

SURFACE USE AGREEMENT AND GRANT OF EASEMENT

THIS SURFACE USE AGREEMENT AND GRANT OF EASEMENT ("Agreement"), effective this 17th day of January 2017, ("Effective Date") is made by and between the **Philip W. Kennedy Estate, by Keith A. Kennedy as Personal Representative**, 252 Roger Canyon Road., Laramie, WY 82072-5923 ("Owner"), and **Exterra Resources, LLC**, 475 17th Street, Suite 790 Street, Denver, CO, 80202 ("Operator"), covering certain lands (the "Subject Lands") situated in Weld County, Colorado, described as follows:

Township 8 North, Range 67 West, of the 6th P.M.
Section 26: The East One-half (E½)

Owner and Operator are referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, Owner is the surface owner in and to the Subject Lands,

WHEREAS, Owner desires to grant Operator the right to use so much of the surface as is reasonably necessary to explore for, produce and develop oil and gas from the Subject Lands along with the associated rights detailed below; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the parties herein contained, and other good and valuable consideration, Owner hereby grants unto Operator an exclusive right of way and easement on, over, through, under and across the Subject Lands for the purpose of drilling wells on the Subject Lands, including vertical, directional and/or horizontal wells that produce from and drain all or portions of the Subject Lands and from other lands, surveying, seismic activity, stimulation, completion, operation, re-stimulation, re-completion, deepening, reworking, plugging and abandoning of wells, access, construction, operation, maintenance, repair and replacement of surface equipment related to such well(s) including but not limited to wellheads, associated production equipment, flowlines, compressors, fluid retention reservoirs, temporary above-ground water lines and completion fluid lines, subsurface flowlines, gathering lines and other pipelines, data transmission lines, electrical lines and related equipment (both subsurface and above-ground), construction maintenance and repair of access roads and any additional purposes that may be necessary or convenient to its operations on the Subject Lands.

The parties further hereto agree as follows:

1. **Initial Operations Area.** Owner shall set aside and provide Operator, for Operator's exclusive use, that portion of the Subject Lands consisting of approximately [REDACTED] as depicted on Exhibit A attached hereto and made a part hereof, for the drilling and operation of oil and gas wells (the "Initial Operations Area"). The Initial Operations Area, including the access road depicted on Exhibit A, shall be made available to Operator in its present condition for any operations conducted by Operator. Owner shall not occupy or disturb any portion of the Initial Operations Area for any purpose. Notwithstanding the foregoing, Owner shall have the right to transverse the access road up until the entrance of the Wellsite as depicted on Exhibit A. Nothing contained in this paragraph shall be construed as prohibiting Operator from exercising any right it has to use the surface of the Subject Lands outside of the Initial Operations Area for future oil and gas development pursuant to this Agreement. The inclusion of Exhibit A to this Agreement shall in no way limit Operator's right to construct additional locations, facilities, utility corridors and/or access roads on the Subject Lands pursuant to this Agreement.

2. **Subsequent Operations Area.** For the use of the surface of the Subject Lands outside of the Initial Operations Area for future oil and gas development pursuant to this Agreement, Operator shall consult with Owner and provide Owner a surface use plat for any Subsequent Operations Areas no later than thirty (30) days before Operator begins constructing the well pad, facility, utility corridors or access roads on the Subject Lands. The final Subsequent Operations Area(s) plat shall depict the total acres to be disturbed by the oil and gas location(s) on the Subject Lands, including new access roads.

3. **Compensation.** Operator shall compensate Owner for its use of the Subject Lands as set forth herein within thirty (30) days of the date of first construction of the well pad, facility or access road on the respective oil and gas location. Compensation shall be based upon a final surface plat and be paid in the following amounts:

- a. **One-time Payment.** Operator shall pay to the Owner a sum of [REDACTED] as a one-time payment for the full execution of this Agreement.
- b. **Wellsites.** Operator shall pay to the Owner a sum of [REDACTED] for the initial oil and gas well drilled in the Initial Operations Area or any Subsequent Operations Area and [REDACTED] per well for any additional wells drilled in the Initial Operations Area or any Subsequent Operations Area, as full consideration and settlement and satisfaction for any and all detriment, depreciation, injury or damage of any nature to the Subject Lands that may occur as a result of Operator's operations on the Subject Lands, including but not limited to Operator's drilling, completion and production operations and any and all other reasonable and customary uses of the Subject Lands related to all such operations and activities. For additional oil and gas wells, payment shall be made thirty (30) days prior to spud.
- c. **Access Road and Utility Corridor.** Whenever possible, Operator agrees to use existing roads for access to the Initial Operations Area or any Subsequent Operations Area for drilling, production or other activities on the Subject Lands. Operator shall pay the sum of [REDACTED] per acre as consideration for the construction, maintenance, and use of any access roads or utility corridors. Any access roads shall be no greater than a total of fifty feet (50') in width with a final constructed roadbed surface of no greater width than thirty feet (30'). The Access Road and Utility Corridor constructed by Operator shall be one hundred twenty-five feet (125') in width during construction. The Access Road, pipelines and utilities (which includes one oil, one gas pipeline, and one water pipeline, electric services, fiber optics and other utilities when located outside of the Wellsite) shall fall within a final ninety foot (90') right-of-way corridor on the Subject Lands.
- d. **Additional Pipeline Easement and Right-of-Way.** Operator has a continuing right and entitlement to install, own, operate, maintain, repair and replace all flowlines, gathering lines, pipelines, electric power lines, data transmission lines and equipment that may be necessary or convenient to its operations on the Subject Lands. The right and authority of Operator hereunder may be exercised by its successors, assigns, licensees, contractors and permittees. Operator agrees that, whenever possible, Operator or another third party designated by the Operator will construct any pipeline and/or power lines within the Access Road and Utility Corridor, if one exists. If, in the reasonable discretion of Operator, Operator is unable to construct its pipelines and/or power lines in the said Access Road and Utility Corridor, Operator agrees to pay Owner the sum of [REDACTED] as consideration for a right-of-way and perpetual easement to lay, install, maintain, operate, replace, protect, repair, relocate, change and remove one or more pipelines, power lines, flow lines, and any appurtenances useful and incident to the operation and protection thereof, for the transportation of crude oil, natural gas, water, or any other like or unlike substances which may be moved by and through the pipelines, and/or flowlines, and appurtenances thereto, on over and through the Subject Lands. Said Easement shall not exceed sixty feet (60') in width without the express written consent of Owner, and Operator agrees to bury all pipelines to a minimum depth of thirty six inches (36") whenever reasonably practical to do so and to restore the surface over the same as nearly as possible to its condition prior to the laying of the lines. In order to provide public notice of the existence of a pipeline, upon the request of the Operator, Owner agrees to execute a formal "Pipeline Right of Way Grant" to be recorded in the applicable county. Operator shall backfill, compact, reseed, and re-contour the area disturbed by Operator's construction, installation, repair, or removal of any power line or pipeline. Upon termination of this Agreement, Owner may, at its election, keep power lines in place.
- e. **Release of All Claims.** Owner shall not be entitled to any additional payments from Operator and the payments provided herein shall be full consideration and final settlement and satisfaction for any and all detriment, depreciation, injury or damage of any nature to the Subject Lands that may occur as a

result of Operator's operations on the Subject Lands, including, but not limited to Operator's drilling and completion operations, its continuing activities for the production and transportation of oil, gas and other hydrocarbons, water or products associated with such operations and activities, use of the surface of the Subject Lands, ingress, egress, access roads, mud and reserve pits, wellhead equipment, separators, tank batteries, wellhead compression, pipeline interconnections, electrical lines and equipment, and any and all other reasonable and customary uses of the Subject Lands related to all such operations and activities.

4. **Waivers.**

a. Owner hereby waives the following notices required by the Colorado Oil and Gas Conservation Commission ("COGCC") and any 30-day comment periods attributable thereto:

- 1) COGCC Rule 305.a.(2) Pre-Application Notification to Surface Owner
- 2) COGCC Rule 305.c.(1) Completeness Determination and Comment Period Notifications/OGLA Notice to Surface Owner
- 3) COGCC Rule 305.f. Statutory Notice to Surface Owner
- 4) COGCC Rule 306.a. Consultation and Meeting Procedure for Surface Owners

b. Owner acknowledges and agrees that Operator has consulted in good faith with Owner as to its proposed operations, in accordance with COGCC requirements, or hereby waives such requirements. Owner hereby waives its right to object to the location of any of Operator's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time. Operator may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body.

c. Operator will provide Owner with the COGCC Form 2A ("Oil and Gas Location Assessment") for the well(s) when submitted to the COGCC, and Operator undertakes to ensure that said Form 2A accurately reflects the provisions of this Agreement.

d. Owner agrees not to object to said Form 2A, so long as it is consistent with this Agreement, and hereby waives any right granted by COGCC rule to comment on said Form 2A, to request an extension of the comment period, to request an onsite inspection pursuant to COGCC policy, or to appeal the approval and issuance of the Form 2A, and any related Form 2 (Application for Permit to Drill).

e. Owner shall not oppose Operator in any agency or governmental proceedings, including but not limited to the COGCC or local government with jurisdiction over the Subject Lands, related to Operator's operations on the Subject Lands, including, but not limited to permitting, formation of drilling units, well spacing, drilling, workovers, well deepening and recompletions.

5. **Fences and Reclamation.** Operator shall install fences around any dangerous areas, including any pits, where Operator drills any new wells or operates a facility. Operator shall reclaim and restore all areas disturbed by Operator's operations as near as practical to their original condition within twelve (12) months after termination of activities at the site or right-of-way. Operator agrees to notify and consult with Owner prior to cutting or damaging any fences, cattle guards, or other improvements of Owner. All areas disturbed by Operator's activities will be reseeded unless otherwise agreed by Owner.

6. **Maintenance and General Operations.** Operator shall at all times keep the well sites, road rights-of-way, facility locations, and other areas disturbed by Operator, safe and in good order, free of noxious weeds, litter, and debris. Operator shall dispose of all litter, sewage, and debris off of Owner's property at a legal disposal site. Using reasonable efforts, Operator shall not allow or permit erosion to continue on any disturbed sites and shall promptly repair, reclaim and reseed all erosion sites. Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Lands. All cattle guards and fences installed by Operator shall be kept clean and in good repair.

7. **Conduct of Operations.** Operator shall conduct its operations on the Subject Lands in accordance with the rules and regulations promulgated by the COGCC, and other State or Federal agencies having jurisdiction.

8. **Safety and Environmental Issues.** Operator retains liability for all environmental clean-up and remediation necessitated by spill, leakage or introduction by means of hazardous and toxic compounds or chemicals to the soil or water as a result of its operations or negligence and will pay for all costs associated with such cleanup. This clause shall survive termination of this Agreement.
9. **Full Compensation.** The compensation provided herein to be paid by Operator to Owner shall release and discharge Operator, its agents and employees from all claims, losses, demands and causes of action for damage to land, loss of and damage to crops, and use of land, hereafter arising as a result of Operator's drilling, producing and marketing operations on the Subject Lands, so long as such operations are conducted in accordance with this Agreement. Notwithstanding Owner's release of Operator from damage claims, Operator shall promptly repair, or compensate Owner for, damage to personal property or to improvements on the Subject Lands, such as damage to buildings, fences, gates, culverts and livestock, or for other such extraordinary losses or damages caused by Operator.
10. **Indemnity.** Owner agrees to account to any other party who may be entitled to any portion of the aforementioned sum, and to indemnify and hold harmless Operator, its agents, contractors, or employees from any action, claim, or demand by any other party relating to damage to the Subject Lands, including, but not limited to, improvements and crops situated on the Subject Lands, except where such action, claim, or demand results from the gross negligence or willful misconduct of Operator, its agents, contractors, or employees. Operator hereby agrees to relieve, release, indemnify, and hold harmless Owner from any action, claim, or demand for damage to any person or property arising out of use of the Subject Lands for operations by Operator, its agents, contractors, or employees for damages proximately caused by Operator, its agents, contractors, or employees, except where such action, claim, or demand results from the gross negligence or willful misconduct of Owner, its agents, contractors, or employees.
11. **Governing Law.** This Agreement shall be subject to, and construed under, the laws of the State of Colorado, without regard to its conflict of law provisions, and jurisdiction and venue shall be solely in the State District Court of Weld County, Colorado, subject to the right of either party to remove a matter to federal court.
12. **Assignment.** The rights of Operator under this Agreement may be assigned, in whole or in part, without the prior written consent of Owner. Any such assignment shall release and relieve Operator of all liabilities, responsibilities and obligations under this Agreement. Either party making any assignment shall notify the other party in writing within thirty (30) days of such assignment.
13. **Covenants Running with the Land.** The terms and provisions of this Agreement are covenants running with the Subject Lands and shall be binding upon and inure to the benefit of the Parties, and their respective heirs, executors, administrators, legal representatives, successors and assigns. Owner may assign the Subject Lands, subject to this Agreement, to another entity, including but not limited to, a limited liability company, trust, or partnership.
14. **Breach or Default.** No action shall be initiated by Owner with respect to a breach or default by Operator hereunder, for a period of at least ninety (90) days after Owner has given Operator written notice as provided herein, fully describing the breach or default, and then only if Operator fails to remedy or commence to remedy all or any part of the breach or default within such period. Neither the service of said notice nor the doing of any acts by Operator aimed to meet all or any part of the alleged breach or default shall be deemed an admission or presumption that Operator has failed to perform all of its obligations hereunder. If there is a final judicial determination that a breach or default by Operator has occurred, this Agreement shall not be forfeited or cancelled in whole or in part, unless Operator is given a reasonable time after said determination to remedy the breach or default and Operator fails to do so. The prevailing Party for any matter requiring judicial resolution in connection with the arbitration shall be entitled to recover reasonable costs and attorneys' fees from the non-prevailing Party.
15. **Confidentiality.** The terms of this Agreement are confidential and Owner shall not disclose the terms to any third party unless compelled to do so by a court of competent jurisdiction. Notice of the Agreement to the COGCC pursuant to Paragraph No. 7 herein shall not be construed to violate the confidentiality requirement of this Agreement. Concurrent with the execution hereof, the parties shall execute a Memorandum of Agreement in

substantially the form set forth on Exhibit "B" to be recorded in Weld County, Colorado to impart constructive notice of the existence of this Agreement.

16. **Severability.** In the event that any provision of this Agreement is deemed invalid or void by any court of competent jurisdiction or cannot be performed, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision of this Agreement. If any provision of this Agreement shall be deemed invalid due to scope or breadth, then such provision shall be valid to the extent and scope permitted by applicable law.

17. **Entire Agreement.** This Agreement constitutes the full and final agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations or understandings, whether written or oral, and this Agreement may be modified or amended only in a writing signed by the Parties.

18. **Authority to Execute Agreement.** Each Party represents that it has the full right and authority to enter into this Agreement with respect to the surface rights or oil and gas interests it owns in the Subject Lands, as applicable.

19. **Notification.** Any notice or other communication given by either Party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by certified mail, return receipt requested, or sent by reputable overnight courier, to such other Party at the respective addresses set forth in this Agreement (or at such other address as may be designated from time to time by written notice given in the manner provided in this Agreement). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by certified mail, return receipt requested, such notice shall be deemed given on the third business day following the deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, shall be deemed effective on the first business day following deposit with such courier:

If to Owner:

Keith A. Kennedy
252 Roger Canyon Rd.
Laramie, WY 82072-5923

If to Operator:

Exterra Resources, LLC
Attn: David Huff, Manager
475 17th Street, Ste 790
Denver, CO 80202

20. **Termination of Rights.** This Agreement shall remain in full force and effect from the Effective Date, and for so long thereafter as any oil and gas lease owned by Operator covering all or any portion of the Subject Lands remains valid from production from the Subject Lands or from production from lands pooled or unitized with the Subject Lands, and for so long thereafter as Operator conducts oil and/or gas operations upon the Subject Lands or lands pooled or unitized therewith. If all oil and/or gas wells on the Subject Lands are permanently plugged and abandoned and the related rights-of-way and easements are not used by Operator for a period of more than twelve (12) months, then said rights-of-way and easements shall terminate and all rights herein granted will automatically revert to Owner, its successors and assigns, and Operator shall have a period of six (6) months from and after the date of such termination in which to remove, at its sole cost, risk, and expense, all of its personal property and equipment located on the Subject Lands, and Operator shall thereafter restore the Subject Lands as near to its former condition as is reasonably practical in accordance with the requirements of the COGCC. In the event any oil and/or gas wells are not permanently plugged and abandoned, but are only temporarily abandoned for further evaluation or for any other reason, then all of the terms and conditions of this Agreement shall remain in full force and effect.

21. **Reasonable Accommodation.** Owner expressly acknowledges and agrees that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligation of Operator to reasonably accommodate Owner's use of the surface of the Subject Lands, existing or future, and waives any statutory or common law claim to the contrary.

22. **Construction.** In construing this Agreement, no consideration shall be given to the fact or presumption that one party has had a greater or lesser hand in drafting this Agreement than any other party.

23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, this instrument is executed, to be effective as of the Effective Date.

OWNER:

Philip W. Kennedy Estate, by Keith A.
Kennedy, as Personal Representative

By:

Name: Keith A. Kennedy

Title: Personal Representative

OPERATOR:

David Huff, as Manager of Exterra Resources,
LLC

By:

Name: David Huff

Title: Manager

ACKNOWLEDGEMENTS

STATE OF Wyoming §
§ss:
COUNTY OF Laramie §

This instrument was acknowledged before me on the 11th day of January, 2017 by **Keith A. Kennedy** to me known to be the identical persons described in and who executed the within and foregoing instrument of writing and acknowledged to me that they duly executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires:



Kaycee Cook
Notary Public in and for the State of Wyoming
Printed Name:

STATE OF COLORADO §
§ss:
COUNTY OF DENVER §

This instrument was acknowledged before me on the 17th day of January, 2017 by **David Huff**, as **Manager of Exterra Resources, LLC**, a Limited Liability Company, on behalf of said Exterra Resources, LLC.

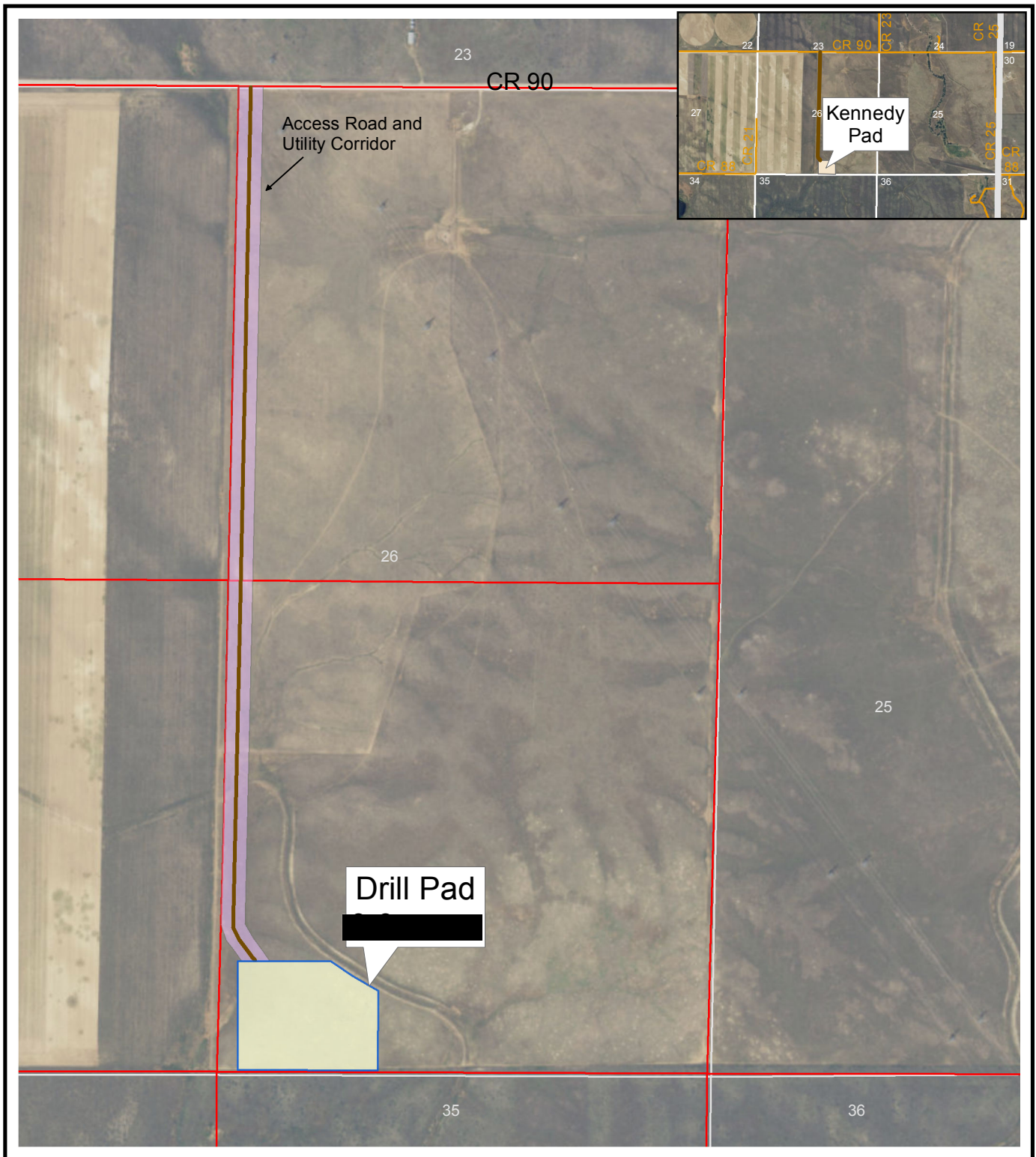
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: 08-10-2019

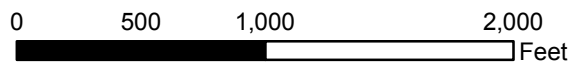


David Huff
Notary Public in and for the State of Montana
Printed Name:

Kennedy Initial Operations Area Exhibit A



2/23/2017



**SE, Sec. 26, T8N, R67W, 6th P.M.
Weld County, Colorado**

Legend	
	Access Road and Utility Corridor
	Drill Pad
	Property Lines

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (this "Memorandum") is to impart notice to all persons of the Surface Use Agreement and Grant of Easement (the "Agreement") dated the 11th day of January, 2017, by and between the **Philip W. Kennedy Estate, by Keith A. Kennedy as Personal Representative**, 252 Roger Canyon Road., Laramie, WY 82072-5923, as surface owner, and **Exterra Resources, LLC**, 475 17th Street, Suite 790, Denver, CO 80202, as operator.

The surface estate subject to the Agreement is identified as follows:

Township 8 North, Range 67 West, of the 6th P.M.
Section 26: The East One-half (E½)

This Memorandum, the Agreement and all rights and covenants in connection therewith shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns.

This Memorandum may be executed in multiple counterparts, each of which shall constitute an original and all of which, when construed together, shall constitute one and the same instrument.

Dated this 11th day of January, 2017.

OWNER:

Philip W. Kennedy Estate, by Keith A.
Kennedy, as Personal Representative

By: [Signature]
Name: Keith A. Kennedy
Title: Personal Representative

OPERATOR:

David Huff, as Manager of Exterra Resources,
LLC

By: [Signature]
Name: David Huff
Title: Manager

ACKNOWLEDGEMENTS

STATE OF Wyoming §
§ss:
COUNTY OF Laramie §

This instrument was acknowledged before me on the 11th day of January, 2017 by **Keith A. Kennedy** to me known to be the identical persons described in and who executed the within and foregoing instrument of writing and acknowledged to me that they duly executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: June 2, 2020



[Signature]
Notary Public in and for the State of Wyoming
Printed Name:


STATE OF COLORADO §
§ss:
COUNTY OF DENVER §

This instrument was acknowledged before me on the 17th day of January, 2017 by **David Huff**, as **Manager of Exterra Resources, LLC**, a Limited Liability Company, on behalf of said Exterra Resources, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: 08-10-2019





Notary Public in and for the State of Montana
Printed Name: