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Niobrara

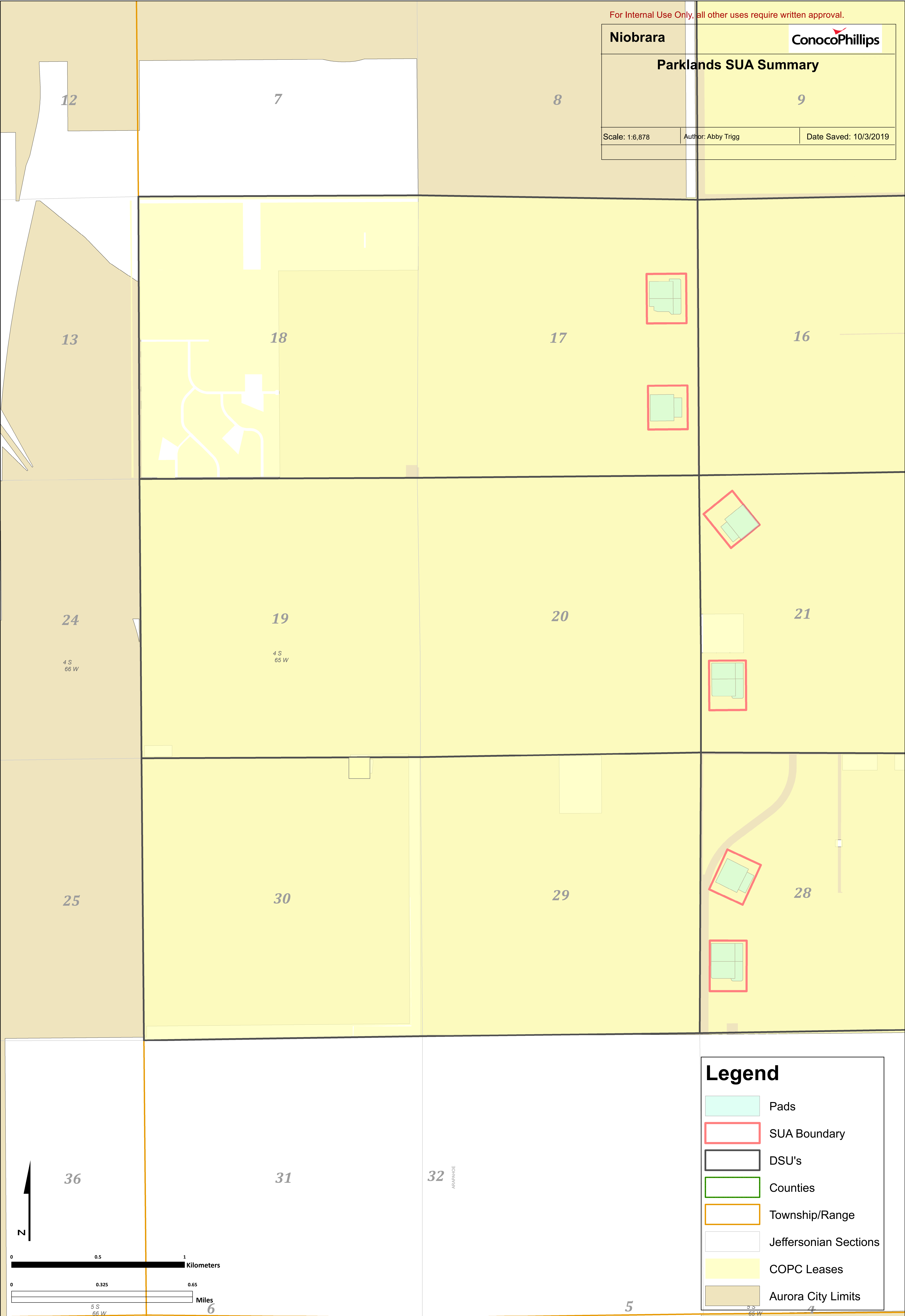
ConocoPhillips

Parklands SUA Summary

Scale: 1:6,878

Author: Abby Trigg

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## **AMENDED AND RESTATED SURFACE USE AND DAMAGE AGREEMENT**

This Amended and Restated Surface Use and Damage Agreement ("Agreement") is made and entered into on January 25, 2017, but effective January 26, 2011, among:

**Cherry Creek Vista Holding Partnership, LLP**, a Colorado limited liability partnership,  
**Eastern Hills, LLC**, a Colorado limited liability company,  
**Alpert Village 1, LLC**, a Colorado limited liability company,  
**ACJ Partnership**, a Colorado general partnership,  
**Coal Creek Reserve, LLP**, a Colorado limited liability partnership,  
**Murphy Creek LLC**, a Wyoming limited liability company,  
**Yale/MC LLC**, a Colorado limited liability company,  
**Alpert Corporation**, a Colorado corporation,  
**Cooper/Alpert #3, LLP**, a Colorado limited liability partnership, and  
**Harvest Investors LLC**, a Colorado limited liability company,

as the owners of the surface of the lands described hereafter, whose addresses are c/o Alpert Corporation, 3033 East 1st Avenue, Suite 725, Denver, CO 80206 (hereinafter collectively referred to as "Original Owner");

