

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT is entered into this ___ day of _____, 2014, by and between _____, whose mailing address is _____ (“Owner”), and _____, whose mailing address is _____ (“Operator”).

WHEREAS, Operator owns all or a portion of the working interest in and to that certain Oil and Gas Lease dated _____ (“Lease”) by and between _____ and Operator, covering the land described in the attached **Exhibit A** (“Land”); and

WHEREAS, Owner and Operator have agreed that this Agreement will apply to all of the Land; and

WHEREAS, it is necessary that Operator use a portion of the Land covered by the Lease to drill, complete, rework, re-complete in the same or other formations, equip, operate, maintain, produce and plug and abandon any wells and restore the surface of that portion of the Land disturbed by its operations (collectively, “Operations”); and

WHEREAS, Owner intends to use and develop the Land for agricultural, industrial, commercial, residential and other purposes and Operator agrees to reasonably accommodate those uses.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of Owner and Operator contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, Owner and Operator agree as follows:

1. Right-of-Way. For Operator to conduct Operations on the Land in accordance with the Lease and with this Agreement, it will be necessary that Operator enter upon, cross and use the surface of the Land and Owner and Operator hereby agree that the right of entry and surface use for the Land shall be subject to the terms and conditions of this Agreement. Owner hereby grants Operator the non-exclusive right for Operator, Operator’s agents, employees and contractors, and their agents and employees, to enter upon the Land to conduct the Operations. Owner agrees to Operator’s use of access roads, gathering pipelines and power lines across the Land in connection with the Operations pursuant to the terms described below. The rights of Operator to use the Land are non-exclusive, and Owner reserves the right to use all access roads, and all of the surface and sub-surface uses of the Land, and to grant successive easements on or across the Land on such terms and conditions as Owner deems necessary or advisable, provided that Owner’s use and all other uses authorized by Owner do not unreasonably interfere with the Operations.

2. Term. Except for any of Operator's obligations that have not been performed, and except as may otherwise be provided by this Agreement, upon the termination of the Lease and all other uses permitted under this Agreement, this Agreement shall also terminate, except Operator may continue to access the Land in order to reclaim the same as required by the Lease and applicable regulations.

3. Operations Area. Operator has agreed to pay to Owner the lump sum of _____ for each acre permanently disturbed (meaning Land used in Operations that is not reclaimed within the times provided for in rule 1003 b of the rules of the Colorado Oil and Gas Conservation Commission ("COGCC") or any successor rule) for the drilling or location of any facility on the Land (whether there are single or multiple wells drilled at the drill site location) as consideration for all ordinary damages associated with the construction, maintenance and use of such location for Operations, payable prior to commencement of any surface disturbing activities. The location of Operations on the Land, which is described in the attached **Exhibit B** ("Operations Area") shall be mutually agreed upon between Owner and Operator and shall not be exceeded in size during drilling, completion, and reworking activities, and no more than four (4) acres in size for the producing Operations Area, including any tank batteries constructed by Operator, which in Operator's judgment, reasonably exercised, are necessary to maximize production of oil and gas from the Land.

Operator agrees that it will not locate any Operations Area or other facility within 500 feet of an occupied dwelling or other improvement. Operator may drill more than one (1) well on any Operations Area. Operator agrees to fence the pits and other dangerous areas and at all times keep its Operations Area in good order and free of litter, debris, trash, or spilled hydrocarbons. In the event that Operator does not encounter commercial quantities of oil, gas, or other hydrocarbons at any well location and determines the location to be a "dry hole," Operator shall fill in, smooth over, and clean up the Operations Area and access to the Operations Area and shall restore and reseed the Operations Area with a seed mix reasonably approved by Owner after replacing topsoil within the time and in the manner required by the applicable rules and regulations of the COGCC. All cleanup and restoration activities shall be completed by Operator as soon as the reserve pit has been allowed to dry so that proper backfilling can be accomplished. If the reserve pit is not dry within six (6) months of completion of drilling operations, it shall be pumped dry by Operator and the contents properly disposed of off the Land pursuant to applicable law. In the event that any well drilled upon the Land is completed as a commercial producer of oil and/or gas, Operator shall clean up the Operations Area and use only so much of the Operations Area as is reasonably necessary for the Operations, and Operator shall restore the well location and reseed it with a seed mix specified by Owner, and Operator shall keep all portions of the Operations Area neat, orderly, and clean at all times. Owner and Operator agree that Operator's right to use the Operations Area shall be limited to conducting those activities permitted by the Lease and the Operations, which shall include, without limitation, the installation, operation and maintenance of oil and gas flow lines, and related surface equipment, such as tank batteries, separators, and meters. Operator shall not construct any compressor station(s) on the Land unless Owner has given its consent in a separate agreement, which consent may be withheld in the sole and absolute discretion of Owner.

