

SAMPLE**FORM SURFACE USE AGREEMENT**

THIS SURFACE USE AGREEMENT (“**Agreement**”), is made and entered into this ____ day of _____ 200__ (“Effective Date”), by and between _____, a _____, with its principal place of business located at 701 Market Street, St. Louis, Missouri 63101 (“Owner”) and _____, a _____, with its principal place of business located at _____ (“Operator”). Owner and Operator are sometimes individually referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS, Owner believes, without warranty of title, express or implied, it owns, or holds undivided interests in, the surface of certain real estate (the “**Land**”) in _____ County, _____, described on Exhibit “A” attached hereto and incorporated herein by this reference (“**Surface Lands**”);

WHEREAS, Operator acquired from Owner or its predecessors rights to explore for, develop, produce, and sell oil and gas (including, without limitation, coalbed methane (“**CBM**”), coal mine methane (“**CMM**”) and associated gases) together with rights to current and future environmental or greenhouse gas emission reduction credits or allowances (collectively, “**ERCs**”) developed from the production, sale, use or flaring of CBM or CMM underlying the Surface Lands (collectively, “**Oil and Gas**”) through various deeds, assignments, and other agreements (collectively, “**Oil and Gas Transfer Documents**”) described on Exhibit “B” attached hereto and incorporated herein by this reference;

WHEREAS, Operator’s Oil and Gas rights and interests are subject and subordinate to, among other things, senior surface and other mineral (excluding Oil and Gas) rights (including, without limitation, rights to conduct agricultural, commercial, recreational and coal mining operations) in, under, or with respect to the Surface Lands reserved by Owner and its predecessors in the Oil and Gas Transfer Documents (as more specifically defined in Section 2.C., “**Reserved Rights**”);

WHEREAS, pursuant to the Oil and Gas Transfer Documents, Operator seeks to obtain site specific non-exclusive rights of ingress and egress on and over the Surface Lands and certain rights to conduct Oil and Gas exploration, development, production and transportation operations further described herein (collectively, “**Oil and Gas Operations**”) on the Surface Lands;

WHEREAS, Operator agrees to conduct all Oil and Gas Operations on the Surface Lands pursuant to the terms and conditions of this Agreement, the Oil and Gas Transfer Documents, and any written cooperative development plans (“**Development Plans**”) described on Exhibit “C” attached hereto and incorporated herein by this reference or that are hereafter mutually agreed to by the Parties and their respective successors; and

WHEREAS, Owner is agreeable to granting such rights for the consideration and on the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the mutual covenants, promises, and obligations set forth herein, the Parties hereby agree as follows:

1. Term. This Agreement shall commence as of the Effective Date and, so long as Owner does not exercise its Reserved Rights as provided in the Oil and Gas Transfer Documents with respect to all or part of the Surface Lands, shall remain in force and effect for a primary term of five (5) years (“**Primary Term**”) and shall continue so long thereafter as there is commercial production of Oil and Gas from the Surface Lands until the occurrence of any of the termination events described below. The Agreement may terminate any time during or after the Primary Term with respect to all or part of the Surface Lands upon the occurrence of either of the following events:

a. with respect to each drilling, spacing or production unit on Surface Lands subject to this Agreement, at such time as Operator, at its sole cost and expense, properly plugs and abandons all Oil and Gas wells, degasification wells, water disposal or injection wells, monitor wells, and stratigraphic test holes (collectively, “**Wells**”), removes all related wellhead equipment, pumps, flares, machinery, materials, tanks, buildings, communication systems (including telephone lines), compression facilities, metering devices, saltwater disposal facilities, powerlines, processing plants, and any other surface facilities and plants associated with the Wells or the conduct of other Oil and Gas Operations (collectively, the “**Equipment**”) from such unit, abandons in place, removes or enters into a separate written agreement with Owner pursuant to Section 7, as the case may be, all underground gathering systems, pipelines, or power lines (collectively, “**Underground Infrastructure**”) and completes reclamation and restoration of the Surface Lands including, without limitation, all Well and Equipment sites, roads, catchment basins, ditches, impoundments, and reservoirs as required under applicable governmental permits and approvals (collectively, “**Permits**”), applicable federal, tribal, state and local laws, regulations, ordinances, and rules (collectively, “**Laws**”) and this Agreement. Notwithstanding the preceding provision, however, this Agreement shall not terminate if Operator has not timely performed all of its duties and obligations in this Agreement with respect to the remainder of the Surface Lands; or

b. upon a material default by Operator that Operator has not cured or diligently commenced to cure as provided in Section 18.

After the Primary Term, this Agreement may terminate upon the occurrence of either of the following events:

(1). Operator’s thirty (30) days’ prior written notice of termination to Owner with respect to the all or part of the Surface Lands; provided, however, Operator shall have no right to terminate this Agreement until all material duties and obligations set forth in this Agreement have been fully performed by Operator; or

(2) commercial production of Oil and Gas from the lands underlying the Surface Lands and all lands pooled therewith is suspended by Operator, at its election, for a period of three hundred and sixty-five (365) consecutive days. For purposes of this Section 1

“**commercial production**” shall mean either: (i) Oil and Gas production sufficient to yield a return in excess of operating costs; or (ii) the continuous operation of one or more dewatering wells that are reasonably expected to result in the production and sale of Oil and Gas in excess of operating costs;

If the Agreement automatically terminates due to the occurrence of events described in subparagraphs 1(b) or (d) above, Operator, at its sole cost, shall have the right for a period of one hundred and twenty (120) days following such termination to obtain access on and over the Surface Lands to promptly plug and abandon all Wells drilled, owned, or operated by Operator, and remove all Equipment, abandon or remove Underground Infrastructure as provided herein, and reclaim the Surface Lands as required under applicable Permits and Laws, this Agreement, and applicable Development Plans. If the Agreement terminates with respect to part of the Surface Lands, the Parties shall promptly amend the description of the Surface Lands thereafter subject to the Agreement and record a memorandum of the amendment with the _____ County Clerk and Recorder’s Office.

