

## **SURFACE DAMAGE AGREEMENT**

This Surface Damage Agreement ("the Agreement") is entered into by and between **MBA Arkansas, LLC, 4001 S. Galloway Dr., Memphis, TN 38111**, as Owner, and **Nighthawk Production, LLC, 1805 Shea Center Drive, Suite 290, Highlands Ranch, CO 80129**, as Lessee.

### **RECITALS**

**WHEREAS**, Lessee is the owner of certain rights to develop the oil and gas mineral estate underlying the following described property (the "Property"):

**Township 6 South, Range 54 West, 6<sup>th</sup> P. M.**

Sections 10; E2

as set forth in the Oil and Gas Leases recorded in **Lincoln County, Colorado, Reception No. 330103 & 330102** (the "Lease"), and

**WHEREAS**, Owner is the owner of the surface estate in and to the Property; and

**WHEREAS**, Lessee and Owner have agreed upon the terms and conditions by which Lessee may enter upon and use certain portions of the Property for oil and gas drilling and producing operations, and have agreed that damages will necessarily result therefrom and are incident thereto, and they desire to further set forth their agreement in this regard.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, Owner and Lessee hereby agree as follows:

1. **Use of Property.** Owner hereby consents to the location of Lessee's proposed **Taos 1-10 Well** (the "Well") at a location specified on **Exhibit "A"** to this Agreement. Lessee's use of the Property is limited to reasonable use in the drilling and operating of the Well, access to the Well and the production flow line, if any, to be used solely for production from the proposed Well. All construction, maintenance and use of the Property shall be in accordance with the Lease and this Agreement. Lessee shall confine its drilling and production activities on the surface to a well site ("Well Site") that shall not exceed **Two and one half (2.5) acres**. The Well Site and access road shall be located as indicated on **Exhibit "A,"** which Exhibit shall consist of a standard U.S. Geological Survey topographic map showing the Well Site location and access road. Prior to commencement of construction of the Well Site location, Lessee agrees to provide Owner with a letter describing measures acceptable to Owner that Lessee will implement to prevent, contain and remedy any spill during drilling and completion of the Well.

2. **Drilling and Production Facilities.** The Well Site location shall be constructed so as to result in the least interference with surface usage as reasonably practicable under the circumstances. All pits shall be constructed so as not to pollute the adjoining land. Lessee shall take all reasonable precautions necessary to prevent land, air and water pollution, including pollution to all underground fresh water zones, as well as to prevent blowouts. Lessee shall collect all trash that accumulates in connection with its operations and promptly remove such trash and all junk or surplus equipment from the Property and properly dispose of same off of any adjacent lands owned by Owner pursuant to applicable regulations. Lessee shall take all reasonable precautions to prevent blowouts from occurring on the Property. Lessee shall utilize only such area around the Well as is reasonably necessary for such purposes, and Lessee shall, weather permitting, restore the remainder of the Well Site to its original condition as soon as practicable as nearly as possible after the completion of the drilling operations. Lessee agrees the construction easement for any production flow line shall initially be 25 feet in width, which upon completion of said construction shall revert to 15 feet, being 7.5 feet left and 7.5 feet right of the center line as laid out and/or surveyed. Within thirty (30) days of completion of drilling activities, Lessee shall provide Owner a location improvement survey or similar detailed drawing showing the location of the Well and other fixtures and equipment to be used at the location during production operations and list of all equipment and accessory structures necessary to the operation of the Well, including but not limited to tanks, separators, meters, pipelines, power lines and fences, placed or to be placed on the surface or in the subsurface of the Property by Lessee, and such map and list shall become a part of this Agreement. If such map and list show that surface area in addition to that shown on Exhibit "A" will be used and Lessee's use of such

additional surface area is acceptable to Owner, then Lessee shall pay Owner at the rates prescribed in Paragraph 4 of this Agreement. Thereafter, should Lessee desire to add additional equipment or accessory structures for production purposes, which additional equipment or accessory structures have not been identified previously by Lessee, then prior to installation of any such equipment or accessory structures, Lessee shall identify and advise Owner of its desire to install such additional equipment or accessory structures, work with Owner to mutually select a site or sites for locating such additional equipment or accessory structures, and pay Owner at the rates prescribed in Paragraph 4 of this Agreement for normal and customary damage to the surface of the Property caused by the addition of such equipment or accessory structures.

