

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("Agreement"), dated effective this 11th day of June, 2013, is made by and between the undersigned, **Town of Frederick**, whose address is PO Box 435, Frederick, CO 80504, herein called "Owner", and **Sundance Energy, Inc.**, whose address is 633 17th Street, Ste. 1950, Denver, CO 80202, herein called "Sundance".

This Surface Use Agreement is for certain property of the Owner to be let to Sundance for the sole and exclusive purposes: (i) of investigating, exploring, prospecting, and drilling for and producing oil, hydrocarbon gas, casinghead gas, casinghead gasoline, condensate, and any other liquid and gaseous hydrocarbons, and to exclude all non-hydrocarbon gases, and any other non-hydrocarbon minerals; provided, that gravel and gravel products shall not be covered by this Surface Use Agreement; (ii) to the extent only that Town's rights in the surface and/or minerals in the premises allow Town to let the premises for such purposes, of laying pipelines and building tanks, and structures necessary to drill for and produce minerals at the well sites but excluding extraction plants, refineries, gasoline plants and "Service Facilities" (i.e., treating facilities necessary to make production from a well marketable, compression equipment, any kind of extraction facility and any gas processing plant; excluding lease production facilities such as heaters or conventional separator facilities at a wellsite) and (iii) of producing, saving, taking care of minerals, treating, processing and transporting the same in conducting the aforesaid operations.

This Surface Use Agreement is subject to all encumbrances of record and to any and all public and private easements on, under, over and across such lands.

RECITALS

WHEREAS, Owner owns the surface estate of that certain tract of land being a portion of SE/4, Section 23, Township 2 North, Range 68 West, 6th P.M., Weld County, Colorado, (hereinafter referred to as the "Property") and more specifically described as:

Outlot A, Eagle Valley

WHEREAS, Owner recognizes that Sundance has the right to conduct operations on the Property pursuant to Oil & Gas Lease(s) covering the Property; and

WHEREAS, it is the intent of the Owner and Sundance to co-locate future wells on the Property with the existing Grant Brothers #34-23C well; and

WHEREAS, Owner and Sundance desire to set forth the parties rights and obligations regarding the relationship between the development and use of the Property by the Town and Sundance's operation and development of its oil and gas leasehold estate, such rights and obligations to be binding upon the parties' successors and assigns.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. Sundance Operational Responsibility.

Sundance is responsible for the drilling, completion, operation, and abandonment of the well and appurtenant facilities and the restoration of the site in accordance with the regulations of the Colorado Oil and Gas Commission and with the regulations imposed by Article X, of Chapter 16 of the *Frederick Municipal Code*.

2. Well Locations and Operations Area (“Oil and Gas Operation Area” or “OGOA”).

Owner shall provide Sundance with one centralized location for a wellpad (the “Oil and Gas Operation Area” or “OGOA”) on the Property. Sundance agrees to drill all oil and gas wells on the Property from the centralized wellpad. Any operations conducted by Sundance in connection with the well(s), including, but not limited to, production activities, work overs, well deepenings, recompletion’s, fracturing and replacement wells shall be limited to the OGOA. Prior to heavy equipment operations on the OGOA, Sundance's representative will meet and consult with Owner (or Owner's representative) as to the location of the wellsite, access road, flowlines, tank batteries and other associated production facilities. Sundance will locate the wellsite, access road, flowlines, tank batteries and other associated production facilities in accordance with Colorado Oil and Gas Conservation Commission (“COGCC”) rules and regulations and by regulations of the Town of Frederick, all of which are hereby incorporated by this reference and made a part of this Agreement.

