

# LIGNITE OR COAL MINING LEASE

State Agency Lignite Lease No. \_\_\_\_\_

**WHEREAS**, under the provisions of Sub-Part A of Chapter 2, Title 30 of the Louisiana Revised Statutes of 1950, as amended, and other applicable laws, the State Mineral and Energy Board of the State of Louisiana (Board) advertised for bids for a Lignite Lease on the property described below; and

**WHEREAS**, in response to required advertisements, bids were received and duly opened in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana on the \_\_\_\_ day of \_\_\_\_\_, 20XX, at a meeting of the Board; and

**WHEREAS**, by Resolution duly adopted that day, the Board accepted the bid of Lessee identified below as the most advantageous to the State of Louisiana and Lessor:

**NOW THEREFORE**, be it known and remembered that the Board, acting under said authority and for and on behalf of the \_\_\_\_\_ **STATE AGENCY** \_\_\_\_\_, as **LESSOR**, whose principal office is located at \_\_\_\_\_, does hereby **GRANT, LEASE and LET** unto \_\_\_\_\_ **COMPANY** \_\_\_\_\_, as **LESSEE**, whose principal office is located at \_\_\_\_\_, and **LESSEE's** successors, transferees and assigns, if any, the exclusive right to enter upon, investigate, explore, prospect by core drilling, excavation or otherwise, and drill, mine, strip mine, operate, produce, treat, store and remove from the surface to a depth of \_\_\_\_\_ (\_\_\_\_) feet all lignite or other coal and/or other constituent products (and other substances removed or released because of practical necessity prior to or in connection with surface mining and strip mining, including but not limited to coal bed methane), all of which are hereinafter referred to as "Lignite", together with the right to use so much of the property as may be reasonably necessary to mine, including but not limited to storing, saving, owning, removing, transporting, cleaning, treating, processing, selling or otherwise utilizing said Lignite, together with rights of way, easements, privileges, and servitudes for such purposes and the right of ingress and egress therefor, laying pipelines, and building or relocating roads, bridges, docks, tanks, power stations, telephone and electric transmission lines, together with the right to construct such facilities and/or other structures in connection with any such operations conducted by Lessee thereon or on Neighboring Lands. Lessee's rights granted hereby also include the right to alter water or watercourses, drainage patterns and surface contours of the Leased Premises, all subject to applicable mining and mineral laws and regulations, and Lessee's reclamation obligations pursuant to this Lease and as required by applicable law.

The Leased Property, situated in the Parish(es) of \_\_\_\_\_, State of Louisiana, is more fully described as follows:

## NEED PROPERTY DESCRIPTION

including, in addition to that above described, all other after-acquired lands contiguous or adjacent to, forming a part of, or adjoining the land described or referred to above owned or claimed by Lessor by sale, donation, prescription, possession, dereliction, accretion, avulsion, inheritance, reversion, unrecorded instrument(s), or any other means whatsoever, all of which is referred to in this Lease as the "Leased Premises".

"Neighboring Lands", as used herein, shall mean all lands other than the Leased Premises included within the Mining Plan referred to herein.

ARTICLE 1 –TERM OF LEASE

(A) Subject to the other provisions herein contained, this Lease shall be for a Primary Term of ten (10) years, beginning on the \_\_\_\_ day of \_\_\_\_\_ 20XX and ending at midnight on the \_\_\_\_ day of \_\_\_\_\_, 20XX, and continuing thereafter upon compliance with the following conditions:

- (1) For as long as there are ongoing mining operations by Lessee on the Leased Premises; or
- (2) For as long as Lignite is being produced by Lessee from the Leased Premises; or
- (3) In accordance with La. R.S. 31:115 (or any successor statute), upon payment of rental as required herein and satisfaction of the following requirements:
  - (a) Lignite or another form of coal susceptible of being mined has been discovered as a result of acts by Lessee committed on the land or due to acts by Lessee providing a reasonable basis of proof of the discovery of the mineral; and
  - (b) A Mining Plan for the ultimate production of Lignite or other form of coal, together with a permit issued by the Commissioner of Conservation are filed in the conveyance records of the parish(es) in which the Leased Premises is located; and
  - (c) The Mining Plan, along with any amendments thereto, provides for the ultimate production of Lignite or other form of coal from the Leased Premises; and
  - (d) Actual mining operations have begun on land included in the Mining Plan, although such operations are not being conducted on the lease being extended.

(B) In accordance with La. R.S. 31:115C(3), after expiration of the Primary Term, this Lease will expire, without the necessity of notice or action by Lessor, if Lessee does not continue its mining operations for a period of more than five (5) years, with the diligence of a reasonably prudent operator under a Mining Plan approved by the Office of Conservation, unless this Lease is suspended pursuant to Article 30 (Force Majeure).

(C) The term "Mining Operations", as used herein, includes operations for opening a mine including, but not limited to the removal of improvements, construction of railroad spurs and haul roads, the on-site erection of major equipment for the removal of Lignite and overburden, the construction of office or shop facilities to be used in conjunction with mining of the Leased Premises, the removal of overburden, the production of Lignite, operations for opening, reworking, deepening, extending or repairing a mine or keeping same in a standby condition, all other operations conducted in an effort to obtain or reestablish the production of Lignite, and all reclamation activities associated therewith.

(D) Notwithstanding any provision of this Lease, the maximum term granted to Lessee to conduct mining operations upon lands covered by this Lease is limited to \_\_\_\_\_ (\_\_\_) years or as set forth in La. R.S. 31:115 (whichever is sooner), commencing on the effective date of this Lease. Upon expiration or termination of this Lease, Lessee will cease to have any control over the lands covered hereby; however, Lessee's obligation to conduct reclamation activities upon lands covered by this Lease shall continue past the Primary Term and any extension thereto, and continue until such lands are fully reclaimed and released from the reclamation bond by the Louisiana Office of Conservation or equivalent governmental agency.

ARTICLE 2 – COMPLIANCE WITH LAWS

(A) Lessee, its successors, transferees and assigns, agree to conduct all operations, development work, and/or mining hereunder with utmost caution and in compliance in every respect with all applicable laws of the State of Louisiana and the United States of America now existing or hereafter enacted, and all rules and regulations promulgated thereunder, including but not limited to governmental requirements under the Surface Mining Control and Reclamation Act; the Clean Air Act; the Clean Water Act of 1977; the Resource Conservation and Recovery Act; the Noise Control Act of 1972; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Mine Safety and Health Act of 1977; the Black Lung Benefits Act of 1972; the Black Lung Benefits Reform Act of 1977; the Black Lung Benefits Amendments of 1981; the Occupational Safety and Health Act of 1970; the Fair Labor Standards Act; the Louisiana Surface Mining and Reclamation Act of 1976, as amended; La. R.S. Title 30; La. R.S. Title 31; LAC 43:XV§101 *et seq.*; the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16

U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa, et seq.); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001, et seq.); the Louisiana Unmarked Human Burial Sites Preservation Act (La. R.S. 8:671, et seq.); The Louisiana Historic Cemetery Protection Act (La. R.S. 25:931, et seq.); and the Louisiana Archaeological Resources Act (La. R.S. 41:1601, et seq.). Lessee agrees that it shall be responsible for complying with such laws/regulations, including the duty to abate any violations or dangerous conditions, and payment of any fines or penalties resulting therefrom. Lessee shall hold Lessor free and harmless from and against any liability or claims, in accordance with Article 29, arising from Lessee's failure to comply with the requirements of this Section.

(B) Lessee, its successors, transferees and assigns, shall not use this Lease nor any language contained herein to circumvent any duty, responsibility or obligation which may be imposed by any applicable law, statute, rule or regulation in force and effect during the life of this Lease.

