

MEMORANDUM OF WELLSITE SURFACE USE AGREEMENT

STATE OF COLORADO:  
COUNTY OF WELD:

This Memorandum of Wellsite Surface Use Agreement ("Memorandum") is being executed and recorded in the records of Weld County, Colorado, for the purpose of giving notice to third parties that Michael A. Litzenberger and Kathryn M. Litzenberger (collectively "Surface Owner"), whose mailing address is 14661 County, Road 5, Longmont, Colorado 80504, and Cub Creek Energy, LLC, ("Operator"), whose mailing address is 200 Plaza Drive, Suite 100, Highlands Ranch, Colorado 80129, entered into a Wellsite Surface Use Agreement ("SUA") dated effective June 1, 2015, whereby Surface Owner has agreed upon certain terms and conditions to allow Operator to use certain lands ("Lands") covered by the Oil and Gas Lease ("Lease") dated March 28, 1980 between Louise E. Kintz, as Lessor, and Calvin Petroleum Corporation, as Lessee, as may have been subsequently amended, recorded on June 2, 1980 at Book 904, Reception No. 1826244, with the Weld County Clerk and Recorder, as the operations and production area in connection with drilling, completion and production operations to be conducted under the terms of the Lease, such Lands being more particularly described as follows; to-wit:

Township 3 North, Range 68 West, 6<sup>th</sup> P.M., Weld County, Colorado

Section 8: that certain tract of land, measuring 530 feet by 360 feet, more or less, situated in South Half of the Northeast Quarter, and identified as the "Operations Area" in the plat attached hereto as Exhibit "A".

Subject to the terms and conditions set forth in the SUA, Operator, and its successors, assignees and designees, shall have the exclusive right to use the Lands for the purposes of drilling, completing, producing, and operating one or more oil and gas wells (including but not limited to straight, directional and horizontal wells), storing, transporting and marketing oil, gas and other products produced from such wells, and all other rights as deemed reasonably necessary by Operator that may be associated with, incidental to, or convenient for any such drilling, completing, producing, and operating activity, including, but not limited to, workovers, deepening, sidetracking, recompleting, hydraulic fracture stimulation, and drilling replacement wells, and installing and maintaining Production Equipment as defined in the SUA. Further, subject to the terms and conditions set forth in the SUA, Operator shall have the non-exclusive right to use other lands as covered by the Oil and Gas Lease for the purposes of constructing and maintaining flowlines, gathering lines and other pipelines and an Access Road as may be necessary for its operations under the Oil and Gas Lease. The Access Road being intended to confine the placement of any to that general area as identified and depicted on the attached plat labeled Exhibit "A".

Reference is hereby made to the executed SUA in possession of Surface Owner and Operator, as maybe be subsequently amended, and by this reference the Lease and all of the provisions thereof shall be deemed to be set out and incorporated herein and made a part hereof as though fully set forth herein. Surface Owner and Operator reserves the right to refuse inspection of the SUA by third parties attempting to obtain information for purposes prejudicial to the business interests of the Surface Owner and/or Operator or to access information that is prohibited by the terms of the SUA.

Nothing in this Memorandum shall be deemed to amend, alternate or supersede any of the terms and conditions set out in the SUA, and in the event of a conflict the terms and conditions contained in the SUA shall control.

This Memorandum may be executed in counterparts, each of which shall be deemed an original instrument, and which together shall constitute but one and the same instrument. A facsimile or

