

## SURFACE USE AND DAMAGE AGREEMENT

This Surface Use and Damage Agreement (“Agreement”) is made and entered into this 27th day of February, 2017, by and between **WADE E. CASTOR** (“Owner”) and **MORNING GUN EXPLORATION LLC** (“Operator”), sometimes referred to each as a “Party” or collectively as the “Parties.”

### WITNESSETH

- A. OWNERSHIP.** Owner is the surface owner of certain lands located in Weld County, Colorado as more specifically described as follows (“Lands”):

**Township 8 North, Range 59 West, 6<sup>th</sup> P.M.**

**Section 19: A portion of the S2, lying East of CB&Q RR also including the abandoned RR right-of-way**

**B. OPERATOR’S OIL AND GAS OPERATIONS ON THE LANDS.** Operator owns certain oil and gas leasehold rights in the Property and/or lands pooled therewith and desires the right to access the Lands and use so much of the surface and subsurface of the Lands as is reasonably necessary to conduct its oil and gas operations, for the exploration, development, production, transportation and marketing of oil, gas, associated hydrocarbons and water, including but not limited to surveying a drill site, staking a drill site, obtaining permits, building roads, clearing a drill site, hauling equipment or supplies; laying temporary fresh water flowlines, completing, reworking, plugging back, deepening, treating, stimulating, refitting, installing any artificial lift or production enhancement equipment or technique; constructing facilities related to the production, treatment, transportation and marketing of substances produced from the leased premises; contracting for marketing services and sale of oil, gas and related substances; and the physical movement of water produced, pursuant to its oil and gas leasehold interests in the Lands and/or lands pooled therewith (the “Operations”); and

**THEREFORE**, 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 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 as follows:

**1. GRANT OF ACCESS.** Owner hereby grants, demises and conveys to Operator, and its employees designated agents, and contractors such use of the surface and subsurface of the Property, such ingress, egress and access to the Lands and such easements and rights-of-way on the Lands as may be necessary or convenient for Operator’s Operations.

**2. LOCATION.** Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations; provided, however that the Location of well sites will not exceed ten (10) contiguous acres in area for drilling operations without written consent from the Owner; and provided further that such wells, access roads, temporary roads to the wellsites, flow lines, separators, tank batteries and other facilities will be located as generally

depicted on Exhibit A attached hereto. Once such locations have been established, Operator, its employees, agents and subcontractors shall not enter or encroach upon the lands of Owner outside of the established locations, and shall pay Owner the sum of Five Hundred Dollars and No Cents (\$500.00) together with any actual damages caused for each such encroachment.

**3. 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.

Grantee shall give Grantor prompt notice of any of the following occurrences arising with regard to the Lands or Grantee's activities thereon;

- (i) Any spill, release, or other occurrence that constitute a violation of the provisions of any applicable laws, rules or regulations or this Grant and Terms of Pipeline Easement; and
- (ii) Any notices, claims or allegations of environmental violations or contamination received from any federal, state or local governmental agency or authority or the filing or commencement of any judicial or administrative proceeding by any such agency.

**4. COMPENSATION AMOUNT.** The Parties acknowledge that Operator will provide Owner with certain good and valuable consideration, as described in that confidential Letter Agreement of even date herewith, prior to the commencement of drilling operations for each Well drilled which consideration is agreed to be and constitutes full, complete and final consideration for settlement and complete satisfaction for any and all detriment, depreciation, injury, or damage of any nature to the Lands or crops growing thereon that may occur as a result from Operator's operations pursuant to this Agreement or the Leases. Such compensation shall be deemed full and agreed consideration for all damages caused or created by the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production, work-over, recompletion and maintenance operations.

**5. ADDITIONAL SURFACE USE PROVISIONS.** With respect to its operations on the Lands, Operator will comply with the following provisions:

**A. Access Roads:**

- (i) All access to the Location shall be directly from Weld County Road 390, without traversing portions of the Lands outside of the Location.
- (ii) Operator will maintain all Access Roads in good repair and condition. Owner shall have joint use of all Access Roads.

