

## SURFACE DAMAGE AND RELEASE AGREEMENT

This Surface Damage and Release Agreement ("Agreement") is made and entered into this 20<sup>th</sup> day of FEBRUARY 2013, by and between the City of Thornton, a Colorado Municipal Corporation, 9500 Civic Center Drive, Thornton, CO 80229 ("Owner"), and Bayswater Exploration & Production, LLC, whose address is 730 17<sup>th</sup> St, Ste 610, Denver, CO 80202 ("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.** Owner is the surface owner of certain lands located in Weld County, Colorado as more specifically described as follows ("Lands"):

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All lands owned by Owner in T7N R66W Section 22: SW1/4

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Operator owns a working or operating interest in or under valid oil and gas leases dated AUGUST, 2010, with BEULAH STACHE, SHIRLEY BERRYMAN, HELEN LOSENZ, covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "Lease Agreement," collectively, the "Lease Agreements"). To the extent that third parties may own a working or operating interest in or under a valid oil and gas lease or leases covering a portion of the Lands or lands pooled or included in a spacing unit therewith, Operator represents to Owner that it has the express or implied authority under agreements with such third parties to enter into this Agreement.

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator may drill or cause to be drilled Thirteen (13) oil and/or gas wells on the Lands ("Wells") subject to the terms and provisions of this Agreement. 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 or equipment necessary for the operation and production of 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 agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands and to define and limit the Facilities on the Lands.

3. **FUTURE USE OF THE LANDS.** Operator may drill future oil and gas wells on the Lands, including horizontal and directional wells that produce from and drain lands other than the Lands, provided such lands are validly pooled with all or any portion of the Lands, and so long as such locations are permitted locations under the then applicable well spacing regulations, rules or orders of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC. Operator and Owner agree to enter into appropriate surface use and or damage agreements relative to wells that may be drilled on Lands in the future.
4. **LOCATION.** The location of the Wells, the Access Roads to the Well site and all other Facilities relative to the Well to be constructed on the Lands are depicted on Exhibit A. Any material changes to the size or proximity of such locations may be made by Operator only with the express written consent of Owner, which consent shall not be unreasonably withheld. If such changes, in Owner's reasonable opinion, unduly interfere with Owner's existing or intended future use of the surface of the Lands, Owner and Operator will collectively work to find a solution that neither interferes with Owner's use of the Lands or Operator's ability to operate and/or produce the Wells. In any event, at all times, Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations.
5. **GOVERNMENTAL PROCEEDINGS.** Owner shall not oppose Operator in any agency or governmental proceedings, including but not limited to the COGCC or other governing body proceedings, relating to Operator's operations on the Lands (including but not limited to drilling, workovers, well deepening and recompletions), provided that Operator's position in such proceedings is not inconsistent with this Agreement.
6. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of this Agreement, the standards of practice for the industry, and the rules and regulations of the "COGCC".
7. **COMPENSATION AMOUNT.** Prior to mobilization and commencement of the drilling operation for any of the Wells, Operator will pay Owner the sum \_\_\_\_\_ per well. Each time Operator remobilizes to drill additional wells beyond the fifth well ("Amount"). The Amount is hereby acknowledged by Owner as full and final consideration for Operator's use of the Lands with respect to the Wells covered by this Agreement and for the drilling operation and for any and 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 constructing the Wells and Facilities in accordance with this Agreement. Such damages will include, without limitation, damage to Owner's real or personal property, growing crops, crop land, the removal, transportation and care of livestock, re-seeding, construction and use of Access Roads and the preparation and use of the Well site area. If after the initial drilling,

completing, and equipping of the Wells and Facilities for production, Operator's subsequent operations thereto results in additional damages on the Lands affected thereby, or in the event that Operator conducts operations or installs or places facilities outside of the those permitted by this Agreement, Operator will timely reimburse Owner for the actual value of such damages.

8. **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. Access Roads will not exceed 24 feet in width.
- ii. Operator will insure that all of its 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 Owner with a minimum of ten (10) days prior written notice before restoring the surface of all Access Roads to be permanently abandoned by Operator. No later than ten (10) days following receipt of such notice, Owner may elect, in writing, not to have such Access Road abandoned by Operator. In such event, Operator will have no liability under this Agreement to restore the surface of the Lands utilized as Access Roads. Failure to timely respond will be deemed as Owner's election that Operator shall proceed with the abandonment of the Access Roads and the restoration of the surface thereof.
- v. Operator will stockpile and save any topsoil removed while constructing Access Roads for rehabilitation or re-seeding as reasonably directed by Owner.
- vi. Operator will maintain all Access Roads in good repair and condition during the drilling, completing, equipping, and operating of the Wells.

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. However Operator's intent to abandon any Access Roads will be subject to the provisions of Section 8(A) (iv).

C. 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. Operator acknowledges the existence of an irrigation tail water drain pipe ("Pipe") running from northwest to southeast across the Lands in the area of the area occupied by Operator. Operator shall maintain flow in the Pipe at all times and repair and/or re-lay Pipe as necessary so as to not cause backup or flooding.
- ii. If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Well, there is unanticipated damage to personal property of the Owner or Owner's tenants, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, crops, or irrigation systems, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Well's construction and Operator will repair or replace such items after consultation with the Owner within fifteen (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 Well will be removed and disposed away from the Lands no later than thirty (30) days after completion of the Well. No such items will be burned or buried on the Lands.
- iv. During construction and subsequent operation of the Lands, Operator shall keep the Facilities and access roads clean, graded, and free from weeds.
- v. If the lands are farmed with a perennial crop such as alfalfa, operator, in addition to the compensation amount stated herein, shall pay the O'                      per acre disturbed by Operator's operations as a one time payment for compensation for reestablishment of such crops.
- vi. At the completion of the drilling operation, Operator agrees to comply with all COGCC rules and regulations, including Rules 900-904 concerning pits, as applicable. Operator shall restore all grades as nearly as possible to the conditions as they existed prior to the execution of this Agreement, unless other arrangements are agreed to between the Parties.

- vii. Operator agrees to discuss screening requests with the Owner and at Operator's discretion may install fencing around the well or its Facilities.
- viii. Operator agrees to perform all drilling operations utilizing a closed loop system for any drilling fluids used as part of the drilling, hydraulic fracturing, and reworking operations associated with this Agreement.
- ix. Operator agrees to report hydraulic fracturing chemical contents to FracFocus for any drilling fluids used as part of the drilling, hydraulic fracturing, and reworking operations associated with this Agreement.

Notwithstanding the foregoing or any applicable notice requirements set forth in this Agreement, in the event of an emergency, Operator shall have immediate access to its Wells or its Facilities on the Lands.

9. **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 the Agreement, Owner will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have thirty (30) business days from date the written notification was mailed in which to cure, dispute or otherwise respond to the notification before Owner may allege default.

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.

10. **WAIVER OF THIRTY (30) DAY NOTICE.** Owner hereby waives the minimum thirty (30) day written notice requirement for operations to begin and any other notice, subject to Section 11, or consultation requirement 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.
11. **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 Well, including, but not limited to, reworking operation thereto.
12. **LIABILITY, RELEASE, AND INDEMNITY.** Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 13

below) all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation, attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with Operator's operations or actions under this Agreement, no matter when asserted, shall remain the sole legal responsibility of the Operator. Operator shall release, defend, indemnify, and hold Owner, its officers, directors, employees, successors and assigns, harmless against all such Claims.

13. **ENVIRONMENTAL INDEMNITY.** The following definitions shall apply to this Section 13:

"**Environmental Claims**" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Lands or ownership of the oil and gas leasehold interests, or ownership of the mining lease, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any Party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party.

"**Environmental Laws**" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligations, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629).

Operator shall defend, indemnify and hold harmless Owner, its successors and assigns, from Environmental Claims relating to the Lands that arise out of Operator's operations.

14. **INSURANCE.** The Operator agrees:

- a. To procure and maintain in force during the term of this Agreement, at Operator's own cost, the following coverage:
  - (1) Commercial General or Business Liability Insurance with minimum combined single limits of each occurrence and general aggregate.



- (2) Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE \$\_\_\_\_\_ for any one occurrence, with respect to each of the Operator owned, hired or non-owned vehicles assigned to or used in the operation of the Lands. In the event that the Operator's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the Operator who utilizes an automobile in the execution of this Agreement.
- (3) Worker's Compensation Insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance.
- b. If approved by Owner, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverage's.
- c. A Certificate of Insurance ("Certificate") shall be completed by the Operator's insurance agent(s) as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by Owner's Risk Management Office. The Certificate shall identify this Agreement and name the City of Thornton as an additional insured, and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to Owner.
- d. Failure on the part of the Operator to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of this Agreement upon which Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by the Operator to Owner upon demand.
- e. Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Operator agrees to execute any and all documents necessary to allow Owner access to any and all insurance policies and endorsements pertaining to this Agreement.
- f. The parties hereto understand and agree that Owner, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations per person \$\_\_\_\_\_ nor any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act,

C.R.S. 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to Owner, its officers, or its employees.

15. **NOTICES.** Notice by a Party to the other will be promptly given, orally if possible (with the exception of the default notice described in Section 8), with subsequent written confirmation sent by United States mail, postage prepaid and addressed to that 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 given as provided in this Section 15:

**Owner**

City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

Attn: SCOTT TWOMBLY

**Operator**

Bayswater Exploration & Production, LLC  
730 17<sup>th</sup> St, Ste 610  
Denver, CO 80202

Attn: BEN SCHUESSLER

16. **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.
17. **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.
18. **TERM.** This Agreement will remain in full force and effect for so long as Operator has the right to conduct oil and gas operations on the Lands pursuant to the Lease Agreements; provided, however, that the termination of the Lease Agreements or this Agreement will not relieve the Parties from their respective obligations or liabilities arising therein prior to such termination.
19. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.
20. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Colorado.
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.

22. **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.
23. **CONFIDENTIALITY.** The parties acknowledge and understand that Owner is a public entity, and therefore, by operation of law, the majority of documents in Owner's possession are public records for open review by the general public as required by law, including, but not limited to, the Colorado Open Records Act ("CORA"). Operator may identify confidential proprietary information as confidential in a clear and distinct manner on the document. However, the fact that a document is marked confidential does not make a document exempt from public inspection. Owner shall make the determination as to whether a document is exempt from public inspection pursuant to CORA. Owner shall be held harmless from any claims arising from the release of claimed confidential and proprietary information not clearly designated as such by Operator, or if designated as such, which is determined by a court of competent jurisdiction to not be subject to protection from disclosure under CORA.

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

***Signature Pages to Follow***

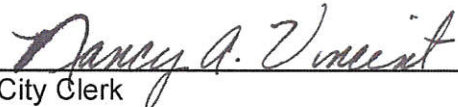
OWNER:

CITY OF THORNTON,  
a Colorado municipal corporation

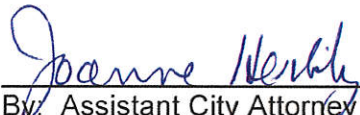
By: 

Jack Ethredge, City Manager

ATTEST:

  
City Clerk

APPROVED AS TO FORM:  
Margaret Emerich, City Attorney

  
By: Assistant City Attorney

OPERATOR:

Mark E. Brown

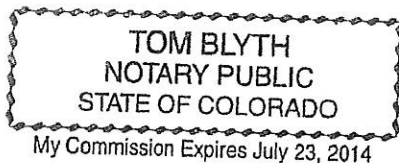
By: Mark E. Brown

STATE OF Colorado )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February, 2013 by Mark E. Brown.

WITNESS my hand and official seal.

My commission expires: 7/23/2014



Tom Blyth  
NOTARY PUBLIC



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