

SURFACE DAMAGE AND RELEASE AGREEMENT

This Surface Damage and Release Agreement ("**Agreement**") is made and entered into this 22nd day of September 2010, by and between Harvey W. Mesbergen and Beverly J. Mesbergen, husband and wife ("**Owner**"), and Apollo Operating, LLC, ("**Operator**"); sometimes referred to each as a "**Party**," or collectively as the "**Parties**."

WITNESSETH:

For and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **OWNERSHIP.** Owners are the surface Owners of certain lands located in Weld County, Colorado as more specifically described as follows ("**Lands**"):

Township 6 North, Range 66 West, 6th P.M.

Section 3: That part of the SE/4 described at Reception Number 2908081 Weld County, Colorado.

Operator (and/or its affiliates) owns a working interest in valid leases taken in its name covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "**Lease**," collectively, the "**Leases**"). Additionally, Operator may have responsibilities under a Joint Operating Agreement ("JOA") with respect to the Lands.

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.**

Operator intends to drill or cause to be drilled oil and/or gas wells on the Lands, as depicted approximately on Exhibit "A" attached hereto ("**Wells**"). In order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities associated therewith, including, but not limited to, access roads ("**Access Roads**"), pipelines, flow lines, separators, tank batteries, electric lines and any other facilities or property necessary for Operator to conduct operations on the Wells (each a "**Facility**," collectively, the "**Facilities**"), it is necessary that Operator enter and utilize a portion of the surface of the Lands.

The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

3. **LOCATION.** The approximate location of the Wells, the Access Roads and Flowlines to the Well sites and certain other Facilities to be constructed on the Lands are depicted on Exhibit "A." Any material changes to the Well, Access Roads and Facilities locations may be made by Operator with the consent of Owners, which will not be unreasonably withheld, but will not unduly interfere with Owners's existing use of

the surface estate. Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations.

4. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of the Leases, this Agreement, the rules and regulations of the Colorado Oil & Gas Conservation Commission ("**COGCC**"), and applicable Colorado statutes and case law.

5. **COMPENSATION AMOUNT.** Operator will pay the affected Owner the sum of ("**Amount**") for each wellhead on a well by well basis prior to the commencement of drilling operations for each such Well. The Amount shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the Wells and Facilities. Such damages will include, without limitation, damage to growing crops and crop land; the removal, transportation and care of any livestock; the re-seeding, construction and use of access roads; and the preparation and use of the wellsite areas. For all subsequent major operations for said Wells including but not limited to refrac, deepening, redrilling, etc. Operator shall pay Owners actual damages caused by said subsequent operations.

6. **ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES.** With respect to its operations on the Lands, Operator will comply with the following provisions:

A. Access Roads:

(i) Permanent Access Roads will not exceed 20 feet in width.

(ii) Operator will insure that all vehicles accessing the Lands on its behalf remain on the Access Roads.

(iii) Operator agrees to back-slope all Access Roads.

(iv) Operator will provide Owners with a minimum of 10 days prior written notice before restoring the surface of all Access Roads to be permanently abandoned by Operator. No later than 10 days following receipt of such notice, Owners may elect, in writing, not to have such Access Roads abandoned by Operator. In such event, Operator will have no liability under this Agreement, the Lease, or otherwise, to restore the surface of the Lands utilized as Access Roads. Failure to timely respond will be deemed as Owners election that Operator proceed with the abandonment of the Access Roads and the restoration of the surface thereof.

(v) Operator will maintain all Access Roads in good repair and condition.

B. Surface Restoration:

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be restored by Operator to their original contour as nearly as is reasonably practicable, and re-seeded if so requested by Owners; provided however, that Operator's intent to abandon any Access Roads will be subject to the provisions of Paragraph 6(A)(iv) herein.

C. Flowlines:

(i) Owner agrees to grant and/or execute formal right of way documents to Operator (or third party gas gatherers) as may be necessary to facilitate development of the Wells in the general locations of the "Flowlines" as depicted on Exhibit "A". Said right of way documents shall be recorded in Weld County, Colorado and shall be non-exclusive.

D. Other:

(i) Operator will install culverts on the Lands that may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.

(ii) If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is damage to personal property of the Owners, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owners has not been previously compensated pursuant to Paragraph 5, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owners. Owners will notify Operator of any items damaged after the Wells construction and Operator will repair or replace such items after consultation with the Owners within 15 days of occurrence.

(iii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands that are not necessary for continued operations of the Wells will be removed and disposed away from the Lands no later than 30 days after the completion of the Wells. No such items will be burned or buried on the Lands.

