

# Draft Lease

This draft lease is provided for the convenience and information of bidders, so that potential bidders will be fully informed of all terms, rights and obligations under the lease. It substantially represents all applicable terms, rights and obligations of the parties. However, the Department of Wildlife and Fisheries expressly reserves the right to alter the language of the lease prior to execution thereof.

STATE OF LOUISIANA

WHITE LAKE WETLANDS  
CONSERVATION AREA  
(WLWCA)-SURFACE LEASE  
NO. LDWF-WLWCA-2011-I.

PARISH OF EAST BATON ROUGE

This contract of lease is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between:

State of Louisiana, through the Department of Wildlife and Fisheries, herein represented by its Secretary, Robert J. Barham, hereinafter referred to as LESSOR; and

\_\_\_\_\_ herein represented by \_\_\_\_\_, its \_\_\_\_\_, hereinafter referred to as LESSEE.

This lease will become binding on LESSOR only after execution by LESSOR and delivery to LESSEE. Deposit of LESSEE'S first rental payment into any account of LESSOR does not constitute acceptance of this lease by LESSOR.

## PROPERTY

Pursuant to LSA R.S. 41:1211 et seq., R.S. 56:30.3 and R.S. 56:799.1 et seq., and upon the terms, conditions and considerations hereinafter set forth, LESSOR does hereby lease and let unto LESSEE, without any warranty of title whatsoever express or implied, the following described property owned by the State of Louisiana, and situated in the Parish of Vermilion and on the White Lake Wetlands Conservation Area ("the property"), to wit:

Otherwise referred to as Tract I

Township 14 South – Range 1 West:

**Sections 1 & 2:** All acreage lying south of agricultural protection levee.

**Sections 3,4,9,10,11,12,13,14,15,19,20,21,22,23,24,25,26,27,28 & 29:** Entire Sections

**Sections 30 & 31:** All acreage lying north of White Lake shoreline

**Sections 32 & 33:** Entire Sections

**Sections 34, 35 & 36:** All acreage lying north of White Lake shoreline.

**Township 15 South – Range 1 West:**

**Sections 3,4,5 & 6:** All acreage lying north of White Lake shoreline.

**Total lease acreage is approximately 18,545.0 acres and is situated in Vermilion Parish, Louisiana as shown on the plat attached hereto and made a part hereof.**

The property is offered "AS IS". There shall be no diminution of rental for any reason, including but not limited to, the reduction of acreage due to subsidence, erosion, or flooding.

### **PURPOSE**

This lease is made and executed by LESSOR to LESSEE for the limited purposes of:

Hunting waterfowl, other migratory game birds, rabbits, deer, trapping alligators and maintaining a single campsite at a location to be determined by the Louisiana Department of Wildlife and Fisheries ("LDWF"). No other uses of the property are authorized without the written consent by the Secretary of the LDWF.

### **RESERVATIONS**

LESSOR reserves the full use and enjoyment of the property, both surface and subsurface, for any and all purposes except those particular uses granted hereinabove to LESSEE. LESSOR'S reservation includes, but is not limited to the following rights:

1. LESSOR reserves all rights of whatever nature and kind in and to all minerals on or under the property. These rights include, but are not limited to, all operations which are necessary, useful or convenient for the exploration, exploitation, drilling, mining, production, development, storage and transportation of all oil, gas, sulphur and other minerals, on or under the property or any other lands under the control of LESSOR.

2. LESSOR reserves all rights of whatever nature and kind in and to all other surface or subsurface uses of the property. These rights include, but are not limited to, all operations which are necessary, useful or convenient for the exploration, exploitation, mining, production and development of all sand, gravel or shell deposits; issuance of servitudes and rights-of-way; and issuance of permits and leases.

3. LESSOR reserves all rights of whatever nature and kind in and to all timber and forest products on the property. These rights include, but are not limited to management and/or removal of timber and forest products.

LESSOR may exercise the rights reserved herein including all access necessary for the exercise of these rights, without LESSEE'S consent, so long as those rights granted do not prohibit LESSEE'S use of the property. LESSEE hereby expressly agrees and declares that LESSOR shall not be liable to LESSEE for damages resulting from the exercise of any rights reserved herein.

