

Surface Use Agreement

This Surface Use Agreement ("Agreement") is entered into by and between **Morning Gun Exploration LLC** whose address is **1601 Arapahoe Street, Denver Colorado 80202** ("**Operator**"), and **Cheri K. Bashor, Attorney-in-fact for William Clyde Bashor** ("Owner") the Owner of the surface estate described below, whose address is **PO Box 1363 Ault, CO 80610** sometimes referred to each as a "**Party**," or collectively as the "**Parties**," and effective this October 24, 2017:

WITNESSTH:

For and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **OWNERSHIP.** Owner is the surface owner of certain lands more particularly described as follows:

Township 10 North, Range 61 West of the 6th P.M.

Section 21: ALL

Parcel: 029121000002

Weld County, Colorado

(the "Lands").

Operator, or its affiliates, owns a working interest, leasehold interest, or other interest under certain oil and gas leases covering all or portions of the Lands, or lands pooled or included in a spacing unit therewith, or lands adjacent thereto (the "Lease," or "Leases").

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

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

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", and "B", attached hereto and made a part hereof. Operator shall have the right to:

1. Drill and operate one (1) well and up to eight (8) wells within the areas shown on Exhibits "A" and "B", 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;
2. Construct and operate a road within the areas shown on Exhibits "A" and "B";
3. Construct and operate production facilities within the areas shown on Exhibits "A" and "B", as such location is permitted under the applicable regulations of the COGCC.

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

Name to be Determined("Wellsite").

Additional Provisions

1. **Compensation Amount.** The Parties acknowledge that Operator will provide Owner with certain good and valuable consideration, as described in that confidential Letter Agreement of even date herewith, prior to the commencement of drilling operations for each Well drilled which consideration is agreed to be and constitutes full, complete and final consideration for settlement and complete satisfaction for any and all detriment, depreciation, injury, or damage of any nature to the Lands or crops growing thereon that may occur as a result from Operator's operations pursuant to this Agreement or the Leases. Subsequent operations related to the Wells including but not limited to refracs, recompletions, deepening, or redrilling, except in case of emergency, shall require prior notice to Owner. Operator shall pay Owner actual damages caused by said subsequent operations.
2. **Production Facilities.** To the extent that production facilities 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 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. This Agreement does not in any way limit the rights of Operator to drill future additional Wells with associated Facilities and Access Roads on the Lands or to exercise all rights consistent with its mineral ownership or lease rights.
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.

K. The locations of Wells, the Access Roads to the Well sites and Facilities to be constructed on the Lands shall be discussed by and between Owner and Operator prior to commencement of operations.

L. Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations.

4. **Fencing.** Operator agrees to fence off the perimeter of the well sites, including but not limited to the well pads, with industry standard fencing after reasonably requested by Owner. Operator will also install cattle guards or gates where reasonably necessary.

5. **Operations.** 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 48 hours) reported to Owner by telephone, fax, in person, 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.

6. **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 six (6) 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.

7. **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 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.

8. **Dry Hole/Water.** 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 the Owner's sole expense. 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 of 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.

9. **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.

10. **Default and Right to Cure.** In the event of alleged default by Operator in the payment of any Compensation Amount, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owner will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have 60 days from receipt of the written notification in which to dispute or otherwise respond to the notification before Owner may pursue other remedies of the alleged default. If Operator cures the alleged default within 60 days of Owner's notice, or if the alleged default is of a nature that cannot be cured within 60 days, then if Operator commences curing the alleged default within that 60 day period and diligently pursues such cure, then no default shall be deemed to have occurred. Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach. Any damages awarded to either party under this Agreement shall be limited to only the actual damages incurred by such party, and neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages in tort or in contract, or under any legal theory, and all such damages are hereby excluded and waived by the Parties and the exercise of the rights of any party hereunder.

11. **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 cause 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. Owner hereby releases and agrees to hold harmless Operator, its agents, successors and assigns from any and all liability and further payment, other than what has been provided in this Agreement, for damages on the Lands which arise from, out of or in connection with the Operator's operations on the Lands, but only as to those operations described in and permitted by this Agreement, and for those operations which the Compensation Amount has been paid and received by Owner pursuant to this Agreement. Operator agrees to indemnify and hold Owner harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the Lands at the request of Operator; with the exception of any claims, damages, and causes of action that arise from Owner's gross negligence or willful and wanton misconduct. Owner agrees to indemnify and hold Operator, its agents, successors and assigns harmless from any and all claims, damages and causes of action arising out of and caused by Owner's operations on the Lands that may be asserted by any of Owner's agents, employees, subcontractors, contractors or persons entering upon the Lands at the request of Owner; with the exception of any claims, damages, and causes of action that arise from Operator's gross negligence or willful and wanton misconduct.

12. **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.

13. **Damages.** The indemnitees 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 full assumption of the indemnification obligations contained herein by the assignee or grantee, then the assignor or grantor 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, waste, toxic chemicals, 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.