**EH 2002 LLC**, whose address is 250 Pilot Road, Suite 140, Las Vegas, NV 89119, and  
**Harvest & Jewell, LLC**, a Colorado limited liability company, whose address is 3515 S. Tamarac Drive, Suite 300, Denver, CO 80237 (hereinafter referred to along with ACJ Partnership as "Additional Owner") (hereinafter collectively referred to along with Original Owner as "Owner"); and

**Burlington Resources Oil & Gas Company LP, a Delaware Limited Partnership** whose address is Attention: Manager, Real Property Administration, P. O. Box 7500, Bartlesville, OK 74004-7500 (hereinafter referred to as "Operator").

### **WITNESSETH:**

**WHEREAS**, Original Owner owns the surface and certain portions of the mineral estate in the lands described on Exhibit A attached hereto (the "Owner Lands"); and

**WHEREAS**, Original Owner and Anadarko E&P Company LP ("Anadarko") entered into an Oil and Gas Lease dated January 26, 2011, as supplemented by Ratifications of Oil and Gas Lease and Surface Use Agreement dated March 29, 2011, and March 30, 2011, and a Corrected Ratification of Oil and Gas Lease and Surface Use Agreement dated June 19, 2014 (the "Owner OGL") covering the Owner Lands; and

**WHEREAS**, in connection with the execution of the Owner OGL, Original Owner and Anadarko entered into a Surface Use and Damage Agreement dated January 26, 2010 [sic] (the "Original Agreement"); and

**WHEREAS**, a "Memorandum of Surface Use and Damage Agreement" (the "Memorandum") was imbedded and recorded as Exhibit B to the Owner OGL in lieu of the unrecorded Original Agreement; and

**WHEREAS**, Operator is a successor in interest to Anadarko; and

**WHEREAS**, Original Owner and Operator desire to amend and restate the Original Agreement in accordance with the provisions of this Agreement and replace the Memorandum with this Agreement; and

**WHEREAS**, Additional Owner owns the surface of the lands described on Exhibit E attached hereto (the "Additional Owner Lands") (hereinafter collectively referred to along with the Owner Lands as the "Lands"); and

**WHEREAS**, portions of the Additional Owner Lands are impacted by the 1,000 Foot Buffer Area as defined in Section 2(b)(ii) of this Agreement; and

**WHEREAS**, the parties desire Additional Owner to become a party to this Agreement so that the Additional Owner and the Additional Owner Lands will become subject to and benefit from certain provisions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby declare that the Lands are subject to the following covenants, restrictions, and conditions, all of which are covenants running with the land for the purpose of allowing oil and gas exploration and development activities by Operator, which are binding on successors and assigns, and do hereby agree as follows:

**1. Definitions.**

"Allowable Well(s)" means any well with a surface location that is within an Oil and Gas Operations Area that meets each of the following requirements: (i) the well, if completed as a producing well, will be completed and produce solely from lands covered by an Owner OGL and any lands pooled therewith in accordance with the terms of the Owner OGL; (ii) Operator owns a working or operating interest in the well at the time the well is drilled and completed; and (iii) the well bore of the well (as originally drilled, and as such well may be deepened, recompleted, side-tracked or reworked) does not enter, penetrate or cross into any portion of the Lands outside of an OGOA at a subsurface depth of less than five hundred (500) feet below the surface.

"Applicable Agency" means the Colorado Oil and Gas Conservation Commission and other federal or State of Colorado administrative agencies, the City, or Arapahoe County, having operational jurisdiction over Operator's operations on the Land (for clarity, in certain circumstances one or more federal or State of Colorado agencies, or local agencies, may have concurrent jurisdiction over the operations of the parties).

"Applicable Agreements" means (a) this Agreement, (b) the Owner OGL, (c) agreements burdening Owner's title to the Lands that are relevant to Operator's use of the Lands and are of

record before the execution date of this Agreement, and (d) agreements burdening Owner's title to the Lands that are relevant to Operator's use of the Lands and are recorded on or after the execution date of this Agreement, copies of which have been provided to Operator by Owner.

"Applicable Laws" means all laws (including statutory and common law), rules, ordinances, regulations, codes or similar enactments by any federal, state, county, municipal or quasi-governmental entity with jurisdiction over the Lands or any portion thereof, as they may hereafter be enacted, issued or amended, including the rules of the Commission, ordinances of the City, the terms and conditions of applicable permits and the rules and regulations of the Applicable Agencies.

