

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
(BUSINESS COURT DIVISION)

ANNE E. MOORE,

Plaintiff,

v.

H3LLC, a West Virginia limited liability
corporation, and MICHAEL HOEFT, in his
individual capacity and as manager of
H3LLC, and DOES 1 THROUGH 25;

Defendants.

B.C.D. Action No.: 15BCD-26

Civil Action No.: 15-C-2056

MEMORANDUM IN OPPOSITION TO MOTION TO REFER
ON BEHALF OF DEFENDANTS H3LLC AND MICHAEL HOEFT

The Plaintiff, Anne E. Moore, by and through her attorney, Mark E. Underwood,
of Underwood Law Offices, herein files her opposition memorandum to the *Motion to
Refer* filed by Defendants, H3LLC and Michael Hoeft.

REFERRAL IS IMPROPER BECAUSE PLAINTIFF IS NOT A "BUSINESS
ENTITY", SHE IS A CONSUMER, AND THIS IS NOT THE TYPE OF SUIT
CONTEMPLATED BY THE COURT AND LEGISLATURE AS "BUSINESS
LITIGATION"

Nothing could be clearer. W. Va. T.C. R. Rule 29.04(a) defines "Business
Litigation" as follows:

- (1) the principal claim or claims involve matters of significance to the transactions,
operations, or governance between *business entities*; and
- (2) the dispute presents commercial and/or technology issues in which specialized
treatment is likely to improve the expectation of a fair and reasonable resolution of the
controversy because of the need to form specialized knowledge or expertise in the subject
matter or familiarity with some specific law or legal principles that may be applicable;
and,

(3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

(Emphasis added).

While corporations may have become "persons" in the eyes of the law, persons are still persons and not corporations. Moreover, Anne E. Moore holds title the mineral rights at issue in this action as "Anne E. Shaffer, single." *See copy of deed, attached hereto as Exhibit A.* On May 4, 1998, the Plaintiff's father, Frederick G. Shaffer, deeded $\frac{1}{2}$ interest in mineral rights in 118 acres of property in Barbour County, West Virginia. Dr. Shaffer's father, Byron Shaffer, had deeded him the same $\frac{1}{2}$ interest on April 16, 1963. These mineral rights are part of a family legacy, not a "business." Because of this, Plaintiff is a consumer. A "consumer" is defined in the West Virginia Uniform Commercial Code as "an individual who enters into a transaction primarily for personal, family or household purposes." W. Va. Code §46-1-201. Consumer litigation is specifically exempted from the Business Litigation rules.

At the heart of the Plaintiff's *Complaint* is a proposed Oil and Gas Lease; a copy of which is *attached hereto as Exhibit B*, which was sent to her by Mountaineer Keystone. When the Plaintiff was approached in 2013 by Mountaineer to sign the proposed lease, Plaintiff called Charleston Attorney, Forrest Jones to advise her whether the proposed lease was a beneficial one.

¹ Shaffer is Anne Moore's maiden name.

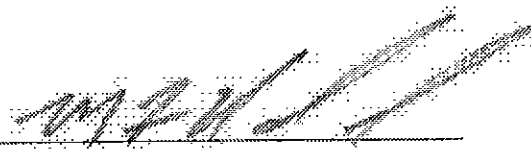
Mr. Jones referred her to his clients, H3LLC and Michael Hoefft, to obtain their opinion. She was told by Mr. Jones that he spoke with Michael Hoefft and explained what the Plaintiff needed. A contract and limited power of attorney was later entered into between the Plaintiff, as an individual, and the Defendants. The Plaintiff verbally requested advice on the proposed lease and despite two promises to review the lease and give her such advice, one in 2013 and another in 2014, the Plaintiff received nothing from the Defendants. Plaintiff now sues for loss of the benefit of the proposed lease. In short, the Plaintiff was a consumer of services of H3LLC, that is, Plaintiff, for the purposes of supporting herself and her family, entered into a contract for H3LLC to provide her the service of advising her on a proposed lease.

Despite Defendant's allegations that this case involves "the complexity of negotiations with natural gas companies on behalf of multiple mineral owners," what Plaintiff has sued for is compensation for the loss of an opportunity to earn the amounts under the proposed lease. Plaintiff also alleges that while H3LLC obtained a Limited Power of Attorney from her, with no definite expiration date, H3LLC took no action whatsoever to negotiate a lease either with Mountaineer Keystone or any other entity.

For the foregoing reasons, the Defendants' *Motion to Refer* must be denied.