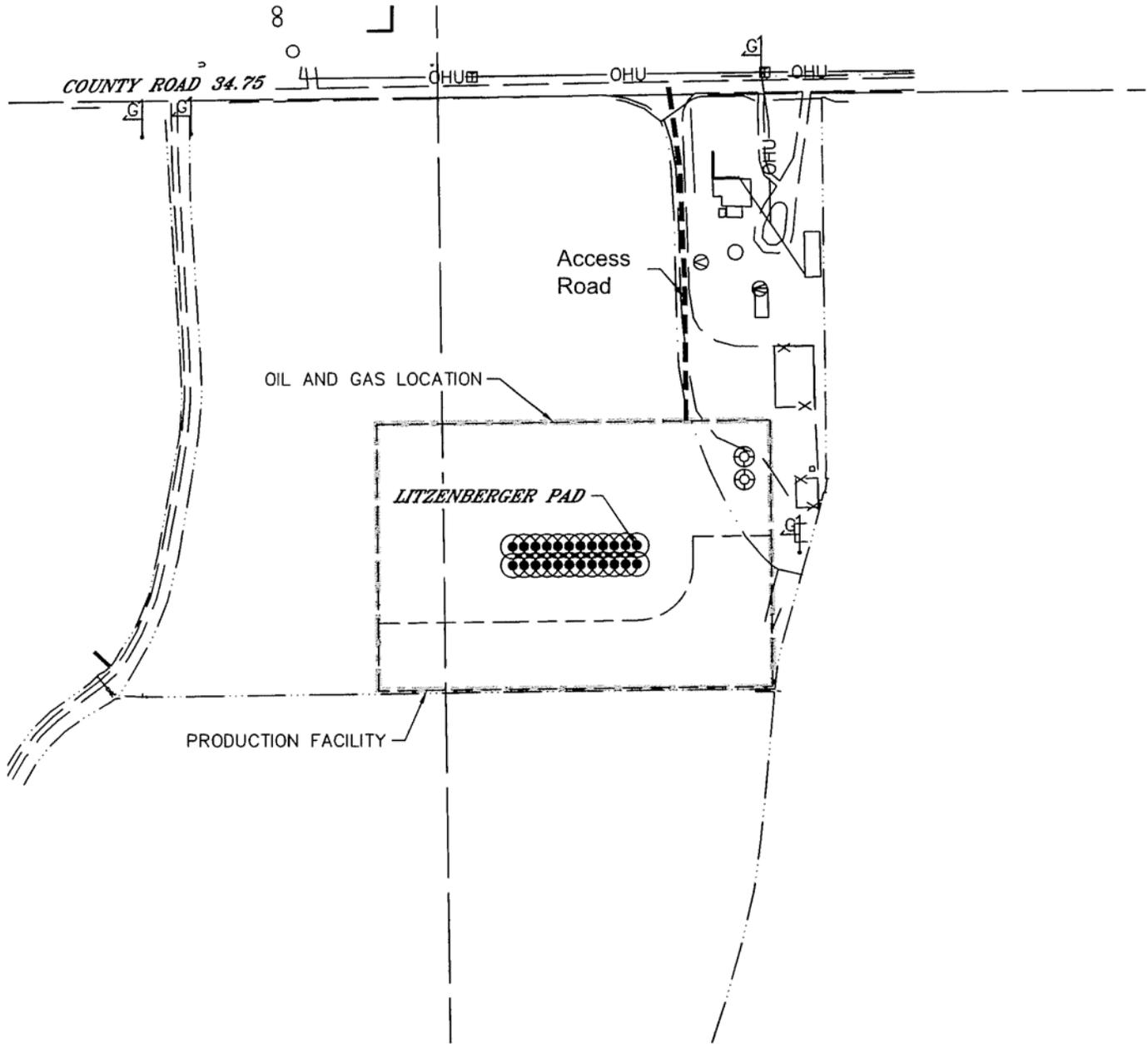




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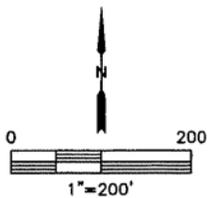
# LITZENBERGER WELL PAD

SECTION: 8  
TOWNSHIP: 3N  
RANGE: 68W  
6TH. P.M.  
WELD COUNTY, CO



### EXHIBIT "A"

Attached to and made a part of that certain Memorandum of Wellsite Surface Use Agreement by and between Michael A. Litzenberger and Kathryn M. Litzenberger and Cub Creek Energy, LLC.



