

SURFACE USE AND RELEASE AGREEMENT

This Surface Use and Release Agreement ("Agreement") is made and entered into this 11th day of June 2008, by and between, Phillips Living Trust dated February 15, 2002, ("Owner"), and Petro-Canada Resources (USA) Inc. ("Operator"); sometimes referred to each as a "Party," or collectively as the "Parties."

WITNESSETH:

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 located in Weld County, Colorado, as more specifically described as follows ("Lands"):

Township 5 North, Range 67 West, 6th P. M.
Section 23: E/2

Owner has plans to develop the surface of the Lands in the future.

Operator owns a working or operating interest in a valid oil and gas lease or leases covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "Lease," collectively, the "Leases").

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator currently operates eight (8) wells on the Lands ("Existing Wells") and may drill or cause to be drilled additional oil and/or gas well or wells on the Lands in the future ("Future Wells") (the Existing Wells and Future Wells are collectively referred to herein as the "Well(s)"). Operator agrees that the area used for drilling, completing, recompleting, refracing, reworking, maintaining and for all other operations on the Wells(s) will not exceed an area defined by a circle with a radius of 150' around each Well as shown on Exhibit "A" (the "Well Site(s)"). In addition, in order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities associated therewith, it is necessary that Operator enter and utilize a portion of the surface of the Lands for its Facilities (as defined herein). A "Facility" (collectively, the "Facilities") shall include, but not be limited to, access roads, ("Access Roads"), pipelines, flow lines, (collectively "Flowlines") separators, tank batteries, electric lines and other property necessary for Operator to conduct operations on the Wells. However, compressors, with the exception of wellhead compressors, shall not be located on the Lands. The "Production Facilities Areas" shall be those areas with the dimensions shown on Exhibit A where tank batteries, separators and certain other Facilities are located. The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

3. **LOCATION.**

A. The approximate location of the Wells, the Access Roads to the Well Sites, tank batteries, separators and certain other Facilities to be constructed or relocated on the Lands are depicted on Exhibit A. Certain Facilities to be removed from the Lands by Operator are also shown on Exhibit A. Aside from the Well Sites, Production Facilities Areas, Flowline Easements (defined below) and Access Roads all as depicted on Exhibit A, Operator shall not use or occupy the surface of the Lands, except in the event of an emergency.

B. Any new tank batteries, separators and similar production equipment located on the Lands shall be located in the Production Facilities Areas.

C. Owner hereby grants to Operator non-exclusive easements for all Flowlines ("Flowline Easements") in the Flowline locations shown on Exhibit A. The width of such easements shall be no more than fifty feet (50') during construction and thirty feet (30') permanently. Owner shall have the right to place utilities within the Flowline Easements so long as the horizontal separation from the centerline of Operator's Flowline is at least ten feet (10') and so long as the vertical

separation from other utilities above or below the Flowline is twelve inches (12") or more. Owner shall have the right to cross the Flowline Easements with roads, utilities and fences placed at substantially right angles and shall have the right to install walks, trails, landscaping and golf course fairways on said easements. Operator shall abandon any portion of a Flowline Easement that will no longer be used for its operations.

D. If Owner, in connection with the development of the surface of the Lands, desires at any time to relocate any of the Facilities, including Flowlines, Owner will pay Operator, in advance, the reasonable actual cost to relocate the Facilities, which Operator will relocate so long as such relocation is reasonable from a technical and engineering standpoint as determined by Operator or a mutually agreeable and qualified third party and complies with all applicable rules and regulations. The relocation costs for the Flowline for the Phillips 23-12 well shall be paid for in accordance with Paragraph 5 below.