### **TERM AND RENTAL**

1. This lease shall commence on September 1, 2011. The hunting rights and campsite lease rights will commence on September 1, 2011. All other rights granted herein will commence on January 1, 2012. The term of this lease shall end on January 31, 2021.

2. As consideration for LESSEE'S right to hunt waterfowl and construct and occupy a campsite during the 2011-2012 waterfowl season, the parties acknowledge that LESSEE has paid \$\_\_\_\_\_, representing one hundred percent (100%) of the annual rental payment. The parties further acknowledge that by or before March 1, 2012 LESSEE shall pay \$ \_\_\_\_\_, representing the annual rental for the period from February 1, 2012 to January 31, 2013. Beginning March 1, 2013 and by or before March 1<sup>st</sup> of each succeeding year, LESSEE agrees to pay an annual advance rental of \$\_\_\_\_\_ which will cover the period from February 1<sup>st</sup> through January 31<sup>st</sup> of each year. (Example: The March 1, 2013 payment will cover the rental period from February 1, 2013 to January 31, 2014.) Further consideration for this lease, in addition to the rent, shall be the mutual covenants between LESSOR and LESSEE herein contained.

The rental herein shall not increase or decrease as a result of changes in crop subsidy payments.

Any rental payment of rent accruing under the provisions of this lease which shall not be paid when due shall bear interest at the rate of twelve percent (12%) per annum, or the maximum rate of interest permitted by Louisiana law, whichever is the lesser amount, beginning thirty (30) days from the date when the rental payment was due by the terms of this lease, until the amount is paid by the LESSEE.

LESSOR shall adjust the rental reflect the percentage of increase or decrease in the cost of living index as established by the Consumer Price Index for Urban Wage Earners and Clerical Works published by the Bureau of Labor Statistics of the U.S. Department of Labor or any revision or equivalent of any such index published by the U.S. Government which has occurred from date of this instrument to the date of adjustment; provided however, that in no event shall consideration of such renewal be less than the consideration paid herein for the original term. This adjustment shall be done in the fifth (5<sup>th</sup>) year of the lease and every five (5) years thereafter in the event of a renewal, and shall be cumulative.

In addition to the above rental LESSOR agrees to pay 40% of the gross proceeds from the sale of any wild alligators harvested from the property. Said alligator payment will be made annually within five days from the sale of said alligators and must be accompanied by copies of receipts from the sale of pelts and/or alligators.

All payments shall be mailed to Louisiana Department of Wildlife and Fisheries, 710 West Prien Lake Road, Suite 202A, Lake Charles, LA 70601. If LESSEE fails to pay any rental or other payment due within 30 days of the due date, LESSOR may terminate this lease immediately and repossess the property without notice or action at law, and may sue for and recover all rentals or other payments then accrued and other rentals or other payments to accrue during the term hereof, or may take any other action for relief either at law or in equity, including, but not limited to, seizure and sale of LESSEE's property on the property as provided by Louisiana law.

### **CONDITIONS**

1. Prior to any and all construction, operation or maintenance activities on the property, LESSEE agrees to contact the LDWF's WLWCA property manager for the purpose of coordinating the planned activities. All activities conducted on the property shall be subject to the rules and regulations of WLWCA.

2. This lease is granted subject to all existing surface leases, mineral leases, servitudes, rights-of-way, permits or any other contracts of record affecting the property.

3. LESSEE shall remediate to the extent LESSOR determines to be practical all adverse environmental impacts occasioned by LESSEE's activities under this agreement.

4. LESSEE agrees to comply with all federal, state and local statutes, rules, regulations and ordinances relating to hunting, fishing, trapping, environmental, sewer, sanitation, fire, safety and any other regulated activities and provide our office with proof of compliance.