Dated: 1/12/16

UNDERWOOD LAW OFFICES



Mark F. Underwood
WVSB: #7023
923 Third Avenue
Huntington, WV 25701
Telephone: (304) 522-0508
Facsimile: (304) 399-5449
Counsel for Plaintiff, Anne E. Moore

EXHIBIT A

370-283

THIS DEED, made this 10th day of May, 1998, by and between FREDERICK G. SHAFFER, single, party of the first part, and ANNE E. SHAFFER, single, party of the second part.

W I T N E S S E T H

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid by the party of the second part unto the party of the first part, the receipt of which is hereby acknowledged, and said party of the first part does grant and convey unto the party of the second part all of the oil, gas, minerals, and all rights in connection therewith owned by the party of the first part within and underlying that certain tract or parcel of real estate situate in Cove District, Barbour County, West Virginia, on the waters of Teters Creek, and known as the part of Bedford Campbell farm hereinbefore conveyed by Byron Shaffner, widower and unremarried, to Frederick G. Shaffer, by deed dated April 16, 1963, and of record in the office of the Clerk of the County Court of Barbour County, West Virginia, in Deed Book No. 201, page 437, the same being herein set out by metes and bounds, in a deed contained at Deed Book 85, Pages 372-4, and of record in the office of the Clerk of the County Court of Barbour County, West Virginia.

It is fully understood and agreed by and between the parties hereto that this deed is intended to convey all of the oil, gas, minerals and the mining, drilling and operating rights appurtenant thereunto owned by the party of the first part within and underlying said tract or parcel of real estate but that this conveyance is made subject to any and all of said minerals and

BOOK 370 PAGE 284

minerals rights which have heretofore been conveyed away by the grantor and his predecessors in title.

The party of the first part covenants to and with the said party of the second part that he has good right and title to the oil, gas, minerals and mineral rights herein and hereby conveyed and the right to convey the same and that he will warrant the title thereto GENERALLY.

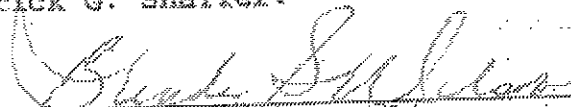
Grantor declares that this conveyance is exempt from transfer taxes that this is a conveyance from parent to his child made as a gift and is without monetary consideration.

WITNESS the following signature and seal:

 (SEAL)
FREDERICK G. SHAFFER

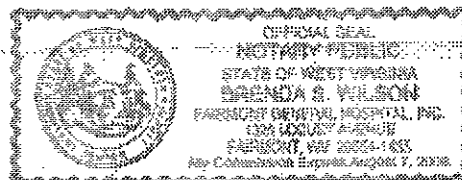
STATE OF WEST VIRGINIA,
COUNTY OF MARION, TO-WIT:

The foregoing instrument was acknowledged before me this
the 4 day of May, 1998 by Frederick G. Shaffer.


Notary Public

My commission expires: August 7, 2006

This instrument was prepared by Anne E. Shaffer, 606 Virginia Street, East, Suite 100, Charleston, West Virginia, and unless a separate written title opinion is provided, said attorney, by the preparation of this instrument alone, makes no representations or assurances to any person of the extent or quality of the title to the herein described property.



STATE OF WEST VIRGINIA, County of Berkeley, To-Wit:
I, Debra H. Talbot, Clerk of the County Commission of said County, do hereby certify that the foregoing writing, with Certificate thereto annexed, was this day produced to me in my office and duly admitted to record.

Witness my hand.

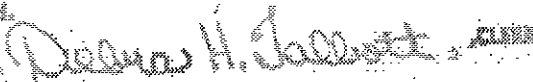
 ALME

EXHIBIT B



June 10, 2013

Anne E. Shaffer
1492 Janet's Place
Englewood, FL 34223

RE: Oil & Gas Lease, 50% Interest in 114.75 Gross Acres in Cove District, Barbour County, WV

Dear Anne E. Shaffer,

Attached please find a standard Ten (10) year Delay Rental oil and gas lease with a 15% royalty for your consideration. The lease pays annual delay rental payments of \$100.00 per acre per year for the Ten (10) year term which equals a total of \$1,000.00 per acre over the life of the lease. If you are comfortable with the lease and our program, please do the following to execute the lease:

1. Please go before a Notary Public.
2. Please sign your name(s) to the bottom of the lease form exactly as they are typed (this is the way they appear in courthouse records).
3. Please have the Notary sign and affix his/her seal to the lease.
4. Please sign one copy of the Order of Payment form and add a Social Security Number for each person signing the lease in the appropriate box, only if the correct number does not already appear. "X"s and/or stickers appear to assist you. Your copy of the Order of Payment is attached to this letter.
5. Kindly return the properly executed and notarized lease form, Order of Payment form, and W-9 in the attached, stamped, self-addressed envelope. Your check will arrive within 120 days of return.

