

## SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (this "Agreement") is made and entered into this 1<sup>st</sup> day of January, 2013, by and between LYNN A. FAGERBERG, RYAN C. FAGERBERG, AND PAIGE L. BAESSLER, as tenants in common, whose mailing address, for purposes of this Agreement, is 18271 Weld County Road 70, Eaton, Colorado 80615 ("Owners"), and NOBLE ENERGY, INC., a Colorado corporation, the mailing address of which, for purposes of this Agreement, is 1625 Broadway, Suite 2200, Denver, Colorado 80202 ("Operator").

### RECITALS

- A. Owners own the surface estate of that certain tract of land more particularly described on Exhibit "A" to this Agreement, being lands located in the SW1/4 of Section 12, Township 6 North, Range 66 West, Weld County, Colorado (hereinafter referred to as the "Property").
- B. Surface ownership of the Property is subject to the rights of the oil and gas mineral leasehold estate, some or all of which is now owned by Operator.
- C. Owners plan to develop the surface of the Property in the future.
- D. Operator has the right to develop its oil and gas leasehold estate by drilling wells (the "Future Wells") on the Property.
- E. Owners hold mineral interests in Sections 7 and 12 of Township 6 North, Range 65 West. Owners and Operator have entered into an oil and gas lease for lands in Section 7 of Township 6 North, Range 65 West (the "Section 7 Lease"), and Operator has an existing lease for the minerals in Section 12 (the "Section 12 Lease"). Operator and Owners intend to use facilities on the Property for the production of oil and gas from the Section 12 Lease and the Section 7 Lease, and lands pooled with these leases, including the drilling of additional "Future Wells" horizontally from the Property through the Section 7 Lease. Nothing in this Agreement is intended to modify or amend Operator's rights under the Section 7 Lease or the Section 12 Lease. All Future Wells will be horizontal wells.
- F. Owners and Operator desire to mitigate any surface damage to the Property and to set forth their agreements with respect to future oil and gas operations on a portion of the Property, the accommodation of development of the surface, and to provide for cooperation between the parties and the mutual enjoyment of the party's respective rights in and to the Property.
- G. This Agreement set forth the parties' rights and obligations regarding the relationship between the development of the Property by Owners' and Operator's operation and development of its oil and gas leasehold estate underlying the Property and for the Section 7 Lease, such rights and obligations to be binding upon the parties' successors and assigns.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the covenants herein made and the mutual benefits to be derived therefrom, the receipt and adequacy of which are hereby confessed and acknowledged, the parties hereto agree as follows:

1. Term of Agreement. Each of the parties covenants and agrees that it shall strictly observe the terms and conditions regarding surface occupancy set forth in this Agreement. This Agreement, and the rights and benefits granted and created herein shall be effective as of the date of this Agreement and shall continue in full force and effect until the later to occur of (i) permanent cessation of operations being conducted on the Oil and Gas Operations Areas, as hereafter defined, or (ii) December 31, 2016, and in either event, Operator has plugged and abandoned all wells owned or operated by Operator and has complied with the requirements of all applicable oil and gas leases and applicable laws, rules and regulations pertaining to removal of equipment, reclamation, and clean-up.

2. Use of Property. Owners shall set aside and provide to Operator that portion of the Property consisting of approximately 50 acres as depicted on Exhibit "A" (the "Oil and Gas Operations Area"). The Oil and Gas Operations Area, as well as the areas for access roads and Pipelines depicted on Exhibit "A" (the "Access Roads" and "Pipelines," respectively, and as further defined below) shall be made available to Operator in their present condition for any operations conducted by Operator in connection with any Future Wells, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing and replacement wells.

Except for the Oil and Gas Operations Area, Access Roads and Pipelines as provided in this Agreement, Operator shall not occupy any part of the surface of the Property except in the event of emergency or for reasonable incidental, temporary and non-damaging activities related to Operator's proper operations, for which Operator shall be strictly and solely responsible for any damages that may occur. Nothing in this Agreement shall diminish Operator's right to conduct activities pursuant to the Section 7 Lease or the Section 12 Lease, whether or not including other lands, including activities relating to wells on the Property as of the date of this Agreement. Operator shall have exclusive use of the Oil and Gas Operations Area, subject only to (i) landscaping installed pursuant to Section 10(D) of this Agreement, and (ii) Owners' agricultural use within the Oil and Gas Operations Area to the extent that such agricultural use does not interfere with or impair Operator's use of the Oil and Gas Operations Area, and provided further that Operator shall have no liability to Owners for damages to agricultural operations within the Oil and Gas Operations Area. Without limiting the foregoing, Operator is also hereby granted a subsurface easement, during the term of this Agreement, for passage of any portion of any well bore for any of the Future Wells, whether producing or nonproducing, including the right to occupy and use the subsurface and subsurface pore space displaced by the well bore and all structures appurtenant thereto.