**B. Surface Restoration:**

- (i) In excavating for pipelines or for drilling operations or for any other purpose, all soils will be separated so that topsoil and subsurface soils shall be placed back in the proper order and leveled, with top soil on top. Operator will replace the topsoil and restore the Location as nearly as possible to its original condition as soon as possible after drilling and completion activities have been concluded.
- (ii) 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 condition and 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 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, livestock, water wells, fences, gates, culverts, bridges, pipelines, ditches, or irrigation systems, Operator will pay full market value, repair, or replace such personal property after consultation with and to the reasonable satisfaction of the Owner within thirty (30) days. Owner will promptly notify Operator of any items damaged after the wells' construction, and Operator will repair or replace such items after consultation with the Owner within thirty (30) days of the notification.
- (iii) Operator agrees that all trash, refuse pipes, 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) The well sites and production/tank sites shall be kept free and clear of all noxious weeds, unsightly growth and trash during drilling operations, after completion and during production. Additionally, all production/tank sites shall be fenced pursuant to the reasonable requirements of Owner such that livestock will not have access to said sites.
- (v) All guy lines 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 during drilling operations. Operator will also install swinging gates

with locks at all access points where necessary as determined by Owner, and Operator shall be responsible for restoring any existing fence of Owner to its original condition at any point of access.

- (vii) All pipelines of any type or purpose shall be buried not less than Three and one-half feet (3½') beneath the surface and water packed or compacted upon installation. No pipelines shall be permitted which do not serve a well or wells located upon Owner's property without prior written consent of Owner.
- (viii) Operator shall not construct or install any pipelines, telephone lines, electric lines or roads on the Lands which do not serve a well located on the Lands, or on lands pooled with the Lands without prior written consent of Owner, nor shall Operator inject any water, brine or other fluids into the subsurface strata of the Lands for the purpose of disposal.
- (ix) Portions of the subject Lands may be part of the Farm Service Agency ("FSA") Conservation Reserve Program ("CRP") and may be subject to all requirements thereof. In the event Owner believes any operations have caused damage to the subject land that is dedicated to the CRP which could result in fines, disqualification or other monetary penalties ("Damages"), imposed by FSA, surface Owner shall notify the FSA and request on-site consultation between the parties. If the FSA determines that Damages could or will be imposed on the Owner, Operator shall be obligated to take the necessary actions (at Operator's sole costs, risk and expense) to remediate the surface to the standards recited by the FSA. In the event Operator cannot or fails to adequately remediate the subject Lands to the FSA standards, thereby exposing the Owner to Damages, Operator shall pay Owner for any and all such Damages, and Owner may pursue all available remedies.

**6. INSURANCE.** Throughout the term of the Agreement, Operator, at Operator's expense, shall carry with an insurance company and in form and substance satisfactory to Owner: (1) Comprehensive General Liability and Auto Liability Insurance insuring Operator with respect to the property the subject of this Agreement with a combined single limit for bodily injury, death and property damages of not less than One Million Dollars (\$1,000,000.00) with endorsements naming Owner as an additional insured to the extent of the liabilities assumed by Operator hereunder; (2) Fire and extended coverage insurance (including vandalism and malicious mischief; and (3) Workmen's Compensation, State Unemployment and other coverage as required by applicable law.

In addition to the One Million Dollars (\$1,000,000.00) coverage stated herein, Operator shall have an additional umbrella liability coverage covering all of the required insurance items as stated herein in an amount of not less than Five Million Dollars (\$5,000,000.00) including an endorsement naming Owner as an additional insured to the extent of the liabilities assumed by Operator hereunder. Operator shall maintain Sudden & Accidental Pollution liability to cover bodily injury, property damage, and clean-up of pollution events that are discovered within 30 days of occurring. Certificates of Insurance shall be delivered to Owner prior to Operator's occupancy of the Property and thereafter at least thirty (30) days prior to the expiration of any policy.

