

SURFACE USE AGREEMENT

This SURFACE USE AGREEMENT ("Agreement") is effective the 6th day of November, 2009, between **THOMAS F. LATHAM AND GINGER L. LATHAM**, whose address is P.O. Box 66, DeBeque, CO 81630 ("Surface Owner"), and **BERRY PETROLEUM COMPANY, a DELAWARE CORPORATION** ("Operator"), whose address is 1999 Broadway, Suite 3700, Denver, Colorado 80202, sometimes collectively referred to as (the "Parties")

RECITALS

A. Surface Owner owns the surface of the following described real property in Garfield County, Colorado (the "Property"), legally described as:

Township 6 South, Range 97 West of the 6th P.M.

Section 2: Lot 13, N/2SE/4

B. Operator is the owner/operator of an interest in an oil and gas lease ("Lease") granting Operator certain rights to minerals on the Property.

C. Operator wishes to drill a Well or Wells (as defined below) on the Property for the extraction of the minerals described in the Lease.

D. Surface Owner and Operator wish to memorialize their agreement concerning the payment for damages to the surface of the Property in connection with the drilling, construction, completion, re-completion, reworking, re-entry, production, maintenance and operation of the Well(s), and for the construction, maintenance and use of an access road and gas pipeline and water pipeline to be located on the Property.

TERMS

NOW THEREFORE, in consideration of the mutual covenants in this Agreement, and Operator's agreement to pay the consideration described in this Agreement, the Parties agree as follows:

1. Wells and Well Pad.

(a) Operator may construct one (1) well pad in the area designated on the map (the "Well Pad") attached to this Agreement as Exhibit "A". The Well Pad shall not exceed an area of 360 feet by 150 feet of disturbed area, including any cuts and fills, after initial reclamation. Operator may drill nine (9) wells on the Well Pad as permitted by Colorado Oil and Gas Conservation Commission ("COGCC") spacing requirements. As used in this Agreement, "Well" shall mean a well and the accompanying wellbore (either vertically or

directionally drilled from the Well Pad) for the production of oil and gas, and all associated casing and wellhead equipment.

(b) On or before December 1, 2010, Operator shall commence construction of the Well Pad and shall pay Owner \$90,000.00. Except as otherwise provided in this Agreement, such payments shall constitute payment in full by Operator for all damages to the Property associated with the drilling, construction, completion, re-completion, reworking, reentry, production, operation and maintenance of the Well(s) and full compensation for the access road and pipeline easement.

2. Access Road and Pipeline Easement.

(a) Surface Owner hereby grants, conveys, transfers and warrants unto Operator, its successors and assigns, a non-exclusive right-of-way and non-exclusive easement to be used solely to survey, construct, lay, maintain, service, inspect, use, operate, protect, replace, repair and/or to remove (i) one (1) access and haul road (the "Access Road"), and (ii) one (1) gas pipeline and 1 water pipeline together with appurtenances thereto, including valves, launchers, and receivers, as necessary for the transportation or transmission of fresh or produced water, oil, gas, petroleum products, and other hydrocarbons, whether fluid, solid or gaseous (the "Pipeline"), in, on, over, under, or through the Property, at the location more particularly described on Exhibit "B", attached hereto and incorporated herein (such location and the easements therein, the "Right-of-Way"), being a survey of the Access Road and the Pipeline, and being specifically limited within such Right-of-Way to the Access Road and the Pipeline described in said Exhibit "B". The width of said Right-of-Way during survey and construction activities shall be seventy five feet (75') for the Access Road and fifty (50) feet for the Pipeline, and upon completion of construction of the Access Road and the Pipeline their respective easements shall be limited to forty feet (40'), being twenty feet (20') on either side of the centerlines as constructed. Any change to the size of the Access Road and/or the Pipeline or the construction of additional access roads and/or pipelines shall require the prior written approval of Surface Owner.

