

SURFACE USE AGREEMENT

[Surface Estate Only]

This Surface Use Agreement is between **STEVE RAFTOPOULOS AND JOHN RAFTOPOULOS** (Herein referred to as "Surface Owners"), whose address is 893 Stout Street, Craig, Colorado 81625 and **THE TERMO COMPANY** (Herein referred to as "Operator"), whose address is PO Box 2767, Long Beach, California 90801-2767, and is intended to define the terms and conditions under which Operator or its assigns may enter Surface Owners' Property, situate in Moffat County, State of Colorado, and described as follows:

See Attached Map

for the purpose of exercising Operator's rights under the following Leases:

See Attached Map

Notwithstanding any other provision hereof, Operator may only enter the Property described above to exercise its rights under the foregoing leases and if all or any portion of either or both of such leases expires or terminates as to specific lands described therein, the rights granted herein also terminate as to such land or lands no longer held by such leases. Nothing herein shall authorize Operator to use Surface Owners' Property to access other oil and gas leases other than those listed above.

1. **AUTHORIZED OPERATIONS.**

- a. Except as hereinafter limited, Surface Owners grant to Operator, during exploration and temporary operations, the right to use and occupy as much of the surface as is reasonably necessary, but not to exceed Four (4) acres per location, to enable Operator to drill exploratory wells (herein referred to as "Well Sites"). Such Well Sites shall be considered governed by this agreement upon Operator providing Surface Owners with a plat prepared by a licensed land surveyor that depicts the boundaries of the Well Site and computes and certifies the occupied acreage. Additionally, the corners of such location shall be clearly marked on the ground. Operator may enter the site and commence preparation of a drill pad only after tendering the consideration identified in Paragraph 4.a.i. below.

- b. In the event that an exploratory well described in Paragraph 1.a. is not a producing well, as that term is described in the leases, Operator shall plug and abandon the borehole and reclaim the surface estate, all within six (6) months after spudding the well as conditions allow.
- c. In the event that an exploratory well described in Paragraph 1.a. is a producing well, as that term is described in the leases, Surface Owners grant to Operator the right to use and occupy as much of the surface as is reasonably necessary, not to exceed two (2) acres, including soil stockpiles, production facilities including, but not limited to, disposal wells, compressors, gas/water separators, dehydrators, storage tanks for water or hydrocarbons or both, meters, meter buildings, or the like to enable Operator to operate and maintain such producing well; such well shall be considered governed by this agreement upon Operator notifying Surface Owners, in writing, that such well is producing, which notice shall be provided within thirty (30) days after a well is capped with a well head.
- d. Surface Owners grant to Operator the right to use, as a means of ingress and egress to and from its wells on the leases, existing access roads over the Property. Such roads shall be considered governed by this agreement upon Operator providing Surface Owners with a topographical map showing the location of the centerline of such roads. It is agreed that the right granted hereunder shall extend only to the lands lying 15 feet on either side of said centerline.
- e. In the event that it is necessary, and subject to the provisions of Paragraph 3.c. below, Surface Owners grant to Operator the right to construct and use, as a means of ingress and egress to and from its wells on the leases, access roads across the Property (upgrading an existing road shall be considered construction and shall be governed by this Paragraph); Operator, to the extent possible and reasonable, shall cooperate and coordinate with Surface Owners in establishing the locations of such roads; such roads shall be considered governed by this agreement upon Operator providing Surface Owners with a topographical map showing the approximate centerline of such roads. It is agreed that the right granted hereunder shall extend only to the lands lying fifteen (15') feet either side of said centerline.
- f. Surface Owners grant to Operator the right to construct and use gathering pipelines and other utility lines on the Property, solely for the purpose of gathering and transporting oil and gas produced from wells owned and operated by the Operator. Nothing herein shall be construed to authorize the operator to construct or use gathering pipelines and other utility lines on the Property for the purpose of transporting gas or oil or provide utility service to wells operated or owned by a producer *other* than the Operator. Pipelines constructed by Operator may be utilized to gather and transport gas and oil from Operator's wells to a sales point that may or may not be located on the Property. To the extent reasonably possible, all authorized pipelines and utility lines shall be buried to a depth of thirty-six inches (36") below the surface and be contained in or confined to existing roadways, whether identified in Paragraphs c. or d. of this Section 1.