E. Operator understands and agrees that Owner may develop a land use plan for the Lands. In connection with such plan, portions of the Access Roads may be relocated and/or replaced with improved public rights-of-way to be established as part of the land use plan and at the Owner's expense so long as such relocation does not unreasonably interfere with or prohibit Operator's access to the Wells or Facilities. Until such plan is approved and the public roads are installed, Operator will use and maintain, at its expense, the unimproved Access Roads it constructs to the Well Sites and Production Facilities Areas. Access Roads which become paved or otherwise improved by Owner in connection with Owner's development of the Lands and which Owner requests Operator to use, shall be constructed in such a manner as to reasonably accommodate the equipment normally used by Operator for its oil and gas operations. Owner shall keep any Access Roads paved by Owner that is jointly used by the Parties or the subdivision occupants in good condition and repair until the same are dedicated to and accepted by the local governing authority. Any Access Roads no longer being used by Operator shall be abandoned in accordance with Paragraph 6.A.(iv).

F. Owner expressly waives the application of any COGCC, or any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement, including, but not limited to, setbacks for high density areas and surface lot lines.

4. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of the Leases, this Agreement, and the rules and regulations of the Colorado Oil & Gas Conservation Commission ("**COGCC**").

5. **COMPENSATION AMOUNT.** Operator will pay Owner the sum of _____ for each Future Well Site location prior to the commencement of actual drilling operations ("**Amount**"); provided, however, that in exchange for the cost to re-route the Flowline for the Phillips 23-12, it is agreed that _____ shall be paid for the drilling of the Phillips 23-4-23 Well Site. The Amount is hereby acknowledged by Owner as full and final consideration for Operator's use of the Lands for the purposes enumerated in this Agreement and for any and all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the Well Site(s) and Facilities. Such damages will include, without limitation, damage to growing crops, cropland, the removal, transportation and care of livestock, re-seeding, construction and use of Access Roads and the preparation and use of the Well Site areas; provided, however, that if after the initial drilling, completing and equipping of the Wells and Facilities for production, Operator commences subsequent operations thereto, including, but not limited to, re-fracturing operations on the Wells, and such operations result in additional crop losses on the Lands affected thereby, Operator will timely reimburse Owner for the actual net value of such crop loss.

If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is unanticipated damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Well's construction and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence.

6. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES. With respect to its operations on the Lands, Operator will comply with the following provisions:

A. Access Roads:

- (i) Access Roads will not exceed 20 feet in width.
- (ii) Operator will take reasonable steps to insure that all of its vehicles accessing the Lands on its behalf remain on the Access Roads.
- (iii) Operator agrees to side-slope all Access Roads.
- (iv) Operator will provide Owner with a minimum of 10 days prior written notice before restoring the surface of all Access Roads to be permanently abandoned by Operator. No later than 10 days following receipt of such notice, Owner may elect, in writing, not to have such Access Roads abandoned by Operator. In such event, Operator will have no liability under this Agreement, the Lease, or otherwise, to restore the surface of the Lands utilized as Access Roads. Failure to timely respond will be deemed as Owner's election that Operator proceed with the abandonment of the Access Roads and the restoration of the surface thereof.
- (v) Operator will stockpile and save any topsoil removed while constructing Access Roads for rehabilitation or re-seeding as reasonably directed by Owner.
- (vi) Operator will maintain all Access Roads in good repair and condition.
- (vii) Operator will provide livestock guards and crossings along all Access Roads as Owner may reasonably require. Such livestock guards will be kept clean and in good repair. Operator will keep Owner's gates closed at all times.

B. Fences:

- (i) Owner may request that Operator install fences and livestock guards on the Lands. If installed, all such fences and livestock guards will be maintained in good condition by Operator, and upon termination of this Agreement, will become the property of Owner. If Owner desires that Operator upgrade the type of fence being used, Operator will do so and Owner will promptly reimburse Operator for all additional costs.
- (ii) During drilling operations and subsequent operations including, but not limited to, re-fracturing operations on the Wells, Operator will install a temporary fence around the perimeter of the Well Site.

C. Surface Restoration:

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be restored by Operator to their original contour as nearly as is reasonably practicable, and re-seeded if so requested by Owner; provided however, that Operator's intent to abandon any Access Roads will be subject to the provisions of Paragraph 6(A)(iv) herein.