2. Grant of Rights.

A. Surface Access and Use. Owner, to the extent of its interest in the Surface Lands, hereby grants unto Operator a private right-to-enter upon and use so much of the Surface Lands as is reasonable and necessary solely for the purpose of conducting Oil and Gas Operations which shall include, without limitation, the following rights to:

(i) survey and stake locations for Wells, Equipment, Underground Infrastructure, and other facilities on or under the Surface Lands;

(ii) drill, complete, re-work, operate, maintain, repair, and plug and abandon Wells on the Surface Lands and all lands pooled therewith;

(iii) establish, construct, install, operate, maintain, repair and remove Equipment, Underground Infrastructure and any other surface facilities required or necessary to explore for, produce, flare, vent, process, store and transport Oil and Gas (including ERCs) from the land underlying the Surface Lands and all lands pooled therewith; and

(iv) acquire a license or contractual right to use areas mutually agreed upon by the Parties to serve as transportation (roads, pipelines, and gathering systems) and utility (communications systems and power lines) corridors across the Surface Lands for purposes of producing Oil and Gas from lands underlying the Surface Lands and other real property in the area. To the maximum extent reasonably possible, Operator will use existing roads on the Surface Lands for its Oil and Gas Operations, and, if construction of any new roads is required for such operations, Operator will consult with Owner so as to build or locate such new roads consistent with Section 5 of this Agreement and any applicable Development Plans and in areas that will not unreasonably interfere with or impede other operations on or under the Surface Lands conducted by Owner or other parties.

The conduct of all Oil and Gas Operations shall be subject to the terms and conditions of this Agreement, the Oil and Gas Transfer Documents, and Development Plans as provided in Section 2.C.

B. Non-Exclusive Surface Rights. The surface rights granted by Owner to Operator are site specific, non-exclusive and contractual in nature, and Owner in connection with the exercise of its Reserved Rights, but without limitation on such Reserved Rights, hereby reserves, among other things, the following rights to:

(i) contract, use, allow third party use, relocate and remove, with no obligation to Operator, access roads, infrastructure and improvements on and over the Surface Lands, whether existing or subsequently developed in connection with Owner's exercise of its Reserved Rights or otherwise;

(ii) grant contracts, rights-of-way, easements, leases, licenses and other access rights (collectively, "**Subsequent Agreements**") on, in, and over the Surface Lands to third parties for any purpose Owner deems necessary or desirable which shall be subject to Operator's exercise of the rights granted pursuant to this Agreement except as otherwise expressly provided in Section 2.C.(ii). Owner shall have the continuing right to allow third parties to utilize roads on the Surface Lands, and, at Owner's option, to charge and receive compensation for such third party use of the roads, and Operator shall not be entitled to any reimbursement or portion of the additional compensation which may be received by Owner from third parties. Owner will require any third party using any road on a continuing or regular basis to share in Operator's cost of maintaining such road to the extent of its actual use; and

(iii) use all new roads on and over the Surface Lands constructed and maintained by Operator in connection with the conduct of its Oil and Gas Operations; provided, however, that Owner shall not materially interfere with or impede such operations and provided, further, that Owner shall be responsible for any damages or costs resulting from such use other than costs associated with Operator's routine road maintenance.

Maps depicting specific locations of all roads, rights-of-way, easements and other similar access rights subject to this Agreement will be attached hereto as Exhibit "D" and incorporated herein by this reference, and such maps shall be updated from time to time by the Parties.

C. Limitation of Operator's Rights. Operators' rights under this Agreement are subordinate or subject to the following:

(i) all existing agreements, bonds, financial assurances and letters of credit, contracts, leases, licenses, Permits, third party ownership interests, and rights-of-way or easements on, in or that encumber the Surface Lands as of the Effective Date of which Operator has actual or record notice or would have notice as of the Effective Date upon reasonable inquiry and inspection of the Surface Lands; and

(ii) the Oil and Gas Transfer Documents and Development Plans entered into with Owner and its predecessors and successors, as well as Subsequent Agreements covering the Surface Lands by Owner in the exercise of its Reserved Rights; provided, however, that Owner shall not enter into Subsequent Agreements that materially interfere with or impede Operator's Oil and Gas Operations except as otherwise expressly provided in the Oil and Gas Transfer Documents.

Nothing set forth in this Agreement shall be interpreted or construed to restrict Owner's right to use, sell, assign, lease, transfer, encumber, or otherwise deal with any portion of the Surface Lands so long as such transactions are made subject to the terms and conditions of the Oil and Gas Transfer Documents, this Agreement and applicable Development Plans.

3. Payments.

A. Well and Facility Site Fee. Operator shall pay Owner a fee ("**Well and Facility Site Fee**") in lieu of actual damages to the Surface Lands sustained by Owner due to drilling, testing, and completing each Well, installing all Equipment, Underground Infrastructure, and constructing fences, roads, surface gathering systems, pipelines and power lines with Owner's prior approval, and related facilities to produce, process, and transport Oil, Gas, or water from the lands underlying the Surface Lands. The initial Well and Facility Site Fee shall be deemed to compensate Owner for actual or deemed disturbance of the Surface Lands associated with Operator's Oil and Gas Operations but shall not apply to damages to existing crops, livestock and personal property and injuries to persons described in Section 3.C. The Well and Facility Site Fee shall be calculated at the rate of One Thousand Eight Hundred Dollars per acre of actual disturbance of Surface Lands, and shall be increased or decreased proportionately to the extent such actual disturbance is more than, or less than, one (1) acre. The initial amount of the Well and Facility Site Fee shall be escalated at the rate of two percent (2.0%) per annum commencing on the third anniversary of the Effective Date. A payment of One Thousand Eight Hundred Dollars (\$1,800.00), which shall be fully creditable against the initial Well and Facility Site Fee, shall be delivered by Operator to Owner upon its execution and delivery of this Agreement to Operator. In the event such payment exceeds the amount of the initial Well and Facility Site Fee, Owner shall promptly refund such excess amount to Operator. Thereafter, all subsequent Well and Facility Site Fee payments shall be made to Owner within thirty (30) days after commencing the drilling of each Well or the installation of Equipment, Underground Infrastructure, or related surface facilities, as the case may be. Each payment shall be accompanied by a written statement from Operator that identifies the specific area disturbed and a calculation of the total acreage disturbed or deemed to be disturbed for which the payment is made.

