

## SURFACE AND SUBSURFACE USE AGREEMENT

THIS SURFACE AND SUBSURFACE USE AGREEMENT, made this, 17th day of July, 2012, by and between Hoshiko Farms, Inc., hereinafter referred to as "OWNER", and Pico Niobrara, LLC, hereinafter referred to as "COMPANY":

### WITNESSETH:

WHEREAS, OWNER is the owner of the surface estate of lands located in that portion of the of Sections 25 and 36, Township 5 North, Range 64 West of the Sixth Principal Meridian, contained within Lot B of Recorded Exemption No. 0963-36-1-RE1349, recorded on August 30, 1991 in Book 1309 at Reception No. 2261514, Weld County, Colorado, hereinafter referred to as the "PREMISES," and

WHEREAS, COMPANY is the lessee of the oil and gas resources within and underlying a portion of the PREMISES and other lands, and

WHEREAS, COMPANY proposes to use a portion of the surface and subsurface of the PREMISES to drill, complete, equip, operate, and locate one or more oil and gas well(s) and subsurface wellbore(s) upon the PREMISES in order to access the oil and gas resources underlying the PREMESIS or other lands, and

WHEREAS, the aforesaid parties desire to agree upon the matter of compensation for the use of a portion of the PREMISES during the drilling, completion and equipping of the aforesaid well(s) and locating the aforesaid subsurface wellbore(s), as well as certain other operations and activities to be conducted upon the PREMISES.

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained, the parties hereto hereby agree as follows:

1 SURFACE USE PAYMENT. Prior to the commencement of operations by COMPANY upon the PREMISES, COMPANY shall pay OWNER the following amounts:

- a. for any horizontal well;
- b. for any directional well; and
- c. for any vertical well.

Such payment by COMPANY to OWNER shall constitute full payment for the normal use of a portion of the PREMISES, the location and dimension of which is described in Exhibit A which is attached to this agreement and by this reference made a part hereof, and access thereto from U.S. Highway 34 ("OPERATIONS AREA"), during the drilling, initial completion operations, continuous production operations, and hydraulic fracturing operations of any oil and gas well, consisting of the construction and use of one (1) access road, and one (1) well drilling site, and the construction, installation, and use of well production equipment consisting of one (1) wellhead valve, one (1) separator, one (1) condensate storage tank and one (1) non-leaching, brine water storage tank, for any and each well. Upon such payment OWNER hereby grants to COMPANY, access to, and the right to occupy, the OPERATIONS AREA, for as long as required by COMPANY in connection with operations on or under the PREMISES or adjacent or nearby lands.

2. SUBSURFACE EASEMENT. Upon payment to OWNER by COMPANY per well as specified in Section 1 herein, OWNER shall thereby grant, assign, transfer and convey unto COMPANY the portion of the subsurface of the PREMISES that will be occupied by a wellbore associated with such well for which payment has been made, for an easement and right of way to utilize the subsurface strata in exploring for and producing oil, gas and other minerals located on or under the PREMISES or adjacent or nearby lands. Said subsurface easement and right of way will continue for as long as use of the easement and right of way is required by COMPANY in connection with operations on or under the PREMISES or adjacent or nearby lands.

3. ACCESS. COMPANY shall gain access to and from the OPERATIONS AREA through the access roads reflected on the attached Exhibit A at the existing access point located on the southern side of U.S. Highway 34. OWNER shall cooperate with COMPANY in obtaining any access permit from the Colorado Department of Transportation ("CDOT") for oil and gas operations access at such point on such highway, but COMPANY shall be responsible for all expenses and requirements associated with obtaining any such access permit from CDOT.

4. FENCING. Prior to the commencement of operations by COMPANY upon the PREMISES involving the use of heavy equipment, COMPANY, at its expense, shall construct a temporary, single strand wire fence to mark the boundaries of the designated access road and drilling site described in Exhibit A. COMPANY shall maintain said fence in a functional condition until all drilling site preparation and construction operations, well drilling and completion operations, pipeline and equipment construction and installation operations, and reclamation operations have been completed. Upon completion of said operations, COMPANY shall dismantle and remove said fence from the PREMISES. COMPANY vehicular traffic and equipment operations upon the PREMISES beyond the fence boundary is expressly prohibited. If COMPANY violates this provision, COMPANY shall compensate OWNER for twice the amount of all damages that result directly from

such violation.

5. CULVERTS. At OWNER'S discretion, COMPANY, at its expense, shall provide and install all culverts of an adequate kind, size and quality necessary to maintain existing land drainage and irrigation practices, and existing water flows to, from, under, over, across, through and upon the PREMISES.

