

## SURFACE USE AGREEMENT

**THIS SURFACE USE AGREEMENT** (this "Agreement") is entered into this 6th day of October, 2017 ("Effective Date"), by and between **Cliff E. Simpson**, whose address is [REDACTED], for himself and his affiliated entities, heirs, administrators, successors and assigns (collectively, "Grantor"), and **Great Western Operating Company, LLC**, a Colorado limited liability company, whose address is 1801 Broadway, Suite 500, Denver, CO 80202, and its affiliates, successors and assigns (collectively, "Grantee"). Grantor and Grantee may be referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Grantor represents that it is the surface owner of a certain tract of land(s) located in Weld County, Colorado, more specifically described as follows:

**Township 8 North, Range 66 West, 6<sup>th</sup> P.M.**

**Section 23: Lot B, Recorded Exemption No. 0553-23-3 RE-3135, recorded January 7, 2002 as Reception No. 2914852, being a portion of the SW/4 Weld County, Colorado**

(the "Lands"); and

WHEREAS, Grantee, and/or its affiliates, owns a working interest in a valid oil and gas lease(s) covering all or portions of the Lands or lands pooled or included in a spacing unit therewith. Additionally, Grantee may have responsibilities under a Joint Operating Agreement with respect to the Lands; and

WHEREAS, this Agreement is subject to any existing rights of Grantee in or to the Lands pursuant to any mineral lease, mineral deed or similar instrument granting rights to develop the mineral estate; and

WHEREAS, Grantor currently farms the surface of the Lands, but may develop the surface of the Lands, or a portion thereof, in the future; and

WHEREAS, the Parties desire to enter into an agreement that sets forth their rights and obligations regarding Grantor's development and use of the Lands, Grantee's operation and development of its oil and gas leasehold estate underlying the Lands and/or lands adjacent thereto, mitigation of any surface damage to the Lands, and cooperation between the Parties for mutual enjoyment of the Parties' respective rights in and to the Lands.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Surface Location** — Grantor hereby grants to Grantee a non-exclusive right-of-way and easement for a surface site on the Lands consisting of approximately four (4) acres of surface area, not including roads that are used for ingress and egress within, to and from said 4 acres, as described and depicted on Exhibit "A" attached hereto, along with the right to construct a well(s) pad on such surface site and to drill one or more oil and/or gas wells (collectively, the "Wells," whether one or more) therefrom, which will include the right to survey, construct, use, operate, maintain and repair a location for a well site, and which may include all equipment necessary for constructing, drilling, completing, equipping, operating, repairing and plugging any such Wells (the "Surface Location Easement"). Grantee shall have the right to occupy so much of the surface of the Lands as reasonably necessary to accommodate the Wells and related oil and gas operations. As of the Effective Date of this Agreement, Grantee plans to drill a vertical/directional well(s) from the Surface Location Easement; however, Grantee reserves the right to drill horizontal wells from the Surface Location Easement. Should Grantee elect to drill horizontal wells, Grantor agrees to amend this Surface Use Agreement to accommodate horizontal development, which will include, but may not be limited to, an expansion of the Surface Location Easement up to twelve (12) acres. The Surface Location Easement may also be used to install, place or store any valves, tanks, pipelines, meters, separators, dehydrators, compressors, electrical lines, phone lines, wires, cables, meter houses, meter runs, and any and all other devices, equipment and structures incident to, or necessary for, drilling, production, operation, plugging, injection, regulation, control, measurement, treatment, separation, processing, storing, transportation, and distribution of oil, gas, petroleum products and any other liquids, gases or substances which can be transported through pipelines.
2. **Subsurface** — Grantor hereby grants to Grantee a right-of-way and easement as to all depths below the surface of all the Lands and the right to use the subsurface, including pore space, for the purposes of drilling Wells for oil, gas and/or other substances to the Lands or other lands; for installing casing, tubing, and other equipment therein; for reworking, recompleting, repairing, side-tracking, plugging and abandoning such Wells; for gathering information, exploring for and producing oil, gas and/or other substances from the Lands or other lands through such Wells; and for injecting substances into the Lands or other lands through such Wells.
3. **Access Road(s)** — Grantor hereby grants to Grantee a non-exclusive easement twenty feet (20') wide across the portion of the Lands labeled as "Access Road" and generally shown on Exhibit "A" (the "Access Easement") to survey, construct, use, operate, maintain and repair one or more roads to allow Grantee access (ingress and egress) to the Easement Areas (defined in Section 5, below) as may be needed by, or