### ARTICLE 3 – DILIGENCE IN DEVELOPMENT AND COMMINGLING

(A) This Lease is granted with the express understanding that prospecting, mining and the recovery of the valuable Lignite content of the Leased Premises shall be pursued with the diligence of a reasonably prudent operator and, if at any time Lessor has reasonable belief that the operations are not being so conducted, it shall so notify Lessee, in writing, and if compliance is not promptly obtained and the delinquency cured, this Lease shall be subject to termination.

(B) If Lignite mined from the Leased Premises is mixed, blended or commingled with that mined elsewhere, then each month Lessee shall determine, subject to review and audit by Lessor, in accordance with acceptable engineering, accounting and auditing standards, the quantity of Lignite mined from the Leased Premises by prorating the total actual tonnage mined from all sources among the properties from which Lignite was mined on the basis of volumetric measurements. The quantity of Lignite upon which Lessee pays actual production royalties shall be determined by prorating the area mined during each month between "Leased Premises Lignite" and "non-Leased Premises Lignite" and then applying that ratio to either the actual tons paid for that month by bona fide purchasers under Article 7(A)(1) or consumed Lignite under Article 7(A)(2), as appropriate.

(C) If Lignite mined from the Leased Premises is mixed, blended or commingled with that mined elsewhere, Lessee shall regularly take and retain representative samples of Lignite from the Leased Premises and of the Lignite mixed, blended or commingled therewith, in a manner commensurate with acceptable and recognized methods in the mining industry. For valuation purposes, the results of such sampling and analysis shall be taken into account if the Lignite mined from the Leased Premises is mixed, blended or comingled with Lignite of either lesser or greater quality mined elsewhere. In such event, the Gross Sales Price stated in Article 7 shall be deemed to be that price which the Lignite mined from the Leased Premises would have sold if not so mixed, blended or commingled.

(D) Lessor shall have the right, at its expense, to take and analyze representative samples of Lignite removed from the Leased Premises and any Lignite with which it may be mixed, blended or commingled for the purpose of evaluating and verifying Lessee's determination of the Gross Sales Price.

### ARTICLE 4 – PAYMENT ACRES

For the purpose of calculating all payments required hereunder, the Leased Premises shall be treated as comprising \_\_\_\_\_ (\_\_\_\_) acres, whether actually containing more or less. The acreage used in initially calculating the sums due hereunder shall be subject to adjustment to reflect any after-acquired additional acreage obtained by Lessor in accordance with the aforesaid "granting clause" since execution of this Lease or any voluntary release of acreage by Lessee pursuant to Article 36 hereof. Lessee shall owe Lessor additional sums equal to the per-acre price, multiplied by the number of additional acres after-acquired by Lessor, with any such sums to be paid by Lessee prior to the next anniversary date. Beginning upon the anniversary date after a partial release by Lessee of acreage within the Leased Premises, Lessee shall calculate and make future payments owed to Lessor based upon the retained acreage of the Leased Premises.

The term “anniversary date” shall mean the date of this Lease and the same date of each ensuing year or years.

ARTICLE 5 –BONUS AND ANNUAL RENTAL PAYMENTS

(A) As adequate consideration for the rights granted hereunder, Lessee shall pay to Lessor, upon execution of this Lease, a bonus payment of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars and an initial rental payment of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars, which rental payment is calculated as \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per acre for each acre of the Leased Premises.

(B) Thereafter, an annual rental payment of \_\_\_\_\_(\$\_\_\_\_\_) Dollars per acre, for each acre of the Leased Premises under lease, shall be due and payable on each anniversary date of this Lease during its term or any continuation, renewal or extension. The annual rental payment shall not be less than the above stated initial rental payment.

(C) In no event shall Lessee be entitled, by reason of expiration or termination of this Lease, or voluntary release of acreage by Lessee, to any refund of any bonus, rental or other payments previously paid, nor be released from the obligation to pay the Minimum Guaranteed Production Royalty required by Article 6.

(D) Lessee understands and agrees that no bonus nor rental payments shall be credited by Lessee against any production royalty payments paid or to be paid to Lessor under this Lease.

(E) Lessee shall pay Lessor the annual rental payments required hereby for the purpose of maintaining Lessee’s rights hereunder and for the right to use the surface, or any part of the Leased Premises, in connection with Lessee’s mining operations on Neighboring Lands or on any portion of the Leased Premises, regardless of whether actual mining or removal of Lignite occurs on the Leased Premises.

ARTICLE 6 – MINIMUM GUARANTEED PRODUCTION ROYALTY

(A) Notwithstanding any provision herein to the contrary, Lessee agrees to pay Lessor a Minimum Guaranteed Production Royalty of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per acre for each acre of the Leased Premises from which Lignite is actually mined and removed, which sum shall be additional consideration for the rights herein granted.

(B) Upon completion of actual Mining Operations on the Leased Premises, Lessee shall determine, whether the production royalties paid to Lessor, in the aggregate, total the minimum guaranteed herein. If Lessee determines that additional royalties are owed, the sum required to equal the minimum guaranteed royalty shall be payable by Lessee to Lessor within six (6) months of completion of Mining Operations on the Leased Premises. Under no circumstance shall the Minimum Guaranteed Production Royalty paid to Lessor be less than the minimum royalty requirements set forth in La. R.S. 30:127. Lessor shall have the right to verify Lessee’s determination that the Minimum Guaranteed Production Royalty has been satisfied, with any dispute to be resolved in accordance with Article 9(D) of this Lease.

ARTICLE 7 – PRODUCTION ROYALTIES

(A) In no event shall the production royalties to be paid Lessor for Lignite sold or used be less than the minimum royalty requirements of La. R.S. 30:127. Notwithstanding this requirement:

- (1) On Lignite produced and saved from the Leased Premises and sold to a third party, the production royalties shall be \_\_\_\_\_ (\_\_\_\_ %) percent of the Gross Sales Price F.O.B. the mine. As used herein, the term “third party” means a person or entity that is not a parent or subsidiary company of Lessee nor owned or controlled, directly or indirectly, by the owners of Lessee; and
- (2) On Lignite produced and saved from the Leased Premises used by Lessee or other person or entity affiliated with Lessee, the production royalties shall be the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per ton (2,000 pounds), subject to adjustment as provided in paragraph (E) below.

(B) Upon completion of actual Mining Operations on the Leased Premises, Lessee shall determine whether the production royalties paid to Lessor satisfied the minimum requirement of La. R.S. 30:127. If Lessee determines that

additional royalties are owed, the sum required to equal the minimum statutory requirement shall be payable by Lessee to Lessor within six (6) months of completion of mining operations on the Leased Premises.

(C) Lessee shall purchase all Lignite produced and saved from the Leased Premises unless Lessor elects, pursuant to La. R.S. 30:127(C), to take in-kind all or any part of the portion due Lessor as royalty on merchantable Lignite produced and saved. Lessor shall exercise this option by providing written notice to Lessee. Lessor may exercise this option at any time while this Lease is in effect and prior to acceptance by Lessor of royalties, other than in-kind, due hereunder. Lessee acknowledges and agrees that it understands that nothing contained in this Lease shall ever be interpreted as limiting or waiving the in-kind option in favor of Lessor.

(D) For purposes of this Section, the gross Gross Sales Price per ton of Lignite mined and sold from the Leased Premises shall be the actual gross sales price paid to Lessee, plus "BTU bonus", without any deduction for sales commissions, brokerage fees or other charges whatsoever.

(E) The per-ton production royalty provided herein shall be adjusted as of January 1 of each year during the life of this Lease, commencing as of January 1, 2016, based on changes to the Producer Price Index (PPI)/Unprepared bituminous coal and lignite (not seasonally adjusted), Series ID WPU 0512081 (1982=100) (the "Index") published by the United States Bureau of Labor Statistics, using September, 2014 as the base month, and determined based on the value of the Index reported for September of the year prior to the year of calculation. The preliminary value of the Index as of September, 2014 is 153.9. For example, if the value of the Index in September, 2015 is 160.6, and the final value of the Index for September, 2014 is 153.9, the per ton production royalty would be adjusted as of January 1, 2016 (160.6 divided by 153.9 times \$/ton stated in (A)(2) above). Notwithstanding said adjustment, in no event shall the adjusted per ton production royalty price decrease below the initial (dollar per ton) rate stated herein.

