

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("Agreement") dated effective this 26th day of September, 2014, is made by and between the undersigned, Patricia Hoffman, whose address is 2465 East 101st Court, Thornton, CO 80229 herein called "Owner", and Foundation Energy Management, LLC, whose address is 16000 Dallas Parkway, Suite 875, Dallas, TX 75248 herein called "Foundation".

WHEREAS, Owner represents that they are the surface owner and in possession of an interest in part or all of the surface estate for the following described lands in Weld County, Colorado, said land herein called "Lands", to wit;

Township 8North, Range 60 West, 6th P.M.
Section 34: SW/4

WHEREAS, Owner recognizes that Foundation has certain obligations under Colorado Oil & Gas Conservation Commission (COGCC) regulations covering the Lands, Owner and Foundation desire to facilitate development of oil and gas resources by use of the surface and to minimize surface damage to the lands and to reach an agreement regarding such surface use; and

WHEREAS, It is Foundation's desire to drill four to sixteen horizontal wells for the purpose of developing Owner's mineral interests and mineral interests other than those of the Owner (the "Wells") from a surface location on the Lands, as depicted on Exhibit A attached hereto and by this reference made a part hereof. The drilling of the Wells requires Owner's consent so as to comply with the applicable COGCC regulations.

NOW, THEREFORE, in consideration of ten dollars and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Foundation agree as follows:

1. Owner agrees to allow Foundation to use the surface of the Lands to drill and operate the Wells from the Wellsite shown on Exhibit A, and all ground between the Wellsite and the road to the south ("the Wellsite").
2. **Surface Operations.** Foundation's rights to use the surface of the Lands pursuant to this Agreement shall continue until the Wells are all plugged and abandoned. Upon the plugging and abandonment of the last Well, Foundation shall reclaim the wellsite pursuant to COGCC regulations and the terms of this Agreement. Weather permitting, reclamation operations shall be completed within six (6) months following abandonment of the last Well, unless Foundation and Owner mutually agree to postponement because of crop or other considerations or unless other wells developing Owners mineral interest are still active.
3. **Subsurface Easement.** Owner hereby grants to Foundation a subsurface easement for passage of any portion of the Wells and all appurtenant structures, including, but not limited to, the wellbore, well casing, production tubing and cement. The subsurface easement hereby granted includes the right to occupy and use the subsurface and the subsurface pore space beneath the Lands displaced by the Wells and all appurtenant structures. Owner acknowledges that it does

not own any working interest in the Wells. Owner also acknowledges that it might not have any mineral interest in certain Wells drilled into adjacent spacing units. It is agreed that Foundation shall have the right to drill and operate the Wells from, through, and under said Lands, irrespective of the bottom hole locations of said Wells. This agreement and associated subsurface easement shall run with the Lands and shall remain in full force and effect until all the Wells are plugged and abandoned and the surface is reclaimed in conformance with this agreement and applicable COGCC regulations. Upon the cessation of operations for the Wells, this Agreement and associated subsurface easement shall terminate, however, some underground appurtenances, including, but not limited to, the wellbore(s), well casing(s), production tubing, and cement shall be allowed to remain in place.

4. **Payment to Owner.** Prior to commencement of drilling operations on the Lands, Foundation shall pay Owner the following sum as the initial settlement and satisfaction for damages growing out of, incident to, or in connection with the usual and customary exploration, drilling, completion (including fracing), deepening, refracing, recompletion, reworking, equipping and production operations (collectively the "Operations"), unless otherwise specifically provided herein:

A. **Surface Location, Access Roads and Initial Well.** Foundation shall pay to Owner ~~_____ (\$_____)~~ (the "Initial Payment") for Owner's written consent to Foundation's construction of the horizontal drilling location at the Wellsite and drilling of the first horizontal well drilled from the Wellsite located on the Lands in which Owner owns the entire surface estate, as the minimum payment due for six (6) acres of disturbed Land for the Wellsite together with ~~_____~~ ~~_____~~ per acre for any additional Lands deemed necessary by Foundation for the Wellsite, access roads, production facilities, pipelines, flowlines or other reasonably necessary facilities in connection with the Wellsite, should more than six (6) total acres be disturbed or to be used for Operations. The Initial Payment shall be paid ~~_____~~ upon execution of this Agreement and the balance of ~~_____~~ shall be paid in good funds prior to commencement of drilling operations. In no event shall Owner be obligated to return any of the Initial Payment.