--- Operations Area

DATE: 6/16/2015  
PROJECT#: 2015065

## WELLSITE SURFACE USE AGREEMENT

This Wellsite Surface Use Agreement ("SUA") is entered into effective as of June 1, 2015 ("Effective Date") between Michael A. Litzenberger and Kathryn M. Litzenberger (collectively "Surface Owner"), whose mailing address is 14661 County, Road 5, Longmont, Colorado 80504 and Cub Creek Energy, LLC ("Operator"), whose mailing address is 200 Plaza Drive, Suite 100, Highlands Ranch, Colorado 80129. Surface Owner and Operator herein sometimes collectively referred to as "Parties", and individually referred to as "Party".

### RECITALS

WHEREAS, Operator, directly or through an assignee or designee, wishes to drill, complete and produce oil and gas wells on lands (the "Lands") owned by Surface Owner in the North Half of Section 8, Township 3 North, Range 68 West, Colorado, 6<sup>th</sup> Principal Meridian, Weld County, Colorado, more particularly described in that lease ("Oil and Gas Lease") recorded on June 2, 1980 at Book 904, Reception No. 1826244, with the Weld County Clerk and Recorder;

WHEREAS, Operator, is the current holder of the rights under the Oil and Gas Lease as the Lessee; and

WHEREAS, Surface Owner agrees to allow Operator, or an assignee or designee of Operator, to use a portion of the surface of the Lands to serve as an operations and production area for the drilling and production of the wells;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged herein, the Parties agree as follows:

(1) Operator represents that it is the current holder of the rights as Lessee under the Oil and Gas Lease, and has the rights under the Oil and Gas Lease to drill oil and gas wells on the Lands.

(2) Surface Owner does hereby agree that Operator, its successors and assigns shall have the exclusive right to use for the purposes of drilling, completing, producing, and operating one or more oil and gas wells (including but not limited to straight, directional and horizontal wells), storing, transporting and marketing oil, gas and other products produced from such wells, and all other rights as deemed reasonably necessary by Operator that may be associated with, incidental to, or convenient for any such drilling, completing, producing, and operating activity, including, but not limited to, workovers, deepening, sidetracking, recompleting, hydraulic fracture stimulation, and drilling replacement wells, and installing and maintaining Production Equipment as defined herein below, the surface and the subsurface of the following described lands; to-wit:

Township 3 North, Range 68 West, 6<sup>th</sup> P.M., Weld County, Colorado

Section 8: that certain tract of land, measuring 530 feet by 360 feet, more or less, situated in South Half of the Northeast Quarter, and identified as the " Operations Area " in the plat attached hereto as Exhibit "A" (such tract referred to herein as "Operations Area").

(3) This SUA shall commence on the Effective Date and shall continue for so long as the Oil and Gas Lease is in effect. This SUA supersedes any prior surface use agreement between the Parties.

(4)  Such payment shall become due and payable fifteen (15) days after a well is spud on the Operations Area. Such payment(s) shall represent the total consideration to be paid by Operator to Surface Owner for the granting of this SUA and all the rights set forth thereunder to Operator. Except as otherwise specifically provided herein, in consideration of this payment, Surface Owner hereby waives all surface and/or other damage payments pursuant to any rule

or regulation of the Colorado Oil & Gas Conservation Commission (“COGCC”), or any state statute, common law or prior agreement, for each and every well that is drilled and/or the installation of the Production Equipment located on the Operations Area.

(5) For the purposes of this SUA, “Production Equipment” shall be deemed to include, any and all equipment and/or facilities, whether located on the surface or subsurface of the Operations Area, as deemed reasonably necessary by Operator for the purpose of conducting, any drilling, completing, producing, and operating activity on the Operations Area, or associated with, incidental to or convenient for any and all operations conducted on the Operations Area as contemplated under this SUA. Production Equipment shall include, but not be limited to tanks, tank batteries, separators, dehydrators, compressors, pumping unit, vapor recovery units, wellheads, gathering lines, flowlines and other equipment, facilities and any associated housings and/or fencings. All surface Production Equipment on the Lands shall be located exclusively on the Operations Area unless the prior consent of the Surface Owner is obtained. The surface of the Lands shall not be occupied by the Operator except for the Operations Area and Road Easement and the Pipeline Easement without the consent of the Surface Owner.

