

SURFACE USE AGREEMENT

This Surface Use Agreement ("**Agreement**") is made and entered into August 18th, 2016, but effective August 18, 2016 ("**Effective Date**"), by and between Cottonwood Creek Investors, LLC, a Colorado limited liability company whose address is 4915 South Gaylord Street, Englewood, Colorado 80113. ("**Grantor**"), and Burlington Resources Oil & Gas Company LP, a Delaware limited partnership, whose address is Attn: Manager RPA, PO Box 7500 Bartlesville, Oklahoma 74004 ("**Grantee**").

RECITALS

- A. Grantor owns the surface and mineral estate, or otherwise controls the surface to property located in sections 23, 26, 27, and 28 of Township 4 South, Range 65 West, 6th P.M., Arapahoe County, Colorado, as more particularly described and depicted on **Exhibit A**, attached hereto and made a part hereof ("**Property**").
- B. A "Memorandum of Surface Use Agreement" ("**Memorandum**") was executed and made effective August 18, 2011 between Anadarko E&P Company LP as operator, and Cottonwood Creek Investors, LLC as owner, as recorded in the records of Arapahoe County, Colorado at reception number D1082659. Burlington Resources Oil & Gas Company LP is the successor in interest to Anadarko E&P Company LP.
- C. Grantor and Grantee desire to replace the Memorandum with this Agreement.
- D. Grantor commenced drilling of the Cottonwood Creek 4-65 27-1H well on February 22, 2014, and thereafter operates such well on the land pursuant to the Oil and Gas Lease dated December 17, 2012, between Anadarko Land Corp., as Lessor, and Operator, as Lessee, a memorandum of which is recorded at Reception No. D2147993, records of Arapahoe County, Colorado. Grantee wishes to compensate Grantor upon the execution of this Agreement and the Unrecorded Compensation and Consideration Agreement ("**UCCA**") associated with it, for the right-of-way and surface disturbance associated with this wellsite based on the acreage depicted on **Exhibit B** as the "**Existing Well Pad**". The terms of compensation are described in the UCCA.
- E. Grantee owns or operates oil and gas leases and rights and may become holder of other oil and gas leases and rights underlying or in the vicinity of the Property ("**Leases**"). Grantee wishes to obtain operations areas for horizontal well sites and related activities on the Property for development of oil, gas, and other hydrocarbons under the Property and lands pooled therewith ("**Operations**").
- F. Grantee, more particularly, owns and operates an oil and gas lease from the Grantor to Anadarko E&P Company, dated August 18, 2011; amended and ratified concurrently with execution of this Agreement covering sections 23, 26, and 28 of Township 4 South, Range 65 West, 6th P.M. ("**Grantor's Lease**").
- G. The parties wish to drill oil and gas wells on the property ("**Wells**") in advance of surface development and to provide for production and maintenance of the Wells and related facilities in such a manner as to minimize disruption of the Property and impact on the surrounding area.

- H. Grantor and Grantee desire to stipulate, confirm and agree on the rights held by Grantee, and to the extent necessary to effectuate and support Grantee's Operations, the rights herein granted by Grantor to Grantee and the consideration and compensation as applicable to be paid for or in connection with such rights.

AGREEMENT

For and in consideration of TEN AND NO/100 DOLLARS (\$10.00), the foregoing recitals and the terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following covenants, restrictions, and conditions, all of which are covenants running with the land and binding on successors and assigns of the parties, and do hereby agree as follows:

1. Surface Access Rights.

A. Right-of-Way.

- a. Grantor grants to Grantee and its agents, employees, and others authorized by them a private easement and right-of-way upon and across the Property to conduct its Operations, including without limitation, the exclusive rights to (i) locate, drill, complete, operate, and maintain Wells and well pads and associated production equipment within Oil and Gas Operations Areas ("OGOAs") on the Property in the locations depicted on Exhibit B and refined pursuant to paragraph 2.A. below; (ii) a non-exclusive right to construct, operate and maintain access roads in the locations depicted on Exhibit B and refined pursuant to paragraph 2.A. below; (iii) a non-exclusive right to lay, construct, operate, inspect, maintain, repair, replace with same or different size pipe, or remove, or abandon in place pipeline(s), compressor(s), underground power line(s), and communication line(s) which are used solely for Operations on the Property and lands pooled therewith, and other facilities related to the Operations all as shown on Exhibit B; (iv) a non-exclusive right to install fencing, landscape improvements, berms, and storm water or drainage structures in accordance with Arapahoe County or City of Aurora permit requirements ("Right-of-Way") all of which are depicted on Exhibit B and refined pursuant to paragraph 2.A. below.
- b. Grantee shall not install above-ground electrical lines on the Property.
- c. Right-of-Way also includes the Ancillary Rights described in Paragraph 10.
- d. The Right-of-Way for the roads and underground power line(s) used solely for Operations on the Property and lands pooled therewith and/or communication line(s) used solely for Operations on the Property and lands pooled therewith will not exceed 30 feet in width plus a contiguous 30-foot temporary construction easement as depicted on Exhibit B. Roads will be constructed at the sole cost and expense of Grantee according to Arapahoe County or the City of Aurora standards for private gravel roads, whichever is applicable at the time of construction, and must be maintained and kept free of noxious weeds, litter, and debris by Grantee, and may not be used by Grantee to access other lands for oil and gas operations or for any other purpose. Roads are not for the exclusive use of Grantee.

- e. Other than the Right-of-Way as set forth on the attached **Exhibit B** and refined pursuant to paragraph 2. A., the Property may not be disturbed by Grantee.
- B. **Section 26.** Grantee may only drill Wells within the OGOA in Section 26 of Township 4 South, Range 65 West after December 31, 2023, if Grantee has drilled at least eight (8) Wells pursuant to Paragraph 18 J. of Grantor's Lease. If the drilling requirement in Paragraph 18 J. of the Grantors Lease has not been met, Grantee shall retain the right to use those portions of the Right-of-Way necessary for the conduct of Grantee's continuing Operations until the termination of this Agreement. Any portion of the Right-of-Way no longer necessary for Grantee's continued Operations may be delineated by Grantee and released to Grantor. Grantee will amend **Exhibit B** and will file a Partial Release of the Right-of-Way in the records of Arapahoe County, Colorado.
- C. **Sections 23, and 28.** Grantee is not entitled to use the surface of Sections 23 and 28 for any purpose including installation of pipelines either by trenching or boring through the subsurface without prior permission.
- D. **Section 27.** Grantee retains its wellbore and the right to operate and maintain the Cottonwood Creek 4-65 27 1H well located on Section 27 but may not drill additional Wells from the Existing Well Pad location labeled on the attached **Exhibit B**. The only location on Section 27 Grantee may use after the Effective Date is the Right-of-Way depicted on **Exhibit B** and refined pursuant to paragraph 2.A. below.
- E. **Pipeline Easements.**
 - a. Pipeline easements shall be located within the Right-of-Way and shall be 75 feet in width during construction and 50 feet in width thereafter. No compressors or above ground equipment which is appurtenant to the pipeline shall be located outside of the Right-of-Way.
 - b. Grantor has the right to cross pipeline easements with roadways and other utilities; provided that, such crossing is made at an angle of not less than 60 degrees and not more than 90 degrees. Grantor also has the right to install and maintain easements that are both adjacent to the pipeline easements for utility lines, including, but not limited to those for water, gas, sewer, electric, telephone, cable, television, and fiber optic and other pipelines; provided, however: (i) any new underground facilities that travel adjacent to a pipeline easement must be located a distance horizontally of at least ten (10) feet from parallel existing pipelines; (ii) any new underground facilities must have at least twenty-four (24) inches of vertical clearance between such new facility and a pipeline.
 - c. Grantor may plant shallow root vegetation in the right-of-way and may maintain irrigation systems thereon. Grantor may also build and maintain unpaved trails within the pipeline easements.
 - d. Grantor agrees that it will notify each utility company that, except in cases of emergency, the Grantee must be contacted at least ten (10) business days prior to commencement of any trenching or digging activities within ten (10) feet of their easement areas.

e. Grantor shall be liable for any damages to Grantee's pipelines as a result of Grantor's concurrent use of the Right-of-Way.

f. Grantee is not liable for damage to the vegetation, irrigation system, or trails as a result of maintenance operations in the pipeline easements.

F. This Agreement does not grant easements to third parties for pipelines, electric lines, or fiber optic lines. Third party pipelines, such as Bronco Pipeline Company ("BPC") or utilities must negotiate a mutually acceptable agreement with Grantor, and access will not be unreasonably withheld.

G. Grantor does not warrant or defend title, except that Grantor warrants that title has not previously been conveyed by, through or under Grantor.

2. Location of Right-of-Way.

A. The Right-of-Way will be located approximately as specified and illustrated on the attached **Exhibit B**. Prior to Grantee applying for a permit to drill with the Colorado Oil and Gas Conservation Commission, **Exhibit B** will be amended by mutual agreement to show the exact locations of the Existing Well Pad, OGOAs, Wells, associated production equipment areas, landscape improvements, pipeline easements, electrical and communication lines, and access roads. The location of the Right-of-Way may not be moved or the size increased without the prior written consent of Grantor, which consent will not be unreasonably withheld.

B. **Setbacks.** Prior to, December 31, 2023 Grantor will not plat lots to build or construct commercial, industrial, residential, or recreational facilities proposed within 1,000 feet of the Limits of Production Equipment Area as shown on **Exhibit B** (the "**Temporary 1,000 Foot Buffer Area**").

3. **Colorado Waiver of Notice and Consultation.** Grantor acknowledges the receipt from Grantee of the information brochure for surface owners described in COGCC Rules. Grantor acknowledges and agrees that Grantee has complied with all notice, meeting, comment and consultation requirements of COGCC Rules 305 and 306 regarding the initial Application for Permit to Drill.

4. Grantor Use of Property.

A. **Reasonable Accommodation.** Grantor expressly acknowledges that this Agreement will be deemed to be specifically applicable to, and, after **Exhibit B** is amended to show the locations of the Existing Well Pad, OGOA(s), well(s), associated production equipment areas, landscape improvements, pipeline easements, electric and communication lines, and access roads, to fully satisfy, the obligation of Grantee to reasonably accommodate Grantor's use of the surface of the Property, existing or future, and Grantor waives any statutory or common law claims to the contrary, provided Grantee performs its Operations under the terms of this Agreement. Further, Grantor acknowledges that Grantee's proposed use of the Property reasonably accommodates the Grantor by minimizing intrusion upon and damage to the Property, and that Grantee has complied with Colorado's statutory reasonable accommodation doctrine at Colo. Rev. Stat. §34-60-127, as amended or re-codified, and the related common law doctrine.

