

## SURFACE DAMAGE AGREEMENT

This Surface Damage Agreement ("the Agreement") is entered into by and between **Kathleen J. Clemons, 21330 Weld County Road 55, Kersey, CO 80644** as Owner, and **Nighthawk Production, LLC, 1805 Shea Center Drive, Suite 290, Highlands Ranch, CO 80129**, as Operator.

### RECITALS

**WHEREAS**, Owner and Operator desire to enter into an agreement providing for the use of certain lands owned by Owner in connection with drilling, completion and production operations proposed by Operator;

**WHEREAS**, Owner and Operator agree that Operator, or any party acting as an agent or representative of Operator and any person acting as an independent contractor pursuant to a contract with Operator, may enter upon and utilize those certain lands of Owner described on Exhibit "A" attached hereto and by this reference made a part hereof (the "**Premises**") in connection with the conduct of drilling, completion and production operations subject to the terms and conditions of this Agreement. All such operations shall be conducted at the sole risk, cost and expense of Operator or such other parties in a good and workmanlike manner consistent with recognized industry procedure and in accordance herewith.

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

1. Use of Property. Operator may construct the necessary well site pads for drilling, completion, re-completion, reworking, re-entry, production, maintenance and operation of wells ("**Well Pad**") on the Premises consistent with this Agreement. Operator, its agents, employees, assigns, contractors and subcontractors, may enter upon and use the Well Pads for the purposes of drilling, completing, producing, maintaining, and operating wells to produce oil, gas and associated hydrocarbons produced from the Premises, or adjacent lands, including the construction and use of frac pits, tank batteries, production equipment, compressor sites, electrical lines and other facilities used to produce and market the oil, gas and associated hydrocarbons. No Well Pad shall exceed three and one half (3.5) acres of disturbed area, including any cuts and fills during drilling, without approval from the Owner.

2. Drilling and Production Facilities. The Well Pad locations 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. Operator 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. Operator 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. Operator shall utilize only such area around the Wells as is reasonably necessary for such purposes, and Operator shall, weather permitting, restore the remainder of the Well Pads to their original condition as soon as practicable and as nearly as possible after the completion of the drilling operations. Operator 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, Operator shall provide Owner a location improvement survey or similar detailed drawing showing the location of any new Well Pad 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 Operator, 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 Operator's use of such additional surface area is acceptable to Owner, then Operator shall pay Owner at the rates prescribed in Paragraph 4 of this Agreement. Thereafter, should Operator desire to add additional equipment or accessory structures for production purposes, which additional equipment or accessory structures have not been identified previously by Operator, then prior to installation of any such equipment or accessory structures, Operator 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 grants to Operator an exclusive access easement ("**Road Easement**") on the Premises for ingress and egress by Operator and its employees, contractors, sub-contractors, agents, and business invitees as needed to conduct oil and gas operations as described in this Agreement. Operator shall have the right to construct, maintain and use existing and new roads on the Premises on the following terms and conditions:

- a) The Road Easement shall be approximately twenty five (25) feet in width, being fifteen (12.5) feet on each side of the centerline. Operator shall pay to Owner prior to commencing any use or construction the sum of [REDACTED] for each road used or constructed on the Premises.
- b) Operator shall advise Owner in reasonable detail of the location (width, cuts, fills and bar ditches) of each new road which it proposes to construct on the Premises.
- c) All vehicular traffic will be restricted to the roads permitted to be used or constructed by Operator hereunder.
- d) Operator shall construct and install such steel gates and cattle guards in all fences as may be necessary for the proper protection and handling of Owner's livestock. Operator shall also install culverts necessary to protect the road beds.
- e) Operator shall maintain the roads, gates, cattle guards, bridges, culverts and any other facilities to be used or constructed by Operator pursuant to this Agreement (the "Improvements") in a good and usable condition during the term of this Agreement and, upon termination of use by Operator of any of such Improvements, Operator shall return the land upon which such Improvements are located to its original condition to the extent reasonably possible, provided that Operator shall notify Owner in writing of any Improvements it intends to cease using and, if Owner so requests within twenty (20) days of receipt of such notice, any such Improvements shall be left in place in a good and usable condition and will thereupon become the sole property of Owner.
- f) Operator shall keep the roads and adjacent areas clean at all times and free of any trash, cans, papers, bottles or other debris resulting from Operator's operations hereunder.