3. Wellsite.

- a. Location.** The OGOA shall be located in Outlot A, Eagle Valley at the southwest corner of Eagle Boulevard and Osprey Way. Sundance will limit the size of the wellsite to approximately 300 feet by 400 feet during any drilling, completion, recompletion or workover operations and shall be no more than 1/4 acre in size during other periods. The area required for any tank battery location associated with the well shall be limited to approximately one-half acre in size upon completion of construction.
- b. Closed Loop Drilling Systems.** Notwithstanding any regulations of the Colorado Oil & Gas Conservation Commission (COGCC) to the contrary, no natural or man-made depressions in the ground shall be used to hold fluids or mud during drilling, reworking or production operations. All fluids, mud and gas brought to

the surface shall be contained in enclosed, impervious steel, fiberglass or concrete tanks (sumps) as a "closed loop system." Such tanks (sumps) and their contents shall be removed from the premises and the drilling site within sixty (60) days after completion of the well and disposed of at a permitted off-site disposal area approved by the COGCC, in accordance with COGCC regulations. During production, E & P waste shall be stored in impervious steel, fiberglass or concrete tanks (sumps) and removed and disposed of at a permitted off-site disposal area approved by the COGCC, in accordance with the COGCC regulations.

- c. **Lighting.** The site lighting shall be directed downward and internally during drilling and post-drilling operations so as to avoid glare on public roads and building units within seven (700) hundred feet.
- d. **Sound Mitigation.** Oil and gas operations at the well site and production facility shall comply with COGCC Rule 802, noise abatement regulations. Operations are subject to the maximum permissible noise levels for Residential/Agricultural/Rural Zones, as measured at a point twenty-five (25) feet from the occupied structure towards the noise source. Short-term increases shall be allowable as described in COGCC Rule 802.c. Stimulation or re-stimulation operations and Production Facilities are governed by COGCC Rule 802. All drill rig engines are to be muffled with the exhaust directed away from adjacent dwellings. Hay bales shall be stacked to achieve a sound barrier height of 12-16 feet constructed to the North, East and West.
- e. **Guy Lines.** Guy lines shall not be placed within twenty-five (25) feet of a boundary of the OGOA. All guy line anchors left buried for future use shall be identified by a marker of bright color not less than four (4) feet in height and not greater than one (1) foot east of the guy line anchor.
- f. **Timing of Drilling Operations.** Sundance agrees to conduct drilling operations by August 15, within its best efforts, and pledge their best efforts to not schedule drilling activities on Thanksgiving Day and the day after Thanksgiving and the day before Christmas and Christmas Day. Sundance agrees to give the Owner and adjacent property owners, within 300 feet of the drill site, notification not less than ten (10) days before commencing drilling operations.
- g. **OGO A Preparation.** Sundance shall separate the topsoil at the time of site preparation so that the topsoil and subsurface soil can be placed back in proper order as nearly as possible.
- h. **OGO A Housekeeping.** Sundance will use reasonable efforts to keep the OGOA, the well, and production facilities free of equipment, vehicles, and supplies not necessary for use on the OGOA and free of weeds, rubbish, and other waste material. The burning or burial of such material on the premises shall not be permitted. All contaminated soil shall be removed and disposed of at a permitted

off-site disposal area approved by the COGCC, in accordance with COGCC regulations.

4. **Urban Mitigation Area Mitigation Measures.** Because the well site is within an Urban Mitigation Area, the following safety measures are required:

- a. **Blowout Preventer Equipment (“BOPE”).** Blowout prevention equipment for drilling operations shall consist of (at a minimum):
 - i. **Rig with Kelly.** Double ram with blind ram and pipe ram; annular preventer or a rotating head.
 - ii. **Rig without Kelly.** Double ram with blind ram and pipe ram. Mineral Management certification or COGCC approved training for blowout prevention shall be required for at least one (1) person at the well site during drilling operations.
- b. **BOPE Testing for Drilling Operations.** Upon initial rig-up and at least once every thirty (30) days during drilling operations thereafter, pressure testing of the casing string and each component of the blowout prevention equipment including flange connections shall be performed to seventy percent (70%) of working pressure or seventy percent (70%) of the internal yield of casing, whichever is less. Pressure testing shall be conducted and the documented results shall be retained by the operator for inspection by the COGCC and the Owner for a period of one (1) year. Activation of the pipe rams for function testing shall be conducted on a daily basis when practicable.
- c. **BOPE for Well Servicing Operations.**
 - i. Adequate blowout prevention equipment shall be used on all well servicing operations.
 - ii. Backup stabbing valves shall be required on well servicing operations during reverse circulation. Valves shall be pressure tested before each well servicing operation using both low-pressure air and high-pressure fluid.
- d. **Drill Stem Tests.** Closed chamber drill stem tests shall be allowed. All other drill stem tests shall require approval by the COGCC.
- e. **Green Completions – Emission Control Systems.**
 - i. Flow lines, separators, and sand traps capable of supporting green completions as described in COGCC Rule 805 shall be installed at any Oil and Gas Location at which commercial quantities of gas are reasonably expected to be produced based on existing adjacent wells within 1 mile.

- ii. Uncontrolled venting shall be prohibited.
- iii. Temporary flowback flaring and oxidizing equipment shall include the following:
 - (1) Adequately sized equipment to handle 1.5 times the largest flowback volume of gas experienced in a ten (10) mile radius;
 - (2) Valves and porting available to divert gas to temporary equipment or to permanent flaring and oxidizing equipment; and
 - (3) Auxiliary fuel with sufficient supply and heat to sustain combustion or oxidation of the gas mixture when the mixture includes noncombustible gases.

5. OGOA Access Roads.

A single private access road used to provide access to the tank batteries and the well site shall be improved and maintained according to the standards contained in Section 9.11 *Frederick Municipal Code*. The access to the OGOA will require a tracking pad as directed by the Owner.

- a. **Access Road Maintenance.** Sundance shall monitor and maintain (dust control and grading to eliminate ruts and washboarding) of the gravel portions the access road, during the preparation for drilling, the well drilling and completion phases, and during the plugging and abandonment phases of the well, all to the satisfaction of the Owner.
- b. **Dust Control.** Sundance shall comply with Weld County dust control regulations during preparation, drilling, completion, maintenance and other operations on-site.

6. OGOA Reclamation.

Sundance will reclaim portions of the OGOA that it will not require for production as nearly as practicable to its original condition including but not limited to completing the landscaping as depicted in Exhibit B. Weather permitting, reclamation operations shall be completed within three months following completion and subsequent related operations, unless Sundance and Owner mutually agree to postponement because of crop or other considerations.

7. Production Facilities.

Production facilities shall be located in accordance with Colorado Oil and Gas Conservation Commission ("COGCC") rules and regulations and by regulations of the Town of Frederick Notwithstanding any COGCC Rules to the contrary, the wellsite and production facilities shall be considered to be located in an Urban Mitigation Area and unless otherwise authorized by this Agreement..

- a. **Tank Battery.** The tank battery shall consist of low-profile 300 barrel tanks. The wellhead, the tank battery and separators will be painted a beige/tan color (NORTHERN CLIMB C14-2 DUTCH BOY) to blend into the surrounding area and vegetation.
- b. **Tank Specifications.** All newly installed or replaced crude oil and condensate storage tanks shall be designed, constructed, and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version) and the International Fire Code, 2006 Edition as adopted by the *Frederick Municipal Code*. Sundance shall maintain written records verifying proper design, construction, and maintenance, and shall make these records available for inspection by the COGCC and the Town.
- c. **Leak Detection Plan.** Sundance shall develop a plan to monitor Production Facilities on a regular schedule to identify fluid leaks and share the schedule with the Owner.
- d. **Fugitive Emission Control.** Combustors or Vapor Recovery Units (VRU) shall be allowed to control fugitive emissions from the tank battery and separator facilities as required by the COGCC. The combustors or Vapor Recovery Units (VRU) shall conform with noise and emission standards set by COGCC. The combustors or Vapor Recovery Units (VRU) shall be painted a beige/tan color (NORTHERN CLIMB C14-2 DUTCH BOY) to blend into the adjacent equipment, surrounding area and vegetation.
- e. **Berm Construction.** Berms or other secondary containment devices shall be constructed around crude oil, condensate, and produced water storage tanks and shall enclose an area sufficient to contain and provide secondary containment for one-hundred fifty percent (150%) of the largest single tank. Berms or other secondary containment devices shall be sufficiently impervious to contain any spilled or released material. All berms and containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a fired vessel.
 - i. Containment berms shall be constructed of steel rings, designed and installed to prevent leakage and resist degradation from erosion or routine operation.

