

SURFACE USE AGREEMENT

This Surface Use Agreement ("Agreement") is made and entered into this 20th day of August, 2019, by and between the City of Thornton, a Colorado home rule municipality, 9500 Civic Center Drive, Thornton, CO 80229 ("Owner"), and Bayswater Exploration & Production, LLC a Colorado limited liability company, whose address is 730 17th Street, Suite 500, Denver, Colorado 80202 ("Operator"), sometimes referred to each as a "Party" or collectively as the "Parties."

WITNESSETH:

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

1. **OWNERSHIP.** Owner is the surface owner of certain lands located in Weld County, Colorado as more specifically described as follows ("Lands"):

Farm #53-6: A portion of Section 6, Township 7 North, Range 65 West of the 6th P.M., further described in **Exhibit 1** attached hereto and incorporated herein by this reference.

On December 12, 2018, Owner and Operator entered into leases #13/50 and #14, comprised of Farms 40/53, 60-1, 60-2, 93, and 118-2, which includes minerals in Sections 1, and 2, of Township 7 North, Range 66 West recorded on December 12, 2018 at Reception Nos. 4454479 and 4454484 with the Weld County Clerk and Record's Office (each a "Lease Agreement," collectively, the "Lease Agreements"). The terms and conditions of said Lease Agreement(s) are incorporated as if fully set forth herein. To the extent that third parties may own a working or operating interest in or under a valid oil and gas lease or leases covering a portion of the Lands, lands covered by the Lease Agreements, or lands pooled or included in a spacing unit therewith, Operator represents to Owner that it has the express or implied authority under agreements with such third parties to enter into this Agreement. Operator further acknowledges that Owner has entered into a non-surface occupancy Lease Agreement dated April 16, 2019, for Farms 23, 53-6, and 73 with Enerplus Resources (USA) Corporation ("Enerplus"), for minerals associated with the Lands herein, and agrees that Operator will conduct its operations so as to not prevent Enerplus from exercising its rights under this lease between Owner and Enerplus.

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator may drill or cause to be drilled 32 (Thirty-Two) oil and/or gas well(s) on the Lands ("Wells") subject to the terms and provisions of this Agreement. In order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities associated therewith, including, but not limited to, access roads ("Access Roads"), pipelines, flow lines, separators, tank batteries, electric lines, and any other facilities or property or equipment necessary for the operation and production of the Wells (each a "Facility," collectively, the "Facilities"), it is necessary that Operator enter and utilize a portion of the surface of the

Lands. The Parties enter into this Agreement to evidence their agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's reasonable and customary use of the Lands and to define and limit the Facilities on the Lands.

3. **FUTURE USE OF THE LANDS.** Subject to the provisions of any Lease Agreement between Owner and Operator, Operator may drill future oil and gas wells on the Lands, including horizontal and directional wells that produce from and drain lands other than the Lands, provided such lands are validly pooled with all or any portion of the lands included in Operator's Lease Agreement covering the Lands, and so long as such locations are permitted locations under the then applicable well spacing regulations, rules or orders of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC. However, for any well not identified in Section 2 above, Section 7 applies and Operator and Owner agree to enter into appropriate surface use agreements relative to wells that may be drilled on Lands in the future. Operator shall not otherwise have the right to drill new wells on the Lands.
4. **LOCATION.** The location of the Wells, the Access Roads, the flow lines and all other Facilities to be constructed on the Lands (collectively the "Operations Area") are depicted on **Exhibit A**. Other than as shown on Exhibit A, Operator will not use or disturb the surface of the Lands. In exchange for Owner granting Operator use of the Lands herein, Operator agrees and acknowledges that it is relinquishing and terminating any right provided in the Lease Agreements for itself and any successors or assigns to conduct surface operations or locate additional surface operations areas on any of the lands associated with the Lease Agreements #13/50 and #14.
5. **GOVERNMENTAL PROCEEDINGS.** Owner shall not oppose Operator in any agency or governmental proceedings, including but not limited to the COGCC or other governing body proceedings, relating to Operator's operations on the Lands (including but not limited to drilling, workovers, well deepening and recompletions), provided that Operator's position in such proceedings is not inconsistent with this Agreement or the Lease Agreement between Owner and Operator.
6. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of the Lease Agreement, this Agreement, and the rules and regulations of the COGCC. In the event of a conflict between the terms and provisions of this Agreement and the Lease Agreement, this Agreement shall control.
7. **COMPENSATION AMOUNT.** Operator shall pay Owner [REDACTED] per Well plus [REDACTED] for each time Operator remobilizes to drill additional wells ("Amount"). Payment for each well shall be made prior to the day when the drilling bit penetrates the surface utilizing a drilling rig capable of drilling the well to the authorized total depth or spud date for that well. The compensation paid herein is for the reasonable and customary use of the Operations Area. If, by reasons resulting from the operations of Operator, there is damage to real or personal property on the Lands, including but not limited to, damage to livestock, crops, structures, buildings, fences, culverts, cement ditches, irrigation

