

Winter/Hedkman

**SURFACE USE AGREEMENT**

This Surface Use Agreement ("**this Agreement**") is made and entered into this 1st day of May, 2013, by and between **Winter North Family Partnership L.P., a Colorado Limited Partnership ("Owner")**, and **Bayswater Exploration & Production, LLC, a Colorado Limited Liability Company ("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**"):

**Township 7 North, Range 67 West, 6<sup>th</sup> P.M.**  
**Section 29: NE / 4**

Operator, and/or its affiliates, owns a working interest in valid leases 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, rework, 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 to the Well sites and certain other Facilities to be constructed on the Lands are depicted on Exhibit "A." Any material changes to the Wells, Access Roads, and Facilities locations may be made by Operator with the written consent of Owner, which will not be unreasonably withheld, but will not unduly interfere with Owner'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.**

A. Upon the execution of this Agreement, Operator shall pay Owner the sum of "**Initial Amount**") for the Drill Pad, Wells, Access Road and Facilities shown on Exhibit "A." The parties expressly agree that the Initial Amount shall allow Operator to drill up to, but not exceeding, four (4) directional wells within the drill site shown on Exhibit "A." If Operator elects to drill more than four (4) directional wells on the Lands or any vertical wells or horizontal wells, Operator shall pay to Owner the following additional amounts:

(i)

(ii)

(iii)

The applicable payment amounts required for any additional Wells shall be paid to Owner prior to commencement of drilling operations of each Well on the Lands.

B. The Initial Amount and any subsequent per Well payment amounts 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 shall 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.

C. In addition to the amounts which are to be paid by Operator to Owner pursuant to Paragraph 5.A and/or elsewhere in this Agreement, Operator shall separately compensate Owner for damages to personal property or improvements on the Lands, including, without limitation, damages to buildings, fences, gates, and livestock and other similar extraordinary losses or damages caused by Operator. Operator agrees to negotiate in good faith with Owner with respect to any such extraordinary losses or damages and to pay Owner reasonable compensation therefor.

D. Any subsequent major operations for said Wells (refrac, recompletion, deepening, redrilling, etc.), except in case of emergency, shall require 10 days' prior notice to Owner. Operator shall pay Owner all 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) Operator will maintain all Access Roads in good repair and condition.

B. Surface Restoration:

(i) Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be promptly restored by Operator to their original contour as nearly as is reasonably practicable.

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.

(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 Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner 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 Owner. Owner will notify Operator of any items damaged after the Wells construction and Operator will repair or replace such items after consultation with the Owner 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) During drilling operations the well sites and any pits shall be fenced if requested by Owner. After completion of the Wells and in the event of production, all production tanks shall be bermed. 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.

(vi) Operator agrees to fence off the perimeter of the well sites with temporary fencing if reasonably requested by Owner. Operator will also install cattle guards and/or gates where reasonably necessary.

**7. DEFAULT AND RIGHT TO CURE.** Amounts payable by Operator pursuant to this Agreement which are not paid when due shall bear interest at the rate of 12 percent per annum from due date. 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. If Operator remedies the alleged default within 30 days of Owner's notice, or if the alleged default is of a nature that cannot be remedied within

30 days, then if Operator commences the remedy of the alleged default within that 30 day period and diligently pursues such remedy, then no default shall be deemed to have occurred.

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; however in no event will Operator be liable for consequential damages.

8. **INDEMNITY.** 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 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 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 (optional) 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**

Winter North Family Partnership L.P.  
C/O Jack E. Winter  
5207 West 13<sup>th</sup> Road  
Greeley, CO 80634  
Phone: (970) 392-0338

**Operator**

Bayswater Exploration & Production, LLC  
730 17<sup>th</sup> St, Ste 610  
Denver, CO 80202  
Phone: (303) 893-2503  
Attn: Mr. Mark Brown

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. **CONFIDENTIALITY.** Intentionally Deleted.

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 Operator(s) and/or its affiliates 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 Operator's use of the surface estate of the Lands as granted herein to Operator shall constitute "reasonable accommodation" by Operator, its successor, and assigns with respect to Colorado revised statute 34-60-127.

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. **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.

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, affiliates, administrators, trustees, executors and assigns.

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

**Operator:**

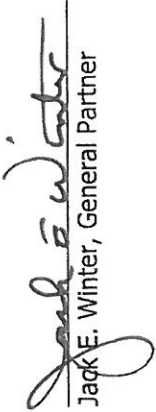
Bayswater Exploration & Production, LLC  
a Colorado Limited Liability Company



Mark Brown, Operations Manager

**Owner:**

Winter North Family Partnership L.P.,  
a Colorado Limited Partnership



Jack E. Winter, General Partner





*Bayswater*

## EXHIBIT "A"

Petroleum Field Services LLC makes no representations and assumes no responsibility for the information contained herein

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