2. CONSULTATION WITH SURFACE OWNERS.

- a. No operation, other than routine operations on existing facilities, including drilling, reworking, road construction, seismic or geophysical shall be conducted on the Property without first advising Surface Owners. At such time as the location of and access to a drill site on the Property is being determined, Surface Owners have the right to be reasonably consulted as to its location and as to routes of access. No well shall be drilled within two-hundred (200') feet of any residence or existing water well or spring on the Property.
- b. Operator shall postpone the onset of operations due to temporary conditions such as heavy rainfall which would result in undue damage to the Property. This stipulation does not apply to operation and maintenance of production facilities.

- c. Except in the event of a bona fide emergency or unless Surface Owners grant written permission, Operator shall cease all construction activities, road maintenance and drilling operations (other than routine maintenance of completed and operational wells) on Surface Owners' Property during lambing season (May 1st through June 15th) and big game hunting season (August 15th through December 1st) of each calendar year during the term hereof. Operator acknowledges that such cessation of activities is a reasonable accommodation of vital commercial interests of Surface Owners.
- d. Operator shall advise Surface Owners, in writing, of the location of all wells drilled upon the Property, and shall, within thirty (30) days, advise Surface Owners of the completion and/or abandonment of each well.

3. SPECIAL CONSIDERATIONS FOR SURFACE USE.

- a. Operator shall be entitled to enter and use the Property solely for the purpose of exploration for and development of leased substances identified in any oil and gas lease covering the Property. This Agreement shall remain in effect for so long as Operator is engaged in operations that continue its oil and gas lease.
- b. Surface Owners reserve the right to use the Property for their own purposes. Operator, its assignees, subcontractors and employees shall conduct their operations in a way which least reasonably interferes with the surface operations of Surface Owners and in a good and workmanlike manner and will not litter the Property with debris and will keep its work areas in a clean and sanitary condition. No unused equipment or supplies shall be stored on the Property by Operator. Equipment shall be deemed stored if it has not been utilized by Operator for its intended purpose for a period of ninety (90) days or more.
- c. To the extent possible, Operator shall confine its operations to existing ranch roads designated by Surface Owners. Operator shall not construct access roads on the Property without Surface Owners' prior written consent, which consent shall not be unreasonably withheld. Operator agrees that any road covered hereunder shall be constructed or upgraded and maintained as a gravel road to reasonable specifications acceptable to Surface Owners. During the term of this Agreement, Operator agrees to maintain any such road and any appurtenances thereto, including culverts, cattle guards, fences, gates and the like.
- d. Operator agrees to fence, with metal stock panels, the entire site described in Paragraph 1.c. above, including all equipment, all holes, depressions, excavations and sumps and, upon surrender of said premises, to dry out or drain all fluids from sumps and dispose of same. All drilling pits shall be adequately fenced with sheep-tight fencing.
- e. Operator shall not relocate, cut, lay down or remove any existing fences or water lines without the prior written consent of Surface Owners and shall repair to Surface Owners reasonable specifications all fences or water lines damaged by its operations. No repair shall be satisfactory until such fence or water line has been restored to full functional capacity.
- f. Operator shall be responsible to control noxious and undesirable weeds that are a direct result of operations by Operator at the Well Sites or along access roads utilized by Operator, and shall be responsible to contain and remediate any spill or release of hazardous or toxic materials caused by Operator's authority on the Property.
- g. Operator and Operator's agents and employees shall not hunt or carry or be in possession of firearms (except handguns utilized for personal security) while on the Property, nor shall Operator or Operator's agents and employees bring dogs on the Property. If there is reasonable proof of such violation, Operator shall pay Surface Owners the sum of Five Thousand Dollars (\$5,000.00) for each such violation.

- h. Operator shall bury any pipes or pipelines as described in Paragraph 1.f.
- i. All use by Operator of the Property shall be non-exclusive and Surface Owners reserve the right to fully utilize all roads and open space.
- j. Operator shall use its best effort to abate or minimize noise from its equipment.
- k. After the completion of a well, Operator shall use its best efforts to keep Surface Owners apprised of the names and contact information for all persons who will, from time to time, enter the Property to operate or maintain any well or production facilities.

