

## SURFACE USE AGREEMENT

**THIS AGREEMENT** is made and entered into this 25th day of JUNE, 2014, by and between **THOMAS RANCH, LLC**, a Colorado limited liability company, the **LLOYD E. THOMAS FAMILY TRUST** and the **MARJORIE J. THOMAS FAMILY TRUST**, and **LARRY E. THOMAS** and **MARJORIE J. THOMAS**, Individually, whose address is 7900 Weld County Road 120, Carr, CO 80612 (hereinafter "Owner"), and **LINCOLN ENERGY LLC**, whose address is 1800 Glenarm Place, Suite 702, Denver, Colorado 80202 (hereinafter "Operator").

### Recitals:

- A. Owner is the owner of the surface estate and mineral interests of the following described lands located in Weld County, Colorado:

Township 10 North, Range 67 and 11 North, Range 67 West, of the 6<sup>th</sup> P.M.,  
Weld County, Colorado

See Exhibit A attached for specific legal description

- B. Operator intends to own mineral lease interests and/or operate oil and gas leases covering all or a portion of the Lands (the "Leases");
- C. Owner currently utilizes the Lands for agricultural and other uses and such uses will continue during the term of this Agreement. Owner requires that Operator's use of the Lands be compatible and in accordance with all terms and conditions set forth in this Agreement.
- D. Operator desires to prospect, drill, produce and explore for oil and gas on the Lands pursuant to the terms of the Leases, and in association therewith, to exercise its right under applicable law to use and possess so much of the Lands as is reasonably required for the operation of the Leases;
- E. The purpose of this agreement is to agree as to reasonable compensation to be paid by Operator to the Owner for certain uses of the surface of the Subject Lands, to assign certain responsibilities between Owner and Operator in regard to all activities associated with the capture, production and sale of oil or gas, to ensure Operator's compliance with all applicable laws, rules, regulations, ordinances and other agreements that effect the Lands, and to ensure that Operator's use of the Lands is compatible with Owner.

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

1. Surface Rights. Owner hereby acknowledges and grants the right of ingress and egress currently afforded by the Leases to the Operator, its agents, employees, representatives, contractors, and assigns, its right to enter upon and use the surface of the Lands as may be reasonably necessary for the purpose of exploring for (including, without limitation, conducting seismic activities, provided that surface damages for seismic activities shall be separately negotiated between Owner and third party seismic contractors), and producing oil and gas from the Lands, together with the right-of-way and easement across the surface of the Lands to drill for oil and gas, construct, reconstruct, operate, inspect, test, repair, alter, replace, relocate, change the size of (subject to such limitations as may be set forth herein), remove and/or otherwise and maintain access roads, wells, well sites, power lines and pipelines, and other such related facilities (collectively, "Facilities"), whether currently existing or hereafter established, as necessary for Operator's exploration and production of oil and gas. The parties agree that any and all surface uses not in conflict with the rights of Operator are reserved to Owner.
2. Location of Wells, Roads & Facilities; Reasonable and Prudent Operator. Owner currently has a sump pump on a portion of the Lands. Operator shall conduct all operations in such a manner as to minimize conflicts with Owner's use of said sump pump. Operator shall locate all treaters, separators, tank batteries and other production equipment outside the circumference of the area effected by the sump pump. Prior to the construction thereof, Operator shall consult with Owner as to the location of Facilities. Operator shall locate new well-sites outside the circumference of the sump pump. Operator shall use the Lands consistent with its rights and obligations under the Leases and applicable law and agreements effecting the property, and as may be deemed appropriate by a reasonable and prudent operator. Operator shall not construct or install any roads, equipment, structures, tanks, batteries or buildings without Owner's approval of the location. Including Spring Creek and its natural drainage path.
3. Term. This Agreement shall terminate upon the removal of all production related equipment and improvements from the wells constructed pursuant to the Leases or the expiration of the Leases, whichever is the latter.
4. Non-exclusive Rights. The rights of Operator to use the surface of the Lands are non-exclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the Lands, and to grant successive easements on or across the Lands on such terms and conditions as Owner deems necessary or advisable, provided they do not unreasonably interfere with the operations of Operator.
5. Compliance with Laws. Operator agrees to comply with and conform to all applicable laws, rules and regulations, including without limitation, any agreement affecting the Lands, the rules and regulations of the County of Weld, State of Colorado, Colorado Oil and Gas Commission, or other such agencies having jurisdiction over the Lands.
6. Compensation for Use of Surface. Operator shall compensate the Owner for use of the surface of the Lands pursuant to the following:

- A. New Locations: Operator agrees to pay Owner a one-time payment of \$3,000 per permanently disturbed acre for each new well site located on the Lands.
- B. Roads: For all new roads constructed, Operator shall pay Owner a one-time payment of [REDACTED] per rod and [REDACTED] per rod for use of existing roads.
- C. Pipelines: For all pipelines constructed, Operator agrees to pay Owner a one-time payment of [REDACTED] per rod. There shall be no additional fee if more than one pipeline is installed in the same trench.
- D. Power Lines: Operator will consult with Owner and with independent power company supplying power to Operator with respect to the location of overhead power lines prior to construction. Overhead power lines will be constructed so as to minimize interference with existing and future ranching operations. Operator shall pay Owner a one-time payment of [REDACTED] per rod for power lines.
- E. Other: Any buildings, structures or other facilities and items not specifically mentioned in this Agreement shall be negotiated under a separate agreement.
- F. Compensation for Extraordinary Loss or Damage to Property: In addition to the foregoing payments, which are acknowledged as sufficient and in full satisfaction for damages caused or created by the reasonable and customary entry, rights-of-way and use of the Lands for locations, roads, pipelines and power lines, Operator shall also compensate Owner for all other actual and documented damages suffered by Owner, including without limitation (i) damages to livestock, buildings or improvements or injuries to persons, damage or impairment to Owner's water wells caused by the negligence of Operator and its employees, agents and contractors, and (ii) damages caused by fires, spills, discharges, leaks, releases and pipeline breaks arising out of Operator's operations on the Lands. Operator shall attempt to conduct operations outside of crop season, so as not to interfere with the use of any irrigation system or farmable land. In the event operations are required during the time of irrigation, and said operations interfere with Owner's use of the irrigation system, Operator shall pay for any additional crop loss that results there from.

Further, Operator shall hold Owner harmless and reimburse Owner for any expenses or losses incurred by Owner as a result of Operator's failure to comply with any laws, rules, regulations, ordinances, or agreements affecting the use of the Lands.

7. Payments, Default and Termination. All payments required hereunder may be made by Operator's company check. In the event of the failure by Operator to timely make any payment required hereunder or to otherwise comply with all material terms hereunder,

Owner shall notify Operator in writing of said failure. Operator shall thereafter have sixty days (60) days to cure such default and/or make any required payment. The waiver of any default shall not be deemed to be a waiver of a subsequent default. In the event Operator does not cure the default within the time specified, the Operator's access to the Lands may be suspended by Owner, including the right of ingress and egress, until such default has been cured, and Owner shall not be liable for any loss or damage to Operator occasioned by Owner's enforcement of this provision.

8. Limitation of Rights.

- A. Well Locations. All well locations shall require the consent of Owner prior to Operator applying for a drilling permit.
- B. Roads, Gas Gathering Lines, Water Pipelines and Power Lines. Operator will use existing roads on the Lands for its operations whenever possible and reasonably appropriate for its operations, and will locate roads, pipelines, power lines and other facilities in a manner so as to minimize interference with Owner's operations on the Lands. New all weather roads will be constructed only when reasonably necessary, and shall be limited to thirty (30) feet in width for the actually traveled road bed, together with a reasonable width for fills, shoulders and crosses. All new roads shall be maintained at Operator's sole cost and expense for all weather travel and provided further that Operator shall have the right to require maintenance contributions from third parties authorized by Owner to use such roads. At the written request of Owner, Operator shall provide Owner, at Operator's expense, with a survey plat showing the location of all new roads, pipelines, and power lines. All pipelines shall be buried to a depth of at least forty inches (40") between the top of the pipe and the present ground level on all lands when reasonably practicable. Roads are not to have borrow ditch that cannot be crossed by semi-truck with cattle pot trailer, farm truck with 25 foot livestock trailer for purposes of feeding livestock and operation/maintaining the operations of the property, or be hazardous if blowing snow fills ditch and cannot be seen or crossable.
- C. Minimize Impact. Operator shall at all times use reasonable efforts to minimize the impact of its operations on the Lands. Whenever possible and reasonably appropriate for its operations, Operator shall consolidate its facilities for as many wells as practical, locate in-coming power at a central point, construct underground power lines whenever possible, and place all roads, pipelines and power lines in the same corridor. To minimize the visual impact on the landscape of the Lands, Operator shall keep buildings and structures as small and few as possible, and paint such buildings and structures using earth tones on the exterior thereof. Operator shall at all times keep well locations, road rights-of-way and other areas used by Operator safe and in good order, free of litter, and debris. Operations shall be no closer than 2640 feet from any residence and the

operational site of 'Thomas Ranch, LLC' and its buildings.

- D. Erosion Prevention; Dust Suppression. Operator agrees to use reasonable means to prevent washes, erosion, run-off problems, ruts or other property damage. Operator shall monitor and promptly correct any erosion caused by Operator's activities. Operator shall install water bars as necessary. Operator shall supply dust suppression when it is reasonably necessary.
  - E. No Stacking of Rigs and Equipment. Neither Operator, nor its agents or contractors, shall have the right to stack or store rigs or other equipment, supplies or parts on the Lands, except during drilling, reworking or construction operations.
  - F. No Offices or Living Quarters. Operator shall not cause to be constructed any living quarters on the well site or on any of the Lands with the exception of necessary personnel, namely geologists, drilling and chemical experts, during actual drilling operations.
  - G. No Drilling Water. Operator shall have no right to use water from ponds, creeks, springs or water wells located on the Owner's lands without the prior written consent of Owner. Any water that is found by drilling operations (except that produced as a result of drilling and fracking operations) remains the sole ownership of Thomas Ranch, LLC and if used will require owner written permission and payment for any water used.
9. Reclamation. As soon as reasonably practical, and in any event within twelve (12) months (weather permitting) following the plugging and abandonment of a well, or the termination of any other operation or use of the Lands which resulted in the disturbance of the surface of the Lands, Operator shall re-contour, reseed and restore, as near as reasonably possible, all areas so disturbed to the condition which they were prior to the execution of this agreement, and remove all above ground facilities and render all pipelines and power lines environmentally safe and fit for abandonment in place and provide Owner with evidence thereof; provided however, that Owner, in its sole discretion, may choose to either allow access roads to remain or may require the Operator to reclaim them. All dry hole markers shall be set in accordance with all applicable regulations. Obstructions to reclamation uncovered or exposed during Operator's operations shall be buried or removed by Operator. Upon reclamation, Operator shall reseed all disturbed areas according to the local soil conservation district's standards.
10. Control of Noxious Weeds. Operator shall undertake all reasonable efforts necessary to control the germination and growth of noxious weeds (as designated by the County of Weld, State of Colorado, or any other regulatory agency with jurisdiction and authority), on the Lands. Owner and Operator shall discuss applicable methods of control and times for application.

11. Fences and Gates. Operator may make fence openings upon the Lands to provide reasonable, uninterrupted entry and departure as may be necessary for operations; and, Operator shall install cattle guards or gates of customary size and quality for the type of traffic used in such operations. All gates used by Operator shall be kept shut and locked at all times. Operator shall reasonably repair and/or replace any and all damage done to any fences or gates, or any other improvements of Owner which result from Operator's operations. All fences shall be repaired in a manner consistent with surrounding fences and reasonable and customary ranching practices.
12. Alcohol, Guns, Dogs and Hunting Prohibited. Operator shall not permit its agents or employees to possess or be under the influence of alcohol or controlled substances, or to possess firearms, crossbows, or other weapons, or to hunt while on the Lands. No recreational use, including but not limited, camping, hunting, fishing, foot traffic, or similar activities are allowed at any time by Operator or Operator's representatives while on the Lands. No dogs shall be allowed on the Lands, including any animal confined to a vehicle in any manner. The failure of any representative of Operator to comply with the foregoing shall entitle Owner to treat the person as a trespasser. Removal or disturbing of any property including artifacts, teepee rings, or any item that is attached or part of the property is not allowed. In the case of artifacts discovered the Manager and Owners of Thomas Ranch, LLC will be immediately notified of such.
13. Recording. This Agreement may not be recorded. Owner hereby authorizes Operator to file a memorandum of this Agreement in the records of Weld County, Colorado. Operator will provide Owner a copy of the recorded memorandum when available.
14. Indemnity. OPERATOR SHALL INDEMNIFY, RELEASE AND HOLD HARMLESS THE OWNER FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, CLAIMS, DEMANDS, COSTS AND EXPENSES OF WHATSOEVER NATURE, INCLUDING COURT COSTS AND ATTORNEY'S FEES, WHICH MAY RESULT FROM INJURY TO OR DEATH OF PERSONS WHOMSOEVER, OR DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY HOWEVER CAUSED, WHICH IN ANY WAY WHATEVER IS DUE TO OR ARISES BECAUSE OF OPERATOR'S PRESENCE ON, OCCUPATION OF OR USE OF THE LANDS, EXCEPT TO THE EXTENT THAT SUCH LIABILITY, LOSS, DAMAGE, CLAIM, DEMAND, COST AND EXPENSE ARISES AS A RESULT OF OWNER'S NEGLIGENCE OR WILLFUL MISCONDUCT.
15. Representations of Operator. As a material inducement and as part of the consideration for Owner entering into this Agreement, it is relying on the following representations of Operator: that Operator is a Colorado limited liability company; that it is in good standing; that it is authorized to do business in the State of Colorado; that it is at the time of execution of this Agreement solvent; that there are no judgments against Operator which if satisfied would render Operator insolvent; that Operator has sufficient