(i) Operator shall construct the Access Road and the Pipeline in a manner and using materials typical for oil and gas well access roads and pipelines in the vicinity of the Property, and shall maintain the Access Road and the Pipeline granted herein as a reasonably prudent operator.

(ii) Culverts shall be installed at ditch and drainage crossings as needed where the Access Road and/or the Pipeline cross such ditches or drainages, and shall be sized to prevent obstruction to the free flow of the volumes of water being carried, inclusive of flood stages. Operator shall protect all water sources and conveyance structures, including but not limited to the natural flow of creeks, wells, and ditches, from all operational activities and shall promptly remedy any diversion, curtailment, or blockage of water flows or contamination of water sources. Operator shall provide Surface Owner with test results from a semi-annual

sampling of all springs and streams for the Property confirming no change in water quality beyond naturally occurring fluctuations in turbidity due to seasonal weather conditions. The semi-annual sampling shall commence prior to the execution of this agreement and continue for so long as Operator or its successors or assigns have a well on the Property. Operator shall be responsible for remediation of any degradation of water quality caused by the activities of Operator, its agents or contractors.

(iii) The Right-of-Way shall at all times be properly graded, drained, and maintained by Operator from commencement of operations through abandonment of the Right-of-Way or termination of this Agreement and shall keep the Right-of-Way in good order, at all times free from litter and debris.

(iv) Permanent gates and cattle guards shall be installed at each point where the Access Road intersects perimeter or cross fences. If Owner or Operator chooses to lock any gate on the Access Road, keys will be provided to the Surface Owner .

(v) The Right-of-Way conveyed by this Agreement shall be for the private use of Operator, its agents, employees, assigns, contractors, and subcontractors only, with no right of use by the public, or for access by the public to other lands. Surface Owner reserves the right to use the Access Road for any purpose that does not unreasonably interfere with Operator's operations.

(b) Construction.

(i) Operator shall make reasonable efforts to provide notice to Surface Owner at least five (5) days prior to any construction under this Section 2, by telephone and/or facsimile.

(ii) During construction of the Access Road and at all times thereafter, Operator shall minimize disruption of, or interference with, any ranching, agriculture, or other operations conducted on the Property now or in the future.

(iii) As soon as practicable following completion of construction or improvement of the Access Road and the Pipeline on the Right-of-Way, Operator shall, at its sole expense, survey the actual location of the completed Access Road and the Pipeline and provide Surface Owner with a copy of such survey.

(c) Compliance with Law. Operator, its agents, designees, assignees and successors-in-interest shall, in connection with the use of the Access Road and the Pipeline, comply with all applicable federal, state and local laws, rules and regulations applicable.

(d) Term of Easement Grant.

(i) The provisions of this Agreement are a covenant running with the land and shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors, and permitted assigns of Surface Owner and Operator. Operator shall not assign, sublease, mortgage, transfer or convey any interest in the Right-of-Way granted herein without Surface Owner's prior written consent, which shall not unreasonably be withheld.

(ii) The Right-of-Way granted herein shall continue in effect for so long as Operator shall use or operate either the Access Road or the Pipeline. Notwithstanding the foregoing, if Operator, or its successors or permitted assigns, expressly abandon the Right-of-Way, discontinue the use of both the Access Road and the Pipeline for any period of 12 consecutive months, fail to perform any material obligation under, or breach in any way, this Agreement, and fail to correct the deficiency or breach within 30 days of written notice from Surface Owner, then Surface Owner may terminate the Right-of-Way granted herein. Pursuant to this Article 2.(d)(ii) and upon the request of Surface Owner, Operator shall execute a recordable release of this Agreement. At termination of the Right-of-Way granted herein, the Right-of-Way granted herein shall revert to Surface Owner whether or not Operator executes a release. All indemnity and other obligations of Operator hereunder which are performable after termination shall survive the termination of this Right-of-Way. In addition, if Operator acquires title to the surface of the Property, the Right-of-Way granted hereunder shall be deemed to be merged into said surface title.