- ii. For locations within five hundred (500) feet and upgradient of a surface water body, tertiary containment, such as an earthen berm, is required around Production Facilities.
- iii. No more than Five (5) crude oil or condensate storage tanks shall be located within a single berm.
- f. **Fencing Requirements.** At the time of initial installation, all pumps, pits, wellheads, and production facilities shall be adequately fenced to restrict access by unauthorized persons. For security purposes, all such facilities and equipment used in the operation of production facilities shall be surrounded by wrought iron fencing, or Ameristar Impasse, or Stronghold fencing, or an approved equivalent. The fencing color shall be black or bronze, six (6) feet in height, constructed in conformance with Town of Frederick standards. The gate shall be compatible with the fence and shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site. The operator must provide the Chief of the Firestone-Frederick Fire Protection District with a Knox Padlock or Knox Box with a key, to access the well site in case of an emergency.
- g. **Drainage.** Due to the location, drainage from the production facilities shall be subject to Urban Drainage storm water management BMPs (Best Management Practices) and water quality requirements.
- h. **Geologic Hazard, Floodplain, Floodway Location Restrictions.** All equipment at well sites and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement or subsidence and to the extent necessary to comply with the Federal Emergency Management Act.
- i. **Timing of Pumping and Hauling of Produced Fluids and E&P Waste.** Sundance will use its reasonable good faith efforts to assure that the pumping and hauling of produced fluids and E&P waste take place only during daylight hours.
- j. **Notice Required for Installation of Additional Equipment.** To the extent Sundance desires after initial completion of a well to place additional equipment on a tank battery or wellhead location which was not shown in the approved plan, Sundance must, except in a situation where additional equipment is necessary for a period of fourteen (14) days or less, notify the Owner of installation of such additional equipment.
- k. **Control of Fire Hazards.** Any material not in use that might constitute a fire hazard shall be removed a minimum of twenty-five (25) feet from the wellhead, tanks and separator. Any electrical equipment installations inside the bermed area

shall comply with API RP 500 classifications and comply with the current national electrical code as adopted by the State of Colorado.

- i. Removal of Surface Trash.** All surface trash, debris, scrap or discarded material of Sundance and its contractors and subcontractors connected with the operations of the property shall be removed from the premises or disposed of in a legal manner. The burning or burial of such material on the premises shall not be permitted. All contaminated soil shall be removed and disposed of at a permitted off-site disposal area approved by the COGCC, in accordance with COGCC regulations.
- m. Building Permits.** Building permits must be obtained for all aboveground structures to which the International Building Code applies.

8. Flowlines and Gathering Lines.

Sundance shall have the right to lay, construct, maintain, operate, repair, replace, remove flowlines and gathering pipelines, together with all necessary valves, connections and fittings for the transportation of oil and gas, and directing, maintaining and removing cathodic protection equipment on, over, under, through and across a strip of land 40 feet in width through the Property (the "right-of-way") during construction of a pipeline and which shall revert back to 20 feet in width, centered on the pipeline after initial construction. Sundance shall provide the Owner an "as built" survey of the pipeline.

