STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff, Case No. 2014-140827-CH

v Hon. Judge Alexander

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation, and
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company,

Defendants.
_____/

DEFENDANT JORDAN DEVELOPMENT COMPANY'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) AND MCR 2.116(C)(8)

LOZEN, KOVAR & LOZEN, P.C. Timothy J. Lozen (P37683) Matthew C. Lozen (P73062) Attorneys for Plaintiff 511 Fort Street, Suite 402 Port Huron, MI 48060 (810) 987-3970	HAFELI, STARAN, & CHRIST, P.C. John D. Staran (P35649) Attorney for Defendant City of Rochester Hills 2055 Orchard Lake Road Sylvan Lake, MI 48320 (248) 731-3088 jstaran@hsc-law.com THE MIKE COX LAW FIRM PLLC Michael A. Cox (P43039) Danila V. Artaev (P74495) Attorneys for Defendant Jordan Development Company, LLC The Mike Cox Law Firm PLLC 17430 Laurel Park Drive North Suite 120 E Livonia, MI 48152 mc@mikecoxlaw.com dartaev@mikecoxlaw.com

Defendant Jordan Development Company, LLC, ("Jordan"), by its attorneys, The Mike Cox Law Firm PLLC, moves for summary disposition under MCR 2.116(C)(5) and MCR 2.116(C)(8) of plaintiff Don't Drill the Hills, Inc.'s, ("DDH") Complaint. In support of this motion, Jordan relies on the accompanying brief and states as follows:

1. Plaintiff DDH is a Port Huron based non-profit corporation that was formed April 24, 2014 "for purposes which include taking actions to oppose oil and gas drilling and leasing in and/or by the City of Rochester Hills and related actions." (Compl ¶1.)
2. DDH seeks a declaratory judgment against the City of Rochester Hills and Jordan to nullify a subsurface oil and gas lease located underneath city-owned parks and a cemetery.
3. DDH claims that the subsurface oil and gas lease violates Section 11.8 of the City Charter and MCL 117.5 and should be declared "void as *ultra vires*." (Compl ¶18.)
4. DDH requests a declaratory judgment, but does not allege an "actual controversy" as required under MCR 2.605 and thus has no standing. There is no "actual controversy" because declaratory judgment is not necessary to guide DDH's future conduct to preserve any legal rights.
5. Rather, DDH seeks to interfere with a contract between the City of Rochester Hills and Jordan—a contract to which Plaintiff DDH is not a party or a beneficiary.
6. Where the plaintiff does not meet the "actual controversy" requirement, the plaintiff must allege a "specific cause of action at law," or "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Duncan v Michigan*, 300 Mich App 176, 192; 832 NW2d 761 (2013).
7. DDH has not alleged a specific cause of action at law and has not pled an injury distinct from the "citizenry at large"—or any actual injury at all. Accordingly, it does

not have standing to bring the current action and summary disposition is appropriate under MCR 2.116(C)(5).

8. Although DDH's Complaint must be dismissed for lack of standing under MCR 2.116(C)(5), the Complaint also fails to state a claim and should be dismissed under MCR 2.116(C)(8). The subsurface oil and gas lease with Jordan does not violate any provision of the City Charter or state law.
9. Section 11.8 of the City Charter does not prohibit the City from severing the surface estate from the oil and gas interests and entering into a subsurface oil and gas lease that does not alter the public recreation or conservation character of the park.[1]
10. There is no dispute the City of Rochester Hills continues to retain the surface estate. DDH does not allege that its members or the citizenry at large would be unable to use the parkland. Indeed, the lease, attached as Ex. A to the Complaint, expressly denies Jordan access to the surface of the parks. Rather, the lease contemplates that Jordan has the right, but not the obligation to drill horizontally into the subsurface estate.
11. In other words, the citizens of Rochester Hills will continue to enjoy the park space to the same extent and in the same manner as before the lease. DDH cannot and does not allege that the subsurface oil and gas lease impedes public recreation or conservation.
12. Additionally, the City of Rochester Hills City Council already considered whether the lease would violate Section 11.8. The council and the mayor approved the lease only after a written opinion by the City's attorney that the lease did not violate Section 11.8 of the City Charter.
13. The Home Rule Cities Act, MCL 117.5(1)(e), prohibits a city "to *sell* a park, cemetery, or any part of a park or cemetery, except where the park is not required under an official master plan of the city…unless approved by a majority of the electors voting on the question at a general or special election." (emphasis added).

[1] Section 11.8 only applies to "parks" and not to cemeteries. Thus, the City Charter and Count I have nothing to do with the cemetery portion of the lease.

14. The contract between the City of Rochester Hills and Jordan is a bona-fide lease, not a sale of property. The lease is for a term of years—five years with a two year renewal option. The City of Rochester Hills continues to own the subsurface oil and gas estate subject to the exploration and extraction rights in the lease.
15. The Legislature did not include leases on the list of prohibited acts. State law clearly distinguishes between real estate sales and subsurface oil and gas leases. Accordingly, an oil and gas lease is not a prohibited sale under MCL 117.5(1)(e).
16. Additionally, Michigan comprehensively regulates oil and gas drilling and production in the State. State law, rules, and policy that encourage natural resource development preempt local regulations.
17. Attorneys for the City of Rochester Hills concur with the relief sought in this motion.
18. Attorneys for Jordan contacted plaintiff's attorney to seek concurrence in this motion, but concurrence was not obtained.

WHEREFORE, Jordan respectfully requests that this Court grant summary disposition in its favor under MCR 2.116(C)(5) and MCR 2.116(C)(8), dismiss DDH's Complaint with prejudice, award costs and attorney fees, and further requests that this Court award such other relief as it deems just and equitable.

Respectfully submitted,

THE MIKE COX LAW FIRM PLLC

/s/ Danila V. Artaev (P74495)

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Dated: June 11, 2014

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CITY OF ROCHESTER HILLS,
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DEFENDANT JORDAN DEVELOPMENT COMPANY'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) AND MCR 2.116(C)(8)

LOZEN, KOVAR & LOZEN, P.C. Timothy J. Lozen (P37683) Matthew C. Lozen (P73062) Attorneys for Plaintiff 511 Fort Street, Suite 402 Port Huron, MI 48060 (810) 987-3970	HAFELI, STARAN, & CHRIST, P.C. John D. Staran (P35649) Attorney for Defendant City of Rochester Hills 2055 Orchard Lake Road Sylvan Lake, MI 48320 (248) 731-3088 jstaran@hsc-law.com THE MIKE COX LAW FIRM PLLC Michael A. Cox (P43039) Danila V. Artaev (P74495) Attorneys for Defendant Jordan Development Company, LLC The Mike Cox Law Firm PLLC 17430 Laurel Park Drive North Suite 120 E Livonia, MI 48152 mc@mikecoxlaw.com dartaev@mikecoxlaw.com

INTRODUCTION

Plaintiff Don't Drill the Hills, Inc., ("DDH") is a Port Huron based non-profit corporation organized April 24, 2014 for "taking actions to oppose oil and gas drilling and leasing in and/or by the City of Rochester Hills and related actions."[1] (Compl ¶1.) Although DDH alleges no actual controversy, legal cause of action, or unique injury, DDH seeks declaratory judgment to second-guess the decision of the duly elected Mayor and City Council to enter into a subsurface oil and gas lease with Defendant Jordan Development Company, LLC, ("Jordan"). DDH is not a party to or a beneficiary of the lease, but DDH seeks to nullify the contract, and requests this Court declare the lease void under Section 11.8 of the City Charter and the Home Rule Cities Act, MCL 117.5(1)(e).

DDH must allege an "actual controversy" for declaratory judgment under MCR 2.605. But DDH does not plead an essential element: "Future conduct" that requires guidance from this Court to preserve DDH's legal rights. DDH alleges purely hypothetical and vague harms to abstract interests that are insufficient to state an "actual controversy." DDH also fails to allege a specific right at law or even to allege the necessary unique injury that is not shared by all citizens. DDH has no standing and its Complaint should be dismissed under MCR 2.116(C)(5).

Further, DDH does not state a claim for relief and its Complaint should be dismissed under 2.116(C)(8) because the lease between Jordan and the City of Rochester Hills does not violate the City Charter or the Home Rule Cities Act. The City Charter does not preclude the ity from leasing the subsurface oil and gas interests without voter approval. The City continues to retain the park surface estate, which is entirely unaffected by any potential future oil and gas extraction. The lease expressly precludes Jordan from entering or interfering with the surface

[1] According to Michigan public records, DDH was incorporated on April 23, 2014 and maintains a registered office at 511 Fort Street, Suite 402, Port Huron, MI 48060—the same address as Plaintiff's attorneys. Indeed, attorney Timothy Lozen, who signed the Complaint, is the registered agent for Plaintiff DDH. Further, the press release announcing the Complaint lists an (856) area code contact number—a number based in Philadelphia suburbs. (**Ex A**.) Plainly, DDH is an organization with little or no connection with Rochester Hills or Oakland County.

estate. Rochester Hills citizens will continue to enjoy the public park land for the same recreation and conservation purposes. DDH cannot and does not allege that the subsurface mineral estate is related to public recreation or conservation, which are the interests that the City Charter protects.

The Home Rule Cities Act, MCL 117.5(1)(e), only prohibits the *sale* of parks or cemeteries without voter approval. The contract between the City of Rochester Hills and Jordan is a bona-fide lease for a term of five years with a two-year renewal option. Under State law, the sale of land and the lease of subsurface oil and gas rights are entirely different processes, governed by different laws. Further, the law grants an *owner* of the mineral estate greater access rights than a *lessee*. The law presumes the Legislature is aware of other laws and intentionally used "sale" to exclude other similar transactions, such as "leases." Accordingly, this Court should grant Jordan's motion for summary disposition under MCR 2.116(C)(5) and MCR 2.116(C)(8) because DDH has no standing to bring this lawsuit and has not stated a claim for relief as a matter of law.

STATEMENT OF FACTS

Defendant Jordan Development Company, LLC, is a Traverse City based oil and gas exploration company that operates over 450 oil and gas wells in Michigan. Jordan's leases cover over 18,000 acres of State of Michigan land in Oakland County for oil and gas exploration and extraction purposes. Jordan has successfully negotiated oil and gas leases with other local governments throughout Oakland County, including agreements with Waterford Township, Independence Township, Springfield Township, and the City of Pontiac. Notably, Jordan also leases 2,510 acres of subsurface rights from the Huron-Clinton metropark system,[2] and successfully extracts oil and gas in Indian Springs Metropark located in White Lake, Michigan.

[2] The Huron-Clinton Metropark Authority has leased subsurface oil and gas interests since 1993 in exchange for royalties and has acquired about $13 million in revenues from successful wells drilled mainly in the Kensington Metropark. http://www.clarkstonnews.com/Articles-News-i-2012-12-19-249945.113121-sub-Search-is-on-for-oil.html. See also "Indian Springs Metropark

In 2012, Jordan approached the City of Rochester Hills to negotiate subsurface oil and gas leases for the property located underneath Nowicki Park, Tienken Park, and the VanHoosen Jones Stony Creek Cemetery. (Compl ¶7.) On December 3, 2012, at a regular meeting of the City Council, the City Council approved the subsurface oil and gas lease with Jordan. (Compl ¶8.) Prior to the vote, the City Council received a written attorney opinion that the lease did not violate Section 11.8 of the City Charter. (Staran Legal Opinion, **Ex B**.) Further, the City of Rochester Hills and Mayor Barnett consulted the Michigan Department of Environmental Quality ("DEQ") and an independent environmental consulting agency. (Video: Jan 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.) Mayor Barnett signed the subsurface oil and gas lease with Jordan on January 15, 2013. (Compl ¶9.)