4. COMPENSATION.

- a. Operator shall pay to Surface Owners for the permission granted hereunder, the following consideration:
 - i. In addition to any other considerations paid Surface Owners, whether pursuant to this Agreement, any oil and gas lease between Surface Owners and Operator or any previous assignment of overriding royalty, Operator shall, prior to spuding a well anywhere within a spacing unit approved by the Colorado Oil and Gas Commission in which any portion of the Property is situate, execute and deliver to Surface Owner an assignment of overriding royalty assigning to Surface Owners a two (2%) percent overriding royalty in the spacing unit. If any such approved spacing unit includes surface lands owned by others, including the State of Colorado or the United States of America, the overriding royalty assigned to Surface Owners shall be paid only in the proportion that the Property within the spacing unit bears to all surface lands within the spacing unit, and shall be paid on any well within the spacing unit regardless of whether such well is on any portion of the Property.
 - ii. The sum of Two Thousand Five Hundred Dollars (\$2500.00) per acre for the surface to be utilized for the drilling pad (based upon the acreage identified by the plat submitted by Operator pursuant to Paragraph 1.a. above) as liquidated damages for any individual well site location and the use of any existing road on the lease.
 - iii. Operator shall pay to Surface Owners the sum of Five Hundred Dollars (\$500.00) per acre per year for the acreage actually utilized at any individual producing or shut-in well locations identified in Paragraph 1.c. above, payable annually in advance on each anniversary date of this Agreement, commencing with the date Operator notifies Surface Owners pursuant to Paragraph 1.c. above. Such obligation shall commence on the date a well is completed and shall continue on each well location until a well is plugged and abandoned.
 - iv. Operator shall pay to Surface Owners the sum of Ten Dollars (\$10.00) per rod of the actual length of the centerline of roads constructed by Operator traversing Surface Owners' Property and thereafter shall pay Five Dollars (\$5.00) per rod per annum payable annually, in advance, on the date the payment described in Paragraph 4.a.ii. is made. Should such road be used to access and serve well locations on surfaces owned by others than Surface Owners, there shall be added to such annual fee the sum of One Thousand (\$1000.00) Dollars for each such location accessed per annum.
 - v. Operator shall only pay for pipelines or utilities not contained or confined within the roadways identified in Paragraph 1.d. and 1.e. Any compensation due shall be computed in the same manner as for roads (see 4.a.iii. above). Any pipeline not permitted by the provisions of Section 1.f. above shall be obtained by separate agreement.

vi. On the third anniversary date of this Agreement and on each third anniversary date thereafter, the foregoing fees and annual fees shall be adjusted, such adjusted fee to be changed to an amount that bears the same relationship to the fees and annual fees provided for above which the Consumer Price Index for the month in which the anniversary date falls bears to the Index for the month in which the effective date of this Agreement falls; provided however, that the fees and annual fees shall never be less than those provided above. The Consumer Price Index to be used is the Consumer Price Index - All Urban Consumers, National Area, published monthly by the United States Department of Labor, in which 1982-84 equal 100. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in any new Index. Should said conversion tables be unavailable, the Consumer Price Index will be used as long as it is published, and, in that event, then a new Index will be used from that time, and the two combined to determine the adjustment. The parties understand and agree that the necessary information for making the adjustment may not be available when a particular payment is due; under such circumstances the regular payment otherwise called for hereunder shall be made, and any adjusted amount shall be tendered within thirty (30) days after the information is available. It shall be Operator's obligation to obtain, apply and tender the Consumer Price Index adjustment to Surface Owner.

~~b. In consideration of Operator drilling its first exploratory well on the above referenced lease during calendar year 2009, Surface Owners waive all of the foregoing charges for such first exploratory well. Thereafter and in the event that Operator drills further exploratory wells on the Property, all such charges shall be in effect.~~

c. The compensation outlined above shall be for liquidated damages for disruption of the Property. Additionally, Operator shall repair or shall compensate Surface Owners to repair ongoing damages to property directly or proximately caused by its operations on the land including, but not limited to, loss or damage to livestock, gates, bridges, roads, culverts, cattle guards, fences, dams, water bars, dikes, hay meadows, irrigation facilities (including ditches and equipment), stock water facilities, and all other improvements, as well as erosion from water discharge.

5. OPERATOR'S DUTY TO RECLAIM. As to any portions of the Property used by Operator, Operator shall have the affirmative duty to reclaim or restore the Property. Operator shall, as soon as is reasonable, but in no event later than six (6) months following completion or abandonment of its use of any portion of the Property, restore the surface as nearly as reasonably practicable to its original condition.

At a minimum, the following shall be done:

- a. When drill sites are being constructed all top soil shall be removed and stored and shall be respread upon reclamation of a site;
- b. All areas where further subsidence is possible must be filled and reasonably compacted;
- c. All disturbed areas must be filled, graded and contoured, following which the Operator must disk and seed with vegetation consistent with the vegetation that existed prior to operations, or as directed by Surface Owners.

