

**EASEMENT, RIGHT-OF-WAY, SURFACE USE AND DAMAGE AGREEMENT**

THIS EASEMENT, RIGHT-OF-WAY, SURFACE USE AND DAMAGE AGREEMENT (hereinafter the "Agreement"), effective the 11th day of January, 2002, is by and between Benjamin E. Nichols, aka Ben E. Nichols and Lois M. Nichols of 55759 Hwy 330, Collbran, CO 81624, hereinafter referred to as "Owner" (whether one or more), and Tom Brown Inc. of 555 17<sup>th</sup> Street, Suite 1850, Denver, CO 80202, hereinafter referred to as "Operator".

WHEREAS, Owner represents and warrants that he is the surface owner of those certain lands situated in Mesa County, Colorado, which are described as follows, hereafter the "Subject Lands":

Township 9 South, Range 95 West, 6<sup>th</sup> P.M.

Section 31: Lots 3 (39.31), 4 (39.24), E/2SW/4, ALSO that part of the SW/4NE/4 and the SE/4 lying South of the Sunnyside Road, aka "V" Road.

Section 32: S/2SW/4, NE/4SW/4, S/2SE/4, NW/4SE/4, ALSO that part of the NW/4SW/4 lying South of the Sunnyside Road, aka "V" Road. ALSO three (3) acres in the SW Corner of the NE/4SE/4 and one (1) acre in the SE Corner of the NW/4SE/4.

Section 33: SW/4SW/4

Township 10 South, Range 95 West, 6<sup>th</sup> P.M.

Section 5: Lots 2 (40.85), 3 (40.93), 4 (41.02), ALSO that part of the SW/4NW/4 lying North and West of the centerline of Plateau Creek.

Section 6: Lots 1 (40.93), 2 (40.66), 3 (40.40), 4 (38.35), 5 (38.27), SW/4NE/4, SE/4NW/4, NE/4SW/4, SE/4SW/4, SW/4SE/4, ALSO that part of the SE/4NE/4 and the NE/4SE/4 lying North and West of the centerline of Plateau Creek, NW/4SE/4 SAVE AND EXCEPT a 0.34 acre tract conveyed to the Colorado Dept. of Transportation in WD dated dated 11-3-1998 and recorded in Book 2514 at Page 534 of the Mesa County Deed Records.

Section 7: N/2NW/4 lying North and West of the centerline of Plateau Creek SAVE AND EXCEPT a 0.703 acre tract conveyed to the Colorado Dept. of Transportation in Deed dated 8-10-1988 and recorded in Book 1708 at Page 438 of the Mesa County Deed Records.

WHEREAS, Operator is the owner of certain oil and gas leases or operating rights covering portions of the Subject Lands. Operator proposes to explore for oil, natural gas and associated hydrocarbons, including coalbed methane gas, and to drill for and produce said gas on the Subject Lands; and

WHEREAS, the purpose of this Agreement is for Owner, to grant Operator a right of way easement to drill gas wells on the Subject Lands, and to do all that is reasonably necessary to develop and produce oil/gas from wells on the Subject Lands and to agree on the amount of payment necessary to compensate Owner for any damages and use of the Subject Lands by Operator;

NOW, THEREFORE, For and in consideration of [REDACTED] the mutual covenants herein contained, and other good and valuable consideration, Owner and Operator agree as follows:

1. Operations: Owner hereby grants and conveys to Operator a right of way easement covering the Subject Lands for the purpose of doing all that is reasonably necessary to explore for, develop and produce natural gas and coalbed methane from wells on the Subject Lands and lands pooled therewith, including, but not limited to, the following (hereinafter generally referred to as "Operations"):

- a) To drill, equip and operate wells to produce gas and dispose of water and other fluids;
- b) To construct pits, tanks and facilities associated with the same;
- c) To construct and operate pipelines to gather and transport gas produced from the Subject Lands and lands pooled therewith, and to transport and dispose of water from said wells;
- d) To erect and maintain any necessary electric transmission and communication lines;
- e) To construct new roads and use existing roads on or across the Subject Lands;
- f) To have the right of ingress and egress across the Subject Lands.

2. Location Fee: Prior to the commencement of construction operations on the Subject Lands, Operator shall pay to Owner, as a surface use fee and as compensation for surface damages ("Location Fee"), the sum of [REDACTED] location to be constructed on the Subject Lands. Operator shall pay to Owner an additional [REDACTED] for each well location subsequently built on the Subject Lands. Payment shall be made prior to the constructing of the additional locations. Each Location Fee shall cover multiple wells drilled on that location and any electrical transmission lines servicing such location.

3. Road Right of Way and Fees: Prior to the commencement of operations to construct a new road or use and improve existing roads, Operator shall pay Owner the [REDACTED] for the right of way easement and for damages, for any new road constructed on the Subject Lands ("Easement Fee"), or for use of any existing road that is not primarily maintained by governmental entities or other third party, such roads being used by Operator to gain ingress and egress to its Operations on the Subject Lands or adjacent lands.

4. Pipeline Rights of Way and Fees: Prior to the construction of pipelines to gather and transport gas and to transport and dispose of water produced from the Subject Lands or lands pooled therewith, Operator shall [REDACTED] per lineal rod for each right of way, as compensation for the easement itself and for damages a one-time fee to use, operate, and maintain said right of way; and for ingress and egress by Operator and its contractors to access said right of way ("Easement Fee"). This Easement Fee covers Operator's installation, at any time during the life of this Agreement, additional pipelines within each right of way.