Operator shall have the right to drill Future Wells within the Oil and Gas Operations Area, including horizontal and directional wells that produce from and drain all or portions of the Property, including the Section 7 Lease or the Section 12 Lease, and any lands pooled with those leases, provided that such locations must be permitted locations under the then applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC. As part of the consideration for this Agreement, Owners hereby waive their right to, and covenant that they shall not protest or object to any such exception location or application for same by Operator, provided that such exception location is otherwise consistent with this Agreement. Operator shall not otherwise have the right to drill new wells on the Property. The bottom hole locations for each of the Future Wells will be determined by Operator in the ordinary course of Operator's economic, engineering and geologic evaluations of potential oil and gas well drill sites.

Owners hold mineral interests in Sections 7 and 12, of Township 6 North, Range 65 West. Operator holds the Section 7 Lease and the Section 12 Lease for Owners' minerals on these lands. The Future Wells will produce from the Section 7 Lease and the Section 12 Lease, and lands pooled with these leases. Operator may use the Oil and Gas Operations Area for any activity related to the production of oil and gas from the Future Wells or any existing well on the Section 12 Lease."

Operator shall assure that each well site and the area required for any tank battery location associated with each well shall be within the Oil and Gas Operations Area. Operator will use road base for the installation of all tank battery areas and roads.

3. Consultation with Owner. Prior to entry of any equipment onto the Oil and Gas Operations Area, Operator's representative shall meet and consult with Owners (or Owners' representative), on the site, as to the exact location of the Access Roads and, if appropriate, Pipeline(s), equipment, and other associated operations and production facilities. Without limiting the foregoing, Operator shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and any other equipment reasonably appropriate for the operation and production of any wells drilled upon the Property in accordance with this Agreement within the applicable Oil and Gas Operations Area. This Agreement precludes the location of any storage facilities on the Property with the exception of storage tank batteries for oil, liquid hydrocarbons, and water produced from operations on the Property, including horizontal wells drilled from the Property but producing from acreage outside the Property. To the extent practicable, Operator will use metal berms around Operator's facilities.

4. Access Roads. Owners shall provide Operator with continuous access to all the Oil and Gas Operations Areas and the Pipelines, if any, provided that unless otherwise agreed to by Owners, Operator shall access all such areas over and across roadways now or hereafter located within the Property within the road corridors depicted on Exhibit "A" (the "Access Roads"). Operator shall be responsible for the repair and maintenance of any such roadway. At the option of Owners, the Access Roads to be used by Operator will instead be those roads, if any, that are eventually constructed by Owners at their sole cost and expense as part of Owners' development of the Property.

5. Flow Lines, Gathering Lines and Other Pipelines. Subject to the limitations hereinafter described, Operator has a continuing right and entitlement to install, own, operate, maintain, repair and replace all flow lines, gathering lines and other pipelines ("Pipelines") that may be necessary or convenient to its operations on the Property, but only within the Oil and Gas Operations Area and corridors depicted as "Pipelines" on Exhibit "A." This Agreement is intended to confine the placement of those pipelines to certain specified locations within the Property, but Owners shall consent to such other or additional locations as may be reasonably necessary for Operator to make all necessary well connections to any Future Well, provided that Owners shall not be required to consent to any such location outside a corridor that will materially interfere with the actual or potential development and use of the Property. Operator shall not, without the prior written consent of Owners, have the right to lay additional Pipelines on the Property except within the Oil and Gas Operations Area and corridors depicted on Exhibit "A." Within a reasonable time after the completion of construction of a Pipeline, Operator shall provide an as-built drawing of the Pipeline to Owners.

Owners shall have the right to require Operator to relocate any Pipelines, at Owners' sole cost and expense, so long as such relocation is feasible and reasonable from a technical and engineering standpoint as determined by Operator in accordance with prevailing industry standards, and so long as such relocation complies with all applicable laws, rules and regulations. At such time as Owners desire to have any Pipeline relocated to an alternative location selected by Owners, Owners shall give written notice to Operator who shall promptly prepare, or commission the preparation of, a cost estimate to accomplish the relocation. As soon as available, Operator will then provide the cost estimate to Owners who will then have the opportunity to review same and make a final determination about whether they wish to proceed with the relocation. If Owners elect to have Operator effectuate the pipeline relocation, they shall tender the estimated costs of such to Operator together with their written request to commence the project as soon as reasonably practicable.

