

885

3548885 04/21/2008 12:07P Weld County, CO  
1 of 8 R 46.00 D 0.00 Steve Moreno Clerk & Recorder

### SURFACE USE AGREEMENT

This SURFACE USE AGREEMENT (the "Agreement") dated this 8<sup>th</sup> day of April 2008, is made by and between the undersigned, Noble Energy, Inc. ("Noble"), a Delaware corporation, 1625 Broadway, Suite 2200, Denver, Colorado 80202, and Front Range Feedlots LLC ("Owner"), a Colorado limited liability company, PO Box 517, Eaton, Colorado 80615.

### RECITALS

A. Owner owns the surface estate situated in the E/2NE/4 of Section 28, Township 6 North, Range 65 West, Weld County, ("Property"), and Owner desires to develop a sugar beet receiving station on the Property as depicted on Exhibit "A" attached hereto and made a part hereof

B. Owner recognizes that the mineral estate in and under the Property is presently subject to valid and subsisting oil and gas leases (the "Lease"), which Lease interest is owned of record by Noble. Noble's Lease rights 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 on the Property.

C. Noble operates wells located on the Property as follows; Swanson Farms 4-28EG well located in the NE/4NE/4, Swanson Farms E 28-8 well located in the SE/4NE/4; (the "Wells") as more specifically depicted on Exhibit "A".

D. Current Colorado Oil and Gas Conservation Commission ("COGCC") regulations provide that any additional oil and gas wells on the Property (the "Future Wellsites") are to be located in certain defined drilling windows, as depicted on Exhibit "A" ("Drilling Windows").

E. Noble and Owner enter into this Agreement to provide for the coexistence and joint development of the surface estate and the oil and gas estate of the Property, and to delineate the process with which Noble and Owner shall comply with respect to the development of the two estates.

NOW, THEREFORE, in consideration of 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. Noble shall have the right to undertake Oil and Gas Operations of the Wells and Future Wellsites to be located on the Property. In order to provide for such, Owner shall, and does hereby ratify and, to the extent necessary, grant to Noble an easement, to utilize the Drilling Windows depicted on Exhibit "A" as the "Oil and Gas Operations Areas" for the development of Future Wellsites and an area measuring two hundred



feet (200') around any existing wells, an area measuring thirty foot (30') wide being a drilling access road and a twenty foot (20') wide permanent access road as depicted on Exhibit "A", and access as necessary for the drilling and operations of Future Wellsites.

1.2 Oil and Gas Operations Areas. The Oil and Gas Operations Areas shall be reserved and utilized for the purpose of any and all Oil and Gas Operations by Noble.

1.3 Pipeline Easements. Noble shall have the right to construct, operate and maintain pipelines on the Property in accordance with the Lease and COGCC Rules and Regulations. In order to provide for such, Owner shall, and does hereby ratify and, to the extent necessary, grant to Noble pipeline easements measuring thirty feet (30') in width to utilize the areas depicted on Exhibit "A", and as necessary for the drilling and operations of Future Wellsites, as "Pipeline Easements"

1.4 Production Facility Areas. In accordance with the Lease and COGCC Rules and Regulations Noble 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 and Future Wellsites.

1.5. Limitation on Use of the Property. Owner shall place no property lines, buildings, structures or improvements (including streets, sidewalks, driveways, curbs and gutters, detention or retention ponds, irrigation systems, sewage or drainage systems or pathways) of any kind within two hundred feet (200') of the Wells or Future Wellsites, within the Pipeline Easements except as shown on the approved plat. Without the prior written consent of Noble, Owner shall not alter or modify the existing grade within the Oil and Gas Operations Areas or Pipeline Easements.