D. Other.

- (i) Operator will install culverts on the Lands that may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.
- (ii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands including bentonite dug up during pit excavation that are not necessary for

continued operations of the Wells will be removed and disposed away from the Lands no later than 30 days after the completion of the Wells. No such items will be burned or buried on the Lands.

(iii) Operator will paint the Facilities, with paint of a color selected by Owner so long as the color and type of paint are approved by the COGCC. Operator will keep tanks and other Facilities in a good state of repair and appearance.

(iv) Owner shall have the right to install and maintain fencing, earth berms and trees around the Well Sites and grass, gravel paths, walks and trails and other non-obstructive landscaping features within the Well Sites, Production Facilities Areas and Flowline Easements so long as such things do not unreasonably interfere with Operator's operations or access to Wells and Facilities. Operator shall not be liable for any damage to landscaping improvements which results from its reasonable exercise of its rights under this Agreement.

7. **GOVERNMENT PROCEEDINGS.**

A. Owner and its Affiliates and agents shall not directly or indirectly oppose or encourage opposition to Operator in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, neighboring Towns, County of Weld, or other governing body proceedings, related to Operator's operations as contemplated by this Agreement, including but not limited to drilling, workovers, well deepenings and re-completions, provided that Operator's position in such proceedings is consistent with this Agreement. Owner further agrees to provide Operator with whatever support it may reasonably request to obtain permits, variances, waivers or other necessary approvals or documents from the COGCC or any local jurisdiction so long as such support is consistent with this Agreement.

For purposes of this Agreement, "Affiliate" means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person, and in the case of a person who is an individual, a spouse, parent, sibling or descendant of such person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person. "Person" shall be construed broadly and shall include an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

B. Operator shall not directly or indirectly oppose or encourage opposition to Owner in any agency, administrative, neighboring Towns, County of Weld or other governing body proceedings, relating to the development of the Lands by Owner provided its position in such proceedings is consistent with this Agreement.

C. Owner will include in any surface development plats, site development plans, or related documents, submitted to the neighboring Towns and/or Weld County the following information: the Oil and Gas Operations Areas, Facilities, actual or planned Access Roads, and Flowline Easements.

8. **DEFAULT AND RIGHT TO CURE.** In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, 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 30 business days from receipt of the written notification in which to dispute or otherwise respond to the notification before Owner may allege default.

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; however, in no event will Operator be liable for additional payment for reasonably anticipated damages to the Lands caused by Operator's oil and gas operations, and in no event will Operator be liable for consequential damages.

9. **INDEMNITY/RELEASE.** 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.

10. **WAIVER OF 30-DAY NOTICE.** Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other notice or consultation requirements of the COGCC. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owner after it has submitted a request for permit to drill from the COGCC.

11. **NOTICE FOR ADDITIONAL OPERATIONS.** Operator will comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

12. **NOTICES.** Notice by either Party will be promptly given, orally if possible (with the exception of the default notice described in Paragraph 8), with subsequent written confirmation sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by notice to the other:

Owner

Duke Phillips
2209 Flora Ct.
Loveland, CO 80537
Phone: (970) 222-6804

Operator

Petro-Canada Resources (USA) Inc.
Attention: Mari S. Gillman
999 18th Street, Suite 600
Denver, CO 80202-1904
Phone: (303) 297-2100
Fax: (303) 297-7708

13. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owner agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owner.

14. **CONFIDENTIALITY.** The Parties agree to keep the terms and conditions of this Agreement confidential and will not disclose such matters to any third party without the advance written consent of the other, or if ordered to do so in a legal proceeding. While the specific terms hereof are to remain confidential between the Parties, Operator shall record a memorandum of this Agreement in Weld County, Colorado.

15. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective successors or assigns.