unencumbered assets to satisfy all of its obligations hereunder, including all obligations relating to the plugging and abandonment of its wells and the reclamation of the Lands; and that bonds in the required amounts will be in place with the State of Colorado and Colorado Oil and Gas Commission to comply with all applicable laws, rules and regulations.

16. Assignment. This Agreement may be assigned by Operator.
17. Enforcement Costs. In the event of a dispute hereunder, and either party is required to employ the services of an attorney to enforce its rights hereunder, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs.
18. Construction; Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of a dispute hereunder, the parties stipulate and agree that sole venue will lie in the federal or state courts in Weld County, Colorado.
19. Notices. Any notice or communication permitted or required hereunder shall be given promptly, orally if possible, and then in writing via certified mail/return receipt requested. Notices shall be deemed given three days after mailing, or on the same day if delivered personally or by facsimile transmission, when addressed as follows:

Owner:  
Larry E. Thomas, as Manager and  
Co-Trustee  
7900 County Road 120  
Carr, CO 80612

Operator:  
Lincoln Energy, L.L.C.  
1800 Glenarm Place, Suite 703  
Denver, CO 80202

Any party may amend the foregoing addresses and information by written notice to the other party.

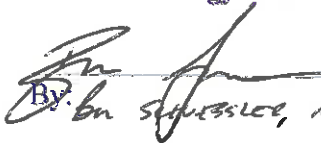
20. Damage by Livestock. Owner shall not be liable for any damage caused by livestock to any of Operator's facilities.
21. No Warranty. Owner makes no warranty of title or otherwise in entering into this agreement.
22. Time. Time is of the essence in this Agreement.
23. Covenants Running with the Lands. The terms and provisions hereof shall constitute covenants and conditions running with the Lands and shall inure to the benefit of and be binding upon Owner and Operator and their respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.

24. Sketch and Diagram of agreed use of the Lands. Attached as Exhibit B. and hereby incorporated into this Surface Use Agreement, is a sketch and diagram of the property and the locations for use, and locations excluded for use, as agreed upon by Operator and Owner.
25. Entire Agreement. This is the entire Agreement between the parties with respect to the transactions contemplated herein and shall supersede all previous oral and written negotiations, commitments, and understandings between the parties and/or their predecessors hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

OPERATOR:

Lincoln Energy L.L.C


  
By: Bob S. Sells, Manager

OWNER:

Thomas Ranch, L.L.C.

  
By: Larry E. Thomas, Manager

**The Lloyd E. Thomas Family Trust and  
Marjorie J. Thomas Family Trust**

  
By: Marjorie J. Thomas, Individually and as  
Co-Trustee

  
By: Larry E. Thomas, Individually and as  
Co-Trustee

## **EXHIBIT "A"**

Attached to and made a part of that certain Surface Use Agreement dated June 25<sup>th</sup>, 2014, by and between Thomas Ranch, LLC, Lloyd E Thomas Family Trust, Marjorie J. Thomas Family Trust, Larry E Thomas and Marjorie J. Thomas, as Owner, and Lincoln Energy, LLC, as Operator.

### **I. DESCRIPTION OF LANDS:**

#### Township 10 North, Range 67 West. 6<sup>th</sup> P.M.

Section 1: SW/4

Section 5: ALL

Section 6: SE/4

Section 8: NW/4, SE/4

Section 9: S/2, NW/4

Section 16: All

Section 17: All

Section 21: All

#### Township 7 North, Range 66 West. 6<sup>th</sup> P.M.

Section 26: W/2

Section 28: NE/4

Section 31: All

All located in Weld County, Colorado

**End of Exhibit "A"**