

**SURFACE USE AGREEMENT**  
**(AIMS)**

**THIS SURFACE USE AGREEMENT (AIMS)** (this "Agreement") is made and entered into this 21 day of JUNE, 2011, by and between WTM LAND, LLC, Colorado limited liability company, 5801 W 11<sup>th</sup> Street, Suite 201, Greeley, Colorado 80634 (hereby referred to as "WTM"), and SYNERGY RESOURCES CORPORATION, a Colorado corporation, 20203 Highway 60, Platteville, Colorado 80651 and FRANCIS ENERGY, INC., a Colorado corporation, 6600 W. 20<sup>th</sup> Street, #12, Greeley, Colorado 80634 (collectively hereby referred to as "Operator").

**BACKGROUND OF AGREEMENT**

The following background statements are made to aid in the understanding and interpretation of this Agreement and shall be deemed a substantive part of this Agreement and not merely recitals.

A. WTM is the owner of the surface estate in an approximate 6.1 acre tract of land located in the Southeast Quarter (SE ¼) of Section Ten (10), Township Five North (T.5N.), Range Sixty-Six West (R.66W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado) more specifically described on Exhibit "A" hereto and made a part hereof (the "Property").

B. This Agreement is entered into as a condition to the willingness of WTM to allow Operator to enter upon the Property for the purpose of conducting certain oil and gas operations as more fully described herein.

C. The surface rights in and to the Property created for the benefit of Operator or under any other claim of right are limited to the "Oil and Gas Operations Area," "Pipeline Easement," and "Access Road" as defined herein and depicted on Exhibit "B" hereto.

D. Operator desires to utilize the Oil and Gas Operations Area to drill and produce oil and gas wells with bottom hole locations beneath lands other than the Property.

E. WTM acknowledges that Operator's use of the Property may include, among other things, the right of ingress and egress for the purposes of exploration, development, drilling, re-drilling, testing, completion, re-completion, re-entry, deepening, fracturing, re-fracturing, stimulation, reworking, production and maintenance operations associated with oil and gas wells and the associated pipelines and production facilities ("Oil and Gas Operations") located within the Oil and Gas Operations Area.

F. Operator intends to drill up to fifteen (15) wells (the "Wells") as shown in Exhibit "A." The "Wells" as that term is used herein shall also refer to any additional wells that Operator drills from the surface of the Oil and Gas Operations Area.

G. Operator and WTM enter into this Agreement (i) to provide for the coexistence and joint development of the surface estate of the Property, and (ii) to delineate the process with which the parties shall comply with respect to the development of the two estates. Should the terms and provisions of this Agreement be inconsistent with or in conflict with any of the terms and provisions of any lease, then the terms and provisions of this Agreement shall prevail.

## **AGREEMENT**

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

### **1. AREAS RESERVED FOR OIL AND GAS OPERATIONS.**

**1.1 OIL AND GAS OPERATIONS.** Operator shall have the right to undertake Oil and Gas Operations for the Wells on the Property, and if any Oil and Gas Operations are commenced on the Property, Operator agrees to continuously drill no fewer than five (5) Wells to be completed within twelve (12) months following approval of special review permits by the City of Greeley and approval of drilling permits from the Colorado Oil and Gas Conservation Commission, and in any event on or before twenty four (24) months from the date of this Agreement. In order to provide for the drilling of the Wells, WTM shall, and does hereby ratify and, to the extent necessary, grant to Operator an easement to utilize the area illustrated on Exhibit "B" hereto as the "Oil and Gas Operations Area." To the extent that any drilling operation conducted by Operator pursuant to this Agreement consists of "horizontal well" technology, in which one well bore is substitute for multiple vertical or slant wells, such horizontal well shall fulfill the equivalent portion of the seven well drilling commitment, except for those provisions stated in Paragraph 20 below, as determined in accordance with prevailing industry practices.

**1.2 OIL AND GAS OPERATIONS AREA.** The Oil and Gas Operations Area shall be reserved and utilized for the exclusive purpose of any and all Oil and Gas Operations by Operator (its successors and assigns).

After the Wells are drilled, Operator shall complete berming and landscaping, as well as other visual mitigation measures as may be appropriate to screen the Oil and Gas Operations Area and the equipment located therein from the balance of the Property and in accordance with any use by special review permit obtained from the City of Greeley.

Except for the Oil and Gas Operations Area, Production Facility Area, Pipeline Easement and Access Road as provided in this Agreement, Operator shall not occupy any part of the surface of the Property except in the event of an emergency or for reasonable, incidental, temporary and nondamaging activities related to Operator's proper operations, for which Operator shall be strictly and solely responsible for any damages that may occur.

Operator shall at all times properly maintain and keep in good repair and condition all

landscaping, fences, roads, and other improvements required or permitted to be installed or in connection with the Oil and Gas Operations Area, Production Facility Area, Access Road or Pipeline Easement. In order to keep such location and facilities in good and safe working order and to maintain such facilities and provide proper weed control, use appropriate dust abatement procedures on all roads and the well site, including, without limitation, not less than annual applications of dust inhibitor, and otherwise maintain the site in as attractive a condition as is reasonably possible. Without limiting the foregoing, Operator, from time to time, shall repaint all equipment and improvements to a mutually agreed upon (such agreement not to be unreasonably withheld) earth tone color to keep a professional and clean appearance.

Upon abandonment of any Well, Operator shall properly plug and abandon same in complete accordance with the requirements of the Colorado State Oil and Gas Conservation Commission and any other governmental authority with jurisdiction over the Property. In addition, upon abandonment of the Oil and Gas Operations Area or Production Facility Area, Operator shall fully restore the location as near as practical to its pre-drilling state (provided that, at WTM's option, any berms and/or landscaping installed by Operator may remain in place). Without limiting the foregoing, Operator shall also fully reclaim and restore to its original condition the location of any Access Roads or Pipeline Easements used by Operator with respect to any abandoned Well site (subject to the option of WTM, exercisable in its sole discretion, to maintain such access roads in place).

Operator shall use the Oil and Gas Operations Areas and Production Facility Area only for drilling and production operations and placements of wellheads, separators, and normal well site storage tanks, and shall not install or store any other temporary or permanent structures, equipment or facilities on the Property without prior written consent of WTM, which may be withheld at WTM's sole discretion. Notwithstanding the foregoing, Operator may install such structures, equipment, or facilities as (i) are necessary to the efficient and safe operation of a Well or Wells; (ii) are necessary to address an emergency; or (iii) are required by applicable law, regulation, code or ordinance. Also, without limiting the foregoing, Operator shall not install or operate gas plants anywhere on the Property.

**1.3 PIPELINE EASEMENTS.** WTM shall grant a Pipeline Easement to Operator's gas purchaser in the area and along the route shown on Exhibit "B" attached hereto and made apart hereof. Any such pipeline shall be located in the center of such easement. WTM shall reasonably cooperate in granting additional pipeline easements within such Pipeline Easement area only to Operator or third parties used to facilitate the transportation of oil, gas and/or condensate to market from the Wells.

**1.4 PRODUCTION FACILITY AREA.** Operator shall have the right to locate, relocate, build, repair and maintain oil tanks, separators, dehydrators, emissions burners, compressors and other equipment necessary, appropriate or convenient for the operation and production of the Wells only within the Production Facility Area as shown in Exhibit "B." The Production Facility Area is located wholly within the Oil and Gas Operations Area. Upon completion of initial operations on any Oil and Gas Operations Area, the surface thereafter used by Operator for such operations shall be entirely within the Production Facility Area as shown on Exhibit "B," or any applicable Pipeline Easement or Access Road.

1.5 **LIMITATION OF USE OF THE PROPERTY.** Except for the Oil and Gas Operations Area, Production Facility Area, Pipeline Easement and Access Road as provided herein and depicted on Exhibit "B" hereto, Operator shall not use or occupy any part of the surface of the Property except in the event of an emergency.