(6) Surface Owner acknowledges that, Operator, as the holder of the rights as Lessee under the Oil and Gas Lease, and its designees and assigns, has a continuing right and entitlement to construct, own, operate, maintain, repair and replace all flowlines, gathering lines, other pipelines and related equipment that may be necessary or convenient to its operations on the Lands. It is agreed such rights will be exercised by a non-exclusive right-of-way and easement (“Pipeline Easement”) over, under and through the Lands for the purposes of installing, constructing, operating, maintaining, replacing and repairing one or more flow lines, gathering lines, and/or pipelines (collectively “Pipeline”), as determined necessary by Operator in, or incidental to, the exercise any of the rights granted under this SUA in and to the Operations Area including but not limited to the transportation and marketing of oil or gas produced from any well located on the Operations Area. Operator shall provide notice to Surface Owner with advance notice of the proposed location of any Pipeline Easement. If Surface Owner should determine in good faith that the proposed location for the Pipeline and/or Pipeline Easement will unreasonably interfere with Surface Owner’s intended future use of the Lands, then Surface Owner shall within 15 days propose an alternative location for the Pipeline Easement. Should Operator determine that any proposed alternative location for the Pipeline Easement is not satisfactory for its operations, the location of the Pipeline Easement shall be reasonably determined by Operator giving due consideration to utilizing the most direct economic routing after taking into consideration the contemplated development of the Lands by Surface Owner. Operator will provide Surface Owner with as-built diagrams of the underground facilities located within the Pipeline Easement. All Pipelines shall be buried below ordinary plow depth a minimum of forty-eight (48) inches below the surface of the ground. Subject to Surface Owner providing Operator with the land and rights necessary to construct and maintain an alternative Pipeline which is reasonable and feasible from a technical and engineering standpoint and complies with all applicable rules and regulations, Surface Owner shall have the right to require the relocation of any Pipeline, including a Pipeline lying within the Pipeline Easement, because of development plans that Surface Owner may have for the property owned by Surface Owner. Operator shall not object to any such relocation, so long as such relocation is reasonable and feasible from a technical and engineering standpoint and complies with all applicable rules and regulations. Any such relocation shall be at Surface Owner’s cost and expense. Operator shall in good faith attempt to relocate any Pipeline as agreed to by the Parties within ninety (90) days of receipt of payment from the Surface Owner of the estimated cost of relocating the Pipeline. Surface Owner shall reimburse Operator for the actual costs of the relocation in excess of the estimate within thirty (30) days of receipt of an invoice from Operator or a third party that may have relocated the Pipeline at the request of Operator. Surface Owner shall be responsible for all abandonment and restoration costs associated with the Pipeline, or the portion thereof, that is abandoned at Surface Owner’s request. Operator shall not be required to dig up and remove the line once abandoned, and may elect to abandon any Pipeline in place subject to the governing rules and regulations. Operator shall notify Surface Owner in writing of the abandonment and the location of the abandoned Pipeline.

(7) Surface Owner acknowledges that Operator, as the holder of the rights as Lessee under the Oil and Gas Lease, and its designees and assigns, has a continuing right and entitlement to drill and operate

one or more horizontal and/or directional wells under the surface and through the subsurface of the Lands for the purposes of exploring, drilling, and operating for, and/or developing and producing oil and gas whether or not any such oil and gas is attributable to lands or mineral rights owned in whole or in part by Surface Owners.

(8) Surface Owner acknowledges that Operator, as the holder of the rights as lessee under the Oil and Gas Lease, and its designees and assigns, has a continuing right and entitlement to construct, use and maintain access roads on the Lands related to its activities. It is agreed that such rights will be exercised by a non-exclusive right-of-way and easement ("Road Easement") over, upon and through the Lands to the extent necessary to provide Operator, and its employees, contractors, subcontracts, agents and representatives the rights of ingress and egress to and from the Operations Area, and for the purposes of constructing, operating, maintaining, replacing and repairing a road or roads ("Access Road"), as determined necessary by Operator in the exercise of any of the rights granted under this SUA in and to the Operations Area, including but not limited to the drilling, completing, producing, and operating an oil and gas well(s) and/or the transportation and marketing of oil or gas produced from any well located on the Operations Area. To the extent possible such access shall be accomplished through the existing roads. This SUA is intended to confine the placement of any Access Road to that general area as identified and depicted on the attached plat labeled Exhibit "A". Should Operator wish to construct and maintain an access road outside of the Access Road, it shall obtain Surface Owner's written consent and shall construct and maintain such road at its sole cost and expense. Except as to the extent that existing roads are used, access up to and around the Operations Area shall be on the road constructed and maintained at the sole cost and expense of Operator. Subject to Surface Owner providing Operator with the land and rights necessary to construct and maintain an alternative Access Road which is reasonable and feasible from a technical and engineering standpoint and complies with all applicable rules and regulations, Surface Owner shall have the right to require the relocation of any Access Road, including an Access Road lying within the Road Easement, because of development plans that Surface Owner may have for the Lands. Any such relocation shall be at Surface Owner's cost and expense. Operator shall in good faith attempt to relocate any Access Road as agreed to by the Parties within ninety (90) days of receipt of payment from the Surface Owner of the estimated cost of relocating the Access Road. Surface Owner shall reimburse Operator for the actual costs of the relocation in excess of the estimate within thirty (30) days of receipt of an invoice from Operator or a third party that may have relocated the Access Road at the request of Operator. Surface Owner shall be responsible for all abandonment and restoration costs associated with the Access Road, or the portion thereof, that is abandoned at Surface Owner's request. Should Operator use a road that is constructed by Surface Owner, Operator shall be responsible for damage caused by its use of any such road, and shall hold Surface Owner harmless from any claims brought against Surface Owner as a result of damage or personal injury which to the extent that such damage or personal injury is directly caused by the use of the road by Operator. At its sole risk and expense, Surface Owner and its tenants shall have the right to use any Access Road constructed by Operator, provided that any such use shall not interfere with the use of the Access Road by Operator, and any such party using the Access Road shall do so at its sole risk and release Operator from all claims for damages or personal injury, regardless of fault or negligence by Operator. Surface Owner shall be liable for any damage to any Access Road constructed by Operator caused by Surface Owner's or its tenants use of the Access Road, and for any claims by third parties attributable to such use.

(9) Surface Owner expressly consents and approves to wells being drilled on the Operations Area acknowledging that: (i) the surface location of any wells drilled on the Operations Area will or may be an exception location and not lie within the drilling windows created for the designated well spacing unit by Rule 318A of the rules and regulations of the COGCC, and (ii) the surface location of any wells drilled on the SUA will or may be greater than fifty (50) feet from an existing surface well location. As by this SUA, Surface Owner has agreed to the locations for wells and Production Equipment, together with the locations of Pipelines and access Roads to access the well sites, Surface Owner waives its right to engage in consultation with the oil and gas operator related to surface locations for wells, pipelines and roads, as required under the rules and regulations of the COGCC. Further, upon request of Operator, Surface Owner agrees to execute such further documents as maybe be required by the COGCC or other governmental or regulatory agencies to acknowledge the rights granted to Operator to use the Operations Area as set forth in this SUA to facilitate the permitting of any well or operation thereon or associated therewith. To the extent required Surface Owner also agrees to

obtain such further executed documents from any tenant of Surface Owner.