14. **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 all the well pad(s), the production facilities, and the pipeline and access easements free of weeds and debris and to control erosion.

15. **Subsurface Easement.** Owner further grants Operator a subsurface easement through the Lands for the purpose of drilling, horizontal drilling, completing, operating, re-stimulating, reworking and maintaining oil and gas wells that may produce and drain oil, natural gas, produced liquids and associated hydrocarbons from lands other than the Lands and lands pooled with the Lands. This clause shall not provide permission to build pipelines for the transportation of produced hydrocarbons, water, or other fluids. Pipeline easements will be in a separate agreement between the parties.

16. **Operations Notice.** Commencement of the Operations with heavy equipment is estimated to begin on or about July 1, 2018 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 proposed Operations.

17. **Operations and Use.** Operator shall construct and install the well pads(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 "B" as to drilling operations, Exhibit "B" as to producing operations. During drilling and completion 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.

18. **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 understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units, occupied buildings, and surface property lines, among other things. Owner hereby waives its right to object to the location of any Well, Access Roads and Facilities on the basis of setback requirements in the rules and regulations of the COGCC, including, but not limited to, the 150 foot setback from surface property lines and other requirements of rules 603.a.(2), and 604.a, except that the Parties intend to rely upon one or more exceptions of rule 604.b of the rules and regulations of the COGCC relating to property lines and urban mitigation areas or designated outside activity areas, as those terms may change or be defined and amended from time to time. For the operations contemplated by this Agreement, Owner hereby waives the Exception Zone, Buffer Zone, Urban Mitigation Area, and High Occupancy Building setback distances, as required by COGCC rules and regulations.

D. Owner grants consent to locate the Wells greater than 50 feet from an existing well pursuant to COGCC Rule 318A.c. Owner grants consent to locate Wells outside of the GWA windows as defined in COGCC Rule 318A.a.

E. Owner understands that Operator may provide a copy of this Agreement to the COGCC in order to obtain a waiver, exception location, or variance from the COGCC rules or from a local jurisdiction.

19. **Accommodation.** Owner expressly acknowledges and agrees that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligations 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.

20. **Confidential.** Owner agrees that the information contained within this Agreement is confidential. Each Party agrees that a Memorandum of Surface Use Agreement may be recorded in the Weld County records in lieu of recording this Agreement in order to give notice of this Agreement's existence. The Parties also agree that the certain Letter Agreement effective even date with this Agreement is also confidential and shall not be disclosed to third parties.

21. **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.

22. **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.

23. **Choice of Law and Legal Proceedings.** This Agreement shall be subject, and construed under, the laws of 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 all reasonable attorneys' fee in any case to enforce the provisions of this Agreement.

24. **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.

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

Owner

Cheri K. Bashor
Attorney-in-fact for
William Clyde Bashor
PO Box 1363
Ault, CO 80610
719-225-0517
Attn: Cheri K. Bashor

Operator

Morning Gun Exploration LLC
Intentionally left Blank
Intentionally left Blank
1601 Arapahoe Street, Box 1
Denver, CO 802202
303-847-1110
Attn: Land Department

26. **Successor and Assigns.** This Agreement shall extend to, bind and inure to the benefit, 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.

27. **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.

28. **Letter Agreement.** The Owners and Operator shall execute a confidential Letter Agreement, dated of even date herewith, containing the terms and conditions of the Compensation Amount arising under this Agreement.

29. **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.

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

31. **Attorney's Fees.** If any action or proceeding is instituted by either party for enforcement or interpretation of any term or provision of this Agreement, the prevailing party pursuant to a final judgment of a court of competent jurisdiction shall recover from the other party, and the other party shall pay, the prevailing party's reasonable attorneys' fees and costs as determined by the court.

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ACKNOWLEDGMENTS

Operator:

Owner:

Morning Gun Exploration LLC

By: [Signature]

By: Cheri K. Bashor

Name: Justin A. Dunn

Name: Cheri K. Bashor, Attorney-in-fact for

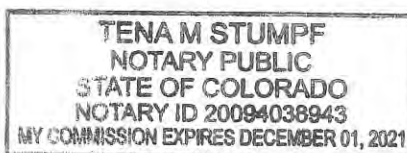
Title: Vice President Land

William Clyde Bashor

STATE OF)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me on this 1 day of Dec, 2017, by Cheri K. Bashor.

Witness my hand and official seal.



My commission expires: 12-1-21

(SEAL)

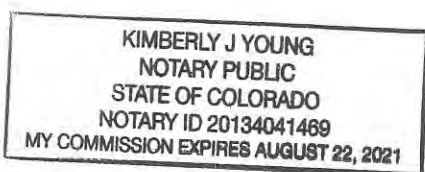
[Signature]
Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me on this 12th day of December, 2017, by Justin A. Dunn, acting as Vice President Land on behalf of Morning Gun Exploration LLC.

Witness my hand and official seal.

My commission expires: August 22, 2021



(SEAL)

[Signature]
Notary Public