1.5.1 Without the prior written consent of WTM, Operator shall not alter the location of the Wells or any other structures within the Oil and Gas Operations Area as shown on Exhibit "B"; the precise location of all such Wells and equipment being a material term of this Agreement. If any alteration for purposes of city or state approval is required, Operator must seek written consent from WTM for such alteration, which consent shall not be unreasonably withheld.

1.5.2 WTM shall place no permanent building, or structure intended for human occupancy or above-ground improvements (excluding streets, sidewalks, driveways, curbs and gutters, retaining walls) within two hundred (200) feet (or as such local and municipal requirements may then allow) of *any* tank or separator located in the Production Facility Area without prior written consent from Operator. WTM shall not construct or allow the construction of dwellings or structures intended for human occupancy on its property within thirty (30) feet of the Pipeline Easement area except at those locations where the pipeline is to be sleeved. At the locations where the pipeline is sleeved, without the prior written consent from Operator (not to be unreasonably withheld), WTM shall not construct or allow the construction of dwellings or structures intended for human occupancy within ten (10) feet on either side of the Pipeline Easement.

1.5.3 WTM hereby reserves the right for itself to use the surface of the Property, including property located in the Oil and Gas Operations Area, to directionally drill wells to leasehold interests other than those owned by Operator or to any other mineral or leasehold interests reasonably accessible from the surface of the Property as long as such operations from the Oil and Gas Operations Area do not unreasonably interfere with the operations of Operator. Such reserved rights may be assigned by WTM to third parties in WTM's sole and absolute discretion. Operator shall reasonably cooperate in granting easements to WTM which may be necessary to directionally drill through Operator's leasehold interest to access such other leasehold interests or minerals. 1.6

**WAIVER OF CERTAIN REQUIREMENTS.** WTM waives all setback requirements in Colorado Oil and Gas Conservation Commission ("COGCC") Rule 603, or any successor rule or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Operator to explore for and produce oil and gas in accordance with this Agreement.

2. **PIPELINES.** All flowlines from the Wells to the production facilities shall be located wholly within the Oil and Gas Operations Area. WTM shall grant a reasonably acceptable pipeline right of way to Operator's gas purchaser within the Pipeline Easement area for the limited purpose of transporting produced gas off of the Property. All flowlines and pipelines shall be buried to a minimum depth of four (4) feet.

3. **SURFACE RECLAMATION.** Operator, its successor and assigns, shall be responsible for the costs of interim and final reclamation and surface restoration related to such operations to the extent required by the COGCC and to the extent required to make the area usable for surface development consistent with the surrounding area and to satisfy any additional requirements as set forth in any use by special review permit obtained by Operator from the City of Greeley.

WTM shall have the right to require Operator to relocate any Pipeline Easement, at WTM's sole cost and expense, so long as such relocation is feasible and reasonable from a technical and engineering standpoint as determined by Operator in accordance with prevailing industry standards, and so long as such relocation complies with all applicable laws, rules and regulations. At such time as WTM desires to have any Pipeline Easement relocated to an alternative location selected by WTM, WTM shall give written notice to Operator who shall promptly prepare, or commission the preparation of, a cost estimate to accomplish the relocation. As soon as available, Operator will then provide the cost estimate to WTM who will then have the opportunity to review same and make a final determination about whether it wishes to proceed with the relocation. If WTM elects to have Operator effectuate the pipeline relocation, it shall tender the estimated costs of such to Operator together with its written request to commence the project as soon as reasonably practicable.

4. **ACCESS.**

4.1 During WTM's development of the surface of the Property and at all times thereafter, WTM shall at all times provide Operator access to the Oil and Gas Operations Area and the Pipeline Easement granted to Operator, though the location of that access may vary from time to time in accordance with the needs and progress of such surface development. The temporary thirty (30) foot wide access road to be used for drilling operations and the permanent twenty (20) foot wide access road shall be located as shown on Exhibit "B" (the "Access Road").