4. Facility Sites Outside the Operations Area. Operator may, subject to Owner's consent, use additional portions of the Land outside the Operations Area for injection, storage, transportation and/or marketing facility including, without limitation, tank batteries, gas, water and oil flow lines, and any facilities necessary for the production, storage, disposal, transportation and marketing of gas, water and/or oil produced from the Land pursuant to the Lease ("Facility Site"). Owner's consent to any Facility Site: (1) shall be in writing; (2) shall describe the actual location and specific terms of use; and (3) may be withheld at the sole and absolute discretion of Owner. Operator shall pay to Owner the additional lump sum of _____ for each permanently disturbed Facility Site (meaning Land used in Operations that is not reclaimed within the times provided for in rule 1003 b of the rules of the COGCC or any successor rule) ("Compensation"), as consideration for all ordinary damages associated with the Facility Site.

Nothing in either Paragraph 3 above or this Paragraph 4 shall ever be construed as providing Operator with the right to install compressor stations, gas processing facilities, or a central production facility that receives deliveries of off-lease gas, water and/or oil and is used as a central point for transmitting to a downstream point.

5. Access Roads.

a. Existing Roads. Whenever reasonably possible, existing roads shall be used to access any Operations Area or Facility Site. Operator acknowledges that the existing roads may not be currently suitable for Operator's intended uses, which may include transport of heavy drilling rigs, trucks and equipment, and that Owner will continue to use the existing roads. Consequently, Operator agrees to maintain or improve, at Operator's sole expense, the condition of existing roads so they are suitable for Operator's intended uses and Operator shall indemnify and hold Owner harmless from any losses incurred by Owner in connection with Operator's use of existing roads including, without limitation, costs and attorneys' fees, unless such loss or cost is the result of Owner's negligence. Operator shall promptly repair at its sole expense any and all damage to the existing roads caused by Operator.

b. New Roads.

Operator may construct new roads on the Land to the extent necessary for the Operations and other activities conducted pursuant to the Lease and this Agreement subject to the conditions described below. Any new roads shall be located to cause the least interference with Owner's current or identified future uses of the Land. Operator shall obtain Owner's written consent prior to construction of any new road. Operator shall maintain and make any necessary repairs to any new road at Operator's sole cost and expense until the Operations are completed, including any reclamation requirements. Any new road constructed by Operator shall not exceed forty (40) feet in width during the construction phase and shall be limited to twenty-two (22) feet in width for the traveled surface. Any portion of the Land that is disturbed during construction of a road which is not included within the traveled surface shall be reclaimed within ninety (90) days after construction of the new road is completed.

i. The surface of all roadways shall be made of compacted gravel, shall not exceed twenty-two (22) feet in width for traveled surface, and shall comply with all regulations or laws applicable to such roadways. Operator shall control dust from all roadways through the application of an appropriate dust suppressant.

ii. If requested by Owner, access to the Land from any public road shall be controlled by a swinging metal gate, which gate Operator shall construct in accord with Owner's reasonable specifications.

iii. Culverts shall be placed in low areas for proper drainage.

iv. No off-road travel is permitted.

v. Operator agrees, if requested by Owner, to place an appropriate sign or signs on any road designating it as a "private road" and to assist Owner in preventing use of the road by unauthorized parties.

vi. Owner may lock gates across its private roads, provided that Operator shall be given a set of keys for Owner's lock for roads which are necessary for Operator to access the Operations Area or Facility Sites. If Owner does not have a lock on the gate, Operator may place its own lock on the gate, provided a set of keys are provided in advance to Owner.

vii. Operator shall maintain existing and newly constructed roads used by Operator to the extent necessary for Operator's needs and to ensure Owner will also be able to use Owner's existing vehicles on the road. Maintenance may include ditching, graveling, blading, mowing grass to avoid fire danger, installing and cleaning cattle guards, and spraying for noxious weeds.

viii. Except for roads located on the Land subject to the Lease, no roads on the Land shall be used by Operator for access to lands not subject to the Lease unless Owner approves use of the road in a separately negotiated agreement.

6. Any pipelines constructed by Operator on the Land shall be constructed and maintained to the following specifications:

a. Owner shall approve all pipeline locations so as to avoid interference with Owner's existing or identified future operations. Whenever possible, Operator agrees that it will construct any pipeline within the access road right-of-way, if one exists.

b. The top of each pipeline shall be buried at least forty-eight (48) inches below the surface of the ground.

c. Operator shall be responsible for backfilling, repacking, reseeding, and recontouring the surface so as not to interfere with Owner's existing or identified future operations. If pipeline trenches settle, Operator shall fill in, repack, and level such trenches.

d. Operator shall provide Owner with a plat showing the “as built” length and location of all pipelines promptly after their installation.

e. Owner reserves the right to occupy, use, and cultivate the Land crossed by any pipeline, and to grant this right to others, so long as the use does not interfere with the Operations. No structures may be built by Owner within fifteen (15) feet of any pipeline.

f. The pipelines allowed by this Agreement are limited to those gathering system pipelines used in connection with wells drilled on the Land pursuant to the Lease and this Agreement. The installation and use of pipelines serving lands other than those owned by Owner shall be by separate agreement to be negotiated by the owner of the land and Operator.

g. If Operator fails to use any pipeline for a period in excess of twenty-four (24) consecutive months, the pipeline shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to clean up and remove the pipeline, or render the pipeline environmentally safe and fit for abandonment in place. All such cleanup and mitigation shall be performed in compliance with all applicable federal, state, and local laws and regulations, with written proof of compliance to be provided to Owner.

7. Power Lines. Any power lines constructed on the Land shall be buried and constructed and maintained to the following specifications:

a. Operator will consult with Owner and with the power company supplying power to Operator regarding the location of power lines prior to construction, and Operator shall obtain Owner’s written consent, which shall not be unreasonably withheld by Owner, before any power lines are installed. Power lines shall be constructed to cause the least interference reasonably possible with Owner’s existing and identified future uses of the Land. In addition, to the maximum extent reasonably possible, power lines will be constructed along the access road right-of-way, if one exists, or along fence lines or property lines. No power line will be located where it will interfere with any existing or identified future uses by Owner.

b. Subject to compliance with any guidelines and policies of the power provider, within two (2) months after a well has been placed on production, all power lines constructed by or for Operator downstream of the power company’s meters shall also be buried, and all power line trenches shall be fully reclaimed and reseeded to the reasonable satisfaction of Owner. Power lines shall be installed at least forty-eight (48) inches below the surface of the ground.

c. In the event Operator installs power lines on the land, upon the request of Owner, Operator agrees, to the extent feasible, to facilitate the connection of structures on the Land to the power lines.

8. Fences and Reclamation. Operator shall install fences around the Operations Area and Facility Sites as required by the rules of the COGCC and acceptable to Owner. Operator shall reclaim and restore all areas disturbed by the Operations as near as reasonably practical to

their original condition as required by the rules of the COGCC and in no event later than one hundred eighty (180) days after termination of the Operations, including any reclamation of the Operations Area and Facility Sites, subject to weather conditions, the availability of equipment and obtaining the necessary permits. Operator agrees to obtain written approval from Owner prior to cutting or damaging any fences, cattle guards, or other improvements of Owner. All areas disturbed by Operator's Operations and activities will be reseeded unless otherwise agreed in writing by Owner.

9. Operations. Operator agrees to keep the roads, Operations Area and Facility Sites and other areas utilized for the Operations and other activities conducted pursuant to the Lease and this Agreement, free from weeds, debris and litter and will properly maintain such areas in such a manner as to minimize interference with Owner's normal use the Lands. In addition:

a. All fences installed by Operator shall be kept clean and in good repair and will become the property of Owner when Operator ceases ownership of the Lease covering that portion of the Land.

b. Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Land. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Land which are reportable to regulatory authorities under applicable law or regulations shall be immediately (within twenty-four (24) hours) reported to Owner by telephone, fax, or e-mail, to be followed by copies of written notices which Operator has filed with regulatory authorities within five (5) business days after such filing.