necessary for, Grantee's operations on or off the Lands. The Access Easement may be expanded from time to time during any period(s) of construction, maintenance or repair to a width of thirty feet (30') for so long as such use is reasonably necessary for the operations being conducted, and shall revert to the permanent width set forth above (20') upon completion thereof. The actual road (the "Access Road") on the associated Access Easement shall at all times provide Grantee's equipment and vehicles, including, but not limited to, oil and gas drilling, workover and completion rigs, with full and unobstructed access to the Surface Location Easement, Wells and all associated production equipment. Grantee, its employees, agents, contractors, licensees, and invitees shall have the full and free right and privilege to use said Access Road for the transportation of persons, material, supplies and commodities in Grantee's oil and gas operations on the Lands and/or other lands adjacent thereto or in the vicinity thereof. Any Access Road existing, constructed or maintained under the terms hereof shall remain the sole and private property of Grantor, subject to the rights, privileges and benefits granted to Grantee herein. Any road(s) to be constructed shall be approved by Grantor prior to construction, which said approval shall not be unreasonably withheld.

4. Pipeline(s) — Grantor hereby grants to Grantee a non-exclusive right-of-way and easement twenty-five feet (25') wide across the Lands to survey, lay, construct, install, operate, inspect, protect, alter, maintain, improve, repair, change the size of, relocate, add, replace, remove and abandon one or more pipelines and all valves, fittings, devices for controlling electrolysis and/or cleaning pipeline interiors, and/or other necessary appurtenances above and below ground, including suitable markers to mark the location of the pipeline(s), for the purposes of transportation of on and/or off-unit oil, gas, petroleum products, fresh or salt water, and/or any other liquids, gases or substances which can be transported through pipelines (the "Pipeline Easement"). The right-of-way and easement associated with the pipeline(s) may be expanded from time to time during any period(s) of construction, maintenance or repair to a width of seventy-five feet (75') for so long as such use is reasonably necessary for the operations being conducted, and shall revert to the permanent width set forth above (25') upon completion thereof. Grantee shall maintain the uppermost part of the underground portions of said pipelines at least forty-eight inches (48") below the surface of the ground, but this limitation shall not apply to any portion of the pipelines or other equipment installed above the surface. Grantee shall coordinate with Grantor when planning pipeline routes to ensure that planned pipelines are constructed in a manner that limits the effect on Grantor's agricultural use of the Lands. Any pipeline constructed under the terms herein shall require Grantor's approval prior to construction, which said approval shall not be unreasonably withheld.