(F) In the event the Index ceases to be published, Lessor and Lessee will attempt to agree on a suitable published replacement index. If Lessor and Lessee are unable to do so within 30 days following cessation of production of the Index, the replacement published index shall be determined by arbitration in accordance with the rules of the American Arbitration Association, and Lessor and Lessee shall each bear one-half of the costs of such arbitration. Once a replacement published index is agreed upon or determined, the term "Index" shall refer to such replacement published index.

#### ARTICLE 8 – OTHER MINERALS

(A) For any minerals and other substances, other than coal bed gas, not considered waste, produced, removed, mined or saved by Lessee, for which Lessor has not specifically granted rights to Lessee, that are sold or used on the mine site, production royalties to be paid Lessor shall be \_\_\_\_\_ (\_\_\_%) percent of the fair market value of such minerals and other substances F.O.B. the mine site. "Fair Market Value" is defined as the value of the commodity in the same area or, if the value in the area is unobtainable, the value in a similar area. As stated, this provision is inapplicable to coal bed gas which is governed by Article 34 hereof.

(B) In no event shall the production royalties paid to Lessor pursuant to this Article be less than the minimum royalty requirements set forth in La. R.S. 30:127. Upon completion of actual mining operations on the Leased Premises, Lessee shall determine whether the production royalties on such minerals and substances paid to Lessor satisfied the minimum requirement of La. R.S. 30:127. If Lessee determines that additional royalties are owed, the sum required to equal the minimum statutory requirement shall be payable by Lessee to Lessor within six (6) months of completion of mining operations on the Leased Premises.

#### ARTICLE 9 – PAYMENTS

(A) Lessee shall pay production royalties on or before the 25<sup>th</sup> day of January, April, July and October of each year during the continuation of this Lease for all Lignite and other materials produced, saved, used and/or sold from the Leased Premises during the three (3) months preceding the first day of the month in which payment is made. Lessor's production royalty entitlement hereunder shall bear its proportionate share of any severance, production or similar taxes legally imposed, whether based on fixed cents or percentage of gross sales price or market value, and Lessee is authorized to deduct from the production royalty payments such pro rata portion of such taxes paid or to be paid by Lessee.

(B) With each quarterly production royalty payment, Lessee shall furnish Lessor, at the following address, \_\_\_\_\_, a complete and accurate statement, verified by Affidavit, confirming the following:

- 1) The quantity of all Lignite and other minerals/materials produced, saved, used and/or sold from the Leased Premises during the preceding three (3) months;
- 2) The earned production royalty due on such Lignite and other minerals/materials;
- 3) The section, township and range wherefrom such Lignite and other minerals/materials were removed;
- 4) The tonnage and applicable gross sales price on Lignite and other minerals/materials;
- 5) The deduction(s) applied to the royalty payments; and
- 6) Such other information as may be required and in the format specified by Lessor.

(C) In accordance with Article 15, these statements are subject to verification by Lessor through examination of the books and records of Lessee. Furthermore, unless provided for elsewhere in this Lease, the provisions of La. R.S. 31:137 through 142 relating to notices, penalties, damages, interest, attorney fees and dissolution shall be applicable to all royalty payments due hereunder.

(D) Should there arise any dispute between Lessor and Lessee as to the tonnage of Lignite reported for purposes of calculating royalties hereunder, Lessor and Lessee shall equally share the costs to employ a mutually acceptable, independent engineer, accountant or auditor, as the case may be, using standard engineering, accounting and/or auditing practices, to verify the tonnage extracted from the Leased Premises. The determination of tonnage by the individual selected pursuant to this Section shall be as fully binding upon the parties and enforceable as though it were a final award reached in arbitration under the United States Arbitration Act, Title IX of the United States Code. In the event the parties are unable to agree upon the selection of an engineer, accountant or auditor, the dispute shall be submitted to binding arbitration, the costs therefor to be borne equally by Lessor and Lessee.

#### ARTICLE 10 – LIQUIDATED DAMAGES

(A) Notwithstanding any provision of this Lease, on the date on which Lessee submits to Lessor the “Notice of Intent to Mine” as provided in Article 12, Lessee shall pay Lessor a one-time payment in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per acre as liquidated damages for each acre from which lignite is to be mined and removed as identified in the Notice of Intent to Mine, provided that liquidated damages have not previously been paid on the acreage so used under the terms of this Lease. Furthermore, said payment of liquidated damages shall also apply to and include acreage within the Leased Premises suffering damages of whatever nature caused by the use of all or any part of the Leased Premises in connection with Lessee’s operations on the Leased Premises or on Neighboring Lands. The per-acre figure will be adjusted for inflation from the date of execution of this Lease and the date of commencement of actual mining operations on these Leased Premises by using the same method used to compensate for inflation of royalty payments due from Lignite mined from lands described in this Lease. These payments will in no way be considered annual rental, production royalties or compensation for timber or agricultural produce harvested or other minerals as specified in Article 8 from the Leased Premises by Lessee in accordance with Article 12, Paragraph (D), and said liquidated damage payment shall not be deducted from royalties on any Lignite production on the Leased Premises.

(B) Lessor agrees that the liquidated damage payments pursuant to this Article shall constitute full and complete compensation for all damages of whatever nature to each acre of the Leased Premises used by Lessee in its mining operations.

#### ARTICLE 11 – MOST FAVORED NATION CLAUSE

(A) Notwithstanding the annual rental to be paid pursuant to Article 5 for the execution of this Lease, if Lessee pays any other lessor a greater annual rental for the execution of an Applicable Lease (as defined herein), Lessee shall pay Lessor the difference between the highest annual rental of the Applicable Lease and the annual rental due Lessor in accordance with this Lease. In such event, Lessee agrees to execute an amendment to this Lease to provide for and pay the higher annual rental.

(B) In addition, notwithstanding the production royalty to be paid pursuant to Article 7 of this Lease, if Lessee agrees to a production royalty in an Applicable Lease that is more favorable to the lessor in the Applicable Lease than the production royalty payable to Lessor under this Lease, Lessee agrees to execute an amendment to this Lease to provide for and pay a production royalty identical to the production royalty most favorable to Lessor in any other such Applicable Lease. Such amendment shall be effective as of the first day of the calendar quarter after the date of such other Applicable Lease, and shall not be applicable to any production royalty due or paid with respect to Lignite produced prior to the effective date of the amendment.

(C) As used herein, the term “Applicable Lease” means a coal and other lignite lease in the same or adjacent parish(es) taken by Lessee covering a full interest (that is, 100% ownership mineral interest) in not less than fifty (50) contiguous acres of land, agreed to or executed within \_\_\_\_\_ (\_\_\_\_) years of the execution of this Lease.

#### ARTICLE 12 – NOTICE OF INTENT TO MINE

(A) Lessee shall give written notice (“Notice of Intent to Mine”) to Lessor, or any other such party or parties as may be entitled thereto, before conducting mining operations on the Leased Premises or any portion thereof, which Notice of Intent to Mine shall be delivered to Lessor at least twelve (12) months prior to commencement of any mining operations on the portion of the Leased Premises designated in the Notice of Intent to Mine.

(B) Lessee may give as many Notices of Intent to Mine prior to termination of this Lease as may, in Lessee’s sole discretion, be necessary or appropriate to mine up to the entirety of the Leased Premises prior to termination of this Lease.

(C) Lessor shall have the right to cut (or cause to be cut) timber and harvest (or cause to be harvested) all agricultural produce, and to remove or dispose of (or cause to be removed or disposed of) any houses, barns, buildings and other structures or improvements after the effective date of this Lease and up to one (1) year after receiving the Notice of Intent to Mine.