(10) During the term of this SUA, Surface Owner will not locate any lot line, building, or structure within the Operations Area without first granting any waiver(s) as may be required to allow Operator to continue to use the Operations Area for the purposes herein granted. Surface Owner shall not inhibit Operator's access to the Operations Area or inhibit Operator's operations within the Operations Area or any of the easements granted hereunder by landscaping or other improvements, unless otherwise agreed upon in writing by Operator, which will not be unreasonably withheld. Surface Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this SUA, Surface Owner hereby waives its right to object to the location of any of Operator's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time. To the extent required Surface Owner agrees to obtain a similar waiver from any tenant of Surface Owner. Surface Owner further and similarly waives its right to object to any other state, county, city or local setback requirements or other requirements or regulations that are or become inconsistent with this SUA or that would prohibit or interfere with the rights of Operator, its designees and assigns, to explore for and produce oil and gas from wells located on the Operations Area in accordance with this SUA. Operator or its successors and assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. Surface Owner agrees not to object to the use of the surface of the Operations Area, so long as such use is consistent with the terms of this SUA, and Surface Owner will provide Operator or its successors and assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any state, county or local jurisdiction.

(11) Operator shall be responsible for any actual damages to growing crops caused by Operator's construction and maintenance of the Operations Area, Access Road, and/or Pipeline.

**(12) Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 13 below) or out of other provisions of this SUA (which claims shall be governed by the terms of this SUA), each Party shall be and remain responsible for (notwithstanding the termination of this SUA) its own liability for all 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 use of and operations on the Operations Area, the Pipeline Easement and/or the Road Easement, no matter when asserted, subject to applicable statutes of limitations. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this SUA, nor does it create any separate rights in Parties to this SUA. Upon the assignment or conveyance of a Party's entire interest in the Operations Area, that Party shall be released from all Claims attributable to actions or occurrences happening after such assignment or conveyance.**

(13) Operator shall protect, indemnify, and hold harmless Surface Owner from any Environmental Claims relating to the Lands that directly arise out of Operator's use of and/or operations on the Lands, Operator's ownership and operation of Production Equipment, and Operator's ownership and operation Pipeline or Assess Road on the lands covered by this SUA.

(14) Notwithstanding the termination of this SUA, any agreement and obligation of Operator to indemnify, protect and hold harmless Surface Owner, as set out herein, shall survive the termination of the term of this SUA, specifically including, any claims brought prior to the plugging of wells and the restoration of the Operations Area.

(15) Should Surface Owner believe that Operator is not in compliance with any of the terms and conditions of this SUA, Surface Owner shall provide Operator with written notice of such non-compliance. Neither Party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other Party for activities undertaken within the scope of this SUA.

(16) Upon the termination of this SUA as provided in Section 2 Operator's right to use the Operations Area for additional operations or wells shall terminate. Provided, however, this SUA remain in full force and effect until Operator, at Operator's expense, has in full compliance with the rules and regulations of the COGCC and any other governing regulatory agencies, plugged and abandoned all wells drilled on the Operations Area , and has removed any and all Production Equipment or other materials placed on the Operations Area , and has reclaimed and restored both surface of the Lands in compliance with any applicable rules, regulations or laws, and the terms of this SUA. Operator agrees to restore the surface of the Lands and any Pipeline Easement or Road Easement used by Operator in connection with or impacted by its operations, to the extent reasonably practicable to a condition similar to the condition that existed as of the date of the SUA, or as otherwise may be required under any applicable rules, regulations or laws. If within one hundred twenty (120) days of the termination of Operator's right to use the Operations Area for additional operations or wells, Operator fails to commence in good faith operations to plug a well or to restore the Lands , Surface Owner shall have the right to preform or have a third party preform any such action. Operator agrees to reimburse Surface Owner within thirty (30) days of receipt of an invoice from Surface Owner, any and all reasonable costs incurred by Surface Owner in connection with any such reasonable action taken by or on behalf of Surface Owner. If Operator fails to reimburse such costs within the 30-day period, Operator shall be further responsible for all costs incurred by Surface Owner in collecting any such reimbursement, including but not limited to court cost and attorney's fee.