"City" means the City of Aurora, Colorado.

"Commission" means the Colorado Oil and Gas Conservation Commission.

"Directional Survey" means a well survey that measures the degree of departure of the wellbore from the vertical and the direction and distance of departure.

"Equipment Area" means an area(s) within an OGOA(s) that is designated for wellheads and production equipment necessary for the production of Allowable Wells.

"Oil and Gas Operations Areas" or "OGOA(s)" refers to those portions of the Lands depicted on the attached Exhibit B and described in Exhibit C, as such exhibits may be amended hereafter pursuant to the provisions of this Agreement.

"Third Party" or "Third Parties" means any party other than the Operator or its parent ConocoPhillips Company or the Owner.

"Unrecorded Consideration and Compensation Agreement" or "UCCA" means the unrecorded agreement signed contemporaneously with this Agreement providing compensation to the Original Owner for the rights, privileges, and uses granted to Operator herein.

## **2. Right of Use.**

(a) *Grant of Use Right.* Owner hereby gives and grants to Operator (which rights may be exercised by Operator through its agents, employees, drilling contractors, and related service companies), subject to the terms of the Applicable Agreements, (i) the exclusive right (subject to the site planning process outlined in Section 3) to enter upon and use the OGOAs solely for the purpose of constructing, drilling, completing, recompleting, fracturing, refracturing, reworking, operating, maintaining and producing one or more Allowable Wells at surface locations within the OGOAs, or at such exception locations within the OGOAs as are approved by the Commission, and (ii) subject to the provisions of Section 3 and other applicable provisions of this Agreement, a non-exclusive right-of-way (the "Right-of-Way") upon those portions of the Lands outside of an OGOA as may be designated pursuant to Section 3, for the sole and limited purpose of ingress and egress to and from

the OGOAs and the construction and maintenance of above ground improvements such as fencing, landscaping, excess topsoil and subsoil storage piles, and storm water BMPs and below ground improvements such as production gathering lines solely for handling production from an Owner OGL (or lands pooled therewith pursuant to the terms of the Owner OGL) and electric utility lines, which will be depicted on Exhibit C, as it may be amended from time to time, and (iii) a non-exclusive right, upon at least 48 hours' written or oral notice to Owner's Designated Representative as defined in Section 18, to enter upon the Lands solely for the purpose of survey associated with any Allowable Well, OGOA or the Right-of-Way. Without Owner's prior written permission, which may be withheld in its sole discretion, Operator shall not use, disturb or enter upon any portion of the Lands other than an OGOA or the Right-of-Way except as specifically permitted by this Agreement.

(b) *Setbacks.*

(i) Operator will comply with setback requirements imposed by Commission Rule 603(a)(1). To the extent permitted by Applicable Laws, Owner waives its right to object to any other setback requirements that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Operator, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement.

(ii) As set forth in the time table below (Figure 1), Owners will not plat lots ("Platting Restriction") or build or construct commercial, industrial, or residential structures (the "Building Restriction") (collectively referred to as "Restricted Uses") within 1,000 feet of any OGOA (the "1,000 Foot Buffer Area"). However, Owner may install infrastructure or make other uses of the 1,000 Foot Buffer Area (excluding the Restricted Uses) at any time. At the request of Operator, Additional Owner agrees to provide reasonable assurances to the City that it will not construct commercial, industrial or residential structures upon any lots or tracts that lie within the 1,000 Foot Buffer Area and that are platted within the Additional Lands as of the execution date of this Agreement.

(Figure 1)

OGO A ID as described on Exhibits B and C	Owner will not plat lots, or seek to build or construct commercial, industrial, or residential structures within 1,000 feet of an OGO A before
1	3/1/2020
2	3/1/2020
3	3/1/2022
4	3/1/2022
5	3/1/2020
6	3/1/2020
7	3/1/2023

If Operator secures all required state and local permits for an OGOA prior to the expiration date for such OGOA stated in Figure 1, Operator shall notify Owner and the Platting Restriction imposed by this Section 2(b)(ii) will terminate as to the subject OGOA.

If Operator completes its drilling program for an OGOA prior to the expiration date for such OGOA stated in Figure 1, Operator shall so notify Owner and the Building Restriction imposed by this Section 2(b)(ii) will terminate as to the subject OGOA.

(c) *Water Rights.* This Agreement will not cover any water rights that Owner may now or hereafter own or that are used on the Lands.