B. Annual Rental. In addition to the Well and Facility Site Fee, Operator shall pay Owner an annual rental payment of One Hundred and Fifty Dollars (\$150.00) ("**Annual Rental**") for each location for which a Well and Facility Site Fee was paid pursuant to Paragraph 3.A; provided that the amount of the Annual Rental shall be escalated at the rate of two percent (2.0%) per annum commencing on the third anniversary of the Effective Date.. Except as otherwise provided below, an Annual Rental will be due one (1) year after completing each Well or constructing each above ground facility together with roads and other permanent surface improvements and each year thereafter until the Well or above ground facility site, are properly plugged and abandoned, reclaimed or removed, as the case may be. For ease of administration and

accounting, the Parties may agree in writing on an Annual Rental payment date for all existing and future payments due under this Agreement. In establishing such a date, all Annual Rentals shall be prorated to such date.

C. Damages to Crops, Personal Property and Persons. In addition to the initial Well and Facility Site Fees and Annual Rentals, if any existing crops, livestock, personal property (including fixtures and improvements (such as buildings)) of Owner, or its employees, agents, contractors, designees, invitees, lessees, licensees, or tenants or other third parties are damaged or injured by or due to Operator's Oil and Gas Operations on or with respect to the Surface Lands (collectively, "**Collateral Damages**"), Operator shall pay the injured parties for all actual damages, costs, and expenses (including reasonable attorneys' fees and costs) attributed to such Collateral Damages. Upon receipt of any information relating to Collateral Damages, Owner shall promptly provide such information to Operator. The baseline for determining the amount of crop damage and productivity will be the average of net sales for the two (2) growing seasons immediately prior to the date the Collateral Damages occurred. The actual amount of crop damages will be determined by Owner or its tenant farmer and Operator using the best information available from Owner, its tenant farmer, and government agricultural agencies. If the parties are not able to agree upon the total amount of crop damage the matter will be submitted to arbitration pursuant to Section 21.

D. Compensation for Reasonable Damages. The payments and other obligations set forth in this Section 3 constitute the entire compensation due Owner or other third parties for claims, damages, injuries or costs due to Operator's occupancy, use, and disturbance of the Surface Land permitted pursuant to Section 1 so long as Operator does not damage the Surface Lands beyond what is reasonable and customary in the Oil and Gas industry or is not grossly negligent or does not engage in any intentional misconduct.

4. General Oil and Gas Operating Procedures. In conducting Oil and Gas Operations, Operator shall minimize, to the extent commercially reasonable, the amount of disturbance to, use of and adverse impacts to the Surface Lands. All Oil and Gas Operations by Operator on the Surface Lands shall be conducted as follows:

a. Notification. Operator shall consult with Owner on the location, timing, and placement of any Wells, Equipment, Underground Infrastructure or other surface facilities on the Surface Lands in accordance with this Agreement.

b. Compliance with Laws and Permits. Operator shall comply with all applicable Laws and Permits governing or regulating its Oil and Gas Operations on the Surface Lands, including the payment of any taxes, fees or fines imposed on its activities or property by any governmental authority. Operator shall obtain all necessary Permits before conducting any activities on the Surface Lands and Owner shall cooperate in good faith with Operator in its efforts to secure all Permits. If Operator breaches any obligations under any applicable Laws or Permits, or fails to obtain any necessary Permits, Operator shall promptly take appropriate action to remedy such breach. Operator shall have the right to contest or dispute any alleged violation of any Laws or Permits.

c. No Liens Against the Surface Lands. Operator shall be solely responsible for the payment of all labor, material, equipment, and supplies contracted by or furnished at its insistence or request. Operator shall not suffer or allow any materialman's, mechanic's or other liens to exist against the Surface Land resulting from its Oil and Gas Operations.

d. Impacts on Owner's Activities and Uses. Operator recognizes that Owner utilizes the Surface Lands in the exercise of its Reserved Rights and agrees to take all action reasonably required pursuant to this Agreement and all applicable Development Plans to coordinate its operations with Owner's to minimize adverse impacts on Owner's operations.

e. Reports. Operator shall furnish Owner with copies of all reports relating to compliance with all Permit requirements or otherwise submitted to governmental agencies concerning its Oil and Gas Operations on the Surface Lands.

f. Taxes. Operator agrees to timely reimburse Owner for all taxes and fees assessed against Operator's assets on the Surface Lands including all Wells, Equipment, and improvements thereon owned by Operator and all taxes based upon or assessed against or with respect to the production by Operator of Oil and Gas in and underlying the Surface Lands. Owner shall provide Operator with copies of any tax or related statements it receives identifying Operator's tax or assessment obligations under this Agreement.