The lease is for a term of five years with an option to renew for two additional years and covers 61.32 acres. In addition to paying the City of Rochester Hills $150 per leased acre as a cash bonus, Jordan agreed to pay the City of Rochester Hills 1/6 of the net amount realized by Jordan from the production of any oil and gas. This is the same royalty percentage granted to the State of Michigan under the standard DNR oil and gas lease. (Michigan Oil and Gas Lease, **Ex C**.) In contrast, if the City refused enter into the lease, and Jordan obtained a forced pooling order from the supervisor of wells, the City of Rochester Hills would only receive a 1/8 royalty interest. MCL 324.61718; R 324.1206. Under the terms of the lease, Jordan may *not* enter, operate, or otherwise erect or maintain structures such as tanks on the surface. (See Compl Ex. A). Jordan also agreed not to hinder, interfere with, or otherwise adversely affect the use of the surface estate for parks and public recreation. (*Id.*) Jordan has not started any extraction or other operations. (Compl ¶10.)

In addition to the lease with the City of Rochester Hills, Jordan has successfully negotiated over 400 private oil and gas subsurface leases with individual owners. (See Compl ¶ 13; Video: Jan 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at

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Oil and Gas Exploration Project Summary," http://www.metroparks.com/Indian-Springs-Metropark-Oil-and-Gas-Exploration-Project-Summary.

http://roch.legistar.com/.) According to Mayor Barnett, the lease with the City accounts only for 15% of the subsurface acreage Jordan has leased in Rochester Hills. The other 85% is private property leases. (Video: Jan 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.)

Plaintiff DDH has a remote, if any, connection to Rochester Hills and to Oakland County. Plaintiff DDH was formed on April 24, 2014 in Port Huron more than 15 months after the City of Rochester Hills signed the lease with Jordan. (Articles of Incorporation, **Ex D**.)

The press release lists a New Jersey area code phone number in the Philadelphia suburbs. (**Ex. A.**) DDH filed its Complaint against the City of Rochester Hills and Jordan on May 15, 2014. In an effort to further its political agenda (that was unsuccessful in front of the City Council and Mayor Barnett), DDH alleges the subsurface mineral lease violates Section 11.8 of the City Charter and the Home Rule Cities Act, MCL 117.5(1)(e), and requests declaratory judgment to void the lease.

ARGUMENT

I. Legal standard

Defendant Jordan requests this Court dismiss Plaintiff DDH's complaint because (1) DDH lacks standing to challenge a subsurface oil and gas lease that was approved by the City Council for city-owned property; and (2) the City of Rochester Hills did not violate the City Charter or the Home Rule Cities Act as a matter of law.

When ruling on a motion under MCR 2.116(C)(5), this Court must consider any affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(5). MCR 2.116(C)(5) provides for summary disposition when the Plaintiff "lacks the legal capacity to sue"—such as where plaintiff lacks the requisite standing. *See Groves v Dept of Corr*, 295 Mich App 1; 811 NW2d 563 (2011)

(granting summary disposition under MCR 2.116(C)(5) where plaintiff failed to allege cognizable injury or otherwise establish standing to challenge contract bidding process);

MCR 2.116(C)(8) permits summary disposition when "the opposing party has failed to state a claim on which relief can be granted." Only the pleadings may be considered for a motion under MCR 2.116(C)(8). MCR 2.116(G)(5). Such motions test the legal sufficiency of the plaintiff's claims to determine whether the allegations state a claim on which relief may be granted. *Spiek v Dep't ofTransp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although all factual allegations in the challenged pleading are to be accepted as true for purposes of a (C)(8) motion, mere conclusory allegations are not sufficient and may be disregarded. *Alleghany Ludlum Corp v Dept of Treasury*, 207 Mich App 604, 605; 525 NW2d 512 (1994).

II. Michigan law requires plaintiff to allege an "actual controversy" for which declaratory judgment is necessary to guide the plaintiff's future conduct, a legal cause of action, or to allege a unique injury not shared by the citizenry at large. DDH's rights or future conduct are unaffected by the lease and it failed to allege a unique—or any—injury. Accordingly, DDH does not have standing.

The standing doctrine requires a "party's interest in the outcome of a litigation; an interest that will assure sincere and vigorous advocacy." *Waterford Sch Dist v State Bd of Ed*, 98 Mich App 658, 662; 296 NW2d 328 (1980). "Traditionally, a private citizen has no standing to vindicate a public wrong or enforce a public right where he is not hurt in any manner differently than the citizenry at large." *Id. See, e. g., Inglis v Public School Employees Retirement Board*, 374 Mich 10, 131 NW2d 54 (1964). The Michigan Supreme Court held that a litigant has standing when (1) the litigant meets the requirements of MCR 2.605 for declaratory judgment; or (2) the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010) ("LSEA"). DDH does not meet any of these criteria and therefore lacks standing.

A. DDH does not allege an "actual controversy" because this Court's judgment is not necessary to guide future conduct to preserve legal rights.

DDH seeks declaratory judgment under MCR 2.605 (Compl ¶ 18) but does not meet the requirements of MCR 2.605. MCR 2.605(A)(1) provides that "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." An "actual controversy" under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct to preserve legal rights. *UAW v Cent Michigan Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). The requirement of an "actual controversy" prevents a court from deciding hypothetical issues. *Id.* If the issue is not justiciable because it does not involve a genuine, live controversy between interested persons asserting adverse claims, the decision of which can definitively affect *existing* legal relations, a court may not declare the rights and obligations of the parties before it. *Zigmond Chiropractic, PC v AAA Michigan*, No. 300643, 2013 WL 3836238 (Mich Ct App July 25, 2013) (*quoting Allstate Ins v Hayes*, 442 Mich 56, 66; 499 NW2d 743 (1993)).

DDH claims that "[a]n actual controversy exists as to whether the City had the authority, without voter approval, to enter the Lease and whether the Lease is valid." (Compl ¶ 17.) This is a conclusory statement without any merit. An "actual controversy" exists where a declaratory judgment is necessary to guide a plaintiff's future conduct to preserve legal rights. Here, there is no "future conduct" to preserve plaintiff's legal rights, and thus, no standing. *UAW*, 295 Mich App at 495.

DDH is *not* a party to the lease between the City of Rochester Hills and Jordan with performance obligations seeking guidance to avoid a breach. In contrast, the defendants, who *are* the parties to the lease and have cognizable legal rights to preserve, do not request a declaratory judgment. Rochester Hills and Jordan agree that the lease is a valid contract consistent with the

law. Nor does DDH allege that the City of Rochester Hills plans to enter into any additional subsurface oil and gas leases with Jordan or any other company.[3]

Rather, DDH asks this Court to overturn the City Council and the Mayor's finding that the lease between the City of Rochester Hills and Jordan is valid and in the best interest of the City of Rochester Hills. The lease contract has nothing to do with DDH, its members, or their rights. Accordingly DDH has failed to demonstrate "an adverse interest necessitating the sharpening of the issues raised." *UAW*, 295 Mich App at 495. Plainly, DDH is attempting to use this Court to advance its political agenda and to second guess the City Council and the Mayor.

DDH's claim is analogous to a disappointed bidder who petitions a court to disrupt a contract between a government entity and the winning bidder based on some perceived flaw in the bid process. However, the Michigan Supreme Court recently reaffirmed the "longstanding rule in Michigan that a disappointed low bidder on a public contract has no standing to sue in order to challenge the award of a contract to another bidder." *Cedroni Assn, Inc v Tomblinson, Harburn Assoc, Architects & Planners Inc*, 492 Mich 40, 46; 821 NW2d 1 (2012). This is the case even where a municipality is alleged to have violated its ordinance during the bid process. *Id.*

Similarly, in *Groves v Dep't of Corrections*, the plaintiff sought to use MCR 2.605 and declaratory judgment to challenge the contract bidding process run by the State of Michigan and its Department of Corrections. *Groves v Dept of Corr*, 295 Mich App 1, 4; 811 NW2d 563 (2011). Plaintiffs alleged that the State violated its own contract bidding procedures by allowing a bidder to alter its pricing proposal after the bid proposal deadline without allowing other bidders the same opportunity. *Id.* Plaintiffs sued, requesting that the Court declare the contract

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[3] DDH alleges in paragraph 12 that "if [Auburn Hills exploration is] successful Jordan would pursue additional leases in the City within a year's time." However, the Mayor actually commented that Jordan may come back and approach additional private individuals to lease their property—Mayor Barnett did not say that Jordan plans to pursue any additional leases of City-owned subsurface estates. (Video: Jan. 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.)

null and void, and require the State to rebid the contract. *Id.* The Court of Appeals granted summary disposition under MCR 2.116(C)(5) in part because, like here, "Plaintiffs have not suffered a cognizable injury and will not suffer such an injury in the future because the contract has already been awarded to PCS; consequently, we find no actual controversy." *Id.* at 10. DDH has not alleged any "actual controversy," any future conduct that requires this Court's guidance to protect its legal rights, or any cognizable injury. DDH has no standing under MCR 2.605.

B. The City Charter and the Home Rule Cities Act do not provide a private cause of action. Thus, DDH does not allege a cause of action at law.

Neither the City Charter nor the Home Rule Cities Act, MCL 117.1 *et seq*, provide a private cause of action to non-profit corporations like DDH or their members to challenge the acts of the City Council or the Mayor. *See LSEA*, 487 Mich at 372 (holding that a litigant also has standing where there is a legal cause of action.) DDH does not cite any provision of the City Charter or the Home Rule Cities Act showing "the Legislature intended to confer standing on the litigant." *Id.*

Indeed, Section 12.4 of the City Charter titled "Violation, punishment" provides that "All violations of this Charter or any ordinance shall be punishable, unless otherwise provided, by a fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment for a period not to exceed ninety (90) days, or both fine and imprisonment in the discretion of the court, except that if the authority of the court is extended to levy a higher fine or impose a greater sentence, the court, in its discretion, may do so to the extent it is lawfully permitted under statute or ordinance." The City of Rochester Hills limited the remedy available for violations of the Charter to the $500 fine and misdemeanor. This is the *sole remedy in the Charter*. The City purposefully excluded any right to private action, specific performance, declaratory judgment or other private remedy.

C. DDH does not allege a special injury or right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large.

DDH also does not have standing because it does not allege "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *LSEA*, 487 Mich at 372. In other words, a citizen has no standing to vindicate a public wrong or enforce a public right unless he is injured in some manner different from all the other citizens who share that same right. *Waterford Sch Dist v State Bd of Ed*, 98 Mich App 658, 662; 296 NW2d 328 (1980). DDH does not allege any unique injury or right. Rather, DDH seeks to enforce the public right of the "citizenry at large" to vote under the City Charter.

In paragraph 13 of the Complaint, DDH attempts to create standing through its purported and unidentified "members." DDH alleges its "members" include

> former members of SPACE who were instrumental in having Section 11.8 of the Charter adopted; members who are registered voters in the City of Rochester Hills who were denied their right to vote on the lease; members who use the Parks; members who live within the units in which drilling is proposed; members who live in close proximity to the Parks; members who live in close proximity to and/or have family members buried in the Cemetery; members who live in close proximity to the well drilling sites proposed by Jordan; members who would be directly impacted by the noise, smells, increased traffic, potential spills, and other adverse environmental impacts caused by the proposed oil and gas exploration and production under the Lease (and the leases from other property owners within the proposed pooled units); and members who own property whose value may be negatively impacted.

None of these purported "members" have standing to challenge the lease with Jordan. They have suffered no injury. Even if they had, the "injury" is common to the citizenry at large. For example, any members who may have suffered injury as "voters" share an injury common to all citizens of Rochester Hills.[4] The other category of members, those whose property rights may

[4] Those who voted for Section 11.8 of the City Charter suffered no unique injury. The right to initiate amendments to the city charter and to vote on those amendments, or to have the City Council comply with the City Charter are all rights common to the public.

be violated, can allege nothing more than an amorphous and hypothetical future harm. DDH admits that Jordan has not started any activities in the City of Rochester Hills. (Compl ¶10.)

