

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (the "Agreement") is made and entered into this 5th day of February, 2004, (the "Effective Date") by and among **PATINA OIL & GAS CORPORATION** ("Patina"), a Delaware corporation, [REDACTED] and the **ROBERT L. SELTZER FAMILY TRUST**, ("Seltzer"), by Jack Alden Seltzer as Co-Trustee with an address of [REDACTED] and Timothy R. Seltzer as Co-Trustee with an address of [REDACTED]

RECITALS

- A. Seltzer is the owner of the surface estate of a 114.165 ± acre tract of land of which is located in the NE/4 of Section 4, Township 1 South, Range 67 West of the 6th P.M., County of Adams, State of Colorado (the "Property"). The Property is more specifically described on Exhibit "A-1" attached hereto and made a part hereof.
- B. The mineral estate in and under the Property is presently subject to valid and subsisting oil and gas leases (the "Leases"), a portion of which leasehold interest is owned of record by Patina. The Leases are more specifically described on Exhibit "A-2" attached hereto and made a part hereof.
- C. Patina's leasehold rights include, among other things, the right of reasonable ingress and egress for the purposes of exploration, development, drilling, re-drilling, testing, completion, re-completion, re-entry, deepening, fracturing, re-fracturing, stimulation, reworking, production and maintenance operations associated with oil and gas wells from the surface to the base of the J-Sand excepting the surface to base of the Sussex formation in the N/2NE/4 of the Property and the associated pipelines and production facilities to be located on the Property.
- D. Patina currently operates the Seltzer 1-4 well, the Seltzer PP 4-7 well and the Seltzer PP 4-8 well on the Property and has the right to drill two (2) future vertical wells in the N/2NE/4 (collectively the "Wells") located on the Property, all in the NE/4 of Section 4, Township 1 South, Range 67 West of the 6th P.M., and their associated flow lines and production facilities located on the Property.
- E. Seltzer desires to have a Developer undertake certain development of the surface of the Property, including residential housing.
- F. Developer shall be defined as the party who will subdivide and develop the Property into residential housing and who acquires this Property as a whole undeveloped parcel for that purpose of surface development. Within this Agreement, the Developer will be referred to as "Subsequent Developer".

The Subsequent Developer shall have all the same rights and obligations as Seltzer as outlined in this Agreement. It is the intention of the parties that this Agreement includes certain rights, provisions and obligations conferred upon Seltzer and the Subsequent Developer, but not to their successors and assigns. These rights and obligations are specifically identified and limited within the Agreement as

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"Seltzer/Subsequent Developer" and are included in Section 1.1.a, 1.2, 1.5, 2, 3, 3.1, 3.3, 3.4, 4, 5.1, 5.2, 6.1, 6.2, 8, and 18.

G. Patina and Seltzer enter into this Agreement to provide for the coexistence and joint development of the surface estate and the oil and gas estate of the Property, and to delineate the process by which the parties, the Subsequent Developer, and their successors and assigns shall comply with respect to the development of the two estates.

NOW, THEREFORE, in consideration of the covenants set forth herein and the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. AREA RESERVED FOR OIL AND GAS OPERATIONS.

1.1. Oil and Gas Operations. Patina shall have the continued right to deepen, recomplete, fracture, re-fracture, stimulate and rework the Wells, and Seltzer agrees that Patina may continue to utilize the area depicted and/or described on Exhibit "B" attached hereto and made a part hereof as the "Operations Area(s)" for the wellsite, production facilities, pipelines and access roads for such operations. The Operations Area(s) shall be deemed to include the areas as follows:

a. New Wellsite Operations Areas: There shall be two new wellsites on the Property; these new wellsites shall be located in the N/2 of the NE/4. The Operations Area for each new wellsite shall be a rectangle area with the dimensions being 275 feet x 250 feet around each new wellsite location. Subject to Patina's consent, which consent shall not be unreasonably withheld, Seltzer/Subsequent Developer shall select each new wellsite location pursuant to the following procedure:

Exhibit "B" reflects two drilling windows, one for each of the new wellsite locations. These drilling windows have dimensions of 400 feet x 400 feet and have been designated by Colorado Oil and Gas Conservation Commission, ("COGCC"), in the N/2 of the NE/4 of the section. Subject to Patina's consent, which consent shall not be unreasonably withheld, Seltzer/Subsequent Developer shall choose one wellsite location in each drilling window; if feasible, such locations shall be in the North half of each drilling window. Unless Patina consents in writing, these new wellsite locations must be a minimum of 1,320 feet from each other and from any other existing wells in the NE/4.

Six (6) months after the date of completion of a New Well, the Operations Area for that completed well will be deemed to be an Existing Wellsite Operations Area pursuant to Section 1.1.b.

b. Existing Wellsite Operations Areas: The Operations Area around Existing Wellsites shall be a square with the dimensions of 225 feet x 225 feet. This square of Operations Area shall be centered exactly around the existing wellsite. These existing wellsites are the Seltzer 1-4 well located in the NE/4NE/4 (990' FNL, 990' FEL), the Seltzer PP 4-7 well located in the SW/4NE/4 (1540' FNL, 1799' FEL), and the Seltzer PP 4-8 well located in the SE/4NE/4 (1910' FNL, 470' FEL).

c. **Production Facilities Operations Area(s):** Pursuant to Section 2 of this Agreement, there shall be a fence around the production facilities. These fence(s) shall delineate the Production Facilities Operations Area(s). At their discretion, Patina may fence each separate piece of production facility equipment, instead of the entire perimeter of the Production Facility. In this event, the non-fenced area between each of the fenced facility pieces of equipment shall be deemed as part of the Production Facilities Operations Area(s). Within the Production Facilities Operations Area(s), there will be no use of the lands of any kind by Seltzer or any of its successors in interest.

Within the Production Facilities Operations Areas, Patina shall place each separate piece of production equipment as close as possible, maintaining a maximum distance of seventy-five (75) feet between each piece of production facility equipment. In the event that Patina is required under COGCC Rule 604, to maintain a distance of more than seventy-five (75) feet between each piece of equipment, Patina shall be allowed to change the seventy-five (75) foot maximum setback in this Agreement to the specific footage as designated in said Rule 604.

On the sides of the facility equipment that comprise the outside parameters of various pieces of equipment of that Production Facility, Patina shall locate the fence a maximum of five (5) feet from the outside of the berm. The berm will be located as close as possible to the production facilities while still in compliance with Rule 604. For the specific production facility equipment that does not require a berm under Rule 604, Patina shall locate the fence a maximum of ten (10) feet from the facility equipment sides which comprise the outside parameters.

Seltzer, its successors and assigns shall place no occupied buildings within one hundred and fifty (150) feet from any piece of production equipment.

d. **Access Road Operations Area(s).** The Access Road Operations Areas shall be as provided in Section 6. Patina shall have the continued right to utilize the roads as provided in Section 6.

1.2 **Operations Area(s).** The Production Facilities Operations Area(s) shall be reserved and utilized for the exclusive purpose for operations by Patina. The Operations Area(s) for New Wellsites and for Existing Wellsites shall be reserved and utilized for the purpose of any and all oil and gas operations by Patina, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing, drilling of replacement wells, and re-fracturing, among other things. The limited use of the New Wellsite and Existing Wellsite Operations Areas by Seltzer/Subsequent Developer may be allowed as set forth in Section 1.5 below. Seltzer shall not grant any future easements within the New Wellsite, Existing Wellsite and Production Facilities Operations Areas unless Patina consents in writing.

1.3 **Pipeline Easements.** Seltzer agrees that Patina may continue to construct, operate and maintain pipelines on the Property, in the areas depicted and/or described on Exhibit "B" as the "Pipeline Easements".

1.4 **Limitation on Use of the Property.** Except for the Operations Area(s) as provided in Section 1.1, and Pipeline Easements as provided in Section 1.3, and access as provided in Section 6, Patina shall not use or occupy any part of the surface of the Property except in the event of an emergency or for reasonably necessary incidental and temporary activities, provided, however, any incidental or temporary use shall require the prior consent of

Seltzer, such consent to not be unreasonably withheld. As part of the consideration for this limitation by Patina, of what would otherwise be the right to make reasonable use of any part of the Property in the conduct of their operations, and without limiting the applicability of Sections 12 and 13 below, Patina shall not be obligated to pay, and Seltzer hereby waives any right to receive, any surface damage payments, license or use fees, now or in the future, associated with the operations of Patina within the Operations Area(s). Notwithstanding the foregoing, Patina shall continue to be liable for damages to persons or damage to property as set forth in Section 12 below, and this Section 1.4 shall not be deemed to be a limitation of such liability other than for surface damages ordinarily paid for crop damages.

1.5 Limited Allowances: Seltzer shall place no buildings, fences, structures, or similar permanent improvements within any of the Operations Areas as defined in Section 1.1. However, within the New Wellsite and Existing Wellsite Operations Areas and within the Pipeline Easements, Seltzer/Subsequent Developer shall be allowed to place and designate property and boundary lines, and open spaces with no minimum setbacks.

In addition, Seltzer shall be allowed to place leach fields, landscaping, and watering systems ("Limited Improvements") within the New Wellsite Operations Areas, with the following limitations:

These Limited Improvements within the New Wellsite Operations Areas must be located a minimum of 112.5 feet from the new wellsite, and must be located only on one side of the new wellsite. This one side shall be an area of a maximum of one half of a circle with a radius of three hundred (225) feet around the new wellsite location.

These Limited Allowances and Limited Improvements of Seltzer and Seltzer/Subsequent Developer shall be at their own expense and risk, acknowledging that Patina's normal operations may from time to time disturb or destroy said allowances. Seltzer and Seltzer/Subsequent Developer hereby agrees to install and maintain said allowances in such a way as to not violate the COGCC regulations or impede Patina's access and/or operations. Seltzer and Seltzer/Subsequent Developer hereby accept all responsibility for the cost of installation, repair and/or replacement of said allowances within the Pipeline Easements and Operations Areas and Patina shall not be responsible for damage to said allowances resulting from its future access or operations. Prior to commencing installation of the allowances, Seltzer and Seltzer/Subsequent Developer shall consult with Patina, to ensure that there are no adverse impacts upon Patina's ability to perform future operations. Patina shall not be liable for damage to or replacement of any such allowances. Seltzer, its successors and assigns do hereby indemnify Patina for damages and replacement costs of any of these allowances within any of the Operations Areas.

1.6. Without prior written consent from Patina, Seltzer shall not construct or allow the construction of dwellings or structures that contain an underground ignition source within sixty-five (65) feet on either side of the Pipeline Easements except at those locations where the pipeline is to be sleeved. At the locations where the pipeline is sleeved, without the prior written consent from Patina, Seltzer shall not construct or allow the construction of dwellings or structures that contain an underground ignition source within fifteen (15) feet on either side of the Pipeline Easements.

1.7 Waiver of Certain Requirements. So long as Patina's operations have not substantially breached any material terms of this Agreement, Seltzer waives all setback requirements in COGCC Rule 603, or any successor rule or amendment to the COGCC setback rules, and to any other state or local setback requirements or other requirements or regulations that are, or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Patina to explore for and produce the oil and gas in accordance with this Agreement. So long as Patina has not substantially breached this Agreement, Seltzer agrees that it will not object in any forum to the use by Patina of the surface of the Property consistent with this Agreement and that it will also provide Patina with whatever support in writing they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

2. PRODUCTION FACILITIES. Patina operates tanks, separators or other production facilities located on the Property within the Operations Area(s) as described in Section 1.1 above. Without the prior written consent of Seltzer, Patina shall not locate additional facilities on the Property or expand the size and/or location of such facilities in the future. Pursuant to negotiations between Patina and Seltzer, and in accordance with Section 5, upon the written request of Seltzer/Subsequent Developer, Patina will use reasonable efforts to relocate the existing production facility currently located in the NW/4NE/4 to the Southwestern portion of the parcel comprising approximately 8 acres in the northeast corner of the NE/4. Any relocation is subject to approval of the new location by the gas gatherer and/or purchaser of said Production Facility.

Patina shall install and maintain fences, gates and locks reasonably necessary for the security of the existing Wells and/or existing production facilities in the Oil and Gas Operations Area. Such fences, gates and locks shall be installed at the expense of Seltzer/Subsequent Developer and maintained at the expense of Patina and shall be of a type and quality agreed between Seltzer/Subsequent Developer and Patina. If Patina drills new wells in the Operations Areas after approval of the final plat by Adams County Commissioners, then the fencing costs shall be borne entirely by Patina.

3. CONSTRUCTION AND REMOVAL. Seltzer/Subsequent Developer may request relocation or removal of certain pipelines and other production facilities in the future. Patina agrees to relocate the production facilities to a location mutually acceptable to Patina and Seltzer/Subsequent Developer. Patina shall install the relocated pipelines from the Wells to the intersection of that portion of pipeline that is not to be relocated within the Pipeline Easement and remove the abandoned segments of the pipeline. The pipeline will be constructed with casing sleeves and risers, all in accordance with the following terms and conditions:

3.1 Construction of Pipeline. In the event Seltzer/Subsequent Developer desires that Patina relocate pipelines in the future, Seltzer/Subsequent Developer shall submit a scaled plat to Patina indicating the exact location of pipelines to be relocated and abandoned as set forth in Section 5. Seltzer/Subsequent Developer shall complete the field staking for the installation of the new pipeline alignment and its required depth as provided below after giving written notice to Patina. The field staking will consist of a marker every thirty (30) feet, marking the desired depth of the pipeline, and the beginning and ending locations of portions of the pipeline. Casing sleeves shall be installed as identified on the scaled plat. [The sleeved segments of the pipeline shall have casing risers at each end of the sleeved segments and the field staking shall identify the location of casing risers and the beginning and ending of each sleeve. Within ninety (90)

days following the completion of the field staking of the pipeline location, Patina will complete the construction of the pipeline along the routes staked in the field and identified by Seltzer/Subsequent Developer on the scaled plat. The pipeline shall be buried to a depth sufficient to result in forty-eight (48) inches below the proposed finished grade of the surface. In no event shall Patina be required to install pipelines at a depth exceeding six (6) feet below the grade existing at the time of installation.

3.2 Removal of Abandoned Pipeline. On the completion of construction of the new pipeline, Patina will remove that portion of the pipeline that was abandoned.

3.3 Line Crossings. If the surface development of the Property requires the crossing of Patina's relocated pipeline (within five (5) feet of a location that is not sleeved or two (2) feet of a location that is sleeved) by a sewer line, water line or other utility, Seltzer/Subsequent Developer shall notify Patina (a) of the date and time of the line crossing (the "Commencement Time"), and (b) when the line crossing has been completed (the "Completion Time"). If in response to Seltzer/Subsequent Developer's notification, Patina suspends production through the pipeline, then Seltzer/Subsequent Developer shall pay Patina for each calendar day or part thereof, beginning forty eight hours after the Commencement Time until the Completion Time. The payment shall be the sum of [REDACTED] per well per day calculated. Such payments shall be the agreed amount to compensate Patina for its response and any lost or delayed production, and shall be made to Patina within thirty (30) days of receipt of an invoice from Patina. In the event that Seltzer/Subsequent Developer notifies Patina more than once in any fourteen (14) day period, subsequent notices will be charged the full lost or delayed production rate as of the commencement time for said initial notice. Seltzer/Subsequent Developer shall maintain a distance of a minimum two (2) feet above or below the pipeline at any such crossings.

3.4 New Survey and Easement. If pipelines are moved to locations different than those depicted on Exhibit "B", Seltzer/Subsequent Developer shall survey the new locations and revise Exhibit's A & B accordingly.

4. **CONSTRUCTION COORDINATION.** Upon commencement by Patina of the construction operations pursuant to Sections 2 and 3 above, Seltzer/Subsequent Developer shall cease those operations on the Property that would unreasonably interfere with Patina's obligations pursuant to this Agreement. To the extent that Seltzer/Subsequent Developer's operations delay Patina's operations or upon the occurrence of an event of force majeure, Patina will not be subject to the performance time frames set forth in Sections 3 and 5.

5. **CONSTRUCTION AND RELOCATION COSTS.**

5.1 Upon written request by Seltzer/Subsequent Developer, in the event that Patina has made a third party contract to relocate the production facilities currently located in the NW/4 of the NE/4 pursuant to Section 2 of this Agreement, Seltzer/Subsequent Developer shall pay to Patina the sum of the consideration for that third party contract, but not to exceed [REDACTED]. In the event that Patina is unable to relocate the production facilities to the

said Northeast parcel, Seltzer/Subsequent Developer will not be required to pay any consideration under this Section.

5.2 Should Seltzer/Subsequent Developer desire that Patina relocate production facilities and/or pipelines, including those facilities referred to in Section 5.1; Seltzer/Subsequent Developer shall submit a scaled plat identifying the production facilities and pipelines to be relocated (the "Relocation Cost Request"). Within thirty (30) days from receipt thereof, Patina shall submit to Seltzer/Subsequent Developer an estimate of the cost to relocate the facilities and pipelines. Thirty (30) days prior to the date Seltzer/Subsequent Developer requires Patina to commence relocation operations, Seltzer/Subsequent Developer shall submit written notice and pay to Patina the Relocation Costs. Patina shall complete construction within ninety (90) days from the date the Relocation Costs are paid and notice of staking as set forth in Section 3.1 has been received, whichever is the later. The estimate of Relocation Costs shall expire one hundred twenty (120) days from the date of submitting the Relocation Cost Request. If Seltzer/Subsequent Developer desires at a subsequent date to request relocation of production facilities and pipelines, Seltzer/Subsequent Developer shall resubmit a Relocation Cost Request. Patina will prepare and submit a revised estimate of Relocation Costs. Seltzer/Subsequent Developer shall then pay the revised amount.

6. ACCESS.

6.1 If Seltzer/Subsequent Developer removes any prior access to any of Patina's operations on the property, then Seltzer/Subsequent Developer will provide adequate alternate access to the Operations Area(s) and Pipeline Easements, although the location of that access may vary from time to time in accordance with the needs and progress of such surface development.

6.2 Seltzer/Subsequent Developer will construct paved roads, reinforced curbs, reinforced gutters and reinforced sidewalks to accommodate Patina's access to the Operations Areas and Pipeline Easements and shall provide curb cuts at all "Access Points" as shown on Exhibit "B". The curb cuts at the Access Points shall be at least 30 feet wide. The paved roads leading to the Access Points, and the curbs, gutters and sidewalks at the Access Points shall be reinforced to accommodate a gross vehicle weight of at least 28,000 pounds per axle. Within thirty (30) days following completion of the pipeline relocation or paved road construction, or removal of existing access roads, whichever is the first to occur, Seltzer/Subsequent Developer will construct access roads from the Access Points to the existing wellsites, with a width of 15 feet, provide a 6 inch aggregate base course and turn such roads over to Patina for their further maintenance. Patina will construct all access roads from the Access Points to new wellsites that are not in existence as of the date of this Agreement.

7. **NOTICE OF FUTURE OPERATIONS.** Patina shall provide at least seven (7) days prior written notice to Seltzer, its successors and assigns in advance of any operations other than the drilling of the new wellsites, within the Operations Area(s) in connection with the reworking, fracturing, deepening or other unusual or other than routine operations on the Wells; provided, however, that Patina shall have immediate access in the event of an emergency. Patina shall provide at least thirty (30) days notice to Seltzer, its successors and assigns for the drilling of the

new wellsites. The new wellsites locations shall be limited to the two locations shown on Exhibit "B" hereto and as set forth in Section 1.1.a hereof.

8. NOTICES TO HOMEOWNERS AND BUILDERS. Seltzer/Subsequent Developer shall record a plat or map showing the Oil and Gas Operations Area(s), Wells and Pipeline Easements in the real property records of Adams County, Colorado. In addition, Seltzer/Subsequent Developer shall record in the real property records of Adams County, Colorado a "Notice of Oil and Gas Operations", substantially in the form attached hereto as Exhibit "C" that conspicuously states that:

8.1 there may be ongoing oil and gas operations in the Oil and Gas Operations Area(s) and Pipeline Easements;

8.2 Purchasers of all or a portion of the Property, as successors in interest to the surface rights of Seltzer, will be acquiring a proportionate interest in some of Seltzer's rights and obligations under this Agreement, and will be subject to those obligations contained therein, and subject to the waivers and setback requirements as specified in the Agreement.

9. FUTURE OPERATIONS. Patina shall make all reasonable efforts to pursue any drilling, re-drilling, reworking and/or recompletion operations in a diligent and prudent manner so as to minimize the total time period on location, to avoid rig relocations or startup delays during the course of drilling, and to attempt to minimize the amount of surface area actually used. Seltzer waives and shall not assert any right to require that wellhead or production equipment be located in conformance with setback requirements different from those agreed to in this Agreement (including but not limited to those concerning any "high density" rules of the COGCC).

