

RESOLUTION NO. 2009-63

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN AN ADDENDUM TO A CONTRACT BETWEEN THE CITY OF KENT AND CUTTER OIL COMPANY, DATED DECEMBER 17, 2008 FOR OIL & GAS DRILLING PURPOSES TO RELOCATE THE CITY'S WELL HEAD AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent has entered into an oil and gas drilling contract dated December 17, 2008 with Cutter Oil Company; and

WHEREAS, the parties agree to relocate the City's well head on the City's property; and

WHEREAS, time is of the essence.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

**SECTION 1.** That Kent City Council hereby authorizes the City Manager, or his designee to execute the Addendum with Cutter Oil Company for the oil and gas drilling agreement dated December 17, 2008, attached hereto as Exhibit "A".

**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Resolution is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 06/17/2009  
DATE

\_\_\_\_\_  
MAYOR AND PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

I hereby certify that Resolution No. 2009- 63 was duly enacted this 17 day of June, 2009, by the Council of the City of Kent, Ohio.

\_\_\_\_\_  
CLERK OF COUNCIL

**EXHIBIT "A"**  
**OIL AND GAS LEASE**

THIS AGREEMENT, made this day \_\_\_\_\_ of \_\_\_\_\_, 2009, between  
The City of Kent

325 South Depeyster Street, Kent Ohio 44240

Parcel No. 17-015-00-00-016-001

Lessor, and **CUTTER OIL COMPANY, 9270 Cedar Valley Road, West Salem, OH 44287**, Lessee, does witness:

1. Lessor, in consideration of the sum of One and no/100 Dollars (\$1.00), the receipt of which is hereby acknowledged and of the covenants and agreements herein contained, does hereby grant unto Lessee all of the oil and gas and the constituents of either, in and under the lands hereinafter described together with the exclusive right to explore, drill and operate for, produce, and market oil and gas and their constituents, the right to lay pipeline to transport oil and gas and their constituents from the lands leased hereunder and other lands, the right to build and install such roads, tanks, equipment and structures ancillary thereto to carry on operations for oil and gas, together with the right to enter thereon at all times and to occupy, possess and use for such purposes. The right to enter upon, occupy and possess said lands as necessary and convenient for the purposes described herein shall be limited to egress points and active areas of the well and tank facilities identified herein.

2. This lease covers the premises situated in Lots 15 and 22, City of Kent, County of Portage, State of Ohio containing 5.8 acres, more or less, being all of the land owned by Lessor in said township or adjoining said tract, bounded substantially as follows:

On the North by lands of Groves / Horning Road  
On the East by lands of Bullock / Stevenson  
On the South by lands of DSMP-Kent LLC  
On the West by lands of The Tell Real Estate Trust

3. This lease shall remain in force for a primary term of 3 years and as long thereafter as operations described above are being conducted on the premises; or oil or gas is produced, or is capable of being produced.

4. The royalties to be paid by Lessee are:

(a) On oil, a proportional share of fifteen percent (15%) as Lessor's acreage bears to the total acreage in the unit, of that produced and saved from said land, same to be delivered at the wells or to the credit of the Lessor;

(b) On gas of whatsoever nature or kind produced and sold, a proportional share of fifteen percent (15%) as Lessor's acreage bears to the total acreage in the unit, of the net proceeds realized by Lessee from the sale thereof after deduction of reasonable gathering, treatment and compression costs;

(c) on gas of whatsoever nature or kind produced and used by Lessee (off the premises) and not sold, a proportional share of fifteen percent (15%) of the highest price paid at the time of use for natural gas by a public utility purchasing gas in the same county. The royalties shall be paid by Lessee within 20 days after Lessee receives payment therefore. In the event all wells on the leased property are shut in for any reason for a continuous period of six months, then on or before the end of each calendar year during which such wells are shut in, Lessee shall pay Lessor a shut in payment of One Dollar (\$1.00) per year per acre, prorated for the period such wells are shut in, and this lease shall continue in full force and effect as provided in paragraph 3 so long as such payments are made.

Lessor shall also receive from Lessor a spud fee in the amount of Ten Thousand and no/100 (\$10,000.00) to be paid prior to commencement of drilling activities.

5. If operations for a well are not commenced on the premises within 24 months from the date of this lease, this lease shall terminate as to both parties unless Lessee on or before that date shall payer tender to Lessor the sum of \$500.00, which shall operate as a rental and cover the privilege of deferring the commencement of operation for a well for six (6) months from said date. Such rentals may, at the option of Lessee, be paid quarterly or annually. This and all other payments due under this lease shall be made by cash or check and shall be deemed tendered when either delivered to Lessor or any of them or mailed to Lessor or any of them at the above address. This lease shall not terminate for failure to pay said rentals unless Lessor gives Lessee written notice of said failure and the rental due is not paid within ten days of the receipt of said notice by Lessee. Any delay after the well is in production shall be subject to the same terms as above.

6. If Lessor owns a lesser interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals provided for herein shall be paid to the Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee. In the event a well drilled hereunder is a dry hole and is plugged according to law, this lease shall not terminate if within twelve (12) months from the date of the completion of the plugging of such well Lessee shall commence another well or if Lessee pays delay rental as hereinabove provided.