(D) Unless Lessor, or any other such party or parties as may be entitled thereto, causes all timber to be cut and all agricultural produce to be harvested from the area designated in a Notice of Intent to Mine within one year after receipt of such Notice, Lessee shall have the right to cause such timber and agricultural produce to be cut, harvested and sold, and Lessee shall pay to Lessor, or any other such party or parties as may be entitled thereto, the proceeds from the sale thereof, less the costs of cutting, harvesting and selling. As to any houses, barns, buildings and other structures or improvements not removed or disposed of by Lessor, Lessee shall have the right to cause the removal or disposition of same, and Lessee shall pay to Lessor, or any other such party or parties as may be entitled thereto, the reasonable market value thereof provided, however, that Lessee shall not be obligated to compensate Lessor, or any other party(s) for any building, structures or other improvement placed on the Leased Premises after the effective date of this Lease.

(E) Upon written request, payment of additional consideration and a showing of good cause by Lessee, Lessor may waive the twelve (12) month delay in the commencement of mining operations as required by Section (A) of this Article. Such consideration shall be calculated on a per-acre basis for each acre identified within the Notice of Intent to Mine, taking into consideration the number of months waived. This Payment will be in addition to the other payments required by this Lease. Upon Lessor’s agreement to such waiver and receipt of the payment required hereby, Lessee’s rights and obligations stated in Section (D) of this Article shall be given effect.

#### ARTICLE 13 – MANNER OF OPERATION

Lessor and Lessee recognize the importance of environmental protection and the necessity of proper ecological balance. To further these objectives, Lessee shall conduct its mining operations, during the term of this Lease or any extension thereof, in accordance with the “Operation Plan” (and amendments thereto), the permit(s) approved by the Office of Conservation, any successor agency thereto or any other agency having jurisdiction, and existing and future statutes or regulations affecting Lignite mining. Furthermore, Lessee’s mining operations shall be conducted in a proper and workmanlike manner and in accordance with generally accepted methods of strip-mining and specifically, leaving no high walls. The Lignite mining method employed by Lessee shall ensure the extraction of the greatest amount of economically mineable and saleable Lignite, having due regard for the prevention of waste of

the Lignite developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the Leased Premises for future use, and the health and safety of workers and employees.

#### ARTICLE 14 – OPERATION PLAN

“Operation Plan” shall mean the surface mining operation plans approved by the Office of Conservation pursuant to LAC 43:XV.2701-2709, copies of which will be provided to Lessor.

#### ARTICLE 15 –RECORDS

(A) Lessee shall maintain an accurate record of all Lignite and other minerals produced, saved, used, sold and/or shipped from the Leased Premises. If Lignite is shipped by truck, Lessee shall maintain a record of all trucks operating from the Leased Premises, which record shall show the date, truck number and other identification, trucking company, number of loads hauled by date, weight and point of delivery. If Lignite is shipped by rail, Lessee shall maintain a record of all railroad car numbers, weights and destinations, company and address to whom shipped, and selling price F.O.B. shipping point. Lessee shall also, if requested, furnish Lessor copies of purchase orders and sales invoices for the Lignite mined, removed, sold and shipped from the Leased Premises, together with information as to any authorized brokers or agents sales commission paid on such sale.

(B) These records shall be maintained by Lessee for a period of \_\_\_\_\_ (\_\_\_\_) years, including the lease year in which the Lignite was produced, saved, used, sold and/or shipped from the Leased Premises.

(C) Lessor, its officers, agents, employees, engineers, attorneys, accountants and auditors shall have the right, at all times and upon reasonable notice, to examine and review these records at Lessee’s office.

#### ARTICLE 16 – THIRD PARTY RECORDS

To the extent of Lessee's right to do so, Lessee hereby authorizes and directs all third parties with whom Lessee shall have any dealings with respect to Lignite mined from the Leased Premises (including, but not limited to third parties to whom such Lignite is sold or who transport or handle such Lignite), to make available to Lessor, its officers, agents, employees, engineers, attorneys, auditors and accountants, for inspection and copying, all information, records and documentation relating to Lignite mined from the Leased Premises as may be reasonably required by Lessor to verify or determine the royalties due to be paid by Lessee under this Lease, or any other matter relating to the performance of Lessee's obligations hereunder. Lessee agrees to make known to such third party(s), as necessary or required, the requirements of this paragraph and to use all reasonable means to ensure that said third party(s) complies with this provision.

#### ARTICLE 17 – TESTS AND LOGS

Upon Lessor’s request, Lessee shall furnish copies of any exploratory test holes, geophysical logs or reports of Lignite analysis obtained from bore holes drilled on the Leased Premises by Lessee. In addition, if requested, all geologic and/or geophysical logs, reports and surveys pertaining to the Leased Premises shall be provided to Lessor upon surrender, termination or expiration of this lease.

#### ARTICLE 18 – ASSIGNMENT OR SUBLEASE

(A) It is expressly understood and agreed by Lessee that no transfer or assignment of this Lease, either in whole or in part, including but not limited to a sublease by Lessee, shall be valid without first obtaining the written approval of Lessor or its authorized agent, which approval shall not be unreasonably withheld by Lessor or its authorized agent. A transfer, assignment or sublease made without the written approval of Lessor shall be void *ab initio*. In any litigation, arbitration or other proceeding filed by Lessor to enforce this provision, Lessee shall pay Lessor’s costs and expenses incurred, including reasonable attorney fees, even if Lessor is not the prevailing party.

(B) A transfer, assignment or sublease made by Lessee, its successor, transferees or assigns, notwithstanding any language to the contrary which may be contained within those documents effecting such transfer, assignment or sublease, even if such transfer, assignment or sublease is approved by Lessor and/or its authorized agent, shall not

relieve original Lessee, or any of its successors, transferees or assigns of any and all duties, obligations and responsibilities required under the terms of this Lease.

(C) In accordance with the provisions of Section (A) of this Article, Lessee agrees that Lessor and/or its authorized agent, in determining whether to consent to any proposed transfer, assignment or sublease, may reasonably consider the proposed transferee's, assignee's or sublessee's financial capacity (including the ability to obtain required insurance and other financial security under and in accordance with the terms of this Lease) and the ability to continue reasonable development of the Leased Premises. Lessor and/or its authorized agent may refuse to consent to such transfer, assignment or sublease if, in Lessor's and/or its agent's reasonable opinion, the proposed transferee, assignee or sublessee lacks the necessary financial capacity to meet the obligations under the terms of this Lease or necessary technical capacity to sustain reasonable development of the Leased Premises. Should Lessor and/or its agent not consent to the transfer, assignment or sublease submitted for approval, whether or not same is recorded, the transferor, assignor or sublessor, as well as their ancestors and predecessors in title, shall remain and be considered the present holder of this Lease for all purposes, rights, duties, obligations, responsibilities and benefits appertaining hereto.

(D) All the terms, provisions, conditions, duties, obligations and responsibilities of this Lease shall be binding upon and shall inure to the benefit of the respective successors, transferees, assignees and/or sublessees of Lessee.

(E) Lessee shall be subject to all civil and/or liquidated penalties allowed and/or required by law for its failure to obtain the approval of any transfer, assignment or sublease of this Lease as required by this Article.

#### ARTICLE 19 – PERMITTING

Lessee agrees that it will, at its sole cost, expense and in its name, perform the necessary procedures to apply for and procure all licenses and permits with the appropriate state, local and/or federal agencies having jurisdiction of such mining operations, and obtain and maintain in effect the requisite permit(s) and license(s) for the conduct of such mining operations throughout the life of this Lease.