3. **Notification and Consultation and Additional Agreements.**

(a) *Notice and Consultation.* At least forty-five (45) days prior to submitting an application for an oil and gas permit to the City or an application for a material amendment to an existing oil and gas permit, Operator will notify Owner and provide to Owner a complete copy of the permit application. Operator and Owner will thereupon meet and consult regarding the location, grading and layout of the Equipment Area; the location and extent of Right-of-Way required for access roads, pipelines, and utility lines serving the OGOA; the efficient stockpiling or disposal of dirt; the design, construction and maintenance of landscaping required by the City; the type and design of fencing or other screening of improvements to be constructed upon the OGOA; noise mitigation; the location of storm water improvements; adjustments to the perimeter description of the OGOA that may be necessary to accommodate any of the foregoing; a reclamation plan; transportation plan; and other matters that are included within the permit application.

(b) *Mutual Accommodation.* With regard to the consultation required by Section 3(a), each party agrees to mutually cooperate with the other, in a timely manner, so as to reasonably accommodate both the Owner's desire to minimize intrusion upon and damage to the surface so as to preserve the Lands for future development and the Operator's right to utilize that amount of the surface as is reasonable and necessary to explore for, develop and produce oil and gas pursuant to the Owner OGL. Without limiting the foregoing, Operator will make commercially reasonable efforts to site permanent above ground facilities such as well heads and tank batteries in alternative locations suggested by Owner, to employ alternative means of operation, or to set the elevations of its Equipment Area and pipelines to accommodate future development of the surface, provided that such alternatives are technologically sound and reasonably available to Operator. In the event that Operator reasonably estimates a proposed accommodation to have an increased cost over and above the cost of the Operator's initial plan, Operator will afford Owner a reasonable opportunity to pay increased costs in a manner consistent with the payment of relocation costs pursuant to Section 3(k), or withdraw the request. With regard to its operations outside of an OGOA, Operator agrees, to the extent possible, to locate surface or above ground improvements such as roads, fencing, landscaping, excess topsoil and subsoil storage piles, and storm water BMPs, and below ground improvements such as pipelines and underground utility lines, within or adjacent to rights of way contemplated in Owner's most current land planning for future development of the Lands. It is intended that this consultation period and subsequent mutual accommodation process will not exceed forty-five (45) days from the time Operator provides the initial permit application materials.

Any disputes that arise between the parties during such consultation will be submitted to dispute resolution pursuant to Section 29 of this Agreement.

(c) *Permit Approval.* Upon completion of the consultation process pursuant to Section 3(a), Operator will revise its permit application in a manner consistent with such consultation, shall provide a copy of the final application to Owner and may submit the application to the City for approval. Operator will advise Owner of hearing dates for the application, and Owner agrees to reasonably cooperate with Operator (without undue expense on the part of Owner) to obtain the approval of the application and issuance of the City's oil and gas permit(s). Any material changes to the application required by the City as conditions of approval will be subject to notice and consultation pursuant to Sections 3(a) and 3(b), provided, however, that in lieu of forty-five (45) days' notice, notice shall be given within a reasonable time under the circumstances.

(d) *Amendment of Exhibits.* If the perimeter of an OGOA is changed in connection with the approval or amendment of a City oil and gas permit pursuant to this Section 3, the parties will execute an amendment to Exhibit B to reflect the final description of the OGOA and record such amendment in the office of the Clerk and Recorder for Arapahoe County, Colorado. Additionally, upon the approval of

City oil and gas permit(s) or a material amendment to a permit(s), Exhibit C will be amended to reflect the description and acreage of the OGOA and the final location of Equipment Areas and Right-of-Way as approved by such permit(s). The amended Exhibit C will be used to calculate subsequent compensation as detailed in the UCCA.

(e) *Notice of Commencement of Construction.* Operator shall notify Owner at least thirty (30) days in advance of commencing any earth moving or excavation operations on the OGOAs or Right-of-Way, including moving in drill or completion rigs or heavy equipment.

(f) *Directional Survey.* Upon Owner's written request, Operator will conduct a Directional Survey of each well drilled directionally on an OGOA, or from a surface location outside the Lands into the Lands, as it is being drilled and upon reaching total depth to verify that such well complies with the requirements of this Agreement and will furnish a copy of such survey to Owner within thirty (30) days after it is obtained by Operator.

(g) *Inspections and Reports.* Owner and its authorized agents and representatives will have access to the OGOAs and will have the right to witness and observe all operations conducted thereon, including the drilling, logging, testing, casing, completing, Directional Surveying, and plugging and abandonment of any well thereon. If Owner elects to access the OGOAs, it will abide by Operator's safety procedures and Owner must be accompanied by Operator's designated representative.