We appreciate your kind participation in our exploration program and we look forward to a long and mutually profitable relationship! Should you have any questions about the lease or program, please feel free to contact me at 304-241-4811 (office) or 304-282-7061 (cell).

Sincerely,

A handwritten signature in black ink, appearing to read "Wes Rosenbaum".

Wes Rosenbaum

Lease No.:

Tax Map Ref.:

Renewal No.:

Estimates:

OIL AND GAS LEASE, EASEMENT AND RIGHT OF WAY

THIS OIL AND GAS LEASE, EASEMENT AND RIGHT OF WAY ("AGREEMENT") made and entered into this the _____ day of _____, 2013, by and between:

Anne E. Shaffer, single
1492 Janet's Place, Englewood, RI 04223

MarKey, LLC
6034 Wallace Road Extension, Suite 300
Wexford, PA 15090-3433

hereinafter called "Lessee",

WITNESSETH, that said Lessor, for and in consideration of the sum of ONE DOLLAR (\$1.00), the receipt of which is hereby acknowledged, and the royalties herein provided, and the covenants hereinafter contained to be paid, kept and performed by said Lessee, grants, demises, leases and lets, exclusively unto Lessee, the lands more particularly described, in Exhibit A attached hereto, with covenants of general warranty, for the purposes and with the rights of exploring by conducting geological surveys, by geophysical surveys with seismographs, by core tests, gravity, magnetic, geochemical and other methods whether now developed or developed later, and of constructing drill sites to drill new wells, recompletion producing wells, re-fill and use abandoned wells, pipe and equipment on the property, and of drilling either vertically or horizontally, producing, and otherwise operating for oil or gas or both, along with all hydrocarbon substances produced in association therewith, together with the right and easement to construct, lay, operate, repair, maintain and remove pipelines, telephone, power and electric lines (telephone, power and electric lines for use only with associated oil and gas production equipment), tanks, ponds, permanent roadways including stone or rock roads, plants, stations, compressors, equipment and structures thereon including houses for valves, meters, regulators and other appliances, together with the exclusive right to inject air, gas, water, brine or other fluids into the subsurface strata, with any and all other rights and privileges necessary, incident to or convenient for such operations, alone or co-jointly with neighboring lands for these purposes, together also with the right in unlimited access to the lands so Lessee can exercise any of the aforesaid rights, (collectively, the "Leased Premises"). Leased Premises being located in the

District of Cov., County of Barbour, State of West Virginia, and further described on Exhibit A, attached and containing, for the purpose of calculating the rental payment, 114.75000000 acres of land whether actually containing more or less.

f. It is agreed that this Agreement shall remain in force for a primary term of Ten (10) years from the date hereof and as long thereafter as the said land is operated by Lessee in the exploration or production of oil or gas or both, or this Agreement is maintained in force under any subsequent provisions hereof.

2. Lessee covenants and agrees:

(a) to pay Lessor, free of costs, a royalty of one-eighth (1/8) of that native oil produced and saved from the Leased Premises, with the exception of non-commercial nuisance oil, and delivered at the wells or into the pipeline to which the wells may be connected. Lessee may from time to time purchase any royalty oil in its possession, paying the market price then prevailing for the field where produced, and Lessee may sell any royalty oil in its possession and pay Lessor the price received by Lessee for such oil computed at the well, and

(5) to pay Lessee as a royalty, for the native gas and casinghead gas or other gaseous substance, produced from the Leased Premises and sold or used beyond the well or for the extraction of gasoline or other product, an amount equal to one-eighth (1/8) of the gross amount realized by Lessee computed at the wellhead from the sale of such substances, less any incurred taxes and third party charges, from each and every well. On gas sold at the well, the royalty shall be one-eighth (1/8) of the amount realized by Lessee from such sale, and

(c) payment of royalties hereunder shall be made or tendered monthly, or may be withheld at the discretion of the Lessee until such time as the total withheld exceeds twenty-five dollars (\$25.00), or annually at the end of the calendar year.