3. Road. Owner consents to Lessee's construction of a temporary access road in the specific location shown on Exhibit "A". Such road shall be an unimproved two track road, limited to twenty five (25) feet in width. Lessee agrees to use the road only when weather permits and to confine all travel incident to the drilling, maintenance and production of the Well and Well Site to this road. During the period of Lessee's operations on the Property, Lessee agrees to maintain the road used by Lessee on the Property in good condition and repair and to promptly repair on demand from Owner any damage caused by Lessee to such road. Upon completion of Lessee's operations on the Property, Lessee shall fully reclaim the road. Lessee shall construct and maintain metal gates and bison-width auto-passes (cattle guards) at all places where any roads used by Lessee cross through fences on the Property, and Lessee, its agents and representatives shall keep such gates closed when not actually passing through such gates. The Owner may take such actions as it deems appropriate to ensure that the public does not use any road constructed by Lessee provided the Owner shall not interfere with the Lessee's use thereof.

4. Surface and Crop Damage Compensation. Within five (5) days following the Effective Date, Lessee shall pay to Owner [REDACTED] as compensation to Owner for all normal and customary damages associated with and incident to drilling the Well, constructing the access road and using the Well Site. If Lessee requests and Owner approves use of acreage in excess of the amount prescribed in Paragraph 1 of this Agreement Lessee shall pay additional compensation at the rate of [REDACTED] per acre or portion thereof. Lessee shall pay [REDACTED] per rod or portion thereof for any linear right-of-way to serve gas gathering pipelines (which pipelines will be no more than four (4) inches in diameter) and any underground electrical lines or water flow lines not laid in the same ditch as the gas gathering pipeline. In no event shall Lessee install any overhead power lines on the Property. If Lessee obtains the Owner's consent to use water from the ranch on which the Property is located, then Lessee shall pay Owner compensation of [REDACTED] for the right to use such water. Owner, at Owner's sole discretion, may refund some or all of these damage payments if Lessee performs mutually agreed upon water development or land clean-up activities. All of this compensation is for normal and customary damage to the Property and does not cover any damages other than normal and customary damages. Lessee agrees to additionally compensate Owner for any additional damages including but not limited to the following:

- (a) Trespass on any lands other than the designated Well Site, access road, flow line easement and production site;
- (b) The use of the Property in a manner inconsistent with the terms of this Agreement and the Lease;
- (c) The failure to maintain the Property in accordance with the terms of this Agreement and the Lease;
- (d) The failure to reclaim and restore the surface of the Property in accordance with the terms of this Agreement and the Lease;
- (e) The failure to comply with the terms of this Agreement and the Lease or with the terms of any federal, state or local statutes, regulations or ordinances;
- (f) The death of or serious injury to livestock, including but not limited to bison; and
- (g) Any damages arising from Lessee's operations and resulting from unreasonable use, negligence or willful misconduct.

5. Maintenance of the Property. Lessee, at its sole expense, shall maintain the Property in accordance with the terms of the Lease and this Agreement. In addition, at its sole expense and in accordance with Lessee's obligation to conduct its operations so as not to interfere unreasonably with Owner's use of the surface of the Property, Lessee shall use low profile tanks and horizontal separators unless waived by Owner. For noise reduction purposes,



any permanent production engine shall use the best available mufflers (hospital-grade or more effective) and equipment available for oil and gas production operations. No later than ten (10) days following completion of construction on the Well Site, Lessee shall install and maintain rail guards or a fence around the production equipment and wellhead in a position and manner acceptable to Owner, which fence shall contain gates if necessary. The rail guards, gates and fence at a minimum shall prevent access of bison and other livestock. Lessee will paint the production equipment and tankage in subdued colors approved by Owner, and Lessee will repaint the same from time to time to keep it appearing clean and well kept. No used or surplus equipment or material shall at any time be stored on the Property. Lessee will maintain the production site and all related facilities in a good, clean workmanlike manner, will prevent the growth of noxious and other weeds, and will generally operate the facilities as a prudent operator, responding to Owner's reasonable requests for maintenance.