3. Weed Control. Operator shall be responsible for controlling all noxious weeds on the Well Pad and the Access Road and Pipeline. Operator shall also be responsible for preventing such noxious weeds from spreading to any portion of the Property adjacent to those areas.

4. Erosion Control. Operator shall be responsible for controlling all erosion of soils at the Well Pad and/or the Access Road and the Pipeline caused by the activities of Operator or its employees, contractors, sub-contractors, or agents. Operator shall not construct any open pit or pits for storage of production water on the Property. Any reserve pit required for drilling and completion operations shall be kept as small as is reasonably possible and Operator shall take reasonable steps to mitigate odor from any such reserve pit.

5. Reclamation.

(a) Initial Reclamation. By December 31, 2012, except for areas required for current operations such as the Access Road, Pipeline, the wellhead(s), permanent facilities, and room for future workover operations, Operator shall restore all other disturbed areas in accordance with this subsection 5(a) and in accordance with applicable regulatory guidelines. Such restoration shall commence promptly following completion of the Wells and establishment of equipment on the Well Pad and/or the Access Road or the Pipeline, as the case may be.

(i) Operator shall make available copies of a site-specific reclamation plan (Form 2A, Oil and Gas Location Assessment) along with copies of each approved Application for Permit-to-Drill (Form 2), including any conditions of approval for all Wells on the Property, prior to commencement of construction operations with heavy equipment. All interim and final reclamation goals shall be included in the site-specific reclamation plan.

(ii) Additional disturbance of native or previously reclaimed areas shall be minimized. If any subsequent disturbances of surface areas are undertaken at any time, the same reclamation and re-vegetation obligations will apply. Recontouring shall not be required in areas that have been successfully reclaimed.

(b) Final Reclamation. Final reclamation shall return the entire site as close as reasonably possible to its original topography, and shall be complete and successful within two (2) years after the last Well is plugged and abandoned. However, if at the end of the two (2) year period Operator has not completed a successful reclamation because of events beyond its control, Surface Owner agrees to grant Operator in writing a reasonable extension of time to achieve a successful reclamation. Upon final termination of operations, Surface Owner may request culverts and fencing to be left in place, in which case they shall thereafter belong to Surface Owner.

6. Termination. The right to erect, drill, and maintain the Well Pad and Wells shall terminate: (i) upon the termination of the Lease; (ii) upon permanent cessation of production of all Well or Wells drilled from the Well Pad and final reclamation.

7. General Provisions.

(a) Consultation. Operator shall consult with Surface Owner regarding all significant operations involving Operator's use of the Property. Operator shall make reasonable efforts to notify Surface Owner at least five (5) days prior to beginning any work on the Property involving heavy equipment, including but not limited to drilling, excavating, cutting roads or laying pipes by telephone and/or facsimile.

(b) Surveys, Plans. Prior to construction, Operator shall provide Surface Owner with COGCC well permits and applications, as well as surveys and plans of the Well Pad site, Access Road, and the Pipeline location.

(c) Liability of Operator. Operator shall be liable for any injury to persons, property, or livestock caused by or incident to the operations of Operator, its agents, employees, assigns, contractors, or subcontractors on the Property, or any extraordinary damages due to spills of materials, explosions, or any other harmful activity of Operator. Operator shall indemnify and hold harmless Surface Owner from and against any and all liability, damages, costs, expenses, fines, penalties and fees (including without limitation reasonable attorney and consultant fees) incurred by or asserted against Surface Owner arising from or regarding or

relating to the operation of the Well or use of the Well Pad or Right-of-Way by Operator, its agents, employees, assigns, contractors, or subcontractors. Such indemnification shall extend to and encompass, but shall not be limited to, all claims, demands, actions or other matters which arise under the common law or other laws designed to protect the environment or public health or welfare. Operator shall, at Surface Owner's option, defend Surface Owner or reimburse Surface Owner as to any reasonable or necessary expenses incurred for Surface Owner's defense against any claims, demands, actions, or other matters, whether brought or asserted by federal, state, or local governmental bodies or officials, or by private persons, which are asserted pursuant to or brought under any such laws. All of Operator's obligations stated in this Section 7 (c) shall survive termination of this Agreement to the extent provided in Section 7. (p).