10. GOVERNMENTAL PROCEEDINGS.

10.1 As long as Patina is in compliance with this Agreement, Seltzer shall not, directly or indirectly, oppose or encourage opposition to Patina in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, Adams County or other governing body proceedings, related to the operations of Patina on the Property, including but not limited to drilling and production activities, workovers, well deepenings, recompletions, fracturing, replacement wells and re-fracturing, provided that the position of Patina in such proceedings is not materially inconsistent with this Agreement.

10.2 As long as Seltzer is in compliance with this Agreement, Patina shall not directly or indirectly oppose or encourage opposition to Seltzer in any agency, administrative, Adams County or other governing body proceedings, relating to Seltzer's operations on and development of the Property, including residential and associated development, provided that Seltzer's position in such proceedings is not materially inconsistent with this Agreement.

11. FORCE MAJEURE

11.1 In the event either party is rendered unable, by an event of Force Majeure (defined below) to perform, wholly or in part, any obligation set forth in this Agreement, other than the obligation to pay money, then the performance by the affected party will be suspended during the continuance of such event of Force Majeure. The party experiencing an event of Force Majeure will provide reasonable notice to the other party as soon as possible with all reasonable dispatch. As used herein, the term "Force Majeure" shall mean any act of God, acts of the public enemy, wars, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, severe weather, floods, washouts, arrests and restraints of the federal, state or local government, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, delay in securing environmental approvals, the inability to obtain necessary supplies, material, equipment, machinery or labor and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

12. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.

12.1. NO PARTY SHALL BE LIABLE FOR, OR BE REQUIRED TO PAY FOR, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES TO ANY OTHER PARTY FOR ACTIVITIES UNDERTAKEN WITHIN THE SCOPE OF THIS AGREEMENT.

12.2 Each party shall be and remain responsible for all liability for losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation reasonable attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations, including each such parties' employees, agents, contractors, sub-contractors or other invitees on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, successors and assigns, harmless against all such Claims that arise from its negligence and intentional misconduct. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein.

13. EXCLUSION FROM INDEMNITIES. The indemnities of any party herein shall not cover or include any amounts, which the indemnified party may recoup from any third party. or that for which the indemnified party is reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

14. NOTICE OF CLAIM FOR INDEMNIFICATION. If a Claim is asserted against a party for which another party would be liable under the provisions of Section 12 above, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party

within thirty (30) days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

15. REPRESENTATIONS. Each party represents that it has the full right and authority to enter into this Agreement and Seltzer specifically confirms their capacity to validly execute the rights of way and easements provided for herein. Patina represents that it owns the oil and gas leasehold interest in the Leases as set forth in Recitals B and C. Patina does not represent and specifically asserts that it does not have the right to bind any other oil and gas interest owner or lessee for the Property.

16. SUCCESSORS.

16.1 For purposes of this Agreement, the identification of "Seltzer" includes all successors and assigns of Seltzer. The terms, rights and obligations that are limited to Seltzer and the Subsequent Developer shall be covenants appurtenant, which run with the land to the extent that they are binding only on the heirs, executors, administrators, successors, and assigns of the immediate parties.

16.2 Except for the specific rights and obligations conferred only upon Seltzer and the Subsequent Developer pursuant to the limitation by the identification of "Seltzer/Subsequent Developer", the remaining terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns. This Agreement and all of the covenants herein, with the exception of those terms and covenants identified in Section 16.1, shall be covenants running with the land.

17. NOTICES. Any notice or other communication required or permitted under this Agreement shall be sufficient if in writing and deposited in the U.S. Mail, postage prepaid, with a copy sent via facsimile, or electronic means addressed to each of the following:

If to Patina Oil & Gas Corporation:

Patina Oil & Gas Corporation
[REDACTED]
[REDACTED]

Attention: Land Department
FAX (303) 595-7410

If to Seltzer

Mr. Tim Seltzer, Co-Trustee
Robert L. Seltzer Family Trust
[REDACTED]
[REDACTED]

Mr. Jack Seltzer, Co-Trustee
Robert L. Seltzer Family Trust
[REDACTED]
[REDACTED]

Any party may, by written notice so delivered to the other party, change the address, fax number or individual to which delivery shall thereafter be made.

18. RECORDING. The Notice of Oil and Gas Operations and the plat or map required pursuant to Section 8 above shall be promptly recorded in the Office of the Clerk and Recorder for Adams County by Seltzer/Subsequent Developer, and Seltzer/Subsequent Developer shall provide the other parties with a copy thereof showing the recording information as soon as practicable thereafter.

19. SURFACE USE AGREEMENT. In consideration of the parties' respective rights, obligations and benefits, as outlined herein, this Agreement shall constitute a surface use or surface damage agreement provided for under the COGCC's Rules and Regulations or under any oil and gas leases covering the Property.

20. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding among the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

22. HEADINGS. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

23. TIME OF ESSENCE. Time is of the essence in this Agreement.

24. NON-WAIVER. Waiver by either party or of the failure of any party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of the right or prevent any such party from requiring the strict performance of any provision in the future.

25. SEVERABILITY. Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice a party in its rights and obligations contained in valid covenants, conditions or provisions. In the event that any part of this Agreement would otherwise be unenforceable or in conflict with applicable laws due to the term or period for which such part is in effect, the term or period for which such part of this Agreement shall be in effect shall be limited to the longest period allowable which does not cause such part to be unenforceable or in conflict with applicable laws.

26. NO JOINT VENTURE. This Agreement is not intended to, nor shall it be interpreted to create a joint venture, partnership or any other relationship among the parties.

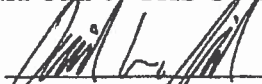
27. COUNTERPARTS. This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

28. **CONFIDENTIALITY.** Seltzer agrees to keep confidential this Agreement and all negotiations leading up to or relating to this Agreement. Seltzer shall not copy or distribute this Agreement or disclose the substance hereof or the nature of such negotiations to others outside of Patina and Seltzer unless required to do so by law.

Provided however, Seltzer may utilize this form of Agreement for an agreement with the leasehold owners of other formations in this Property. Additionally, Seltzer may disclose the terms of this Agreement to a Subsequent Developer pursuant to any negotiations/proceedings with that Subsequent Developer. Further, Seltzer agrees to provide a copy of this Agreement to the Subsequent Developer of the surface prior to the closing of any sale of the Property. Subsequent Developer must provide a copy of this Agreement to any other potential successor or assign of surface rights prior to the closing of any sale of all or any portion of the Property.

The parties have executed this Agreement as of the day and year first above written.

PATINA OIL & GAS CORPORATION

By:  RO Date: 2/5/04
David W. Siple, Vice President

THE ROBERT L. SELTZER FAMILY TRUST

By:  Date: 2/12/04
Jack Alden Seltzer, Co-Trustee

By:  Date: 2/5/04
Timothy R. Seltzer, Co-Trustee

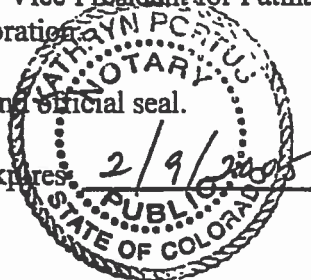
ACKNOWLEDGMENTS


STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 5th day of February, 2004, by David W. Siple, Vice President for Patina Oil & Gas Corporation, a Delaware corporation, on behalf of that corporation.

Witness my hand and official seal.

My Commission expires



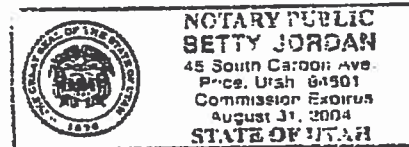

Notary Public

STATE OF Utah)
COUNTY OF Carbon) ss.

The foregoing instrument was acknowledged before me this 12th day of February, 2004, by Jack Alden Seltzer, as Co-Trustee of the Robert L. Seltzer Family Trust
Witness my hand and official seal.

Betty Jordan
Notary Public

My Commission expires: 8/31/04



STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 5th day of February, 2004, by Timothy R. Seltzer as Co-Trustee of the Robert L. Seltzer Family Trust
Witness my hand and official seal.

Dawn Elaine Depriest
Notary Public

My Commission expires: February 13, 2007

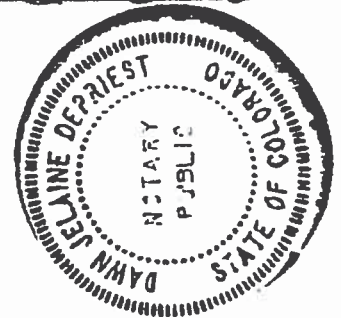
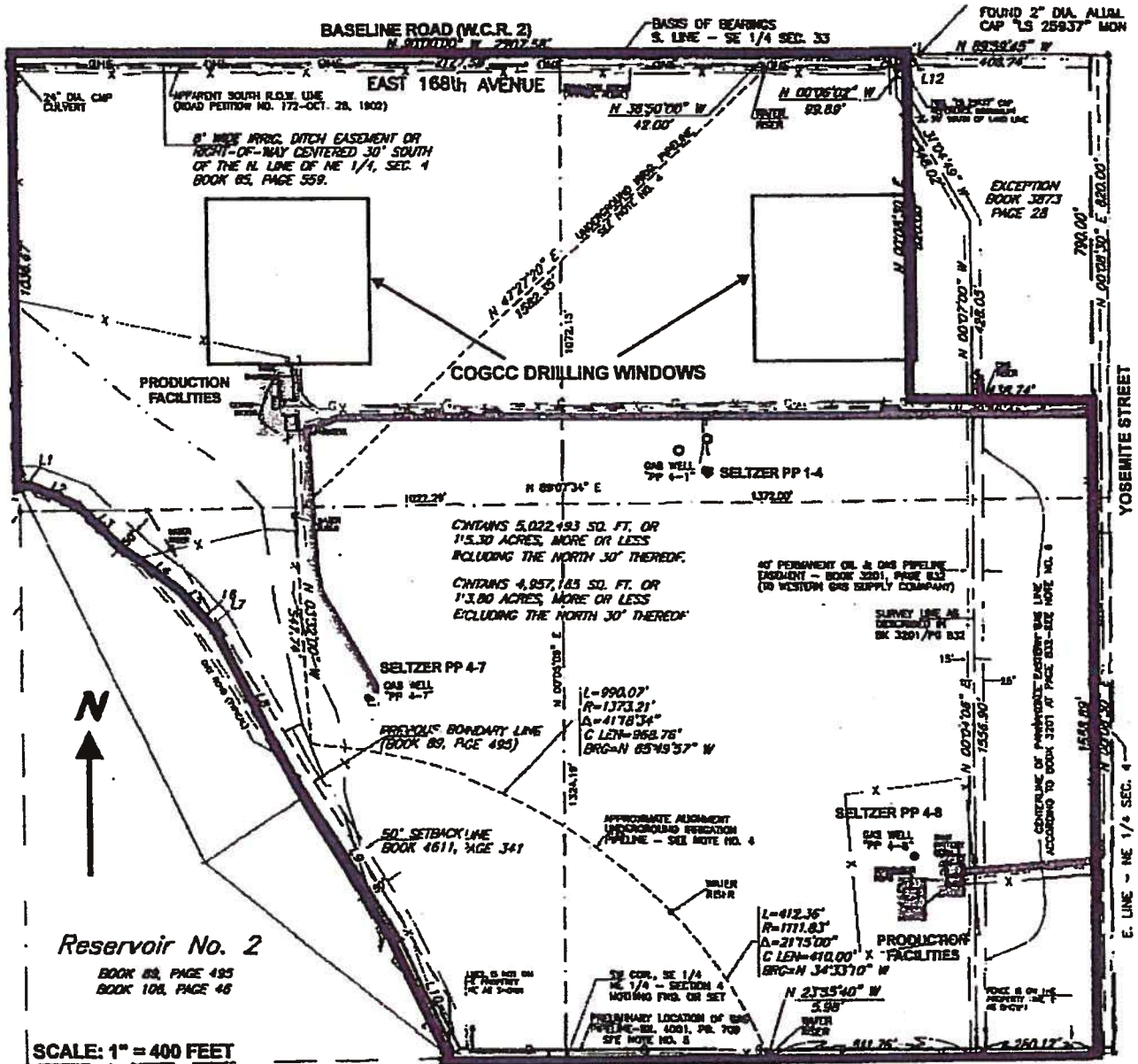