5. Access Roads Construction, Maintenance and Reclamation.

A. Construction. Any new roads constructed by Operator on the Surface Lands shall be constructed in compliance with applicable Laws and limited to thirty (30) feet in width unless otherwise agreed to by Owner in writing or provided in applicable Development Plans, or unless, and only to the extent, required by terrain conditions. Operator shall remove only the minimum amount of vegetation necessary for the construction of roads and surface facilities described in Section 6. Topsoil shall be conserved and stockpiled during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation. Borrow pits shall be sloped so that reseeded can be accomplished by tractor. All roads shall be constructed to enable drill rigs and heavy equipment to access in and out of all Well and Facility site locations and shall be graveled so as to minimize dust emissions. Operator shall be solely responsible for all costs of construction of access roads required for Oil and Gas Operations. [INSERT SUCH OTHER SITE SPECIFIC CONDITIONS AS MAY BE REASONABLY REQUESTED BY OWNER TO PROTECT THE SURFACE LANDS ENVIRONMENT AND ASSURE SAFE OIL AND GAS OPERATIONS.]

B. Maintenance. Operator, at its sole cost, shall maintain in good condition and repair all existing roads used for Oil and Gas Operations and all new roads developed for Oil and Gas Operations, and shall be responsible for keeping the roads graded, and shall install culverts where necessary to prevent ponding or erosion caused by interference with the natural drainage. Once roads are established for Oil and Gas Operations, driving through any field onto cropland to avoid mudholes will be strictly prohibited.

C. Reclamation. At such time as Operator no longer needs or utilizes any portion of any access road it has constructed on the Surface Lands, Operator shall notify Owner of its desire to

cease use of such access road. Owner, in its sole discretion, may choose to either allow the access road to remain or may require Operator to reclaim the access road corridor. If Owner elects to have the access road corridor reclaimed, Operator, at its sole cost, shall promptly reclaim the access road corridor to its approximate original contour and shall successfully reseed the disturbed area as provided under applicable Permits or consistent with then current best environmental and reclamation practices in the oil and gas industry. If Owner elects to allow the access road to remain, Operator shall be released from any further responsibility or liability for maintaining or reclaiming the access road corridor.

6. Wells, Equipment and Surface Facilities Location, Maintenance and Reclamation.

A. Location. Consistent with good operating practices, Operator will consolidate its Equipment and other facilities to serve as many Wells as possible. In locating its Wells and Equipment on the Surface Lands, Operator shall comply with all setback requirements under applicable Laws. It is specifically agreed, that no compressors, processing plants, or major storage facilities shall be located within 1,000 feet of any residence or barn without the prior written consent of Owner. In all respects the location of all Wells, Equipment, and other surface facilities shall be in areas agreed to by Owner in writing, which agreement shall not be unreasonably withheld, or as otherwise provided in applicable Development Plans. [INSERT SUCH OTHER SITE SPECIFIC CONDITIONS AS MAY BE REASONABLY REQUESTED BY OWNER TO PROTECT THE SURFACE LANDS ENVIRONMENT AND ASSURE SAFE OIL AND GAS OPERATIONS.]

B. Maintenance. Operator shall maintain all Wells, Equipment, and other surface facilities in good working order and in accordance with applicable Laws and Permits. All Oil and Gas Operations sites shall be properly posted and fenced to protect livestock and persons from any dangerous areas or obvious hazards. Operator shall keep all weeds at and around the Wells, Equipment, surface facilities, and roads mowed or trimmed, and shall spray and kill any noxious weeds when necessary. If Operator fails to control or eradicate noxious weeds within ten (10) days after written notice from Owner, Owner may take such action as it deems necessary and appropriate and Operator shall promptly reimburse all reasonable and necessary material, equipment, and labor costs incurred by Owner in such efforts upon receipt of Owner's written demand. Operator shall not permit the release or discharge of any toxic or hazardous substance, chemicals or wastes on the Surface Lands. All sites for Oil and Gas Operations shall be kept free of litter and debris.

C. Reclamation. At such time as Operator decides to plug and abandon any Well drilled on the Surface Lands, Operator shall notify Owner of its decision and shall upon request provide Owner with all information known to Operator with respect to such Well. Owner shall then have the option, in its sole discretion but subject to contractual obligations binding on Operator, to either accept ownership of the Well in its then current condition or to have Operator properly plug and abandon the Well. If Owner chooses to have the Well abandoned, Operator, at its sole cost, shall plug and abandon the Well, remove all Equipment and fully reclaim the site, all in accordance with applicable Laws and Permits and this Agreement. If Owner chooses to take title to the Well, Owner shall pay Operator the then current market value for all removable or salvageable Equipment associated with the Well and Operator shall assign all of its right, title and interest in the Well and well bore, free and clear of all liens, claims and encumbrances arising by, through or under Operator.

Owner, at its sole cost, shall be responsible for obtaining any Permit, bond or other financial assurance needed to own and operate the Well. Upon the transfer of the Well to Owner, Owner shall assume all liabilities relating to the Well and attributable to periods after the effective date of the transfer including the cost and responsibility for properly plugging and abandoning the Well and reclaiming the site. Operator shall be released from any further responsibility for any Well that Owner acquires; provided, however, Operator shall remain responsible for all duties and obligations that accrued prior to the transfer of the Well and associated Equipment to Owner except as otherwise expressly provided herein. Operator shall cooperate with Owner in Owner's efforts to obtain all Permits and other government approvals to transfer ownership of any Wells to Owner. Upon plugging and abandonment of a dry-hole, a dry-hole marker shall be installed when necessary and shall be buried below plow depths unless otherwise agreed by Owner in writing or required by Law.