(d) Regulations: No part of this Agreement shall be construed to relieve Operator from any or all COGCC regulations, present and future.

(e) No Off-Site Substances. Operator shall not store or dispose of on the Property any soil, waste, or other substance generated off of the Property.

(f) Prohibited Items. Operator shall not be permitted to have, or allow, firearms, crossbows, pets, alcohol, or illegal drugs on the Property.

(g) Insurance. Operator shall keep its operations insured, or comply with applicable self-insurance laws and regulations, for automobile, liability, and workmen's compensation insurance, and for any damages incurred on the Property.

(h) Operator Liens. Operator shall, at its sole expense, take all reasonable steps to remove any operator's liens or similar encumbrances resulting from the activities of Operator and/or its agents on the Property promptly after becoming aware of the existence of such lien or encumbrance, and shall indemnify and hold harmless Owner from and against any and all liens, claims, demands, costs, and expenses, including, without limitation, attorney fees and court costs, in connection with or arising out of any work done, labor performed, or materials furnished.

(i) No Warranty of Title. This Agreement is made subject to any and all existing easements, rights-of-way, liens, agreements, burdens, encumbrances, restrictions, and defects in title affecting the Property.

(j) Subrogation of Rights. Operator shall have the right to discharge or redeem for Surface Owner, in whole or in part, any mortgage, tax, or other lien on the Property that could jeopardize Operator's rights under this Agreement, in which case Operator shall be subrogated to that mortgage, tax, or other lien and incident rights.

(k) Non-Exclusive Use and Reservations. All rights granted in this Agreement are limited to the specific grants described in this Agreement. Surface Owner

reserves to itself and its successors and assigns all rights not specifically granted to Operator in this Agreement.

(l) Notice. Wherever provision is made in this Agreement for the giving, service, or delivery of any notice, statement, or other instrument, such notice shall be given by: (i) personal delivery, or (ii) United States first class mail, postage prepaid, certified, return receipt requested, or (iii) facsimile transmission, addressed to the party entitled to receive the same at the address stated below ; provided, however, that each party may change that party's mailing address by giving to all other parties written notice of change of such address in the manner provided in this subsection 7 (l). Mail shall be deemed to have been given, served and delivered upon the third delivery day following the date of the mailing; personal delivery shall be deemed to have been given, served and delivered upon receipt.

Surface Owner:

Thomas F. Latham
Ginger L. Latham
P.O. Box 66
DeBeque, CO 81630
Phone: 970-210-1832
Facsimile: 970-283-5248

Operator:

Berry Petroleum Company
Attn: Corporate Land Manager
1999 Broadway, Suite 3700
Denver, CO 80202
Phone: 303-999-4400
Facsimile: 303-999-4401

(m) Authority. Operator represents that it has full authority to commit to this Agreement.

(n) Survival of Certain Obligations. Operator's indemnification obligations under Section 7 (c) and reclamation obligations under Section 5 shall survive the later to occur of: (i) two (2) years after the termination of this Agreement, or (ii) the completion of final reclamation under Section 5.

(o) Merger of Prior Agreements. This Agreement contains the sole and entire agreement and understanding of the parties with respect to its entire subject matter. All prior discussions, negotiations, commitments, and understandings relating to the subjects of this Agreement are merged into it.

(p) Amendments. This Agreement may only be amended by the written agreement of both Parties. This Agreement cannot be amended or terminated orally.

(q) Headings. Section headings or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision.

(r) Construction. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa; and the masculine gender shall include the feminine and neuter genders, and vice versa. The provisions of this Agreement have been independently, separately and freely negotiated by the Parties as if drafted by both of them. The Parties waive any statutory or common law presumption that would serve to have this Agreement construed in favor of or against either party.

