

## SURFACE USE AND DAMAGE AGREEMENT

This Surface Use and Damage Agreement ("Agreement") is made and entered into as of the 22 day of June, 2005 by and between **Hotchkiss Ranches, Inc.**, 619 Shepherds Lane, Hotchkiss, CO 81419-0479, referred to herein as Owner, and **Gunnison Energy Corporation**, 1801 Broadway, Suite 1200, Denver, Colorado 80201, referred to herein as Gunnison or Operator.

A. Owner is the surface owner of the following lands, located in Gunnison County, Colorado (hereinafter referred to as the "Properties"):

Township 12 South, Range 89 West, 6<sup>th</sup> P. M.

Tract A:

Section 17: W/2W/2, SE/4SW/4, S/2SE/4

Section 18: Lots 1-4, E/2W/2, E/2

Tract B:

Section 19: Lots 2-4, E/2SW/4, SE/4

Section 20: S/2NW/4, SW/4SW/4, NE/4SE/4(that portion west of old Hwy 133), SW/4NE/4(that portion west of new Hwy 133)

Tract C:

Section 20: N/2SW/4, SE/4SW/4, NW/4SE/4

Gunnison County, CO

(See Exhibit A attached hereto and made a part hereof)

B. Owner's surface ownership in Tracts A & B of the Properties is subject to the rights of the federal oil and gas mineral estate (Federal COC-65106 and COC-65108), and Tract C (Hotchkiss fee minerals), which have been leased to Operator;

C. The terms of the oil and gas leases ("Leases") grant the Operator the right to use so much of the surface as is reasonably necessary to explore and develop its oil and gas leasehold estate by drilling, testing, completing, maintaining and operating wells (hereinafter referred to as "Wells") on the Properties and/or deepening, recompleting, or reworking any Wells; and

D. This Agreement sets forth the parties' rights and obligations regarding the continued use of the Properties by Owner and Operator's operation and development of its oil and gas leasehold estate.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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pipelines for gas and liquids necessary in connection with Operator's Oil and Gas Operations on the Properties. Owner shall grant to Operator the rights-of-way needed by Operator for any new flowlines or pipelines. All flowlines and pipelines shall be located at a depth of 36 inches from the surface or below. Should Owner request the relocation of any flowlines or pipelines on the Properties, and Operator agrees to such relocation, Owner shall be responsible for any and all relocation costs. Upon termination of this Agreement, Operator shall promptly take all actions necessary to clean up, mitigate the effects of use, and render all flowlines or pipelines installed by Operator environmentally safe and fit for abandonment in place. All such clean up and mitigation shall be performed in compliance with all federal, state and local laws and regulations;

m. No Recording Without Mutual Consent. This Agreement may not be recorded without the mutual written consent of Owner and Operator.

## 5. NOTICE OF OPERATIONS

Operator shall provide notice to Owner not less than thirty (30) days before initial commencement of Oil and Gas Operations on the Properties, setting forth: (i) the estimated starting date for the proposed activity; (ii) the name of the operator and the name, address and phone number of the individual representing the operator who can be contacted concerning the proposed operations; (iii) the legal description indicating the quarter quarter section upon which the operations will be conducted; and (iv) a statement that the Owner has the responsibility for notifying any affected tenant of the proposed operations; and thereafter Operator shall provide at least forty eight (48) hours prior written notice to Owner of any drilling, reworking, fracturing, deepening or other major operation on the Wells. **THIS AGREEMENT SETS FORTH THE SOLE AND EXCLUSIVE NOTICE AND CONSULTATION REQUIREMENTS BETWEEN OPERATOR AND OWNER REGARDING THE PROPERTIES. WITH THE EXCEPTION OF THE NOTICE AND CONSULTATION REQUIREMENTS SET FORTH HEREIN, OWNER EXPRESSLY WAIVES ALL OTHER NOTICE AND CONSULTATION REQUIREMENTS, INCLUDING THOSE SET FORTH IN RULES 305 AND 306 OF THE RULES OF THE COGCC.** Regardless of the foregoing notice and/or consultation requirements, Operator shall have immediate access to and across the Properties in the event of an emergency, and shall provide written notice to Owner as soon thereafter as is reasonable in light of the circumstances.

## 6. SURFACE RECLAMATION

Operator shall be responsible for all costs of reclamation for its Oil and Gas Operations on the Properties, and shall, within a reasonable time after cessation of all Oil and Gas Operations by Operator, return the surface to as near as practical to the condition in existence prior to any Oil and Gas Operations, subject to the following provisions:

- a) Well pad locations will be re-contoured to as near as practical to the condition in existence prior to any Oil and Gas Operations.

In the event that negotiations and mediation prove unsuccessful to resolve the dispute, venue for any and all actions arising in connection with this Agreement shall be District Court in Gunnison County, Colorado.

**13. ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding among the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

The parties have executed this Agreement on the day and year first above written.

**GUNNISON ENERGY CORPORATION**

By:  6/27/05  
Anthony B. Gale, Senior Vice-President

**OWNER:**

**HOTCHKISS RANCHES, INC.**

By:   
John A. Hotchkiss, Sec/Treas

Acknowledgments

STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of June 2005, by Anthony B. Gale, Senior Vice-President for Gunnison Energy Corporation, on behalf of said corporation.

Witness my hand and official seal.

(SEAL)

[Signature]  
Notary Public

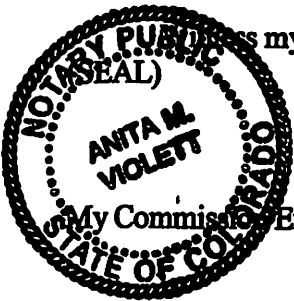
My Commission Expires:

June 12, 2007

STATE OF COLORADO )  
COUNTY OF Delta ) ss.

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of June 2005, by John A. Hotchkiss, Secretary/Treasurer of Hotchkiss Ranches, Inc.

Witness my hand and official seal.



[Signature]  
Notary Public

My Commission Expires: 2-17-06