6. Setback Requirements. Owners will not locate any lot line, building, or structure within the Oil and Gas Operation Area, or within any setback area required under the Colorado Oil and Gas Conservation Commission ("COGCC") rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines. In order to give full effect to the purposes of this Agreement, Owners hereby waive their 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, provided that in no event shall such waiver be construed as permitting any operation or location of any structure, improvement or equipment by Operator outside the Oil and Gas Operations Area, or for Access Roads, or Pipelines. 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. Owners agree not to object to Operator's use of the surface in the Oil and Gas Operations Area or for Access Roads or Pipelines so long as such use is consistent with this Agreement. Owners 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 or local jurisdiction.

Notwithstanding the foregoing, Operator acknowledges that Owners own a crew house located within fifty feet (50') of the anticipated Oil and Gas Operations Area and all parties agree and acknowledge Owner's right to continue to use such facility. The parties further agree and acknowledge that Owners consent to all operations conducted by Operator within the Oil and Gas Operations Area, and Owner waives any right to limit those activities based on the location of the crew house.

7. Surface Damages. Subject to the terms and conditions of this Agreement, Owners hereby waive all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled, tank battery and emissions control device located on the Property within the Oil and Gas Operations Areas and also including, but not limited to, any Access Road, flowline, or Pipeline constructed pursuant to this Agreement, and specifically including any usual and customary exploration, drilling, stimulation, completion, restimulation, recompletion, deepening, reworking, equipping, production, maintenance, plugging and abandoning operations. Operator may provide a copy of this Agreement to the COGCC as evidence of this waiver.

8. Other Damages. If by any reasons resulting from the operations of Operator, there is damage to real or personal property upon the Property which is not associated with usual and customary operations, such as (but not limited to) damage to livestock, crops, structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural water ways, such damage will be repaired or replaced by Operator, or Operator will pay reasonable compensation to Owners for such additional damage.

9. Environmental Indemnity.

A. Environmental Indemnification. Operator shall protect, indemnify, and hold harmless Owners, and any subsequent owner of all or any portion of the Property from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise solely out of Operator's use and operation of the Oil and Gas Operations Areas, Access Roads or Pipelines. Owners shall fully protect, defend, indemnify and hold harmless Operator from any and all Environmental Claims relating to the Property that arise solely out of Owners' use of the Property.

B. "Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including, but not limited to, any Claims arising from Environmental Laws. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party.

C. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order (whether currently existing or hereafter adopted) of any federal, state or local governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901, *et seq.*), the Clean Water Act (33 U.S.C. §§ 466, *et seq.*), the Safe Drinking Water Act (14 U.S.C. § 1401, *et seq.*), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801, *et seq.*), the Clean Air Act (42 U.S.C. § 7401, *et seq.*), and the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*).

10. Operational Restrictions.

A. Operator shall conduct its operations on the Property in accordance with all applicable law and regulation, and in accordance with best management practices applicable to the oil and gas industry. "Best management practices" refers to state-of-the-art mitigation measures applied to oil and natural gas drilling and production by operators to help ensure that energy development is conducted in an environmentally responsible manner while assuring development of vitally needed domestic energy sources. Operator shall consult with Owners before using any chemicals for weed control. Operator will consult with Owners concerning the slope of the terrain in the Oil and Gas Operations Area, and will take reasonable measures to minimize the overall slope of the facility. With the assistance of Owners, Operator may maintain the slope by filling areas with soil provided by Owners.

B. Operator shall use the Oil and Gas Operations Areas only for drilling and production operations and placements of wellheads, separators, and normal well site storage tanks, and shall not install or store any other temporary or permanent structures, equipment or facilities on the Oil and Gas Operations Areas unrelated to oil and gas operations without prior written consent of Owners, which may not be unreasonably withheld.

C. Operator shall provide written notice to Owners of any reasonably anticipated operations in connection with any major reworking or fracturing, deepening or recompletion operations on any well(s) consistent with applicable COGCC regulations. Regardless of the foregoing notice requirements, Operator shall have immediate access to any of its facilities in the event of an emergency. After receipt of the

above notice, but not less than five (5) working days prior to Operator's mobilization on the applicable Oil and Gas Operations Area, either Operator or Owners may request an on-site meeting. The purpose of the meeting shall be to inform Owners of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of Owners' development.