3. If on or before 120 days from the date hereof operations for the drilling of a well for oil or gas or other substances covered hereby have not commenced upon the Leased Premises or upon lands pooled or unitized therewith, or there is no production in paying quantities from the Leased Premises or lands pooled or unitized therewith, or if Lessee has not recorded in the Recorder's Office of **Darwin** County a full and completed surrender of the Leased Premises within 180 days from the date hereof, then on or before the date, Lessee shall pay to the Lessor the sum of One Hundred 00/100 Dollars (\$100.00) per net acre as an annual delay rental payment covering the privilege of deferring the commencement of operations for the drilling of a well during the first twelve months of this lease, subject however, to the express right of cancellation and surrender as hereafter granted to the Lessee. Lessee shall pay subsequent annual delay rental payments on the anniversary dates of this lease; each such payment shall be an advance delay rental payment and shall serve to extend the lease for the twelve months following such anniversary date for the remainder of the primary term. It is understood and agreed that the delay rentals as hereinbefore provided for are the primary consideration under this Agreement until commencement of a well on the Leased Premises or lands pooled or unitized therewith. Upon the commencement of a well on the Leased Premises or upon lands pooled or unitized therewith, Lessee shall have no further obligation to pay such delay rentals to Lessor during the remainder of the term hereof. The drilling of a non-productive well shall be accepted by the Lessor in lieu of delay rental for a period of twelve (12) months after its completion and following the exhaustion or abandonment of the well and Lessee shall have, for a period of twelve (12) months, the right to resume the payment of delay rental or commence operations for another well. Upon the resumption of payments of delay rental, the provisions hereof governing such payments and the effect thereof shall continue in full force as though they had not been interrupted. The payment of any delay rental is expressly subject to the right of surrender and cancellation as set forth in paragraph 8 of this Agreement.

4. All payments under this Agreement shall be made by check to the order of, and shall be mailed to, Anna E. Shaffer, single at 1492 Janet's Place, Underwood, FL 34223 until the Lessee shall have written notice from the Lessor, its heirs or assigns, accompanied by original or certified copies of deeds or other documents as Lessee may require, evidencing such change of ownership and directing payments to be made otherwise; and any payments made as above until such direction, and thereafter in accordance with such direction, shall absolve the Lessee from any liability to any heir or assign of the Lessor. All amounts to be paid hereunder shall be made according to Lessor's respective interests, as herein set forth, and this Agreement shall not be forfeited for Lessee's failure to pay any amounts hereunder until Lessee has received written notice by registered mail of such default and such failure shall continue for a period of one hundred twenty (120) days after receipt of such notice, to pay the same. This Agreement shall not be subject to a civil action or other claim to enforce claim of forfeiture due to Lessee's alleged failure to perform as specified herein, unless Lessee has received written notice of Lessor's demand and thereafter Lessee fails or refuses to satisfy Lessor's demand within one hundred twenty (120) days from the receipt of said notice by registered mail. If Lessor owns less than the entire interest in the Leased Premises, then the royalties, rentals and other payments herein provided shall be paid to the Lessor only in the proportion that such interest bears to the whole and undivided interest therein.

5. In addition to the covenants of general warranty hereinabove contained, Lessor further covenants and agrees, that if Lessor's title to the Leased Premises shall come into dispute or litigation, or if in the judgment of Lessee, there are bona fide adverse claims to the rentals or royalties hereinabove provided for, then Lessee, at its option, may withhold the payment of said rentals or royalties without interest until final adjudication or other settlement of such dispute, litigation, claim or claims; and that Lessee, at its option, may pay and discharge any taxes, mortgages or other lien or liens existing, levied, assessed or which may hereafter come into existence or be levied or assessed on or against the Leased Premises, and in the event it exercises such option, Lessee shall be subrogated to the lien and any and all rights of any holder or holders thereof, and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien or liens, any rental or royalty accruing hereunder.

6. In the event drilling or other operations hereunder are delayed or interrupted by lack of water, labor or material, or by fire, storm, flood, weather, war, rebellion, insurrection, riot, strike, differences with workmen, failure of subcontractors, or failure of carriers to transport or furnish facilities for transportation, or as a result of some order, rule, regulation, requisition or necessity of the government, or any other recognized force majeure, or as the result of any other cause whatsoever beyond the control of Lessee, the time of such delay or interruption shall not be counted against Lessee, notwithstanding anything in this Agreement to the contrary. All express or implied covenants of this Agreement shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations and this Agreement shall not be terminated, in whole or in part, nor Lessee held liable for any damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.

7. Lessee shall have the right to assign this Agreement or any interest therein and the assignee of Lessee shall have corresponding rights, privileges, and obligations with respect to said royalties and rentals as to the acreage assigned to it.

8. Lessee may, at any time during the term hereof, cancel and surrender this Agreement, and be relieved of any and all obligations, payments and liabilities, including any and all delayed rental as set forth in paragraph 3 above, by placing of record a notice of Agreement surrender and cancellation with the Office of the Clerk of the County Commission of the County in which the Leased Premises is located.

9. It is agreed that Lessee may drill or not drill on the Leased Premises as it may elect, and the consideration and rentals paid and to be paid hereunder constitute full adequate compensation and consideration to Lessor for such privilege.