- B. Grantee's Exclusive Use of Well Pads.** Grantee will fence the well pads located within the OGOA and will have exclusive use of the well pads located within the OGOAs, Grantor specifically agrees not to place or store any personal property or material of any kind on any well pad, including but not limited to placing or storing vehicles, farm equipment, hay or other crops on any well pad. Following notice to Grantor, Grantee may remove any such equipment from the OGOA to another location on the Property, at Grantor's sole risk and expense.

5. Grantee's Use of Property.

- A. Permitted Uses.** Grantee's use of the Property and Right-of-Way is limited to facilities that are reasonably necessary to produce, transport, treat, and store oil and gas and other products produced from the Property and lands pooled therewith. Other than the Right-of-Way, the Property may not be disturbed by Grantee except in the event of an emergency or for reasonable, incidental, and temporary activities. Except to the extent caused by Grantor, Grantee shall be strictly and solely responsible for any damages that may occur as a result of such emergency or incidental and temporary activity.
- B. Prohibited Uses.** Pits or disposal of oilfield waste on the Property and wells drilled for injection of produced water, flow back fluids, or other liquid waste; and underground gas storage or sequestration of any substances are **expressly prohibited by this Agreement**. Notwithstanding anything to the contrary contained herein, no compressors shall be located on the Property, except for wellhead compressors located in the OGOA(s) necessary to transport gas from the Property to the border thereof.

6. Compensation & Damages.

- A. Compensation.** Consideration for the rights granted hereunder and compensation for normal damages incurred with respect to Grantee's use of the Property, including the Setbacks described in Section 2B of this Agreement, for the purposes stated herein, is provided for in a separate UCCA between Grantor and Grantee signed concurrently with this Agreement. The compensation paid pursuant to the UCCA is for the reasonable and customary use of the Right-of-Way.
- B. Third Parties.** Compensation paid pursuant to this Agreement shall not cover the BPC ROW depicted on **Exhibit B**.
- C. Damages.** If, by reasons resulting from the Operations of Grantee, there is damage to real or personal property on the Property, including but not limited to, damage to livestock, structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural water ways, the damages will be repaired or replaced by Grantee or Grantee shall pay reasonable compensation to Grantor for the damage or an amount equal to the reasonable costs to repair the damage. Damage to or loss of livestock will be paid for by Grantee at the higher of market value or replacement cost.
- D. Liabilities.** This Agreement does not relieve Grantee from liability due to Grantee's negligence or due to spills or discharges of any hydrocarbons or toxic substance or hazardous chemicals or wastes, or from leaks or breaks in Grantee's pipelines. Any

pollution of the Property caused by Grantee's operations on the Property, or groundwater due to spills or leaks of hydrocarbons, chemicals, produced water, or other oilfield waste, shall be reclaimed to the pre-contamination condition of the Property and/or groundwater.

7. **Release.** Grantor, and on behalf of his heirs, executors, administrators, successors and assigns, as applicable, acknowledges the receipt and sufficiency of all compensation and consideration paid by Grantee pursuant to this Agreement as full and complete settlement for and as a release of claims for normal loss, damage or injury to the Property arising out of Grantee's Operations, except as set forth in paragraph 6 above.

8. **Conduct of Operations.**

- A. Grantee will conduct its Operations in a safe and workmanlike manner and in compliance with all applicable federal, state or local laws, rules or regulations.
- B. Grantee will design and construct well locations to provide a safe working area while reasonably minimizing the total surface area disturbed. At the sole cost and expense of Grantee, berms with trees and screen plantings will be used to visually soften the view of the well pads from future development areas. All landscaping shall be at the sole cost and expense of Grantee and shall to done pursuant to the City of Aurora standards.
- C. At the time any access road is initially constructed, Grantee will install a cattle guard and/or gate at each existing fence line crossed by such access road. Gates across the access roads will remain closed and locked except when Grantee is entering or leaving the access roads. Grantor will be provided keys or the combination to the locking mechanism on the gates.
- D. Grantee will maintain the Right-of-Way in a manner that controls dust and minimizes erosion. During the term of this Agreement, Grantee will keep the Right-of-Way as reasonably free of noxious weeds as practicable.
- E. Grantee will have the right to clear all trees, undergrowth and other obstructions from the Right-of-Way.
- F. Grantor will not impound water or build, construct, create or install, nor permit others to impound water or build, construct, create or install any buildings, structures, fences, trees, engineering works, or any obstructions on the Right-of-Way except for: (a) shallow root vegetation and the irrigation systems required therefor within the reclamation areas depicted on the attached **Exhibit B** and agreed to and finalized pursuant to paragraph 2.A. of this Agreement, and (b) easements for pipeline, electric, and communication lines Grantor will not change the grade of the Right-of-Way without the express written consent of Grantee, which consent will not be unreasonably withheld.
- G. During times of construction or other significant work, Grantee may park vehicles in the Right-of-Way or along roads. No living quarters shall be constructed upon the Property with the exception of temporary living quarters for necessary personnel during actual drilling, completing or testing operations. Any temporary living quarters will fully comply with all laws, rules and regulations of governmental authority and will provide a hygienic and healthy living environment.

- H. Grantee may store material excavated from the Property (e.g., soil and gravel) on the Right-of-Way to be used for construction or reclamation of the Right-of-Way. Grantee also may import material from off of the Property, at its sole cost and expense, for construction or reclamation of the Right-of-Way. After constructing the Right-of-Way, if Grantee determines that there is material in excess of what is required for reclamation that can reasonably be stored on the Right-of-Way, then Grantee may deliver said excess material to a location on the Property that is mutually acceptable to Grantee and Grantor. Any such excess material so delivered will become the sole responsibility of Grantor, and Grantee will have no further responsibility for said excess material. Should a mutually acceptable location on the Property not be found, then Grantee will remove such excess material from the Property.
- I. None of Grantee's employees, agents, or contractors, or any other person under the direction or control of Grantee will be permitted to carry firearms or any other weapon on the Property and such persons may not hunt, fish, or engage in recreational activities on the Property. No dogs will be permitted on the Property at any time. Grantee will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing, or recreational activities will be allowed on the Property. None of Grantee's employees, agents, or contractors, or any other persons under the direction or control of Grantee, shall possess or be under the influence of alcohol, marijuana, or illegal drugs while on the Property. Further, Grantee and its employees, agents, or contractors, or any other person under the direction or control of Grantee may not cut or transport firewood or remove artifacts and other non-oil and gas materials from the Property. Notwithstanding the foregoing this provision does not apply to security or law enforcement units or personnel, whether on or off duty, who may serve as security contractors for Grantee, or drug detection dogs used for periodic inspection of Grantee's worksites.
- J. Grantor hereby grants permission for any local electric company to raise, move and install underground utility lines on the Property when requested by Grantee in connection with Grantee's Operations provided said electric lines are contiguous to section lines and county roads. Grantor agrees to execute utility easements with such local electric company as necessary to comply with this provision.
- K. The Grantee will install all noise mitigation measures as required by the Colorado Oil and Gas Conservation Commission or local regulations in effect from time to time.
- L. Grantee will comply with all applicable law or regulations in effect from time to time, whether federal, state, or local, to employ the required equipment necessary to recycle volatile organic compounds from tanks and separators in order to minimize escape of VOC's into the environment. Grantee will not knowingly or intentionally permit the release or discharge of any toxic or hazardous chemicals or wastes on the Property in violation of any law. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Property which are reportable to regulatory authorities under applicable law or regulations will be reported within twenty-four (24) hours to Grantor by telephone, fax, or e-mail, to be followed by copies of written notices which Grantee has filed with regulatory authorities within five (5) business days after such filing.

M. Grantee is responsible for complying with all federal, state and local regulations relating to storm water runoff, sediment, and erosion control and shall obtain storm water permit(s) for all of Grantee's activities.

N. For all Operations, top soil will be stripped, stockpiled, and replaced at the conclusion of said Operations.

O. **Visual Mitigation.**

a. Well pads and all related facilities will be enclosed by a screen wall or opaque structure of at least nine feet (9') in height so that equipment, tanks, vehicles and other above ground improvements are screened from view from adjacent rights-of-way and surrounding areas. Screening may also be provided by grading, berms, trees and landscape plantings so long as those methods provide a similar degree of screening from rights-of-way and adjacent development areas. Screen walls must allow for reasonable landscape improvements (trees, shrubs, native vegetation, etc.) to provide an appearance similar to that of an industrial complex; all in accordance with local ordinances.

b. Grantee is required to maintain the visible portions (screen wall, fencing, gates, parking areas, landscape improvements, etc.) of the Right-of-Way in conformance with Arapahoe County standards or the City of Aurora's ordinances, whichever is applicable. Screen walls will be painted in a neutral tone (beige, medium brown, or grey-green) selected to blend with the background. Graffiti will be removed within 48 hours and trash and debris will be picked up regularly. Landscape improvements will be maintained in good condition and dead plant materials replaced. Trash dumpsters, if any, shall have covers and be screened from view.

c. Any gates into the OGOAs will provide visual screening and will remain closed except when necessary for vehicles to enter or leave the OGOAs.

d. The configuration of the OGOA will be such that any large tanks or equipment exceeding the height of the screen wall will be consolidated in one area and evergreen tree plantings, landforms and berms will be situated to offer additional screening as the trees mature. All costs of visual mitigation shall be borne by Grantee.

P. **Lighting.** Site lighting will be directed downward and inward and shielded so as to avoid glare on public roads and Building Units in compliance with COGCC Rule 803, or other applicable regulations.

9. **Water Quality and Quantity.** Baseline water quality tests on the Property will be conducted and paid for by Grantee in conformance with COGCC Rules. Testing parameters will be those required by regulation. Test results will be provided to Grantor. Grantor shall be entitled to conduct its own tests at Grantor's cost. Test results will be provided to Grantee.

10. **Ancillary Rights.** In addition to the other rights granted herein, Grantee is granted a right-of-way and easement to use the subsurface interests owned by Grantor in connection with the Property (e.g., minerals, pore spaces, etc.) to drill, complete, produce, deepen, rework, drill additional laterals or Wells, frac, re-frac and recomplete directional and/or horizontal Wells under and through the Property to reach lands not covered by this Agreement but which Wells are pooled with the Property and which Wells have bottom hole locations (if vertical Wells) or

horizontal drainhole locations (if horizontal Wells) on lands not covered by this Agreement but are pooled with the Property. Grantee shall have the right to use dirt and rock removed from the OGOA, pipeline excavations, and access easement.

11. Reclamation.

- A. As to all disturbed areas affected by Grantee's Operations, that are no longer needed or used for construction or operation of any facilities, or upon termination of this Agreement, Grantee will commence and continue in a diligent manner to fully reclaim and re-seed areas to a condition as similar as is practicable to that existing prior to the commencement of Grantee's activities, and in accordance with these provisions. In the event there is no growth from the reseeding, Grantee will continue the process until healthy growth is re-established.
- B. Reclamation on areas no longer needed or used for construction or operation of any facilities will be performed in accordance with the areas shown as Reclamation on the attached **Exhibit B**. Additional storm water mitigation may be necessary to accomplish successful reclamation.
- C. Grantee will consult with Grantor regarding seed mix to be used for reseeding.
- D. Grantee will notify Grantor prior to final reclamation operations on the Right-of-Way, including plugging and abandonment, and will comply with any federal, state or local notification rules, regulations or requirements. Grantee will use its reasonable efforts to consult in good faith with Grantor regarding all aspects of final reclamation, including but not limited to timing of such operations, topsoil protection and reclamation of the Property.

12. Designated Contact Person. Grantor and Grantee designate the following as their primary contact person for discussions, consultation and/or notification purposes:

Burlington Resources Oil & Gas Company LP
Real Property Administration
PO Box 7500
Bartlesville, OK 75005-7500

And to:

ConocoPhillips Company
Attn: Surface Land
34501 E. Quincy Ave.
Watkins, CO 80137
Phone: 303-268-3711
Fax: 303-268-3730

Cottonwood Creek Investors, LLC
4915 South Gaylord Street
Englewood, Colorado 80113
Attention: Andrew Chaikovsky
Phone: 303-783-9425

With email copies to: achaikovsky@comcast.net

All notices and communications required or permitted under this Agreement must be in writing and addressed as set forth above. Any communication or delivery hereunder will be deemed to have been duly made and the receiving Party charged with notice, whether personally delivered, sent by facsimile transmission, mail or overnight courier, when received. Grantor or Grantee may notify the other of a change in its designated contact person.

13. **Assignability.** This Agreement may be assigned by Grantee without Grantor's consent to any person or entity holding the oil and gas leasehold interest in the Property but may not otherwise be assigned. Such assignment will act to terminate the assigning party's duties, obligations, and liabilities under this Agreement from and after the effective date of the assignment, with the exception of any monetary obligations, damage, and environmental damage accruing prior to such date.
14. **Binding Effect.** All provisions of this Agreement will be binding on and inure to the benefit of Grantor and Grantee and their heirs, executors, administrators, successors and assigns.
15. **Term.** This Agreement is effective as of the Effective Date and will remain in force and effect until any Wells located on the Property pursuant to Grantor's Lease and/or Leases have been plugged and abandoned in accordance with COGCC rules, and for a period of one (1) year following final plug and abandonment of such Wells while final reclamation is completed by Grantee. Upon termination, Grantee will file a Release of this Agreement in the records of Arapahoe County, Colorado.
16. **Conflict.** In the event the terms of this Agreement as they relate to Grantee's use of the surface of the Property and the terms of Grantor's Lease and/or Leases pertaining to the Property conflict, the terms of this Agreement will control.
17. **Indemnity.** Grantee hereby agrees to indemnify, defend and hold Grantor harmless from and against all losses, damages, claims, demands and suits (including court costs and reasonable attorney's fees) that Grantor may incur or be liable for (collectively, "Claims"), to the extent that such Claims result directly from Grantee's exercise of the rights granted hereunder, EXCEPT to the extent any such Claims result from or are attributable to the negligence, gross negligence, willful misconduct or malicious acts (or omissions) of Grantor, its agents, employees, contractors or representatives.
18. **Force Majeure.** Neither Grantor nor Grantee will be liable to the other for any damages for failure to perform its obligations under this Agreement due to fire, earthquake, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, acts of terrorism, and other like casualty or other causes beyond its reasonable control (including but not limited to inability to complete reclamation responsibilities; provided, however, that such responsibilities will continue but with an extension of the completion deadline), nor for damages caused by public improvements or condemnation proceedings.
19. **Transfer of Grantor's Interest.** No transfer of Grantor's interest, by assignment or otherwise, will be binding on Grantee until Grantee has been furnished with written notice, including copies of all recorded instruments or documents and other information necessary to establish a complete chain of record title from Grantor. No present or future division of Grantor's ownership as to different portions or parcels of the Property will operate to enlarge the

obligations or diminish the rights of Grantee, and all Grantee's Operations may be conducted without regard to such division.

20. **Amendments.** This Agreement may only be amended by the written agreement of both parties.
21. **Headings.** Paragraph headings or captions in this Agreement are for reference and convenience only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision.
22. **Construction of Agreement.** Whenever required by the context of this Agreement, the singular will include the plural, and vice versa, and the masculine gender will include the feminine and neuter genders, and vice versa. The provisions of this Agreement have been independently, separately and freely negotiated by Grantor and Grantee as if drafted by both. The parties waive any statutory or common law presumption that would serve to have this Agreement construed in favor of or against either of them.
23. **Applicable Law.** This Agreement will be governed by and interpreted in accordance with the laws of Colorado, excluding any choice of law provisions that would refer the matter to the laws of another jurisdiction
24. **Notice of Breach or Default.** An alleged breach or default by Grantee of any obligation under this Agreement, or the failure of Grantee to satisfy any condition or limitation contained in this Agreement, will not work as forfeiture or termination of this Agreement, nor be grounds for cancellation of this Agreement in whole or in part. Grantor will not initiate litigation with respect to any alleged breach or default by Grantee under this Agreement for a period of at least thirty (30) days after Grantor has given Grantee written notice fully describing the breach or default, and if Grantee does not dispute the breach, then only if Grantee fails to remedy or commence to remedy the breach or default within such period.
25. **Relationship of Grantor and Grantee.** This Agreement does not create any special relationship between them including, without limitation, that of joint venturers or partners. Nothing in this Agreement will be construed to establish a fiduciary relationship, a relationship of trust or confidence or a principle-agent relationship between Grantor and Grantee for any purpose.
26. **Severability.** If any provision of this Agreement is illegal, invalid or unenforceable under present or future laws applicable to this Agreement, Grantor and Grantee intend that the remainder of this Agreement will remain in full force and effect so as to fulfill as fully as possible their intent as expressed by the then existing terms of this Agreement, including the invalidated provision.
27. **Merger of Prior Agreements.** This Agreement and UCCA contain the sole and entire agreement and understanding of Grantor and Grantee with respect to the Right-of-Way, and will supersede all prior agreements, if any, insofar as they pertain to the Right-of-Way. All prior discussions, negotiations, commitments and understandings relating to the Right-of-Way are merged into this Agreement. The Memorandum and corresponding Surface Use Agreement dated August 18, 2011, between Anadarko E&P Company LP as operator, and Cottonwood Creek Investors, LLC as owner are of no further force or effect.

28. Recordation. This Agreement will be recorded in the Arapahoe County Clerk and Recorder's records within ten (10) days after the document has been fully executed. A recorded copy of the instrument shall be provided to Grantor within thirty (30) days of execution of this Agreement.

29. Counterparts. This Agreement may be executed in two or more original counterparts, all of which together will constitute one and the same Agreement.

EXECUTED as of the date of acknowledgement, but this Agreement is effective as of the Effective Date.

GRANTOR:

**Cottonwood Creek Investors, LLC, a
A Colorado limited liability company**

By: Its Manager
BTAC Cottonwood Creek Investment
Manager, LLC, a Colorado limited liability
Company

By: _____

Andrew Chaikovsky

Title: Manager

Date: _____

GRANTEE:

**Burlington Resources Oil & Gas
Company LP**

By: _____

J. D. Adkins

Title: Attorney-in-Fact

Date: _____

ACKNOWLEDGMENTS

State of _____ }
County of _____ }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Andrew Chaikovsky, whose name as the as Manager of BTAC Cottonwood Creek Investment Manager, LLC, Manager of Cottonwood Creek Investors, LLC, a Colorado limited liability company is signed to the foregoing Surface Use and Compensation Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument he, as authorized agent and with full authority, executed the same voluntarily and as the act of said Company.

Given under my hand and official seal, this the _____ day of _____, 2016.

Notary Public

My Commission Expires _____

State of Texas }
County of Harris }

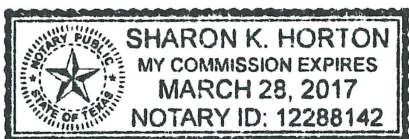
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J.D. Adkins, whose name as Attorney In Fact of Burlington Resources Oil & Gas Company LP is signed to the foregoing Surface Use Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument she, as authorized agent and with full authority, executed the same voluntarily and as the act of said corporation.

Given under my hand and official seal, this the 18th day of August, 2016.

Sharon K Horton

Notary Public

My Commission Expires March 28, 2017



28. **Recordation.** This Agreement will be recorded in the Arapahoe County Clerk and Recorder's records within ten (10) days after the document has been fully executed. A recorded copy of the instrument shall be provided to Grantor within thirty (30) days of execution of this Agreement.

29. **Counterparts.** This Agreement may be executed in two or more original counterparts, all of which together will constitute one and the same Agreement.

EXECUTED as of the date of acknowledgement, but this Agreement is effective as of the Effective Date.

GRANTOR:

**Cottonwood Creek Investors, LLC, a
A Colorado limited liability company**

By: Its Manager
BTAC Cottonwood Creek Investment
Manager, LLC, a Colorado limited liability
Company

By: 
Andrew Chaikovsky

Title: Manager

Date: 08-18-2016

GRANTEE:

**Burlington Resources Oil & Gas
Company LP**

By: _____
J. D. Adkins

Title: Attorney-in-Fact

Date: _____

ACKNOWLEDGMENTS

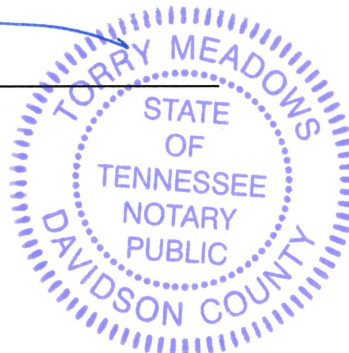
State of TN }
 }
County of DAVIDSON }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Andrew Chaikovsky, whose name as the as Manager of BTAC Cottonwood Creek Investment Manager, LLC, Manager of Cottonwood Creek Investors, LLC, a Colorado limited liability company is signed to the foregoing Surface Use and Compensation Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument he, as authorized agent and with full authority, executed the same voluntarily and as the act of said Company.

Given under my hand and official seal, this the 18TH day of AUGUST, 2016.

My Commission Expires July 6, 2020

Notary Public



State of _____ }
 }
County of _____ }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J.D. Adkins, whose name as Attorney In Fact of Burlington Resources Oil & Gas Company LP is signed to the foregoing Surface Use Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument she, as authorized agent and with full authority, executed the same voluntarily and as the act of said corporation.

Given under my hand and official seal, this the _____ day of _____, 2016.

Notary Public

My Commission Expires _____

Exhibit A

Attached to and made a part of that certain
Surface Use Agreement
dated August 18, 2016
by and between
Cottonwood Creek Investors, LLC,
and
Burlington Resources Oil & Gas Company LP

Property

Township 4 South, Range 65 West, 6th p.m.

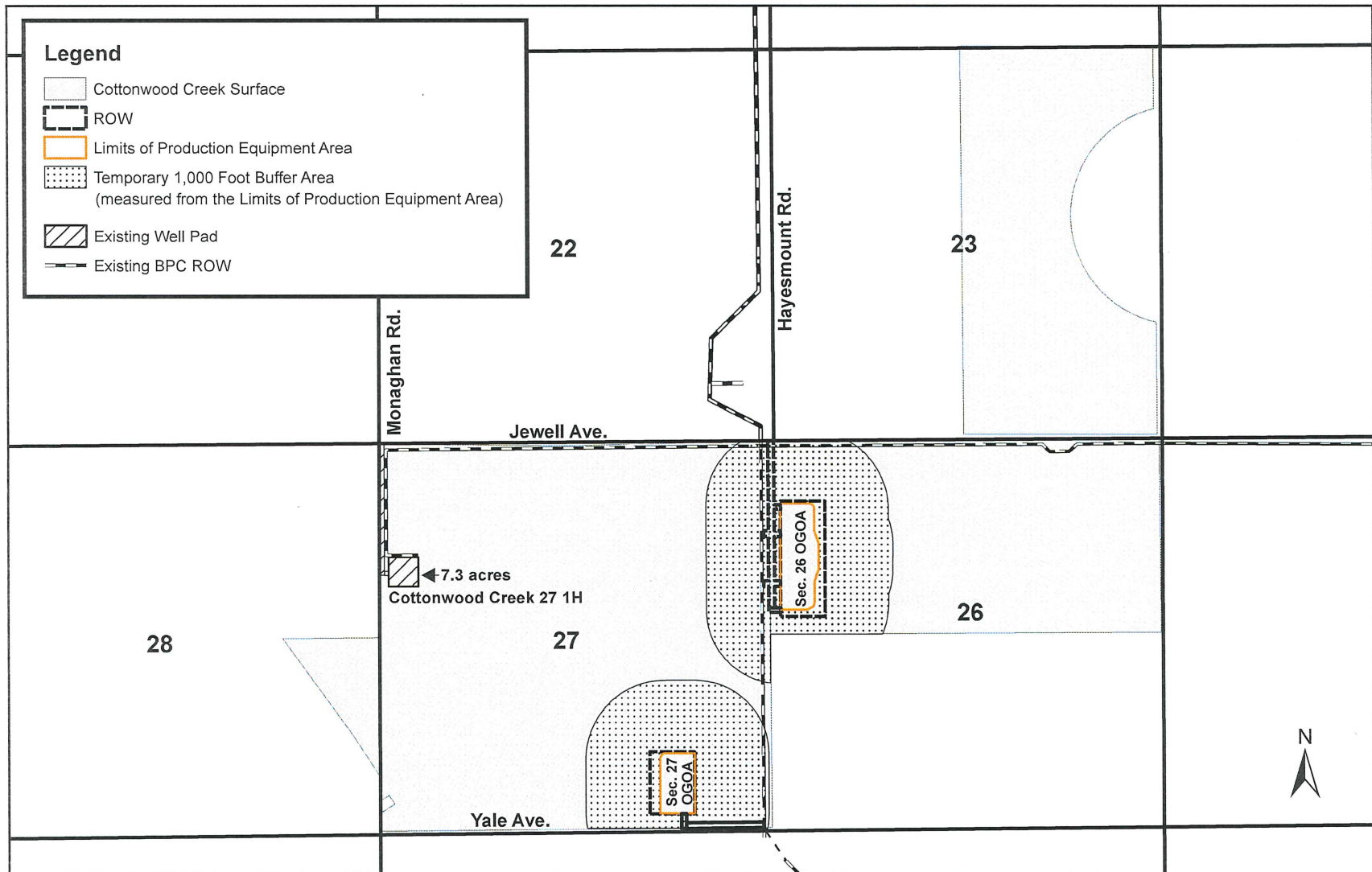
Section 23: E2, excepting a parcel of land in the SE/4 and the NE/4 being more particularly described as follows: Beginning at the northeast corner of said SE/4, thence along the east line of said SE/4 S 0 degrees 07'46"E a distance of 1113.91 feet; thence along the arc of a curve to the right with a central angle of 64 degrees 12' 02" and a radius of 1500.00 feet a distance of 1680.76 feet to a point on the north line of said SE/4; thence continuing along the arc of the curve to the right with a central angle of 90 degrees 42' 53" and a radius of 1500.00 feet a distance of 2374.90 feet to a point on the east line of said NE/4; thence along the east line of said NE/4 S 0 degrees 00' 47" W a distance of 1814.19 feet to the point of beginning.

