

## SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("Agreement") is entered into by and between Mustang Creek Operating, LLC, whose address is 5251 DTC Parkway, Suite 800, Greenwood Village, CO 80111 ("**Operator**"), and Rebecca A. Callaway and Catherine R. Callaway, Joint Tenants, the owners of the surface estate described below ("collectively, **Owner**") (together "**Party**" or the "**Parties**"), with respect to the following described lands:

Township 13 South, Range 58 West, 6<sup>th</sup> PM  
Section 3: SE4

Elbert County, Colorado (the "**Property**")

### WITNESSETH:

WHEREAS, Operator owns the leasehold right to access the Property and use so much of the surface as is reasonably necessary to explore for and produce oil and gas from the leased premises; and,

WHEREAS, Operator and Owner desire to enter into this Agreement as a supplement to, but not in derogation of, Operator's leasehold rights, including the right to drill future wells in addition to any well enumerated herein.

### AGREEMENT

NOW THEREFORE; in consideration of Operator's payment to Owner of the sum of [REDACTED], the receipt and sufficiency of which is hereby acknowledged, and the mutual promises and covenants contained herein:

Owner hereby releases and discharges Operator, its agents, employees, contractors and licensees from and against any and all claims by Owner for compensation for damages and use of the Property customarily, arising from, incident to, or in connection with Operator's oil and gas operations ("the Operations") on the Property, so long as such Operations are conducted in accordance with this Agreement.

AND,

Owner hereby grants, demises and conveys such easements and rights-of-way on and across the Property for the Operations contemplated hereunder, and as depicted on Exhibits "A", "B" and "C", attached hereto and made a part hereof. Operator shall have the right to i.) drill and operate one (1) well within the areas shown on Exhibit "A", as such location is permitted under applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC; ii.) construct and operate a road within the areas shown on Exhibit "B" and iii.) construct and operate production facilities within the areas shown on Exhibit "C", as such location is permitted under the applicable regulations of the COGCC.

This Agreement is applicable to the following well and its associated access roads, production facilities:

Callaway #3-33, NW4SE of Section 3, T13S-R58W, Elbert County, CO. ("Wellsite").

ADDITIONAL PROVISIONS

**1. Production Facilities and Pipelines.** To the extent that production facilities and a pipeline are necessary for the transportation and processing of hydrocarbons, Operator may exercise its rights hereunder for all purposes convenient for Operator to perform the Operations, including the right of unimpeded ingress and egress on the designated rights-of-way to access the Well(s), to install and operate and pipelines and to install and operate production facilities. Operator may exercise its rights to a third party to install and operate pipelines in order to connect the Well(s) to a gas or liquids gathering system. Operator agrees to pay Owner the sum of [REDACTED] 30 days prior to pipeline installation. Operator agrees to pay Owner the sum of [REDACTED] 30 days prior to installation of production facilities. The access easements granted herein shall be non-exclusive and capable of use by Owner, so long as such use does not interfere with or impair the Operations, and with the permission of Operator, which permission shall not be unreasonably withheld.

**2. Additional Wells.** Should Operator desire to use the Wellsite for an additional Well(s), the Operator shall consult with Owner regarding such expansion, and shall compensate Owner by the payment of [REDACTED]. If an additional well(s) require expansion of the Wellsite, Operator agrees to pay Owner [REDACTED], or fraction thereof, of additional surface disturbance in addition to the [REDACTED] per Well(s).

**3. Road Construction and Use.** Any roads constructed or used by Operator on the Property shall be constructed or used to the following specifications:

(a) The surface of all roadways shall not exceed 30 feet in width for traveled surface unless agreed to by Owner in writing.

(b) If requested by Owner, access to the Property of Owner from any public road shall be controlled by a swinging metal gate.

(c) Culverts shall be placed in low areas for proper drainage, at Operator's expense.

(d) No off-road travel is permitted.

(e) Operator agrees to keep roads used by it free of weeds, debris, and litter, and to conduct periodic trash pickup.