D. Operator shall consult with Owners concerning mitigating the visual impacts of Operator's facilities. Owners, at their own risk and expense, shall have the right to install landscaping and other improvements for the purpose of buffering or isolating the Oil and Gas Operations Areas from the Property or the remainder of Owners' adjacent lands, provided that Owners shall not unreasonably inhibit Operator's access to the Oil and Gas Operations Areas or unreasonably inhibit Operator's operations within the Oil and Gas Operations Areas by such landscaping or other improvements, unless otherwise agreed upon between Owners and Operator, which agreement shall not be unreasonably withheld. Owners shall be responsible for the maintenance of all landscaping installed pursuant to the Section 10(D).

E. Operator covenants and agrees to relocate the existing tank battery located within the Property (associated with existing production) to a location within the Oil and Gas Operations Area (and to relocate any and all flow lines and gathering lines associated with the relocated tank battery to mutually acceptable location within or outside the Oil and Gas Operations Area as necessary or desirable and restore the site of the relocated tank battery) concurrently with the construction of new facilities within the Oil and Gas Operations Area within the Property. All such removal and relocation shall be accomplished at the sole cost and expense of Operator. Without limiting any other remedies available to Owners under this Agreement, Owners shall specifically have the right of specific performance in the event of failure of Operator to perform its obligations under this provision.

11. Compliance with Applicable Laws. Owners and Operator shall each, at all times, conduct their respective operations on or about the Property in compliance with the requirements of any applicable laws, rules, regulations, and requirements imposed by any governmental agency, including, without limitation, the Colorado Gas and Conservation Commission. Nothing contained herein shall be construed as waiving the right of either party to contest any requirement sought to be imposed by any such governmental authority.

12. Insurance. Before and during drilling and production operations on the Property, Operator shall at all times maintain appropriate insurance, including, without limitation, workers compensation insurance, in compliance with Colorado law for its employees or contractors involved in the conduct of operations on any portion of the Property and general public liability insurance in such amounts as are customarily maintained for operations similar to those conducted by Operator.

13. Land Development. Operator acknowledges that it is the intent of Owners to continue use of the Property for agricultural production or to further develop the surface of the Property and adjacent property, and Operator shall use commercially

reasonable efforts in the conduct of all operations pursuant to this Agreement to accommodate such use and development, and to conduct its operations in such a way as not to interfere with such use and development. Owners acknowledge that it is the intent of Operator to conduct future drilling and production operations on the Oil and Gas Operations Areas, and Owners shall use commercially reasonable efforts in their use and development of the surface so as not to unreasonably interfere with such drilling and production operations, provided that nothing contained herein shall be construed as requiring Owners to allow Operator to conduct any such operations at any location other than the Oil and Gas Operations Areas identified in this Agreement, nor shall this provision be construed as precluding Owners from using and developing the Property outside the Oil and Gas Operations Area for any agricultural, residential, commercial or other purpose permitted by any applicable governmental zoning laws, rules and regulations.

14. Cooperation. Owners agree to cooperate with Operator, at Operator's request, in Operator's effort to seek approval by the Town of Eaton, Weld County or the State of Colorado, of the proposed oil and gas development on the Property and join in the execution of any consents or other documents necessary to permit Operator to pursue such approvals (subject, however, to the condition that the proposed operation must be consistent with the terms and conditions of this Agreement). Operator acknowledges that it is aware of Owners' intended future use and/or development of the surface of the Property and Operator agrees that it will not protest or object to any land use, subdivision, zoning, or other similar proposal presented by Owners to the Town of Eaton, Weld County or the State of Colorado with respect to the Property and that Operator will join in the execution of any plats, consents, or other documents necessary to permit Owners to pursue such approvals (subject, however, to the condition that the proposed operation must be consistent with the terms and conditions of this Agreement). The foregoing provision is subject to the condition that the proposed use or development will not result in an unreasonable increased risk to the health and safety of the Operator's employees or others, and does not unreasonably interfere with or unreasonably increase the cost of operation and production of Operator's well or wells.

15. Governing Law, Jurisdiction, and Venue. It is expressly understood and agreed by and between the parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Colorado. The parties further expressly acknowledge and agree that jurisdiction and venue for any actions arising out of or in connection with this Agreement shall be in District Court, in the County of Weld, State of Colorado.