5. The Access Easement, together with the Pipeline Easement and the Surface Location Easement, may be collectively referred to herein as the "Easement Areas." The approximate locations of the Easement Areas are shown on Exhibit "A" attached hereto. Grantee shall replace Exhibit "A" with a final, or as-built, surveyed plat depicting the actual boundaries of said Surface Location Easement and/or the actual boundaries or centerlines of said Access Easement and Pipeline(s) Easement by recording a designation of easement location ("Designation") in the county in which the applicable Lands are situated, and any such Designation, and any exhibits thereto, shall supersede and replace that portion(s) of Exhibit "A," attached hereto, that has been re-surveyed and re-platted as provided for herein. Grantee shall forward a copy of such Designation to Grantor as soon as practicable thereafter. The location of the Surface Location Easement may be altered from the location shown on Exhibit "A" as required to obtain approval of the Colorado Oil & Gas Conservation Commission ("COGCC") (or such other governmental authority with jurisdiction therein), in which event the location of the Pipeline Easement and/or Access Easement(s) will also be altered so as to align with the altered Surface Location Easement. In such case, Grantor agrees to execute an amendment to this Agreement in recordable form indicating the correct Easement Areas. Grantee shall have the right to move the Surface Location Easement in the event it becomes necessary to avoid wetland, archeological, biological or other subsurface or topographical issues. Notwithstanding anything herein to the contrary, any material alteration(s) to the Easement Areas shall be subject to Grantor's approval, which said approval shall not be unreasonably withheld.
6. Grantee has the express right, privilege, and authority to construct, install, operate, maintain, repair, replace, add to, and remove electric, communication, and/or control lines either above or below the Lands as may be ancillary to the rights conveyed herein or necessary to carry out Grantee's operations contemplated hereunder. Grantee may not remove existing electric, communication, control lines or other utilities that service other users of such utilities without first obtaining the consent of any such user(s) to be affected by such removals. Upon permanent cessation of operations on the Lands, Grantee shall remove any utilities installed for its operations and restore the Land as near as practicable to its original condition.
7. Without prior, written consent of Grantee, Grantor shall not construct or permit construction within the boundaries of the Easement Areas, and Grantee shall have the right to prevent the construction within the boundaries of the Easement Areas and the right to remove therefrom, any and all types and sizes of houses, barns, buildings, structures, permanent impoundments of water, and natural or man-made obstructions, including, but not limited to, trees, brush, roots and other growth. Grantor shall not, nor permit third parties to, change the grade of the land or remove the cover over the Pipeline(s), or excavate within the Easement Areas without prior, written consent of Grantee, which consent shall not be unreasonably withheld, provided same does not present an operational or safety issue for Grantee. Grantor shall allow for continuous use and access to the Easement Areas at all times. Grantor and Grantee shall coordinate to reduce both the impact to Grantee's operations from Grantor's development of the Lands, and the impact to Grantor's surface development of the Lands from Grantee's operations within the Easement Areas.
8. Except as otherwise set forth herein, the consideration paid hereunder includes payment for all ordinary damages to the Lands caused or created by Grantee's reasonable and customary use of the Easement Areas, and Grantor hereby acknowledges receipt and sufficiency of said payment as full and complete settlement for the Easement Areas. Grantee shall compensate Grantor for damage to personal property or to