4.2 If applicable, and as WTM constructs paved roads, curbs, gutters and sidewalks to accommodate WTM's infrastructure design, WTM shall continue to provide Operator access to the Oil and Gas Operations Area and Pipeline Easements and shall provide curb cuts at all access points. The curb cuts at the access points shall be at least thirty (30) feet wide. The paved roads leading to the access points, and the curb pans and gutters at the access points shall be reinforced to accommodate a gross vehicle weight of at least 18,000 pounds per axle. WTM at its sole cost and expense shall be entitled to relocate the Access Road as deemed appropriate by WTM in its surface development so long as such other access is reasonably acceptable to Operator.

4.3 All access for Oil and Gas Operations shall be subject to approval of the City of Greeley as part of Operator's use by special review permit.

4.4 Operator agrees to construct and maintain the Access Road in a good condition and at its sole cost and expense and to utilize materials for the surface of the access road that will prevent the tracking of mud, as reasonably as practicable, onto the paved surfaces

connecting to the Access Road.

5. **PRODUCTION FACILITIES.** Operator shall have the right to locate, relocate, build, repair and maintain oil tanks, separators, dehydrators, compressors and other equipment necessary, appropriate or convenient for the operation and production of the Wells limited, however, to the Production Facility Area designated for such purpose on Exhibit "B." All tanks and separators shall be "low profile" as defined in the rules and regulations of the City of Greeley. With respect to the Wells and production facilities of Operator, other than pipelines and access roads, Operator shall install and maintain fences, gates and locks reasonably necessary for the security of the Wells within the Oil and Gas Operations Area and the production facilities in the Production Facility Area. Such fences, gates and locks shall be installed at the expense of Operator and maintained at the expense of Operator and shall be of a type and quality customarily used for such purpose in an urban area and subject to approval of the City of Greeley.

6. **NOTICE OF FUTURE OPERATIONS.** Operator shall provide at least thirty (30) days prior written notice to WTM in advance of any operations (other than the drilling of new wells) within the Oil and Gas Operations Area in connection with the reworking, fracturing, deepening or other unusual or other than routine operations on the Wells; provided, however, that Operator shall have immediate access in the event of an emergency.

7. **INSURANCE.** Before and during drilling and production operations on the Property, Operator shall at all times maintain appropriate insurance, including, without limitation, workers compensation insurance, in compliance with Colorado law for its employees or contractors involved in the conduct of operations on any portion of the Property and general public liability insurance in such amounts as are customarily maintained for operations similar to those conducted by Operator.

8. **PRELIMINARY AND FINAL PLATS.** Any Final Plat hereafter prepared by WTM as part of the subdivision approval process for the Property (if any) shall include the Wells, production facilities, Pipeline Easement, and Access Road.

9. **CONSIDERATION FOR DIRECTIONAL DRILLING.** Operator shall be responsible for any and all costs related to directional drilling of the Wells.

10. **FUTURE OPERATIONS.** Operator shall make all reasonable efforts to pursue any and all Oil and Gas Operations in a diligent manner so as to minimize the total time period on location and to avoid rig relocations or startup delays during the course of drilling. WTM waives and shall not assert any right to require that wellhead or production equipment be located in conformance with setback requirements different from those agreed to in this Agreement (including, but not limited to, those concerning any "high density" rules of the COGCC).

11. **DEFAULT AND RIGHT TO CURE.**

11.1 In the event of alleged default by either party 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 this Agreement said party will be notified, by certified mail, return receipt requested, of the alleged default. The receiving party will have thirty (30) days from receipt of written notification in which to cure the alleged default, dispute or otherwise respond to the notification before the other party may allege default in any court. Except as otherwise agreed in writing, no waiver by either party of any breach by the other party 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 either party to seek a remedy for any breach by the other party be deemed to be a waiver of rights or remedies with respect to such breach. IN NO EVENT WILL EITHER PARTY BE LIABLE TO ANY PARTY FOR CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES FOR ACTIVITIES UNDERTAKEN WITHIN THE SCOPE OF THIS AGREEMENT.