4. Surface and Crop Damage Compensation. As consideration for damages to be incurred by Operator on the Premises, Operator shall pay [REDACTED] that is constructed on the Premises. Such payment shall constitute payment in full by Operator for (1) the construction of said Well Pad, and (2) consideration for the wellbore drilled within such Well Pad.

If Operator requests and Owner approves use of acreage in excess of the amount prescribed in Paragraph 1 of this Agreement, Operator shall pay additional compensation at the rate of [REDACTED] proportionately reduced to the amount of actual acreage used. Operator shall pay [REDACTED] 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. **If Operator obtains the Owner's consent to use water from the ranch on which the Property is located, then Operator 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 Operator 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. Operator agrees to additionally compensate Owner for any additional damages including but not limited to the following:

- (a) Trespass on any lands other than a designated Well Pad, 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 Operator's operations and resulting from unreasonable use, negligence or willful misconduct.

5. Maintenance of the Property. Operator, 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 Operator's obligation to conduct its operations so as not to interfere unreasonably with Owner's use of the surface of the Property. 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 Well Pad, Operator 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. Operator will paint the production equipment and tankage in subdued colors approved by Owner, and Operator 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. Operator 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. Operator shall not conduct any operations within one five hundred (**500**) 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. Operator 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 Operator, Operator 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 Operator due to inclement weather, Operator 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 Operator, of all areas affected by Operator'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, Operator shall remove any and all property placed by Operator on the Property or Owner may cause same to be removed at Operator's expense. Operator's obligations and liabilities under this Paragraph are continuing and shall survive the termination of the Agreement.

8. Water Use; Water Well Option; Wastewater. Operator 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 Operator 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 Operator 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 Operator at its expense as required by law. In the event Operator drills a water well as a fresh water source for drilling and desires to abandon the water well, Operator 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 Operator within five (5) days of Owner's receipt of said notice from Operator, Operator 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. Operator 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. Operator shall comply with all applicable federal, state and local statutes, rules, regulations and ordinances applicable to the Property and Operator's operations thereon. Operator 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 Operator and Operator'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, Operator 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 Operator 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 the time at which the Operator's right to continue exploration terminates.

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

To Owner: **Kathleen J. Clemons**  
21330 Weld County Road 55  
Kersey, CO 80644

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

13. Release. Owner releases and discharges Operator 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 Operator's use of the Property to access and drill the Well. This release does not cover any damage caused by Operator 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, Operator and their respective successors, assigns, agents, employees, partners, associated and affiliated companies, insurance carriers and contractors.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto effective as of the Effective Date of April 29, 2014.

Kathleen J. Clemons  
Kathleen J. Clemons

**ACKNOWLEDGMENT**

State of COLORADO }  
County of Lincoln } ss.

Before me, the undersigned, a Notary Public, in and for said County and State, on this 7 day of May, 2014, personally appeared **Kathleen J. Clemons**, 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.

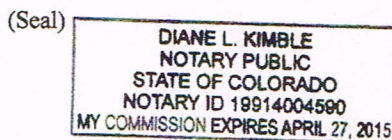
My commission expires:

4-27-2015

Diane L. Kimble  
Notary Public

Limar CB

80828  
Address





OPERATOR: NIGHTHAWK PRODUCTION LLC

BY: Craig Burbage  
Craig Burbage, Land Manager

DATE: 5/22/14

ACKNOWLEDGMENT

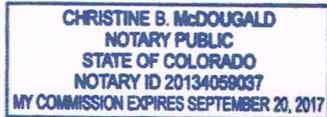
State of COLORADO }  
County of DOUGLAS } ss.

Before me, the undersigned, a Notary Public, in and for said County and State, on this 22<sup>nd</sup> day of May, 2014, personally appeared **Craig Burbage, Land Manager of Nighthawk Production, LLC**, 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:

9-20-17

(Seal)



Christine B McDougald  
Notary Public

1805 Shea Center Drive #240  
Highlands Ranch, CO  
Address

**This Exhibit "A" is in reference to a certain Surface Use Agreement Dated April 29, 2014.**

**Township 5 South, Range 54 West, 6<sup>th</sup> P.M.**  
**Section 35: W2**