7. Underground Infrastructure. To the extent feasible and except as otherwise provided in applicable Development Plans, Operator shall install all Underground Infrastructure in and along access road corridors unless otherwise provided in applicable Development Plans. Operator shall be responsible for backfilling, repacking, reseeding, and recontouring the surface above any Underground Infrastructure as near as practicable to the original contour so as to not interfere with Owner's operations. Unless otherwise agreed by Owner in writing, which agreement shall not be unreasonably withheld, Operator shall bury any pipelines constructed by Operator at a minimum depth of thirty-six (36) inches below the surface. Operator shall supply Owner with a map showing the routes and locations of all Underground Infrastructure, and shall post the location of Underground Infrastructure so as to avoid damages caused by digging, excavation or otherwise. At such time as all Wells are plugged and abandoned and the Surface Lands are fully reclaimed, Operator may continue to use any subsurface pipelines and power lines located on or under the Surface Lands and required for Operator's Oil and Gas Operations on other real property upon first entering into a written agreement with Owner based on then current financial terms for access and use of comparable or similar surface property for underground pipeline and power line facilities. Upon termination of this Agreement with respect to any portion of the Surface Lands containing Underground Infrastructure, Operator shall promptly take all action necessary, desirable or reasonably requested by Owner to clean up, mitigate the effects of use, and render all Underground Infrastructure safe and environmentally fit for abandonment in place. All such clean up and mitigation shall be performed by Operator, at its sole expense, in compliance with all Laws and Permits and the reasonable requirements of Owner so as to not unreasonably interfere with or impose on Owner any material costs associated with the exercise of its Reserved Rights on the Surface Lands. [INSERT SUCH OTHER SITE SPECIFIC CONDITIONS AS MAY BE REASONABLY REQUESTED BY OWNER TO PROTECT THE SURFACE LANDS ENVIRONMENT AND ASSURE SAFE OIL AND GAS OPERATIONS.]

8. Fences and Gates. Operator shall not cut, destroy or remove any existing fences without the express written approval of Owner, which approval shall not be unreasonably withheld. If Operator damages any existing fences during its operations, Operator shall promptly repair said fence in a proper and workmanlike manner. Operator shall keep all existing gates closed at all times. If Operator installs additional gates in any fence constructed by Operator and Operator desires to lock such gates, Operator shall provide a key to such gates upon Owner's request. Where and as necessary to protect livestock operations, Operator shall construct cattle guards at all fence crossings which are used by Operator. Installation of new cattle guards, fence braces, wings, and metal gates

shall be at the sole cost of Operator. [INSERT SUCH OTHER SITE SPECIFIC CONDITIONS AS MAY BE REASONABLY REQUESTED BY OWNER TO PROTECT THE SURFACE LANDS ENVIRONMENT AND ASSURE SAFE OIL AND GAS OPERATIONS]

9. Water Management.

A. Surface Water. To the extent Owner has the ability to grant such rights, Operator shall have the right to use surface water located on the Surface Lands in connection with its Oil and Gas Operations provided such use does not disturb, interfere with, fill or block any creek, reservoir, spring, or other source of water on the Surface Lands, or in any manner materially impact or prevent Owner or its licensees, lessees, tenant farmers or assigns from exercising rights to utilize such water in connection with other activities or operations on such lands. Owner shall be compensated for all surface water used by operator in its Oil and Gas Operations as provided in Section 10B.

B. Identification of Affected Aquifer, Testing, Production, and Discharge. Operator shall identify the depths, vertical parameters, and quality of the water aquifer or aquifers from or to which groundwater is planned to be produced and discharged in connection with its Oil and Gas Operations. Copies of groundwater information gathered by Operator shall be provided to Owner for its confidential review and shall not be disclosed or released by Owner without the prior written consent of Operator unless directed by an appropriate governmental authority or a court of competent jurisdiction. Operator will be solely responsible for the surface discharge of produced water and such discharge will be allowed on the Surface Lands only if:

- (i) such discharge does not significantly or materially degrade or adversely affect other surface water or reservoirs on the Surface Lands or other lands and does not otherwise unreasonably interfere with or impede Owner's exercise of its Reserved Rights;
- (ii) Owner has approved, in writing, Operator's written water management plan for each discharge point; and
- (iii) Operator has obtained all necessary Permits.

Operator shall be solely responsible for all costs and expenses associated with its water production and management activities which shall include, but not be limited to, construction of reservoirs or catchment basins for produced water, any water treatment process and plants, or reinjection wells and facilities.

C. Water Well Mitigation Agreement. Operator acknowledges that its Wells on the Surface Lands may impact domestic or agricultural wells and surface and groundwater resources, and agrees to take all action necessary and appropriate to mitigate the impact of its Oil and Gas Operations on such wells and water resources including, without limitation, entering into a separate water well mitigation agreement with Owner that will provide replacement water for wells damaged by such operations as determined by a qualified hydrological engineer selected by the Parties.

D. [INSERT SUCH OTHER SITE SPECIFIC CONDITIONS AS MAY BE REASONABLY REQUESTED BY OWNER TO PROTECT SURFACE AND GROUNDWATER RESOURCES.]

10. Miscellaneous Oil and Gas Operating Matters.

A. Damage by Livestock. Owner or its tenant farmers, lessees or licensees shall not be liable for claims, damages or personal injuries (including death) caused by livestock to any of Operator's Oil and Gas Operations, Wells, Equipment, Underground Infrastructure, or to Operator and its working interest owners and their respective employees, agents, contractors, invitees, lessees, successors or assigns.

B. Purchase of Shale, Gravel or Water. To the extent Operator's Oil and Gas Operations require shale, gravel, or existing but not produced, water where reasonable and practicable Operator will purchase shale, gravel, or water on the Surface Lands from Owner at then current market rates prevailing in the area. Operator, at its sole cost, shall be responsible for mining, producing, and transporting all such materials and shall be responsible for all claims, demands, and liabilities arising from the production and use thereof.

C. Restoration. To the extent not otherwise expressly addressed herein, upon termination of this Agreement with respect to all or part of the Surface Lands, Operator shall fully restore and level the surface of the affected Surface Lands as near as possible to the contours which existed prior to commencement of Operator's Oil and Gas Operations. All surface restoration shall be accomplished to the reasonable satisfaction of Owner and shall comply with applicable Laws and Permits. All cleanup and restoration requirements shall be completed within six (6) months following termination of this Agreement with respect to the Surface Lands previously subject thereto.

