

## SURFACE USE AGREEMENT

THIS AGREEMENT is made and entered into this 29th day of December, 1999, by and between Gary Herman and Joyce Herman, 12994 Weld County Road 28, Platteville, Colorado 80651, ("Surface Owner"), and Patina Oil & Gas Corporation, a Delaware corporation, 1625 Broadway, Suite 2000, Denver, Colorado 80202 ("Patina").

Exhibit "A" attached hereto describes one (1) potential drillsite within the SW1/4 SW1/4 of Section 32, Township 3 North, Range 66 West, 6th P.M., Weld County, Colorado (the "Property"). Patina and Surface Owner have agreed that Patina will pay Surface Owner [REDACTED] per drillsite prior to the commencement of drilling operations on each drillsite, said payment to be made not less than five (5) days prior to the commencement of drilling operations. No payment will be made for drillsite described if an oil and gas well is not drilled thereon. In consideration of such payment and in consideration of the covenants and obligations set forth herein, Patina and Surface Owner agree as follows:

1. Said payment constitutes the full and entire consideration to be paid by Patina for the use of the surface and all damages (except as provided in paragraph 2 hereof) to the land associated with the drilling, testing, completion, recompletion, reworking, reentry, operation and maintenance of the drillsites located on the Property. The payment is for all damages to the Property, including but not limited to growing crops, sod, damage to crop lands, removal, transportation and care of livestock, construction of access roads, preparation and use of the drillsite area, preparation and use of reserve pits, and construction, installation, and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil, gas and other materials produced by or used for production of the above well. With respect to the construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil, gas and other materials produced by or used for the production of the above well, Patina may exercise the rights granted by this Agreement at any time and from time to time without further or additional consideration being payable to Surface Owner.

2. If, by reason of Patina's operations, there is damage to personal property located on the Property or if there is damage to the Property caused by negligence of Patina or an unreasonable use of the surface of the Property by Patina that is not associated with reasonable and normal drilling, completion, recompletion, reworking, reentry, production and maintenance operations, such as damage to structures, fences, culverts and cement ditches, such damage shall be repaired or replaced by Patina or Patina shall promptly pay Surface Owner for such damage.

3. With respect only to the subject matter of paragraph 1 above, Surface Owner agrees to indemnify and hold Patina harmless from all claims, demands, liability and actions against Patina by any other surface owner, surface tenant or occupant of the Property arising out of any damage by Patina to the Property or growing crops thereon asserted by any such other surface owner, surface tenant or occupant. Surface Owner may allocate the payments made hereunder with any surface owner, surface tenant or occupant as they shall mutually determine between themselves and Patina shall have no liability therefor.

4. As between Surface Owner and Patina, Surface Owner shall have no liability for the release or discharge by Patina, its contractors or agents, of oil, gas, or any other substance on or under the Property, except as any such release or discharge is caused in whole or in part by Surface Owner, Surface Owner's tenant, licensees, invitees, or agents and Patina will indemnify and hold Surface Owner harmless from and against all costs and expenses (including reasonable attorneys' fees) for any such release or discharge by Patina.

5. This Agreement constitutes written consent of Surface Owner for Patina to proceed with the drilling, completion, recompletion, reworking, reentry, operation and maintenance of the above-described wells on the Property. This Agreement also constitutes Surface Owner's written acknowledgment that Patina has complied with Rules 305 (b), 305(c) of the Colorado Oil and Gas Conservation Commission, Surface Owner's written waiver of the "thirty day notice", "irrigation notice" and "reclamation notice" requirements set forth in Rule 305, and Surface Owner's written acknowledgment that Patina has complied with the consultation requirements set forth in said Rule 306.

