

SURFACE USE AGREEMENT

This Surface Use Agreement (the “**Agreement**”) is made and entered into by and between _____ (hereinafter referred to as “**Buyer**”) and **MD America Energy, LLC** (hereinafter referred to as “**Seller**”) to be effective as of _____ (the “**Effective Date**”); and

WHEREAS, Seller owns the surface estate, including but not limited to the reservoir on the Subject Land and the associated water rights, in to, and under the lands described on the attached Exhibit “A” (hereinafter referred to as the “**Subject Land**”) and

WHEREAS, Buyer and Seller have entered into that certain Real Estate Contract dated _____ wherein Buyer is purchasing the Subject Land subject to this Agreement and the rights and privileges conveyed herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, and in consideration of the mutual covenants, agreements and obligations herein contained, Buyer does hereby grant and convey the following rights and privileges to Seller as to the surface, water rights and subsurface in, to and under Subject Land subject to the provisions below:

1. Grant of Access: Buyer hereby grants and conveys to Seller a right of ingress and egress to, from and across the Subject Land in order to access, develop, produce, transport or market any and all water located on the Subject Land.
2. Pipelines: Seller shall have the right to lay permanent or temporary water lines which could include gathering lines, flow lines or transmission lines over, across or under the Subject Land in order to remove any and all water located on the Subject Land. Seller agrees that if any pipelines are to be buried, they will be to a depth of 36” below the surface of the ground. Furthermore, any pipelines shall not be more than 30 feet in width when fully completed. During construction, maintenance or removal of any pipelines, Seller may utilize an extra strip of land twenty (20) feet in width running parallel with any pipeline or other line, except at locations such as roads, streams, ditches, or specific areas requiring additional space, which shall revert to a thirty (30) foot permanent easement for normal operation of the pipelines after construction. Precise locations of the pipelines will be determined by Seller and confirmed by an as-built plat.
3. Continued Use: Buyer may continue to use the surface of the Subject Land for all agricultural purposes, pasturage or other similar purposes; provided however, Buyer shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other permanent obstructions on, above or near the pipelines or water sources which would interfere with Buyer's exercise of the rights herein conveyed.
4. Compensation: As compensation for the use of water from the Subject Land, Seller agrees to pay to Buyer \$10,000.00 as full consideration and payment for any drawdown of water on the Subject Land within 14 days of the completion of any drawdown. If Seller builds, operates and maintains a permanent pipeline on the Subject Land, Seller agrees to pay Buyer \$50.00 per rod for said pipeline(s). The exact number of rods used for a pipeline will be determined, by a licensed surveyor, within 30 days of completion of construction. If the number of rods increases more than 10% from the estimates to completion of construction, Seller will pay the difference. Upon Seller’s payment to Buyer of the amount noted above, Buyer agrees that such payment will effectively release Seller from any and all further damages caused by Seller to any improvements, personal property, shrubs, trees, crops or other emblements growing or located on the Subject Land.
5. Extraordinary Damages: The compensation provided in paragraph 4 above, is to compensate Buyer for use of the Subject Land by Seller and for those uses within the reasonable scope of Seller's operations. However, Seller further agrees that should its operations cause extraordinary damages not reasonably anticipated in the scope of Seller's operations, or if any roads or pipelines are damaged by Seller, then appropriate and reasonable amounts will be due and payable to Buyer as such damages occur. Seller and Buyer agree to negotiate in good faith in order to arrive at a commercially reasonable amount to be paid to Buyer for all such additional damages, if any.

6. Water Well: Buyer agrees to give Seller access to, and use of, any existing water well on the Subject Land. At the termination of this Agreement, Buyer will own said water well(s) and Seller will no longer be responsible for its maintenance or repairs.

7. Term: This Agreement shall be in force and effect for a term of ten (10) years with the option to renew for additional five (5) year increments at the conclusion of said term. If at the expiration of the original ten (10) year term, Seller chooses to renew this Agreement for an additional five (5) year term, Seller will notify Buyer in writing of same within 60 days of expiration of the original term. For each additional term of five (5) years, Seller will pay Buyer a one-time fee of \$10,000.00 for each renewal. The costs for drawdowns of water in any term will be the stated amount in paragraph 4 above.

8. Reclamation: Seller shall have the right, at any time, within six (6) months after the termination of this Agreement to remove any and all personal property, fixtures and improvements of whatsoever nature or character owned by or placed by Seller on the Subject Land in connection with operations under this Agreement. Seller shall place the Subject Land back to its original condition, as near as reasonably practicable, within nine (9) months of the termination of this Agreement.

9. Indemnification: Absent gross negligence or criminal intent, Buyer, its successors and assigns, agree to indemnify and hold harmless Seller and its respective assigns, successors, agents and employees, from any and all costs, losses, claims and damages which may arise from the activities of Seller or Seller's agents and employees on the Subject Land.

10. Memorandum of Agreement: This Agreement shall not be recorded, but the parties shall execute and record a memorandum of this Agreement in Madison County, Texas.

11. Assignability: This Agreement may be assigned by either party, in whole or in part. The rights granted to Seller herein may be exercised by Seller and/or its successors and assigns, and may be exercised by and through its employees, independent contractors, agents, and/or representatives.

12. Binding Effect: The covenants and conditions herein contained and all of the provisions of this Agreement shall be binding upon and inure to the benefit of the Buyer and Seller, and their respective heirs, successors and assigns.

13. Counterparts: This Agreement may be executed by 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.

14. Entire Agreement: This Agreement contains the entire agreement between the parties and may not be modified orally or in any other manner other than by agreement in writing signed by all parties or their respective successors or assigns.

17. Governing Law: This Agreement shall be construed in accordance with and governed by the law of the State of Texas without regard to principles of conflicts of law.

18. Notice: All notices, statements, demands, requests, consents, approvals, offers, authorizations, agreements, appointments or designations to either party shall be in writing and shall be addressed to the party representative noted below:

Buyer: _____

Seller: MD America Energy, LLC
301 Commerce, Suite 2500
Fort Worth, Texas
Attn: Tim Bozeman

IN WITNESS WHEREOF, the Buyer and Seller have executed this Agreement effective as of the Effective Date.

BUYER:

By: _____

Name: _____

SELLER:

By: _____

Name: _____

EXHIBIT "A"

Surface Use Agreement effective as of _____ by and between
_____, as Buyer and MD America Energy, LLC, as Seller

A tract or parcel of land containing approximately 208.70 acres, more or less, in the aggregate, being composed of six tracts or parcels of land, respectively containing 72 acres, 20.4 acres, 3.7 acres, 40 acres, 17 acres, and 55.6 acres, more or less, in Madison County, Texas, each tract or parcel of land being more particularly described below and in that certain Special Warranty Deed dated January 10, 2013, and recorded in Volume 1231, Page 237, Official Records of Madison County, Texas, from Ursula Lusk Investments, Ltd. to Texas at Louisiana, LTD.