#### ARTICLE 20 – GEOPHYSICAL SURVEY

If Lessee enters upon the Leased Premises for the purpose of conducting geological, geophysical, core-drilling tests or other examinations, except mining operations, for the presence of Lignite or other deposits, Lessee shall pay Lessor, or such other party as may be entitled thereto, for any damage to timber and/or growing crops occasioned by such operations. Lessee further agrees, at its sole cost and expense, to restore substantially to their former condition any roadways, fences, bridges or other improvements moved, altered or damaged in the course of such operations, and restore as nearly as practicable the surface of the ground to its former condition.

#### ARTICLE 21 – GENERAL COVENANTS

(A) This Lease shall not prevent the letting of oil and gas leases and related mining operations upon the Leased Premises by Lessor. In such event, Lessor and Lessee shall conduct their respective operations in compliance with Article 23.

(B) This Lease shall include only the right and privilege of Lignite and associated mining operations, but if Lessee discovers any non-lignite vein, lode, lead or ledge, or other mineralized rock, sand or gravel in commercial quantities in, upon or under the Leased Premises, it shall immediately report the same to Lessor.

(C) This Lease is subject to all servitudes, easements, rights of way and all other rights upon the Leased Premises existing at the time of execution hereof for railroads, public or private roads, electric transmission and telephone lines, gas/oil or other pipelines, cemeteries or other activities or purposes upon or affecting the Leased Premises, unless specified otherwise herein. This Lease also is subject to any federal and state statutes, regulations, rights, privileges, protections and entitlements relating to the governance, control, preservation and/or restoration of historical, cultural and archeological sites.

(D) Notwithstanding any provision of this Lease, any land owned or claimed by Lessor that is not described in this Lease shall in no way become a part of this Lease, nor shall any such land be entered upon, mined or otherwise used

by Lessee without Lessor's written permission; provided, however, that any acreage contiguous to the Leased Premises after-acquired by Lessor in accordance with the aforesaid "granting clause" and Article 4 shall be added to, included in and be subject to the terms and provisions of this Lease. Additionally, at no time shall Lessee interfere with, obstruct or in any way prevent Lessor from entering or otherwise using any unleased property owned or claimed by Lessor.

(E) Upon completion of all mining operations and removal of Lignite from the Leased Premises, Lessee shall give written notice to Lessor of such completion. Except as provided herein, this Lease shall remain and continue in full force and effect during Lessee's use of the Leased Premises for operations on Neighboring Lands. Additionally, Lessee's reclamation obligation shall remain and maintain until all reclamation of the Leased Premises as required hereunder or by law is complete and until such lands are released from the reclamation bond by the Louisiana Office of Conservation or the equivalent governmental agency.

(F) Lessee shall furnish Lessor with any information, documentation or data requested by Lessor deemed reasonably necessary for Lessor to be fully informed and assured, at all times, that Lessee is complying in good faith with the provisions of this Lease, and developing and operating the Leased Premises as a reasonably prudent operator for the mutual benefit of both Lessor and Lessee.

#### ARTICLE 22 – LESSOR EXPRESSLY RESERVES

(A) Lessor reserves and excepts from this Lease oil, gas, timber, sands, gravel and all other minerals, materials and natural resources in, upon and under the Leased Premises not specifically granted to Lessee by this Lease.

(B) Lessor reserves the right to carry on, in and upon the Leased Premises such operations as Lessor may deem proper or convenient for and in connection with the discovery, extraction, preparation, utilization, removal and sale of any and all minerals and other materials hereinabove reserved to Lessor. However, these rights reserved by Lessor are to be exercised by Lessor so as not to unreasonably interfere with the operations to be carried on by Lessee in accordance with this Lease.

#### ARTICLE 23 – CORRELATIVE RIGHTS

Lessor and Lessee, their successors and assigns, agree to exercise their respective mineral rights, retained or assigned herein, with reasonable regard for the rights of the other and shall use only so much of the Leased Premises, including its surface, as is reasonably necessary to conduct their operations. The exercise of the mineral rights granted herein shall be subject to the provisions of Articles 11 and 22 of the Louisiana Mineral Code.

#### ARTICLE 24 – DEFAULT

(A) If Lessee defaults in performing or satisfying the duties, obligations and requirements set forth in this Lease, regardless of nature or reason, after notice and opportunity to cure the default as set forth in (B) hereinafter, Lessor shall have the right to terminate this Lease, retain all sums previously paid, receive all sums which remain due and owing and repossess itself of the Leased Premises.

(B) Prior to exercising the right to terminate this Lease, for default or breach, Lessor shall notify Lessee, in writing, setting forth with clarity the matters to which Lessor deems Lessee to be in default or breach. Lessee shall have forty-five (45) days from the date of receipt of said notice within which to take the action necessary to remedy any such default or breach or demonstrate to the satisfaction of Lessor that no such default or breach exists. If Lessee fails to remedy such default or breach within this time period, Lessor shall have the right to terminate this Lease at any time thereafter by giving Lessee notice, in writing, of such termination, and upon the giving of such notice, this Lease and the rights herein granted to Lessee shall terminate. However, if such default or breach is not susceptible of being totally cured within this time period, then such period shall be extended, upon request by Lessee, for such reasonable time, as necessary, provided that Lessee demonstrates continuing good faith, diligent efforts to remedy the default or breach.

(C) Should Lessor at any time terminate this Lease for any default, breach, forfeiture or failure to pay, in addition to any other remedies it may have, Lessor may recover from Lessee all damages it may incur by reason of such default or breach, including the costs of recovering the Leased Premises, reasonable attorney fees and the

value, at the time of such termination, of the royalties which Lessor would be entitled to receive under this Lease for the remainder of its term, all of which sums shall be immediately due and payable by Lessee to Lessor.

(D) In the event this Lease shall terminate for any reason, Lessee's obligation to conduct reclamation activities upon the lands covered by this Lease, as required by Article 33, shall remain in effect until all reclamation of the Leased Premises is complete and until such lands are released from the reclamation bond by the Louisiana Office of Conservation or the equivalent governmental agency.

#### ARTICLE 25 – INSPECTIONS AND AUDITS RIGHTS

(A) Lessor, or any person or entity acting as agent, representative or under the authority of Lessor, shall have the right, at all reasonable times and upon reasonable notice, to examine, audit or inspect all books, records, accounts, statements, sales, invoices, maps, plans, seismic or geologic data, diagrams and other such documents pertaining to Lessee's mining operations on the Leased Premises.

(B) Lessor, or any person or entity acting as agent, representative or under the authority of Lessor, shall have the right, at all reasonable times and upon reasonable notice, to examine, audit or inspect all books, records, programs and accounting systems of Lessee which pertain to ascertaining the amount and volume of Lignite mined or removed from the Leased Premises, and to verify the accuracy of the reports and statements furnished to Lessor. This right to examine, audit or inspect Lessee's records shall also extend to any and all books and records pertaining to the value and sales price of Lignite mined under this Lease. Furthermore, Lessor and/or its authorized agent shall have the right to examine, audit or inspect the books and records of Lessee which pertain to Lessee's costs, expenses and profits from mining operations related to this Lease.

(C) Lessee shall employ methods, programs and techniques which ensure the most accurate and readily discernable figures and calculations reasonably available with regard to its books, records and accounting systems. Lessee agrees to and shall use generally accepted accounting principles consistently applied in the preparation and maintenance of its records.

(D) All audit working papers, records or any information provided by the entity being audited may be subject to Louisiana's Public Records Act and therefore, will be considered confidential only to the extent such records are designated confidential as a matter of law.

(E) In addition to all other audit rights otherwise set forth in this Lease or required by law, if designated by Lessor to manage this Lease, the Board and its staff shall have the same audit rights which the United States of America has under 30 U.S.C. 1713(a) and under La. R.S. 30:136, La. R.S. 47:1542 through 47:1548.

