

MEMORANDUM OF SURFACE USE AGREEMENT

(Zellitti 34-9 #34-4 Well from Zellitti 34-9 #34-2 Well location)

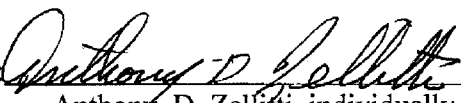
This MEMORANDUM OF SURFACE USE AGREEMENT ("Memorandum"), is provided by XTO Energy Inc., a Delaware Corporation, the address of which is 810 Houston Street, Fort Worth, TX 76012-6298 ("XTO" or "Operator"), and Anthony D. Zellitti, individually and Anthony D. Zellitti and Marilyn G. Zellitti, as Joint Tenants ("Surface Owner"), whose address is 2001 CR 300, Durango, CO 81303 ("Surface Owner"). Notice is hereby given that XTO and Surface Owner have entered into a Surface Use Agreement dated the 3rd day of October, 2008, concerning a proposed gas well known as the Zellitti 34-9 #34-4 Well ("Additional Well") to be located on the well pad of an existing gas well known as the Zellitti 34-9 #34-2 Well ("Existing Well") or reasonable expansion or modification thereof, and the utilization of existing access roads. Both wells are or will be located on the below described property and will be or have been drilled pursuant to underlying oil and gas lease(s) and applicable permits. Under the Surface Use Agreement, Surface Owner and Operator have agreed to certain specific matters in connection with XTO's right to use the surface estate of the following property:

E1/2SW1/4 of Section 34, Township 34 North, Range 9 West, N.M.P.M., La Plata County, Colorado

This Memorandum constitutes notice to all interested parties of the existence of the Surface Use Agreement. Furthermore, any successor or assign of either XTO or Surface Owner shall be bound by the terms and conditions of the Surface Use Agreement. In the event that any party acquires any rights or interests in the surface estate of the Property, such rights or interests shall be subject to the terms and conditions set forth in the Surface Use Agreement. For more information, contact either XTO or Surface Owner.

SURFACE OWNER:

OPERATOR:

By: 
Anthony D. Zellitti, individually
and as Joint Tenant

By: 
Marilyn G. Zellitti

XTO Energy Inc., a Delaware Corporation

By: _____
Name: Edwin S. Ryan, Jr.
Title: Senior Vice President – Land
Administration

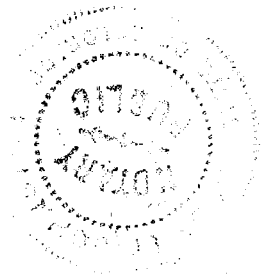
STATE OF Colorado)
COUNTY OF LARIMA) ss.

The foregoing instrument was acknowledged before me this 3rd day of October, 2008, by Anthony D. Zellitti and Marilyn G. Zellitti, personally known to me.

Robert J. Hill
Notary Public

WITNESS my hand and official seal.

My commission expires: 7-11-2010



STATE OF TEXAS)
COUNTY OF TARRANT) ss

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Edwin S. Ryan, Jr., as Senior Vice President - Land Administration of XTO Energy Inc., on behalf of said corporation.

Notary Public

WITNESS my hand and official seal.

My commission expires: _____

MEMORANDUM OF SURFACE USE AGREEMENT

(Zellitti 34-9 #34-4 Well from Zellitti 34-9 #34-2 Well location)

This MEMORANDUM OF SURFACE USE AGREEMENT ("Memorandum"), is provided by XTO Energy Inc., a Delaware Corporation, the address of which is 810 Houston Street, Fort Worth, TX 76012-6298 ("XTO" or "Operator"), and Zellitti Properties, a partnership ("Surface Owner"), whose address is c/o Wilma I. Zellitti, 10751 West 34th Place, Wheat Ridge, CO 80033 ("Surface Owner"). Notice is hereby given that XTO and Surface Owner have entered into a Surface Use Agreement dated the 3rd day of October, 2008, concerning a proposed gas well known as the Zellitti 34-9 #34-4 Well ("Additional Well") to be located on the well pad of an existing gas well known as the Zellitti 34-9 #34-2 Well ("Existing Well") or reasonable expansion or modification thereof, and the utilization of existing access roads. Both wells are or will be located on the below described property and will be or have been drilled pursuant to underlying oil and gas lease(s) and applicable permits. Under the Surface Use Agreement, Surface Owner and Operator have agreed to certain specific matters in connection with XTO's right to use the surface estate of the following property:

E1/2SW1/4 of Section 34,
Township 34 North, Range 9 West, N.M.P.M.
All in La Plata County, Colorado
(the "Property")

This Memorandum constitutes notice to all interested parties of the existence of the Surface Use Agreement. Furthermore, any successor or assign of either XTO or Surface Owner shall be bound by the terms and conditions of the Surface Use Agreement. In the event that any party acquires any rights or interests in the surface estate of the Property, such rights or interests shall be subject to the terms and conditions set forth in the Surface Use Agreement. For more information, contact either XTO or Surface Owner.

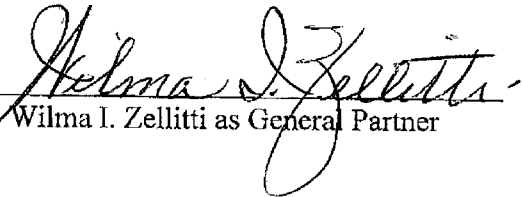
SURFACE OWNER:

OPERATOR:

Zellitti Properties, a partnership

XTO Energy Inc., a Delaware Corporation

By:


Wilma I. Zellitti as General Partner

By: _____

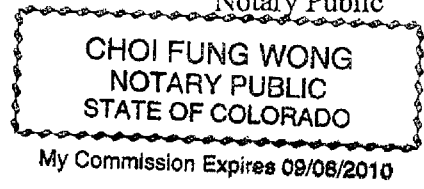
Name: Edwin S. Ryan, Jr.
Title: Senior Vice President – Land Administration

STATE OF Colorado)
COUNTY OF Jefferson) ss.

The foregoing instrument was acknowledged before me this 3rd day of October, 2008, by Wilma I. Zellitti as General Partner of Zellitti Properties, a partnership, personally known to me.

Wong Chung
Notary Public

WITNESS my hand and official seal.



My commission expires: 09/08/2010

STATE OF TEXAS)
COUNTY OF TARRANT) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Edwin S. Ryan, Jr., as Senior Vice President – Land Administration of XTO Energy Inc., on behalf of said corporation.

Notary Public

WITNESS my hand and official seal.

My commission expires: _____