B. **Off Unit Well Payments:** Foundation shall pay Owner ~~_____~~ ~~_____~~ prior to commencement of actual drilling operations for each well drilled for the exclusive purpose of developing a mineral estate in any section other than 34 and 27 (the "Off Unit Well Payment (s)") for Owner's written consent to drill any additional horizontal wells from the Wellsite. A copy of the drilling permit for every Off Unit Well shall be provided to Owner by Foundation along with payment, prior to drilling any Off Unit Well.

Buried Permanent Pipeline. If Foundation determines it necessary to bury pipeline outside of the Wellsite, Foundation shall bury all pipeline 48" below the surface, and shall pay Owner ~~_____~~ ~~_____~~ per foot for the length of the buried pipeline as compensation for a permanent Right of Way and surface damage

associated with the installation of the Pipeline. Foundation agrees to utilize the most direct route from the Wellsite to the existing gas gathering pipeline, which runs north-south along the east line of Section 34. The pipeline will run from the Wellsite directly to the east to a tie-in point on the existing pipeline, unless an alternate route is agreed upon between the parties hereto. The width for any subsurface pipeline easement shall not exceed fifty (50) feet during installation and twenty (20) feet thereafter for future maintenance, repair, and operation without additional proportionate compensation to Owner. Foundation shall level and restore any Lands affected by Foundation's operations that may have excessive settling and sufficiently compact the soil within a reasonable period of time after completion. During any construction or maintenance of the pipeline, Foundation shall return all top soil to the surface of disturbed soil on the Lands. Owner hereby grants Foundation the right to transport fluids which may be produced from any of the Off Unit Wells on and off the Wellsite, thru the pipeline contemplated herein. At Foundation's request, Owner agrees to execute a mutually agreeable Right of Way instrument granting Foundation the easement herein described after receipt of payment and prior to installation for recording purposes with the Clerk & Recorder of Weld County, CO. This provision shall not be construed or interpreted to negate, or limit Foundation's oil and gas lease rights in any way.

- C. Temporary Water Lines. If temporary water transfer lines are needed for completion of any of the Wells, Owner shall allow reasonable use of the Access Roads for such temporary water transfer lines. Foundation shall consult with Owner as to route and time period of use for any temporary water transfer lines. On the anniversary date of this Agreement, Foundation shall pay Owner ~~_____~~ for any temporary water lines that have been placed on the Lands during the previous twelve (12) months. The width for disturbing the surface to lay the temporary water line will not exceed 30 feet. Foundation shall promptly notify the Owner and the appropriate regulatory agency in the case of any leak or breach of any temporary water transfer line and the Parties agree to cooperate in determining appropriate remediation consistent with COGCC rules and regulations and to pay for any damages to the Owner's property arising out of such spill or release.
- D. Additional Damage. If, by reasons resulting from Operations of Foundation, there is damage to real or personal property upon the Lands which is not associated with usual and customary operations, including, but not limited to, damage to livestock, structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural water ways, such damage will be repaired or replaced by Foundation, or Foundation will pay reasonable compensation to Owner for such additional actual damage or an amount equal to the reasonable costs to repair such actual damages.
- E. Tenant Notice. Owner agrees to notify any surface tenant that may be affected by Foundation's operations on the Lands and Owner may allocate the payments made

hereunder with such surface tenant as they shall mutually determine between themselves and Foundation shall have no liability thereof.