D. [INSERT SUCH OTHER SITE SPECIFIC CONDITIONS AS MAY BE REASONABLY REQUESTED BY OWNER TO PROTECT THE SURFACE LANDS ENVIRONMENT AND ASSURE SAFE OIL AND GAS OPERATIONS.]

11. Prohibited Acts and Practices.

A. No Storage and Maintenance of Equipment. Without the prior written approval of Owner, Operator shall not store or maintain any Equipment, inventory, or other materials of any kind on the Surface Lands not needed in the daily conduct of Oil and Gas Operations. All lubricants, solvents, petroleum based products and residues, and other wastes shall be captured and disposed off site in accordance with applicable Laws and Permits.

B. Living on Surface Lands. Except as agreed by Owner in writing, neither Operator nor any of its employees, agents, contractors or subcontractors shall be allowed to establish any living quarters on the Surface Lands; provided, however, that employees, agents, contractors or subcontractors of Operator who are required to stay on the Surface Lands for extended periods of time (not to exceed fourteen (14) days) during drilling, completion and testing of Wells or the construction of Equipment or major facilities may reside in campers or other temporary living

facilities located at the site being drilled or constructed. Such campers or temporary living facilities shall be self-contained and no garbage, litter, or human excrement shall be disposed of on the Surface Lands.

C. No Open Fires. There shall be no open fires on the Surface Lands for any purpose other than for flaring associated with Oil and Gas production at locations agreed to with Owner in writing. If any fires (including flaring) are ignited by Operator's employees, agents, invitees, contractors or subcontractors, Operator shall be responsible for all damages, costs and expenses attributable to such surface fires, including to the Surface Lands and other real properties in the area as well as all personal property and improvements thereon including, without limitation, paying the cost for replacement pasture, the cost of trailing or trucking cattle to comparable alternate pasture plus replacement or repair costs for all personal property destroyed or damaged.

D. No Weapons, Alcohol, Drugs, Dogs or Hunting. No weapons including firearms, alcohol, drugs or dogs are allowed on the Surface Lands without the express written permission of Owner, which can be withheld for any or no reason. Operator shall make every reasonable effort to insure that none of its employees, agents, or contractors is under the influence of alcohol or illegal drugs while on the Surface Lands and shall make every reasonable effort to insure that such employees, agents, invitees, contractors or subcontractors do not engage in any hunting activities while on the Surface Lands.

12. Damages to Surrounding Properties; Acceptance of Responsibility. At all times, Operator shall exercise its best efforts to prevent nuisances, pollution, drainage, or other occurrences, event or conditions upon or from the Surface Lands resulting from its Oil and Gas Operations which would have an impact upon or result in damages to surrounding lands. At its sole cost, risk and expense, Operator agrees to abate any nuisances, pollution, drainage, occurrences, events or conditions upon or from the Surface Lands promptly and without the necessity of prior notice, request, or demand by Owner. Operator agrees to accept full and absolute liability and responsibility for all actual damages to the Surface Lands and surrounding lands and for all related costs, and expenses (including reasonable attorneys' fees) caused by or resulting from its Oil and Gas Operations regardless of whether or how the occurrence was abated or mitigated by Owner, other property owners, or any regulatory agency. The provisions of this Section 12 shall survive the termination of this Agreement.

13. Insurance Requirement; Notices of Cancellation. Operator shall obtain and maintain in force throughout the term of this Agreement insurance with insurance carriers having an AmBest rating of "A" or better as follows: (i) general liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for property damage and injury (including death), including an endorsement for Protection and Indemnity coverage; (ii) auto liability insurance with bodily injury and property damage coverage in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence; (iii) workers' compensation insurance in the amount as required by state law; (iv) employers' liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence; and (v) additional insurance in the amount of not less than an additional Five Million Dollars (\$5,000,000.00) under an umbrella policy containing a sudden and accidental pollution endorsement of not less than Five Million Dollars (\$5,000,000.00). At every three (3) year anniversary of this Agreement, the insurance coverage levels stated above shall be (i)

increased by five percent (5%) annually for each of the succeeding three (3) years, if commercially available in the United States; and, (ii) increased, if necessary, to coverage levels then considered comparable with coverage levels stated above as determined by Owner's licensed insurance brokers as being considered to provide reasonable insurance coverage to Owner in order that Owner shall have the insurance coverage then deemed reasonably necessary within the insurance industry, if commercially available in the United States. Upon Owner's written request, a copy of all such policies shall be furnished to Owner. All aforementioned policies (other than workers' compensation) shall list Owner Peabody Energy Corporation and all affiliated or subsidiary companies, corporations, or firms now existing or which may hereafter be constituted as additional insureds. To the extent Operator subcontracts any of its activities with respect to its use of the Surface Lands, Operator shall cause all such parties to carry the appropriate insurance described above with Owner named on such policies as an additional insured as set forth in this paragraph. Operator will be required to give thirty (30) days notice to Owner of cancellation of or any material changes to any of the insurance policies required hereunder.

14. No Warranty. Owner makes no warranty of title, express or implied, to the Surface Lands or otherwise in entering into this Agreement. However, if it is subsequently determined Owner does not own or control all of the Surface Lands, Operator's initial Well and Facility Site Fee, Annual Rentals, damage, and other payment obligations shall be proportionately reduced to conform to Owner's actual ownership interest.