EXHIBIT "B"
NE/4 OF SECTION 4
TOWNSHIP 1 SOUTH - RANGE 67 WEST
OF THE SIXTH PRINCIPAL MERIDIAN
ADAMS COUNTY, COLORADO



PATINA
 OIL & GAS CORPORATION

1S-67W-4-NE-2



PRODUCTION FACILITY OPERATIONS AREA

EXISTING WELLSITE OPERATIONS AREA



PROPERTY BOUNDARY



ACCESS ROADS

PIPELINE EASEMENTS

TS

FIRST AMENDMENT OF SURFACE USE AGREEMENT

THIS FIRST AMENDMENT OF SURFACE USE AGREEMENT (the "Amendment") is made and entered as of 1st day of December 2015, (the "Effective Date") by and among **EXTRACTION OIL & GAS, LLC ("Operator")** whose address is [REDACTED], and the **ROBERT L. SELTZER FAMILY TRUST, ("Seltzer")**, Jack Alden Seltzer as Co-Trustee with an address of [REDACTED] and Timothy R. Seltzer as Co-Trustee with an address of [REDACTED]. Operator and Seltzer may sometimes be referred to in this Amendment individually as a "**Party**" or collectively as the "**Parties**". This Amendment modifies that certain Surface Use Agreement between Seltzer and Patina Oil and Gas Corporation dated February 6, 2004 ("**Noble SUA**") which is attached to and by reference made part of this Agreement as **Exhibit A**.

RECITALS

- A. Operator is the successor to Noble Energy, Inc. ("**Noble**"), Operator's predecessor in interest with respect to a leased interest, Noble's rights with respect to explore, develop and produce from certain property ("**Property**") which is specifically described in **Exhibit B**, attached hereto and by reference made a part hereof;
- B. Seltzer and Operator wish to amend the Noble SUA with respect to the right to plug and abandon certain wells; and
- C. Seltzer and Operator wish to amend the Noble SUA with respect to the right to drill additional wells on the Property.

NOW, THEREFORE, in consideration of the covenants set forth herein and the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree to amend the Noble SUA as follows:

- 1. In accordance with the letter agreement between Operator and Seltzer dated January 20, 2016, Operator shall pay Seltzer the agreed upon amount within thirty (30) days of the commencement of any future well that is drilled on the Property.
- 2. The description of the Property in Exhibit "A-1" is replaced by the description in Exhibit B to this Amendment, which is attached to and by reference made part hereof.
- 3. The two COGCC Drilling Windows shown on Exhibit "B" are replaced by the description of the one area described in Exhibit C of this Amendment, which is attached to and by reference made part hereof. All future wells on the Property will be drilled from the new, single drilling area, the new Designated Area for Operations, described in Exhibit C of this Amendment.
- 4. Extraction will promptly plug and abandon the below-described four (4) wells on the Property once as generally described in the email message dated December 7th, 2015 from Joseph Silipo, Landman for Extraction, to Mark T. Nesbitt:

Seltzer 1

Seltzer PP 4-7

Seltzer 1-4

Seltzer 4-8

4. The following provision is added at the end of Subsection 1.4:

Subsurface Right-of-Way. Seltzer further grants Operator a subsurface right-of-way through the Property for the purpose of drilling, completing, operating and maintaining oil and gas wells that may produce and drain oil, natural gas, and associated hydrocarbons from lands other than the Property and lands pooled with the Property.

5. Section 7, Notice of Future Operations is amended by:

a. Deleting the sentence, "Patina shall provide at least thirty (30) days notice to Seltzer, its successors and assigns for the drilling of the new wellsites."

b. Adding the following provision:

No waiver of COGCC notices and other regulatory matters. Seltzer expressly does not waive the following notices and consultations and shall not object or protest any Application for Permit to Drill (Form 2) and Oil and Gas Location Assessment (Form 2A) filed by Operator with the COGCC:

- A. Rule 305.a.: Notice of Intent to Conduct Oil and Gas Operations;
- B. Rule 305.c.(1): Oil and Gas Location Assessment Notice;
- C. Rule 305.c.(2): Buffer Zone Notice;
- D. Rule 305.f: Statutory Notice to Surface Seltzers;
- E. Rule 305.h.: Move-In, Rig-Up Notice;
- F. Rule 306.a.: Surface Seltzer Consultation and Meeting Procedures; and
- G. Any other notice or consultation requirements of the COGCC.
- H. Operator will incorporate the applicable provisions of this Agreement into the applicable Form 2A.
- I. Notwithstanding anything to the contrary in this Amendment, Seltzer may object to the Form 2A, so long as the objection is based on a matter that Seltzer believes is consistent with the Noble SUA as amended by this Agreement.
- J. Seltzer grants consent to drill future wells within the drilling area defined by the survey description attached hereto as Exhibit C ("Designated Area for Operations").
- K. Seltzer understands that Operator may provide a copy of this Agreement to the COGCC in order to obtain a waiver, exception location, or variance from the COGCC rules or from a local jurisdiction. Seltzer also agrees that it will not object in any forum to the use by Operator, provided that Operator's use is in accordance the Noble SUA as amended by this Agreement and that it will also provide Operator with its reasonable written

_____  _____

support which may be reasonably required for Operator to obtain permits from the COGCC or any local jurisdiction.

6. The content of Section 17 is replaced with the following new provision:

NOTICES. All notices shall be given by personal delivery to the intended party to this Agreement by electronic communication, capable of producing a printed transmission, registered or certified mail return receipt requested, or overnight or other express courier service. All notices shall be effective and shall be deemed given when received on the date of receipt at the principal address if received during normal business hours, and, if not received during normal business hours, on the next business day following receipt, or if by electronic communication, on the date of such communication. Any party may change its address for notice purposes by notice properly given.

Seltzer:

Robert L. Seltzer Family Trust
Timothy R. Seltzer, Co-trustee

Robert L. Seltzer Family Trust
Jack Seltzer, Co-Trustee

Operator:

Extraction Oil & Gas, LLC

Phone: (720) 974-2021
Attn: Jamison McIlvain

7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado except for conflict of laws and insofar as it may become necessary to comply with federal statutes, rules or regulations.
8. **Recording.** The Parties agree that either Owner or Operator may record this Agreement in the real estate records of Adams County, Colorado.
9. **Counterparts.** This Agreement may be executed by facsimile or electronic mail, in counterparts, each of which will be considered an original and enforceable against either Party.

The Parties have executed this Amendment as of the day and year first above written.

Extraction Oil & Gas, LLC

Robert L. Seltzer Family Trust

By: _____
Jamison McIlvain
Title: Landman

By: Jack Alden Seltzer TTK
Jack Alden Seltzer, Co-Trustee

By: _____
Timothy Robert. Seltzer, Co-Trustee

ACKNOWLEDGMENTS

STATE OF ARIZONA)
)ss.
COUNTY OF)

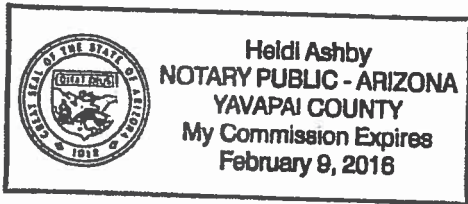
The foregoing instrument was acknowledged before me on this 15th day of December
2015, by Jack Alden Seltzer as Co-Trustee of the Robert L. Seltzer Family Trust.

Witness my hand and official seal.

My commission expires: 2/9/16

Heidi Ashby
Notary Public

(SEAL)



STATE OF COLORADO)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me on this _____ day of _____
2015, by Timothy Robert Seltzer as Co-Trustee of the Robert L. Seltzer Family Trust.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public

_____ JP

STATE OF COLORADO)
)ss.
COUNTY OF)


The foregoing instrument acknowledged before me on this ____ day of _____
2015, by **Jamison McIlvain on behalf of, and landman for, Extraction Oil & Gas, LLC.**

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public



By: Timothy Robert Seltzer
Timothy Robert. Seltzer, Co-Trustee

ACKNOWLEDGMENTS

STATE OF ARIZONA)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me on this _____ day of _____
2015, by **Jack Alden Seltzer as Co-Trustee of the Robert L. Seltzer Family Trust.**

Witness my hand and official seal.

My commission expires: _____

(SEAL)

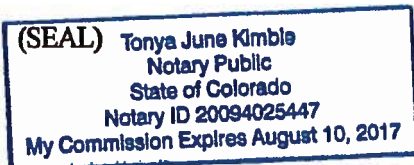
Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF Weld)

The foregoing instrument was acknowledged before me on this 14th day of
December 2015, by **Timothy Robert Seltzer as Co-Trustee of the Robert L. Seltzer**
Family Trust.

Witness my hand and official seal.

My commission expires: 8/10/15



T. Kimble
Notary Public