#### ARTICLE 26 – NOTIFICATION

All notices, including requests, claims, demands and other communications between the parties shall be in writing. All notices given hereunder shall be sufficient only if sent by Certified or Registered U. S. Mail or personally delivered to Lessor at \_\_\_\_\_, and to Lessee at \_\_\_\_\_. Lessor or Lessee may, at any time, change the designated place of receiving notice by giving written notice of such change to the other.

#### ARTICLE 27 – PERFORMANCE BOND

Prior to commencing mining operations hereunder, Lessee shall obtain a surety bond or bond for performance pursuant to LAC 43:XV.3901 et seq. or applicable federal law, irrespective of the length of time Lessee has been doing business in this State. A copy of any bond(s) obtained pursuant to this Article or required by either state or federal law shall be furnished to Lessor.

ARTICLE 28 - INSURANCE

(A) Lessee agrees to obtain and maintain insurance covering all persons employed by Lessee and any other individuals providing services and/or working in, on or in connection with the mining operations on the Leased Premises as will fully comply with the provisions of the statutes and regulations of the State of Louisiana and the United States of America, as are now in force or as later may be enacted, covering worker's compensation and occupational disease(s). Additionally, Lessee shall require any subcontractor or independent contractor engaged by Lessee to perform any services related to this Lease to likewise obtain and maintain such insurance on its employees. Lessee agrees to comply with all terms and provisions of any such statutes and regulations, and to indemnify, defend and hold Lessor harmless of and from any liability, responsibility, claims, damages, losses, medical expenses and benefits occasioned by Lessee's failure to so comply.

(B) Lessee agrees to obtain and maintain general liability insurance providing coverage for the coal mining and reclamation activities and mining operations required by this Lease, which coverage shall provide for bodily injury protection of not less than \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per person and \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per occurrence, and property damage coverage of not less than \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per occurrence. Such policy shall extend coverage to premises, structures, products, completed mining operations, contractual liability, underground resources and pollution. Such insurance policy shall not include exclusions for collapse, explosion or underground hazards, and shall not contain a mining limitation endorsement.

(C) Lessee agrees to obtain and maintain vehicle liability insurance for bodily injury, property damage and medical expenses providing coverage for \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per person and \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per occurrence. Lessee shall require all contractors, subcontractors, independent contractors and others providing services related to this Lease to maintain such coverage.

(D) These policies shall be maintained in full force and effect during the term of this Lease or any renewal or extension thereof, including completion of all reclamation operations required hereby. These policies shall include a rider requiring that the insurer timely notify Lessor whenever substantive changes are made in the policy, including any termination or failure to renew. Lessor shall be named as an additional insured on all such policies.

ARTICLE 29 – INDEMNIFICATION AND HOLD HARMLESS

(A) Lessee, its successors, transferees and assigns, shall indemnify, defend and hold harmless Lessor, the Louisiana State Mineral and Energy Board and the Louisiana Department of Natural Resources, their officers, representatives, agents and employees, except as limited by Louisiana Civil Code Article 2004, of and from any and all liability, responsibility, claims, damages, losses, awards, costs and fees, including reasonable attorney fees, caused by, arising under or resulting from, directly or indirectly, this Lease or any contract, lease, permit or license granted to any individual or entity for any purpose related to this Lease.

(B) Lessee, its successors, transferees and assigns, shall indemnify, defend and hold harmless Lessor, the Louisiana State Mineral and Energy Board and the Louisiana Department of Natural Resources, their officers, representatives, agents and employees, except as limited by Louisiana Civil Code Article 2004, of and from any and all liability, responsibility, claims, damages, losses, awards, costs, fees (including reasonable attorney fees), and penalties (civil or criminal) caused by, arising under or resulting from, directly or indirectly, any and all activities and operations associated with, related to or required by this Lease. This indemnification, defense and hold harmless obligation extends to any unnatural conditions in, upon or under the Leased Premises and to the cleanup costs arising out of or in any way related to Lessee's use, disposal, transportation, generation, sale and location of substances, hazardous or otherwise, in, upon or affecting the Leased Premises. This indemnification, defense and hold harmless obligation also extends to actions of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees and invitees.

(C) Lessee, its successors, transferees and assigns, shall be responsible for any pollution or contamination of air, lands or water resulting from Lignite and Lignite products, slack, dirt, slate and other waste materials deposited on

the Leased Premises and/or arising or resulting from Lessee's activities and operations hereunder. Lessee, its successors, transferees and assigns, shall indemnify, defend and hold harmless Lessor, the Louisiana State Mineral and Energy Board and the Louisiana Department of Natural Resources, their officers, representatives, agents and employees, except as limited by Louisiana Civil Code Article 2004, of and from any and all liability, responsibility, claims, damages, losses, awards, costs, fees (including reasonable attorney fees), and penalties (civil or criminal) caused by or resulting from, directly or indirectly, any such pollution or contamination.

#### ARTICLE 30 – FORCE MAJEURE

(A) If, because of a force majeure occurrence, Lessee is prevented from performing any of its obligations under this Lease or satisfying any of the conditions of this Lease, including those obligations and conditions which, if unfulfilled, may limit the term of this Lease or cause termination thereof, then such obligations and conditions may be suspended, and any time or date (including those on the term of this Lease if production in paying quantities is interrupted by such force majeure) extended to the extent Lessee is so prevented for the period of such force majeure.

(B) The term “Force Majeure”, as used herein, means any cause beyond the reasonable control of Lessee including, but not limited to: (i) acts of God, including the elements and floods; (ii) labor disputes, labor shortages, insurrections or riots; (iii) material shortages, equipment shortages, breakdowns of or damage to equipment or facilities, interruption of transportation of coal (including rail car shortages), embargoes, fires, explosions and casualties not attributable to Lessee; (iv) an administrative delay beyond normal agency processing timeframes in any approval, permit or other authorization by a governmental agency which is not caused by Lessee’s actions (provided Lessee has appropriately responded to all requested information and deficiencies made known to it); (v) newly enacted or amended legislation or administrative regulations or changes in the interpretation thereof; (vi) orders of civil or military authorities or of anybody having jurisdiction over the parties or the Leased Premises; and (vii) extraordinary circumstances not attributable to and not reasonably foreseeable by a prudent operator, including delays caused by litigation challenging any permit or approval of Lessee’s right to conduct mining activities or to access coal, whether such situations affect Lessee directly or by reason of their effect on a subsidiary, customer, contractor, shipper or supplier, which wholly or partially prevent Lessee from exercising mining rights or the mining or delivery of coal at a reasonable profit; *provided* that an act, event or occurrence shall not constitute a force majeure occurrence if it could have been prevented or overcome by Lessee through the exercise of such diligence and reasonable care as would be exercised by a reasonably prudent lessee or operator under similar circumstances.

(C) The examples enumerated above are by way of example and not limitation. Force majeure shall not include any condition arising out of business risks such as fluctuations in prices, sales or costs, including costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; receipt of governmental approvals or permits; or inability to obtain sufficient sales.

(D) Lessee shall diligently attempt to remedy, as soon as possible, any force majeure occurrence and mitigate its effects upon the implementation of and compliance with the requirements of this Lease and on the payments due Lessor hereunder.

(E) In order for the effects of the force majeure occurrence to be recognized, Lessee shall:

- (1) Provide Lessor reasonable, timely written notice of the occurrence of the force majeure (notice given beyond three months of the occurrence shall be deemed unreasonable barring consequential extenuating circumstances). If Lessor has delegated responsibility for managing this Lease to the Board, such notice shall likewise be provided to the Office of Mineral Resources;
- (2) Provide an affidavit which contains the date and nature of the force majeure occurrence, its effects on preventing continuation of mining operations, the steps being taken to mitigate and eliminate those effects, and an estimated time for resuming mining operations; and
- (3) Provide evidence that Lessee is diligently, reasonably and in good faith attempting to mitigate and eliminate the effects of the occurrence and resume mining operations.