Section 26: N2

Section 27: All, except North 30' for Jewell

Section 28: Part of the E/2SE/4 lying North and East of County Road 29 (47.105 acres)

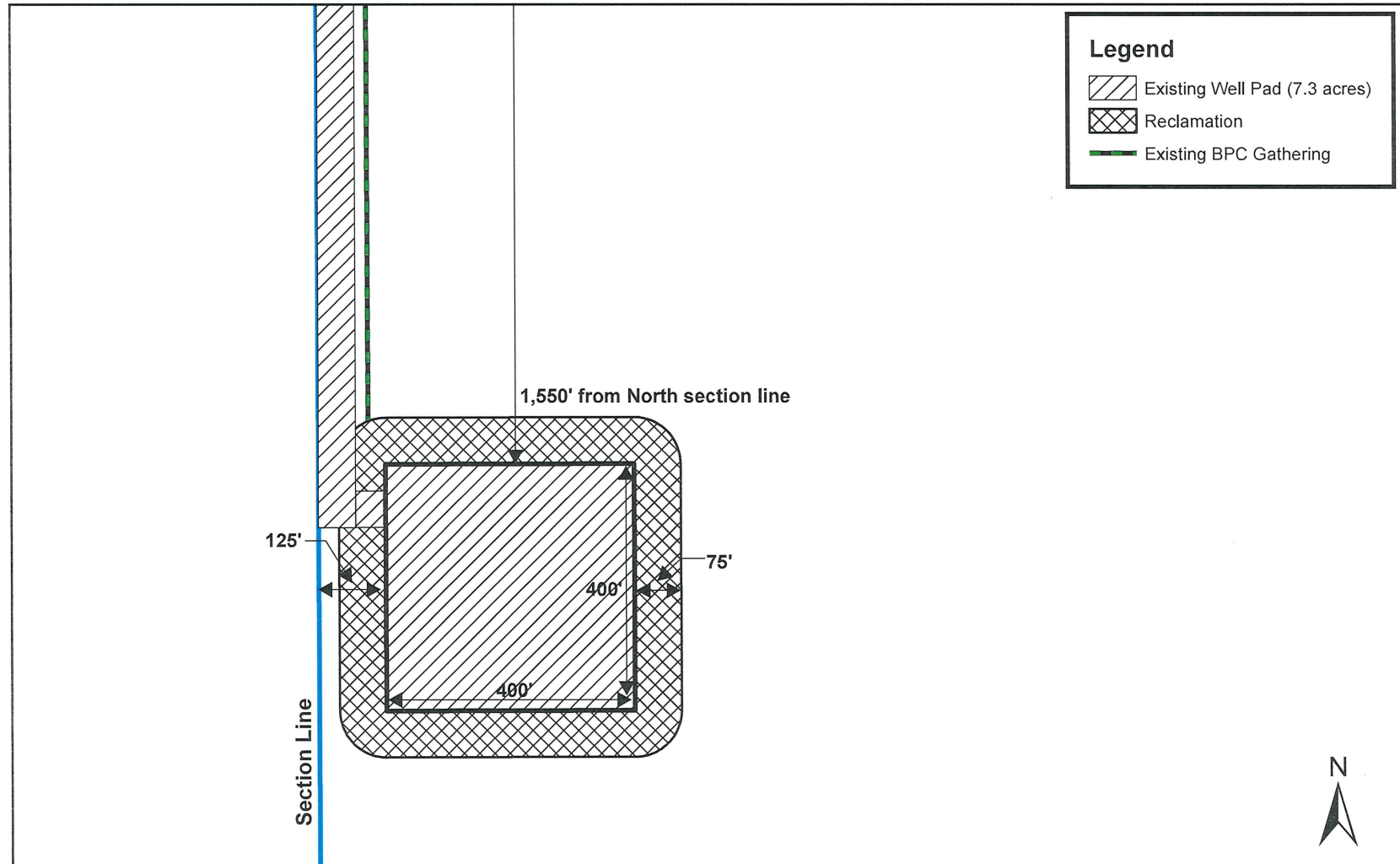
Exhibit B: Overview 4S-65W



All distances and acreage are approximate, and will verify by a licensed surveyor prior to construction.

1 inch = 2,000 feet

Exhibit B: Section 27 Existing Well Pad Detail



All distances and acreage are approximate.

1 inch = 250 feet