5. **Foundation's Obligations.** In conducting operations on the Lands, Foundation shall:
- A. Locate the Wellsite, access roads, flowlines, tank batteries, and other associated production facilities only as depicted on Exhibit "A" attached hereto and by this reference made a part of this Agreement.
 - B. Separate the topsoil at the time of excavation of the Wellsite so that the topsoil and subsurface soil can be placed back in proper order as nearly as possible.
 - C. Reclaim the Wellsite as nearly as practicable to its original condition and in accordance with all applicable regulations, providing for reasonable contouring of the surface to accommodate the burial of the disturbed surface and subsurface materials. .
 - D. For any abandoned Wellsites located in a field with cultivated crops, Owner agrees to reseed the affected area and receive payment from Foundation in the amount of Seven Hundred and Fifty Dollars (\$750.00) per acre upon notice of such reseeded by Owner. Such payment will constitute Owner's acceptance of responsibility for compliance with Colorado Oil and Gas Conservation Commission ("COGCC") Rule 1003(e)(1), *Revegetation of crop lands*, insofar as any perennial forage crops that were present before disturbance shall be re-established. If the Owner's reseeded effort does not result in an initial stand of the reseeded crop, Owner shall notify Foundation, and Foundation shall reimburse Owner for one additional year of reseeded efforts consistent with the compensation set forth in this paragraph.
 - E. **Maintenance Obligations.** Foundation shall (i) remove all debris resulting from Operations and (ii) keep each drill site and any production facilities clean and free of weeds and trash and (iii) be responsible for the cleaning and removal of any spills of any nature caused by Foundation's operations upon Owner's Lands. Access Roads shall be reasonably maintained. Foundation agrees that all Access Roads shall not permanently exceed twenty (20) feet in width where straight, but may be wider on turns, to accommodate equipment.
 - F. **Spills and Releases.** Foundation shall immediately respond and remediate any spill or release at the Property, and shall give the Owner simultaneous notice of any spill or release that is reported to the COGCC. Foundation shall be responsible for, and shall promptly remediate any surface or subsurface impacted by any spills or release of any nature arising out of or related to Foundation's use and occupancy of the Property, or the Owner's adjacent surface.

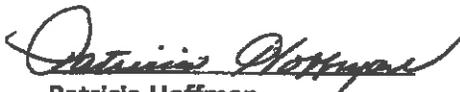
- G. **Contractors.** Access Roads and the Wellsite shall only be used by Foundation, Foundation's employees, its co-owners, its designated agents, contractors and subcontractors ("Contractors"), state, local and federal regulators and any other person as required by law or court order to conduct Operations. Off road driving shall be strictly prohibited. All roads may also be used by Owner and Owner's tenants (if any) consistent with the Owner's surface use.
 - H. **Prohibited Activities.** Neither Foundation nor its Contractors shall possess or use drugs, alcohol or firearms on the Property.
 - I. **Standard of Care.** Foundation and its Contractors shall conduct all operations in a good, careful, safe, and workmanlike manner, consistent with industry standard industry practice and in compliance with all federal, state and local laws, rules, and regulations regarding land use, environmental laws and all other applicable rules and laws. Foundation shall strictly comply with all existing, and any future modifications to, the rules of the Colorado Oil and Gas Conservation Commission, provided if there is any more restrictive term or provision contained in this Agreement the terms of the Agreement shall prevail.
 - J. **Notice and Right to Cure.** Owner shall promptly notify Foundation in writing of any default under this Agreement. Foundation shall have thirty (30) days after receipt of written notification to remedy the default, unless additional time is reasonably required and the continuation of actions to remedy the default are diligently pursued.
 - K. **If Foundation doesn't commence drilling operations on the Lands prior to five years after the execution of this Agreement, this Agreement shall terminate and Foundation shall release any and all documents recorded referencing this Agreement.**
6. **Waivers.** Owner hereby agrees to provide Foundation with all reasonably requested waivers and/or written approvals to locate the Wellsite identified herein. Owner further agrees to provide such other waivers and/or written approvals which are reasonably requested by Foundation and that are consistent with COGCC Rules and this Agreement.
7. **Successors and Assigns.** When Foundation is used in this Agreement, it shall also mean the successors and assigns of Foundation, as well as its employees and officers, agents, affiliates, contractors or subcontractors. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Owner and Foundation.

8. **INDEMNITY.** FOUNDATION OR FOUNDATION'S ASSIGNS AGREES TO INDEMNIFY, DEFEND AND HOLD OWNER, OWNER'S TENANTS, AGENTS, ASSIGNS, EMPLOYEES AND INVITEES ("OWNER GROUP") HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, INCLUDING REASONABLE LEGAL FEES AND DISBURSEMENTS AND COSTS OF INVESTIGATION, LITIGATION, SETTLEMENT, JUDGMENT, INTEREST AND PENALTIES, ARISING FROM OR IN ANY WAY RELATED TO FOUNDATION'S OPERATIONS ON THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY CLAIM BY OTHER MINERAL OWNERS, LESSEES OR OPERATORS OR ANY REGULATORY ENTITY (COLLECTIVELY THE "CLAIMS"). THE DUTY TO DEFEND AND INDEMNIFY SHALL EXTEND TO, BUT SHALL NOT BE LIMITED TO, CONFLICTING CLAIMS OF PROPERTY USE, ENVIRONMENTAL DAMAGE DUE TO SURFACE SPILLAGE OR THE UNDERGROUND RELEASE OF CONTAMINATED FLUIDS. THIS INDEMNITY AND DUTY TO DEFEND SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR A PERIOD OF TEN YEARS, AND SHALL CONTINUE TO BE IN FORCE AND EFFECT FOR ALL CLAIMS AS TO FOUNDATION, OR AS TO FOUNDATION'S ASSIGNS AND ANY LEGAL SUCCESSOR TO FOUNDATION, INCLUDING WITHOUT LIMITATION ANY SUCCESSOR BY MERGER OR ACQUISITION OF FOUNDATION.
9. **Confidentiality.** Owner agrees to keep the terms hereunder confidential and shall not disclose such information without the advance written consent from Foundation except as may be necessary to obtain advice and review of Owner's agents (including legal and accounting review), or as may be ordered by any court of competent jurisdiction. Foundation may record a memorandum evidencing the existence of this Agreement, with a copy of the recorded Memorandum provided to Owner for review in advance of recording.
10. Foundation shall provide Owner with the name and phone number of a representative on the Wellsite.
11. **Insurance.** Foundation, at its own expense, shall maintain a general liability insurance policy (covering both bodily injury and property damage and covering its indemnity provisions of this Agreement) in an amount of at least one million dollars (\$1,000,000.00) combined single limit. Foundation shall also, at its own expense, carry worker's compensation insurance as required by law. Said policies shall (i) name Owner as an additional insured (except for worker's compensation policy) and (ii) provide that said insurance shall not be cancelled unless thirty (30g) days prior written notice shall have been given to Owner. In addition, such insurance provided by Foundation shall be primary coverage for Owner when any policy issued to Owner is similar or duplicate in coverage, and Owner's policy shall be excess over Foundation's policies. Said policy or policies or certificates thereof shall be delivered to Owner by Foundation upon commencement of the Agreement and upon each renewal of said insurance.
12. **Trespass.** Foundation, its employees, contractors, and agents are prohibited from trespassing on any Lands owned by Owner outside of the Wellsite, except as provided in this Agreement.

13. 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.
14. Governing Law/ Venue. This Agreement shall be interpreted according to the laws of the State of Colorado. Venue for any dispute shall be City and County of Denver, Colorado.
15. Written Modifications/Notices. This agreement may only be amended in writing signed by both parties. All notices to either party shall be in writing addressed to the parties at the address first set forth above.
16. This Agreement may be executed in counterparts and by fax or pdf signature, each of which shall be considered an original signature and together shall constitute a fully executed Agreement for all purposes.

AGREED TO AND ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE.

Owner

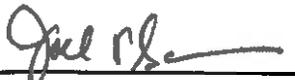


Patricia Hoffman

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Foundation Energy Management, LLC



