

## **SURFACE DAMAGE AND RELEASE AGREEMENT**

This Surface Damage and Release Agreement ("**Agreement**") is made and entered into this 7<sup>th</sup> day of June 2012, by and between **R. Scott Murdock** ("**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. **OWNERHIP.** Owner is the surface owner of certain lands located in Larimer County, Colorado as more specifically described as follows ("**Lands**"):

**That portion of the Southwest Quarter of Section 34, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., Larimer County, Colorado, being more particularly described as follows:**


**Considering the West line of the Southwest Quarter of said Section 34 as bearing North and South and with all bearings contained herein relative thereto:**

**Beginning at the Northwest corner of said Southwest Quarter; thence along the North line of said Southwest Quarter South 89° 30' 16" East 2631.49 feet, more or less, to the Northeast corner of said Southwest Quarter; thence along the East line of said Southwest Quarter South 00° 13' 36" East 875.30 feet to the TRUE POINT OF BEGINNING; thence continuing along said East line of said Southwest Quarter South 00° 13' 36" East 1759.55 feet to the Southeast corner of said Southwest Quarter; thence along the South line of said Southwest Quarter North 89° 32' 59" West 1065.72 feet, more or less, to a point on the East line of the plat Murdock M.R.D. S-116-92, Larimer County, Colorado; thence along said East line North 00° 27' 01" East 1193.46 feet and again North 65° 17' 12" West 15.00 feet; thence departing said East line North 62° 34' 48" East 1197.51 feet to a point of the East line of said Southwest Quarter and the TRUE POINT OF BEGINNING.**

**The above described parcel contains 36.00 Acres (Gross), more or less, as described in Quit Claim Deed recorded March 7, 2003 at Reception No. 20030029002 records of Larimer 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.** To facilitate the drilling, and production therefrom, of five surface wellhead locations being one vertical wellbore and four directional wellbores with various bottom hole locations, as depicted on Exhibit "A" ("**Wells**") attached hereto and incorporated herein by reference, the Owner agrees to allow use of the surface estate for one access road consisting of an additional secondary exit location in addition to said road for tractor tailer entrance and exit off of HWY 60 and to the wellheads ("**Access Road(s)**"), and to allow the placement of flowlines and a tank battery sufficient to handle the amount of production obtained ("**Facilities**"), as depicted on Exhibit "A". 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." Owner Any changes to the Land use and locations other than specified on Exhibit "A" will be negotiated at the time any such changes may become necessary, however, Owner recognizes additional well locations under COGCC spacing rules, orders, and regulations are possible for maximum development of the mineral resource from the Land and will not unreasonably preclude Operator from development thereof.

4. **CONDUCT OF OPERATIONS.**

A. 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.

B. Operator shall provide ten (10) days' advance written notice before entering the Lands to perform drilling, deepening, reworking or refracturing operations.

5. **COMPENSATION AMOUNT.** Operator will pay the sum of [REDACTED] ("Amount") to R. Scott Murdock and the sum of [REDACTED] to Carol J. Murdock prior to the commencement of construction of the Wells, Access Road(s), or Facilities. Should additional wellhead or well bottom hole locations be required, an additional negotiated amount shall be arrived at between the parties. The [REDACTED] shall constitute compensation for the reasonable and customary development of the Wells, Access Road(s), and Facilities. Such damage includes and is limited to damage to the surface topsoil, growing crops, and grasses. Upon the completion of the Drilling operation, the disturbed surface will be resurfaced with removed top-soil, seeded as directed by the Owner, and the Wells and Facilities fenced with livestock fencing and gates, as approved by the Owner.

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 and shall be constructed in accordance with normal industry standards and shall be maintained in good and work like manner.

(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.

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(iv) Operator will provide Owner 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, Owner 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 Owner 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 Owner; provided however, that Operator's intent to abandon any Access Roads will be subject to the provisions of Paragraph 6(A)(iv) herein. In all excavations, soils will be separated and top soil and subsurface soils shall be placed back in the proper order and leveled, with top soil on top. Nothing in this paragraph shall relieve the Operator from any reclamation requirements of the Colorado Oil and Gas Conservation Commission. Upon completion of drilling operations, all facilities and materials not necessary for continued production, including concrete, bentonite, cable and plastic or mud liners shall be removed from the Lands.

**C. Flowlines:**

(i) Flowlines may be constructed as necessary to facilitate the production of the Wells and shall be a leasehold as provided for in the underlying Oil and Gas Lease Agreement dated June 7, 2012. Any and all flowline use will terminate when the underlying Oil and Gas Agreement dated June 7, 2012 terminates. The flowlines are depicted in Exhibit "A". However, Owner recognizes third party right of way will be required for a "gas purchasers" meter house and related pipeline and expressly agrees to grant the same.

**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) Any damage to any cropland or pasture land other than those areas indicated on Exhibit A will be compensated at fair market value as determined by an independent appraisal. The appraiser shall be agreed upon by

the parties to this Agreement. Examples of such damages may include but are not limited to, damage to irrigation ditches and pipes, fences, gates, etc., however, damage to irrigation ditches and pipes, fences, gates, etc. that is repaired to its original state by the Operator shall not require such appraisal.

(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) 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.

(v) All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed. Operator acknowledges that the surface of the Lands is currently used by Owner for agricultural production using flood irrigation. Accordingly, Operator shall use water tanks in lieu of water pits, and shall line all mud and reserve pits with synthetic liners in accordance with COGCC Rule 904.b. Operator shall also "water settle" the fill when filling all pits and trenches on the Lands to minimize the possibility of subsidence.