Reclamation shall be satisfactory if completed in compliance with the rules and regulations of the Colorado Oil and Gas Commission.

Notwithstanding the foregoing, Operator shall inquire of Surface Owners whether roads constructed pursuant to Paragraph 1.e. above may remain unreclaimed. If Surface Owners elects to not reclaim any newly constructed roads, they shall provide written confirmation of such choice to Operator.

6. WATER USE AND PROTECTION.

- a. Operator agrees to comply with the applicable state and federal laws, regulations, and rules regarding the disposal of drilling fluids and salt water.

In order to conduct surface discharge of produced water, Operator shall obtain from the Colorado Department of Public Health & Environment, Water Quality Control Division a "Colorado Discharge Permit System" (herein "Discharge Permit"), and comply strictly with said permit in the discharge of produced water (herein Effluent).

Notwithstanding the Discharge Permit, and at a minimum, Effluent discharged on the Property shall be suitable for consumption by livestock and shall not cause damage to native soils or vegetation. If such Effluent does not meet these minimum requirements, Surface Owner shall be entitled to demand cessation of discharge on the Property. Operator shall be in compliance with Surface Owner's demands to not discharge such Effluent if the same can be re-injected or be retained in fenced (sheep-tight) evaporation ponds, to be located within the permitted area as described in either Paragraph 1.a. or 1.c. above, and not otherwise released or discharged on the Property.

In furtherance of monitoring Operator's compliance with the Discharge Permit, Surface Owner shall be provided with copies of all water sample reports submitted by Operator to the Water Quality Control Division.

Remedial work and compensation for any damages caused or associated with erosion from the discharged Effluent (whether on the Leased Property or downstream thereof), shall be the responsibility of Operator and shall be in addition to any compensation paid by Operator pursuant to this agreement. Construction of diversions, dams, culverts, pipelines, reservoirs, or injection wells to mitigate damage from erosion shall be at the sole expense of Operator. Operator shall consult with Surface Owner regarding such mitigation measures.

Discharge water, the samples of which have been tested and certified as suitable for consumption by livestock may be retained in fenced stock ponds. Surface Owner shall be reasonably consulted regarding the location of such ponds. Upon the death or foundering of livestock from the consumption of such water, Surface Owner may demand that such ponds be fenced with sheep-tight fence.

- b. Operator shall not be entitled to adjudicate a water right on surface or ground water appurtenant to the Property.
- c. Operator shall not use, pollute or damage, in any way, water from springs, reservoirs, wells or any other sources developed by, used by or appropriated by Surface Owners, and Operator shall, in addition to any compensation paid pursuant to this Agreement, be liable for any damage caused to such water as a direct result of Operator's operations on the Leased Premises. Surface Owners are not agreeing to furnish any water to Operator for operations hereunder, and any use of Surface Owners' water shall be by separate agreement at prevailing market rates.
- d. Should ground water and/or an artesian well be encountered in drilling, Operator shall not abandon or plug such well without first notifying Surface Owners in writing. Upon receipt of such notice, Surface Owners shall have the option, without payment to Operator, to accept assignment of such well. Such option must be exercised by written notice from Surface Owners to Operator, which notice shall be transmitted to Operator no less than forty-eight (48) hours after Operator's notice to Surface Owners. Operator agrees, in the event Surface Owners so elect, to leave existing casing in the hole and Surface Owners shall reimburse Operator the salvage value of said casing less the cost of salvaging same. Surface Owners shall indemnify Operator and shall absolve Operator of all

liability, including plugging liability, with the appropriate state agencies, for such takeover of operations, and shall file all proper and required permits and bonds.