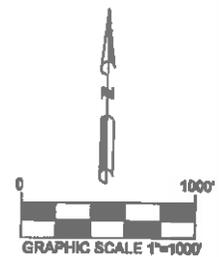
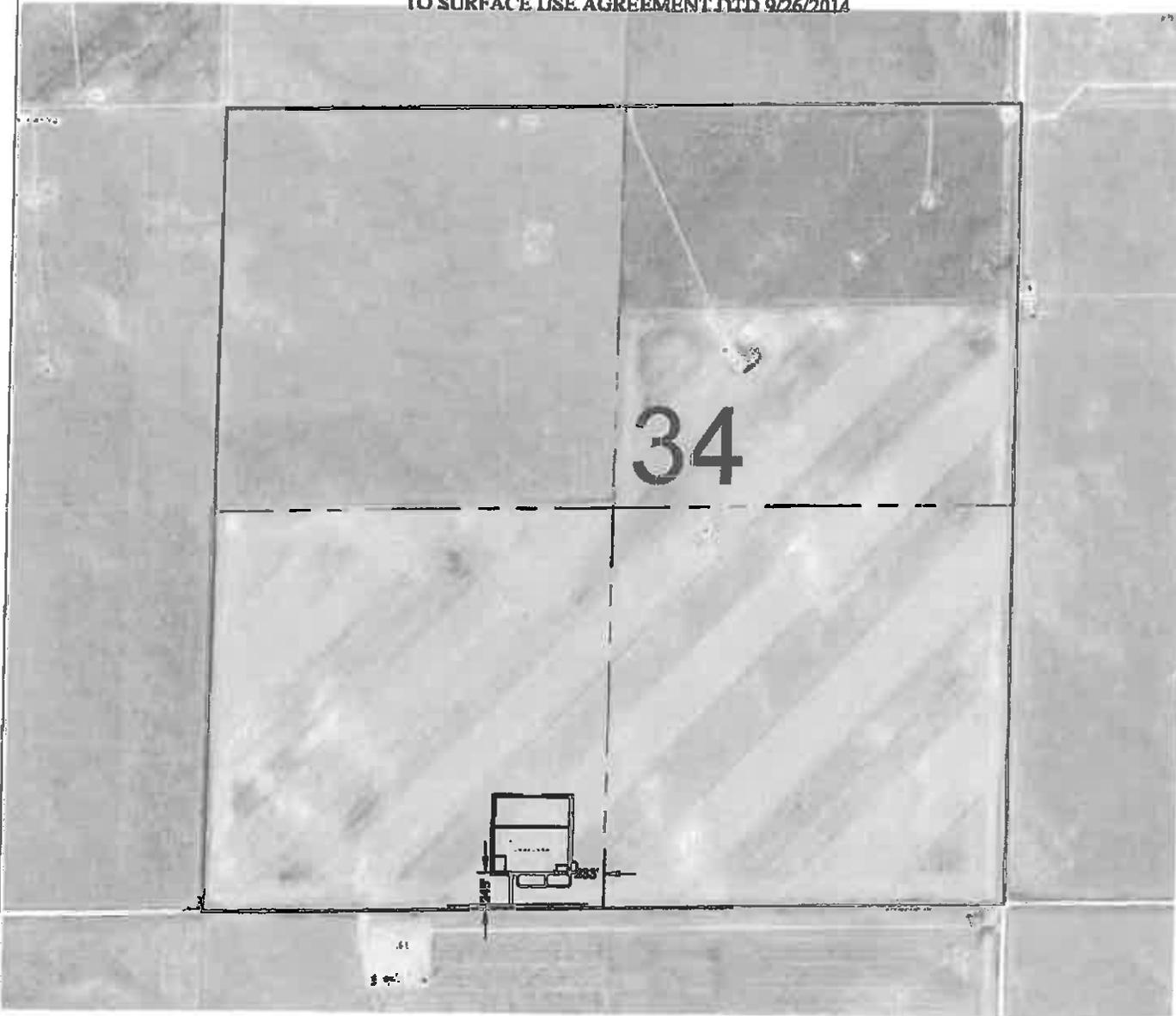
Joel P. Sauer

Vice President

Phone: 303-244-8100

Email: jsauer@foundationenergy.com

**HOFFMAN 34-O PAD
FOUNDATION ENERGY
EXHIBIT A
TO SURFACE USE AGREEMENT DTD 9/26/2014**



PREPARED BY:  PFS Petroleum Field Services, LLC 7535 Hilltop Circle Denver, CO 80221	FIELD DATE: 07-28-14	PAD NAME: HOFFMAN 34-O PAD	PREPARED FOR: 
	DRAWING DATE: 08-20-14	SURFACE LOCATION: SE 1/4, SW 1/4, SEC. 34, T8N, R60W, 6TH P.M. WELD COUNTY, COLORADO	
BY: WDW	CHECKED BY: KAD		