5. LESSEE agrees to comply with all requirements of any levee board flood control servitude existing on the property.

6. LESSEE accepts possession of the leased premises as being in good order and repair. LESSEE shall occupy the leased premises at its own risk, and LESSOR shall not be liable to LESSEE, LESSEE'S employees, agents, invitees, licensees, or any other person, for any damage to person or property caused by any act, omission or neglect by LESSEE, LESSEE'S successors or assigns, or by reason of any defect in the leased premises, whether apparent or latent.

7. LESSEE agrees to use the property as a good and careful administrator. This includes maintaining the property in a neat, clean and orderly manner at all times. No hazardous waste materials shall be released, placed, or stored by LESSEE on or under the property.

8. The parties hereto recognize that it might hereafter become necessary or desirable to

widen, deepen or make some other work of public improvement on land or on the streams or water bottoms over and through which the property under this agreement is located, and LESSEE accepts this lease under the express condition and with the distinct understanding that, if any such work by the United States, the State of Louisiana, or any agency, board, commission, department or political subdivision of either, makes it necessary to alter or relocate any constructions thereon, the entire cost of such alteration or relocation shall be borne by the LESSEE, this responsibility on the part of the LESSEE being part of the consideration for which this grant is made. This provision, however, shall not prejudice the LESSEE's right to receive indemnification and/or relocation costs from the United States, the State of Louisiana or any agency, board, commission, department or political subdivision of either in the event that there is an appropriation for payment of such costs.

9. Should an Agent or Attorney be employed to give special attention to the enforcement or protection of any claim of LESSOR arising from this lease, LESSEE shall pay as fees and compensation to such Agent or Attorney such sum as will constitute a reasonable fee including all court costs, together with all other costs, charges and expenses or reimbursement for actual costs occasioned by LESSOR, at LESSOR'S discretion.

10. LESSEE shall use due care to avoid damage to the leased premises or anything related thereto, including timber, crops, wildlife, game, fish, and other plant and animal life, except as may be contemplated by this lease. LESSEE shall maintain, repair and restore at its own expense all canals, ditches, dams, levees, roads, bridges, fences and other structures on the leased premises which may be worn or damaged by LESSEE'S use or possession hereunder. LESSEE shall be responsible for any and all damages to the leased premises or anything related thereto which may result from LESSEE'S use or possession hereunder. LESSEE shall not conduct any activities which require a Corp of Engineers wetland permit without advance written notice to, and express written permission from, LESSOR. In such event, LESSEE shall cooperate with LESSOR to obtain the necessary permits prior to the commencement of such activities.

11. LESSEE may clear all underbrush from the property but no trees over 6" in diameter may be cut on the property without prior approval of LESSOR.

12. LESSEE shall restrict hunting to no more than eight (8) waterfowl blinds each day, with no more than four (4) hunters per blind. LESSEE shall not conduct or allow waterfowl hunting after 12:00 noon each day on the leased acreage. All waterfowl hunting shall be conducted from established waterfowl blind locations. No hunting from levees or boats will be allowed. LESSOR reserves the right to make the final and future decisions concerning blind location and installation on the leased acreage.

13. LESSEE shall, at its own risk and expense, cause the property to be properly and adequately policed for the purpose of protecting waterfowl thereon from molestation, injury or destruction, except as contemplated by this lease, and for the purpose of preventing violations of the law being committed upon the property; and if LESSEE shall fail to do so, then LESSOR may cancel this lease on fifteen (15) days written notice to LESSEE; or LESSOR, at its election, may provide policing as in its judgment shall be necessary for such purposes, and shall charge to and collect from LESSEE the reasonable cost thereof. LESSOR shall have the continuing right to provide for such additional policing of the property, or any part or parts thereof as LESSOR may desire. LESSEE shall grant access to LESSOR'S agents and employees for any purpose required by LESSOR.

18. The hunting rights granted hereunder are exclusively for the benefit of LESSEE, his LESSOR-approved annual sub-lessee, and their guests and invitees. LESSEE shall not allow or conduct commercial or "for profit" hunting on the leased premises, as determined solely by LESSOR.

19. The possession of the property by LESSEE hereunder, and any previous possession of LESSEE, is considered to be that of LESSOR or LESSOR'S predecessors or successors in title, LESSEE claiming no interest in the leased premises by reason of any previous possession of LESSEE or any other person. LESSEE agrees to notify LESSOR immediately in the event of

damages to or encroachment upon the property.

### **EXISTING CAMPS, STRUCTURES AND PUMPS**

In the event that the current lessee or most recent lessee of record on the leased property (hereinafter "previous lessee") does not become and is not the LESSEE under this lease, then, in that event, the previous lessee shall have until April 29, 2012 to remove any camps, structures or pumps from the leased property. In lieu of this option, LESSEE herein may negotiate with the previous lessee for a purchase of the said camps, structures, and pumps. In the event that the previous lessee does not remove his camps, structures, and pumps does not negotiate to sell such camps, structures, and pumps to LESSEE, then in that event LESSOR shall be deemed to be the owner of said camps, structures, and pumps, and LESSEE hereby agrees to, by May 29, 2012:

- a. On behalf of LESSOR, at LESSOR'S sole option, remove said camps, structures, and pumps from the leased property at LESSEE'S cost; or
- b. Purchase said camps, structures, and pumps from LESSOR at fair market value.

### **NEW IMPROVEMENTS, CAMPS, STRUCTURES AND PUMPS**

There shall be no permanent residences on the property.

LESSEE shall not make any improvements, additions, alterations, constructions or reconstructions of any nature whatsoever to the property, including constructing or placing buildings, camps or other structures, without prior written permission from LESSOR. LESSEE shall provide LESSOR evidence that any improvements meet all applicable codes and standards.

LESSEE shall not obligate the LESSOR or create any liability on LESSOR'S part for materials used in the construction and maintenance of additions of improvements, or contract for any labor in connection therewith, if such actions constitute or create a lien on the property, and LESSEE shall hold LESSOR harmless from any and all costs and expenses, including reasonable attorney fees, arising from or associated with any such actions by the LESSEE.

LESSEE shall be deemed to be the owner of all camps, structures, and pumps placed or constructed on the property. Additionally, the parties agree and stipulate that any other thing or materials placed on the property by LESSEE which becomes immovable by nature, use, and/or destination, shall become part of the property and shall not be removed therefrom without the prior written consent of LESSOR.

In the event that LESSEE does not become the lessee under succeeding leases of the property, then, in that event, LESSEE shall have ninety (90) days from the date of execution of the succeeding lease to remove any camps, structures or pumps from the leased property. In lieu of this option, LESSEE herein may negotiate with the succeeding lessee for a purchase of the said camps, structures, and pumps. In the event that the LESSEE does not remove his camps, structures, and pumps, and does not negotiate to sell such camps, structures, and pumps to the succeeding lessee, then in that event LESSOR shall be deemed to be the owner of said camps, structures, and pumps, and shall have the right to remove the said camps, structures, and pumps at LESSEE'S total cost.

### **LIABILITY INSURANCE**

It is contracted and agreed that the LESSEE herein must submit to the LESSOR herein within thirty (30) days from the signing of this lease, and on an annual basis, a CERTIFICATE OF INSURANCE from a good and solvent insurance company, naming the State of Louisiana, Louisiana Department of Wildlife and Fisheries herein as INSUREDS in the sum of one million (\$1,000,000.00) dollars General Comprehensive Liability Insurance, insuring LESSOR against claims for bodily injury and property damage, said insurance to cover the entire term of this lease.

### **ASSIGNMENT/SUBLEASE**

This agreement shall be binding upon LESSOR and LESSEE, their respective successors and assigns. This lease may not be assigned, subleased or otherwise transferred in whole or in part without the prior written permission of LESSOR. It is further provided, that such consent shall not be necessary, but notice shall be provided, in the event of a transfer of the lease resulting from a corporate merger, consolidation or change of name of LESSEE. Should LESSOR approve the subletting of the leased premises, LESSOR will provide LESSEE with an approved SUBLESSEE AGREEMENT that will be executed by LESSOR, LESSEE and SUBLESSEE. All subleases shall be for a period of one year.

### **HOLD HARMLESS**

LESSEE accepts the property in its present condition, and LESSOR shall not be responsible for damage of any kind to any person or property arising out of or resulting from LESSEE'S use of the property. It is agreed and understood that LESSOR shall be fully protected during the terms of this agreement and LESSEE hereby agrees to protect, defend, indemnify, save, and hold harmless the LDWF, the Louisiana Wildlife and Fisheries Commission ("LWFC"), and the State of Louisiana, their officers, agents, servants, representatives, and employees, including volunteers, from and against any and all claims, demands, expenses and liability arising out of this agreement or injury, death, damage, loss, or destruction of any property, which may occur or is in any way related to any alleged act or omission of LESSEE, its agents, servants, and employees, and any other person on the property with or without the permission of LESSEE, and any and all costs, expense and/or attorney fees incurred by LESSEE or LESSOR as a result of any claims, demands, and/or causes of action, including those claims, demands, and/or causes of action arising out of the alleged negligence or breach of duty of the LDWF, the LWFC, or the State of Louisiana or their officers, agents, servants, representatives, and employees and which arise as a result of this agreement or which may occur as a result of or which are in any manner related to any alleged act or omission of LESSEE, its agents, servants, and employees, and any other person on the property with the permission of LESSEE, its agents, servants, and employees, and any other person on the property with the permission of LESSEE. LESSEE agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suits at its sole expense and agrees to bear all other costs and expenses related thereto, including judgments, settlements, costs, attorney fees, and expenses of defense, even if such claims, demands, and/or causes of action are groundless, false, or fraudulent.

### **TERMINATION/CANCELLATION**

1. Should LESSEE violate or fail to perform any of the provisions or conditions of this lease, express or implied, then LESSOR may cancel this lease if within fifteen (15) days of receipt of written notice to such effect from LESSOR, LESSEE fails to remedy the violation or failure to the satisfaction of LESSOR. In the event a lawsuit is filed pursuant to the foregoing provisions, LESSEE shall pay all costs and expenses related thereto, including reasonable attorney's fees. LESSEE will remain responsible/liable for any personal property or equipment covered by this lease, remaining on the site after said lease has been suspended.

2. Should LESSEE be found by a tribunal of competent jurisdiction to have used the property or any portion thereof in any manner which violates any state or federal statute, rule or regulation, and for which violation a fine of ten thousand dollars (\$10,000.00) or greater or a prison sentence is assessed, this lease will automatically terminate without further action on the part of LESSOR. LESSOR reserves the right to review any fish or wildlife violations that occur on the property, and at its sole option, terminate this lease for same.

3. Non-use of the rights granted hereunder for a continuous period of one (1) year shall, at the option of LESSOR, operate as an abandonment by the LESSEE of this agreement. In this instance this lease and all rights granted hereunder shall terminate, except when existing causes of force majeure actually prevent the use of the lease and satisfactory evidence thereof is submitted to the Secretary of LDWF.

4. There shall be no right of return of all or part of the consideration paid should this lease be

terminated for any reason.

5. In the event of cancellation or termination for any reason, LESSEE or its assigns hereby agrees to remove at their sole risk, cost and expense, any or all camps, structures, or pumps and to restore the property to its original condition within ninety (90) days of notice of the lease termination. In the event LESSEE fails to remove all camps, structures, or pumps within ninety (90) days of lease termination, then LESSOR will acquire ownership of the said camps, structures, and pumps and owes nothing to the LESSEE. Should LESSOR undertake the removal of any or all of said camps, structures, or pumps, and restoration of the property by reason of LESSEE'S or its assigns' failure or refusal to do so, then LESSEE and its assigns expressly consent and agree to reimburse LESSOR for the full cost incurred for such removal and restoration.

6. There shall be no tacit or implied reconduction or renewal of this lease under any circumstances, including any continued occupancy by the LESSEE after the expiration of the expressed term, and LESSEE shall have no claim whatsoever, whether legal, equitable, moral or otherwise, to obtain a renewal of this lease or further grant of leasehold rights. This lease shall automatically terminate if LESSEE ceases to exist or becomes the subject of a petition in bankruptcy.

7. It is understood and agreed that should it be determined that the property leased herein is required for a public purpose by LESSOR, LESSEE shall be so notified by writing and this lease, or a portion thereof, shall be cancelled and terminated and the property surrendered ninety (90) days from the date of receipt of said notice.

8. The above enumerated rights to terminate this lease are in addition to LESSOR'S right to terminate this lease for failure to make timely payment of rentals or other payments due.

#### **ECOLOGICAL PROTECTION**

The granting of this lease shall not be a bar or defense to the right of the LESSOR or the State of Louisiana and its agencies, boards and commissions to take any and all action necessary to seek abatement of LESSEE'S construction or operations that unreasonably or unlawfully interfere with or disturb the existing ecological regimen, including, but not limited to, fishing, hunting, and trapping, and to seek legal recourse for any and all damage to the existing ecological regimen arising out of LESSEE'S activities.

#### **ENFORCEMENT OF PROVISIONS; SEVERABILITY**

The failure of either party to this lease to insist on the performance of any of the terms and conditions of this lease, or the waiver of any breach of any of the terms and conditions of this lease, shall not be construed as thereafter waiving any such terms and conditions, but such terms and conditions shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. The invalidity of any portion of this lease will not and shall not be deemed to affect the validity of any other provision. In the event any provision of this lease is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

#### **ENTIRE AGREEMENT; EFFECT OF LAW**

This lease constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this lease shall not be binding on either party except to the extent incorporated in this lease. Any modification of this lease or additional obligation assumed by either party in connection with this lease shall be binding only if in writing signed by each party or an authorized representative of each party. The parties to this lease understand and agree that the provisions herein shall, between them, have the effect of law; but in reference to matters not provided herein, this lease shall be governed by the laws of the State of Louisiana.

**VENUE**

The venue for any claims or actions arising out of this lease, as well as any claims or actions arising out of the awarding of this lease, shall be in the Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana.

**NOTICES**

All notices required to be provided under this lease shall be as follows:

LESSOR:     Robert J. Barham, Secretary (or successor)  
                  Louisiana Department of Wildlife and Fisheries  
                  P.O. Box 98000  
                  Baton Rouge, LA 70898-9000

LESSEE:     \_\_\_\_\_  
                  \_\_\_\_\_  
                  \_\_\_\_\_  
                  \_\_\_\_\_

Any notice provided for in this lease shall be in writing and be deemed sufficiently given when sent by certified or registered mail sent to the respective address of each party as set forth herein. Each party may change its address under this Agreement by giving the other party thirty (30) days advance written notice.

The terms, covenants, and conditions of this lease shall bind and inure to the benefit of the parties, their successors and assigns.

THUS DONE, EXECUTED AND SIGNED in Baton Rouge, Louisiana, in triplicate, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

WITNESSES:

\_\_\_\_\_  
  
\_\_\_\_\_

LESSOR

BY: \_\_\_\_\_  
      Robert J. Barham, Secretary  
      State of Louisiana, Department of  
      Wildlife and Fisheries

**ACKNOWLEDGMENT FOR LESSOR**

**STATE OF LOUISIANA  
PARISH OF BATON ROUGE**

BEFORE ME, the undersigned authority, personally came and appeared \_\_\_\_\_  
\_\_\_\_\_ who, being first duly sworn, did depose and say that  
the within foregoing instrument was signed by Robert J. Barham, Secretary of the Department of

Wildlife and Fisheries, on behalf of the LESSOR, in affiant's presence and in the presence of the other subscribing witness.

\_\_\_\_\_  
AFFIANT

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
NOTARY PUBLIC

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSEE:

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**ACKNOWLEDGMENT FOR LESSEE**

**STATE OF  
PARISH OR COUNTY OF**

BEFORE ME, the undersigned authority, personally came and appeared \_\_\_\_\_  
\_\_\_\_\_ who, being duly sworn, did depose and say that the  
within foregoing instrument was signed by \_\_\_\_\_, on behalf of the  
LESSEE, in affiant's presence and in the presence of the other subscribing witness.

\_\_\_\_\_  
AFFIANT

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFT