

## **SURFACE AND ROAD USE AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this 3<sup>rd</sup> day of December 2018 by and between **Giuliano & Sons Coal Company**, whose mailing address is 48161 Four Seasons Blvd., Northville, MI 48168, herein referred to as "Owner", and **AusCo Petroleum, Inc.**, whose address is 113 N Santa Fe Ave, Florence, CO 81226, herein referred to as "Operator." Owner and Operator shall herein be collectively referred to as the "Parties."

WHEREAS, Owner is the owner of the surface estate of the following described lands ("Property") located in Fremont County, Colorado, to wit:

Township 19 South, Range 70 West, 6<sup>th</sup> PM  
( NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  ) Section 35

WHEREAS, Operator owns an interest in that certain Oil and Gas Sublease dated June 30, 2011, by and between Prize Energy Resources, L.P., as Sublessor, and Aus-Tex Exploration, Inc., as Sublessee, as evidenced by Memorandum of Oil and Gas Sublease recorded at Reception #888485 in the records of Fremont County, Colorado (the "Sublease"), which grants Operator certain rights and interests in the oil and gas leasehold rights under the Property pursuant to that certain Oil and Gas Lease dated September 15, 1988 between Santa Fe Pacific Mining, Inc. as Lessor, and Santa Fe Energy Company, as Lessee, ("the Lease") and recorded at Book 908, Page 262 in the records of Fremont County, Colorado, which permits Operator to enter, drill, complete and produce the proposed Well; and

WHEREAS, Operator intends to conduct operations on the Property, pursuant to the Lease and the Sublease, in connection with the drilling of an oil or gas well located in the NE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of Section 35, Township 19 South, Range 70 West, 6<sup>th</sup> PM, Fremont County, Colorado (herein referred to as "Well"); and

WHEREAS, That in connection with the conduct of Operator's operations under the Lease to drill, complete and produce the proposed Well, it is necessary that Operator access, cross and use certain roads and surface property of Owner's Property; and

WHEREAS, in order to reasonably accommodate the uses of Owner on the Property, Operator agrees to certain terms and conditions in connection with Operator's access to and upon the Property.

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

1. The primary term of this Agreement shall be for a period co-terminous with the Sublease.
2. An initial payment shall be paid by the Operator to the Owner as liquidated damages in the amount of eight thousand and no/100 Dollars (\$8,000) as compensation for all normal and customary damages incurred in connection with Operator's operations on the Property including the usage, right-of-way and easement of any access roads, the Well Site Area and/or Facilities Site Area in connection with Operator's drilling and production of the Well on the Property. Owner shall make said payment no later than seven (7) days after the execution of this Agreement. Thereafter, Operator shall make successive annual payments to Owner in the amount sum of \$1,000.00 for each acre, or fraction thereof, of the Property used by Operator thereafter. Said annual payments shall include the fee for Operator's use of any access road described herein and shall be made to Owner on or before the anniversary date of this Agreement. Any failure to timely make a payment hereunder shall not act to terminate this Agreement but shall give Owner a claim for amounts due plus interest at the rate of 1.5% per month from the due date until paid.
3. That Operator shall locate the Well at the location described in the recitals and as generally depicted on Attachment A hereto, and will utilize an area approximately five (5) acres in size and centered approximately around the well site (herein referred to as "Well Site Area"). The Well Site Area may contain a Drilling Pad from which up to four (4) wells may be drilled.
4. That the access road constructed by the Operator shall be used to reach the Well Site location described in the recitals and generally depicted on Attachment A hereto and is more particularly described as a vehicular dirt road beginning at a departure point approximately 282' feet to said Well Site ("Access Road"). Said Access Road lies entirely on Owner's Property and shall be approximately 282' feet long and no more than forty (40) feet wide. Owner and Operator shall mutually determine the location of any other access roads that Operator may need to access the Well; provided, Owner's agreement shall not be unreasonably withheld, delayed or conditioned.

5. That Operator may, at its option, locate certain production facilities, including tank batteries, pipelines, power lines and other such related facilities necessary for Operator's use and enjoyment to drill, complete and produce the Well; and will utilize an area not to exceed five (5) acres in size and located on the Well Site Area (herein referred to as "Facility Site Area"). The location of the Facility Site Area to be used by Operator in connection with the Well is generally depicted on Attachment A hereto. As to any production facilities that cannot be feasibly located on or immediately adjacent to any the Well Site Area, Operator will consult with Owner and use commercially reasonable efforts to avoid or minimize the use of additional surface acres and adverse impacts of the facilities on Owner's operations.

6. If Operator desires to drill additional wells on Property, which are not located on the Well Site described herein, Operator and Owner shall enter into a separate agreement pertaining to such additional location or locations in which the payments to the Owner shall not exceed those agreed to in this document.

7. Owner hereby gives, grants, and conveys unto Operator, its agents, employees and assigns, subject to the terms and conditions hereof, a exclusive easement and right-of-way to enter upon and use the above described Access Road, Well Site Area and Facility Site Area to truck oil and to construct and maintain roads, well sites, tank batteries, pipelines, power lines and other such related facilities necessary for Operator's use and enjoyment to drill, complete and produce the Well. Operator shall cause all its permanent facilities and improvements located on the Property to be painted in a color that blends with the environment, and will not place any logos or similar marks on such facilities and improvements except as required by law or regulations. The color and the painting of any such permanent facilities and improvements shall be subject to all safety regulations.

8. Operator agrees to reclaim and repair the damages caused directly by Operator's operations on or near the Well Site, the Access Road and the Facility Site Area. All reclamation work shall comply with the reclamation standards under Colorado Oil and Gas Conservation Commission ("COGCC"). Operator further agrees to compensate Owner for all other damages to Owner's Property, including damages to surface natural resources, personal property, fixtures and livestock thereon, that are directly caused by Operator's operations or activities and that are not included in the compensation under Section 2, above. This provision is limited to those damages arising out of activities of Operator or by Operator's representatives, agents, employees or contractors, and shall not be applicable where such damages are caused by Owner, or Owner's guests, representatives, agents, employees or contractors. If the parties cannot agree on the amount of damages owed by Operator to Owner under this Section, they shall each

engage a qualified, independent appraiser, who will agree upon appointment of a third qualified, independent appraiser to establish the damages by concurrence as to the amount by at least two out of the three appointed appraisers, with each party to be responsible for one-half of the costs of obtaining such appointment and appraisal.

9. In the event Operator obtains a producing well on the Property, Operator shall restore and re-seed that portion of Well Site, the Access Road and the Facility Site Area located on the Property not required to operate and maintain said producing well. Said restored area shall be restored and re-seeded, as nearly as possible, to its original condition. Operator further agrees to utilize no more than three (3) acres of the Well Site to operate and maintain said producing well or wells, which portions shall not require re-seeding.

10. Operator shall conduct all operations on the Property consistent with that of a good and prudent operator and shall proceed diligently with its drilling operations once commenced. If drilling, production or other operations are to be suspended for any period exceeding forty five (45) consecutive days, Operator shall ensure that all facilities, and all drilling or production materials and products are "buttoned-up" and secured and that all waste, trash or other refuse is removed from the Property. Operator further agrees to keep all Access Roads, Well Area Sites and Facilities Area Sites safe and in good order, free of noxious weeds, litter and debris.

11. At such time Operator abandons its drilling and production activities on the Property, including termination of operations due to surrender, cancellation or other termination of the Sublease (collectively "Termination"), Operator shall restore, reclaim and re-seed the Well Site, the Access Road and the Facility Site Area, as nearly as possible, to their original condition. Operator shall complete all clean up, reclamation and restoration requirements within one hundred eighty (180) days after termination of drilling and production activities, and in compliance with all requirements of the COGCC, including requirements concerning reclamation and equipment removal, weather permitting. Abandonment of the Well by Operator shall comply with applicable well abandonment procedures established by the COGCC.

12. In the event Operator is required to remove any fences on Owner's property during the construction of a Well Site Area, Access Road and Facility Site Area, Operator shall replace said fences with the same type and material of the original fencing removed. If Operator elects to extend its usage of a Well Site, Access Road and/or a Facility Site Area to operate and maintain producing wells, Operator shall install

any necessary gates and/or cattle guards. The location and type of said gates and/or cattle guards shall be approved by Owner.

13. Operator shall conduct its operations in such a manner as to reasonably reduce the spread of noxious weeds on or about a Well Site Area, Access Road and Facility Site Area. At such time Operator completes its drilling and completion activities Operator shall, if necessary, spray the areas immediately adjacent to the Well Site Area, Access Road and Facility Site Area in order to control said noxious weeds.

14. Operator shall not permit its' employees, agents contractors or other individuals entering Owner's lands on behalf of Operator to engage in hunting and/or fishing on Owner's lands, or to bring firearms, drugs or alcohol on Owner's land. This Agreement does not authorize the Operator to place temporary or permanent housing on the Property or otherwise house employees on the Property, except for Operator's drilling superintendent and well log contractors during drilling and completion operations.