7. MISCELLANEOUS.

- a. Operator shall indemnify and hold Surface Owners harmless from any loss, cost, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the Operator's operations occasioned, in whole or in part, by the acts or omissions of the Operator, its employees, agents or subcontractors. This indemnification is made expressly applicable to any loss, cost, damage, expense or liability that results from environmental hazards including use, storage, release or disposal of hazardous materials.
- b. Operator shall pay any and all additional taxes which may be levied against Property due to Operator's specific operations and/or improvements constructed by Operator upon the Property.
- c. In the event of whole or partial failure of Surface Owners' title, Surface Owners shall not be liable for any damages caused thereby to Operator, Operator having relied upon its determination of title prior to the execution of this Agreement by Surface Owners. Further, Surface Owners shall not be required to return any monies previously paid by Operator predicated upon errors made by Operator in determining Surface Owners' title.
- d. Operator may utilize third party contractors to perform operations permitted under this Agreement. Nevertheless, Operator will be fully and solely responsible to Surface Owners for damages and the indemnity as herein stated. After completion of a well, Operator shall use its best efforts to keep Surface Owners apprised of the name and contact information for all persons who will, from time to time, enter the Property to operate or maintain any well or production facilities.
- e. Operator shall, at its sole cost, keep the Property free and clear of liens and encumbrances resulting from Operator's activities hereunder.
- f. NOTIFICATION OF BREACH. In the event Surface Owner considers that Operator has failed to comply with any obligation hereunder, express or implied, Surface Owner shall notify Operator in writing specifying in what respect Surface Owner claims that Operator has breached this Agreement. Operator shall then have sixty (60) days after receipt of said notice within which to meet, or commence to meet, all or any part of the breaches alleged by Surface Owner. The service of said notice shall be a condition precedent to the bringing of any action by Surface Owner on said Agreement for any cause, and no action for damages shall be brought until the lapse of sixty (60) days after service of such notice on Operator. Neither the service of said notice nor the doing of any acts by Operator aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that the Operator has failed to perform all its obligations hereunder. Should Operator refuse or otherwise fail to remedy such breach, Surface Owner shall be entitled to any remedy authorized by law, including, if appropriate, specific performance, rescission, forfeiture or damages. The prevailing party in any litigation shall be entitled to recover all costs and expenses of litigation, including reasonable attorney fees, incurred by such party in the enforcement of any portion of this Agreement. The parties agree that any and all suits for any and every breach of this Agreement shall be instituted only in the courts of the State of Colorado, located in the County of Moffat; and it is mutually understood and agreed that this agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. Any payment due hereunder that is not paid when due shall bear interest at the rate of twelve (12%) percent per annum.
- g. The parties agree that this Surface Use Agreement shall not be recorded in the real estate records. However, Surface Owners agree, upon the request of Operator, to execute a Memorandum of this Surface Use Agreement suitable for recording.

8. **BINDING EFFECT.** Operator may assign this Agreement to a reputable Operator. Operator will only be released from its obligations hereunder if Surface Owners consent to such assignment, which shall not be unreasonably withheld. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto, and by taking an assignment of this Agreement, the assignee assumes all of the duties and responsibilities of the Operator. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto, and by taking an assignment of this Agreement, the assignee assumes all of the duties and responsibilities of the Operator.

IN WITNESS WHEREOF, the parties hereto have hereunto hereby agree the effective date of this Agreement shall be MARCH 26, 2009

SURFACE OWNERS:

[Signature]
Steve Raftopoulos

[Signature]
John Raftopoulos

OPERATOR:

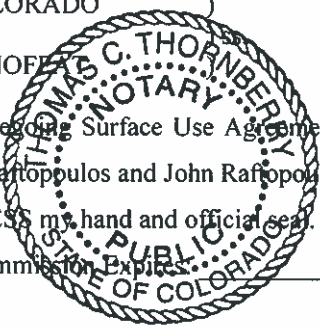
THE TERMO COMPANY

By: [Signature]

Francis H. Roth
Vice President

STATE OF COLORADO)

COUNTY OF MOFFAT)



The foregoing Surface Use Agreement was acknowledged before me this 26 day of March, 2009 by Steve Raftopoulos and John Raftopoulos as Surface Owners.

WITNESS my hand and official seal.

My Commission Expires: _____

My Commission Expires 04/26/2010

[Signature]
Notary Public

STATE OF _____)

COUNTY OF _____)

See attached

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, as _____ on behalf of The Termo Company.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

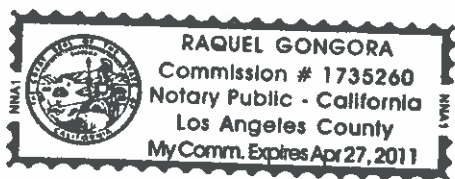
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS Angeles

On March 16, 2009 before me, Raquel Gongora, Notary Public

personally appeared Francis A. Rotu



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Raquel Gongora

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Surface Use Agreement

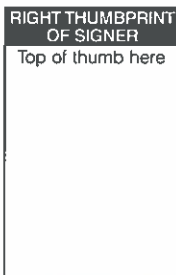
Document Date: _____ Number of Pages: 7

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Francis A. Rotu

- Individual
- Corporate Officer — Title(s): VP
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

The Termo Company

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