6. Except as provided in paragraph 2 hereof for cases of unreasonable surface use and/or negligence by Patina, Surface Owner, for itself, and its successors and assigns does hereby, in consideration of the above payment, release, relinquish and discharge Patina, its successors and assigns from all claims, demands, damages and causes of action, past, present, and future, that Surface Owner may have by reason of the occupancy of the acreage provided in paragraph 1 of Exhibit A attached hereto and for the drilling of the well and all other damage or injury to the Property caused by drilling, completion, recompletion, reworking, reentry, operation and maintenance of the well and Surface Owner accepts the above payment as full compensation therefor.

7. This Agreement is subject to Exhibit "A" attached hereto and by this reference made a part of this Agreement.

8. This Agreement is subject to Exhibit "B" attached hereto and by this reference made a part of this Agreement.

9. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Agreed to and accepted the day and year first above written.

PATINA OIL & GAS CORPORATION,  
A Delaware corporation

By: \_\_\_\_\_

Roger Lowe

SURFACE OWNER

By: \_\_\_\_\_

Gary Herman

By: \_\_\_\_\_

Joyce Herman

Tax ID or SSN: \_\_\_\_\_

## EXHIBIT "A"

Attached to and by reference made a part of that certain Surface Use Agreement dated December 29, 1999, by and between Patina Oil & Gas Corporation, as "Patina" and Gary Herman and Joyce Herman, as "Surface Owner" covering the following lands:

Township 3 North, Range 66 West, 6th P.M.  
Section 32: SW1/4SW1/4

1. The wellsite shall be located in the SW1/4SW1/4, according to the governing regulations.
2. Consideration herein shall be for one (1) well.
3. The topsoil shall be removed from the area over the pits, stockpiled and held in reserve until the contour of the site is re-established. The wellsite shall be ripped and returned to original slope and contour, as is reasonably practicable, following completion operations. Following completion, recompletion, reworking and/or reentry operations, Patina shall return the topsoil to its relative position over excavated areas and shall place any culverts necessary to practically and adequately drain the wellsite and tank battery site.
4. Rule 1003.d.(1) provides that Patina may dispose of de minimus amount of drilling fluids in the reserve pit during reclamation operations. It is agreed that the amount of drilling fluid that may remain in the reserve pit shall be that portion of the fluids that cannot be suctioned out of the pit by a pump. For non-cropland locations, Patina reserves the right to dispose of drilling fluids and cuttings in the reserve pit, after the pit is sufficiently dry, by backfilling the reserve pit with soils removed from the pit area.

During the two (2) year period following reserve pit closure, if additional topsoil is necessary to return the reserve pit to its original contour, Patina shall provide such topsoil to the pit area. The quality of the topsoil being returned shall be subject to the approval of Surface Owner which approval shall not be unreasonably withheld by Surface Owner. Patina and Surface Owner recognize and agree that Patina is not guaranteeing that the reserve pit area will be restored to its original contour and agricultural productivity in the absolute sense. Patina will, however, use its best efforts to restore the same to its original contour to the extent practical.
5. Patina agrees to be responsible for any alterations needed to existing fences for the purpose of drilling, completion or production of the wells herein proposed.
6. Patina agrees to bury all flowlines to a depth of forty-eight (48) inches below the surface of the ground.
7. Patina agrees to pay [REDACTED] per acre proportionately reduced for damages occurring as a result of future reworking, recompletion or reentry operations.
8. Patina is authorized to occupy a maximum of three acres for each well to be drilled on the Property. If Patina occupies more than three acres for any drillsite, it shall pay Surface Owner at the rate of [REDACTED] per additional acre, proportionately reduced.
9. In consideration of the payment provided herein, Surface Owner hereby accepts responsibility for compliance with sentences #2 and #3 if Rule 1003.e.(1) and sentence #2 and the remainder of Rule 1003.e.(2) of the Colorado Oil and Gas Conservation Commission.

EXHIBIT "B"

Attached to and by reference made a part of that certain Surface Use Agreement dated December 29, 1999, by and between Patina Oil & Gas Corporation, as "Patina" and Gary Herman and Joyce Herman, as "Surface Owner" covering the following lands:

Township 3 North, Range 66 West, 6th P.M.  
Section 32: SW1/4SW1/4