15. Operator shall conduct its operations in such a manner to reasonably allow livestock and Owner vehicles to continue their movement on and about a Well Site Area, Access Road and Facility Site Area including, if requested by Owner, the construction of fencing around existing cattle paths. If Operator is required to construct said fencing it shall use reinforced fencing and use its best efforts to construct said fencing in such a manner as to allow Owner vehicles and equipment to pass through and around said fencing. Operator shall not construct any fences, cattle guards or other improvements, except those mentioned above, nor shall Operator modify existing fences, cattle guards or other improvements located on Owner's land without prior consent of Owner, which consent shall not be unreasonably withheld.

16. Operator shall at all times comply with all local, state and federal laws applicable to any of Operator's operations on the Property, including but not limited to laws applicable to the transportation, storage, use or disposal of hazardous, toxic or other regulated materials or pollutants, and applicable to storm-water pollution prevention. In addition, Operator acknowledges and agrees that it is solely responsible for obtaining all licenses, permits or other authorizations that may be required for Operator to use, cross, bury or relocate existing public roads, utilities, irrigation or drain ditches and their associated easements or rights-of-way.

17. Notice by either party hereto shall be promptly given orally, if possible, and immediately mailed to:

Owner:

**Giuliano & Sons Coal Company**

48161 Four Seasons Blvd.

Northville, MI 48168

Attn: Jeffrey Boleski

Phone: 313-623-6431

Email: jboleski@comcast.net

Operator:

**AusCo Petroleum, Inc.**

113 N Santa Fe Ave

Florence, CO 81226

Attn: Mr. Guy T. Goudy

Phone: 303-495-0327

Email: ggoudy@fremontpetroleum.com

18. In the event of default by Operator of any provision herein, Owner shall notify Operator in writing, specifying the nature of the default and the action required to remedy the default, Operator shall promptly initiate efforts to cure the default, which in any event must be initiated within thirty (30) days after the date of such written notification and proceed thereafter with continuing due diligence until the default is cured; provided however, that if a default exists due to Operator's acts or failure that pose an imminent threat to persons or property, Operator shall take immediate steps to cure such default and to eliminate and remediate same. If Operator is in default in the payment to Owner of any monies due to Owner under this Agreement, such default must be cured within thirty (30) days after the date of Owner's written notification. Waiver of any default shall not be deemed a waiver of subsequent defaults, but written notice thereof shall be given by Owner to Operator as herein provided. In the event Operator does not initiate action to cure the default within the specified time, and without limiting any of Owners' other rights or remedies, the rights of Operator shall be suspended until such default has been cured Owner shall not be liable for any loss or damage to Operator occasioned by Owner's enforcement of this provision.

19. This Agreement does not grant or acknowledge any right of Operator to use water or water rights belonging to Owner. Operator shall be solely responsible for obtaining any water supplies and/or water rights and conveyance facilities necessary for Operator's operations.

20. Operator shall maintain any and all bonds required by the State of Colorado to conduct the operations contemplated herein. All such bonds shall be maintained throughout the term of this Agreement; and continue in force and effect until all obligations under this Agreement, including but not limited to reclamation obligations, are fulfilled by Operator.

21. Operator shall secure and maintain liability insurance and shall provide Owner with a certificate of insurance evidencing Operator's liability insurance.

22. Operator agrees to indemnify, defend and hold Owner harmless from any and all loss, costs, damages, claims, attorneys' fees and expenses of every kind and nature that Owner may suffer, expend or incur under or by reason, or in consequence of or growing out of the operations or activities of Operator or Operator's representatives, agents, employees or contractors on the Property.

23. In any action or proceeding brought by a party to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs. This Agreement and all the covenants contained herein shall be binding upon the parties, their successors, heirs, or assigns.

24. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns. Operator shall provide Owner with written notice of any assignment of this Agreement by Operator.

25. This Agreement shall not be placed of record without the written consent of Owner and Operator; however, Owner agrees that Operator may file in the county records a "NOTICE OF SURFACE DAMAGE AND ROAD USE AGREEMENT" to provide third party notice of this Agreement.

