

**KENAI PENINSULA BOROUGH
REAL PROPERTY LEASE**

This LEASE (hereinafter "LEASE"), for good and valuable consideration, and pursuant to Ordinance 2009-____, enacted _____, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and MARATHON OIL COMPANY (Marathon), an Ohio Corporation, whose address is P.O. Box 196168, Anchorage, Alaska 99519-6168 (hereinafter "LESSEE").

I. PURPOSE OF LEASE

This lease grants LESSEE use of the real property described in Section II below for the purpose of commercial and industrial surface uses to compliment federal Oil and Gas Lease Serial A-028055 and State of Alaska, Department of Natural Resources, Gas Storage Lease ADL 390821 and LESSEE's broader commercial and industrial activities.

II. DESCRIPTION OF PROPERTY AFFECTED

The following parcel of real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, is described as:

Tract 5, Kalbea Tract 5 Subdivision, according to Plat No. 75-95, records
of the Kenai Recording District, containing 18.57 acres more or less
(hereinafter the "Property").

Said Property is occupied by the southern segment of Kenai Gas Field, Pad 34-31 operated by Marathon Oil Company.

**III. TERMS AND CONDITIONS SPECIFIC
TO LEASE BETWEEN KPB AND MARATHON OIL COMPANY, INC**

1. Lease Term. This lease is for an initial term of 20 years commencing May 1, 2009 and terminating April 30, 2029. Lessee shall have the option to renew this lease for up to four additional five (5) year terms with continuing rental terms identified in 2, (below). Renewal option shall be exercised in writing by Lessee no less than 90 days in advance of the expiration of the initial term or respective renewal term.
2. Lease Rental. The annual lease rental for the first year of this lease is \$15,000.00 and shall be increased on May 1 of each subsequent year of the term by 3 percent over the previous lease year rental. (See attached rental schedule.) Rental is due in advance on May 1 of each lease year.
3. Development Plan. LESSEE shall operate oil and gas associated facilities with the development plan attached as "Attachment A."
 - A. Modifications of LESSEE's development plan may be made through the written approval of the KPB Planning Director of a modified development plan submitted by LESSEE to KPB in writing at least 60 days prior to anticipated modification of improvements or use. Approved modifications shall be attached to this lease and effective upon the Planning Director's written approval. Approval by KPB shall not be unreasonably withheld. The modified development plan shall describe the proposed improvements or use, their location, disclose their use and their nature, and provide an estimate of their value.
4. Oil and Gas Lease A-028055. This lease shall in no way affect LESSEE's interests in federal Oil and Gas Lease A-028055.
5. Gas Storage Lease ADL 390821. This surface lease shall in no way affect LESSEE's interests and operations of the Gas Storage Lease held with the Alaska Department of Natural Resources, Division of Oil and Gas. LESSOR acknowledges that this lease will apply in the event that field operations shift solely to gas storage operations.
6. Ownership of Improvements. LESSEE shall retain ownership of LESSEE's improvements subject to the terms and conditions of this lease.
7. Site Closure. Notwithstanding KPB Code Section 17.10.240 provisions, KPB reserves the right, at KPB's sole option, to require LESSEE to restore site to a natural condition, free of surface contamination, to leave the site in a condition suitable for use by another, or to another condition determined by mutual written agreement, or any combination thereof.

- A. Pre-closure Inspection. Prior to termination of the Lease or last executed renewal KPB and LESSEE will jointly inspect site for the purpose of KPB determining the condition that site will be left in upon termination of lease. KPB and LESSEE shall agree in writing the condition that site will be left in prior to termination of lease. KPB, at its sole discretion, may require LESSEE to take any or all of the actions listed in paragraphs B through F of this section.
- B. Removal of Improvements. LESSEE shall remove all improvements including surface structures, pad, and/ or road ways.
- C. Testing. At LESSEE'S sole expense, site shall be sampled and analyzed in accordance with Alaska Department of Environmental Conservation (ADEC) regulations at the time of closure.
- D. Remediation. At LESSEE'S sole expense, screening, cleanup, and remediation of environmental contamination shall be accomplished to current (as of the date of remediation) ADEC standards prior to termination of lease. KPB will be consulted on such actions and allowed the opportunity to comment on future proposals and final decisions
- E. Reclamation. Site shall be reclaimed by adding organic material to bring site to the same topographic level as adjacent land and then planted with local plant species.
- F. Post-closure Inspection. KPB and LESSEE will jointly inspect site to confirm site is left in a condition acceptable to KPB.

IV. TERMS AND CONDITIONS CONTAINED IN KPB CODE SECTION 17.10.240

1. Assignments. LESSEE may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the provisions of this agreement and laws and regulations applicable thereto.
2. Termination. Upon termination of this Lease, LESSEE covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of III.7. Site Closure.

3. Breach of Agreement. In the event of LESSEE's default in the performance or observance of any of the LEASE terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may cancel this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the LEASE is in default.
4. Cancellation. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the LESSEE and either the KPB Mayor or Planning Director. This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
5. Entry or Re-Entry. In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the LESSEE during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefore. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.
6. Fire Protection. LESSEE shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
7. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on the Property except as authorized and regulated under federal Oil and Gas Lease A-028055 and state gas storage lease ADL 390821; namely, Marathon may temporarily store hazardous wastes generated during production operations in a designated area on Kenai Gas Field, Pad 34-31. Wastes shall be periodically removed by a qualified party for permitted treatment and off-site disposal.