improvements on the Lands, such as damage to buildings, fences, gates, culverts, and for other such losses or physical damages caused by Grantee. This Agreement shall in no way diminish, lessen, or remove any rights now or hereafter held by Grantee, its successors or assigns, by and through any and all oil, gas, and mineral lease(s) or any other agreements that cover all or any portion of the Lands subject to this Agreement.

9. Except with respect to the Surface Location Easement, the rights-of-way and easements granted by this conveyance are non-exclusive, and Grantor reserves and retains the right to convey similar rights and easements to such other persons as Grantor may deem proper; provided, however, that all such conveyances shall be subject to Grantee's rights, and Grantee shall not be unreasonably disturbed in the use and enjoyment of the rights granted hereunder.
10. Grantee agrees to perform all reclamation in accordance with local government regulations and requirements, and the rules and regulations of the COGCC. Grantee shall endeavor to keep the Easement Areas free of weeds and debris, and to control erosion.
11. Interest in Real Property.
  - (a) This Agreement creates a valid, present interest in the Lands in favor of Grantee. The covenants and rights contained in and granted by this Agreement are made for the direct benefit of the Lands and shall run with and against the Lands and inure to the benefit of and bind Grantor and Grantee and their respective agents, assigns, employees, heirs, lessees, mortgagees, permittees, successors, and transferees, and all entities or persons claiming by, through, or under them, from the Effective Date of this Agreement, and for so long thereafter as some, or all, of the same shall be used for the purposes which are herein granted.
  - (b) Nothing in this Agreement shall be deemed to limit either party's right to convey, sell, or otherwise transfer all or any part of the Lands; provided that any such transfer shall be subject to the terms and conditions of this Agreement.
  - (c) Grantor and/or a party acquiring some or all of the Lands from Grantor shall, within thirty (30) days after a conveyance, sale or other transfer of some or all of the Lands or interests therein, provide Grantee a copy of the recorded vesting document related to the transfer, delivered in accordance with the notice provisions in Section 16 of this Agreement. The failure to provide the required recorded vesting document shall not be a default under this Agreement; however, Grantee shall have no obligations under this Agreement to any subsequent Grantor unless and until Grantee has received such document.
12. Grantor acknowledges and agrees that Grantee has consulted in good faith with Grantor as to its proposed operations in accordance with COGCC requirements, or hereby waives such requirements. Grantor expressly waives the application of any COGCC setbacks inconsistent with this Agreement.
  - (a) Grantor agrees not to object to the Form 2A, so long as it is consistent with this Agreement, and hereby waives any right granted by COGCC rule to comment on the Form 2A, to request an extension of the comment period, to request an onsite inspection pursuant to COGCC policy, or to appeal the approval and issuance of the Form 2A, and any related Form 2, so long as such forms are consistent with this Agreement.
  - (b) Grantor shall not oppose Grantee in any COGCC or other governmental proceeding related to Grantee's operations, including, but not limited to, permitting, formation of drilling units, well spacing, well density, pooling, drilling, completion, stimulation, re-stimulation, workovers, deepening and recompleting, provided that Grantee's position in such proceedings is consistent with this Agreement.
  - (c) Grantor hereby waives its right to, and covenants that Grantor shall not protest or object to any such exception location or application for the same by Grantee, provided that such exception location is otherwise consistent with this Agreement. The bottom-hole locations for each of the Wells will be determined by Grantee in its ordinary course of economic, engineering and geologic evaluations of potential oil and gas well drill sites.
  - (d) Throughout the term of this Agreement, Grantee is hereby expressly granted consent to locate any number of wells within the Surface Location Easement, and for each well Grantee proposes within the Surface Location Easement, Grantor shall fully support Grantee's efforts to permit such wells, including granting consent to locate any well greater than fifty (50) feet from an existing well pursuant to COGCC Rule 318A.(c) and granting consent to locate any well outside of the GWA windows as defined in COGCC Rule 318A.(a).
  - (e) Grantor hereby waives its right to object to the location of any of Grantee's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time, provided that in no event shall such waiver be construed as permitting any operation or location of any structure, improvement or equipment by Grantee outside the Easement Areas. Grantor agrees not to object to Grantee's use of the surface of the Lands, so long as such use is consistent with this Agreement. Grantor will provide Grantee, or its successors and assigns, with whatever written support they may reasonably require to obtain permits from the COGCC or any other state or local jurisdiction; provided, that any such permits submitted are consistent with this Agreement.

(f) Grantor hereby waives the minimum 30-day written notice requirement for commencement of operations and any other notice or consultation requirements of the COGCC. Grantor agrees that the execution of this Agreement is sufficient notice of Grantee's proposed oil and gas operations on the Lands.

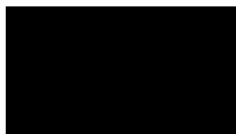
13. GRANTEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AGAINST ANY CLAIMS, DAMAGES, DEMANDS, LIABILITIES, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) TO THE EXTENT ARISING FROM, OR RELATED TO, THE OPERATIONS OF GRANTEE OR ITS EMPLOYEES, AGENTS, CONTRACTORS, OR INVITEES IN THE COURSE OF THEIR EXERCISE OF RIGHTS GRANTED BY THIS INSTRUMENT, BUT NOT TO THE EXTENT CAUSED BY GRANTOR, OR ITS EMPLOYEES, AGENTS, CONTRACTORS, OR INVITEES.

14. This Agreement is subject to that certain Payment Agreement dated the 6th day of October, 2017, by and between Cliff E. Simpson, as "Grantor," and Great Western Operating Company, LLC, as "Grantee" ("Payment Agreement").