10. Lessee shall not drill a well within 200 feet of any dwelling or barn now on the Leased Premises, except by written consent of the Lessor or owner of the surface on which such dwelling or barn is located, whichever is applicable; provided, however, that Lessee may otherwise locate drill sites and well bores where it deems necessary on the Leased Premises for the production of oil or gas, or both. Lessee may construct and maintain any roads necessary to carry out the intent of this Agreement.

11. It is agreed that Lessee shall have the privilege of using, without any additional rental or compensation to Lessor, hereunder sufficient water, oil and gas from the Leased Premises to run all machinery necessary for drilling and operations thereon.

12. If Lessee shall begin operations for the commencement of a well during the primary term of this Agreement, or any extension thereof, Lessee shall then have the right to complete the drilling of such well, and if oil or gas, or both, is found in paying quantities, this Agreement shall continue and be in force and with like effect as if such well had been completed within the term first herein mentioned.

13. The Leased Premises may be fully and freely used by Lessor for any purpose, excepting such parts as are used by Lessee in operation hereunder. Any sites of Lessee utilized for drilling, producing, storing and otherwise operating on the Leased Premises are for Lessee's use only, and Lessor shall not use any such sites for storage or for any other purpose so long as this Agreement is in effect.

14. Lessee shall pay Lessor for all damages to growing agricultural crops caused by Lessee's operations on the Leased Premises and shall bury all permanent pipelines below plow depth through cultivated areas upon request of Lessor owning an interest in the surface. Damages shall be calculated at the current marketable value only, and in no instance shall estimates of future values be considered. Any timber cut by Lessee in preparing access roads, right-of-ways, or locations will be stacked in an orderly manner in locations to be mutually agreed upon between by Lessee and Lessor and will not be subject to damage reimbursement to Lessor by Lessee. Any delays to Lessee's workers or damages to Lessee's property that are caused by Lessor, whether intentional or not, shall be recoverable by Lessee from any royalty payments or any other payments to Lessor that are due or becoming due.

15. Lessee is hereby granted the right to pool and unitize all or any part of the Leased Premises with any other lease or leases, land or lands, mineral estates, or any of them whether now owned or owned in the future by Lessee or others, so as to create one or more drilling or production units. Each such drilling or production unit shall not exceed 640 acres in total and shall conform to the rules and regulations of any lawful government authority having jurisdiction of the premises, and with good drilling or production practice in the area in which such unit is located. In the event of the unitization of the whole or any part of the Leased Premises, Lessee shall before or after the completion of the well, record a copy of its unit operation designation in the County wherein the Leased Premises are located and mail a copy thereof to the Lessor. In order to give effect to the known limits of the pool of oil or gas or both as such limits may be determined from available geological or scientific information or drilling operations, Lessee may at any time increase or decrease that portion of the acreage covered by this Agreement which is included in any drilling or production unit, or exclude it altogether, provided that written notice thereof shall be given to Lessor promptly. As to each drilling or production unit designated by Lessee, Lessor agrees to accept and shall receive out of the production or the proceeds from the production from such unit, such proportion of the royalties specified herein, as the number of acres out of the lands covered by this Agreement which may be included from time to time in any such

unit bears to the total number of acres included in such unit rather than the full amount of the royalty stated in section 2 above. The commencement, drilling, completion of or producing from a well on any portion of the unit created under the terms of this paragraph shall have the same effect upon the terms of this Agreement as if a well were commenced, drilled, completed or producing on the Leased Premises.

16. If at any time either during or after the primary term hereof there is a well capable of producing gas (with or without condensate) in paying quantities located upon the Leased Premises or on lands pooled therewith but such well is awaiting pipeline connection or is shut-in for any other reason (whether before or after production) and this Agreement is not maintained in force by operations or production at any well or by other activity or event, nevertheless it shall be considered that gas is being produced in paying quantities within the meaning of this Agreement. On or before the end of the initial year during which this Agreement is maintained in force for the entire annual period under this paragraph 16, Lessee shall pay or tender to Lessor hereunder, or to those entitled to the royalties provided in this Agreement a shut-in royalty equal to \$1.00 per acre for the acreage held under this Agreement at the time such payment or tender is made. Each subsequent payment or tender shall be made thereafter in like manner and amount on or before the end of each annual period while the Agreement was maintained in force for the entire annual period under the first sentence of this paragraph 16. Lessee's failure to timely or correctly pay or tender the shut-in royalty for any year shall not operate to terminate this Agreement or serve as a basis for its cancellation, but Lessee shall convey any erroneous payment or tender, when notified thereof, and if late then Lessee shall make the correcting payment or tender with interest at the rate of eight (8%) percent per annum to those to whom such shut-in royalty was not timely or correctly paid or tendered. As long as any well is shut-in, it shall be considered for the purpose of maintaining this Agreement in force that gas is being produced in paying quantities and this Agreement shall continue in effect both before and after the primary term.