Indeed, it is uncertain when and if and to what extent Jordan will exercise its rights under the various subsurface leases. DDH can only speculate what the impact of Jordan's activities, if any, will be, and any impact it may have on private property rights. Additionally, the lease with the City of Rochester Hills is only a small fraction of property that Jordan has leased in the City—private leases account for 85% of the leased property. (See Video: Jan. 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.) A declaratory judgment that the lease with the City is void will not, as a practical matter, change any potential impact on other citizens' property rights.[5]

In sum, DDH asks this Court to decide a purely hypothetical dispute, with no actual or imminent injuries, and no rights asserted different than those from the citizenry at large. DDH does not meet the requirements of MCR 2.605. DDH does not have standing. Accordingly, this Court should grant summary disposition under MCR 2.116(C)(5) and dismiss the Complaint.

III. The City Charter does not prohibit selling subsurface oil and gas interests where the surface estate retains its nature and character. The lease does not impact the surface, nature of the park, or the recreational uses of the park. Accordingly, the lease does not violate the City Charter.

DDH failed to state a claim for relief because the City of Rochester Hills did not violate the City Charter when it approved the subsurface oil and gas lease with Jordan. Section 11.8 of the City Charter does not prohibit the City of Rochester Hills from leasing the subsurface oil and gas estate where the surface estate remains unaffected and suitable for public recreation and conservation purposes. DDH ignores the well-established difference between the surface estate and the subsurface mineral rights. *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253; 677

[5] Moreover, under MCL 324.61525 the DEQ, and not the City of Rochester Hills, issues permits for any actual drilling or extraction activities. The City of Rochester Hills is preempted from enacting any ordinance or other regulation that invades the State's jurisdiction over subsurface oil and gas extraction activities.

NW2d 45 (2003). Nothing in the City Charter prohibits the city from leasing the subsurface mineral rights. DDH does not allege that the City failed to retain the surface estate.

DDH's claim that the City Charter requires a voter referendum on the lease also ignores the plain language of the voter-initiated amendment. The rules applicable to statutory construction apply construction of local laws as well. *Ballman v Borges*, 226 Mich App 166, 167; 572 NW2d 47 (Mich Ct App 1997). "The words of an initiative law are given their ordinary and customary meaning as would have been understood by the voters." *Welch Foods, Inc v Attorney General*, 213 Mich App 459, 461; 540 NW2d 693 (1995). The Court presumes "the Legislature intended the meaning plainly expressed in the statute." *Id.* This Court must avoid a construction that would render any part of a statute surplusage or nugatory, and "must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme." *People v Williams*, 268 Mich App 416, 425; 707 NW2d 624 (2005).

Section 11.8 of the Rochester Hills City Charter states:

Parks and open spaces:

City-owned parks and open spaces shall be used only for park and open space purposes and shall not be sold, leased, transferred, exchanged or converted to another use unless approved by a majority of votes cast by the electors at an election.

1. "Converted to another use" means changing the use of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation.

2. This section shall apply to all present and future City-owned property designated as park or open space in the City's Parks and Recreation Master Plan. The designation of parks or open space shall not be removed or changed without voter approval. The existing use of a park or open space on the effective date of this section shall be considered to be a lawful use for the particular property.

3. All land acquired by the City with proceeds from the 2005 Millage Proposal[6] to Provide Funding to Permanently Preserve Green Spaces and Natural Features within the City of Rochester Hills shall remain permanently preserved.

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[6] The language of the 2005 Millage Proposal referenced in Section 11.8 further evidences the voters' intent was to preserve the environment and green spaces for public recreation and

The City Council determined the subsurface oil and gas lease does not violate Section 11.8 of the City Charter. (Compl ¶ 8; See **Ex B**, Staran Legal Opinion.) Nothing in the Section 11.8 prohibits leasing subsurface mineral rights. Reading Section 11.8 as a whole and giving it the "meaning plainly expressed," it is clear the voters were concerned with only those property transfers that would interfere with their ability to use park land for recreation and conservation purposes. *Welch Foods*, 213 Mich App at 461. Tellingly, the voters defined "converted to another use" to mean "changing the use of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation." This means that not all "conversions"—and by extension sales and leases—are prohibited without a vote. For example, if the City decided to convert part of the park land to sell creek water to a bottled water manufacturer, it would not require a vote so long as it would not impact the citizens' ability to enjoy the park land, or be inconsistent with public recreation and conservation.

Similarly, here, the subsurface oil and gas lease has no impact on the public's ability and right to enjoy the park land. Nor does the lease interfere in any way with public recreation and conservation. Indeed, the lease is carefully crafted to avoid any adverse impact on the parks and any public recreation or conservation activities. Paragraph 3 of Ex. A to the lease (Compl Ex A) prohibits Jordan from entering or operating on the surface estate. Still, DDH implies that the subsurface oil and gas lease will somehow impact "public recreation or conservation." (Compl ¶25.) But this is simply not the case—no reasonable use of a park or open space contemplates subterranean activity that would be impacted by oil and gas extraction. At best, DDH alleges a non-justiciable hypothetical injury. Such speculation is not sufficient to state a cause of action.

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conservation. "Shall the City of Rochester Hills permanently preserve natural green spaces, wildlife habitats and scenic views; protect woodlands, wetlands, rivers and streams; and expand the Clinton River Greenway and other trail corridors by funding the purchase of land and interests in land….?" Nothing in the text of the proposal suggests that the voters intended to preclude uses that do not impact preservation of "natural green spaces, wildlife habitats and scenic views."

IV. The Home Rule Cities Act prohibits a city from selling a park or cemetery without voter approval. The City of Rochester Hills did not "sell" any part of a park or cemetery to Jordan. Rather, they leased to them oil and gas rights for a five year term.

DDH also claims that the City of Rochester Hills violated the Home Rule Cities Act. MCL 117.5(1)(e) prohibits a city "to *sell* a park, cemetery, or any part of a park or cemetery …unless approved by a majority of the electors voting on the question at a general or special election." (emphasis added). The contract between the City of Rochester Hills and Jordan is a bona-fide lease and not a sale. The lease is for a term of years, five years with a two year renewal option. (Compl Ex A.) The City of Rochester Hills continues to own the subsurface oil and gas estate subject to the exploration and extraction rights in the lease

Importantly, the Legislature did not include leases on the list of prohibited acts in MCL 117.5. The expression of one thing in a statute—"to sell"—means the exclusion of other similar things—such as "to lease." *See Alan v Wayne County*, 388 Mich 210, 253; 200 NW2d 628 (1970). Nothing in the text of the statute or the legislative history suggests that the Legislature intended "sale" to refer to subsurface oil and gas leases.

As a matter of state law, an oil and gas lease is an entirely different transaction from a "sale" of land. A normal sale by deed conveys the surface together with the subsurface oil and gas interests. *Stevens Mineral Co v State of Michigan*, 164 Mich App 692, 696; 418 NW2d 130 (1987). However, the owner of the estate may reserve or convey "less than a fee estate in the minerals." *Id.* (citing *Pellow v Arctic Iron Co*, 164 Mich 87, 105; 128 NW2d 918 (1910)). Owners of mineral interests and those who have a mineral *lease* also have different access rights. A mineral lease merely conveys the rights to explore, mine, and produce the minerals beneath the surface, usually pursuant to a royalty-sharing arrangement between the extracting party and the owner of the mineral interest. *See generally Thomas v Wilcox Trust*, 185 Mich App 733; 463 NW2d 190 (1990). In contrast, the mineral owner has the right to come on the land and use the surface in a reasonable fashion to extract the minerals. *Erickson v Michigan Land & Iron Co*, 50

Mich 604, 16 NW 161 (1883). There is no dispute that under the plain terms of the lease, Jordan has no right to enter the surface estate, which is consistent with a *lease*.

Under state law, the process for the *sale* of state owned land under MCL 324.2130 *et seq* is entirely different from the oil and gas *leasing* process. MCL 324.2131 and MCL 324.2132 impose specific conditions on the sale of land that are not required when the DNR leases oil and mineral rights. For example, the land sold must be designated as "surplus" and meet one of three conditions: (1) The land has been dedicated for public use for not less than 5 years immediately preceding its sale and is not needed to meet a department objective; (2) the land is occupied for a private use through inadvertent trespass; or (3) the sale will promote the development of the forestry or forest products industry or the mineral extraction and utilization industry in this state. MCL 324.2131.

In contrast, the oil and gas lease process is entirely governed by State administrative rules. Any party may nominate lands for oil and gas leases, R 299.8102(1), and the DNR will then recommend to the Natural Resources Commission whether to lease the land, R 299.8102(4). The lease is then offered at public auction, with the winning bidder agreeing to the terms of the standard Michigan oil and gas lease. R 299.8106. In short, Michigan law distinguishes between a sale and lease of the subsurface mineral interest. The City of Rochester Hills properly *leased* both the parks and the cemetery subsurface oil and gas rights. MCL 117.5 prohibits only a "sale"—and the City of Rochester Hills did not sell anything to Jordan. Accordingly, DDH failed to state a claim for the violation of the Home Rule Cities Act.

V. Michigan law favors natural resource recovery and the Legislature enforces this policy through comprehensive regulation. The Legislature preempts local government regulation and granted the supervisor of wells power to force pool interests into drilling units.

A. The City of Rochester Hills is preempted by State law from regulating oil and gas drilling.

DDH urges this Court to expand the plain language of Section 11.8 and MCL 117.5 to void the subsurface oil and gas lease. Even if the plain language of the City Charter and the Home Rule Cities Act supported DDH's argument (which it does not), the State's comprehensive oil and gas regulatory scheme preempts local regulation of subsurface leases. Local governments may not enact regulations "if 1) the ordinance is in direct conflict with the state statutory scheme, or 2) if the state statutory scheme preempts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, *even where there is no direct conflict between the two schemes of regulation*." *People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977) (emphasis added).

The Legislature granted exclusive powers to the supervisor of wells (the Director of the DEQ), "over the administration and enforcement of this part and *all matters* relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and *all matters* relating to the prevention of waste and the conservation of oil and gas." MCL 324.61505 (emphasis added). The Legislature granted the supervisor a number of police powers, including "to [enact regulations to] prevent fires or explosions," MCL 324.61506(f), "to regulate the mechanical, physical, and chemical treatment of wells," MCL 324.61506(h), and "to require the immediate suspension of drilling or other operations if there exists a threat to public health or safety," MCL 324.61506(q). R 324.506 prohibits flare stacks and surface facilities in residential areas. R 324.1016 requires surface facilities to comply with noise abatement standards to minimize any nuisance from the oil and gas extraction activities.

The DEQ also promulgated administrative rules that limit the role of cities in the oil and gas lease process. For example, R 324.61525 requires a permit before drilling any well for oil or gas, and requires the supervisor of wells to provide information about the applicant and the proposed well to the "city, village, or township in which the oil or gas well is proposed to be located." R 324.61525(4). The affected city may only "provide written comments and recommendations to the supervisor pertaining to applications for permits to drill and operate. The

supervisor shall consider all such comments and recommendations in reviewing the application." *Id.* Further, the DEQ's administrative rules already have "zoning" requirements for oil and gas wells. For example, the supervisor shall not issue a permit where the proposed "well is located within 450 feet of a residential building; [and] the residential building is located in a city or township with a population of 70,000 or more." R 324.61506b(1).

The State of Michigan comprehensively regulates oil and gas drilling operations under State law, including local police power concerns, such as public health and safety. The DEQ state-level permit process protects individual citizens' property rights from adverse impacts of oil and gas exploration. Section 11.8 of the City Charter cannot apply to oil and gas leases because if it did, it would be preempted by the comprehensive state regulatory scheme.[7] *See People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977) (emphasis added).

