2) Lessee's financial inability to comply with any of the obligations of this Lease
- 4 shall not be grounds for an extension of time;
- 5
- 6 (3) Notice (as required under Article 5(B)(1) above) given beyond ninety (90) days
- 7 shall be deemed unreasonable barring consequential extenuating circumstances;
- 8 and
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- 10 (4) The interpretation and operation of any term of this Force Majeure and
- 11 Suspending Event provision are at the sole, reasonable discretion of Lessor.
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15 **PROPOSED RE-WRITE (TRACK CHANGES)**

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- 17 (A) If, at any time this Lease is being maintained, Lessee is prevented from continuing
- 18 Acceptable Lease Operations and/or Production in Paying Quantities by the occurrence
- 19 of a Force Majeure or Suspending Event (herein "**Incident**"), both herein below defined,
- 20 and Lessee cannot maintain this Lease under any other operative provision hereof, such
- 21 as the payment of annual rental, Deferred Development Payment or Shut-In Payment,
- 22 then and only then shall the date for Lessee to re-commence Acceptable Lease
- 23 Operations and/or Production in Paying Quantities be postponed on a day-for-day basis
- 24 for so long as the adverse effects upon Lessee's Acceptable Lease Operations and/or
- 25 Production in Paying Quantities prevail.
- 26
- 27 (B) Lessor may recognize the Incident provided that Lessee has submitted:
- 28
- 29 (1) Written notice of the occurrence within ninety (90) days of the Incident
- 30 onset;
- 31
- 32 (2) An affidavit containing:
- 33
- 34 (a) The onset date, description and nature of the Incident;
- 35 (b) The effects preventing continuation of Acceptable Lease Operations or
- 36 Production in Paying Quantities;
- 37 (c) The steps being taken to mitigate and eliminate those effects; and
- 38 (d) An estimated time for resumption of Acceptable Lease Operations or
- 39 Production in Paying Quantities.
- 40
- 41 (3) Evidence of Lessee's diligent, reasonable and good faith efforts to mitigate and
- 42 eliminate the effects of the Incident and to resume Acceptable Lease Operations
- 43 and/or Production in Paying Quantities; and
- 44

1  
2 (4) Any other information or documentation evidencing the existence of the Incident  
3 requested by Lessor.  
4

5 (C) If Acceptable Lease Operations and/or Production in Paying Quantities cease prior to the  
6 Incident onset (or during the period in which the Incident is still in effect), and the  
7 Incident prevents Lessee from re-establishing Acceptable Lease Operations and/or  
8 Production in Paying Quantities, then the date for Lessee to re-establish Acceptable  
9 Lease Operations and/or Production in Paying Quantities shall be extended by the period  
10 of time during which Lessee was prevented from re-establishing Acceptable Lease  
11 Operations and/or Production in Paying Quantities.  
12

13  
14 (D) The occurrence of an Incident shall not maintain this Lease for more than twelve (12)  
15 months from the date of the Incident onset unless extended by Lessor. To utilize Article  
16 5, Lessee shall be required to submit written, detailed reports on a monthly basis to OMR  
17 and demonstrate the ongoing efforts by Lessee to mitigate the effects of the Incident.  
18

19 (E) A ***“Force Majeure”*** event, as herein utilized, shall be a fortuitous event that is beyond  
20 Lessee’s control and is not ultimately determined to be caused by Lessee nor due to  
21 Lessee’s negligent or intentional commission or omission, or failure to take reasonable  
22 and timely foreseeable preventative measures that would have mitigated or negated the  
23 effects of the event. ~~A Force Majeure event may include (1) a major storm, major flood  
24 or other similar natural disaster, or (2) a major accident such as a blowout, fire or  
25 explosion.~~  
26

27 (F) A ***“Suspending Event”***, as herein utilized, shall be (1) the lack of availability, after  
28 Lessee has diligently, timely and in good faith attempted to secure same, of any required  
29 equipment and/or personnel, such as the specific type of rig or specific type of casing or  
30 drill pipe, or (2) the unreasonable delay by any government agency or political  
31 subdivision in granting permits necessary for Acceptable Lease Operations or Production  
32 in Paying Quantities, or (3) an order of any federal or state court of competent  
33 jurisdiction preventing Acceptable Lease Operations or Production in Paying Quantities,  
34 or (4) the act of a third party, not under the control or at the instigation of Lessee, in  
35 shutting down and unreasonably refusing to reopen any facility through which  
36 hydrocarbons from this Lease are necessarily passed as part of production (and provided  
37 there is no other reasonably economical method of carrying on production), or (5) other  
38 events not described herein that are recognized by Lessor.  
39

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

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2 (H) For purposes of this Article:  
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4 (1) An increase in costs of performing the obligations set forth in this Lease shall not  
5 constitute circumstances beyond Lessee's control;  
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7 (2) Lessee's financial inability to comply with any of the obligations of this Lease  
8 shall not be grounds for an extension of time;  
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10 (3) Notice (as required under Article 5(B)(1) above) given beyond ninety (90) days  
11 shall be deemed unreasonable barring consequential extenuating circumstances;  
12 and  
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14 (4) The interpretation and operation of any term of this Force Majeure and  
15 Suspending Event provision are at the sole, reasonable discretion of Lessor.  
16

17 **PROPOSED RE-WRITE (CLEAN VERSION)**

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19 (A) If, at any time this Lease is being maintained, Lessee is prevented from continuing  
20 Acceptable Lease Operations and/or Production in Paying Quantities by the occurrence  
21 of a Force Majeure or Suspending Event (herein "**Incident**"), both herein below defined,  
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23 as the payment of annual rental, Deferred Development Payment or Shut-In Payment,  
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26 for so long as the adverse effects upon Lessee's Acceptable Lease Operations and/or  
27 Production in Paying Quantities prevail.  
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42 utilize this provision to excuse any failure to comply with any obligations of this Lease  
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9 (3) Notice (as required under Article 5(B)(1) above) given beyond ninety (90) days  
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13 (4) The interpretation and operation of any term of this Force Majeure and  
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