1.5.1 Owner shall place no permanent building, or structures intended for human occupancy or improvements (excluding streets, sidewalks, driveways, curbs and gutters) within two hundred feet (200') of any tank or separator located in the Production Facility Area Without prior written consent from Noble, Owner shall not construct or allow the construction of dwellings or structures intended for human occupancy within sixty feet (60') on either side of the Pipeline Easements 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 Noble, Owner shall not construct or allow the construction of dwellings or structures intended for human occupancy within ten feet (10') on either side of the Pipeline Easements.

1.5.2 Owner and Noble shall make all reasonable efforts to coordinate operations to the extent that Noble would not be precluded from conducting Oil and Gas Operations on a Well or Future Wellsite due to Owner's beet stacking operations. In the case that Noble provides Owner notice of oil and gas operations in accordance with Section 4, Owner shall make all reasonable efforts to accommodate Noble's Oil and Gas Operations by moving any beets up to two hundred feet (200') away from Wells and Future Wellsites. In no instance shall the Owner stack beets any closer than seventy-five feet (75') from any existing well.

1.6 Waiver of Certain Requirements. Owner waives all setback requirements in Colorado Oil and Gas Conservation Commission ("COGCC") Rule 603, or any successor rule or amendment to the COGCC setback rules, and to any other state or local setback requirements or

other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Noble to explore for and produce the oil and gas in accordance with this Agreement. Owner understands that Noble may cite the waiver in this Section 1.6 in order to obtain a location requirement exception or variance under COGCC rules or from a local jurisdiction. Owner also agrees that it will not object in any forum to the use by Noble of the surface of the Property consistent with this Agreement and that it will also provide Noble with whatever support in writing they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

**2. SURFACE RECLAMATION.** Noble or succeeding oil and gas operators shall be responsible for their respective costs of interim and final reclamation and surface restoration related to such future operations to the extent required by the COGCC.

**3. ACCESS.**

3.1 During Owner's development of the surface of the Property and at all times thereafter, Owner shall at all times provide Noble access to the Oil and Gas Operations Areas and Pipeline Easements, though the location of that access may vary from time to time in accordance with the needs and progress of such surface development.

**4. NOTICE OF FUTURE OPERATIONS.** Noble shall provide at least seven (7) days prior written notice to Owner in advance of any operations (other than the drilling of new wells) within the Oil and Gas Operations Areas in connection with the reworking, fracturing, deepening or other unusual or other than routine operations on the Wells; provided, however, that Noble shall have immediate access in the event of an emergency.

**5. PRELIMINARY AND FINAL PLATS.** The Final Plat prepared by the Owner as part of the subdivision approval process for the Property shall include the Wells, Drilling Windows, existing Pipeline Easements and existing Access Roads. Within thirty (30) days of approval by the County of Weld of a Final Plat, Owner shall record a copy of the Final Plat in the real property records of the County of Weld, Colorado.

**6. FUTURE OPERATIONS.** Noble shall make all reasonable efforts to pursue any 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. Owner 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).

**7. GOVERNMENTAL PROCEEDINGS.**

7.1 Owner shall not, directly or indirectly, oppose or encourage opposition to Noble in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, the County of Weld, or other governing body proceedings, related to the operations of Noble on the Property, including but not limited to drilling and production activities, workovers, well deepenings, recompletions, fracturing, replacement wells and re-fracturing, provided that the position of Noble in such proceedings is not materially inconsistent with this Agreement.



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

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

8.1 NO PARTY SHALL BE LIABLE FOR, OR BE REQUIRED TO PAY FOR, SPECIAL PUNITIVE OR EXEMPLARY DAMAGES TO ANY OTHER PARTY FOR ACTIVITIES UNDERTAKEN WITHIN THE SCOPE OF THIS AGREEMENT.

8.2 Each party shall be and remain responsible for all liability for losses, claims, damages, demands, suits, causes 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, sub-contractors 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.

9. **EXCLUSION FROM INDEMNITIES.** 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.

10. **NOTICE OF CLAIM FOR INDEMNIFICATION.** If a Claim is asserted against a party for which another party would be liable under the provisions of Section 8 above, 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.