(17) Surface Owner shall have no liability for the release or discharge by Operator, its contractors or agents, of oil, gas or any other substance on or under the Lands, except as such release or discharge is caused in whole or in part by Surface Owner, or Surface Owner's tenants, licensees, invitees or agents, and Operator will indemnify and hold Surface Owner harmless from and against all costs and expenses (including attorney's fees) for any such release or discharge.

(18) The Operator shall use its best efforts to keep the area around the wells and other areas related to its operations free of weeds and debris.

(19) This SUA, any and amendment hereto shall not be recorded in the public records of Weld County, Colorado, without the written consent of both Parties. Provided, however, Operator may record in the public records of Weld County, Colorado, a Memorandum of Surface Use Agreement, setting forth the identity of the Parties to the SUA a, the effective date, the term of the SUA, the rights granted to Operator and the lands covered by the SUA, for the purpose of notice to third parties, with the document to be recorded to be signed by Surface Owner at the request of Operator. Operator shall provide Surface Owner with a recorded copy of any such recorded document. Notwithstanding, Operator may provide a copy of this Lease to the COGCC.

(20) THIS SUA SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO.

(21) The rights granted herein may be assigned in whole or in part by either Party, and the terms, conditions, and provisions of this SUA are a covenant running with the land and shall extend to and be binding upon the successors, and assigns of Surface Owner and Operator. The SUA shall inure to the benefit of and shall be binding upon Surface Owner and Operator and their successors, assigns and designees.

(22) This SUA sets forth the entire understanding among the Parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This SUA shall not be amended, except by written document signed by all Parties. This SUA may be executed in counterparts, each of which shall be deemed an original instrument, and which together shall constitute but one and the same instrument. A facsimile or scanned copy of the signed SUA shall be deemed as an original executed copy thereof.

IN WITNESS WHEREOF, the Parties have duly executed this SUA as of the date set forth below.

Surface Owner:

Michael A. Litzenberger

Michael A. Litzenberger

Date: July 15, 2015

Kathryn M. Litzenberger

Kathryn M. Litzenberger

Date: July 15, 2015

Operator:

Cub Creek Energy, LLC

By: [Signature]

Name: Robert A. Gardner

Title: President and Chief Executive Officer

Date: 7/15/15

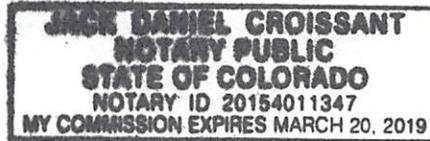
ACKNOWLEDGMENTS

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 15<sup>TH</sup> day of July, 2015, by Michael A. Litzenberger.

WITNESS my hand and official seal.  
My commission expires: MARCH 20<sup>TH</sup> 2019

JACK DANIEL CROISSANT  
Notary Public

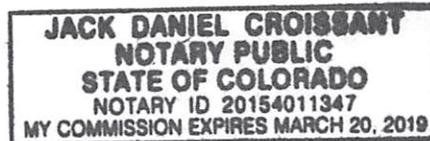


STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 15<sup>TH</sup> day of July, 2015, by Kathryn M. Litzenberger.

WITNESS my hand and official seal.  
My commission expires: MARCH 20<sup>TH</sup> 2019

JACK DANIEL CROISSANT  
Notary Public

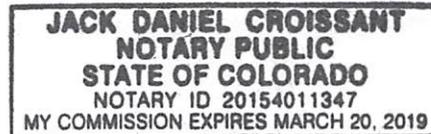


STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 15<sup>TH</sup> day of July, 2015, by Robert A. Gardner, as President and Chief Executive Officer of Cub Creek Energy, LLC, a Delaware limited liability company, by and on behalf of said company.