B. Michigan's public policy is to maximize the recovery of the State's natural resources. The State enforces this policy through forced pooling of properties for oil and gas recovery. Plaintiffs seek a moot remedy because the State could order the pooling of properties and enable Jordan to recover the oil and gas underneath the city property.

If the City of Rochester Hills never approved the lease with Jordan, Jordan would be able to petition the state supervisor of wells to pool the leases that Jordan already has into 40 acre "drilling units." (See DEQ – Pooling of Properties for Oil and Gas Production, attached as **Ex E**.) Jordan is still able to access the oil and gas interests under the parks and cemeteries.

The State of Michigan encourages "the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products." MCL 324.61502. One of the ways the State effects this policy is through forced pooling of interests under MCL 324.61513. Jordan may petition the State supervisor of

[7] The comprehensive State regulatory scheme also explains why MCL 117.5 only restricts "sale" of city parks and cemeteries and makes no reference to leasing. The Legislature obviously recognized that cities were without the power to regulate oil and gas leasing, drilling, and extraction because they were preempted from doing so under the Natural Resources and Environmental Protection Act, and the DEQ's administrative rules.

wells under MCL 324.61513(4) and obtain an order that the city park and cemetery subsurface estates be pooled with the surrounding Jordan-owned leases into a 40 acre drilling unit. The City of Rochester Hills receives only a 1/8 royalty interest, MCL 324.61718; R 324.1206, as opposed to the 1/6 that the City negotiated under the lease. The City would also be subject "terms and conditions that are just and reasonable" as imposed by the State supervisor of wells, and not those freely negotiated between Jordan and the City. MCL 324.61513(4).

CONCLUSION AND RELIEF SOUGHT

DDH requests that this Court overrule the judgment of duly elected officials that the lease comports with the City Charter and Michigan law, but has not alleged an "actual controversy" for this Court to decide. DDH has no standing to challenge a contract between the City of Rochester Hills and Jordan Development. DDH also fails to state a claim. The City Charter does not prohibit the City from entering into a subsurface oil and gas lease that does not impact the surface estate or the recreational and conservation uses of the parks. And the Michigan Home Rule Act only applies to *sales* of land—not to bona-fide oil and gas leases. Accordingly, DDH has failed to state claim on which relief can be granted. Summary disposition is proper under MCR 2.116(C)(5) and C(8). This Court should dismiss DDH's Complaint as a matter of law.

Respectfully submitted,

THE MIKE COX LAW FIRM PLLC

/s/ Danila V. Artaev (P74495)

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Dated: June 11, 2014

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff, Case No. 2014-140827-CH

v Hon. Judge Alexander

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation, and
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company,

Defendants.
_____/

INDEX OF EXHIBITS

EXHIBIT
A

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FOR IMMEDIATE RELEASE
May 15, 2014

Don't Drill the Hills, Inc. files lawsuit against City of Rochester Hills for Charter Violation

Don't Drill the Hills, Inc. *(DDHI)*, is a non-profit, grassroots group of local citizens opposed to oil and gas drilling projects in their community. The group filed legal action today against the City of Rochester Hills for signing a lease for oil and gas exploration of City-owned park and cemetery properties. DDHI believes this violates the City's Charter, Michigan statute, and is a violation of public trust. The group seeks a declaratory ruling from the Court that the lease is void.

With the approval of Rochester Hills City Council, Mayor Bryan Barnett signed a lease with Jordan Development Company, LLC (Jordan) on January 15, 2013. The lease allows Jordan and West Bay Exploration Company to use horizontal drilling to explore for, extract, and sell oil/gas from Tienken Park, Nowicki Park and Stoney Creek Cemetery. Given the lease's swift passage, there are concerns the City did not perform proper investigatory due diligence.

At issue is a resident-driven 2011 City Charter Amendment. The amendment states that City-owned parks cannot be sold/leased or converted to a non-recreation or non-conservation use, *without approval* of the City's voters in an open election. The City Charter protects not just the surface of the park land in Rochester Hills, but the entire property, including its subsurface resources.

The lawsuit asserts that by signing a lease with Jordan, the Mayor and City Council:

- Violated the City Charter (Sec. 11.8).
- Violated Michigan law (MCL 117.5(e)) which requires voter approval for the sale of city parks and cemeteries designated as such in the City's Master Plan.
- Acted beyond the scope of their power, and took away the citizen's right to vote on the lease.

"We worked hard in a City-wide effort to amend the Charter in 2011 to protect our parks and ensure our beautiful city retains its residential character", said a DDHI Spokesperson Erin Howlett. "Rochester Hills voters saw the need for this added protection, initiated the Charter amendment, approved it overwhelmingly at the ballot box, and the City needs to honor it."

Since the city signed the lease, Jordan has targeted land owners and homeowner associations to lease their property's mineral rights. As local awareness has grown, residents have spoken out against horizontal drilling in dense residential areas with concerns over property rights, property values, environmental risks, tanker traffic, transparency in the process, and most importantly, the risks to the families that live in the *65 affected subdivisions* and attend the *8 schools* in the proposed drilling zone (along Tienken Road from Squirrel Road east to Stoney Creek High School).

The City's parks and natural resources need to be protected for future generations. This lawsuit strives to make that a reality. Jeannie Morris, DDHI Member notes: "Although the City proclaims its 'green' initiatives and environmental successes, the City's oil/gas lease is not in line with those values. We believe the Rochester Hills Council and Mayor Barnett have violated the City Charter, Michigan law, and the trust of residents."

###

Don't Drill the Hills, Inc. is a non-partisan grassroots nonprofit corporation that is building awareness of the risks of horizontal drilling in high-density residential and K-12 School areas. Concerns include: property rights, property values, mortgage and insurance complications, as well as potential environmental and health risks.

EXHIBIT B

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November 20, 2012

VIA E-MAIL & U.S. MAIL

City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Proposed Oil and Gas Lease***

Dear City Council:

The Rochester Hills City Council is considering a proposed Oil and Gas Lease requested by Jordan Development Company, LLC, of Traverse City, wherein Jordan, as the Lessee, would lease from the City the right to explore, extract and sell oil and gas that may be located beneath the surface of the City's Nowicki Park, Tienken Park and Stoney Creek Cemetery parcels, collectively comprising approximately 61 acres. These oil and gas rights will be part of a larger, pooled unit being assembled by Jordan. In consideration, the City will be paid a bonus of $150 per acre and will also receive royalties on the oil and gas produced and sold.

The City Council has asked for our written legal opinion whether the proposed Oil and Gas Lease may be authorized under the City Charter, as amended in 2011 to add Section 11.8 – Parks and Open Spaces, as follows:

> **Section 11.8 - Parks and Open Spaces**
>
> City-owned parks and open spaces *shall be used only for park and open space purposes and shall not be sold, leased, transferred, exchanged or converted to another use* unless approved by a majority of votes cast by the electors at an election.
>
> .1 "Converted to another use" means *changing the use* of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation.
>
> .2 This section shall apply to all present and future City-owned property designated as park or open space in the City's Parks and

> Recreation Master Plan. The designation of parks or open space shall not be removed or changed without voter approval. The existing use of a park or open space on the effective date of this section shall be considered to be a lawful use for the particular property.
>
> .3 All land acquired by the City with proceeds from the 2005 Millage Proposal to Provide Funding to Permanently Preserve Green Spaces and Natural Features within the City of Rochester Hills shall remain permanently preserved. [Emphasis added]

This charter amendment resulted from a citizen-driven initiative designed to require voter approval before the City may transfer or convert public parks and open space to non-recreational uses.

At the outset, it is important to understand the distinction between leasing the land and leasing the oil and gas rights. Those are two distinctly different things. Oil and gas rights may be sold or leased separately from the land itself, and that is what is being proposed here. Only the subsurface oil and gas rights are covered by the proposed lease. The City's surface estate will be unaffected, meaning the City's ownership, possession, use and control of the land, including the right to develop, occupy, use and/or preserve the land for park and open space (and cemetery) are unencumbered and unchanged by the proposed Oil and Gas Lease.

The form of lease presented is fairly standard and is modeled after the lease form used for State land. But, there are a number of important conditions that have been written into Exhibit A of the proposed lease to expressly provide that: (1) Lessee shall not utilize the hydraulic fracturing process (i.e., no "fracking"); (2) Lessee does not have the right to enter onto the property and may not conduct operations (including erection or construction of drills, wells, rigs, pipes, pumps, tanks, or other in-ground or above-ground structures, facilities or equipment) on the surface of the land without further approval of the City Council *and* compliance with applicable ordinance or charter requirements; (3) Lessee, through its operations, shall not disrupt, interfere with, restrict, drain, damage, destroy or remove any natural or man-made condition, feature or improvement located on the property; and (4) Lessee's operations shall not hinder, interfere with, restrict or otherwise adversely affect the current or future use and development of the land for parks, open space and public recreation without further approval of the City Council *and* compliance with applicable ordinance or charter requirements.

Consequently, because the proposed Oil and Gas Lease covers only subsurface oil and gas rights, does not allow the Lessee to enter onto, use or occupy the surface the land, does not restrict or interfere with the City's use, development or conservation of the land, does not transfer or alienate the City's ownership, use or control of the land, and does not convert any City park or open space to another use, I conclude, and reaffirm my prior verbal opinion, that Section 11.8 of the City Charter is not implicated and does not diminish the City Council's

EXHIBIT C

OIL AND GAS LEASE NO.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

By authority of Part 5, Section 502, 1994 Public Acts 451 as amended.

This Lease, made and entered into this of in the year ,

By and between the DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES for the STATE OF MICHIGAN, hereafter called "Lessor", whose address is P.O. Box 30452, Lansing, Michigan 48909-7952, and , whose address is , , , hereafter called "Lessee".

Witness, that the State of Michigan is the owner of all rights of any oil and gas lying within or under any of the land described below, and the Lessor has the authority to lease for the exploration, development, and production of any existing oil and gas therein.

The Lessor, for and in consideration of a cash bonus paid to it, and of the covenants and agreements herein contained on the part of the Lessee to be paid, kept and performed, does hereby lease, without warranty, expressed or implied, unto the Lessee for the sole and only purpose of drilling, boring, and operating for oil and gas, and acquiring possession of and selling the same, and for laying pipelines and building tanks, power stations, and structures thereon, necessary to produce, save and take care of such products. No operations shall be conducted by the Lessee on any of the following described land situated in the State of Michigan without obtaining all separate written permissions required by the Lessor or any other State or Federal Government Agencies:

County

Parcels

Description	Section	Acres	Equity

Stipulations

None

Containing <LEASEACRES> net acres, more or less

A. DEFINITIONS

For the purposes of this Lease, the following definitions apply:

1. "Actual drilling operations" shall mean and be defined as actual drilling and penetration of strata in a continuous manner either by rotary, cable or combination drilling equipment to reach the objective formation at the intended depth as specified by permit and shall include drilling, completing, reworking, recompleting and deepening.
2. "Commercially Producible Well" shall mean a well capable of production in paying quantities.
3. "Commensurate royalties" means that amount of money which would fairly compensate the Lessor for any royalties lost due to drainage of oil and/or gas from the leased premises.
4. "DEQ" shall mean the Department of Environmental Quality.
5. "Development Plan" shall mean a plan to minimize negative impacts to the surface and shall include, but not be limited to, a complete copy of the proposed drilling permit application pursuant to 1996 AACS R 324.201, a copy of the request to install a surface facility or flowline pursuant to 1996 AACS R 324.504(4), and any supplemental Project Development maps, plans and Environmental Impact Assessments (EIA) filed with the Supervisor of Wells. Additionally, identification of State-owned surface lands within the proposed unit will be required. Documents filed with the Supervisor of Wells may need to be supplemented to identify pipelines, drill sites, facility sites, roads, erosion control, and other measures which may be necessary to mitigate impacts.
6. "Development Unit" shall mean the larger of a) the Drilling Unit or b) the unit voluntarily pooled, for the drilling of a single well.
7. "Drilling Unit" shall mean an area prescribed by applicable spacing regulations for the granting of a permit by the Supervisor of Wells for the drilling of a well.
8. "Extension fee" means a surcharge payment by the Lessee for the privilege of extending the primary term of the Lease for one (1) or two (2) years.
9. "Gas" means a mixture of hydrocarbons and varying quantities of nonhydrocarbons in a gaseous state which may or may not be associated with oil, including those liquids resulting from condensation, including but not limited to natural gas and casinghead gas.
10. "Gross Proceeds" means the total monies and other consideration accruing to an oil and gas Lessee for the disposition of the oil, gas, or plant products produced. Gross proceeds includes, but is not limited to, payments to the Lessee for certain services such as compression, dehydration, measurement, and/or gathering which the Lessee is obligated to perform at no cost to the Lessor to place lease products in marketable condition. Where lease products are sold to an affiliated person or entity, gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality lease products from the same field or area. In evaluating the comparability of arm's-length contracts for purposes of this Lease, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality, volume, posted prices, prices received for arm's-length spot sales, other reliable public sources of price or market information, and such other factors as may be appropriate.
11. "Lease Date" shall mean the date the Lease was made and entered into as shown on Page 1 of this document.
12. "Lease Issue Date" shall mean the date that the Lease is acknowledged by the Lessor as set forth on Page 11 (signature page).
13. "Lease Products" means any leased minerals attributable to, originating from, or allocated to this Lease.
14. "Lessee" shall mean the person or entity who shall remain responsible for any and all covenants, express or implied, contained within the Lease regardless of any partial interest assignments.
15. "Marketable Condition" for gas means sufficiently free from impurities, except CO_2, H_2S and N_2, and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for the field or area.
16. "Marketable Condition" for oil means sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for the field or area.

17. "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir, including but not limited to oil, casinghead gasoline, drip gasoline and natural gasoline extracted from natural gas.

18. "Paying quantities" shall mean a dollar amount sufficient to pay the day to day well operating costs and for which a reasonably prudent operator would, for the purpose of making a profit and not merely for speculation, continue to operate a well.

19. "Production Unit" is a Drilling Unit, or Development Unit, or Uniform Spacing Plan and, if agreed to by the Lessor, a Unitized Area, and consisting of one or more wells.

20. "Reasonably prudent operator" shall mean an operator that operates to maximize economic return to both Lessor and Lessee, taking into account market conditions, comparable production activities in the same field or area and all applicable regulatory conditions.

21. "Reclassification" shall mean the change of the classification in all, or a portion of, the lands contained within the Lease from nondevelopment or development (including a subsection of development which may contain restrictions) as deemed appropriate by the Lessor when the existing classification is substantially in error or there is a change in circumstances subsequent to the Lease Date.

22. "Reclassification fee" means a surcharge payment by the Lessee for the privilege of modifying all, or a portion of, the existing classification of lands contained within the Lease.

23. "Supervisor of Wells" shall mean the Director of the Department of Environmental Quality or his/her designated representative.

24. "Uniform Spacing Plan" (USP) shall mean a unit, as authorized by a Supervisor of Wells Order, such as (A) 14-9-94 for the Antrim formation, which will provide flexibility in the placement of wells as intended in Part 615 of 1994 PA 451, as amended.

25. "Unitization Agreement" is an agreement to consolidate acreage into a Unitized Area for the allocation of production on a basis as defined within the Agreement or Ratification as approved by the Lessor.

26. "Unitized Area" is the leased lands within the boundaries defined in the Unitization Agreement, or Ratification thereto, approved by the Lessor.

27. "Working Interest in the Lease" shall mean one or more individuals or entities who have obtained, with prior approval from the Lessor, an interest in the Lease to explore, develop, and produce the oil and/or gas under the leased premises.

28. "1994 PA 451, as amended" shall mean Act 451 of the Public Acts of 1994, as amended, and known as the Natural Resources and Environmental Protection Act.

B. TERM OF LEASE

1. Lease rights shall terminate and the Lessee shall be required to file a release with the Lessor as hereinafter provided whenever any rentals coming due under the Lease shall be and remain unpaid for a period of fifteen (15) calendar days after the rental becomes due.

2. Unless terminated pursuant to B(1), it is agreed that this Lease shall remain in force for a primary term of five (5) years from the Lease Date and as long thereafter as oil and/or gas are produced by the Lessee in paying quantities from any Development Unit, Drilling Unit or, at the option of the Lessor a Production Unit, but only as to the lands included in said unit.

3. The Lessor agrees that it may grant to the Lessee an extension of the primary term of this Lease for not more than two one-year extensions. Such extension to the sixth and seventh anniversaries of the Lease Date--as to any or all of the lands leased hereby--will be considered upon written application by the Lessee and payment of an extension fee, regardless of whether the Lessee is engaged in actual drilling operations on any Development Unit or Drilling Unit containing lands leased hereby. The application must be submitted not sooner than the fourth anniversary of the Lease Date. The amount of the extension fee shall be established by the Lessor and the extension fee must be paid prior to the fifth anniversary of the Lease Date for the first one-year extension and prior to the sixth anniversary of the Lease Date for the second one-year extension. The extension fee established for the sixth year shall remain the same for the seventh year, if executed. If, during the extended term, oil and/or gas is found in paying quantities, this Lease, insofar as it affects lands for which an extension was granted, shall continue with like effect as if oil and gas had been found within the primary term first set forth in paragraph B(2).

4. If the Lessee at the end of the fifth year of this Lease, or the first or second one-year extension granted under B(3), is engaged in actual drilling operations with respect to any well or wells on any Development Unit or Drilling Unit authorized which includes lands leased hereby, this Lease shall remain in force only on the lands included in such Development Unit or Drilling Unit so long as the actual drilling operations on said well(s) is diligently prosecuted to completion within one year from the start of drilling of said well. If oil and/or gas is found in paying quantities upon completion of such well(s), this Lease, only insofar as it affects land included within the said Development Unit or Drilling Unit, shall continue and be in force with like effect as if such well or wells had been completed within the primary term first set forth in paragraph B(2).

5. Notwithstanding anything to the contrary herein contained, actual drilling operations on or production from a Development Unit or units established under the provisions of J(7) shall maintain this Lease in force beyond the primary or extended term only as to land included in such unit or units. As to all other lands, this Lease shall expire under its own terms.

6. All applicable laws and rules are made a part and condition of this Lease. Violations of any of the applicable laws shall be considered a violation of the terms of this Lease and the Lessor, at its sole discretion, may invoke E(7), E(8), or E(9), or any combination thereof. No rules made after the approval of this Lease shall operate to affect the term of the Lease, rate of royalty, rental, or acreage, unless agreed to by both parties.

C. ECONOMIC TERMS

1. Rentals

The Lessee shall pay to the Lessor rental as follows:

a. The Lessee shall be required to make annual rental payments during each year of this Lease, it being understood that the primary lease term commences on the Lease Date.

b. Rental for each year of the primary term shall be paid at the rate of $2.00 per acre per year. Should the primary term of this Lease extend beyond the fifth year under provisions of Section B of this Lease, the rental shall be paid at the rate of $3.00 per acre for the sixth year, and $4.00 per acre for the seventh year.

c. A minimum rental of $5.00 per year per Lease shall be paid by the Lessee on any Lease where rental payment heretofore specified shall be less than that amount.

d. All rental, except for the first year of the Lease, shall be paid annually in advance of each anniversary of the Lease Date. Rental for the first year of the Lease shall be paid in conjunction with and at the same time as when Bonus payments are due.

e. The Lessor's receipt and deposit of a late rental payment shall not constitute a waiver of, or otherwise affect, the Lease termination that shall automatically occur whenever any rental payment is unpaid for a period of fifteen (15) calendar days or more after the anniversary of the Lease Date.

f. Each and every oil and/or gas well, producing in paying quantities, and paying royalties to the Lessor, shall abate the rental only on the leased premises situated within the established oil or gas Development Unit or Drilling Unit. At the Lessor's option, rent may be abated in accordance with specific terms contained within a Unitization Agreement which has been approved in writing by the Lessor. The abatement shall be effective on the rental due date following the rental period in which the abatement is granted.

2. Royalties

The Lessee shall pay to the Lessor royalties as follows:

a. The Lessee shall pay the Lessor a royalty equal to one-sixth (1/6) of the gross proceeds of sale of all oil and/or gas produced and saved in any combination from the leased premises as further set forth below.

b. It is agreed that the Lessee is required to place lease products in marketable condition at no cost to the Lessor. The value of gross proceeds shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which is the responsibility of the Lessee to place lease products in marketable condition.

c. At the sole option of the Lessor, and in lieu of royalty payments upon oil and/or gas produced and saved, the Lessee shall deliver to the credit of the Lessor free of cost the equal one-sixth (1/6) part of all oil and/or gas produced and saved under the terms of the Lease to facilities to which the wells may be connected.

d. If payments specified are not made on or before the twenty-fifth (25) day of the first month following oil production sale or the second month following gas and/or plant products sale, the Lessor may claim default under the provisions of Section E(1) herein. In addition to any remedies available to the Lessor

under the Lease, payments made after the due date shall include interest at the rate of one and a half percent (1.5%) per month, or at the maximum legal rate, whichever is less, on the amount of royalty unpaid. A full month's interest will be charged for late payments received during any portion of the month in which late payment is received.

e. Should oil be produced from any well, the gross proceeds of sale of lease products of such oil shall be free to the Lessor of any cost to whichever point is first encountered: 1) the point of sale to an independent nonaffiliated third party purchaser; or 2) to an affiliated purchaser, provided the sale is at prevailing market rates; or 3) the point of entry into an independent nonaffiliated third party owned pipeline system; or 4) the point of entry into an affiliate owned pipeline system, provided transportation rates are at prevailing market rates. Upon request by the Lessor, written justification of charges made by the Lessee must be submitted and agreed to in writing by the Lessor.

f. Should gas, including casinghead gas, be produced and saved from any well, the gross proceeds of sale of lease products of said gas shall be free to the Lessor of any cost to whichever point is first encountered: 1) the point of entry into a facility to remove CO_2, H_2S, N_2 or obtain plant products, or 2) the point of entry into an independent nonaffiliated third party owned pipeline system; or 3) the point of entry into a pipeline system owned by a gas distribution company, or any subsidiary of such gas distribution company which is regulated by the Michigan Public Service Commission; or 4) the point of entry into an affiliated pipeline system, if the rates charged by such pipeline system have been approved by the Michigan Public Service Commission, or if the rates charged are reasonable, as compared to independent pipeline systems, based on such pipeline system's location, distance, cost of service and other pertinent factors. Upon request by the Lessor, written justification of charges made by the Lessee must be submitted and agreed to in writing by the Lessor.

g. The Lessee agrees that all royalties accruing to the Lessor herein shall be without deduction of any costs incurred by the Lessee except as agreed herein. The Lessor is not liable for any taxes incurred by the Lessee and no deduction may be taken for any tax in computing the royalty. Lessor's royalty is to be free and clear of all costs, claims, charges and expenses of any nature, including third party post production costs on or off the premises except as herein provided, and except for the reasonable costs of CO_2, H_2S and N_2 removal, there shall be no deduction for the cost of gathering, separating, dehydrating, compressing or treating the gas to make it marketable. Unless otherwise specifically agreed in writing, there shall be no deduction for transportation costs prior to entry of gas into a pipeline system as set forth in C.2f (2) through (4).

3. Royalties for: Shut-in Wells and Wells Suspended from Operation

Within fifteen (15) calendar days after the anniversary of the Lease Date when a producing well is shut-in or suspended from operation for a period greater than 180 continuous calendar days, the Lessee shall pay to the Lessor, for each acre of the leased premises located within the established oil and/or gas Production Unit, a sum equal to the rental rate applicable under the terms of C(1b). For each year thereafter, any shut-in rate shall increase an additional $1.00 per acre per year. Such payment shall be deemed a royalty under all provisions of this Lease.