(F) Notwithstanding any provision within this Article, Lessee may not suspend the payment of the annual rental required under this Lease. Further, this Lease shall be subject to termination unless all payments required hereby are timely paid by Lessee.

(G) Evidence of the existence of a force majeure occurrence must be presented to Lessor via the above noted documents. The burden of proof that such event has occurred, adversely affected Lessee's mining operations and is ongoing lies solely with Lessee, and the approval of any extension to the terms of this Lease, based upon the existence of such occurrence, is within the sole discretion of Lessor upon review of the information and evidence so provided by Lessee.

#### ARTICLE 31 – GOVERNING LAWS

Lessee agrees that the laws of the State of Louisiana shall govern and be controlling and binding upon the rights, conditions and obligations herein granted. Furthermore, Lessee agrees that the courts of the State of Louisiana shall be the proper forum, unless such suit is required to be filed in or is removed to a federal court in this state.

#### ARTICLE 32 – NO WARRANTY OF TITLE

The rights herein leased are limited to such as Lessor possesses and has the lawful right to lease, and to such as Lessor owns under the deeds covering said properties or said Lignite and appurtenant rights, and it is agreed that Lessor does not warrant its title to the Leased Premises or any portion thereof. Notwithstanding any provision to the contrary in this Lease, this Lease is granted and accepted without any warranty of title and without any recourse against Lessor whatsoever, either express or implied, it being expressly agreed that Lessor shall not be required to return any payments received hereunder or be otherwise responsible to Lessee therefor. Lessee represents that it has investigated the title and is satisfied with such title as Lessor may have. Lessor hereby disclaims any covenant of quiet enjoyment or peaceful possession of the leased property.

#### ARTICLE 33 - RECLAMATION

(A) Lessee in good faith shall present a commercially reasonable reclamation plan for the Leased Premises to the Louisiana Office of Conservation that is mutually acceptable to Lessor and Lessee, with both parties acknowledging that final approval of any such plan lies solely with the Louisiana Office of Conservation. Notwithstanding any such plan and/or approval, Lessee shall return the Leased Premises to approximately its original contour, as practicable, and shall not, without Lessor's express written consent:

- (1) Permanently divert or eliminate any rivers, streams, bayous, lakes, ponds and other water bodies located upon the Leased Premises or within the vicinity thereof; and
- (2) Permanently alter or eliminate the natural drainage patterns which existed on the Leased Premises prior to commencement of mining operations; and
- (3) Permanently alter, impair or eliminate any pre-existing roads, access or passage.

Lessee agrees in good faith to use reasonable efforts, at the request of Lessor, to seek any amendment to an approved reclamation plan that does not materially increase Lessee's costs of reclamation, but Lessor recognizes that final approval of any such amendment lies solely with the Louisiana Office of Conservation.

(B) Lessee agrees that the obligation to reclaim the Leased Premises shall be in addition to and completely independent of Lessee's, its successors, transferees and assigns obligation to pay royalties and other sums as required herein. Lessee, its successors, transferees or assigns, agrees that it is responsible for reclamation of the Leased Premises and for obtaining all necessary permits and authorizations for its reclamation activities.

(C) Lessee agrees to plant trees and grass in accordance with the recommendations of Lessor and restore any pond dug on the Leased Premises in accordance with specifications of Lessor should Lessor request such reclamation efforts; provided, however, that any such request shall comply with the minimum requirements of the governmental agency(s) supervising and approving Lessee's reclamation plan.

(D) Lessee shall survey and reestablish property lines of Lessor upon completion of mining operations by monumenting the corners with concrete markers topped with metal plates indicating location (Section, Township, Range and quarter section corner). Each corner monument is to be witnessed with two properly marked witness monuments to be placed precisely on the two different property lines and indicating the direction and distance to the corner. Lessee shall provide to Lessor a certified reproducible plat of the tract, including State Plane Coordinate grid bearings for each line, along with copies of all field notes. Also, at intervals not to exceed 200 feet along the property lines, Lessee shall install eight (8') foot carsonite (or equivalent) posts with boundary marker decals.

(E) Upon termination or expiration of this Lease, Lessee shall have 180 days in which to remove from the Leased Premises all Lessee's equipment, supplies, buildings, facilities, other improvements and personal property. If such right of salvage is not timely exercised, Lessee shall be subject to and liable for any costs or expenses of any kind incurred by Lessor in removing or disposing of Lessee's equipment, supplies, buildings, facilities, other improvements and personal property, but under no circumstance shall title to said salvage transfer to or vest in Lessor, nor shall it be deemed forfeited by Lessee to Lessor.

(F) Notwithstanding any provision of this Lease to the contrary, no release, termination or expiration of this Lease shall in any way release or discharge Lessee's obligation of reclamation required hereby and under the Louisiana Surface Mining and Reclamation Act. Lessee agrees that it will also perform the reclamation as required by the Louisiana Surface Mining and Reclamation Act upon any part of the Leased Premises that is used for mining operations on other lands.

(G) At the expiration and termination of this Lease, Lessee shall begin paying Lessor an annual "Reclamation Rental" payment of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per acre per year for the right to access and use the surface of the Leased Premises, in connection with Lessee's reclamation obligations as set forth herein. This Reclamation Payment shall be due annually by January 31 of each year and shall be paid by Lessee through completion of its reclamation obligations and acceptance and release of Lessee's reclamation responsibilities by the Louisiana Office of Conservation or equivalent government entity.

#### ARTICLE 34 - COAL BED GAS

(A) Lessee may remove, vent or flare coal bed gas from the Lignite formation being mined only if doing so is as a waste product, a necessary safety procedure or directly related to the normal physical process of mining Lignite. All venting or flaring of coal bed gas must comply with all applicable federal and state laws and regulations.

(B) If Lessee sells the coal bed gas, royalties payable to Lessor shall be \_\_\_\_\_ (\_\_\_%) percent of the value of any coal bed gas sold. If Lessee sells the coal bed gas to an independent party under an arms' length transaction, prudently negotiated under the facts and circumstances existing at the time of execution, the royalty value of the gas, shall be calculated based upon the price received by Lessee in accordance with the transaction. If the transaction made with the independent party was not prudently negotiated, the royalty value of such gas shall be calculated based upon the natural gas spot price at the Henry Hub terminal in Louisiana, US Dollars per Million Metric British Thermal Unit, at the time of the sale.

(C) If Lessee uses or utilizes the coal bed gas in furtherance of its mining operations, Lessee shall pay Lessor royalties of \_\_\_\_\_ (\_\_\_%) percent of the value of such gas calculated as the fair market value at the time of production or equal to the sale price Lessee would have received for the sale of the gas of like kind and quality being sold by an independent party in the same market area.

(D) Except as expressly permitted herein, Lessee shall not make any deduction whatsoever for the costs of any mining operations, process, facility or other item considered a production function at the time such gas is produced.

(E) In no event shall the royalty paid to Lessor pursuant to this Article be less than the minimum royalty requirements set forth within La. R.S. 30:127. Upon completion of actual mining operations on the Leased Premises, Lessee shall determine whether the production royalties paid to Lessor, satisfy the minimum required. If Lessee determines that additional royalties are owed, the sum required to equal the minimum statutory requirement shall be payable by Lessee to Lessor within six (6) months of completion of mining operations on the Leased Premises.

### ARTICLE 35 – WATER RIGHTS

(A) This Lease grants to Lessee Lessor's right to use ground or surface water for the mining operations being conducted on the Leased Premises and on Neighboring Lands in connection with said mining operations. Lessee may not interfere with any water usage rights owned or operated by Lessor or any other person existing at the time of execution hereof.

(B) Lessee agrees to abide by all rules and regulations promulgated by the State of Louisiana related to the development, use and maintenance of water rights for the mining operations being conducted on the Leased Premises and on Neighboring Lands in connection with Lessee's mining operations as stated herein.