- a. Location.** Pipeline routes shall be mutually selected by the parties. Sundance shall strive to fully accommodate any concerns or issues that Owner may have with the placement of and or operation of any pipeline, and Owner's consent to any pipeline routes shall not be unreasonably withheld. Easements for pipelines within the Property shall be so located as to avoid interference with the use of the Property by the public, as determined by the Town.
- b. Term.** The term of a flow line or gathering line easement shall expire with the abandonment and removal of the line.
- c. Removal or Relocation.** At the request of the Owner, Sundance shall relocate flowlines and gathering pipelines at its expense provided however such relocation is supported by a reasonable reason or just cause.

9. Transportation Route for Drilling Equipment, E&P Waste Products and Produced Fluids.

A traffic plan/transportation route shall be coordinated with the Town of Frederick prior to commencement of move in and rig up. Any subsequent modification to the traffic plan/transportation route must be coordinated with the Town of Frederick. The traffic plan/transportation route to the production facilities and the drilling pad is to be from

State Highway 52, northward on the frontage road to Godding Hollow Parkway, westward on Godding Hollow Parkway to Eagle Boulevard, northward on Eagle Boulevard approximately 450' to the true point of access to the well and production site.

10. Oil & Gas Rig Transportation Permit Required.

Sundance or its drilling and completions service providers shall comply with Sec, 8-144, *Frederick Municipal Code* with regard to obtaining an oil & gas rig transportation permit prior to moving a drilling rig within the Town over Town streets.

11. Oversized or Overweight Load or Vehicle Permit.

Sundance or its drilling and completions service providers shall comply with Sec, 8-140, *Frederick Municipal Code*, for all oversized or overweight vehicles or loads which use Town streets. Sundance shall minimize oversize or overweight vehicle traffic on streets within the Town.

12. Compliance with State Environmental Requirements.

Sundance shall comply with all current applicable state and federal regulations and standards concerning air quality, water quality and waste disposal.

13. Spills and Releases.

- a. **General.** Spills/releases of E&P waste, including produced fluids, shall be controlled and contained immediately upon discovery to protect the environment, public health, safety, and welfare, and wildlife resources in accordance with COGCC Rule 906. Impacts resulting from spills/releases shall be investigated and cleaned up as soon as practicable.
- b. **Reportable Spills and Reporting Requirements for Spills/releases.** Spills/releases of E&P waste or produced fluid shall be reported to the COGCC as required by COGCC Rule 906.
- c. **Surface Owner Notification and Consultation.** Sundance shall notify the Owner of reportable spills as soon as practicable, but not more than twenty-four (24) hours, after discovery. The operator also shall make good faith efforts to notify and consult with the Owner, prior to commencing operations to remediate E&P waste from a spill/release in an area not being utilized for oil and gas operations.
- d. **Remediation of Spills/Releases.** Spills/releases shall be remediated in accordance with COGCC Rules 909. and 910.
- e. **Spill/Release Evaluation.** Sundance shall determine the cause of a spill/release, and, to the extent practicable, shall implement measures to prevent spills/releases

due to similar causes in the future. For reportable spills, Sundance shall submit this information to the COGCC and the Owner, within ten (10) days after discovery of the spill/release.

14. Wildlife Impact Mitigation.

- a. **Wildlife.** When a well site or production site is located within or adjacent to a wildlife or natural area, and if required by applicable COGCC rules Sundance shall consult with the State Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. Sundance shall implement such mitigation procedures as are recommended by State Division of Wildlife after consultation with the Town. The Sundance shall file a mitigation plan with the Town.
- b. **Endangered Species.** Sundance shall not engage in activities which, in the opinion of the State Division of Wildlife, threaten endangered species.

15. Landscaping.

Sundance will landscape the OGOA to screen the wellsite and production facilities as mutually agreed upon by Sundance and the Owner. As a minimum, articulated earthen berms shall be constructed adjacent to Eagle Boulevard and Osprey Circle and landscaped with trees and native grasses as approved by the Owner. Landscaping shall be installed not less than 180 days following the installation of the production facilities.

16. As Built Drawings.

Within thirty (30) days after the last well is completed, Sundance shall provide to the Owner "as built" drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit.