(h) *Operator Covenants.* Operator agrees that it will not (and that it will cause its Affiliates not to): (i) drill, deepen, recompleat, sidetrack or rework any well, whether such well has a surface location within a OGOA or a surface location outside of the Lands, such that any portion of the well bore of the well enters, penetrates or crosses into any portion of the Lands outside of a OGOA at a subsurface depth of less than five hundred (500) feet below the surface, or (ii) seek to locate or drill any well at any surface location that is within the Lands other than an Allowable Well on an OGOA as permitted by this Agreement. Operator will vote and make such elections and consents that it has the power to make under applicable operating agreements, unit operating agreements, unit agreements and other agreements consistent with this Agreement. Operator further agrees to provide a copy of title work procured by Operator regarding the Lands, redacted as appropriate to delete proprietary information relating: (1) to property other than the Lands and (2) title to mineral interests other than those owned by Owner. Any title information will be provided with no warranty by Operator regarding its accuracy and completeness, and Operator will have no liability of any nature whatsoever in connection therewith.

(i) *No Assurance.* Operator acknowledges that its operations are subject to applicable law, the rules and regulations of the Applicable Agencies, and the



Applicable Agreements. Owner is not giving Operator any assurance, and disclaims any representation or warrant to Operator, that Operator has the right to locate and drill any well on any OGOA under applicable law or the Applicable Agreements. Operator will be solely responsible for obtaining all required permits, consents and authorizations that may be necessary to conduct its operations and Operator assumes the risk of not obtaining any such permits, consents and authorizations.

(j) *Specific Operational Restrictions.* Operator will comply with Applicable Laws and the Minimum Standards attached hereto as Exhibit D. Operator agrees not to conduct its operations on the Lands in a manner that causes the City or other third party to declare a default by Owner under any of the Applicable Agreements; provided, however, that Operator will not be in default under this sentence if its operations have been conducted in compliance with its regulatory approvals granted to Operator by the City.

(k) *Relocation.* Owner will have the right to change the location of the Right-of-Way by terminating the existing Right-of-Way and granting Operator a substitute Right-Of-Way acceptable to Operator on similar terms and conditions, but at no additional cost to the Operator, and require Operator to relocate any roads, pipelines, power lines, fencing, landscaping, excess topsoil and subsoil storage piles, and storm water BMPs located on the Right-of-Way (the "Relocated Facilities") to such substitute Right-Of-Way upon ninety (90) days prior written notice to Operator. Operator will provide Owner with a bona fide third party estimate of the costs for the relocation of the Relocated Facilities. Owner will have the right to withdraw the relocation request within ten days after receipt of the estimate. Unless Owner withdraws the relocation request, Operator will, within such ninety (90) day period, commence the relocation of the Relocated Facilities to the substitute Right-of-Way, if required permits can be reasonably attained in that time frame. Operator will diligently pursue the relocation work, but will not be required to abandon the use of its existing Relocated Facilities until relocation work has been completed unless Operator, in its sole discretion, determines that such abandonment will not jeopardize its operations. Notwithstanding the above, Operator will be under no obligation to commence any relocation activities unless and until Owner has paid the estimate to Operator or furnished Operator a bond, letter of credit or other security acceptable to Operator for payment of such amount. Upon completion of the relocation, Operator will furnish Owner a full accounting of the costs and expenses of the relocation. If the cost of the relocation is less than the estimate, Operator will refund the difference to Owner and if the cost of the relocation is more than the estimate, Owner will pay the difference to Operator within ten (10) days of receiving Operator's invoice provided Owner will not pay more than one hundred twenty percent (120%) of the estimate furnished to Owner.

(l) *Subsequent Modification of OGOAs.* Upon the completion of drilling of the initial well within an OGOA, Owner, after consultation with Operator, may propose a revised legal description for the subject OGOA that maximizes the

setbacks from the well and associated surface facilities to adjacent portions of the Lands that are contemplated for residential or commercial development. Operator agrees not to unreasonably withhold its consent to such a modification of the subject OGOA if such modification does not materially impair the technical feasibility or the safety of extracting oil and gas from such OGOA. In the event that Operator reasonably estimates such modification to have an increased cost over and above the cost of the Operator's initial plan, Operator will afford Owner a reasonable opportunity to pay increased costs in a manner consistent with the payment of relocation costs pursuant to Section 3(k), or withdraw the request. A legal description of the modified OGOA will be prepared by a Colorado licensed surveyor at the expense of Owner and will be attached to this Agreement as an amended Exhibit C and, at Owner's expense, Exhibit B will be amended to reflect the adjusted location of the OGOA. If compensation for the OGOA has already been paid pursuant to the UCCA, an adjustment to the location of such OGOA pursuant to this Section will not result in any adjustment to the amount paid. If compensation for the OGOA has not been paid as of the date of an adjustment pursuant to this Section, compensation for such OGOA will be based upon the amended Exhibit C prepared pursuant to this Section.