11. **REPRESENTATIONS.** Each party represents that it has the full right and authority to enter into this Agreement and Owner specifically confirms its capacity to validly execute the rights of way and easements provided for herein. Noble represents that it owns the oil and gas leasehold interest in the Leases as set forth in Recital B under the Property. Noble does not represent and specifically asserts that they do not have the right to bind any other oil and gas leasehold interest owner, mineral owner, lessee or assignee for the Property.

12. **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.



3548885 04/21/2008 12:07P Weld County, CO  
5 of 8 R 46.00 D 0.00 Steve Moreno Clerk & Recorder

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

**If to Noble Energy Production, Inc.:**

Noble Energy Production, Inc.  
1625 Broadway, Suite 2000  
Denver, Colorado 80202  
Attention: Land Department  
FAX (303) 595-7410

**If to Owner**

Front Range Feedlots LLC  
PO Box 517  
Eaton, CO 80615  
Fax: (970)

Any party may, by written notice so delivered to the other party, change the address, fax number or individual to which delivery shall thereafter be made.

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

15. **SURFACE DAMAGES.** In consideration of the parties' respective rights, obligations and benefits, as outlined herein, this Agreement shall constitute a surface use or surface damage agreement provided for under the COGCC's Rules and Regulations or under any oil and gas leases covering the Property.

16. **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.

17. **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.

18. **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.

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

20. **NON-WAIVER.** Waiver by either party or of the failure of any party to insist upon the strict performance of any provision 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.



21. **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.

22. **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 lines of pipe, 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, material, equipment, machinery or labor and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

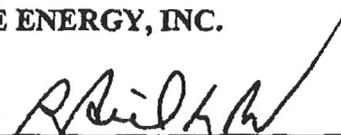
23. **NO JOINT VENTURE.** This Agreement is not intended to, nor shall it be interpreted to create a joint venture, partnership or any other relationship among the parties.

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

25. **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.

The parties have executed this Agreement as of the day and year first above written.

**NOBLE ENERGY, INC.**

By:   
P. David Padgett, Attorney In-Fact 

**FRONT RANGE FEEDLOTS LLC**

By:   
Dallas P. Horton, Registered Agent

ACKNOWLEDGMENTS

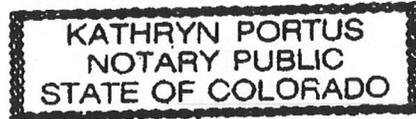
STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2008, by P. David Padgett, Attorney In-Fact for Noble Energy, Inc., a Delaware corporation, on behalf of said corporation.

Witness my hand and official seal.

Kathryn Portus  
Notary Public

My Commission expires:



MY COMMISSION EXPIRES 2/9/2009

STATE OF COLORADO )  
 ) ss.  
~~Weld~~ COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of April, 2008, by Dallas P. Horton, Registered Agent for Front Range Feedlots LLC, on behalf of said company.

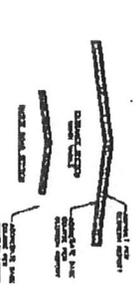
Witness my hand and official seal.

Julie Brown  
Notary Public

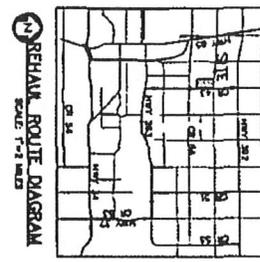
My Commission expires: My Commission Expires  
01/29/2011