6. SOIL EXCAVATION. During all soil excavation operations, COMPANY shall rely on apparent differences in physical soil characteristics such as color, texture, density, and consistency in order to segregate the topsoil from the subsoil. All excavated subsoils and topsoils shall be stockpiled separately within the fenced drilling site area.

7. PIPELINES. One (1) flowline per well may be constructed upon the PREMISES to convey gas produced from such well from such well's gas measuring device to the gathering line or, if no such gathering line exists, to the boundary line of the OPERATIONS AREA. In the event no gathering line exists to which COMPANY may connect its flowline(s), OWNER shall negotiate with a third party gathering line company in good faith to provide for gas produced to be supplied to such gathering line and sold at market cost. Said flowline(s) shall be located and constructed in such a manner so as to cause the least interference with existing land use, water drainage and irrigation practices. Said flowline shall be wrapped, coated, or otherwise adequately protected to prevent corrosion, and shall be buried to a depth of no less than four (4) feet below the surface of the land that existed prior to the commencement of operations by COMPANY upon the PREMISES. All pipeline trench excavation and reclamation operations shall be conducted in accordance with Sections 6 and 8 of this Agreement. Water of sufficient quantity shall be added to all excavated soils as they are returned to the relative positions where they were located prior to excavation to minimize future soil subsidence.

8. RECLAMATION. As soon as conditions permit following the completion of well drilling and completion operations, but no later than thirty (30) days after the completion of such operations, all portions of the PREMISES affected by operations conducted by COMPANY that are not necessary for the continued operation of any well, shall be restored by COMPANY, at its expense, to the condition that existed prior to the commencement of such operations, as provided by the reclamation regulations of the Colorado Oil and Gas Conservation Commission ("COGCC"). OWNER may extend said thirty (30) day period in writing if conditions beyond the control of COMPANY prevent COMPANY from complying with this provision. All equipment, items, materials, liquids and substances of any kind, nature and composition associated with operations conducted by COMPANY not necessary for the continued operation of any well, shall be removed from the PREMISES. If OWNER determines that soils have been contaminated and a neutral 3<sup>rd</sup> party soils expert agrees with such determination, then COMPANY, at its expense, shall replace contaminated soils with

uncontaminated soils of a similar kind and quality. All soils, excavated pipeline trenches, and fluid containment pits shall be allowed to dry sufficiently to minimize soil compaction during reclamation operations. All excavated soils shall be returned to the relative positions where they were located prior to excavation, and the surface of the entirety of each drilling site shall be contoured and leveled to the condition that existed prior to the commencement of operations by COMPANY upon the PREMISES. The surface of the entirety of each drilling site shall be mechanically ripped to a depth of one and one-half (1.5) times the depth of the zone of soil compaction when the soil moisture content is below thirty-five percent (35%) of field capacity, as determined by a neutral 3<sup>rd</sup> party soils expert. All soils upon the PREMISES affected by operations conducted by COMPANY not necessary for the continued operation of any well shall be restored to the capability of supporting plant life that existed prior to the commencement of operations by COMPANY upon the PREMISES. If perennial vegetation upon the PREMISES is damaged or destroyed by operations conducted by COMPANY, such vegetation shall be reestablished to the condition that existed prior to the commencement of such operations.

9. ROAD MAINTENANCE AND WEED CONTROL. COMPANY will maintain all Access Roads in good repair and condition, including grading as necessary from time to time.

10. DAMAGES (GENERALLY). COMPANY shall compensate OWNER for all damages directly caused by COMPANY's operations on the Premises. Such damages include, but are not limited to: (a) the loss of income and incurred expenses; (b) the market value of crops, pasture, trees, shrubs, or livestock destroyed, damaged or prevented from reaching market, located anywhere on the PREMISES; (c) the cost of repair of property to the extent not reclaimed by COMPANY, both real and personal, located anywhere on the PREMISES; and (d) damage to and the loss of use of any water supply or drainage system associated with the PREMISES. If damages occur, OWNER shall notify COMPANY of such damages within thirty (30) days of OWNER'S discovery thereof. If said notice of damages is given and OWNER receives a written rejection from COMPANY, rejects any counter offer of COMPANY, or receives no reply from COMPANY, OWNER may bring an action for recovery of damages in a court of proper jurisdiction, but only after arbitration. Before bringing an action in court, OWNER shall notify COMPANY, that damages shall be determined by arbitration. Such arbitration shall be conducted in accordance with C.R.S. Sections 13-22-201 through 13-22-221, except that if the amount of damages awarded by arbitration or the court is greater than that which was offered by COMPANY, or if OWNER received no reply from COMPANY, OWNER shall be awarded reasonable attorney fees, costs of appraisers and expert witnesses, any cost which may be legally assessed, interest on the amount of such fees and costs from the time they were incurred, and interest in the amount of final compensation for damages awarded from the time the damages occurred or commenced to occur.