D. TERMS FOR: SHUT-IN WELLS AND WELLS SUSPENDED FROM OPERATION

1. If a commercially producible oil and/or gas well completed on the leased premises, or on acreage pooled or consolidated with all or a portion of the leased premises into a Development Unit for the drilling or operation of such well, but only to the extent that the leased premises are included in said Development Unit, is at any time shut-in, or operations are suspended due to action taken by the Supervisor of Wells, and no oil and/or gas therefrom is sold (or gas is used for the manufacture of gasoline or other products), subject to the conditions of this Lease, such shut-in well or well suspended from operation shall be deemed to be a well on the leased premises producing oil and/or gas in paying quantities, and this Lease shall continue in force provided that within thirty (30) calendar days from the date the Lessor's written request is mailed, the Lessee submits to the Lessor satisfactory documentation in support of the shut-in or suspended status.

2. If an oil and/or gas well has been shut-in, or operations have been suspended by the Supervisor of Wells, and shall remain shut-in or suspended for a period of thirty (30) calendar days due to conditions or circumstances beyond control of the Lessee, the Lessee shall notify the Lessor in writing within fifteen (15) calendar days thereof, and annually thereafter, stating the conditions or circumstances for the shut-in or suspended status and expected date of resumption of production. The Lessee must be able to demonstrate why the well is shut-in or suspended. In the event the Lessor shall determine, in its opinion, that such oil and/or gas can be marketed, the Lessor shall give notice to the Lessee in writing and the Lessee shall have thirty (30) calendar days from the date such notice is mailed in which to satisfy the Lessor. If the Lessee fails

to satisfy the Lessor and reach agreement with the Lessor, the Lessor may, at its sole discretion, invoke Section E(9) of this Lease as herein provided.

3. The Lessee shall at all times use reasonable diligence to produce and market oil and/or gas capable of being produced from such shut-in well.

E. DEFAULT OF LEASE

1. In the event the Lessor shall determine a default in the performance by the Lessee of any express or implied covenant of this Lease, the Lessor shall give notice, in writing, by personal service or certified United States mail, return receipt requested, to the Lessee's last known address, specifying the facts by which default is claimed. Except as to rental and offset well requirements as herein provided, the Lessee shall have thirty (30) calendar days from the date such notice is mailed in which to satisfy the obligation of the Lessee, if any, with respect to the Lessor's notice.

2. No tools, fixtures, machinery or other property of the Lessee shall be removed from said premises, if any royalties, damages, or other payments are due to the Lessor, and all sums due on royalties, damages, or other payments, shall be a lien on all implements, tools, movable machinery, and all other chattels used in operating said property, and also upon all of the unsold oil and/or gas obtained from the land herein leased, as security for the payment of said royalties, damages, or other payments.

3. The Lessee may remove all machinery and fixtures placed on the leased premises, including the right to remove casing from wells not productive of oil or gas in commercial amounts, provided, however, that said Lessee has complied with and fulfilled all other provisions of the Lease as herein provided.

4. Should the Lessee be prevented from complying with any express or implied covenant of this Lease, from conducting drilling operations thereon, or from producing oil and/or gas therefrom, after effort made in good faith, for any cause beyond the reasonable control of the Lessee, such as, but not limited to war, rebellion, riots, strikes, acts of God or an order or rule of governmental authority, then while so prevented, the Lessee's obligation to comply with such covenant shall be suspended upon proper and satisfactory proof presented to the Lessor in support of the Lessee's contention. The Lessee shall not be liable for damages for failure to comply therewith except in the event of lease operations suspended for wrongful acts or omissions of the Lessee. This Lease shall be extended as to such portion of the leased premises as, while, and so long as the Lessee is prevented, by any such cause, from drilling, reworking operations or producing oil and/or gas thereon or therefrom, provided, however, that nothing herein shall be construed to suspend the payment of rentals during the primary or extended term. The Lessee is expected to make application for all separate written permissions required by governmental agencies, including but not limited to easements, drilling permits, and surface use permits, within reasonable time prior to expiration of the Lease. Lessee's obligations under this Lease shall not be excused by failure to make timely applications for permits, annual frost law road restrictions, winter snow conditions or other conditions which are reasonably foreseeable.

5. As required by R299.8106 (3), before a lease will be executed for oil and/or gas exploration, development, and production, the Lessee shall file with the Lessor a lease performance bond, in an amount established by the Lessor, to cover costs incurred by the Lessor due to breach of any clause contained herein by the Lessee, including but not limited to the costs of any enforcement actions necessary on the part of the Lessor, costs of any necessary environmental remediation, clean-up or site restoration and conditioned that the Lessee, its heirs, executors, administrators, successors, and assigns, shall faithfully perform the covenants, conditions, and agreements specified in the Lease, and the laws and rules of the State of Michigan which apply.

6. The Lessee shall keep in full force and effect a sufficient lease performance bond to cover the acreage held under this Lease. If the amount of the lease performance bond in effect becomes depleted or partially depleted because of any claim or claims, the Lessee shall file a new or additional lease performance bond as required by the Lessor.

7. The Lessor may invoke part or all of the lease performance bond when it determines that part or all of the covenants, conditions or agreement specified in the Lease are not being fulfilled. Invoking the lease performance bond is not necessarily related to any action taken by the Lessor under part E(1).

8. In addition to invoking a part of or all of the lease performance bond noted under E(7), the Lessor, at the Lessor's sole option, may determine that the Lessee be placed on a "Hold Action" list until such time as any and/or all infractions by the Lessee have been resolved to the satisfaction of the Lessor. Placement on said list may result in barring the Lessee from any further leases, assignments, easements, extensions or other approvals required by the Lessor. However, placement on said list does not eliminate the Lessor's ability to forfeit any or all parts of said Lease under E(9).

9. If the Lessee fails to voluntarily satisfy the claim of default as herein provided relative to any condition or any express or implied covenants of this Lease, the Lessor may proceed, at its sole discretion, with forfeiture of all or part of said leased premises in accordance with the provisions of Act 81 of Public Acts of 1929, being Sections 554.281 and 554.282 of the Michigan Compiled Laws with invocation of all or part of the lease performance bond or with any combination thereof.

F. ASSIGNMENTS AND CONTRACTS

1. It is expressly understood and agreed that no assignments of working interests, of this Lease or any portion thereof, shall be valid except upon written approval of the same by the Lessor, and upon payment of a fee as established by the Lessor. Failure to notify, provide supporting documentation, and obtain Lessor's approval to assign any, or all, parts of said Lease, shall constitute default of this covenant and result in the Lessor's ability to invoke Paragraph E(7), E(8) and/or E(9).
2. Assignments of the entire 100% working interest to all formations in any portion of the premises herein leased shall be construed as a separate lease agreement and not a part of the original Lease. Development on the assigned acreage, after the assignment has been made, shall not affect the rate of rental or term of the Lease on the unassigned acreage; and, conversely, development on the unassigned acreage, after the assignment has been made, shall not effect the rate of rental or term of the Lease on the assigned acreage. Where the Lessee assigns any interest in this Lease which is less than the entire 100% working interest to all formations in any portion of the leased premises, the Lessee shall remain responsible for any and all covenants, express or implied, contained within this Lease.
3. If the estate of either party is assigned, the covenants hereof shall extend to their heirs, executors, administrators, successors, or assigns, but no change in the ownership of the land or the assignment of royalties shall be binding on the Lessee until after the Lessee has been furnished a written transfer or assignment or a copy thereof.
4. Subject to Paragraph F(1), each and every clause and covenant in this Lease shall extend to the heirs, executors, administrators, successors, and assigns of the parties hereto.

G. SURFACE DAMAGE PAYMENTS

1. The Lessee shall pay or agree upon payment to the surface owner, or any person holding under the owner, for all damages or losses (including any loss of the use of all or part of the surface), caused directly or indirectly by operations hereunder, whether to growing crops or buildings, to any person or property, or to other operations.
2. Before a drilling permit application is submitted to the Supervisor of Wells relating to land in which the State of Michigan owns mineral rights only, and as described in this Lease, proof shall be submitted to the Lessor, in writing, that notification to enter the land has been provided to the surface owner and that either voluntary agreement or stipulated settlement relative to surface use and damages has been reached between the Lessee, or the Lessee's authorized agent, and the surface owner or G(3) is invoked.
3. When a mutually satisfactory agreement relative to surface use and damages cannot be reached, either party can inform the Lessor, in writing, that a dispute exists and the Lessor will grant a negotiation period of thirty (30) calendar days in which no drilling or development operations may be conducted by the Lessee. This time period is to allow for the resolution of the dispute. If, at the end of this period, proof of the agreement is not submitted in writing to the Lessor, drilling and development operations will not be prohibited by the Lessor and resolution of the dispute rests solely with the Lessee and the surface owner independent of the Lessor. It is the sole responsibility of the Lessee to ensure that said thirty (30) day negotiation period is completed thirty (30) days prior to the expiration of the primary term or any extensions of this Lease.

H. RECORDS AND LOGS

1. The Lessee shall submit, upon request by the Lessor, an accurate log or record of each well in the format acceptable to the Supervisor of Wells and as provided for in the DEQ's Rules and Regulations under Part 615, 1994 PA 451, as amended.
2. The Lessee shall keep an accurate account of all operations under this Lease, including production, sales, prices, and dates of same; and shall report to the Lessor on the twenty-fifth (25th) day of each month, the quantity produced by each producing unit in the preceding calendar month, the quantities delivered to pipeline companies, and the quantities otherwise disposed of from the premises herein leased. The Lessee shall install and properly maintain, at its expense, adequate and correct meters for the measurement of gas

production and flows, and shall provide for verification of gas production and flows by an independent third party at the sole discretion and request of the Lessor.

3. The Lessor shall have the right to examine the books of the Lessee insofar as they relate to the production, sale, and valuation of any oil, gas or other products derived from the premises herein leased. The Lessee shall provide monthly information such as production volumes, sale prices, remittance amounts, deductions and other information pertinent to the calculation and payment of royalties due the Lessor in a format approved by the Lessor. The Lessee shall submit, upon request by the Lessor, copies of source documents, reports, contracts, schedules, and computations to support volumes, prices, costs, and other factors used to determine value and remittance.

4. The Lessor, or the Lessor's designated agent, shall have free access to the leased premises for the purpose of inspection and examination.

5. The Lessee shall, at the sole discretion of the Lessor, submit to an audit of all transactions, contractual relationships, volume, production, flows, sales, valuation, or such other records as Lessor may determine appropriate which are related to establishment of gross proceeds, deductions, the State of Michigan's decimal interest and corresponding correctness of the royalty payments or any other types of payments due to the Lessor. The audit may be performed by the Lessor, or contracted for by the Lessor, at the Lessor's discretion. The Lessee shall be responsible for the cost of the audit if, based upon the final audit report, any underpayment calculated before interest is in excess of five percent (5%) of the payment made for the audit period.

I. ENVIRONMENTAL TERMS

1. Any operations under this Lease shall be subject to all applicable Federal and State laws and rules now or hereafter in force. This Lease is not in itself an authorization to drill, and issuance of drilling permits for specific locations is subject to separate application and approval by the Supervisor of Wells pursuant to Part 615, 1994 PA 451, as amended. No operations shall take place on State-owned surface without separate written permission(s) required by the Lessor and/or any other State or Federal governmental agency.

   For lands under this Lease, the Lessee shall submit to the Lessor a complete copy of any application for permits to drill simultaneously with the submission of the application to the Supervisor of Wells. Each application shall identify the location of any State-owned surface lands contained within the proposed unit.