(iv) Operator is required to remove casing to a depth of 6 feet below surface within 90 days following cessation of operations.

(v) During drilling operations the well sites and any pits shall be fenced if so requested by Owner. Additionally, the well sites shall be kept

free and clear of all noxious weeds, unsightly growth and trash either during drilling operations or after completion and production.

(vi) All fresh water pits shall be lined with plastic. Such liner shall be used to prevent seepage to adjacent lands. Lessee shall remove the plastic after completion of operations as soon as is reasonably practicable.

(vii) All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed.

7. **DEFAULT AND RIGHT TO CURE.** In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owners will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have 30 days from receipt of the written notification in which to dispute or otherwise respond to the notification before Owners may allege default. Receipt of the certified mail shall be deemed effective 3 days after the mailing unless sooner received by Operator.

Except as otherwise agreed in writing, no waiver by Owners of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owners to seek a remedy for any breach by the Operator be deemed to be a waiver by Owners of its rights or remedies with respect to such breach; however in no event will Operator be liable for consequential damages.

8. **INDEMNITY/RELEASE.** Owners hereby releases and agrees to hold harmless Operator from any and all liability and further payment, other than what has been provided herein, for damages on the Lands which arise from, out of or in connection with the Operator's operations on the Lands, but only as to those operations which are described in and permitted by this Agreement, and for those operations which the Amount has been paid and received by Owners pursuant to this Agreement.

Operator agrees to indemnify and hold Owners harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the premises at the request of Operator.

9. **WAIVER OF 30-DAY NOTICE.** Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other notice or consultation requirements of the COGCC. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owners after it has submitted a request for permit to drill from the COGCC.

10. **NOTICE FOR ADDITIONAL OPERATIONS.** Operator will comply with COGCC rules and regulations requiring that advance notice be provided to Owners for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

11. **NOTICES.** Notice by either Party will be promptly given, orally if possible (with the exception of the default notice described in Paragraph 7), with subsequent written confirmation sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by notice to the other:

Owners

Harvey & Beverly Mesbergen
35520 County Road 72
Greeley, CO 80631
Phone: (970) 454.3093

Operator

Apollo Operating, LLC
Attention: Jesse L. White
1538 Wazee, St., Suite 200
Denver, CO 80202
Phone: (303) 830.0888 Ext. 203
Fax: (303) 830.2818

12. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owners agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owners.

13. **CONFIDENTIALITY.** The Parties agree to keep the terms and conditions of this Agreement confidential and will not disclose such matters to any third party without the advance written consent of the other, or if ordered to do so in a legal proceeding. While the specific terms hereof are to remain confidential between the Parties, Operator or Owners may record a memorandum of this Agreement in Weld County, Colorado.

14. **ENTIRE AGREEMENT.** This instrument 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.

15. **TERMINATION.** This Agreement will terminate concurrently with the applicable oil and gas lease(s) as they relate to Operators rights to explore, drill, and produce hydrocarbon from the Lands or lands pooled therewith.

16. **REASONABLE ACCOMMODATION.** Owner acknowledges the right to use of the surface estate of the Lands by Operator as herein described are expressly granted to Operator, its successor, and assigns; therefore Owner further acknowledges Operators use of the surface estate of the Lands as granted herein to Operator shall construe "reasonable accommodation" by Operator, its successor, and assigns with respect to Colorado revised statute 34-60-127.

17. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed and enforced in accordance with the laws of Colorado. Venue shall be deemed to be in Weld County, Colorado.

18. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.


19. **ATTORNEY'S FEES AND COSTS.** The Parties agree that the prevailing Party in any action resulting from a breach of this Agreement will be entitled to its reasonable attorneys' fees and costs incurred therein.

20. **AUTHORITY OF SIGNATORIES.** The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

21. **SUCCESSORS.** This Agreement constitutes a covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, administrators, trustees, executors and assigns, or any other third party owning an mineral leasehold interest in the Lands or lands pooled or included in a spacing unit therewith.

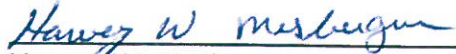
IN WITNESS WHEREOF, the Parties have set their hands, the day and year first written above.

APOLLO OPERATING, LLC




Jesse L. White, Operations Manager

OWNER(S)



Harvey W. Mesbergen



Beverly J. Mesbergen

Exhibit "A"

Township: 6 North, Range 66 West, 6th P.M.
Section 3: SE/4
Weld County, Colorado



	Permanent Road and Drilling Rig Access
	Flow Lines
	Tank Facility
	Surface Well Head Location
	Directional Well Bottom Hole Location
	Directional Well Bore

* All locations are approximate and subject to minor adjustments