11.2 With respect to a default consisting of failure by Operator to drill at least five (5) Wells from locations on the Property within the timeframe contemplated by the provisions of Section 1.1 of this Agreement, Operator shall pay to WTM the sum of \$65,000.00, as liquidated damages for each Well less than five (5) so drilled (as determined in accordance with the provisions of Section 1.1 of this Agreement). By way of example, if Operator completes only three (3) Wells from locations on the Property within the timeframe contemplated by Section 1.1, Operator shall pay to WTM liquidated damages in the amount of \$130,000.00 (being 2 x \$65,000.00 per Well). THE PARTIES AGREE THAT IT WILL BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE TOTAL DAMAGES WHICH WTM MIGHT SUFFER AS A RESULT OF OPERATOR'S FAILURE TO TIMELY COMPLETE THE DRILLING OF AT LEAST FIVE (5) WELLS FROM LOCATIONS ON THE PROPERTY. THE PARTIES THEREFORE AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT WTM WOULD SUFFER IN THE EVENT OF SUCH A DEFAULT SHALL BE EQUAL TO THE LIQUIDATED DAMAGES PROVIDED HEREIN, AND PAYMENT OF SUCH LIQUIDATED DAMAGES SHALL BE WTM'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH DEFAULT. THE PAYMENT OF SUCH AMOUNT OF LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OF PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO WTM.

Notwithstanding the foregoing, in the event that Operator has drilled zero wells upon the Property as contemplated by the provisions of Section 1.1 of this Agreement, no liquidated damages will be payable in accordance with the foregoing, and WTM's sole remedy in connection with such default shall be termination of this Agreement and Operator's acknowledgment that it is prohibited from entering upon the surface of the Property for the purpose of conducting any further drilling operations.

## 12. GOVERNMENTAL PROCEEDINGS.

12.1 WTM shall not, directly or indirectly, oppose or encourage opposition to Operator in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, the County of Weld, the City of Greeley, or other governing body proceedings related to the operations of Operator within the Oil and Gas Operations Area, including but not limited to drilling and production activities, workovers, well deepenings,

recompletions, fracturing, replacement wells and re-fracturing, provided that the position of Operator in such proceedings is not materially inconsistent with this Agreement.

12.2 Operator shall not directly or indirectly oppose or encourage opposition to WTM in any agency, administrative, or other governing body proceedings, relating to WTM's operations on and development of the Property, including residential and associated development, provided that WTM's position in such proceedings is not materially inconsistent with this Agreement.

12.3 This Agreement is subject to approval of the City of Greeley in its use by special review permitting procedures and by the COGCC in its application for permit to drill procedures. Should the City of Greeley or the COGCC have requirements that are contrary to the provisions of this Agreement, the parties hereto agree to work in good faith to resolve said conflicting provisions in a way that allows the oil and gas development contemplated herein without increasing the burdens on the use of the surface of the Property.

### 13. ENVIRONMENTAL INDEMNITY.

13.1 Operator shall protect, indemnify, and hold harmless WTM, any homeowners or property owners association, and any subsequent owner of all or any portion of the Property from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of Operator's use and operation of the Oil and Gas Operations Area, Production Facility Area, Access Roads or Pipeline Easements. WTM shall fully protect, defend, indemnify and hold harmless Operator from any and all Environmental Claims relating to the Property that arise solely out of WTM's development of the Property (provided that discovery by WTM, during the course of such development, of previously unknown Environmental Claims caused by Operator shall be the responsibility of Operator).

13.2 "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 Property or ownership of the oil and gas leasehold interest, 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. 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.

13.3 "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order (whether currently existing or hereafter adopted) of any federal, state or local governmental authority(ies), which relate to or otherwise impose liability, obligation, 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).

**14. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.**

14.1 Each party shall be and remain responsible for all liability for losses, claims, damages, demands, suits, cause 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 each such party's ownership or operations, including each such parties' employees, agents, contractors, subcontractors or other invitees on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold harmless against all such Claims that arise from its negligence. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein.

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

14.3 If a Claim is asserted against a party for which another party would be liable under the provisions of this Section 16, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within thirty (30) days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

**15. REPRESENTATIONS.** Each party represents that it has the full right and authority to enter into this Agreement. WTM specifically confirms its capacity to validly execute the rights of way and easements provided for herein. Operator represents that it owns oil and gas leasehold associated with the Wells anticipated to be drilled from the surface of the Property.