(s) Applicable Law and Attorney Fees. This Agreement and the rights of the Parties under it shall be governed by and interpreted in accordance with the laws of the State of Colorado, by the District Court of Garfield County, Colorado. In the event of any dispute, the substantially prevailing Party as determined by the court shall be entitled to recover its reasonable costs and attorney fees, including post-judgment collection costs, in addition to actual damages.

(t) Assignment, Heirs, Successors and Assigns. Operator may assign the rights and Right-of-Way granted herein, either in whole or in part, subject to the terms of this Agreement, and such rights and Right-of-Way shall be covenants running with the land. Subject to any limitations on assignment provided in this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

(u) Recording Memorandum. This Agreement will not be recorded without the consent of both Parties. The Parties will execute a Memorandum of Agreement and Right-of-Way describing the right to the Well Pad and Right-of-Way granted herein. Operator will record said memorandum of agreement and right-of-way in the real property records of Garfield County, Colorado.

(v) Counterparts. This Agreement may be executed in two or more counterparts which together shall constitute a final agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Date first above written.

SURFACE OWNER:

By: Thomas F. Latham
Thomas F. Latham

By: Ginger L. Latham
Ginger L. Latham

OPERATOR:

BERRY PETROLEUM COMPANY, a Delaware corporation

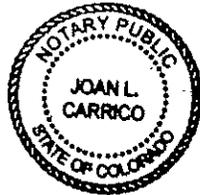
By: _____
Daniel G. Anderson, Vice President

ACKNOWLEDGMENTS

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 6th day of November, 2009, by Thomas F. Latham and Ginger L. Latham.

Witness my hand and official seal.
My commission expires: 10-24-10



Joan L. Carrico
Notary Public

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

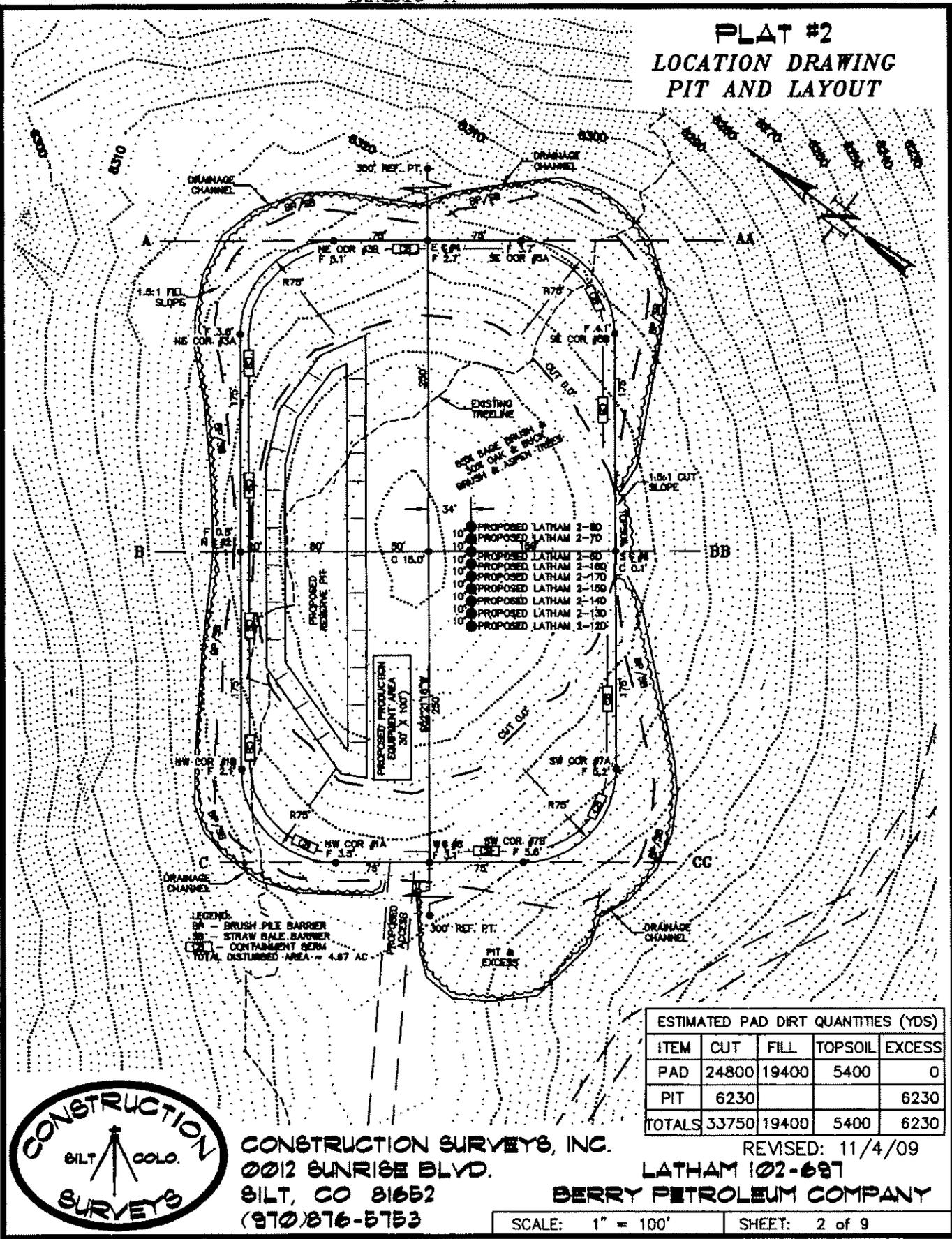
The foregoing instrument was acknowledged before me this _____ day of November, 2009, by Berry Petroleum Company, a Delaware corporation, by Daniel G. Anderson, its Vice President.