2. No operations shall take place in: a) a wetland (as defined in Part 303 of 1994 PA 451, as amended); b) habitat identified as critical to the survival of an endangered species and designated under provisions of Part 365 of 1994 PA 451, as amended; c) a site designated by the Secretary of State to be of historical or archaeological significance; unless a plan can be mutually agreed upon by the Lessor and the Lessee to substantially eliminate negative impacts.

3. Notwithstanding areas identified in Section I(2), in areas identified by the Lessor as having special wildlife, environmental, recreational significance, and/or State surface, the Lessee agrees to submit and negotiate a Development Plan with the Lessor which will minimize negative impacts and will minimize surface waste while remaining consistent with the spacing requirements established by the Supervisor of Wells.

   The Development Plan shall be submitted to the Lessor simultaneously with the Lessee's submission of the drilling permit application to the Supervisor of Wells. Upon completion of a producible exploratory well, the Development Plan, if not already provided to the Lessor, shall be submitted thirty (30) calendar days prior to any further drilling permit applications or formation of the Production Unit.

   The Lessor reserves the right to exclude certain sites from drilling and/or production activities in areas having special wildlife, environmental, or recreational significance, on State surface lands.

4. No well shall be drilled which is inconsistent with the Development Plan agreed to in I(3) or nearer than 1,320 feet to any lake or stream without the prior written consent of the Lessor. Great Lakes coastal shores shall be classified as nondevelopment within 1,500 feet of the shoreline unless a written exception is granted by the Lessor. To obtain the Lessor's consent, the Lessee will be required to demonstrate to the Lessor that the non-conforming well location will result in less environmental impact.

5. The Lessee shall route all pipelines from the well site to follow existing well roads or utility corridors and shall bury all pipelines below plow depth, unless the Lessor authorizes an exception in writing.

6. Restoration shall be completed within nine (9) months of surface disturbance within the premises for well site(s), pipeline(s), road(s), and other oil and gas development activities unless otherwise specifically approved in writing by the Lessor's authorized representative. Restoration shall be pursuant to requirements

identified within the Surface Use Permit, easement or other similar written permission for the development activity.

7. The Lessee, when surrendering this Lease, or portion thereof, or any well, shall leave the premises as required by applicable law and according to the terms and conditions of this Lease and terms of any prior written permissions from the Lessor, and in a safe and orderly condition. All debris and materials, such as timbers, boards, sheeting, tanks, pipe tubing, and any other equipment used in operating this Lease or a well, shall be removed from the leased lands when operations have ceased. Slush pits and burning pits shall be taken care of as required by applicable law and filled in. Upon failure of the Lessee to conform with these provisions, the Lessor shall have the right to enter on the property to repair damages and restore the property to a lawful, safe and sightly condition at the Lessee's cost or, at the Lessor's option, to invoke Paragraph E(7), E(8), or E(9). The Lessee may not escape any prior obligation of the Lease by surrendering this Lease, or any portion thereof.

J. LESSOR RIGHTS

1. The Lessor reserves the right to all minerals on, in and under the leased premises not herein expressly granted.
2. The Lessor reserves the right to use or lease the premises, or any part thereof, at any time, for any purpose but not to the detriment of the rights and privileges herein specifically granted.
3. The Lessor reserves the right to sell or otherwise dispose of the premises, or any part thereof, subject to the terms and conditions of this Lease.
4. The Lessor shall not be liable for any damages resulting from failure of its title, or control of restrictions established by the State department or Federal governmental agency having jurisdiction over the surface of the leased lands, as either relates to rights included herein; provided, however, that if the Lessor's title or control fails as to any or all of the rights covered by this Lease, the Lessor shall refund to the Lessee all bonus, rental or royalty payments made by the Lessee attributable to that part or portion of, or interest in, the title or control which has failed. In the event of title dispute wherein the Lessor's claim to title prevails, the Lessor shall receive interest at the prevailing prime rate on all money withheld by the Lessee pending settlement of the title dispute.
5. Should the Lessor be prevented from complying with any express or implied covenant of this Lease because of a force majeure (i.e., for any cause beyond the reasonable control of the Lessor such as, but not limited to, acts of God, legislation or rules of any governmental body, including budgeting constraints, any judgment of injunctive order entered by a court of competent jurisdiction, acts of the public enemy, riots, strikes, labor disputes, labor or material shortages, fire or flood) then such covenant shall be suspended to the extent made necessary by the aforesaid force majeure.
6. The Lessor reserves the right to require the Lessee to drill and operate wells to offset producible wells on adjoining production units when the Lessor believes drainage is occurring, regardless of whether such adjoining units are owned or leased by the Lessee. If, within one hundred twenty (120) calendar days from the date notification from the Lessor is mailed pursuant to E(1), the Lessee fails to: commence drilling such offset well(s), or agree to payment of and to commence payment of commensurate royalties on a monthly basis, or to submit reasonable proof to the Lessor that drainage is not occurring, the Lessor may require the Lessee to surrender a portion of the leased premises necessary to establish a Drilling Unit(s) for the drilling of offset wells. Offset wells shall be drilled to a depth not less than that of the producing formation of the adjoining well, and the drilling of such offset well or wells shall be prosecuted to completion in good faith. In the event the Lessee elects to make payment of commensurate royalties, the Lessee shall provide the Lessor with information in the Lessee's possession relevant to determination of said royalties.
7. For the purpose of oil and/or gas development and production under this Lease, the Lessor does hereby grant to the Lessee, the right to pool said premises, or any part thereof, with other land to comprise an oil and/or gas Drilling Unit. The Lessee shall record in the Register of Deeds office in the county in which said Drilling Unit is situated, an instrument identifying the unit so authorized, and a copy of the recorded instrument shall be filed with the Lessor within thirty (30) calendar days after recording. If such oil and/or gas well shall not be drilled on the leased premises but within the authorized Drilling Unit, it shall nevertheless be deemed to be upon the leased premises within the meaning of all of the covenants, expressed or implied, in this Lease, but only to the extent that the leased premises are included within the Drilling Unit. The Lessor shall participate in the royalty from such oil and/or gas Drilling Unit, at the rate provided in this Lease, only in the proportion that the number of acres owned by the Lessor within

the limitations of such Drilling Unit bears to the total number of acres included therein unless a substitute method is agreed to between the Lessee and the Lessor or established by the Supervisor of Wells.

8. Unitization Agreements including acres under this Lease must be approved in writing by the Lessor. Participation in royalties from a unitized area, or rent abatements, shall be in accordance with the Unitization Agreement.

9. The Lessor reserves the right, at its option, to renegotiate certain terms and conditions of the Lease as requested by the Lessor or Lessee.

K. LESSEE RIGHTS

1. The Lessee may surrender all or any part of the premises herein leased by giving notice in writing to the Lessor, provided however, that the Lessee may not escape any prior obligation of the Lease by filing a release. Upon surrender, the Lessee shall execute and deliver to the Register of Deeds, in the county wherein the land is situated, for recording, a proper and sufficient instrument of release of all of the Lessee's rights and interest under this Lease, insofar as they apply to the premises surrendered, and shall have said instrument delivered to the Lessor within fifteen (15) calendar days after recording with the Register of Deeds. Failure of the Lessee to conform with the provisions of this Lease may result in the Lessor invoking Paragraph E(7), E(8), and/or E(9).

L. RECLASSIFICATION OF LAND UNDER LEASE

1. The Lessee understands and agrees that the Lessor may at any time prior to the start of actual drilling operations, reclassify this Lease as "nondevelopment" as defined in 1981 AACS, R 299.8101. In the event of such reclassification, the Lessee agrees that its sole remedy, to the exclusion of any other at law or in equity, is to surrender this Lease or a portion thereof to the Lessor in exchange for a refund of all bonus and rental payments made by the Lessee attributable to the Lease or portion thereof surrendered. Where the land subject to this Lease is reclassified as "nondevelopment", the Lessee at its option may be entitled to a refund equal to the difference between the average per-acre bonus paid for State development leases and for State nondevelopment leases at the same sale in the same vicinity if said nondevelopment leases were sold for less than the development lease. Upon surrender, the Lessee shall execute and deliver to the Register of Deeds a proper and sufficient release of the Lessee's rights as set forth in Section K(1).

2. In the absence of alleged drainage and for nondevelopment lease tracts other than those formally dedicated by the Lessor as State parks, State recreation areas, or wilderness and natural areas, the Lessor may grant a change of classification from a nondevelopment lease, or tracts therein, to a development lease classification if the Lessor finds that the existing nondevelopment classification is in error or that there is a change in circumstances. In the event that a lease is reclassified as development, the Lessee shall pay compensation to the Lessor at least equal to the difference between the average per-acre bonus paid for State development leases and for State nondevelopment leases at the same sale in the same vicinity.

3. Notwithstanding the provisions of Section L, the Lessor shall not reclassify a lease as development if there will be impairment of any of the following: wetlands, endangered species habitat, historic, archaeological or cultural sites, areas of special wildlife, ecological or recreational significance.

M. NONDEVELOPMENT LEASE RESTRICTIONS

(This section pertains to nondevelopment leases only. A nondevelopment lease is identified by the prefix "N" in front of the Lease Number shown on page 1 of this document.)

1. All other provisions of this Lease notwithstanding, it is understood that no drilling or development work shall be conducted on the surface of the land described in this Lease without reclassification and/or the specific authorization of the Lessor. Reclassification or such authorization for this Lease or any portion of the lands contained herein, will be granted at the sole discretion of the Lessor.

2. Drilling, if authorized, shall be limited to the number of wells necessary to prevent drainage from said State minerals.

3. No operations shall be conducted until written instructions for the proper protection of any and all natural resource interests and/or surface values are issued by the Lessor.

The said Lessor, by its Manager of Minerals Management Section, has signed and affixed the seal of the State of Michigan by virtue of action taken by Lessor on , and the Lessee has signed and affixed its seal the day and year written below.

ACKNOWLEDGEMENT BY LESSOR

NATURAL RESOURCES DIRECTOR FOR
THE STATE OF MICHIGAN

By: _____

, Manager

Department of Natural Resources

Minerals Management Section

Acknowledged before me in Ingham County, Michigan, on _____, 20____, by , Manager, Minerals Management Section, of the Department of Natural Resources for the State of Michigan.

Prepared By:

_____

_____ , Notary Public

State of Michigan County of _____

My Commission Expires: _____

Acting in County of _____

ACKNOWLEDGEMENT BY LESSEE

LESSEE:

By: _____

Before me, the undersigned, a notary public in and for said county and State, on this _____ day of _____, 20____, personally appeared _____ to me personally known, who being duly sworn did say that they (or he/she) are authorized to sign on behalf of the Lessee named in the foregoing instrument and acknowledged to me that they (or he/she) executed the same as their (or his/her) free and voluntary act and deed.

_____

_____, Notary Public

State of _____ County of _____

My Commission Expires: _____

Acting in County of _____

This Lease was approved by the Michigan State Administrative Board on:

lawful authority to consider and approve the proposed Oil and Gas Lease as presented.* Underpinning my opinion are the protective conditions written into the proposed Oil and Gas Lease which are designed to ensure the subject park and open space land will remain as such and will not be transferred, occupied or converted to another use.

Very truly yours,

John D. Staran

JDS/ijd
Enclosure

cc: Mayor Bryan K. Barnett

* If circumstances were different with Lessee proposing to enter onto, use, occupy or alter the surface of the land, Charter Section 11.8 may apply and require a referendum vote to authorize.

EXHIBIT D

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

FILING ENDORSEMENT

This is to Certify that the ARTICLES OF INCORPORATION - NONPROFIT

for

DON'T DRILL THE HILLS, INC.

ID NUMBER: 71548R

received by facsimile transmission on April 23, 2014 is hereby endorsed.

Filed on April 24, 2014 by the Administrator.

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 24th day of April, 2014.