16. **TERM.** This Agreement will remain in full force and effect for so long as Operator has the right to conduct oil and gas operations on the Lands pursuant to the Leases; provided, however, that the termination of this Agreement will not relieve the Parties from their respective obligations or liabilities arising herein prior to such termination.

17. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.

18. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed and enforced in accordance with the laws of Colorado.

19. AGREEMENT TO ARBITRATE ANY DISPUTE OVER THIS AGREEMENT OR OPERATOR'S OPERATIONS ON THE LANDS. If any dispute arises between Owner and Operator with respect to this Agreement, the Lease, or from Operator's operations on the Lands, such dispute will be resolved through arbitration. Any such arbitration will be conducted by the Judicial Arbitrator Group ("JAG") in Denver, Colorado, by a single arbitrator employed by or associated with JAG. Such arbitrator will have at least 10 years experience in oil and gas, either by work directly in the industry or as a lawyer or a judge familiar with oil and gas issues. Either Party may serve upon the other a demand for such arbitration, which should be served by fax and mail, or by hand delivery. Owner and Operator agree that if either of them initiates a demand for such arbitration, Owner and Operator will thereafter attempt to mutually agree on the selection of one of the JAG arbitrators to be the arbitrator. Owner and Operator will confer on the selection of such arbitrator within 10 days after the demand for arbitration is served, and will agree upon the selection of a JAG arbitrator, if possible, within 20 days after the arbitration demand has been served. In the event that Owner and Operator are unable to agree on the selection of such arbitrator within this 20-day time period, then Owner and Operator will each submit to JAG, via fax, the names of three arbitrators (meeting the requisite experience specified above) who are employed by or associated with JAG, whom each would find acceptable to be the arbitrator. Such submission to JAG will be made on the fifth business day after the 20-day time period referenced above has expired. JAG will thereafter select from the names submitted by Owner and Operator a single arbitrator who will hear and decide the arbitration. The arbitrator will issue an arbitration decision within 30 days after the arbitration hearing is concluded. In the event that JAG no longer exists, the arbitration will be conducted by an American Arbitration Association arbitrator under the rules of the American Arbitration Association then existing. Any decision by the arbitrator relating to the dispute between Owner and Operator will be final and binding upon both Owner and Operator.

20. SUCCESSORS. This Agreement constitutes a covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, administrators, trustees, executors and assigns.

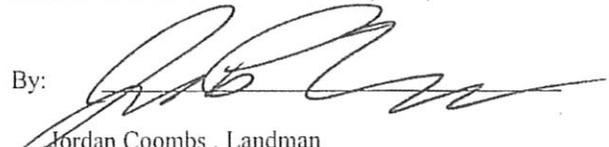
21. AUTHORITY OF SIGNATORIES. The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

22. ATTORNEY'S FEES AND COSTS. The Parties agree that the prevailing Party in any action resulting from a substantial breach of this Agreement will be entitled to its reasonable attorney's fees and costs incurred therein.

IN WITNESS WHEREOF, the Parties have set their hands, the day and year first written above.

PETRO-CANADA RESOURCES (USA) INC.

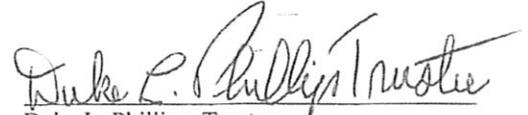
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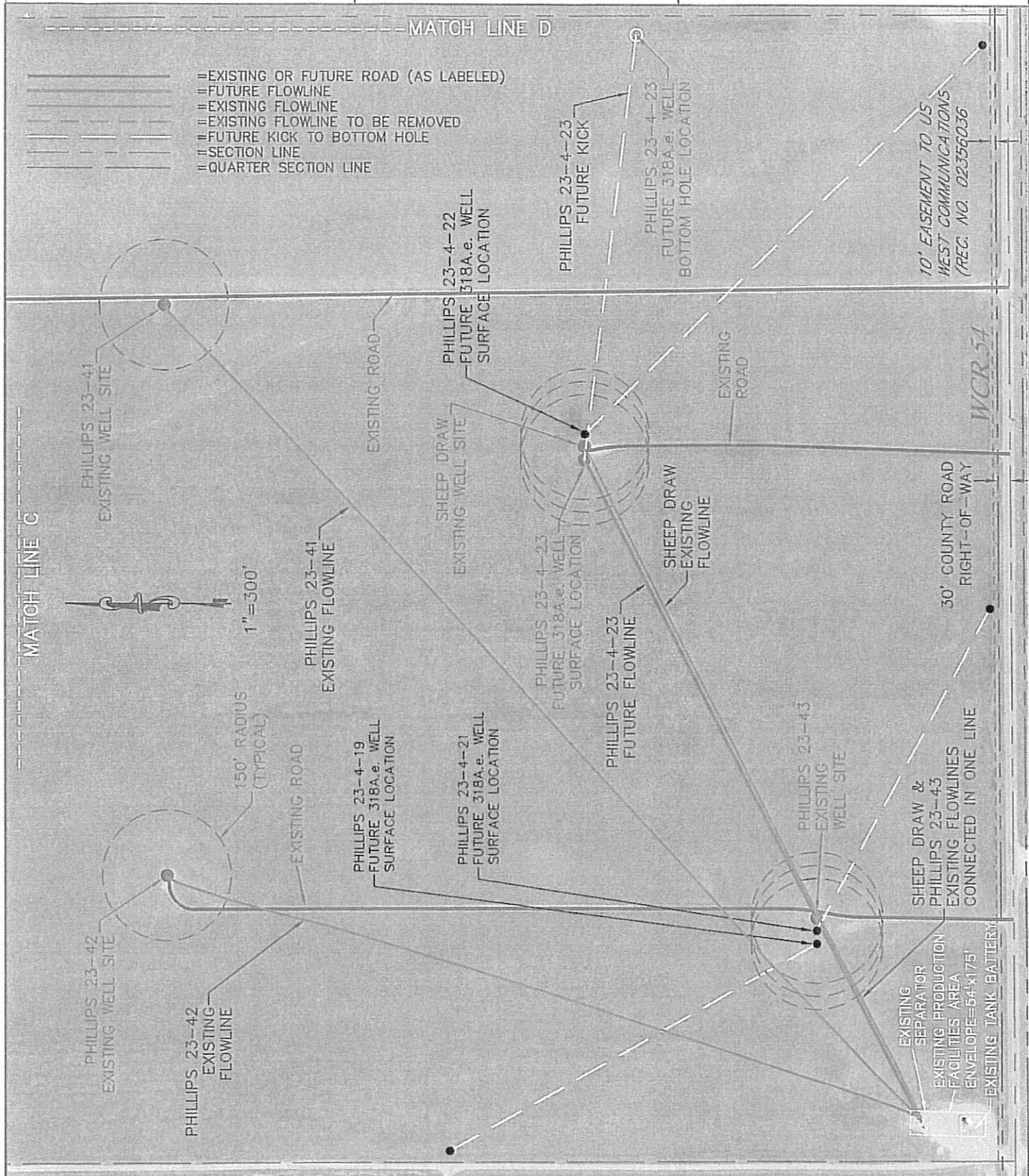

Jordan Coombs, Landman
Agent for Petro-Canada Resources (USA) Inc.

OWNER:

PHILLIPS LIVING TRUST DATED FEBRUARY 15,
2002

By:


Name: Duke L. Phillips, Trustee



- =EXISTING OR FUTURE ROAD (AS LABELED)
- =FUTURE FLOWLINE
- =EXISTING FLOWLINE
- =EXISTING FLOWLINE TO BE REMOVED
- =FUTURE KICK TO BOTTOM HOLE
- =SECTION LINE
- =QUARTER SECTION LINE



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PROJECT NO: 2008032

DATE: 05/16/2008

CLIENT: DUKE PHILLIPS

DWG: 2008032BASE