(m) *Owner's Permitted Uses.* Although Operator's use of an OGOA is generally exclusive as specified in Section 2(a), in connection with the consultation conducted pursuant to Sections 3(a) and 3(b), Operator will reasonably consider what non-intensive uses (such as the construction and operation of underground utilities and appurtenant above-ground appurtenances, parking, primitive ranch roads, trails or other recreational use, berms or landscaping, signage, or similar uses) ("Permitted OGOA Improvements") may be conducted by Owner within the portion of an OGOA outside of the Equipment Area (the "Reclamation Area"), provided, however, that: (i) any such use shall be conducted at the sole risk and expense of Owner; and (ii) no habitable structures requiring a building permit will be placed by Owner within the Reclamation Area without Operator's prior written consent which will not unreasonably be conditioned or withheld; and (iii) Operator and its contractors will not be liable for damages to Permitted OGOA Improvements, including any structures, caused by its oil and gas operations, subject to limitations in Section 15; provided, however, that Operator will make reasonable efforts to avoid damage to or the disruption of the use of Permitted OGOA Improvements. Subject to the foregoing, however, Owner will be responsible for the repair and replacement of any Permitted OGOA Improvements.

**4. Compensation.** Compensation for the rights, privileges, and uses granted hereunder, and for damages incurred with respect to Operator's use of the OGOA(s) and Right-of-Way, is provided for in the UCCA. All payments made to Original Owner will be by draft, certified funds, cashier's check, wire transfer, or check from Operator, as reasonably specified by Original Owner.

**5. Road Construction and Use.** Any roads constructed or used by Operator on the OGOAs or Right-of-Way will be constructed or used to the following specifications:

(a) *Use of Existing Roads.* To the maximum extent possible, Operator will use existing roads or road locations designated by Owner for its operations or future development, and if construction of a new road is required that is not within the Right-of-Way as described in an amended Exhibit C, Operator will consult with Owner and obtain Owner's consent to the location of the new road, which consent will not be unreasonably withheld.

(b) *Specifications.* The surface of all roadways will be made of compacted gravel, will not exceed twenty-three (23) feet in width for traveled surface and will comply with Applicable Laws.

(c) *Dust Control.* Operator will control dust from all roadways through the application of an appropriate dust suppressant.

(d) *Gates.* If requested by Owner, access to the Lands of Owner from any public road, or from the land of any adjoining land, will be controlled by a swinging metal gate in addition to a cattle guard.

(e) *Culverts.* Properly sized culverts will be placed in low areas for proper drainage.

(f) *Off-Road Travel.* No off-road travel is permitted, particularly off-road travel that has the effect of widening the road or area of damage.

(g) *Weeds, Trash.* Operator will keep roads used by it free of weeds, debris, and litter, and will conduct periodic pickup of trash caused by its operations, contractors or employees, if requested by Owner.

(h) *Non-Exclusive.* The use and construction of roads by Operator on the Right-of-Way is a non-exclusive use, and Owner may allow other parties to use said roads and make a charge therefor. However, Operator will have the right to assess other users of the roads for oil and gas operations for their share of maintenance work performed by Operator.

(i) *Signage.* If requested by Owner, Operator will place an appropriate sign or signs on any road, designating them as "private roads", and to assist Owner in the control of the use of such roads by unauthorized users. The size and color of such signs will be subject to Owner's approval.

(j) *Locks.* Owner may lock gates across its private roads, provided that Operator will have the right to place its own locks on such gates.

(k) *Maintenance.* Operator will maintain existing and newly constructed roads used by Operator to the reasonable satisfaction of Owner, which maintenance may include resurfacing, ditching, graveling, blading, mowing grass to avoid fire danger, installing and cleaning cattle guards, maintaining storm water

control devices or Best Management Practices ("BMPs"), dust control, and spraying for noxious weeds. This work will be done at such reasonable times as Owner will request. Owner will have no responsibility for road maintenance until roads are merged into Owner's development as described in Section 5(l) of this Agreement, at which point:

(i) If the roads are dedicated to a public or quasi-public entity, road maintenance will be governed by the road maintenance agreement approved by the City in connection with the oil and gas permitting process or, if none, by Applicable Laws. Notwithstanding the foregoing, however, during any probationary or warranty period imposed by the City as a condition of acceptance of the roads, Operator will contribute to Owner a portion of the cost of warranty repairs that are required due to usage of the road. Except as provided in Section 15, Operator will not be required to contribute toward the cost of warranty repairs that arise out of other causes, such as faulty workmanship in construction of the road or acts of God. Operator's contribution will be based upon its proportionate share of traffic upon the subject road and the load equivalency factor of vehicles utilizing the road (as determined pursuant to AASHTO procedures and standards). The share of road maintenance costs to be paid by Operator pursuant to this Section 5(k)(i) will initially be determined by a licensed Colorado traffic engineer engaged by Owner or its designee, but is subject to dispute resolution pursuant to Section 29 of this Agreement.

(ii) If the roads remain as private roads, road maintenance will be conducted and paid for as the parties may agree or, in the absence of agreement, by Owner or its designee (for example, a homeowners association), provided, however, that, except as provided herein, Operator will contribute a portion of the annual costs of road maintenance (including reserves for future road repairs and gravel resurfacing) based upon its proportionate share of traffic upon the subject road and the load equivalency factor of vehicles utilizing the road (as determined pursuant to AASHTO procedures and standards). Operator will not be responsible for paving any private roads that were initially constructed to support its operations. Owner or designee may pave any private road in use by Operator, and Owner or designee will be responsible for all costs of the initial paving and subsequent maintenance. The share of road maintenance costs to be paid by Operator pursuant to this Section 5(k)(ii) will initially be determined by a licensed Colorado traffic engineer engaged by Owner or its designee, but is subject to dispute resolution pursuant to Section 29 of this Agreement.

(l) *Improvement by Owner.* Owner will have the right, at its expense, to improve roads constructed by Operator and to integrate them into the road system that is designed for surface development of the Lands, which may entail relocation of the roadways. Owner and Operator agree that once surface development begins, the parties will consult with each other utilizing the principles stated in Section 3(b) and agree on how the roads used in the operations of the oil and gas activities will be merged into the development roads.

6. **Well Sites.** The approximate size of each OGOA is identified on the Exhibit B and reflects the estimated size reasonably necessary for Operator to conduct its intended operations, including but not limited to constructing, drilling, completion, fracturing, reworking, producing, and maintaining well sites and Equipment Areas within an OGOA. Operator may reenter any OGOA upon which a well is located in order to drill additional wells on the OGOA if necessary, in Operator's judgment reasonably exercised, to maximize the production of oil and gas from the Lands. Operator will fence all Equipment Areas in a manner to prevent livestock and persons from entering the fenced area, and at all times keep its operations in good order and free of litter, debris, trash, or spilled hydrocarbons. Compressors on OGOAs for wells within a single OGOA are permitted. Compressor stations (defined as serving multiple OGOAs) are not permitted without Owner's prior written consent.

7. **Pipelines.**

(a) *Location and Depth.* All pipelines authorized under this Agreement will be located within OGOAs or the Right-of-Way. Except as otherwise agreed during the consultation of the parties pursuant to Sections 3(a) and 3(b), outside of an Equipment Area, all pipelines will be at least forty-eight (48) inches below the surface of the ground at the date of construction and will be constructed in such a manner to safely permit Owner to construct roads and utilities over such power line in such locations as may be designated by Owner and approved in writing by Operator, such approval not to be unreasonably withheld. All trenches will be fully reclaimed and reseeded to the reasonable satisfaction of Owner. If pipeline trenches settle, Operator shall fill in, repack, and level such trenches upon request by Owner. In connection with any uses by Owner permitted by this Agreement within the Right-of-Way or peripheral portion of an OGOA, Owner agrees not to increase the depth of a pipeline to more than six (6) feet or reduce the depth to less than thirty-six (36) inches.

(b) *As-Built Survey.* Promptly after the installation of a pipeline outside of an Equipment Area, Operator, at its sole expense, will provide Owner with a survey prepared by a Colorado licensed surveyor showing the "as-built" depth and location of the pipeline(s). As-Built surveys of piping and flowlines located within an Equipment Area are not required.

(c) *Permitted Uses.* The pipelines permitted by this Agreement are limited to and include only pipelines used solely in connection with Allowable Wells. Easements for pipelines that, in whole or in part, transmit oil or gas not exclusively produced from the Lands or lands pooled therewith pursuant to the terms of an Owner OGL are subject to separate agreements between Owner and the Third Party transmission company or Third Party pipeline contractor.

(d) *Abandonment and Reclamation.* If Operator fails to use any pipeline for a period in excess of twenty-four (24) consecutive months, the pipeline will be deemed abandoned. Upon the abandonment or other permanent cessation of use of a pipeline, Operator will reclaim the affected portions of the OGOA in accordance with the provisions of Section 14 of this Agreement.

8. **Power Lines.** Any power lines constructed by Operator on the OGOAs or Right-of-Way will be constructed and maintained to the following specifications:

(a) *Location.* Operator will cause power lines serving an OGOA to be constructed within the Right of Way identified and approved pursuant to Sections 3(a) and 3(b) of this Agreement. If alternative locations become necessary, Operator will consult with Owner and with the independent power company supplying power to Operator with respect to such alternative locations of such power lines prior to construction, and will obtain Owner's written consent for such alternative locations, which consent will not be unreasonably withheld.