17. Emergency Response Costs.

Sundance shall reimburse the Town of Frederick or the fire protection district for any emergency response costs incurred by the Town or the fire district in connection with activity at the well site or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by a mistake of the Town.

18. Groundwater Baseline Sampling and Monitoring.

Notwithstanding any COGCC Rules to the contrary, Sundance shall install one or more groundwater monitoring wells in the event that alternate sampling locations are not available. Initial baseline samples and subsequent monitoring samples shall be collected from all available water sources up to a maximum of four within a ½ mile radius of the

OGO. The results of the initial baseline testing and subsequent monitoring samples shall be reported to the Owner contemporaneously with Sundance's report to the state.

19. Baseline Air Quality Sampling and Monitoring.

Notwithstanding any COGCC Rules to the contrary, Sundance shall comply with the Colorado Department of Public Health and Environment Air Pollution Control Division, Oil and Gas Exploration & Production Regulation No. 7 with regard to establishing a baseline for emissions of volatile organic compounds and nitrogen oxides from the OGO, and for monitoring and reporting emissions from the OGO. The results of the initial baseline testing and subsequent monitoring samples shall be reported to the Owner contemporaneously with Sundance's report to the state.

20. Abandonment of Well and Removal of Facilities; Expiration of Surface Use Agreement.

Sundance shall comply with COGCC Rule 319 and COGCC Rule 1000, et. seq., with regard to abandonment and reclamation of the well and the OGO. The easement granted by this Surface Use Agreement shall expire upon completion of the abandonment and removal of the well and production facilities.

- a. **Well Site Cleared.** Within ninety (90) days after a well is plugged and abandoned, the well site shall be cleared of all non-essential equipment, trash, and debris. All contaminated soil shall be removed and disposed of at a permitted off-site disposal area approved by the COGCC, in accordance with COGCC regulations.
- b. **Identification of Plugged and Abandoned Wells.** Sundance shall identify the location of the wellbore with a permanent monument as specified in Rule 319.a.(5). The operator shall also inscribe or embed the well number and date of plugging upon the permanent monument.
- c. **Removal of Flowlines and Gathering Lines.** In the event Sundance fails to provide as-builts, Sundance shall remove all flowlines and gathering pipelines from the OGO.

21. Payment to Owner.

Prior to commencement of drilling operations on the Property, Sundance shall pay Owner the following sum for damages growing out of, incident to, or in connection with the usual and customary exploration, drilling, completion, deepening, refracing, recompletion, reworking, equipping and production operations, unless otherwise specifically provided herein:

- a. **Amount of Payment**

located on the Property.

- b. **Reimbursement for Damages.** If, by reasons directly resulting from the operations of Sundance, there is damage to real or personal property upon the Property which is not associated with usual and customary operations, including, but not limited to, damage structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural water ways, such damage will be repaired or replaced by Sundance, or Sundance will pay reasonable compensation to Owner for such additional actual damage or an amount equal to the reasonable costs to repair such actual damages.
 - c. No party shall be liable for, or shall be required to pay, special, punitive, exemplary, incidental, consequential, or indirect damages to any other party for activities undertaken with the scope of this Agreement.
22. **Waiver of Thirty-Day Notice.** Owner hereby waives the minimum thirty-day written notice requirement described in the Notice Letter provided by Sundance to Owner when it initially gave notice of its intent to drill on the Property.
23. **Successors and Assigns and Covenant Running with Land.** When Sundance is used in this Agreement, it shall also mean the successors and assigns of Sundance, as well as its employees and officers, agents, affiliates, contractors, subcontractors and/or purchasers. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Owner and Sundance and may be executed in counterparts, and this Agreement shall be deemed a covenant running with the Property.
24. **Governing Law/Venue.** This Agreement shall be interpreted according to the laws of the State of Colorado. Venue for any dispute shall be Weld County, Colorado.
25. **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.
26. **Original Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

By this acknowledgment, the undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

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

ATTEST:

TOWN OF FREDERICK