**7. DEFAULT AND RIGHT TO CURE.** In the event of alleged default by Operator in the payment of any of the sums provided to be made herein, 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. Receipt of the certified mail shall be deemed effective 3 days after the mailing unless sooner received by Operator.

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/RELEASE.** Owner hereby releases and agrees to hold harmless Operator from any and all liability and further payment, other than what has been provided herein, for damages on the Lands which arise from, out of or in connection with the Operator's reasonable operations on the Lands, but only as to those operations which are described in and permitted by this Agreement.

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 FOLLOWING NOTICES AND CONSULTATIONS:

- (i) Rule 305.a.: Notice of Intent to Conduct Oil and Gas Operations;
- (ii) Rule 305.c.(1): Oil and Gas Location Assessment Notice;
- (iii) Rule 305.c.(2): Buffer Zone Notice;
- (iv) Rule 305.f.: Statutory Notice to Surface Owners;
- (v) Rule 306.a.: Surface Owner Consultation and Meeting Procedures;
- (vi) Any other notice or consultation requirements of the COGCC.

B. Owner shall not object or protest any Application for Permit to Drill (Form 2) and Oil and Gas Location Assessment (Form 2A) filed by Operator with the COGCC. Subject to this Agreement, Owner agrees to allow Operator to locate the Wells and Facilities on the Lands as generally shown on Exhibit A.

C. Owner 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, and to appeal the approval and issuance of the Form 2A, and any related Form 2.

D. Owner shall not oppose Operator, its agents, consultants, attorneys, successors and assigns in any COGCC or other administrative or governmental proceedings related to Operator'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 Operator's position and contemplated undertakings in such proceedings are consistent with this Agreement. Owner will provide Operator, its agents, consultants, attorneys, successors and assigns with any and all written support they may reasonably require to obtain permits from the COGCC or other applicable governmental body.

E. Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units, occupied buildings, and surface property lines, among other things. Owner hereby waives its right to object to the location of any Well, Access Roads and Facilities on the basis of setback requirements in the rules and regulations of the COGCC, including, but not limited to, the 150 foot setback from surface property lines and other requirements of rules 603.a.(2), and 604.a, except that the Parties intend to rely upon one or more exceptions of rule 604.b of the rules and regulations of the COGCC relating to property lines and urban mitigation areas or designated outside activity areas, as those terms may change or be defined and amended from time to time. For the operations contemplated by this Agreement, Owner hereby waives the Exception Zone, Buffer Zone, Urban Mitigation Area, and High Occupancy Building setback distances, as required by COGCC rules and regulations.

F. Owner understands that Operator may provide a copy of this Agreement to the COGCC in order to obtain a waiver, exception location, or variance from the COGCC rules or from a local jurisdiction.

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 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 exception of the default notice described in Paragraph 7), with subsequent written confirmation 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: Wade E. Castor  
22791 Highway 39  
Weldona, CO 80653**

**With a copy to: George H. Ottenhoff, Esq.  
Lind, Ottenhoff & Root LLP  
355 Eastman Park Dr., Suite 200  
Windsor, CO 80550**

**Operator:** Morning Gun Exploration LLC  
1601 Arapahoe Street, Box 1  
Denver, CO 80202  
Attn: Land Department

**12. BINDING EFFECT.** The covenants and conditions herein contained are all of the provisions of this Agreement, and 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. 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.

**14. CONFLICT.** This Agreement sets forth additional terms and conditions of the Lease between the parties hereto. If there is a conflict between this Agreement and the Lease with regard to surface use or damage issues, this Agreement shall control.

**15. COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either party.

**16. 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.

**17. ATTORNEY'S FEES AND COSTS.** The Parties agree that the prevailing Party in any action resulting from an alleged breach of this Agreement will be entitled to its reasonable attorneys' fees and costs incurred therein.

**18. 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.

**19. SUCCESSORS.** This Agreement may be assigned and 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.

**20. TERMINATION.** If Operator does not commence operations for the Wells within the primary term of the Lease, this Agreement will terminate in its entirety without penalty to either Party, or will otherwise be renegotiated.



EXHIBIT A

