

**AMENDMENT TO
UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
GRANT OF EASEMENT WITH TERMS AND CONDITIONS**

(Hardwick - DOW)

THIS AMENDMENT TO UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION GRANT OF EASEMENT WITH TERMS AND CONDITIONS (hereinafter the "Amendment"), is made and entered into this 13 day of OCTOBER, 2008 (hereinafter the "Effective Date") by and between:

(i) the **JOHN K. HARDWICK, JR. REVOCABLE TRUST** Dated November 21, 2000 (hereinafter the "John Hardwick Trust"), and the **MARY ELLEN HARDWICK REVOCABLE TRUST** Dated November 21, 2000 (hereinafter the "Mary Hardwick Trust"), whose collective mailing address is 24700 County Road 19, Vernon, Colorado 80755 (hereinafter collectively the "Grantors"); and

(ii) the **STATE OF COLORADO** acting by and through the **DEPARTMENT OF NATURAL RESOURCES** for the use and benefit of the **DIVISION OF WILDLIFE** and **WILDLIFE COMMISSION**, whose address is 6060 Broadway, Denver, Colorado 80216 (hereinafter the "Grantee" or the "State").

· WITNESSETH THAT:

RECITALS

A. WHEREAS, on April 27, 1988, the State Director of the Farmers Home Administration of the United States Department of Agriculture executed a six (6) page document entitled "*Grant of Easement with Terms and Conditions*" regarding certain property located in Yuma County, Colorado, which was subsequently recorded on October 12, 1988, with the Clerk and Recorder for Yuma County, Colorado, at Reception Number 450973 and located at Book 662, Pages 25 thru 30 (hereinafter the "FHA Easement"); and

B. WHEREAS, as worded in Section I. of the FHA Easement ("Description of the Easement Area"), the original FHA Easement burdened certain lands located in the following described areas:

Township 2 South, Range 44 West, 6th P.M.

Section 4: South Half West Half Southeast Quarter East Half Southwest Quarter (S1/2W1/2SE1/4E1/2SW1/4).

Section 9: Northeast Quarter (N1/4) EXCEPT areas delineated on map 1, Exhibit "A" to the FHA Easement.

Section 10: West Half Northwest Quarter (W1/2NW1/4) and Southwest Quarter (SW1/4) EXCEPT areas delineated on maps 2 and 3 of Exhibit "A" to the FHA Easement.

C. WHEREAS, the aliquot legal description in Section I. ("Description of the Easement Area") of the FHA Easement for Section 4, Township 2 South, Range 44 West, 6th P.M., is ambiguous because it does not conform to generally accepted guidelines for aliquot legal descriptions, and therefore is unclear exactly what parcel of land is intended to be described by it; and

D. WHEREAS, the Parties to this Amendment believe regarding the land area in Section 4, Township 2 South, Range 44 West, 6th P.M., that what was originally intended was for the FHA Easement to burden the following area:

W1/2SE1/4, E1/2SW1/4 (West Half Southeast Quarter, East Half Southwest Quarter) (which is approximately 160 acres); and

E. WHEREAS, pursuant to a General Warranty Deed dated January 25, 2001, and recorded initially on January 25, 2002, with the Clerk and Recorder for Yuma County, Colorado, at Reception Number 505888, and re-recorded on May 27, 2003, with the Clerk and Recorder for Yuma County, Colorado, at Reception Number 512527, the John Hardwick Trust owns, among other parcels, the following real property:

Township 2 South, Range 44 West, 6th P.M.

Section 4: South Half (S1/2).

Section 10: West Half Northwest Quarter (W1/2NW1/4) and Southwest Quarter (SW1/4).

F. WHEREAS, pursuant to a General Warranty Deed dated January 25, 2001, and recorded initially on January 25, 2002, with the Clerk and Recorder for Yuma County, Colorado, at Reception Number 505887, and re-recorded on May 27, 2003, with the Clerk and Recorder for Yuma County, Colorado, at Reception Number 512526, the Mary Hardwick Trust owns, among other parcels, the following real property:

Township 2 South, Range 44 West, 6th P.M.

Section 9: Northeast Quarter (NE1/4) Except Tract in the NE1/4 of said Section 9 commencing at a point where the west line of the said NE1/4 intersects the south line of the road right-of-way lying along the north side of said Northeast Quarter, thence East 135 feet; thence South 362 feet; thence West 135 feet; thence North 362 feet more or less to the point of beginning.

G. **WHEREAS**, given that:

(i) the general location of the "Excluded" area depicted in the Northwest Quarter Northeast Quarter (NW1/4NE1/4) of Section 9, Township 2 South, Range 44 West, 6th P.M., on Map 1 of 3 of Exhibit "A" to the FHA Easement (that being the page recorded at Book 662 Page 28); and

(ii) the general location of the Tract of land in the Northeast Quarter (NE1/4) of Section 9, Township 2 South, Range 44 West, 6th P.M., that is excluded from the ownership of the Mary Hardwick Trust;

the Parties hereto believe that the Grantors collectively are the owners as of the Effective Date of this Amendment of all of the real property burdened by the FHA Easement; and

H. **WHEREAS**, the Grantors and the Grantee desire to amend the FHA Easement upon the terms and conditions set forth below in order to accomplish the following:

(i) to clarify that Section I. ("Description of the Easement Area") of the original FHA Easement was intended to identify the lands in Section 4, Township 2 South, Range 44 West, 6th P.M., that were to be burdened by the FHA Easement to be the W1/2SE1/4, E1/2SW1/4 (West Half Southeast Quarter, East Half Southwest Quarter);

(ii) to correct a mistake that occurred in the original FHA Easement regarding the location of "Excluded" Property in the Northwest Quarter (NW1/4) of Section 10, Township 2 South, Range 44 West, 6th P.M., on Map 3 of 3 of Exhibit "A" of the FHA Easement (that being the page recorded at Book 662 Page 30);

(iii) to clarify some of the terms and conditions thereof in light of how the Parties hereto believe the Easement should be administered in regard to residential, commercial, and industrial development; and

(iv) to provide for the drilling and operation of four (4) oil and gas wells on areas burdened by the FHA Easement, which clarifying how the Parties will interact regarding future oil and gas development proposals.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, restrictions, and requirements contained herein, which are based upon common law and C.R.S. § 38-30.5-101, et seq., as amended, the Grantors and Grantee hereby Amend the FHA Easement as set forth below.

AMENDMENT

I. **CLARIFICATION OF THE LAND AREA IN SECTION 4.** The legal description in Section I. ("Description of the Easement Area") of the FHA Easement regarding the land area in Section 4, Township 2 South, Range 44 West, 6th P.M., which reads as follows:

Section 4: South Half West Half Southeast Quarter East Half Southwest Quarter (S1/2W1/2SE1/4E1/2SW1/4)

is hereby deleted from the FHA Easement in its entirety and replaced with the following legal description regarding said Section 4:

Section 4: W1/2SE1/4, E1/2SW1/4 (West Half Southeast Quarter, East Half Southwest Quarter)

II. REPLACEMENT OF MAP 3 OF 3. Map 3 of 3 of Exhibit "A" to the FHA Easement, which is that map which depicts the location of "Excluded" Property in the Northwest Quarter (NW1/4) of Section 10, Township 2 South, Range 44 West, 6th P.M. (that being the page recorded at Book 662 Page 30), is hereby deleted from the FHA Easement in its entirety and replaced with the map that is attached hereto as Exhibit I, which is incorporated herein by this reference.

III. ADDITIONS TO COVENANTS BY THE LANDOWNER. Section II of the FHA Easement ("Covenants by the Landowner") shall be amended to add the following new provisions to the Easement:

C. The Landowner/Grantor shall not construct, place, or erect any new structures or facilities on the Easement Area, including, but not limited to, buildings, houses, offices, trailers, camping accommodations, permanent tent facilities, temporary living quarters of any sort, quonset huts, mobile homes, storage sheds, and enclosures of any sort.

D. The Landowner/Grantor shall not establish or operate any feedlot. A "feedlot" shall be defined for purposes of this Easement as a permanently constructed confined area or facility that is used for the purpose of engaging in the business of receiving and feeding livestock.

IV. ADDITION OF A NEW SECTION REGARDING MINERAL DEVELOPMENT. The following new Section V shall be added to the FHA Easement:

V. Mineral Development.

A. This Easement shall not be interpreted in any way to preclude, limit, restrict, or interfere with the drilling and operation of:

(i) the two (2) oil and gas wells that are known by the Colorado Oil and Gas Conservation Commission (and its Division) as "Hardwick 32-9" and "Hardwick 42-9", which are both located in the South Half of the Northeast Quarter (S1/2NE1/4) of Section 9, Township 2 South, Range 44 West, 6th P.M.; and

(ii) the two (2) oil and gas wells that are known by the Colorado Oil and Gas Conservation Commission (and its Division) as "Hardwick 11-10" and "Hardwick 12-10", which are both located in the West Half of the

Northwest Quarter (W1/2NW1/4) of Section 10, Township 2 South, Range 44 West, 6th P.M.

B. In regard to third parties who are developing minerals the ownership of which, as of the Effective Date of this Amendment, has already been severed from the surface ownership of the Property, the State and the Landowner/Grantor shall have the same legal rights as each other to influence and control impacts to the surface of the Property from mineral development by said third parties. Such rights shall include, but not be limited to, the unilateral right to take whatever legal action either Party deems necessary in order to respond to proposals to develop oil, gas, and other minerals from beneath the Property, including bringing judicial or administrative actions. Grantors and State both agree that, after the Effective Date of this Amendment, neither shall unilaterally enter into a contract with a third party regarding any oil, gas, and mineral development of the Property, but instead both Grantors and State shall be required participants to any such contract. This provision shall NOT apply to the four (4) wells identified above in Section V.A.

C. In regard to third parties who are developing minerals the ownership of which, as of the Effective Date of this Amendment, has NOT already been severed from the surface ownership of the Property, the FHA Easement shall prohibit the mining, drilling, or exploring for or extracting minerals, oil, gas, or other hydrocarbons, soils, sand, gravel, rock, ground water, or other materials on or below the surface of the Property, except that this Easement shall not preclude the removal of such materials from beneath the surface of the Property if (i) access is obtained by means other than going through, on, or across the surface of the Property; or (ii) if agreed upon in advance in writing by the State.

In all other respects, the FHA Easement shall remain unchanged and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Grantors and Grantee have executed this Amendment as of the date first set forth above.

MARY ELLEN HARDWICK REVOCABLE TRUST Dated November 21, 2000

GRANTOR

By: Mary Ellen Hardwick Trustee
Mary Ellen Hardwick, Trustee

STATE OF COLORADO

)
) ss.
)

COUNTY OF YUMA

The foregoing instrument was acknowledged before me the 13 day of October 2008, by Mary Ellen Hardwick, Trustee of the Mary Ellen Hardwick Revocable Trust Dated November 21, 2000, Grantor.

Witness my hand and official seal.

(Seal)

NOTARY PUBLIC

Murray A. Shepherd

My Commission Expires: 7-22-09

JOHN K. HARDWICK, JR. REVOCABLE TRUST Dated November 21, 2000

GRANTOR

By: John K Hardwick, Jr. Trustee
John K Hardwick, Jr., Trustee

STATE OF COLORADO

)
) ss.
)

COUNTY OF YUMA

The foregoing instrument was acknowledged before me the 13 day of October 2008, by John K. Hardwick, Jr., Trustee of the John K. Hardwick, Jr., Revocable Trust Dated November 21, 2000, Grantor.

Witness my hand and official seal.

(Seal)

NOTARY PUBLIC

Murray A. Shepherd

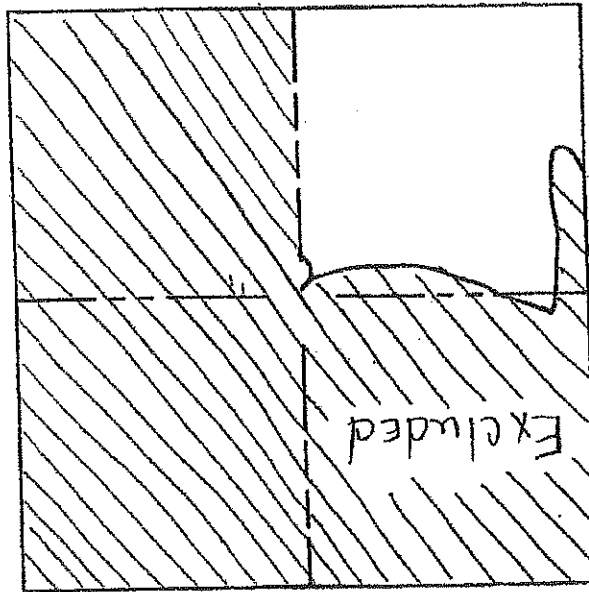
My Commission Expires: 7-22-09

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

EXHIBIT "A"

Map 3 of 3

PROTECTED AREA *Yuma*, COUNTY, STATE OF *Colorado*
AUTHORIZED BY EXECUTIVE ORDER(S) *1790, 1770* OF MAY 24, 1917, AND SECTION 1314 OF
THE FOOD SECURITY ACT OF 1985, P. *65*, H. *44*, W. *65*, PRINCIPAL MERIDIAN
SECTION(S): *10 NW 1/4*



This map delineates the area referred to in the easement conveyance dated _____

Farmers Home Administration

LEGEND

Boundary of Easement Description

Wetlands covered by provisions of the easement



Restored wetlands covered by provisions of the easement



Floodplain covered by provisions of the easement

Riparian covered by provisions of the easement

Grasslands covered by provisions of the easement

Exhibit I to the
Amendment of the RHA Easement