**EXHIBIT A**

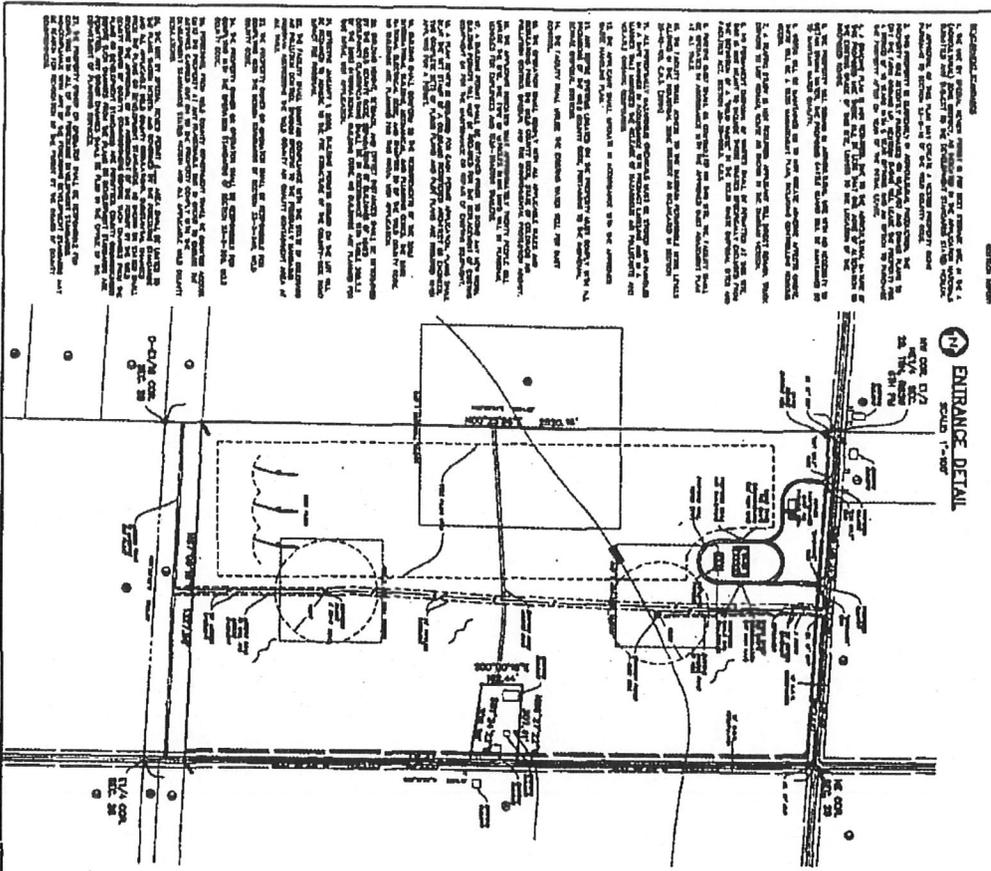
ATTACHED TO THAT CERTAIN SURFACE USE AGREEMENT DATED \_\_\_\_\_ (OWNER),  
 BY AND BETWEEN NOBLE ENERGY, INC. ("NOBLE") AND \_\_\_\_\_ (OWNER),  
 E/2 NE/4 OF SECTION 24, T8N, R65W OF THE 6TH P.M., COUNTY OF WELD, STATE OF  
 COLORADO  
 AREA = 74.09 ACRES, MORE OR LESS



**ENTRANCE DETAIL**  
 ROAD 1'-20\"/>



**MOBILITY MAP**  
 SCALE 1'-2000\"/>



**GENERAL NOTES:**

1. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
2. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
3. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
4. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
5. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
6. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
7. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
8. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
9. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
10. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.

**PROPERTY MAP**

SECTION 24, T8N, R65W

SEC. 24	SEC. 23	SEC. 22
SEC. 25	SEC. 24	SEC. 23
SEC. 26	SEC. 25	SEC. 24

**GENERAL NOTES:**

1. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
2. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
3. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
4. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
5. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
6. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
7. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
8. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
9. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.
10. THE SURFACE USE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURFACE USE AGREEMENT.

DATE	DESCRIPTION
04/21/2008	RECORDING
04/21/2008	RECORDING
04/21/2008	RECORDING