(f) The use and construction of roads by Operator on the Property is a non-exclusive use, and Owner may allow other parties to use said roads and make a charge therefore. However, Operator shall have the right to assess other non-agricultural users of the roads for their share of maintenance work performed by

Operator. Owner shall have no responsibility for road maintenance, but may assist in maintenance operations during the life of the Well(s). Operator's Operations take priority over all other uses, including any other uses Owner may grant to third parties and other uses may not interfere with the Operations.

(g) Operator agrees, if requested by Owner, to place an appropriate sign or signs on any road designating them as "private roads – no trespassing" and other "oil field rules" to assist Owner in the control of the use of such roads by unauthorized users.

(h) Owner may lock gates across its private roads, provided that Operator shall have the right to place its own locks on such gates. Operator shall have access to all locks on all gates on the Property.

(i) No roads on the Property shall be constructed or used by Operator for access to lands not subject to this agreement without a separately negotiated agreement.

(j) At such time as Operator no longer desires to utilize any portion of an access road, Operator shall notify Owner of its desire to abandon use of the access road. Owner hereby agrees to allow the access road to remain and Operator shall be released from any and all responsibility or liability for maintaining or reclaiming that access road.

**4. Operations.** Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Property. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Property which are reportable to regulatory authorities under applicable law or regulations shall be immediately (within 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. **However, it is agreed that provided Operator uses a fresh water based bentonitic drilling mud system Operator, in accordance with applicable COGCC rules and regulations, may bury its drill cuttings on the Property.**

**5. Power Lines & Telecommunications Lines.** Any power lines and telecommunications lines constructed on the Property shall be constructed and maintained to the following specifications:

(a) Temporary overhead power lines will be constructed along access road.

(b) Within two months after a well has been placed on production, all power lines constructed by or for Operator downstream of the independent power company's meters shall be buried within the access road right-of-way.

**6. Produced Water.** With respect to any water produced from wells drilled on the Property in connection with the production of oil, gas, or other hydrocarbons, Operator agrees to reinject produced water or haul the same away from the Property and properly dispose of such produced water off the Property, unless otherwise agreed in writing by Owner. 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. Except set forth herein surface discharge of produced water shall not be permitted anywhere on Owner's Property.

**7. Dry Hole / Water.** In the event that Operator discovers water during its drilling operations, Operator shall advise Owner of the location and quantity thereof. In the event Operator elects to abandon a well (either a "dry hole" or upon cessation of production from a producing well), Operator will give Owner thirty (30) days written notice of the opportunity to take over any abandoned well and convert the well to a water well. If Owner elects in writing to take over the abandoned well and convert the well to a water well, then Owner will assume all liability and costs associated with the well thereafter, and both parties shall execute any and all documents necessary to provide that the water in the well shall become the property and the responsibility of Owner. If Owner does not elect to take over an abandoned well within such 30-day period, Operator shall plug and abandon the well as required by applicable law and regulations and reclaim the well site as provided herein.

**8. Repairs.** Notwithstanding Owner's release of Operator from damage claims, Operator shall promptly repair, or compensate Owner for damage to personal property or to improvements on the Property, such as damage to buildings, fences, gates, culverts and livestock, or for other such extraordinary losses or damages caused by Operator. Any failure to reach mutual agreement with respect to such repair or compensation shall not terminate or diminish the grants, conveyances, rights and obligations contained herein.

**9. Indemnity.** Operator hereby agrees to indemnify and hold Owner harmless from and against any and all third party claims, losses, liability, damages, and causes of action for personal injury or property damage arising out of Operator's Operations, unless, and to the extent that, Owner's negligence causes or contributes to such third party claims. This indemnification extends to any action by a government agency with jurisdiction over the Operations under an environmental law or regulation.