11. DAMAGE TO WATER. If COMPANY causes or allows substances to enter into an aquifer, surface water or water supply system associated with the PREMISES to cause a diminution of water quality or quantity, as determined by a neutral third party, COMPANY shall compensate OWNER for all damages to such water as provided under Section 10 of this Agreement including, but not limited to, the cost of repair, alteration or construction that ensures the delivery of the quality and quantity of water available to OWNER prior to the commencement of operations by COMPANY upon the PREMISES.

12. NOTICE OF OPERATIONS. COMPANY shall notify OWNER no less than seven (7) days prior to the commencement of all operations associated with any and each well conducted by COMPANY upon the PREMISES subsequent to the operations aforementioned in this Agreement. This provision shall not apply in the event of an emergency, or for normal well production operations that do not involve the use of heavy equipment.

13. PROTECTION OF THE NATURAL ENVIRONMENT. During all operations conducted by COMPANY upon the PREMISES, COMPANY shall protect the natural environment including, but not limited to, all air, soil and water resources, and all wildlife and natural vegetation associated with the PREMISES, from all degradation including, but not limited to, all contamination, damage, pollution and harm. If degradation occurs, COMPANY shall mitigate and remediate all such degradation.

14. OPERATIONAL OBLIGATIONS. All operations conducted by COMPANY upon the PREMISES shall be done in a diligent manner and in accordance with all applicable law, as well as the highest standards of the oil and gas industry.

15. INDEMNIFICATION. COMPANY shall indemnify, hold harmless, and defend OWNER from all liability for personal injury or injury to third persons or their property, and from all degradation of the natural environment caused by operations conducted by COMPANY.

16. VIOLATIONS. If OWNER finds COMPANY in violation of this Agreement, OWNER shall notify COMPANY of such violation within thirty (30) days of OWNER'S discovery thereof. If said violation continues after seven (7) days from the time COMPANY received said notice of violation, OWNER may bring an action for the enforcement of this Agreement, or for injunctive relief, or both, in the District Court of Weld County. If the court determines that COMPANY was in violation of this Agreement at the time OWNER filed said action with the court, OWNER shall be awarded reasonable attorney fees, costs of appraisers and expert witnesses, any cost which may be legally assessed and interest on the amount of such fees and costs from the time they were incurred.

17. NOTIFICATION. Any notice given from one party hereto to the other under this agreement shall be made by depositing such notice in the U. S. Mail, as certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to OWNER:               HOSHIKO FARMS, INC.  
P.O. BOX 119  
KERSEY, CO 80644

If to COMPANY:       Pico Niobrara, LLC  
Attention: Max Webb,  
Chief Financial Officer  
7979 Ivanhoe Ave., Suite 300  
La Jolla, CA 92037

18. COLORADO REVISED STATUTES AND COGCC REGULATIONS. OWNER acknowledges that by execution and adherence to the terms of this Agreement, and compliance with the notice provision in Section 12, COMPANY has and shall provide OWNER evidence of its intention to conduct oil and gas operations on the PREMISES by providing for in this Agreement OPERATIONS AREA in which any such wells will be located and associated roads and production facilities as specified in Exhibit A, notice of the commencement of Oil and Gas Drilling Operations, and the COMPANY'S name and contact information. As such, but only as so long as COMPANY complies with such provisions of this Agreement, OWNER hereby waives the statutory notice requirement provided by C.R.S. § 34-60-106(14), the Advance Notice requirements of COGCC Rule 305(e)(1)(B), and the Notice of Subsequent Well Operations of COGCC Rule 305(e)(4) with respect to all Oil and Gas Operations for any such Well.

For any and all Well(s), COMPANY shall submit a Form 2A to the COGCC as required by COGCC Rule 305(b)(1) and 305(e)(1)(A) and shall provide a copy of such Form 2A to OWNER, and such form shall reflect the provisions of this Agreement and Exhibit A, provided that, to the extent that such Form 2A provides for development of any Well(s) in a manner substantially similar to that provided for in this Agreement, OWNER hereby waives any right to, and shall not request the COGCC to extend the twenty (20) day comment period provided by COGCC Rule 305(c), and hereby waives the Landowner Notice requirement of COGCC Rule 305(e)(1)(A) with respect to all Oil and Gas Operations for any such Well.

COMPANY shall provide notice to OWNER not less than thirty (30) days before any actions are to be undertaken when a Well is to be plugged and abandoned or when production facilities are to be permanently removed on the Lands, and as such, OWNER hereby waives the final reclamation notice requirement of

COGCC Rule 305(e)(6).