5. Damage Payments: The compensation to be paid by the Operator to the Owner hereunder shall be for the right-of-way to cross the Owner's lands and for damages caused by the reasonable and customary entry, drilling, subsurface discharge of production fluids and subsequent operations of the Operator, but do not include damages to livestock, buildings, improvements of any type, fences, or injury to persons or any other type of property.

6. Compliance With Laws and Regulations and Standard of Operation: All Operations will be conducted in accordance with all applicable federal, state and local laws and regulations. Operator shall conduct its Operations in a prudent manner, including but not limited, to the following:

- a) When requested by Owner, Operator shall fence locations and place cattle guards on or along any roadways. Lessee must consult Lessor on the location of any cut in a fence prior to a fence being cut. Lessee shall construct proper and sufficient braces at any point where fences are to be cut, prior to cutting. Braces shall be constructed so that slack will not develop in existing fences.
- b) Owner shall be entitled to lock gates located along said roadways, but shall provide to Operator all combinations or keys necessary to ensure Operator's continued and unimpeded access.
- c) As soon as practicable after the completion of drilling or reworking operations on the leased premises, Lessee shall fill and plug any holes, level all dumps, and fill and level all pits. Lessee shall remove all drilling mud or other contaminants which have been placed on drill sites or equipment installation sites. On termination of this Lease, Lessee shall restore the lease premises to as near its original condition as it was in prior to Lessee's operations. Throughout the term of this Lease, Lessee shall maintain all roads in good condition, and on termination of this Lease, Lessee shall place all roads in good condition, subject to Lessor's option to have Lessee remove all or part of the roads. If any disturbed area included non-native grasses or vegetation, all restored areas shall be reseeded or replanted under the direction of Lessor.
- d) Operator shall keep the portion of the Subject Lands which it uses free of litter and debris.
- e) Unless otherwise agreed upon, Operator agrees that its employees, contractors, agents and representatives shall confine its activities to the proposed wellsite and road right-of-way and easement areas.
- f) Operator shall use its best efforts not to permit any such employees or parties to possess firearms or alcohol while on the Subject Lands.

7. Consultation with Owner: Operator shall consult with Owner regarding the location of wellsites, roads, pipelines, electric transmission lines and other structures in advance of constructing such facilities and Operator shall endeavor to design its operations so as to minimize the amount of Owner's surface required and to locate all structures, roads or lines at such locations that will minimize the interference with the surface use of the land for farming and ranching purposes. Upon written request by Owner, Operator shall provide maps showing wellsite locations, pipelines and roads as well as proposed wellsite locations, pipelines and roads.

8. Indemnification: Operator will defend, indemnify and hold harmless Owner from and against any and all liability on the account of the acts of Operator, its employees, agents or representatives. Excepted from the foregoing indemnity are injuries and/or damages that are the result of the gross negligence or willful misconduct of Owner, its agents, invitees or contractors.

9. Notice of Default: In the event of a breach of the terms of this Agreement, Operator or Owner, as the case may be, shall notify the other party in writing of the specific breach or default, and provide a reasonable opportunity for the defaulting party to remedy such breach prior to any suit or cancellation proceedings being instituted.

10. Complete Agreement: This Agreement sets forth the full and complete terms and consideration relevant to Operations on the Subject Lands and is subject to modification only by written agreement fully executed by the parties hereto. Upon request by Operator, Owner shall execute formal easements in favor of Operator for roads, pipelines, or equipment placement subject to this Agreement. Operator may record a memorandum of this Agreement in the public land records.

11. Term of Agreement: This Agreement shall be effective as of the date of execution of same as set forth herein below and shall continue in full force and effect as long as Operations are conducted by Operator on the Subject Lands under the

terms of the Oil and Gas Lease(s) and/or any extension or renewal of the same and until all required surface reclamation operations have been completed according to the terms of this Agreement.

12. Successors and Heirs: This Agreement shall be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns.

SURFACE OWNERS:

OPERATOR:  
TOM BROWN INC

Benjamin E. Nichols  
Benjamin E. Nichols

By: [Signature]

Lois M. Nichols  
Lois M. Nichols

STATE OF Colorado )  
COUNTY OF Mesa )§

Oklahoma, Kansas, New Mexico, Wyoming, Montana, Colorado, Utah,  
Nebraska, North Dakota, South Dakota  
ACKNOWLEDGMENT—INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this 11th day of January, 2002, personally appeared Benjamin E. Nichols aka Ben E. Nichols and Lois M. Nichols, husband and wife, to me known to be the identical persons described in and who executed the within and foregoing instrument of writing and acknowledged to me that they duly executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires 7-11-2005

FREDERICK D. JONES  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires \_\_\_\_\_

[Signature]  
Notary Public  
Address: 3831 N. 12th St  
GRAND JUNCTION, CO 81506

STATE OF Colorado )  
COUNTY OF Denver )§

ACKNOWLEDGMENT (For use by Corporation)

On 14th day of January, A.D. 20 02, before me personally appeared David S. Petrie, to me personally known, who, being by me duly sworn, did say that he is the Manager-Government of Affairs and Regulations of TOM BROWN, INC.

and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said David S. Petrie acknowledged said instrument to be free act and deed of said corporation.

Witness my hand and seal this 14th day of January, A.D. 20 01

My Commission Expires 12-6-03

[Signature]  
Notary Public  
Address: 555 17th Street, Suite 1850  
Denver, CO 80202

PHYLLIS MALISHESKI  
NOTARY PUBLIC, STATE OF COLORADO