**10. Consultation.** Owner has requested that all consultation be conducted directly with Owner. Accordingly, Owner shall have the responsibility of notifying any affected tenant, lessee or other party who may own or have an interest in any crops or surface improvements which could be affected by the Operations. Owner agrees that all damages claimed by a surface tenant, lessee or other such party resulting from the Operations shall be settled by Owner, and Owner hereby agrees to indemnify and hold Operator harmless from and against any such claims.

**11. Damages.** The indemnities of the parties herein shall not cover or include any amounts for which the indemnified party is actually reimbursed by any third party. Upon the assignment or conveyance of a Party's entire interest in the Property, and assumption of the indemnification obligations contained herein by the assignee or grantee, that party shall be released from its indemnification obligation in paragraph 8 above, as applicable, for all actions or occurrences happening after the date of such assignment or conveyance. The compensation provided for herein is acknowledged by Owner as sufficient and in full satisfaction for damages and use of the Property caused or created by the reasonable and customary entry, rights-of-way, and operation and use of roads and well sites, but do not include damage to buildings, or improvements, or injuries

to persons. This Agreement does not relieve Operator from liability due to Operator's negligence or due to spills or discharges of any hydrocarbon or toxic substance or hazardous chemicals or wastes or, damages for environmental contamination or damage by Operator's activities and payable by the Operator shall include, but not be limited to, the cost necessary to remediate the site, and for nonuse of the contaminated land by landowner. The compensation provided herein does not relieve Operator from its responsibility and liability to restore and reclaim Owner's Lands.

**12. Reclamation.** Operator agrees to perform all reclamation in accordance with the rules and regulations of the COGCC, unless a variance therefrom is granted by the COGCC upon the request of Owner. Operator shall endeavor to keep the well pad(s), the production facilities, and the pipeline and access easements free of weeds and debris and to control erosion.

**13. Operations Notice.** Commencement of the Operations with heavy equipment is estimated to begin on or about August 1, 2015, but is subject to change. Operator will provide Owner with ten (10) days notice by mail, phone call or personal visit prior to commencing Operations on the Property with heavy equipment. Owner acknowledges that this notice complies with, or hereby waives, all COGCC requirements that it be given advance notice by Operator of the proposed Operations. Owner acknowledges receiving from Operator a brochure prepared by the COGCC which describes the rights and responsibilities of Owner as a surface owner.

**14. Operations and Use.** Operator shall construct and install the well pad(s), roads, pipelines and production facilities, including, but not limited to, pumping units, tanks, heater/treaters, separators, emission control units and fencing, at the specified surface locations shown on Exhibit "A" as to drilling operations, Exhibit "B" as to road and pipeline(s) and Exhibit "C" as to production facilities. At the request of Owner, Operator shall construct and maintain a temporary barbed wire fence around the drill pad during drilling and completion operations and a permanent four (4) strand barbed wire fence around the scaled back well pad, and production facility during production operations. Except as specified herein, Operator shall not enter or occupy the surface of the Property except in the event of an emergency or for reasonable incidental and temporary activities, and Operator shall be responsible for any physical damage to the Property that may be caused by such emergency or temporary activities.

**15. COGCC Consultation.** Owner acknowledges and agrees that Operator has consulted in good faith with Owner as to its proposed Operations, in accordance with COGCC requirements, or hereby waives such requirements. Owner expressly waives the application of any COGCC setbacks inconsistent with this Agreement, including, but not limited to, setbacks for high density areas and surface lot lines.

(a) Operator will provide Owner with the COGCC Form 2A ("Oil and Gas Location Assessment") for the Well (s) when submitted to the COGCC, and Operator undertakes to ensure that said Form 2A accurately reflects the provisions of this Agreement, including the specified surface locations of facilities shown on the appropriate Exhibit.

(b) Owner agrees not to object to said Form 2A, so long as it is consistent with this Agreement, and hereby waives any right granted by COGCC rule to comment on said Form 2A, to request an extension of the comment period, to request an onsite inspection pursuant to COGCC policy, or to appeal the approval and issuance of the Form 2A, and any related Form 2 ("Application for Permit to Drill").