**16. SUCCESSORS.** The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, devisees, executors, administrators, successors and assigns. This Agreement and all of the covenants herein shall be covenants running with the land. Without limiting the foregoing, WTM covenants and agrees to exercise reasonable efforts to cooperate with Operator in obtaining commercially reasonable subordinations from any lender holding a deed of trust or other lien with priority on the interest of WTM which would otherwise have lien priority over the interest of Operator under this Agreement.

**17. ASSIGNMENT.** This Agreement shall be assignable, in whole or in part, by either party, subject to the following:

17.1 Operator may assign its interest in the Surface Use Agreement only if such assignment is expressly subject to all terms and conditions of this Agreement, and expressly provides for the assumption by assignee of all obligations of Operator under this Agreement. Any such assignment shall be expressly subject to all terms and conditions of this Agreement (whether or not so stated therein), and the assumption by assignee of all obligations of Operator under this Agreement (whether or not so stated therein).

17.2 WTM may assign or convey its interest in the Property or any portion thereof only following written disclosure to the assignee of the existence of this Agreement, and such assignment or conveyance shall be expressly subject to all terms and conditions of this Agreement, and the assumption by such assignee or grantee of all obligations of WTM under this Agreement.

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

If to Operator:

Synergy Resources Corporation  
20203 Highway 60  
Platteville, Colorado 80651  
Facsimile: (970) 737-1045

Francis Energy, Inc.  
6600 W 20<sup>th</sup> Street, # 12  
Greeley, CO 80634  
Facsimile: (\_\_\_\_) \_\_\_\_\_

If to WTM:

WTM Land, LLC  
5801 W 11<sup>th</sup> Street, Suite 201  
Greeley, Colorado 80634  
Facsimile: (970) 352-2903

With a copy to:

Michael A. Maxwell  
Attorney at Law  
8010 South County Road 5, Suite 207  
Windsor, Colorado 80528  
Facsimile: (970) 377-8001

Any party may, by written notice so deliver to the other party, change the address, fax

number or individual to which delivery shall thereafter be made.

19. **RECORDING.** Within fifteen (15) days of the Effective Date, WTM shall record a complete copy of this Agreement in the real property records of the County of Weld, Colorado. WTM shall provide Operator with a copy thereof showing the recording information as soon as practicable thereafter.

20. **SURFACE DAMAGES AND PAYMENT.** Operator shall provide not less than thirty (30) days advance written notice to WTM of its intent to drill each of the Wells. Operator shall pay to WTM per well damages in an amount as stipulated in a certain Surface Damages Agreement between WTM, as Owner, and Operator, covering the Property (the "Surface Damages Agreement"). The parties hereto do hereby agree any default under the terms of the Surface Damage Agreement shall be deemed a default under this Agreement and shall be cause for termination of Operator's right to access the surface of the Property in any way whatsoever. Additionally, the parties hereto agree that no well shall be drilled from the surface of the Property unless and until satisfaction of all requirements of the Surface Damage Agreement have been confirmed by all parties thereto.

In consideration of the parties' respective rights, obligations and benefits as outlined herein, this Agreement shall constitute surface right or surface damage agreement provided under the COGCC's rules and regulations.

If by any reasons resulting from the operations of Operator, there is damage to real or personal property upon the Property which is not associated with usual and customary operations, such as (but not limited to) damage to livestock, structures, buildings, fences, culverts cement ditches, irrigation systems, and natural water ways, such damage will be repaired or replaced by Operator, or Operator will pay reasonable compensation to WTM for such additional damage.

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

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

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

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

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

future.

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

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

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

29. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.

30. **TERMINATION.** Unless otherwise agreed in writing, the rights of Operator its successors and assigns to use the Oil and Gas Operations Area shall terminate upon the later of the expiration or termination of the Lease or the plugging and abandonment of the Wells with a surface location within the Oil and Gas Operations Area operated by Operator.

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

32. **BINDING EFFECT.** The parties have executed this Agreement as of the day and year first above written, and shall be binding on WTM and Operator, their successors and assigns.