Owner:

**Giuliano & Sons Coal Company**

By: [Signature]

Name: PATRICK M. VASILO

Title: ATTORNEY IN FACT

12-4-18

Operator:

**AusCo Petroleum, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)ss.

COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned, a Notary Public, on this \_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared \_\_\_\_\_, to me known to be the identical persons described herein and who executed the within and forgoing instrument and acknowledged to me that they duly executed same as their free and voluntary act.

IN WITNESS WHEREOF, I have set my hand and affixed my seal the date above written.  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Address: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)ss.

COUNTY OF \_\_\_\_\_ )

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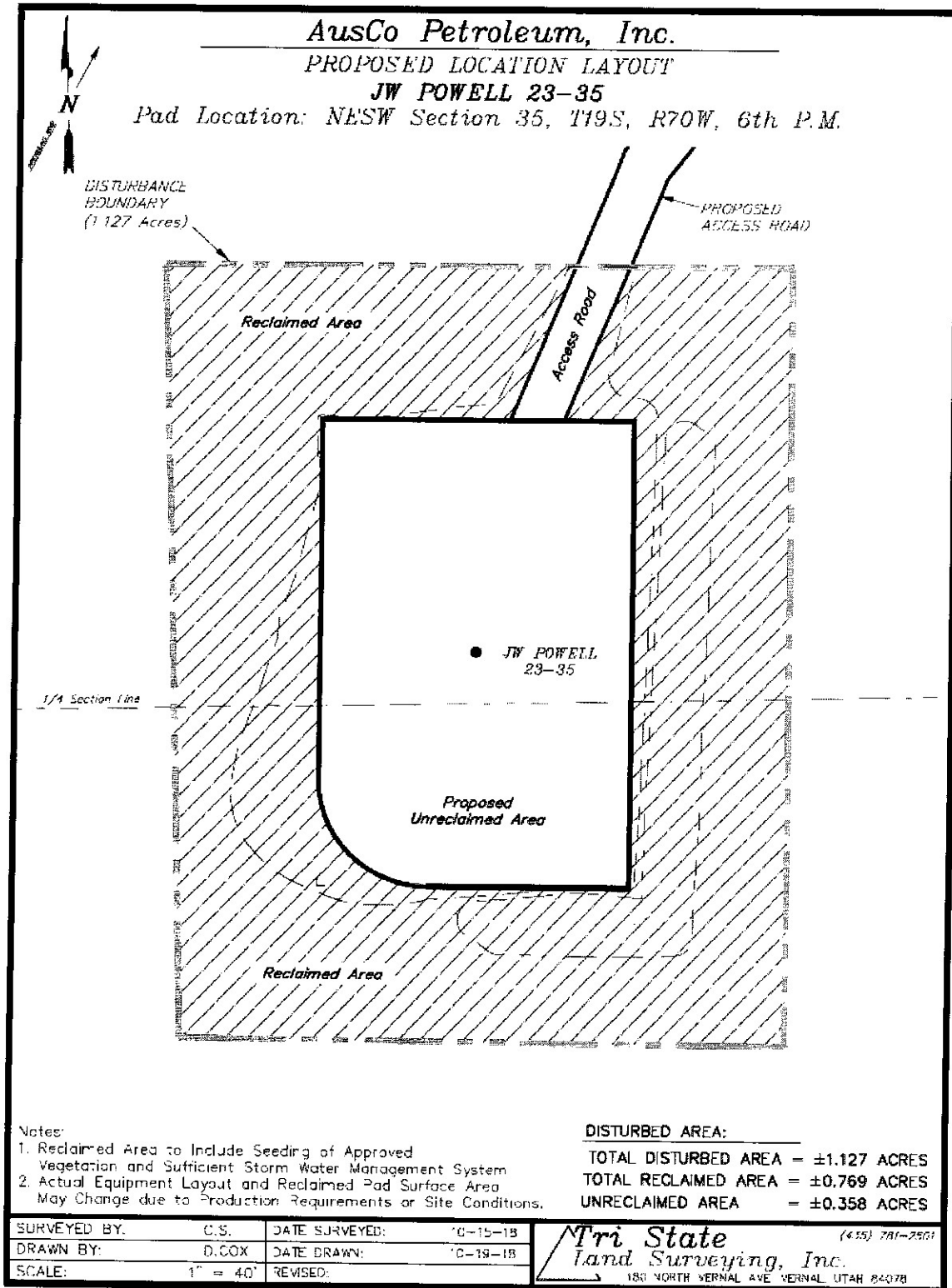
\_\_\_\_\_  
Notary Public

Address: \_\_\_\_\_

*pmv*



# Attachment\_A



*Pm v*