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, Owner 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 Owner 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 Owner 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 Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach.

8. **INDEMNITY/RELEASE.** Operator agrees to indemnify and hold Owner 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 Operator or any of Operator's agents, employees, subcontractors, contractors or other persons which may enter upon the premises in connection with or as a result of Operator's operations on the Lands.



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 Owner 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 Owner 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:

Owner

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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.

Owner 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 Owner.

13. **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.

14. **DURATION AND TERMINATION.** This Agreement coincides with the underlying Oil and Gas Lease executed on June 7, 2012 and, accordingly, 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.

15. **REASONABLE ACCOMODATION.** 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

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statute 34-60-127, as amended, modified, or supplemented or in relation to any and all state law governing the surface use as it relates to oil and gas development.

16. **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 Larimer County, Colorado.

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

18. **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.

19. **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.

20. **LEASE ROAD AND PRODUCTION FACILITY MAINTENANCE.** Owner acknowledges periodic maintenance of lease roads and production Facilities under the terms of this Agreement will be required of Operator. Such maintenance will be in accord with COGCC rules, however, Owner specifically grants Operator approval under COGCC rule 907 (d)(3)(B)(i-v) to use water based bentonitic fluids for such maintenance.

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, but only so long as the underlying Oil and Gas Lease executed June 7, 2012 remains in effect Operator agrees that it may only assign this Agreement upon the express consent and approval of Owner. Owner's consent shall not be unreasonably withheld so long as Lessor is provided with sufficient opportunity for investigation of the proposed Assignee, including sufficient assurances of acceptable financial resources and experience.

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)**

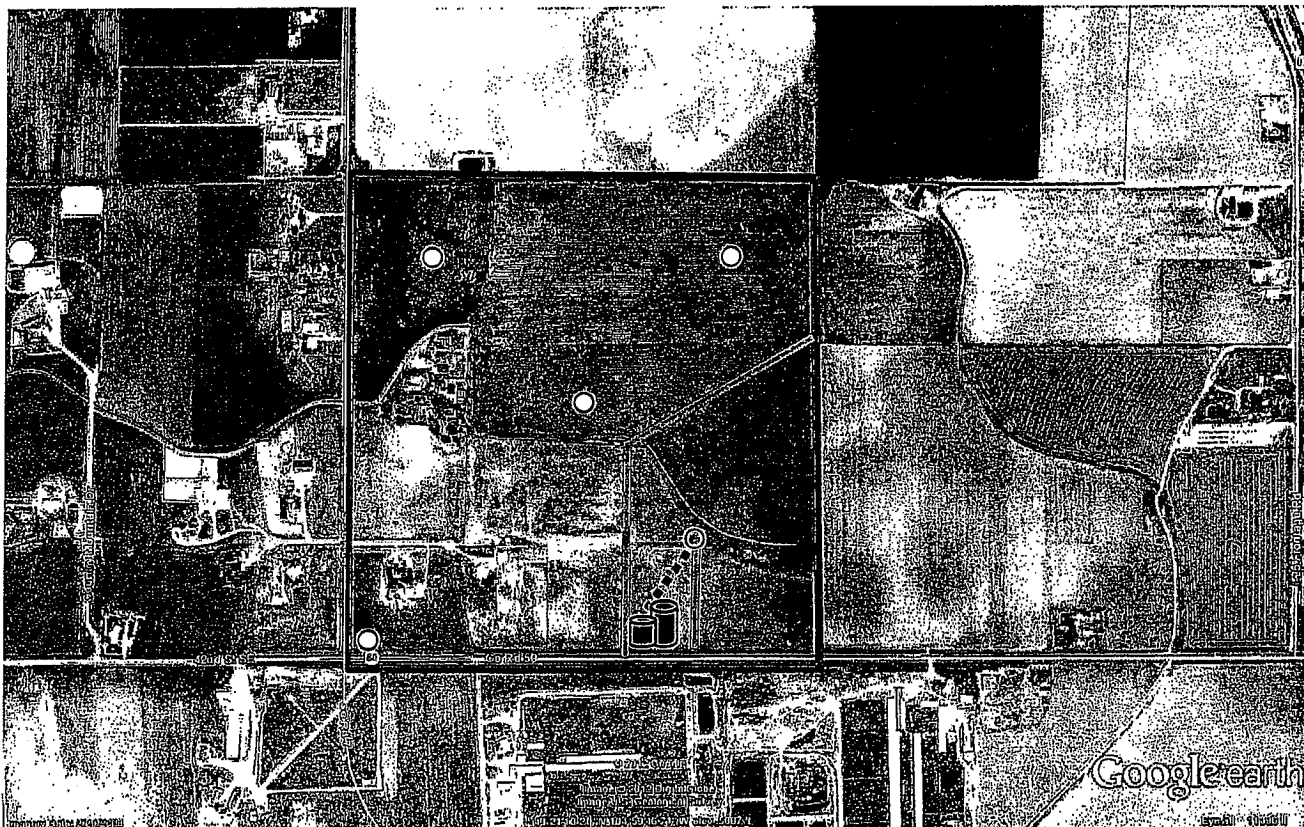


R. Scott Murdock



# Exhibit "A"

Township: 5 North, Range 68 West, 6th P.M.  
Section 34: SW/4  
Larimer County, Colorado



	Permanent Road and Drilling Rig Access
	Flow Lines
	Tank Facility
	Surface <b>Five</b> Wellhead Location
	Directional Well Bottom Hole Location
	Owner's Land Boundary Line
	Boundary of the SW/4 Sec. 34 T5N-R68W

\* All locations are approximate and subject to minor adjustments

*Robert G. Gabel*