16. Default Remedies. The parties to this Agreement acknowledge and declare that, under certain circumstances where no other reasonable remedy is available, it would be impossible or difficult to measure in money the damages which would accrue to either party by reason of the failure of the other party to perform its obligations as set forth herein. Therefore, under such circumstances where no other reasonable remedy is available, should any dispute arise or any action be instituted by either party to this Agreement, to enforce the provisions of this Agreement, it is agreed that this Agreement shall be enforceable in a court of equity by decree of specific performance, and also that

appropriate injunctions may be issued. Each of the parties hereto waives, for itself and its successors and assigns, any claim or defense that an adequate remedy exists in law. The remedies provided herein shall be cumulative, and not exclusive, and shall be in addition to any other remedies available to a non-defaulting party. In the event it is necessary for any party to engage in the services of legal counsel in order to enforce its rights hereunder, the prevailing party in any such proceedings shall be entitled to an award of its reasonable costs and expenses (including attorneys' fees). Prior to any party declaring this agreement or any party or any party in default, the non-defaulting party shall send the other party a notice of default and provide a thirty (30) day cure period. In the event the claimed default is not able to reasonably be cured within thirty (30) days, this Agreement shall not be in default so long as cure is being diligently pursued and cured within a reasonable time. Prior to the institution of any litigation, the Parties agree to participate in non-binding mediation, which shall be included within sixty (60) days of any demand of the same. The parties shall select a mediator from a list provided by the Judicial Arbitrator Group in Denver, Colorado, if they are unable to otherwise agree upon a mediator. In any civil litigation arising out of this Agreement, trial shall be to the Court and each side waives all rights to trial by jury.

17. Assignment. This Agreement shall be assignable, in whole or in part, by either party, subject to the following:

A. Operator may assign its interest in the Oil and Gas Lease(s) covering the subject property only following written disclosure to the assignee of the existence of this Agreement, and such assignment shall be expressly subject to all terms and conditions of this Agreement, and the assumption by assignee of all obligations of Operator under this Agreement.

B. Owners may assign or convey their interest in the Property or any portion thereof only following written disclosure to the assignee of the existence of this Agreement, and such assignment or conveyance shall be expressly subject to all terms and conditions of this Agreement, and the assumption by such assignee or grantee of all obligations of Owners under this Agreement.

18. Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

19. Notices. Any notice or other communication given by either party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by certified mail, return receipt requested, sent by reputable overnight courier, or sent by facsimile transmission (with evidence of such transmission received) to such other party, at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by certified mail, return receipt requested, such notice shall be deemed given on the third business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, shall be deemed effective on the

first business day following deposit with such courier; and if delivered by facsimile transmission, shall be deemed effective when received:

If to Owners, to:

Lynn A. Fagerberg  
Ryan C. Fagerberg  
Paige L. Baessler  
18271 Weld County Road 70  
Eaton, Colorado 80615  
Facsimile: (970) 834-1434

If to Operator, to:

Noble Energy, Inc.  
1625 Broadway, Suite 2200  
Denver, Colorado 80202  
Facsimile: (303) 228-4285

Each of Owners and Operator shall designate a representative as the primary point of contact between the parties. The initial representatives of the parties are specified on Schedule A to this Agreement. Owners and Operator shall provide written notice to the other party upon any change in their designated representative.

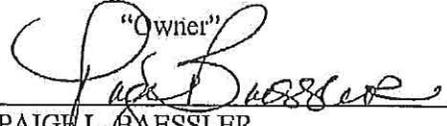
20. Binding Effect. This Agreement shall be binding upon and inure to the benefit to the heirs, personal representatives, successors and assigns of the parties, and may be executed in counterparts. The provisions of this Agreement shall constitute covenants running with the Property for so long as this Agreement (and any modifications thereof) remains in force and effect. Operator hereby represents that this Agreement has been duly and properly authorized on behalf of Operator and constitutes a valid and binding obligation of Operator. The Operator shall record a memorandum of this Agreement in the real property records of Weld County, Colorado in the form attached as Exhibit B.

21. Confidentiality. Owners agree to keep the amount of consideration paid hereunder by Operator confidential and shall not disclose the information without advance written consent of Operator which shall not be unreasonably withheld, provided that Owners shall have the right to disclose any such information as may be necessary in connection with enforcement of their rights or Operator's obligations under this Agreement. Operator may record a memorandum evidencing the existence of this Agreement provided that if it does so, Operator shall be responsible to record an appropriate release upon expiration or termination of this Agreement.

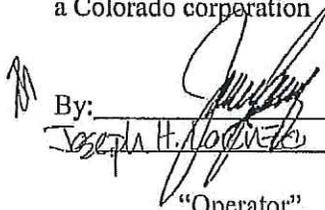
IN WITNESS WHEREOF, the parties hereto have executed this Surface Use Agreement as of the day and year first above written.

  
LYNN A. FAGERBERG

"Owner"  
  
RYAN C. FAGERBERG

"Owner"  
  
PAIGE L. BAESSLER  
"Owner"

NOBLE ENERGY, INC.,  
a Colorado corporation

  
By: Joseph H. Jodnick, Attorney-in-Fact  
"Operator" 