(c) Owner shall not oppose Operator in any agency or governmental proceedings, including but not limited to the COGCC or local government with jurisdiction over the Property, related to Operator's operations on the Property, including but not limited to permitting, formation of drilling units, well spacing, drilling, workovers, well deepening and recompletions, provided that Operator's position in such proceedings is consistent with this Agreement.

**16. Accommodation.** Owner expressly acknowledges and agrees that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligation of Operator to reasonably accommodate Owner's use of the surface of the Property, existing or future, and waives any statutory or common law claim to the contrary.

**17. Confidential.** Owner agrees to include a note on any annexation, subdivision plat, planned unit development or other land use designation for which Owner may apply to put successors or assigns on notice that the Property is subject to this Agreement. Operator may also record an Agreement or a Memorandum thereof. In all other respects, however, the parties shall hold the provisions of the Agreement in confidence.

**18. Assignment.** Operator may assign its right to use the Owner's surface estate only to the extent no violation of this Agreement exists as of the date of assignment, and further provided that the Assignee agrees in writing to assume the obligations contained herein.

**19. Construction of Agreement.** In construing this Agreement, no consideration shall be given to the fact or presumption that one party has had a greater or lesser hand in drafting this Agreement than any other party.

**20. Choice of Law and Legal Proceedings.** This Agreement shall be subject to, and construed under, the laws of the State of Colorado, without regard to its conflict of law provisions, and jurisdiction and venue shall be solely in the courts of the State of Colorado, subject to the right of either party to remove a matter to federal court. If either Party is required to undertake legal proceedings to enforce the provisions of this Agreement, the prevailing party may recover all reasonable attorneys' fees in any case to enforce the provisions of this Agreement.

**21. Authority.** Each of the undersigned principals of the parties represents and warrants that such person has the requisite corporate or legal authority to bind the respective parties to this Agreement.

**22. Notice.** Notice by either party shall be promptly given, orally if possible, and immediately mailed by U.S. mail and confirmed electronically to:

**Owner**

Rebecca A. Callaway  
4984 County Road 161  
Ramah, CO 80832  
Email: Becki-6cal@hotmail.com

Catherine R. Callaway  
5586 County Road 165  
Ramah, CO 80832  
Email: cattiecallaway@outlook.com

**Operator**

Mustang Creek Operating, LLC  
5251 DTC Parkway, Suite 800  
Greenwood Village, CO 80111  
Email: bdavis@nexgenoilandgas.com

**23. Successors and Assigns.** This Agreement shall extend to, bind and inure to the benefit of, Owner and Operator, and their respective heirs, personal representatives, successors and assigns. The rights and obligations contained herein shall constitute covenants running with the Property.

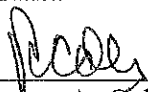
**24. Effective Date and Termination.** This Agreement shall become effective when it is fully executed and shall remain in full force and effect until Operator's leasehold estate expires or is terminated, and Operator has plugged and abandoned the well(s) and conducted reclamation in accordance with this Agreement and applicable COGCC rules and regulations, except that any release, discharge or indemnity from and against liability contained herein shall survive the expiration of this Agreement.

**25. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable law, such provision shall be severable from the remainder of this Agreement, which shall remain in full force and effect.

**26. Counterpart.** This Agreement shall become effective upon execution, which may be by counterparts, each of which shall constitute one and the same document.

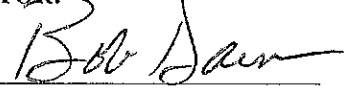
IN WITNESS WHEREOF, the parties have executed this Agreement this 8<sup>th</sup> day of July, 2015.

**OWNER:**

  
\_\_\_\_\_  
Rebecca A. Callaway

  
\_\_\_\_\_  
Catherine R. Callaway

**OPERATOR:**

  
\_\_\_\_\_  
By: Bob Davis  
Vice President  
Mustang Creek Operating, LLC