LESSEE shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, LESSEE shall IMMEDIATELY report such release to the KPB Planning Director and to any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261.3, of the Resource Conservation and Recovery Act (RCRA), and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

8. Full and Final Agreement. This LEASE constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This LEASE may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. LESSEE avers and warrants that no representations not contained within this agreement have been made with the intention of inducing execution of this agreement.
9. Notice. Any notice or demand, which under the terms of this Lease must be given or made by the parties hereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown in this section. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR
KENAI PENINSULA BOROUGH

LESSEE
MARATHON OIL COMPANY

Planning Director
144 N. Binkley St.
Soldotna, AK 99669-7599

Charles Underwood, Land Manager
P.O. Box 196168
Anchorage, Alaska 99519-6168

10. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
11. Resale. In the event that this Lease should be terminated, canceled, forfeited or abandoned, KPB may offer said lands for sale, lease or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations. If said land is not immediately disposed of, then said land shall return to the Land Bank.
12. Responsibility of Location. It shall be the responsibility of the LESSEE to properly locate itself and its improvements on the leased lands.
13. Liens and Mortgages. LESSEE shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease, except in connection with financing transactions as discussed below. In the event that any prohibited lien is placed against the property, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees.

For the purpose of interim or permanent financing of improvements to be placed upon the leased property, and for no other purpose, LESSEE, after giving written notice thereof to KPB, may encumber by mortgage, deed of trust, assignment or other appropriate instrument, LESSEE's interest in the leased premises and in and to this Lease, provided such encumbrance pertains only to such leasehold interest and does not pertain to or create any interest in KPB's title to or interest in the leased property. Any such encumbrance shall be entirely subordinate to KPB's rights and interest in the leased property.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the LESSEE with respect to the curing of any default hereunder by LESSEE.

In the event of cancellation or forfeiture of this Lease for cause, the holder of a properly recorded mortgage, deed of trust, or assignment will have the option to acquire the Lease for the unexpired term thereof, subject to the same terms and conditions as in the original instrument.

14. Easements and Rights-of-Way. This Lease is subject to all easements, rights-of-way, covenants and restrictions of which LESSEE has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and access purposes across the PROPERTY as deemed reasonable and necessary provided that such easements will not unreasonably interfere with LESSEE'S use of the PROPERTY.

LESSEE will be notified if an additional easement is proposed and LESSEE will within 30-days provide KPB a letter of non-objection or a statement of concerns in the event such proposed easement is deemed to cause interference with LESSEE's use of the Property. .

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements across the PROPERTY, it is agreed and understood that LESSEE shall receive no damages for such grant

15. Sanitation. LESSEE shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands.
16. Subleasing. No LESSEE may sublease lands or any part thereof without written permission of the mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.
17. Violation. Violation of any of the terms of this lease may expose LESSEE to appropriate legal action including termination or cancellation of its interest in accordance with state law.
18. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by LESSEE, or of any default on the part of the LESSEE in observance or performance of any of the conditions or covenants of this LEASE, shall not be deemed to be a waiver of any provision of the LEASE. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.

V. GENERAL TERMS AND CONDITIONS

1. Waste. LESSEE shall not commit waste or injury upon the lands leased herein.
2. Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition.
3. Compliance With Laws. LESSEE agrees to comply with all applicable federal, state, borough and local laws and regulations.
4. Inspections. LESSEE shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time, with advance notice to LESSEE, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be reasonably exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.
5. Indemnification and Liability Insurance.
 - a. Indemnification and Hold Harmless. The LESSEE shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from LESSEE'S performance or failure to perform in accord with the terms of this lease in any way whatsoever. The LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE'S officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.
 - b. Liability Insurance. LESSEE shall purchase, or self-insure, at its own expense and maintain in force at all times during the term of this Lease Comprehensive General Liability Insurance, or self-insurance of substantially equal terms, which shall include bodily injury, personal injury, and property

damage with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$2,000,000 per occurrence. The policy purchased shall name LESSEE as the insured and KPB as an additional insured, and shall also require the insurer to provide KPB with thirty (30) days or more advance written notice of any pending cancellation or change in coverage.

- c. Proof of Insurance. At the time of executing this LEASE, and at the time of each renewal of insurance, LESSEE shall deliver to the KPB Planning Director certificates of insurance, or a statement of self-insurance, meeting the above criteria.
6. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F), this agreement will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
7. Jurisdiction. Any suits filed in connection with the terms and conditions of this Lease, and of the rights and duties of the parties, shall be filed at Kenai, Alaska and shall be governed by Alaska law.
8. Savings Clause. Should any provision of this Lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Lease or constitute any cause of action in favor of either party as against the other.
9. Binding Effect. It is agreed that all covenants, terms and conditions of this LEASE shall be binding upon the successors, heirs and assigns of the original parties hereto.
10. Authorization to Sign. LESSEE warrants that the person executing this agreement is authorized to do so on behalf of MARATHON OIL COMPANY.

MARATHON OIL COMPANY

KENAI PENINSULA BOROUGH

Charles Underwood
Land Manager and Attorney-in-fact

David R. Carey
Mayor

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

Johni Blankenship
Borough Clerk

Holly B. Montague
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by David R. Carey, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2009, by Charles Underwood, Land Manager and attorney-in-fact for Marathon Oil Company, an Ohio corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