6. Pipelines; Proximity to Structures. All pipelines and/or flowlines are to be buried at least **36 inches** below the ground, which will be from the top of the pipe to the surface of the ground. Only crude oil and natural gas (no other derivatives) and produced waters will be allowed to be transported through any pipelines and/or flowlines located on the Property. Lessee shall not conduct any operations within one thousand three hundred twenty (**1,320**) feet of any residence, four hundred (**400**) feet of any permanent livestock holding pens, permanent livestock corrals or permanent livestock barns or two hundred (**200**) feet of any permanent livestock watering facilities without express written consent of Owner.

7. Restoration and Reclamation. Lessee shall comply with all applicable statutes, rules, regulations and ordinances of all federal, state and local governments, agencies and authorities in regard to restoration and reclamation. Upon completing a commercial well, completing drilling operations, plugging and abandoning the Well, or ceasing use of any portion of the Property by Lessee, Lessee shall reclaim and restore such portion of the Property as nearly as reasonably practical to allow it to be used for those purposes which Owner intends to use the Property. Such restoration and reclamation shall be completed as soon as practicable, but no later than ninety (90) days after said completion or abandonment, weather permitting. In the case of reasonable delay in such restoration and reclamation by Lessee due to inclement weather, Lessee shall complete such restoration and reclamation as soon as reasonably possible. Such restoration and reclamation includes, but is not limited to, the removal of all drilling and associated equipment and facilities, the removal of all drilling and produced substances and disposal of such substances off the Property, the leveling of all drilling pits and other excavations, and the reseeded, with native grass seed mix selected and provided by Owner and paid for by Lessee, of all areas affected by Lessee's use of the Property, subject to repeat reseeding(s) and weed control as reasonably required and directed by Owner, until such time as a satisfactory native grass covering is obtained. Within ninety (90) days after the termination of the Lease and weather permitting, Lessee shall remove any and all property placed by Lessee on the Property or Owner may cause same to be removed at Lessee's expense. Lessee's obligations and liabilities under this Paragraph are continuing and shall survive the termination of the Lease.

8. Water Use; Water Well Option; Wastewater. Lessee shall not use water from any fresh or usable water sands or strata, including water from any formation which would be protected under the federal Underground Injection Control program, for any water flood or other enhanced recovery operations for pressure maintenance purposes. Further, no fresh or useable water may be used for secondary recovery without the prior written consent of the Owner. Subject to the foregoing, Owner may, in its sole discretion, offer to sell Lessee fresh water from surface impoundments or other surface or ground water sources to the extent reasonably necessary for drilling and development operations on the Leased Premises so long as such use does not unreasonably interfere with agriculture or livestock operations. The Owner shall have the right to designate the location from which water shall be taken. Upon completion of the drilling operations any permits obtained by Lessee for water wells and any water wells drilled pursuant to such permits may be conveyed to the Owner, or such water wells will be plugged by Lessee at its expense as required by law. In the event Lessee drills a water well as a fresh water source for drilling and desires to abandon the water well, Lessee shall give Owner written notice ten (10) days prior to plugging the water well and Owner shall have the option to take over the well. In the event Owner elects to exercise this option and notifies Lessee within five (5) days of Owner's receipt of said notice from Lessee, Lessee shall then complete the water well in accordance with government requirements and assign the water well to Owner who shall assume liability for all future well operations. Lessee shall handle, remove and dispose of off of the Property any and all wastewater associated with its operations thereof, which handling, removal and disposal shall be conducted pursuant to all applicable federal, state and local laws, rules and regulations. In no event shall any wastewater be stored on the Property or adjacent lands owned by Owner.

9. Compliance and Indemnification. Lessee shall comply with all applicable federal, state and local statutes, rules, regulations and ordinances applicable to the Property and Lessee's operations thereon. Lessee agrees to protect, defend, indemnify and hold harmless Owner, and his respective agents, employees, tenants, successors and assigns from and against all liabilities, losses, expenses, claims, demands, and causes of action of every kind and character, whether for death or personal injury to persons (including agents and employees of Lessee and Lessee's subcontractors) for loss or damage to the Property, in any way and at any time arising out of, incident to, or in connection with this Agreement, operations conducted on the Property, or breach of the terms hereof, regardless of whether any such liability, loss, expense, claim, demand or cause of action is based on the sole or concurrent negligence of any party indemnified hereunder. This obligation is continuing and shall survive the termination of this Agreement. Prior to commencement and construction of the drillsite location for the Well, Lessee shall purchase and keep in force a policy or policies of commercial general liability insurance relating to the use of the Property in an aggregate amount of at least Five Million Dollars (\$5,000,000.00) and name Owner as an additional insured on the policy or policies. The Lessee agrees to furnish to Owner a certificate or certificates naming Owner as an additional insured and further providing that the insurer(s) shall give Owner ten (10) days prior written notice of any termination, cancellation or material modification made to such insurance policy(ies).