17. Lessee shall be entitled during the term of this Agreement to lay and maintain pipelines on and across the Leased Premises to transport, without any fee payable therefore to Lessor, natural gas produced on the said tract of land and/or on other lands whether or not adjacent to the tract of land described herein. Any such transportation or gathering lines shall always remain the property of the Lessee.

18. Beyond the term of this Agreement, Lessee shall not be entitled to lay and maintain additional pipelines across Lessor's premises without specific written consent of Lessor. However, any pipelines laid during the term of this Agreement shall continue to be operative at the Lessee's option without any fee payable to Lessor and Lessee shall continue to have the right of unlimited access to maintain or remove said pipelines.

19. Lessee shall sell the production of the well on such terms and conditions as Lessee, in its sole discretion, may deem appropriate. Lessee shall have no duty to obtain production sales terms, which maximize the royalties payable to Lessor hereunder.

20. Lessee, in its sole discretion, may plug and abandon any well which it has drilled on the Leased Premises. Upon abandonment of said well or wells drilled on the Leased Premises, Lessee shall convey back to Lessor the drill site, access road(s) to said drill site(s), culverts and gates. Transportation and gathering pipelines shall remain the property of the Lessee and Lessee shall continue to have the right of unlimited access to maintain or remove said pipelines.

21. Lessee shall have the right at any time during the term of this Agreement or after the expiration or termination thereof to remove all machinery, fixtures, pipelines, meters, well equipment, houses, buildings, and other structures which Lessee has placed or caused to be placed on said premises, including the right to pull and remove all casing and tubing.

22. All the terms, conditions, limitations and covenants herein contained shall be binding upon the parties hereto and shall extend to and be binding upon their respective heirs, successors, personal representatives and assigns, but no representations other than those herein contained shall be binding on either party.

23. Lessor hereby represents, warrants and covenants that: (i) Lessor owns any and all interest in and rights to the Leased Premises; (ii) the Leased Premises are not encumbered by any enforceable oil or gas lease(s) of record or otherwise, and (iii) Lessor is not currently receiving any bonus, rental, production royalty or shut-in royalty as the result of any prior oil or gas lease(s) covering any or all of the Leased Premises; and (iv) any wells previously drilled upon the Leased Premises, or upon any lands with which the Leased Premises have been combined in a drilling or production unit, have been plugged and abandoned.

24. If during the term of this Agreement, Lessor makes any conveyance whereby any surface rights are transferred on the Leased Premises, Lessor shall promptly give notice of the same to Lessee and Lessor shall forward to Lessee a recorded copy of such conveyance. Lessor shall similarly provide any new title holder(s) to the surface rights with the terms and provisions of this Agreement and that said title holders are subject to and are bound by this Agreement.

25. If Lessor receives an offer to lease the oil or gas, or both, concerning any portion of the Leased Premises at any time while this Agreement remains in full force and effect, or within six (6) months thereafter, Lessor hereby agrees to notify Lessee of offeror's name, and to offer immediately to Lessee, in writing, to lease the oil or gas, or both, under the same terms. Lessee shall have fifteen (15) days to accept or reject the said offer to lease the oil and gas covered by the offer at the price, terms, and conditions specified in the offer. Failure of Lessor to provide such notice and offer to Lessee shall terminate any Lease entered into between Lessor and such offeror.

26. This Agreement may be executed in counterparts each having the same validity and all of which shall constitute but one and the same instrument. In the event any one or more of the parties named as Lessor fail to execute this Agreement, it shall nevertheless be binding upon all such parties who do execute it as Lessor.

27. This Agreement may, at Lessee's option, be extended as to all or part of the Leased Premises, for an additional primary term of **Ten (10) years** commencing on the date that the Agreement would have expired but for the extension. Lessee, its successors and assigns, may exercise its option by paying or tendering to Lessor an extension payment of **\$ 100.00** per net acre for the land then covered by the extended term, with said rental to be paid or tendered to Lessor in the same manner as provided in Paragraphs 3 and 4 hereof with regard to the payment of rentals. If Lessee exercises this option, the primary term of this Agreement shall be considered to be continuous commencing on the date of the Agreement and continuing from that date to the end of the extended primary term. Lessee's option shall expire on the first to occur of the following: (a) thirty (30) days following the termination or expiration of this Agreement or (b) the second anniversary of the expiration of the primary term stated in Paragraph numbered 1 above.