systems, and natural water ways, the damages shall be repaired or replaced by Operator or Operator shall pay reasonable compensation to Owner for the damage or an amount equal to the reasonable costs to repair the damage. Damage to or loss of livestock shall be paid for by Operator at the higher of market value or replacement cost.

This Agreement does not relieve Operator from liability due to Operator'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 Operator's flow lines. Any pollution of the Lands 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 Lands and/or groundwater.

8. **ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES**. With respect to its operations on the Lands, Operator will comply with the following provisions:

A. Access Roads:

- i. Access Roads will not exceed 24 feet in width.
- ii. Operator will insure that all of its vehicles accessing the Lands on its behalf remain on the Access Roads.
- iii. Operator agrees to back-slope all Access Roads.
- iv. Operator will provide Owner with a minimum of ten (10) days' prior written notice before restoring the surface of all Access Roads to be permanently abandoned by Operator. No later than ten (10) days following receipt of such notice, Owner may elect, in writing, not to have such Access Road abandoned by Operator. In such event, Operator will have no liability under this Agreement, the Lease Agreement, or otherwise, to restore the surface of the Lands utilized as Access Roads. Failure to timely respond will be deemed as Owner's election that Operator shall proceed with the abandonment of the Access Roads and the restoration of the surface thereof to preexisting conditions, including reestablishing the healthy growth of vegetation.
- v. Operator will stockpile and save any topsoil removed while constructing Access Roads for rehabilitation or re-seeding as reasonably directed by Owner.
- vi. Operator will maintain all Access Roads in good repair and condition during the drilling, completing, equipping, and operating of the Wells.
- vii. Operator shall use commercially reasonable and environmentally friendly efforts to control dust.

- viii. Access roads may be used by Owner so long as such use does not unreasonably interfere with Operator's use.
- ix. Culverts shall be installed at ditch and drainage crossings to prevent obstruction to the free flow of the volumes of water being carried, inclusive of flood stages. Operator shall protect all water sources and conveyance structures, including but not limited to the natural flow of creeks, wells, and ditches, from all operational activities and shall immediately remedy any diversion, curtailment, or blockage of water flows or contamination of water sources.
- x. Permanent gates shall be installed at each point where the road intersects perimeter or cross fences. The parties agree to keep all gates locked in a manner to permit access by Owner and Operator at any time, either by a double lock system or otherwise.
- xi. Owner shall have the right to relocate any road, provided that such relocation does not interfere with Operator's operations. Any relocated road shall be of similar utility, and all costs associated with such relocation, other than maintenance by Operator to the standards set forth in this Agreement, shall be at Owner's expense.

B. Surface Restoration:

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be restored by Operator to their original contour and condition as nearly as is reasonably practicable and re-seeded if so requested by Owner. However Operator's intent to abandon any Access Roads will be subject to the provisions of Section 8(A)(iv).

C. Abandoned Flow Lines:

All abandoned flow lines shall at the option of Owner be either (1) abandoned in accordance with the COGCC rules in effect at such time, or (2) removed and the land shall be reclaimed to its preexisting condition. Prior to removal of the flow lines, Operator shall notify Owner so that Owner may inspect the excavation.

D. Other.

- i. Operator will install culverts on the Lands as may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.
- ii. If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is

unanticipated damage to personal property of the Owner or Owner's tenants, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, crops, or irrigation systems, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Well's construction and Operator will repair or replace such items after consultation with the Owner within fifteen (15) days of occurrence.

- iii. Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands that are not necessary for continued operations of the Wells will be removed and disposed away from the Lands no later than thirty (30) days after completion of the Wells. No such items will be burned or buried on the Lands.
- iv. During construction and subsequent operation of the Lands, Operator shall keep the Facilities and access roads clean, graded, and free from weeds.
- v. If the lands are farmed with a perennial crop such as alfalfa, operator, in addition to the Amount stated herein, shall pay the Owner [REDACTED] per acre disturbed by Operator's operations as a one time payment for compensation for reestablishment of such crops.
- vi. At the completion of the drilling operation, Operator agrees to comply with all COGCC rules and regulations. Operator shall restore all grades, other than those being utilized as a part of the ongoing Operations Area, as nearly as possible to the conditions as they existed prior to the execution of this Agreement, unless other arrangements are agreed to between the Parties.
- vii. Operator agrees to install screen and fencing around the well and its Facilities.
- viii. Operator agrees to perform all drilling operations utilizing a closed loop system for any drilling fluids used as part of the drilling, hydraulic fracturing, and reworking operations associated with this Agreement. There shall be no pits constructed on the Lands.
- ix. Operator agrees to report hydraulic fracturing chemical contents to FracFocus for any drilling fluids used as part of the drilling, hydraulic fracturing, and reworking operations associated with this Agreement.
- x. Operator's employees shall not park on the Lands outside of the Operations Area and are permitted to park in the Operations Area only while conducting operations on behalf of the Operator. No living quarters shall be constructed upon the Lands, except that drilling crews and geologists or service personnel may use temporary trailers during drilling, completion, or reworking activities.

- xi. None of Operator's employees, agents, or contractors, or any other person under the direction or control of Operator shall be permitted to carry firearms or any other weapon on the Lands and such persons shall not hunt, fish, or engage in recreational activities on the Lands. No dogs will be permitted on the Lands at any time. Operator will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing, or recreational activities will be allowed on the Lands. None of Operator's employees, agents, or contractors, or any other persons under the direction or control of Operator, shall possess or be under the influence of alcohol, marijuana, or illegal drugs while on the Lands. Further, Operator and its employees, agents, or contractors, or any other person under the direction or control of Operator shall not cut or transport firewood or remove artifacts and other non-oil and gas materials from the Lands.
- xii. Lighting shall be limited to that reasonably necessary to illuminate areas for ongoing night-time operations, safety and security. To the extent practicable, site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units.
- xiii. The Operator shall install all noise mitigation measures as required by the Colorado Oil and Gas Conservation Commission or local regulations as they exist from time to time.
- xiv. Operator shall employ the best available equipment to recycle volatile organic compounds from tanks and separators in order to minimize escape of VOC's into the environment. Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Lands. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Lands which are reportable to regulatory authorities under applicable law or regulations shall be reported within twenty-four (24) hours to Owner by telephone, or e-mail, to be followed by copies of written notices which Operator has filed with regulatory authorities within five (5) business days after such filing.
- xv. Operator shall be 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 Operator's activities.
- xvi. Owner shall have the right to cross flow lines with roadways provided such crossing is made at an angle of not less than 60 degrees and not more than 90 degrees.

Notwithstanding the foregoing or any applicable notice requirements set forth in this Agreement, in the event of an emergency, Operator shall have immediate access to its Wells or its Facilities on the Lands.

9. **DEFAULT AND RIGHT TO CURE.** In the event of a default by Operator in the payment of any of the sums herein provided to be made, in obligations to be performed, or any other terms, conditions or covenants of the Agreement, Owner is hereby authorized upon notice, to terminate this Agreement. In the event of any such failure or default, Owner shall, before terminating, send to Operator by certified mail, to the post office address of said Operator as shown in Section 16, a notice of intention to terminate for such failure or default, specifying the same, stating that if within thirty (30) days from the date of mailing said notice, Operator shall correct such failure or default, no termination will be made; provided if the default is of a nature that cannot be reasonably cured within such 30-period, Operator shall commence the curing of the default within such 30-day period and shall thereafter diligently complete the cure. If such failure or default is not corrected within thirty (30) days after the mailing of such notice, or such longer period as provided above, this Agreement will terminate and be canceled by operation of this Section without further action by Owner, or further notice to Operator. If in the Owner's reasonable opinion Operator is no longer diligently curing the default, Owner may mail Operator a final notice of termination to take effect in thirty (30) days from the date of the final notice. Such termination or cancellation shall not serve to release Operator from its obligations under this Agreement that have accrued prior to the date of termination or cancellation. If during the term of this Agreement, Operator has been given notice of default under this Section two (2) times for the same or similar material violations; upon a third material violation, Owner shall not be required to provide a thirty (30) day period to correct such failure or default, and can by written notice declare this Agreement immediately terminated with no further action required by Owner or recourse by Operator.
10. **WAIVER OF BREACH.** Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach.
11. **WAIVER OF THIRTY (30) DAY NOTICE.** Owner hereby waives the minimum thirty (30) day written notice requirement for operations to begin and any other notice, or consultation requirement of the COGCC, except as provided in Section 12. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owner after it has submitted a request for permit to drill from the COGCC.
12. **NOTICE FOR ADDITIONAL OPERATIONS.** Operator will comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operation thereto.
13. **LIABILITY, RELEASE, AND INDEMNITY.** Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 14 below) all

losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation, attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with Operator's operations or actions under this Agreement or under the Lease Agreement, no matter when asserted, shall remain the sole legal responsibility of the Operator. Operator shall release, defend, indemnify, and hold Owner, its officers, directors, employees, successors and assigns, harmless against all such Claims. Nothing herein contained shall limit Operator's obligation to reclaim the Lands as required by this Agreement.

14. **ENVIRONMENTAL INDEMNITY.** The following definitions shall apply to this Section 14:

"Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Lands or ownership of the oil and gas leasehold interests, or ownership of the mining lease, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any Party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party.

"Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligations, or standards with respect to pollution or the protection of the environment, including but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); the Clean Water Act (33 U.S.C. § 466 et seq.); the Safe Drinking Water Act (14 U.S.C. §§ 1401 1450); the Hazardous Material Transportation Act (49 U.S.C. § 1801 et seq.); the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601 2629).

Operator shall defend, indemnify and hold harmless Owner, its successors and assigns, from Environmental Claims relating to the Lands that arise out of Operator's operations.

15. **INSURANCE.** The Operator agrees:

- A. To procure and maintain in force during the term of this Agreement, at Operator's own cost, the following coverage:
 - i. Commercial General or Business Liability Insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) general aggregate.

- ii. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000) for any one occurrence, with respect to each of the Operator owned, hired or non-owned vehicles assigned to or used in the operation of the Lands. In the event that the Operator's insurance does not cover non-owned automobiles, the requirements of this Section shall be met by each employee of the Operator who utilizes an automobile in the execution of this Agreement.
 - iii. Worker's Compensation Insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance.
- B. If approved by Owner in writing, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.
- C. A Certificate of Insurance ("Certificate") shall be completed by the Operator's insurance agent(s) as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by Owner's Risk Management Office. The Certificate shall identify this Agreement and name the City of Thornton, its officers, agents, and employees as an additional insured and include all Additional Insured endorsements. D. Failure on the part of the Operator to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of this Agreement upon which Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by the Operator to Owner upon demand.
- E. Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Operator agrees to execute any and all documents necessary to allow Owner access to any and all insurance policies and endorsements pertaining to this Agreement.
- F. The parties hereto understand and agree that Owner, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations nor any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as from time to time amended, or otherwise available to Owner, its officers, or its employees.
16. **NOTICES.** Notice by a Party to the other will be promptly given, orally if possible (with the exception of the default notice described in Section 9), with subsequent written confirmation sent by United States mail, postage prepaid, or email, and addressed to that Party at the address, or email address as designated below; or to such other place as either

Party may from time to time designate by notice to the other given as provided in this Section 16:

Owner

City of Thornton
Attn: Real Property Manager
9500 Civic Center Drive
Thornton, CO 80229
Email: scott.twombly@cityofthornton.net

Operator

Bayswater Exploration & Production
Attn: Tyler Hammond
730 17th Street, Suite 500
Denver, CO 80202
Email: thammond@bayswater.us

17. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owner agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owner.
18. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective successors or assigns.
19. **TERM.** This Agreement will remain in full force and effect for so long as Operator has the right to conduct oil and gas operations on the Lands pursuant to the Lease Agreement; provided, however, that the termination of the Lease Agreement or this Agreement will not relieve the Parties from their respective obligations or liabilities arising therein prior to such termination.
20. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.
21. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Colorado.
22. **SUCCESSORS.** This Agreement constitutes a covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, administrators, trustees, executors and assigns.
23. **AUTHORITY OF SIGNATORIES.** The signatories below declare, warrant, and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.
24. **CONFIDENTIALITY.** The parties acknowledge and understand that Owner is a public entity, and therefore, by operation of law, the majority of documents in Owner's possession


are public records for open review by the general public as required by law, including, but not limited to, the Colorado Open Records Act (“CORA”). Operator may identify confidential proprietary information as confidential in a clear and distinct manner on the document. However, the fact that a document is marked confidential does not make a document exempt from public inspection. Owner shall make the determination as to whether a document is exempt from public inspection pursuant to CORA. Owner shall be held harmless from any claims arising from the release of claimed confidential and proprietary information not clearly designated as such by Operator, or if designated as such, which is determined by a court of competent jurisdiction to not be subject to protection from disclosure under CORA.

IN WITNESS WHEREOF, the Parties have set their hands the day and year first written above.


Signature Pages Follow

OWNER:

CITY OF THORNTON,
a Colorado home rule municipality

By: 
Kevin S. Woods, City Manager

ATTEST:


Kristen N. Rosenbaum, City Clerk

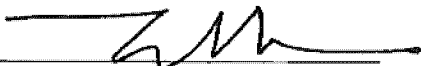
APPROVED AS TO FORM:

Luis A. Corchado, City Attorney


By: Senior Assistant City Attorney

OPERATOR:

BAYSWATER EXPLORATION & PRODUCTION, LLC,
a Colorado limited liability company



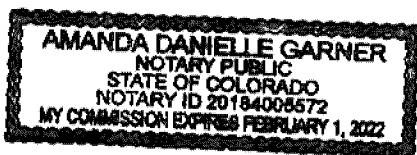
By: Lynn S. Belcher
Title: Executive Vice President

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 8 day of
August, 2019 by Lynn S. Belcher as Executive Vice President of Bayswater
Exploration & Production, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 2/1/22





NOTARY PUBLIC

Exhibit 1

(#53-6)

Lot "B" of Recorded Exemption No. 0709-06-3-RE911, being a part of the SW/4 of Section 6, Township 7 North, Range 65 West of the 6th P.M.

Exhibit A