OWNER agrees that by negotiation and execution of this Agreement, COMPANY has consulted in good faith with OWNER regarding location of roads, production facilities, and well sites and other Oil and Gas Facilities, and has provided for reclamation and abandonment, with respect to all oil and gas operations and the Well(s). COMPANY has provided Owner a diagram of the proposed drillsite (attached as Exhibit A), topsoil management (Sections 6, 8, and 13 herein) and location of oil and gas facilities for the Well(s), as provided by COGCC Rule 306(a), and as such, OWNER hereby waives the consultation requirement of COGCC Rule 306(a) as provided by COGCC Rule 306(a)(3).

To the extent that state law or regulations require written waiver by OWNER, evidencing COMPANY'S compliance with the provisions of this Section 17, and to the extent that COMPANY complies with the provisions of this Section 17, OWNER agrees to execute a separate waiver for filing with the COGCC if requested by COMPANY or its affiliates which such waiver would apply to all oil and gas operations within the OPERATIONS AREA, limited to any and each Well proposed by COMPANY pursuant to and in compliance with this Agreement.

OWNER acknowledges and agrees that by execution and adherence to the terms of this Agreement, COMPANY'S oil and gas operations located in the Operations Area have and will accommodate the OWNER by minimizing intrusion upon and damage to the surface of the PREMESIS by selecting alternative locations for wells, roads, pipelines, and production facilities which will reduce or mitigate the impacts of the oil and gas operations on the surface of the PREMESIS as to any Well(s) drilled, as set forth in C.R.S. Section 34-60-127(1)(a) and (b).

OWNER understands and agrees that the Operations Area is outside of a Greater Wattenberg Area drilling window, as such terms are defined in COGCC Rule 318(A)(I)(A), and that good cause exists for such locating oil and gas operations in the Operations Area (as defined herein) instead of a Greater Wattenberg Area drilling window. By execution of this Agreement, OWNER authorizes the surface location of any well located in the Operations Area to be outside of a Greater Wattenberg Area drilling window, limited to the area within the Operations Area, as set forth in Exhibit A hereto.

19. CONFIDENTIALITY. OWNER agrees to keep the amount of consideration paid hereunder by COMPANY confidential and shall not disclose such information without the advance written consent from COMPANY. COMPANY may record a memorandum evidencing the evidence of this Agreement.

20. GOVERNING LAW / VENUE. This Agreement shall be interpreted according to the laws of the State of Colorado. Venue for any dispute shall be Weld County, Colorado.

21. WRITTEN MODIFICATIONS / NOTICES. This Agreement may only be amended in writing signed by both parties. All notices to either party shall be in writing addressed to the parties at the addresses first set forth above.

22. ASSIGNMENT. All rights and obligations under this Agreement shall run with the PREMISES and shall inure to the benefit of and be binding upon the heirs, successors, or assigns of each party. The Agreement may not be assigned without the written consent of the other party, and such consent shall not be unreasonably withheld.

23. In the event COMPANY shall commence operations for the drilling of two or more wells on the OPERATIONS AREA, one of the first two such wells shall attempt to develop the oil and gas resources underlying that portion of the oil and gas estate owned by OWNER under that portion of the PREMESIS located in the SE of Section 25, and as leased by OWNER to COMPANY by that certain Oil and Gas Lease of even date herewith executed by OWNER and COMPANY.

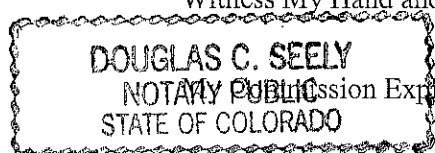
24. BINDING EFFECT. This agreement shall become binding and effective upon the parties, their heirs, successors, assigns and legal representatives upon the signature thereof by the parties in the spaces herein below:

OWNER:

By: Dennis J. Hoshiko Title: President

STATE OF COLORADO )  
 ) SS.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 2012,  
by Dennis J. Hoshiko as President of Hoshiko Farms, Inc.

Witness My Hand and Official Seal.  
 Douglas C. Seely  
NOTARY PUBLIC Commission Expires 7/12/2013  
STATE OF COLORADO

\_\_\_\_\_  
Notary Public

COMPANY:

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

*[Signature]*

Title: \_\_\_\_\_

*CFO*

STATE OF COLORADO )

) SS.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_.

Witness My Hand and Official Seal.

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

*see Attached  
"Surface and  
Subsurface Use  
Agreement"*

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On July 17, 2012 before me, Stephanie Speed, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared max Webb

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Stephanie N. Speed

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Surface and Subsurface Use Agreement

Document Date: July 17, 2012

Number of Pages: 10

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: max Webb

☒ Corporate Officer — Title(s): CFO

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: PICO

Niobrara

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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