Sent by Facsimile Transmission

Alan J. Schefke, Director
Corporations, Securities & Commercial Licensing Bureau

CSCL/CD-502 (Rev. 01/14)

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

Date Received

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Name: Timothy J. Lozen

Address: 511 Fort Street, Suite 402

City: Port Huron, MI 48060 State: ZIP Code:

EFFECTIVE DATE:

Document will be returned to the name and address you enter above. If left blank, document will be returned to the registered office.

ARTICLES OF INCORPORATION
For use by Domestic Nonprofit Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is:

Don't Drill the Hills, Inc.

ARTICLE II

The purpose or purposes for which the corporation is organized are:

Taking actions to oppose oil and gas drilling and leasing in and/or by the City of Rochester Hills and related actions.

ARTICLE III

1. The corporation is organized upon a Nonstock basis. (Stock or Nonstock)

2. If organized on a stock basis, the total number of shares which the corporation has authority to issue is _____. If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences and limitations of the shares of each class are as follows:

ARTICLE III (cont.)

3. a. If organized on a nonstock basis, the description and value of its real property assets are: (if none, insert "none")

   None

   b. The description and value of its personal property assets are: (if none, insert "none")

   None

   c. The corporation is to be financed under the following general plan:

   Contributions by supporters of the corporation

   d. The corporation is organized on a Directorship (Membership or Directorship) basis.

ARTICLE IV

1. The name of the resident agent at the registered office is:

   Timothy J. Lozen

2. The address of its registered office in Michigan is:

   511 Fort Street, Suite 402 (Street Address) Port Huron (City), Michigan 48060 (ZIP Code)

3. The mailing address of the registered office in Michigan if different than above:

   (Street Address or PO Box) (City), Michigan (ZIP Code)

ARTICLE V

The name(s) and address(es) of the incorporator(s) is (are) as follows:

Name	Residence or Business Address
Timothy J. Lozen	511 Fort Street, Suite 402, Port Huron, MI 48060

Use space below for additional Articles or for continuation of previous Articles. Please identify any Article being continued or added. Attach additional pages if needed.

ARTICLE VI

No member of the board of directors of the corporation who is a volunteer director, as that term is defined in the Act, or a volunteer officer shall be personally liable to this corporation or its members for monetary damages for a breach of the director's or officer's fiduciary duty; provided, however, that this provision shall not eliminate or limit the liability of a director or officer for any of the following:

1. a breach of the director's or officer's duty of loyalty to the corporation;
2. acts or omissions not in good faith or that involve intentional misconduct or a kowing violation of law;
3. a violation of section 551(1) of the Act;
4. a transaction from which the director or officer derived an improper personal benefit
5. an act or omission occurring before the filing of these articles of incorporation; or
6. an act or omission that is grossly negligent.

If the Act is amended after the filing of these articles of incorporation to authorize the further elimination or limitation of the liability of directors or officers of nonprofit corporations, the liability of members of the board of directors or officers, in addition to that described in Article VI, shall be eliminated or limited to the fullest extent permitted by the Act as so amended. No amendment or repeal of Article VI shall apply to or have any effect on the liability or alleged liability of any member of the board of directors or officer of this corporation for or with respect to any acts or omissions occurring before the effective date of any such amendment or repeal.

ARTICLE VII

The corporation assumes the liability for all acts or omissions of a volunteer if all of the following conditions are met:

1. The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.
2. The volunteer was acting in good faith.
3. The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
4. The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the Insurance Code of 1956, 1956 PA 218, MCL 500.135.

These Articles of Incorporation are signed by the incorporator on April _____, 2014.

I, (We), the incorporator(s) sign my (our) name(s) this 22nd day of April, 2014

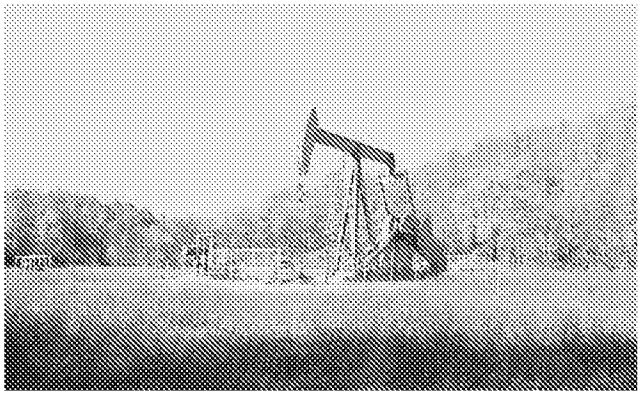
Timothy J. Fogan

EXHIBIT
E

State of Michigan
DEQ
Department of Environmental Quality

POOLING OF PROPERTIES FOR OIL AND GAS PRODUCTION

Please note: This document is intended only to give a brief general description of oil and gas pooling, and is not to be construed as legal advice. If you are involved in a pooling matter, you may wish to contact an attorney.



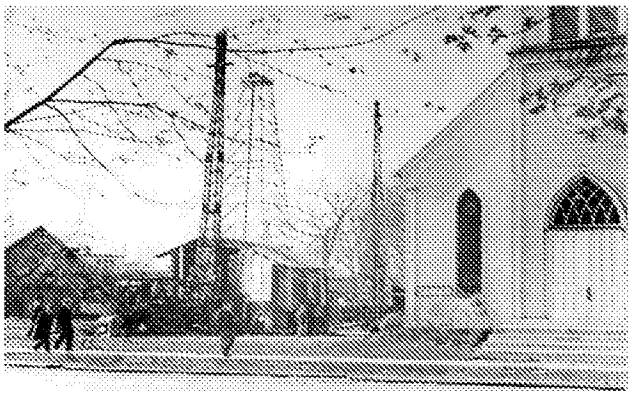
Typical Michigan Oil Well

In the early days of oil and gas production, developers often drilled as many wells as they could on the properties they owned or leased. Each developer was in competition with his or her neighbors and wanted to pump as much oil as possible, as quickly as possible. This often resulted in many more wells than were necessary and in waste of oil and gas resources.

Oil and gas producing states soon took action to address this and other wasteful practices in the oil and gas industry. Michigan enacted what is now Part 615 of the Natural Resources and Environmental Protection Act. Part 615 designates the Director of the Department of Environmental Quality as the "Supervisor of Wells," and charges the Department with providing for the orderly and efficient development of Michigan's oil and gas resources, while preventing damage to other resources, the environment, and public health and safety. Among other things, Part 615 provides for pooling of properties to form drilling units.

What is pooling?

Pooling is the combining of all oil and gas interests in a drilling unit. In most cases, the owners of oil and gas rights in a unit sign a lease with a developer that allows for pooling. If there is more than one developer in a unit, they voluntarily agree on a development plan. Each owner and developer receives his or her agreed upon share of proceeds from oil and gas produced from the unit. However, if an owner refuses to lease, or when two or more developers cannot agree on a plan, Part 615 provides for the Supervisor of Wells to pool the properties of those parties. This is termed "statutory pooling."



Early Oil Development, Bloomingdale

What is a drilling unit?

A drilling unit is a tract of land with a specified size and shape upon which one well may be drilled into a designated oil or gas reservoir. The purpose of drilling units is to set the optimum spacing and placement of wells, and to give each mineral owner a fair chance to benefit from development of oil and gas under his or her property.

Why is statutory pooling necessary?

The purpose of statutory pooling is to provide for equitable and efficient development of oil and gas while preventing the drilling of unnecessary wells.

Statutory pooling prevents the proliferation of wells that would occur if each owner of a separate small tract were allowed to drill a well on that tract. At the same time, it protects an owner from having his or her oil and gas drained without compensation.

How is statutory pooling done?

Statutory pooling can only be done by holding a hearing before the Supervisor of Wells. Any owner of a mineral interest in the area proposed to be pooled may participate in the hearing. Based on the hearing testimony, an order may be issued that sets the formula for sharing costs and revenues from a well or wells in the pooled area.

Who can be pooled?

Statutory pooling may affect the following persons:

Oil and gas developers who have leased mineral rights in the unit but do not voluntarily agree to share the costs of drilling and producing a well. The pooling order will set the terms for sharing of costs and revenues from the well. The developer may choose to pay in advance his or her share of costs of the well, or to have those costs deducted from his or her revenues. If the developer chooses the latter, he or she is not required to pay any out-of-pocket expenses. However, an additional cost (typically 100 to 300 percent of drilling costs) may be assessed against his or her revenue to compensate the driller for the risk of an uneconomic well.

Mineral owners who do not agree to lease. If pooled, a mineral owner will be subject to the same provisions for revenue sharing and choices for participation in costs as a developer, except that he or she will receive 1/8 of his or her revenue share as a cost-free royalty. The costs of drilling and production are deducted from the remaining 7/8 interest.

Mineral owners who have leased but do not consent to voluntarily pool their interests with others to form a full drilling unit. A pooling order may pool the interests of such an owner, but does not impose costs or affect his or her royalties.

Can a company drill a well or construct a pipeline on my land if I do not sign a lease and I am statutorily pooled?

A statutory pooling order does not give a developer the right to drill or otherwise trespass upon the land of an unleased owner. However, the developer may have certain rights of access under other legal provisions.

Department of Environmental Quality
Dan Wyant, Director
State of Michigan
Rick Snyder, Governor

Office of Oil, Gas, and Minerals
525 W. Allegan
P O Box 30256
Lansing MI 48909-7756
517- 241-1515
www.michigan.gov/ogs

Updated August, 2013

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff, Case No. 2014-140827-CH

v Hon. Judge Alexander

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation, and
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company,

Defendants.
_____/

LOZEN, KOVAR & LOZEN, P.C. Timothy J. Lozen (P37683) Matthew C. Lozen (P73062) Attorneys for Plaintiff 511 Fort Street, Suite 402 Port Huron, MI 48060 (810) 987-3970	HAFELI, STARAN, & CHRIST, P.C. John D. Staran (P35649) Attorney for Defendant City of Rochester Hills 2055 Orchard Lake Road Sylvan Lake, MI 48320 (248) 731-3088 jstaran@hsc-law.com THE MIKE COX LAW FIRM PLLC Michael A. Cox (P43039) Danila V. Artaev (P74495) Attorneys for Defendant Jordan Development Company, LLC The Mike Cox Law Firm PLLC 17430 Laurel Park Drive North Suite 120 E Livonia, MI 48152 mc@mikecoxlaw.com dartaev@mikecoxlaw.com

NOTICE OF HEARING

TO: Clerk of the Court
1200 N. Telegraph Road
Pontiac, MI 48341

LOZEN, KOVAR & LOZEN, P.C.
Timothy J. Lozen
Matthew C. Lozen
Attorneys for Plaintiff
511 Fort Street, Suite 402
Port Huron, MI 48060

HAFELI, STARAN, & CHRIST, P.C.
John D. Staran
Attorney for Defendant City of Rochester Hills
2055 Orchard Lake Road
Sylvan Lake, MI 48320

PLEASE TAKE NOTICE THAT Defendant Jordan Development Company, LLC's MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) and MCR 2.116(C)(8) will be heard before the Honorable James M. Alexander on Wednesday, September 3, 2014, at 8:30 a.m. in Court Room 1B, located at the Oakland County Circuit Court,1200 N. Telegraph Road, Pontiac, MI 48341.

Respectfully submitted,

The Mike Cox Law Firm, PLLC

June 11, 2014

/s/ Dan V. Artaev

Dan V. Artaev (P74495)
Co-Counsel for Defendant Breen
17430 Laurel Park Drive, North
Suite 120E
Livonia, MI 48152
(734)591-4002
dartaev@mikecoxlaw.com

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2014, I electronically filed the foregoing paper with the Clerk of the Circuit Court for the County of Oakland, using the Tyler Technologies via WIZNET File & Serve system, which shall send notification of such filing to all counsel of record.

THE MIKE COX LAW FIRM PLLC

/s/ Danila V. Artaev
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