Witness my hand and official seal.
My commission expires:

Notary Public

Well Pad Location
Exhibit "A"

PLAT #2
LOCATION DRAWING
PIT AND LAYOUT



LEGENDS:
 BP - BRUSH PILE BARRIER
 SB - STRAW BALE BARRIER
 [Symbol] - CONTAINMENT BERM
 TOTAL DISTURBED AREA = 4.87 AC

- 10' PROPOSED LATHAM 2-80
- 10' PROPOSED LATHAM 2-70
- 10' PROPOSED LATHAM 2-60
- 10' PROPOSED LATHAM 2-180
- 10' PROPOSED LATHAM 2-170
- 10' PROPOSED LATHAM 2-150
- 10' PROPOSED LATHAM 2-140
- 10' PROPOSED LATHAM 2-130
- 10' PROPOSED LATHAM 2-120

ESTIMATED PAD DIRT QUANTITIES (YDS)				
ITEM	CUT	FILL	TOPSOIL	EXCESS
PAD	24800	19400	5400	0
PIT	6230			6230
TOTALS	33750	19400	5400	6230



CONSTRUCTION SURVEYS, INC.
 0012 SUNRISE BLVD.
 BILT, CO 81652
 (970)876-5753

REVISED: 11/4/09
 LATHAM 102-697
BERRY PETROLEUM COMPANY

SCALE: 1" = 100' SHEET: 2 of 9

Right-of-Way to Access Road and the Pipeline

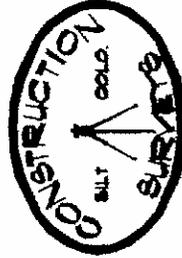
Exhibit "B"



SCALE 1" = 200'

PROPOSED LATHAM 1-2-697

CUT = 24007 cu. yds
 FILL = 16064 cu. yds
 Net = 5063 cu. yds CUT
 PAD GRADE = 2313
 6400 YARDS TOPSOIL
 -12837 YDS EXCESS
 PTT-12837 on yards OVT



CONSTRUCTION SURVEYS, INC.
 6012 SUNRISE BLVD.
 SILT, CO 81652
 970-574-5753

DRAFTED BY: BW	CHECKED BY: BW
DATE: 10/18/06	DWG: LATHAM-2-697

SHEET 1 OF 1