15. Notwithstanding any of the other provisions herein as to termination, this Agreement may be terminated by Grantee at any time by giving ninety (90) days' notice, in writing, to Grantor of such termination. In the event Grantor believes that Grantee is in default or breach of any material term of this Agreement, Grantor shall give written notice to Grantee of such alleged material default or breach and provide a written explanation detailing Grantor's belief. Grantee shall then have thirty (30) business days within which to remedy, or commence to remedy if remedy cannot be made within 30 days, any alleged material default or breach, or to assert a good-faith dispute as to the alleged material default or breach. No waiver by either Party or any breach of any of the covenants or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

16. Any notice provided or permitted to be given in this Agreement must be in writing and may be given by depositing the notice in the United States mail, postage prepaid, certified with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the foregoing manner shall be deemed received five (5) days after it is so deposited, excluding Saturdays, Sundays, and postal holidays. Notice given in any other manner shall be effective only if and when actually received by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows until changed as herein provided:

Grantor:



Grantee:

Great Western Operating Company, LLC  
ATTN: Land Manager  
1801 Broadway, Suite 500  
Denver, CO 80202

Either party may designate a different address for receipt of subsequent notices by notifying the other as provided in this paragraph.

17. Grantor agrees to include a note on any annexation, subdivision plat, planned unit development or other land use designation for which Grantor may apply to put successors or assigns on notice that the Lands are subject to this Agreement. Grantee shall record this Agreement or a memorandum thereof, setting forth the identity of the Parties, the Effective Date, and the Lands covered by this Agreement, for the purpose of notice to third parties. Grantee shall provide Grantor with a recorded copy as soon as practicable thereafter. In all other respects, however, the Parties shall hold the provisions of this Agreement in confidence.

18. This Agreement shall be governed by, and its terms construed under, the laws of the State of Colorado. Grantor and Grantee further expressly acknowledge and agree that jurisdiction and venue for any actions or claims arising out of, or relating to, this Agreement, or the breach thereof, shall be resolved in District Court, in the County of Weld, State of Colorado.

19. If any clause or provision of this Agreement is invalid or unenforceable at any time under the current laws, the remainder of this Agreement shall not be affected thereby, and this Agreement shall be modified so that in place of each such clause or provision of this Agreement there will be added, as a part of this Agreement, a legal, valid, and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

20. This Agreement may be executed as one document, or in several partially executed counterparts, and the original and counterparts shall be construed together and shall constitute one instrument. The failure of one or more parties to execute this Agreement, or a counterpart hereof, shall not, in any manner, affect the validity and binding effect of the same as to the parties who execute said instrument.

21. 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.

22. Additional Provisions:

(a) Grantee agrees to use Grantor and/or his affiliates to build the pad within the Surface Location Easement and the Access Road(s).

(b) Grantee agrees to use Grantor and/or his affiliates for water transfer and storage, if needed.

- (c) Grantor shall meet with Grantee's Construction Supervisor prior to performing any work, maintenance or repairs on the Surface Location Easement or Access Easement.
- (d) If Grantor's work meets Grantee's standards and is competitively priced, Grantor shall earn the right to bid other jobs for Grantee in the Ault and Pierce areas of Weld County, Colorado.
- (e) Grantor shall execute a Master Service Agreement with Grantee prior to performing any work.

**[Remainder of page intentionally left blank. Signatures to follow.]**

EXECUTED as of the date of the Parties' respective acknowledgements below, but effective for all purposes as of the Effective Date first listed above.

**GRANTOR:**

CLIFF E. SIMPSON

By: \_\_\_\_\_

Cliff E. Simpson

**GRANTEE:**

GREAT WESTERN OPERATING COMPANY, LLC

By: \_\_\_\_\_

Jeremy Conger, Sr. Vice President - Operations



## Exhibit "A"

Attached to and made a part of that certain Surface Use Agreement dated the 6th day of October, 2017, by and between Cliff E. Simpson, as Grantor, and Great Western Operating Company, LLC, as Grantee.

### Section 23, Township 8 North, Range 66 West, 6<sup>th</sup> P.M.