10. Term. If not sooner terminated by the terms of this Agreement, this Agreement shall terminate upon termination of the Lease.

11. Owner acknowledges that this notice complies with, or hereby waives, all COGCC requirements that it be given advance notice by Company of the proposed Operations. Owner acknowledges receiving from Company a brochure prepared by the COGCC which describes the rights and responsibilities of Owner as a surface owner.

12. Notice. Any notice or other communication required to be given by one party to the other pursuant to this Agreement shall be in writing and shall be given and deemed to have been given when delivered personally or by overnight courier or three (3) days after being mailed postage pre-paid, registered or certified, and addressed as follows:

To Lessee: Nighthawk Production LLC  
1805 Shea Center Drive  
Suite 290  
Highlands Ranch, Colorado 80129  
Chuck Wilson – Chief Operating Officer  
303-407-9600

To Owner: MBA Arkansas, LLC  
4001 S. Galloway Dr.  
Memphis, TN 38111  
Phone: 901-763-2470 or 901-277-8469 (cell)

With Copies to:

or to such other address(es) as Lessee and Owner may from time to time designate by written notice to the other.

13. Release. Owner releases and discharges Lessee from all actions, causes of actions, suits, claims and demands for and on account of normal and customary damage to the Property or any growing crop, caused by or on account of Lessee's use of the Property to access and drill the Well. This release does not cover any damage caused by Lessee to the Property other than normal and customary damages.

14. Agents and Successors. The terms of this Agreement shall inure to the benefit of and be binding upon Owner, Lessee and their respective successors, assigns, agents, employees, partners, associated and affiliated companies, insurance carriers and contractors.

15. Terms of Lease; Effective Date. The parties intend that the terms of this Agreement supplement, not replace, the terms of the Lease. In the event of a conflict between the terms of this Agreement and the terms of the Lease, the terms most favorable to Owner shall control. The effective date ("Effective Date") of this Agreement shall be the date the latter of the two parties executes same.



IN WITNESS WHEREOF, this Agreement is executed by the parties hereto effective as of the Effective Date of January 21, 2013

**MBA ARKANSAS, LLC**

By: **MBA Corp., its sole member**

By: Brandon G. Morrison

Name: Brandon G. Morrison

Title: Vice President

Date: 1-27-13

State of Tennessee }  
County of Shelby } ss.

**ACKNOWLEDGMENT**

Before me, the undersigned, a Notary Public, in and for said County and State, on this 27 day of January, 2013, personally appeared Brandon G. Morrison who executed the within and foregoing instrument of writing and acknowledged to me that she did duly execute said instrument for the purposes and consideration therein expressed.

My commission expires:  
**My Commission Expires August 21, 2016**

(Seal)



Cathleen Denise Martin  
Notary Public  
Memo Carr / Elaine Circle  
Kentfield TN 38133  
Address

**LESSEE: NIGHTHAWK PRODUCTION LLC**

BY: Michael Thomsen

**Michael Thomsen - President**

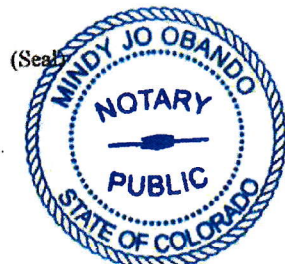
DATE: Feb. 5, 2013

**ACKNOWLEDGMENT**

Before me, the undersigned, a Notary Public, in and for said County and State, on this 5 day of February, 2013, personally appeared **Michael Thomsen - President**, who executed the within and foregoing instrument of writing and acknowledged to me that he did duly execute said instrument for the purposes and consideration therein expressed.

My commission expires:

7/27/16



(Seal)

Mindy Jo Obando  
Notary Public  
1805 Shea Center Dr. #290  
Highlands Ranch CO 80129  
Address

**Exhibit "A"**  
**Taos 1-10 Well**

**This Exhibit "A" is in reference to a certain Surface Use Agreement Dated January 21, 2013.**