(C) Lessee agrees that Lessor's water rights granted hereby are for the sole purpose of Lessee's mining operations stated herein, and any ground or surface water obtained or obtainable by Lessee shall not be sold or otherwise disposed of by Lessee.

(D) Lessee shall have the right to use a dewatering system to remove excess water from the Leased Premises throughout the duration of its mining operations. Prior to installing and operating the dewatering system, Lessee first must obtain all required permits and approvals from the appropriate state, local and federal authorities. During its mining operations, Lessee shall fully comply with all environmental laws and regulations with regard to the discharge of mined water.

### ARTICLE 36 – RELINQUISHMENT AND RELEASE

(A) Lessee, at any time, may relinquish all or any portion of the Leased Premises previously mined upon completion of its reclamation obligations under Article 33 by filing a written Notice of Relinquishment with Lessor. Lessor may disapprove any such relinquishment if: Lessee has failed to pay all rentals, royalties or other sums due and owing to Lessor; Lessee is not in full compliance with all terms and provisions of this Lease; relinquishment would, in Lessor's reasonable determination, cause waste of economically recoverable Lignite; or the Office of Conservation has not accepted Lessee's reclamation and released Lessee's required performance bond. Upon approval, relinquishment shall relieve Lessee of all future rental obligations as to the portion of the Leased Premises relinquished effective as of the date of recordation of the Release required hereby, but shall not relieve Lessee or any successor, assign or sublessee, of any other obligation arising under this Lease or obligation arising under any Commissioner of Conservation ruling or regulation.

(B) Lessee, at any time and from time-to-time, may execute and deliver to Lessor a Notice of Release covering any portion of the Leased Premises not previously mined, thereupon terminating this Lease as to such designated portion of the Leased Premises. Lessor may disapprove any such release if Lessee has failed to pay all rentals, royalties or other sums due and owing to Lessor or if Lessee is not in full compliance with all other terms and provisions of this Lease. Upon approval, such Release shall relieve Lessee of all future rental obligations as to the portion released effective as of the date of recordation of the Release required hereby, but shall not relieve Lessee, or any successor, assign or sublessee, of any obligation already accrued under this Lease or obligation arising under any Commissioner of Conservation ruling or regulation.

(C) Within ninety (90) days after expiration or termination by its own terms of this Lease or any portion thereof, or the approval by Lessor of a Notice of Relinquishment or Notice of Release pursuant to Section (A) or (B) of this Article, either during or after the Primary Term, Lessee shall execute and record a formal Release evidencing such expiration, termination, relinquishment or release, and provide Lessor a copy thereof properly certified by the Recorder(s) of the parish(es) in which the Leased Premises is located.

(D) In the event Lessee fails to timely comply with the requirements of Section (C) hereof, Lessee shall be liable for the reasonable attorney fees and costs incurred by Lessor in obtaining such Release, and for damages, if any, resulting from such failure. Additionally, upon such failure to execute and record an appropriate Release as required by Section (C), Lessee shall be liable, after notice, for the payment of liquidated damages in the amount of One Hundred (\$100.00) Dollars per day for each day of noncompliance after expiration of the ninety (90) day period.

(E) Lessee may not relinquish nor release parcels smaller than a quarter-quarter section or surveyed lot.

(F) Lessee shall surrender to Lessor the portion(s) of the Leased Premises relinquished or released in accordance with this Article upon recordation of the Release required hereby.

#### ARTICLE 37 – SPECIAL PROVISIONS

(A) Lessor makes no warranties as to the condition of the Leased Premises, and Lessee accepts the leased property “AS IS”. Lessor has no obligation to make any repairs, additions or improvements to the property leased for the purpose of readying it or rendering it more suitable for the purposes intended by this Lease.

(B) The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Lease.

(C) Lessee acknowledges and agrees that the rule of construction construing the terms and provisions of an instrument against the drafting party is not and shall not be applicable to this Lease.

#### ARTICLE 38 – LESSOR’S RIGHTS NOT WAIVED

No delay or omission of Lessor to exercise any right, remedy or lien accruing or otherwise available upon any default or breach by Lessee of any provision of this Lease shall be construed as a waiver of any preceding or succeeding default or breach of the same or any other provision of this Lease, nor shall the acceptance of rentals or royalties by Lessor during any period in which Lessee is in default or breach be deemed a waiver of such default or breach.

#### ARTICLE 39 – TAXES

Lessee shall pay all taxes (including property and severance taxes), levies, assessments and other charges imposed by the State of Louisiana or any of its political subdivisions, municipalities or the United States of America upon the Leased Premise during the term of the Lease or any renewals or extensions thereof.

#### ARTICLE 40 – SEVERABILITY

This Lease sets forth the full terms of the agreement between the parties. If any section of this Lease is found to be invalid or unenforceable for any reason, such section shall be severed from the Lease and the remainder of the terms and conditions of this Lease shall be binding on the parties.

#### ARTICLE 41 - AMENDMENT

This Lease represents the entirety of the agreement between Lessor and Lessee, and any change, modification or amendment to the terms and provisions hereof requires a formal writing voluntarily signed and dated by both parties.

#### ARTICLE 42 – EMINENT DOMAIN

If the whole or a substantial part of the Leased Premises should be taken by right of eminent domain by any legal entity vested with such power and authority, then when possession is taken by or title to the Leased Premises or any part thereof vests in such legal entity, whichever occurs first, the term hereof and all rights of Lessee afforded hereby with regard to the expropriated property shall immediately terminate and Lessee shall have no claim against Lessor for the value of the unexpired term, and Lessee shall not be entitled to any part of the condemnation award or any consideration in lieu thereof received by Lessor.

**SIGNATURE PAGES FOLLOW**

THUS DONE, READ AND SIGNED by the parties hereto in the presence of the undersigned competent witnesses and Notaries Public on the dates indicated.

WITNESSES to the signature of Lessor:

\_\_\_\_\_  
Print/Type Name: \_\_\_\_\_

STATE MINERAL AND ENERGY BOARD:

\_\_\_\_\_  
Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

FOR AND ON BEHALF OF:

\_\_\_\_\_  
LESSOR

\*\*\*\*\*

WITNESSES to the signature of Lessee:

\_\_\_\_\_  
Print/Type Name: \_\_\_\_\_

\_\_\_\_\_  
LESSEE

\_\_\_\_\_  
Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

\*\*\*\*\*

**WITNESS ACKNOWLEDGMENT FOR THE STATE MINERAL AND ENERGY BOARD**

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, the undersigned authority, personally came and appeared \_\_\_\_\_ who, by me being first duly sworn, did depose and say:

That he/she is one of the witnesses to the execution of the foregoing instrument and that he/she saw \_\_\_\_\_ sign said instrument as the authorized representative of the State Mineral and Energy Board for and on behalf of \_\_\_\_\_, Lessor, in the presence of appearer and \_\_\_\_\_, the other subscribing witness.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20XX.

\_\_\_\_\_  
Name: \_\_\_\_\_, Appearer

\_\_\_\_\_  
Print Name: \_\_\_\_\_, # \_\_\_\_\_  
Notary Public

\*\*\*\*\*

**WITNESS ACKNOWLEDGMENT FOR LESSEE**

STATE OF \_\_\_\_\_

PARISH OF \_\_\_\_\_

Before me, the undersigned authority, personally came and appeared \_\_\_\_\_ who, by me being first duly sworn, did depose and say:

That he/she is one of the witnesses to the execution of the foregoing instrument and that he/she saw \_\_\_\_\_ execute said instrument as \_\_\_\_\_ of \_\_\_\_\_, Lessee, in the presence of appearer and \_\_\_\_\_, the other subscribing witness.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20XX.

\_\_\_\_\_  
Name: \_\_\_\_\_, Appearer

\_\_\_\_\_  
Print Name: \_\_\_\_\_, # \_\_\_\_\_  
Notary Public