15. Operator's Assumption of Risk and Release of Liability. Prior to entering into this Agreement, Operator has inspected the Surface Lands to its satisfaction and hereby assumes all risks and responsibilities associated with such lands including, without limitation, risks relating to:

- a. the geology or operational conditions existing or to be encountered on or with respect to the Surface Lands;
 - b. Owner's title to the Surface Lands;
 - c. inherently dangerous conditions on the Surface Lands;
 - d. acceptability and adaptability of the Surface Lands for Operator's purposes;
- and
- e. any right to appropriate, use, discharge, or inject water produced in connection with its Oil and Gas Operations on the Surface Lands.

Operator hereby releases and waives any and all causes of action, claims, or demands against Owner and Owner's joint venturers and affiliates, and their respective partners, members, directors, officers, employees, agents, contractors, invitees, lessees, licensees, representatives, working interest owners, successors and assigns for any losses, damages, costs, expenses (including court costs and reasonable attorneys' fees), injuries (including death), casualties or claims of every kind or character (at law or in equity) caused to persons or real or personal property arising out of, or in any way connected with, the conditions or suitability of the Surface Lands for Operator's Oil and Gas Operations. The provisions of this Section 15 shall survive the termination of this Agreement.

16. Owner's Use of Surface Lands for Reserved Rights. Operator acknowledges and agrees that in the Oil and Gas Transfer Documents, Owner or its predecessors reserved for itself and its grantees, lessees, licensees, and successors and assigns the senior right to use all or any portion of the Surface Lands in connection with the exercise of all surface and mineral (other than Oil and Gas) rights in and with respect to the Surface Lands and Operator further acknowledges and agrees that its rights herein are subject and subordinate to Owner's Reserved Rights including, without limitation, all rights relating to the conduct of coal mining operations. If Owner's exercise of any of its Reserved Rights unreasonably interferes with, suspends, or terminates Operator's ability to exercise any rights granted herein, Operator's sole and exclusive remedies for such interference is set forth in the Oil and Gas Transfer Documents.

17. Indemnification.

A. Indemnification by Operator for Third-Party Claims. For purposes of this Section 17, references to "**Operator Group**" shall mean Operator, Operator's joint venturers and affiliates, and their respective partners, members, directors, officers, employees, agents, contractors, invitees, lessees, licensees, representatives, working interest owners, successors and assigns with rights and interests in and with respect to Oil and Gas in the land underlying the Surface Lands conveyed and transferred to Operator or its predecessors pursuant to the Oil and Gas Transfer Documents. Operator hereby agrees to indemnify, defend, and hold harmless Owner from any causes of action (at law or equity), claims, liens, liabilities, losses, damages, demands, costs or expenses (including court costs and reasonable attorneys' fees) (collectively, "**Claims**") of or by any third parties made against Owner and arising from any act or omission of the Operator Group resulting in personal injuries, including death, and damages to any real or personal property caused by the Operator Group's Oil and Gas Operations conducted on the Surface Lands pursuant to this Agreement after the Effective Date.

B. Indemnification by Owner for Third-Party Claims. For purposes of this Section 17, references to "**Owner Group**" shall mean Owner and Owner's joint venturers and affiliates, and their respective partners, members, directors, officers, employees, agents, invitees, lessees, licensees, representatives, working interest owners, successors and assigns with rights and interests in and with respect to Owner's Reserved Rights described in the Oil and Gas Transfer Documents. Owner hereby agrees to indemnify, defend, and hold harmless Operator from any Claims by third parties made against Operator and arising from any act or omission of the Owner Group resulting in personal injuries, including death, and damages to any real or personal property caused by the Owner Group's activities or operations on the Surface Lands in the exercise of any of Owner's Reserved Rights including, without limitation, coal mining operations on, under, or with respect to the Surface Lands prior to or after the Effective Date.

C. Mutual Indemnification. Each Party shall promptly pay the other Party for any actual damages or losses suffered to its real or personal property rights or interests or any personal injury, including death, due to gross negligence or willful misconduct by a Party operating on the Surface Lands pursuant to this Agreement. It is specifically agreed by the Parties that the sole and exclusive remedies and damages available to Operator for any Claims relating to the temporary suspension or permanent cessation of Operator's Oil and Gas Operations due to Owner's exercise of its Reserved

Rights are set forth in the Oil and Gas Transfer Documents.

18. Default. If Owner believes the Operator has failed to comply with any of the terms, conditions, or obligations in this Agreement, Owner shall notify Operator in writing of such alleged default. Within ten (10) days of receiving such notice, Operator shall notify Owner in writing whether it disputes the default. If Operator does not dispute the default, Operator shall have thirty (30) days after the date of receiving notification within which to cure or diligently commence to cure a non-monetary default and fifteen (15) days to make any required monetary payments due hereunder. Operator shall have the right to tender to Owner the monetary payment alleged to be due and retain the right to dispute such default as provided in Section 20. If Operator fails to timely cure a material default following receipt of proper written notice as provided herein, the rights granted Operator under this Agreement shall terminate. The termination of this Agreement, however, shall not interfere with or restrict any common law or statutory right Operator may have to obtain access or use of the Surface Lands as an incident or right appurtenant to the Oil and Gas estate or as expressly provided in the Oil and Gas Transfer Documents (exclusive of any right Operator would otherwise have to receive a new Surface Use Agreement from covering all or part of the same Surface Lands). This Agreement, however, may not be terminated for a non-monetary default if Operator diligently commences to cure and cures such default as provided above within one hundred and eighty (180) days of Operator's receipt of a notice of default. Notwithstanding any alleged default by Operator, Owner shall not take any action which denies Operator access to its Wells, Equipment, or other facilities so long as this Agreement remains in force and effect. 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 any arbitration or legal action is initiated that results in a determination that a Party is in default, the prevailing Party shall be entitled to recover from the defaulting Party all reasonable attorneys' fees, court costs, and expenses incurred as a result of such default.

19. Force Majeure. The term of this Agreement may be extended for all "force majeure events. A force majeure event shall mean the following events: acts of God, natural disaster, strikes, lockouts, other industrial disturbances, acts of the public enemy, unavailability of equipment, labor, or materials at reasonable costs, inability to obtain access to drill site locations from surface owners, interruptions in delivery or transportation services, civil disturbances, orders or restraints of government, matters in arbitration and litigation, or war. If Operator is unable to fully and timely perform all of its duties and obligations under this Agreement (exclusive of any payment obligations Operator may have hereunder which shall not be subject to any force majeure events and must be fully and timely performed as provided herein) because of a force majeure event, Operator shall give prompt written notice thereof to Owner, which notice shall include, at a minimum, a full description of the force majeure event, an estimate of the probable duration of the force majeure event, and a description of the steps Operator is taking to eliminate such event. Upon delivery of the aforementioned notice, Operator's obligations shall be suspended for the duration of the force majeure event. If, however, Operator fails to perform any material duties and obligation due to any single force majeure event other than governmental order or restraint, natural disaster, or war for a period greater than six (6) months, or if the sum of the duration of all force majeure events exceeds 24 months, then Owner shall have the right to terminate this Agreement upon 15 days' prior written notice to Operator.

20. Surrender of Rights. Upon termination of this Agreement pursuant to any of the events described in Section 1, after plugging all Wells, removing or abandoning all Equipment, Underground Infrastructure and reclaiming and restoring the Surface Lands in accordance with this Agreement and all applicable Permits, Operator's rights to obtain access to and use of the Surface Lands pursuant to this Agreement will terminate.

21. Arbitration. If after thirty (30) days of good faith negotiations, the Parties are unable to resolve any dispute arising under this Agreement, either Party upon prior written notice to the other Party may seek to resolve such dispute shall be settled by binding arbitration administered by a single arbitrator, with at least ten (10) years of natural resources, mineral extraction experience, or other applicable experience pertaining to the matter in dispute. Owner and Operator shall cooperate in the selection of the single arbitrator. Decisions by the arbitrator shall be issued within one hundred twenty (120) days of the selection of the arbitrator. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association; provided, however, that the Commercial Mediation Procedures provided for therein shall not apply unless the Parties to the arbitration mutually agree. Any arbitral decision or award may be enforced against the Parties or their assets wherever they may be located and a judgment on an arbitral award may be entered by any court having jurisdiction thereof and, for such purpose, each Party hereby submits to the jurisdiction of any such court and waives any objections based on inconvenient forum or lack of jurisdiction.

22. Designated Contact Persons. Operator and Owner will each, from time to time, designate an individual, with appropriate telephone numbers or facsimile numbers, who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement.

Owner: _____
Telephone #: _____
Fax: _____

Operator: _____
Telephone #: _____
Fax: _____

23. Notices. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request shall be in writing and shall be deemed to have been properly given or served when delivered in person or faxed to the other party or delivered to the party by private express courier service, or on the third business day after being deposited in the United States mail, with adequate postage prepaid and sent by registered or certified mail with return receipt requested, to the addresses set forth below or at such other addresses as are specified by Owner or Operator:

Owner: _____
c/o Peabody Energy
701 Market Street
St. Louis, Missouri 63101
Attn: _____

Operator:

CNX Gas Corporation
5 Penn Center West, Suite 401,
Pittsburgh, Pennsylvania 15276
Attn: _____

Any Party may hereafter change its address upon giving notice as provided in this section.

24. Recording. This Agreement shall not be recorded without written consent of both Parties and is considered confidential; however, a memorandum of this Agreement may be executed and recorded at the request of either Party. The memorandum will include a statement that the rights and interests granted Operator in this Agreement are contractual and do not constitute an interest in and to the Surface Lands. Within thirty (30) days of a termination of all or part of this Agreement as provided herein, the Parties shall execute, acknowledge, and record a Notice of Termination covering the Surface Lands described therein. Copies of all recorded documents shall be promptly provided to the nonrecording Party.

25. Assignment. Each Party shall provide the other Party prior written notice of any proposed assignment of this Agreement. No assignment and assumption of this Agreement shall be effective unless and until the assignee has agreed in writing to be bound by all of the terms and conditions of this Agreement and to assume, pay, perform and discharge all of the obligations and liabilities whatsoever of the assignor hereunder arising after the effective date of such assignment. A copy of the assignment and assumption agreement in its entirety shall be provided to the nonassigning Party. Notwithstanding anything to the contrary herein, without the prior written consent of Owner, Operator shall not assign this Agreement or its rights hereunder, or delegate its obligations hereunder, to any third party, and any such transfer made without such consent shall be void *ab initio*; provided that Operator may, without first obtaining Owner's written consent, assign this Agreement or its rights hereunder, or delegate its obligations hereunder, to a third party with whom Operator has entered into a joint operating agreement, pursuant to which Operator is participating or has a right to participate in Oil and Gas Operations on or underlying the Surface Lands. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

26. Further Assurances. The Parties shall execute such other documents as may be reasonably required by any Party to carry out the purpose and intent of this Agreement.

27. Governing Law. In the event of a dispute between the Parties arising under this Agreement the laws of the State of ____ [location of Surface Lands] control.

28. Severability. The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provision in this Agreement, which shall remain in full force and effect. Additionally, if any provision in this Agreement is finally determined, after exhaustion of any applicable appeals or appeal periods, to be unenforceable, that provision shall be revised so as to be enforceable under applicable Law and so as best to reflect the intentions of the Parties hereunder.

29. Conflict. In the event of a conflict between the provisions of this Agreement and the applicable Oil and Gas Transfer Documents and Development Plans, the terms and conditions of the Oil and Gas Transfer Documents and Development Plans shall control.

30. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one in the same Agreement.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date first above written.

Owner:

Operator:

CNX Gas Corporation

By: _____

Its: _____

By: _____

Its: _____