c. Operator shall remove only the minimum amount of vegetation necessary for the construction of roads, well locations, and other facilities. Topsoil shall be conserved during excavation, stockpiled and reused as cover on disturbed areas to facilitate regrowth of vegetation.

d. Operator shall minimize construction or routine maintenance activities during periods when the soil is too wet to adequately support construction equipment.

e. All surface facilities shall be as low profile as is reasonably possible and shall be painted to blend with the natural color of the landscape unless a different color is required to comply with applicable laws or regulations. In addition, Owner and Operator will cooperate with one and another to screen the Operations Area. Screening techniques to be employed shall include, without limitation, berms, landscaping and fencing.

f. No living quarters shall be constructed upon the Land, except that drilling crews and geologists or service personnel may use temporary "dog houses" during drilling, completion, or reworking activities.

g. Operator shall not fence any access roads without the prior consent of Owner.

h. Operator and its employees, agents, and contractors shall leave all gates located on the Land as they found them; gates found closed are to be closed; gates found open are to be left open.

i. None of Operator's employees, agents, or contractors, or any other person under the direction or control of Operator shall be permitted to carry firearms or any other weapon on the Land or to hunt, fish, or engage in recreational activities on the Land. No dogs will be permitted on the Land at any time. Operator will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing, or recreational activities will be allowed on the Land. None of Operator's employees, agents, or contractors, or any other persons under the direction or control of Operator, shall possess or be under the influence of alcohol or illegal drugs while on the Land.

j. Operator shall conduct operations and activities on the Land in accordance with all existing local, state, and federal laws, rules, and regulations.

k. No open fires shall be permitted on the Land. Operator shall take all reasonable steps to prevent fire and to promptly extinguish fire, including, without limitation, maintaining a fire extinguisher, shovel, and bucket in each service vehicle entering upon the Land. Operator shall fully and promptly compensate Owner for all damages caused by fire arising out of the Operations including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

l. To the extent feasible, Operator shall not schedule activities in the Operations Area between the hours of 6:00 p.m. and 7:00 a.m. When Operations are necessary between the hours of 6:00 p.m. and 7:00 a.m., Operator shall take all steps reasonably possible to minimize disturbance to Owner and adjacent land owners.

10. Water/Dry Hole. Operator shall not use water from any source on or under the land without Owner's prior written permission. Operator shall not disturb, interfere with, fill, or block any creek, reservoir, spring, or other source of water on the Land. In the event Operator wishes to drill a water well on the Land, it shall obtain Owner's written consent prior to doing so, and Owner's consent may be withheld in the sole and absolute discretion of Owner. If a water well is then drilled and completed, Owner shall have the option of retaining said well for personal use upon completion of the Operations. Operator will comply with all applicable statutes, rules and regulations regarding diversion, withdrawal and use of water, and protection of water quality.

11. Notice. Operator will give Owner all notices required by the rules of the COGCC and it will conduct all consultations required by those rules and by this Agreement, the goal of which is to minimize interference with Owner's existing and identified future uses of the Land.

12. Release. The Compensation defined in Paragraph 4 of this Agreement shall release and discharge Operator, its agents, contractors and employees from all ordinary claims, losses, demands and causes of action for damage to the Land, loss of and damage to crops, and use of the Land, resulting from the Operations and other activities conducted pursuant to this Agreement including marketing operations on the Land. The Compensation does not cover damages or losses which are caused by any breach of this Agreement, for Environmental Claims as defined in Paragraph 14 of this Agreement, Operator's unreasonable use of the Land, or the negligence of Operator, its agents, contractors and employees. This Agreement also does not relieve Operator from liability due to pollution, spills or discharge of any hydrocarbon or toxic substance or hazardous chemicals or wastes, hydraulic fracturing or from leaks or breaks in Operator's pipelines or distribution systems. Operator will compensate and hold Owner harmless for any losses or actual damages including attorneys' fees and costs incurred by Owner as a result of any loss or damage incurred as a result of: (1) breach of this Agreement; (2) Environmental Claims; (3) unreasonable use of the Land; and (4) the negligence of Operator, its agents, contractors or employees.

13. Indemnity. Operator shall be liable for, and shall be required to pay any, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken by Operator within the scope of this Agreement.

Unless provided otherwise in this Agreement, Operator and Owner are separately responsible for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities including, without limitation, attorneys' fees and costs resulting from their respective uses of the Land (collectively, "Claims"). Operator and Owner shall release, defend, indemnify and hold harmless each other and their respective representatives including, without limitation, officers, directors, employees, agents and contractors, successors and assigns, against all Claims resulting from their respective uses of the Land regardless of the person or entity asserting the Claims. This provision does not, and shall not be construed to create any rights in persons or entities not a party to this Agreement.

Upon the assignment or conveyance of the entirety of Operator's or the entirety of Owner's interest in the Land, the party making the assignment or conveyance shall be released from its indemnification provided above, for all actions or occurrences happening after such assignment or conveyance, but not for any actions or occurrences happening before such assignment or conveyance.

14. Environmental Indemnity.

This Paragraph 14 and not Paragraph 13 of this Agreement shall apply to any environmental matters:

"Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited

to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 *et seq.*), the Clean Water Act (33 U.S.C. §§ 466 *et seq.*), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 *et seq.*), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629).

“Environmental Claim” shall mean any Claim asserted by Owner, governmental bodies or other third parties for pollution or environmental damage of any kind, arising from Operations on the Land or ownership of the Lease, whichever is applicable, and all associated cleanup and remediation costs, fines and penalties including, without limitation, Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Operator shall be liable for, and shall be required to pay any, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken by Operator within the scope of this Agreement. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party.

Operator shall protect, indemnify, and hold harmless Owner from any Environmental Claim that may be asserted relating to the Land or the Lease that arise out of Operations on the Land or Operator’s use or ownership of any well, facility, road, pipeline easement, power line, or right-of-way on the Land. This indemnity specifically covers, without limitation, any Claim related to the completion, fracturing or refracturing of any well drilled by Operator on the Land or land pooled or unitized with the Land. Owner shall fully protect, defend, indemnify and hold harmless Operator from any and all Environmental Claims relating to the Land that arise out of Owner’s Operations on the Land.

15. Exclusion From Indemnities. The indemnities of Operator and Owner provided by this Agreement shall not cover or include any amounts for which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

16. Notice of Claim for Indemnification. A party entitled to indemnification under of Paragraphs 14 or 15 above must provide written notice to the party required to provide the indemnification of a Claim or Environmental Claim describing the basis for the requested indemnification. This notice shall include the particulars of the Claim or Environmental Claim, as known by the party seeking indemnification, including any written materials that have been provided to the party seeking indemnification by the claimant. Every effort shall be made to provide the notice required by this paragraph within fifteen (15) days of receipt of the Claim or Environmental Claim and within such time as will allow the indemnifying party to defend against the Claim or Environmental Claim.

17. Limitation on Rights. The Land may not be used in connection with activities or operations on other premises not owned by Owner without Owner's written consent.

18. Produced Water. Unless otherwise required by law, with respect to any water produced from wells drilled on the Land in connection with the production of oil, gas, or other hydrocarbons, Operator agrees to reinject produced water or haul the same away from the Land and properly dispose of the produced water off the Land. Operator shall not construct evaporation pits for produced water, but may have a small "emergency pit" during drilling, completion, or reworking operations for produced water purposes.

19. Modular Large Volume Tank. All use of Modular Large Volume Tanks shall be pursuant to COGCC's January 3, 2014 Draft Policy on Modular Large Volume Tanks or any successor rule or policy including, but not limited to, provisions requiring that all Modular Large Volume Tank designs be approved and evidenced by the stamp of a licensed professional engineer.

20. Law. This agreement shall be governed and construed in accordance with the laws of the State of Colorado.

21. Assignment. This Agreement shall be binding upon and shall be for the benefit of Operator and Owner and their respective heirs, successors and assigns. Any sale, encumbrance or other disposition by Owner of any interest in the Land shall be made subject to the terms and conditions of this Agreement.

22. Notification. Any notice required or permitted to be given hereunder shall be deemed to be delivered when deposited in the U.S. Mail, postage prepaid, certified with return receipt requested, or registered mail, addressed to the party to which it is intended at the address set forth below for such party:

If to Owner:

Copy to:

If to Operator:

23. Recording. This Agreement or a memorandum of this Agreement and any amendment to this Agreement or memorandum of the amendment may be recorded by Operator. Operator shall provide Owner with a copy showing the recording information as soon as practicable following recording.

24. Subordination. Owner and Operator agree to cooperate in any reasonable way with each other, their successors and assigns, to secure subordinations of any encumbrances placed of record upon the Land prior to the execution of this Agreement.

25. Dispute Resolution. In the event of any dispute, disagreement or controversy arising out of, relating to or connected with this Agreement or the Lease including, without limitation, the Claims, the Environmental Claims, claims for compensation or damages, the location of any well, surface sites or facilities, access roads, power lines and pipelines, Owner and Operator shall use reasonable, good faith efforts to settle such dispute or claim through negotiations with each other. If such negotiations fail to produce a mutually acceptable resolution to the matter in dispute, Owner and Operator will submit the same to non-binding mediation before a sole mediator. The mediation will be conducted by the Judicial Arbiter Group, Inc., 90 South Cascade Avenue, #1130, Colorado Springs, Colorado, 80903 (“JAG”). The matter in dispute will be submitted to mediation within fifteen (15) days of a written demand for mediation from Owner or Operator to the other party. If the mediation is not successful, the matter in dispute shall be submitted for final and binding arbitration by the same mediator to be held no later than thirty (30) days after the conclusion of the mediation, as signified by a written notice from the mediator that mediation has terminated. Within five (5) days of the date of the mediator’s notice, if Owner or Operator desires arbitration it shall concisely state (1) the matter(s) in dispute; (2) its position regarding the disputed matter(s); and (3) its proposed resolution of the disputed matter(s).

a. During any negotiations conducted pursuant to this Agreement, Owner and Operator will keep and maintain a record of all issues upon which agreement has been reached. To narrow and focus the issues that may need to be resolved in an arbitration proceeding, each of the submittals by Owner and Operator shall include all points that have been agreed to by Owner and Operator during their negotiations.

b. Any arbitration proceeding shall be conducted in accordance with the Uniform Arbitration Act found at C.R.S. § 13-22-201 *et seq.* (or a successor statute). The purpose of the arbitrator’s role is to produce a final decision of any matter submitted for arbitration to which Owner and Operator agree to be bound. The place of arbitration shall be at the offices of JAG in Colorado Springs, Colorado.

c. The JAG mediator/arbitrator shall, if possible, have experience in matters pertaining to the law of oil and gas development. At a minimum, the JAG mediator/arbitrator shall have experience in Colorado real property law governing the use and enjoyment of surface and subsurface estates. If Owner and Operator cannot reach agreement on the choice of JAG mediator/arbitrator within ten (10) days of the original demand for arbitration (or such other time as may be agreed to by Owner and Operator), they shall abide by the assignment of JAG mediator/arbitrator made by the JAG Administrator.

d. For any matter requiring judicial resolution in connection with the arbitration, including the enforcement of any award, enforcement of this agreement to arbitrate, or injunctive relief to preserve the status quo pending arbitration, Owner and Operator agree to the exclusive jurisdiction of the State District Court for Fremont County, Colorado.

e. Owner and Operator shall share equally in the cost of retaining the services of JAG for any mediation or arbitration conducted under the terms of this Agreement and each shall be solely responsible for its own costs and expenses of preparing for and pursuing any mediation or arbitration, and for converting any arbitration award into a judgment.

26. Baseline and Post-Operational Water Testing. Prior to commencing the Operations on the Land, Owner will designate a qualified water quality testing organization to determine baseline water quality for any water wells or surface supplies providing water to the Land to other land owners who share a property line with Owner. Operator shall pay for an independent organization to conduct baseline water quality testing for these sources of supply including, without limitation, testing for constituents required by COGCC Rule 609 and any additional constituents Operator will use within the Operations Area. The independent well testing organization shall provide the test results directly to both Owner and Operator for their records. Once the Operations on the Land are completed, Operator shall perform testing of the same wells and water supplies in the same manner provided for baseline testing in this paragraph.

27. No Waiver. The terms and conditions of this Agreement are in addition to any applicable requirements that may be imposed by statute, case law, rules or regulations, and this Agreement shall not be construed to waive all or any portion of these requirements.

IN WITNESS WHEREOF, Owner and Operator have executed this Surface Use Agreement on the date set forth above.

OWNER

OPERATOR

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A
To
Surface Use Agreement

[Description of Land]

EXHIBIT B
To
Surface Use Agreement
[Operations Area Restrictions]