WITNESS my hand and official seal.  
My commission expires: MARCH 20<sup>TH</sup> 2019

JACK DANIEL CROISSANT  
Notary Public

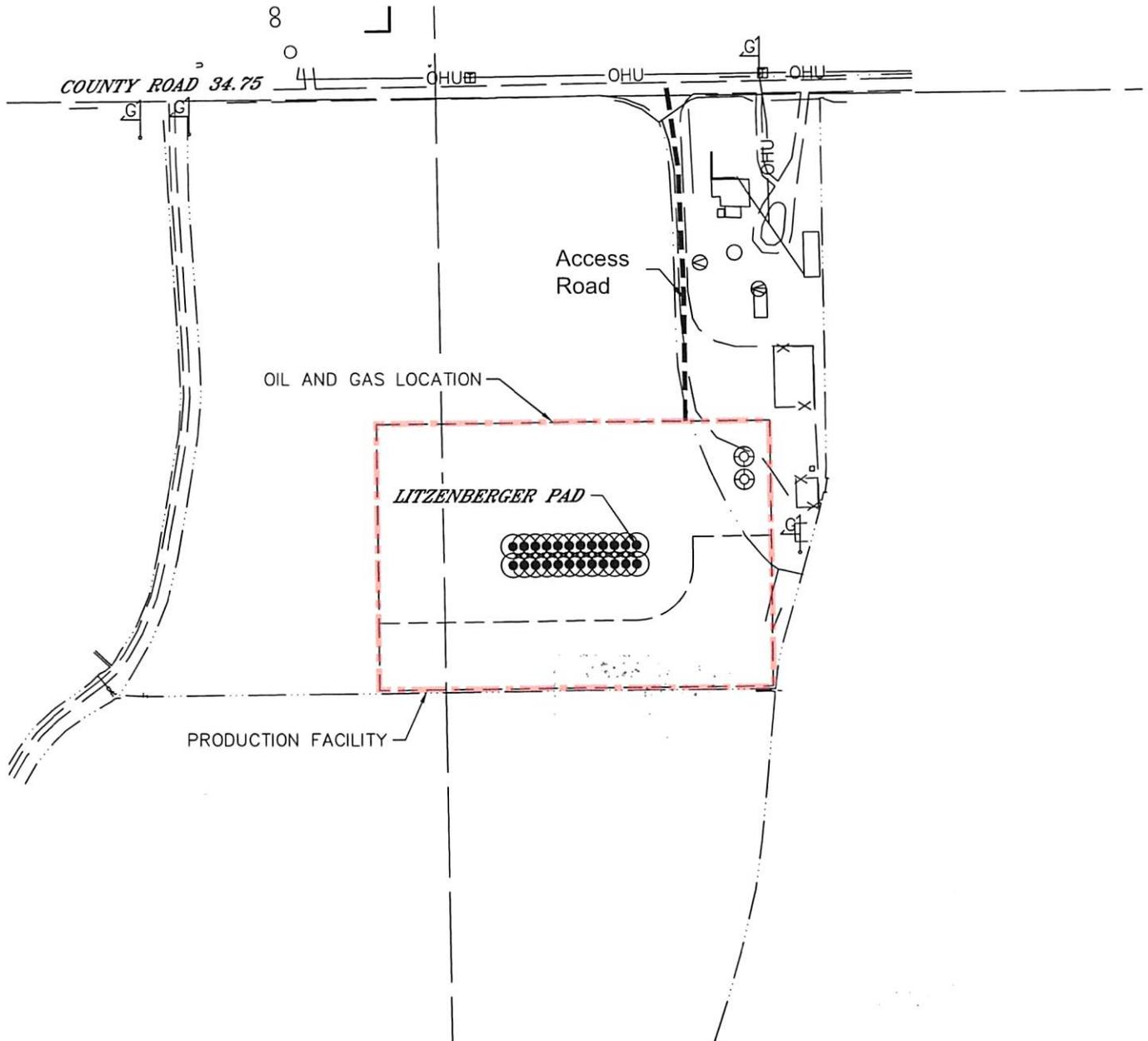




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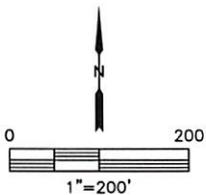
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