28. See Exhibit B attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals the day and year first above written.

WITNESS(ES):

LESSOR(S) SIGNATURES:

Printed Name

Printed Name Ann E. Shaffer

Printed Name

Printed Name

ACKNOWLEDGMENT

STATE OF

COUNTY OF

SS:

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared Ann E. Shaffer, single, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

PREPARED BY & RETURN TO: MARKKY LLC

6031 WALLACE ROAD EXTENSION, SUITE 300
WEXFORD, PA 15090-3430

EXHIBIT ATAX MAP No. 47-001-03-29-32

Leased Premises include all of that certain tract of land situate in the

District of Cove, County of Harbour, State of West Virginia, and bounded substantially as follows:On the North by lands of Wills Ray FreemanOn the East by lands of Hazel Freeman Holts c/o Samuel M. FreemanOn the South by lands of Clara Shaffer HoltsOn the West by lands of Wanda L. Freeman and Gary R. Freemanand containing, for the purpose of calculating rental payments, 114.75000000 acres of land whether actually containing more or less; and part of all said land is described in that certain Deed to Lessor from Frederick G. Shaffer dated 5/2/1998, recorded in Deed Book 370 Page 283 in the Recorder's Office of said County.

EXHIBIT

Addendum to Oil and Gas Lease, Easement and Right-of-Way dated _____ from Anne E. Shaffer, single, Lessor, whose address is 1491 Janet's Place, Hollywood, FL 34721 to Markey, LLC, Lessee, covering 114.75000000 acres, more or less, situated in Cove District, Harboure County, West Virginia.

In the event of a conflict or inconsistency between the printed terms of this Agreement and these added terms of this Agreement, the added terms shall control and be deemed to supersede the printed terms of the Agreement.

Notwithstanding anything to the contrary provided for in the foregoing Agreement, here, it is agreed and understood:

Marcellus Shale Royalty

For production from the Marcellus Shale, all references made in Paragraph (2) a and b of the section entitled "Lessee covenants and agrees" as to one-eighth (1/8) royalty shall be amended to Fifteen Percent (15%).

Acceleration Provision

If a well capable of producing oil and/or gas or other substances in paying quantities is completed upon the leased premises or upon lands pooled or unitized therewith prior to the expiration of the primary term of this Agreement, Lessee shall pay to Lessor any and all remaining delay rentals in a single lump sum payment within 90 days from the completion of said well.

Signed for identification:

Anne E. Shaffer

MEMORANDUM OF OIL AND GAS LEASE, EASEMENT AND RIGHT-OF-WAY

State (West Virginia):

County (Barbour):

Lessor: Anne E. Shaffer, singleLessor's Address: 1492 Janet's Place, Englewood, FL 34223

Lessee:

MarKey, LLC

Lessee's Address:

6031 Wallace Road Extension, Sullis, 360
Wexford, PA 15090

Date Executed: _____

Effective Date: _____

As of the Effective Date stated above, Lessors, named above, executed and delivered to Lessee, named above, an Oil And Gas Lease, Easement and Right-of-Way (the "Agreement") in which Lessors granted, leased, and let to Lessee lands (the "Lands") located in the County and State named, described as follows:

All that certain tract of land in Cove District, being a total of 114.75000000 acres, more or less, and known as Tax Parcel # 47-061-03-20-32

The Agreement grants Lessee, the exclusive right to explore for, produce and market oil, gas and other hydrocarbons from the Lands during the term of the Agreement, as provided for in the Agreement.

The Agreement is for a primary term of Ten (10) year from the Effective Date stated above, and as long thereafter as oil, gas or other minerals are produced from the lands described above, or lands pooled therewith, according to and by the terms and provisions of the Agreement between Lessor and Lessee. The Agreement, with all of its terms, covenants and other provisions, is referred to and incorporated into this Memorandum for all purposes.

This Memorandum of Oil and Gas Lease, Easement and Right-of-Way is executed by Lessor and Lessee and placed of record in the County in which the Lands are located for the purpose of placing all persons on notice of the existence of the Agreement which Agreement is not, at the request of both parties, being placed of record.

WITNESS:

LESSORS:

Anne E. ShafferLESSEE:
MarKey, LLC_____
By: Jonathan D. Farmer
His: Vice President of Land

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) SS:

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared Anne E. Shaffer, single, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:

On this the _____ day of _____, 2013, before me, the undersigned officer personally appeared Jonathan D. Farmer, who acknowledged himself to be the Vice President of Land of MarKey, LLC and as such Vice President of Land, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name as Vice President of Land.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Signature/Notary Public: _____

Name/Notary Public (print): _____

PREPARED BY & RETURN TO:
MarkKey LLC
6031 Wallace Road Extension, Suite 300
Wexford, PA 15090



Consideration Receipt

MarKey, LLC, 6031 Wallace Road Extension, Suite 300, Wexford, PA 15090 has this day tendered to: Anne E. Shaffer, single the sum of \$1.00 dollars cash as initial consideration pursuant to the terms of that certain Oil and Gas Lease, Easement and Right-of-Way dated _____ 2013, for Lessor's interest in lands described as follows:

District/Township: Cove

County, State: Barbour, West Virginia

Prospect Area: Beulah East

Tax Parcel(s): 47-001-03-20-32

Gross Acres: 114.75000000

Landman: Wes Rosenbaum

Date Cash Received: _____

Lessor's Signature: _____

Lessor Name (printed): Anne E. Shaffer

AFFIDAVIT OF NONDEVELOPMENT AND NONPAYMENT OF DELAY RENTALS

I, Anne E. Shaffer, single, of 1493 Janet's Place, Englewood, FL 34223, being of lawful age and duly sworn, do hereby depose and state the following:

Affiant hereby states that (he/she) is the owner of an undivided interest in the oil and gas rights under certain lands situate in the District of Cove, Putnam County, West Virginia, being further described as follows:

Tax Parcel No. 47-001-03-26-12

Bounded formerly or currently as follows:

On the North by lands of: Willis Ray Freeman
On the East by lands of: Hazel Freeman Heirs c/o Samuel M. Freeman
On the South by lands of: Clara Shaffer Heirs
On the West by lands of: Wanda L. Freeman and Gary R. Freeman

And more specifically described in a deed dated 5/4/1998, from Frederick G. Shaffer to Anne E. Shaffer and recorded in Deed Book 270, at Page 283, of the deed records of said county and state.

Affiant further states that during the time of his/her ownership of the aforementioned rights in the above described lands, there (has/had not) been various oil and gas leases executed for the purpose of exploring for oil and gas. Affiant is also aware that there may have been other oil and gas leases executed by predecessors in title to the above described lands. Affiant further states that for a period of at least _____ years there has been no delay rental payments paid to Affiant, in money or otherwise, nor have such payments been deposited to Affiant's credit in any named bank. Affiant further states that she will not accept any delay rental or other payments after the date of execution of this Affidavit that would perpetuate any of said prior leases.

Furthermore, Affiant states that to the best of her knowledge there is no production of oil and/or gas from the above described lands and that she is not aware of any drilling, exploration, or development activities of any nature or kind conducted on said lands. Affiant also states that no production royalties and/or shut-in royalties have been paid effectively perpetuating any prior leases.

Further Affiant sayseth naught.

AFFIANT:

Anne E. Shaffer

Subscribed and sworn to before me on this _____ day of _____, 2013.

My Commission Expires: _____

Signature/Notary Public

Name/Notary Public (PRINT)

**ORDER OF PAYMENT**

With respect to that certain Oil & Gas Lease, Easement and Right-of-Way dated the _____ day of _____, 2013 between MarKey LLC, as Lessee, and Anne E. Shaffer, single as Lessor(s), it is understood and agreed that Lessee shall pay the rental payment per paragraph three (3) of the Oil & Gas Lease, Easement and Right-of-Way to Lessor in the sum of One Hundred and no/100 Dollars (\$100.00) per net acre within One Hundred Twenty (120) days of MarKey's receipt of said signed Oil & Gas Lease, Easement and Right-of-Way.

LESSEE: MarKey LLC

By _____
Its Representative

LESSOR(S):

Anne E. Shaffer

SS# _____

SS# _____

Execute in duplicate original -- 1 original for MarKey LLC
1 original for Lessor

PAYEE'S ADDRESS: 1492 Janet's Place
Englewood, FL 34223

Form W-9 (Rev. October 2007) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
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Part of type See specific instructions on page 1	Name (as shown on your income tax return) Anne E. Shaffer Business name, if different from above Check appropriate box: ☒ Individual sole proprietor ☐ Corporation ☐ Partnership ☐ Limited liability company. Enter the tax classification (if disregarded entity, C corporation, Partnership) # ☐ Other (see instructions) # Exempt payee ☐ Address (number, street, and apt. or suite no.) 1432 Janet's Place City, state, and ZIP code Englewood, FL 34225 List account number(s) (optional)
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Part I Taxpayer Identification Number (TIN)	
Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, use the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.	Social security number or Employer identification number

Part II Certification	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and	
3. I am a U.S. citizen or other U.S. person (defined below).	
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign this Certification, but you must provide your correct TIN. See the instructions on page 3.	

Sign Here	Signature of U.S. person	Date
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General Instructions Section references are to the Internal Revenue Code unless otherwise noted.	Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are: • An individual who is a U.S. citizen or U.S. resident alien, • A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, • An estate (other than a foreign estate), or • A domestic trust (as defined in Regulations section 301.7701-7).
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Purpose of Form A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions to an IRA.	Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partner's share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income. The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases: • The U.S. owner of a disregarded entity and not the entity,
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