7. Lessee shall lay a line to one gas well on the leased premises and connect at the location in the manner designated by Lessee on said land and Lessor may take annually up to 300,000 cubic feet of free gas produced from said well for use for heat and light in one dwelling house located on said land, at Lessor's risk and Lessee's expense, subject to the use and the right of abandonment and surrender of Lessee. Lessee shall have the right to use free of cost, gas, oil, and water found on said land for its operations thereon, except water from the wells of Lessor. When requested by Lessor, Lessee shall bury pipelines below normal plow depth in cultivated

areas and shall pay for damaged caused by its operations to growing crops and to fences on said land. No well shall be drilled nearer than 100 feet to the house or barn now on said premises, without the written consent of Lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, and any other structures or improvements placed on said land by Lessee, including the right to draw and remove all casing.

8. The rights of either party hereunder may not be assigned in whole or in part. No change in ownership of the land or the rentals or royalties shall be binding on the Lessee until Lessee has received notice and has been furnished with the written transfer document or certified copy thereof. In the event this lease shall be assigned as to a part or as to parts of the above described lands, and the holder or owner of any such parts shall fail or make default in the payment of its proportionate part of the delay rental, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said land upon which Lessee or any assignee hereof shall make due payment of said rentals.

9. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the said lands and production and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself from any payments due hereunder.

10. When drilling, reworking, production, or other operations are delayed or interrupted by force majeure, this is by storm, flood, rain, snow, or other act of God, fire, war, rebellion, insurrection, riot, strikes, difference with workmen, or failure of carriers to transport or furnish facilities for transportation, or as the result of any law, judgment, order, rule, regulation, requisition or necessity of any government, Federal or State, or Local, or as a result of any cause whatsoever beyond the control of lessee, the time of such delay or interruption shall not be counted against lessee, anything in this lease to the contrary notwithstanding, but this lease shall be extended for a period of time equal to that during which Lessee is so prevented from conducting such drilling or other operations on or producing oil, gas, casing head gas, condensate or other minerals from the premises. This lease shall be subject to governmental rules or regulations, and this lease shall not be terminated, in whole or in part, nor shall Lessee be held liable in damages, for failure to comply herewith, if compliance is prevented by, or such failure is the result of, any such law, rule or regulation. Lessor grants Lessee the authority to compromise or settle any disputes or conflicts with governmental agencies, public utilities or any entity relating to this lease or production there from and related contracts.

11. Lessee is hereby granted the right at any time to utilize the leased premises or any portion thereof, as to any or all strata or stratum, with any other lands for the production of oil and/or gas and/or the constituents of either. No such unit shall embrace more than 160 acres; provided that if any governmental regulations shall prescribe a spacing pattern for the development of the field, then any such unit may embrace as much additional acreage as may be so prescribed. Operations upon and production from the unit shall be treated as if such operations were upon or such production were from the leased premises whether or not the well or wells are located thereon, provided, however, that Lessee shall pay Lessor, in lieu of other royalties thereon, only such proportion of the royalties stipulated in paragraph 4 as the amount of Lessor's acreage placed in the unit, or Lessor's royalty interest therein on an acreage basis, bears to the total acreage in the unit, and provided further that Lessor may take free gas as provided in paragraph 7 and hereof from a unit well only if said well is located on lands actually owned by Lessor.

12. Following completion of any producing well, Lessee shall:  
**(a)** Fill all pits used during drilling which are not required either for production purposes or by any government regulations;  
**(b)** Remove all concrete bases, drilling supplies and drilling equipment;  
**(c)** grade, plant and seed the area disturbed by drilling that is not required in production of the well, where necessary to bind the soil and prevent substantial erosion and sedimentation.

13. Lessee may at any time surrender all or any part of this lease by delivering or mailing a release thereof to Lessor, or by placing a release of record in the proper county. After a partial surrender, the rental and shut in payments specified above shall be proportionately reduced on acreage basis.

14. This lease and all its terms, conditions and stipulations shall extend to and be binding on all heirs, personal representatives, successors and assigns of Lessor and Lessee. This lease contains all of the agreements and understandings of Lessor and Lessee respecting the subject matter hereof and no implied covenants or obligations, or verbal representations or promises, have been made or relied upon by Lessor or Lessee supplementing or modifying this lease or as an inducement thereto.

15. Lessee will test the water wells within 1000 feet from the well that is being drilled. The Lessor will receive a copy of the water well testing before the commencement of drilling.

**IN WITNESS WHEREOF, the undersigned have executed this instrument on the date appearing above.**

\_\_\_\_\_  
\_\_\_\_\_  
STATE OF OHIO  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
SOCIAL SECURITY NUMBER  
\_\_\_\_\_  
SOCIAL SECURITY NUMBER  
\_\_\_\_\_  
SOCIAL SECURITY NUMBER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_.

NOTARY PUBLIC

CORPORATE ACKNOWLEDGEMENT

STATE OF OHIO

COUNTY OF \_\_\_\_\_

On this \_\_\_\_, day of \_\_\_\_\_, 2008, before me personally came \_\_\_\_\_ to me personally known who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_, \_\_\_\_\_, that he/she is the \_\_\_\_\_ of The City of Kent, the corporation described in and which executed the within instrument, that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

NOTARY PUBLIC