WTM LAND, LLC,  
a Colorado limited liability company

6/21/11  
Date

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

SYNERGY RESOURCES CORPORATION,  
a Colorado corporation

6-22-11  
Date

By:   
\_\_\_\_\_  
CEO, ~~Manager~~

FRANCIS ENERGY, INC.  
a Colorado corporation

6-22-11  
Date

By:   
\_\_\_\_\_  
Nicholas D. Francis President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of June, 2011, by Brian Bartels as Manager of WTM LAND, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 12-08-2014



C. Rasmuson  
\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> CR day of June, 2011, by Edward A. Holloway as Manager of SYNERGY RESOURCES CORPORATION, a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 12-08-2014



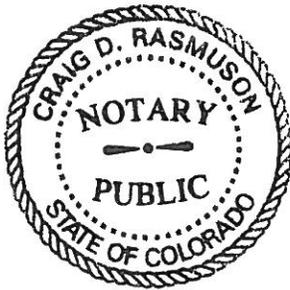
C. Rasmuson  
\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> <sup>CR</sup> day of June, 2011, by Nicholas D. Francis as Manager of FRANCIS ENERGY, INC, a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 12-08-2014



C. Rasmuson  
Notary Public

EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE SURFACE USE AGREEMENT (AIMS) BY AND BETWEEN WTM LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY ("WTM") AND SYNERGY RESOURCES CORPORATION, A COLORADO CORPORATION AND FRANCIS ENERGY, INC., A COLORADO CORPORATION (COLLECTIVELY, "OPERATOR").

Legal Description of the Property

A parcel of land being part of the Southeast Quarter (SE1/4) of Section Ten (10), Township Five North (T.5N.), Range Sixty-six West (R.66W.) of the Sixth Principal Meridian (6th P.M.), City of Greeley, County of Weld, State of Colorado and being more particularly described as follows:

**COMMENCING** at the East Quarter Corner of said Section 10 and assuming the East line of the SE1/4 of said Section 10 as bearing North 00°27'35" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2649.30 feet, with all other bearings contained herein relative thereto:

THENCE South 88°53'52" West along the Northerly line of said SE1/4 a distance of 465.60 feet to the Northwest Corner of Country Meadows Subdivision, as recorded August 6, 1987 as Reception No. 2109640 of the Records of the Weld County and said point being the **POINT OF BEGINNING**;

THENCE South 00°27'35" East along the West line of said Country Meadows and it's Southerly extension a distance of 422.72 feet;

THENCE South 44°39'48" West a distance of 147.32 feet to the Northerly line of a 50' Greeley Waterline Easement recorded June 21, 1906 as Book 234 at Page 483 of the Records of Weld County;

THENCE North 61°36'55" West along the Northerly line of said 50' Greeley Waterline Easement a distance of 291.59 feet;

THENCE South 28°23'05" West a distance of 207.75 feet;

THENCE North 61°36'55" West a distance of 100.00 feet;

THENCE North 28°23'05" East a distance of 207.75 feet to the Northerly line of said 50' Greeley Waterline Easement;

THENCE North 61°36'55" West along the Northerly line of said 50' Greeley Waterline Easement a distance of 195.89 feet;

THENCE North 01°06'08" West a distance of 236.30 feet to the Northerly line of said SE1/4;

THENCE North 88°53'52" East along the Northerly line of said SE1/4 a distance of 621.68 feet to the **POINT OF BEGINNING**;

Said described parcel of land contains 266,597 Square Feet or 6.120 Acres, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

EXHIBIT "B" ATTACHED TO AND MADE A PART OF THE SURFACE USE AGREEMENT (ON THE GREEN) BY AND BETWEEN WTM LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY ("WTM") AND SYNERGY RESOURCES CORPORATION, A COLORADO CORPORATION AND FRANCIS ENERGY, INC., A COLORADO CORPORATION (COLLECTIVELY, "OPERATOR").

Oil and Gas Operations Area, Production Facility Area,  
Pipeline Easement and Access Road