(b) *Underground.* To the extent permitted by Applicable Laws, power lines serving an OGOA may initially be installed above ground. Within two (2) months after a well has been placed in production, all power lines constructed by or for Operator downstream of the independent power company's meters will be buried, and all power line trenches will be fully reclaimed and reseeded to the reasonable satisfaction of Owner. Except as otherwise agreed during the consultation of the parties pursuant to Sections 3(a) and 3(b), buried power lines outside of an Equipment Area will be installed at least thirty-six (36) inches below the surface of the ground and will be constructed in such a manner to safely permit Owner to construct roads and utilities over such power line in such locations as may be designated by Owner and approved in writing by Operator, such approval not to be unreasonably withheld.

(c) *Grant of Easement.* Owner hereby grants permission for any local electric company to raise, move, and/or install utility lines within the Right-of-Way when requested by Operator in connection with any OGOA. Owner will execute utility easements with such local electric company as necessary to comply with this provision. Should Owner desire to modify the form of agreement provided by the electric company, Owner will negotiate in good faith directly with the electric company.

9. **Operations.** Operator's operations on the OGOAs and Right-of-Way will be conducted according to the following specifications:

(a) *Maintenance.* Operator will at all times keep OGOAs and Right-of-Way safe and in good order, free of noxious weeds, litter and debris, and will spray for noxious weeds upon reasonable demand by Owner or as required by Applicable Laws.

(b) *Cattle Guards and Fences.* All cattle guards and fences installed by Operator will be kept clean and in good repair and will become the property of Owner when Operator ceases ownership of its Owner OGL covering that portion of the Lands.

(c) *Hazardous Materials.* Operator will implement best management practices to avoid the spill, release or discharge of any pollutants, contaminants, chemicals, solid wastes, or industrial, toxic or hazardous substances or wastes on the Lands. Any such spill, release or discharge, including of oil, gas, grease or solvents, that occurs on the Lands will promptly be remediated in compliance with Applicable Laws. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Lands that are reportable to regulatory authorities under applicable law or regulations will be promptly reported to Owner by telephone, fax, or e-mail.

(d) *Vegetation.* Operator will remove only the minimum amount of vegetation necessary for the construction of roads, well locations, and other facilities. Topsoil will be conserved during excavation, stockpiled and reused as cover on disturbed areas to facilitate regrowth of vegetation.

(e) *Surface Facilities.* All surface facilities not subject to safety requirements will require Owner's consent and will be painted the Operator's colors, otherwise designed to blend with the natural color of the landscape.

(f) *Living Quarters.* No living quarters will be constructed upon the Lands, except that drilling crews and geologists or service personnel may use temporary living quarters during drilling, completion, or reworking activities.

(g) *Fencing.* Operator will not fence any access roads or Right-of-Way without the prior consent of Owner, which will not be unreasonably withheld. Notwithstanding the above, fences that have been identified on permit documents during the Notification and Consultation Process specified in Paragraph 3 do not require consent. Fencing constructed by Operator within an OGOA will comply with Applicable Laws as of the date that the fence is constructed, but, as development occurs upon the Lands within the vicinity of the OGOA, will be upgraded by Operator to meet the requirements imposed by Applicable Laws for the then-current level of development. The materials and design of fencing will be subject to approval by Owner, which will not be unreasonably withheld.

(h) *Gates.* Operator and its employees, agents, and contractors will leave all gates located on the Lands as they found them; gates found closed are to be closed; gates found open are to be left open. Gates installed exclusively for access to OGOAs will be kept closed and locked at all times, except during periods of continuous operations within the OGOA.

(i) *Firearms, Recreational Activities, Animals.* None of Operator's employees, agents, or contractors, or any other person under the direction or control of Operator will be permitted to carry firearms or any other weapon on the Lands, and such persons will not hunt, fish, or engage in recreational activities on the Lands. No dogs will be permitted on the Lands at any time. Operator will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunt-

ing, fishing, or recreational activities will be allowed on the Lands. Notwithstanding the foregoing, this provision does not apply to law enforcement units or personnel, whether on or off duty, who may serve as security contractors for Operator. None of Operator's employees, agents, or contractors, or any other persons under the direction or control of Operator, will possess or be under the influence of alcohol or drugs that are illegal under federal law while on the Lands.

(j) *Compliance With Law.* Operator will conduct operations and activities on the Lands in accordance with, and will strictly comply with all Applicable Laws. Operator will also obtain any permit, consent, license, or other authorization required by law or by any governmental authority having jurisdiction.

(k) *Fire.* Operator will take all reasonable steps to prevent fire and to promptly extinguish fire caused by its operations. Operator will fully and promptly compensate Owner for all damages caused by fire arising out of Operator's operations, including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

(l) *Dust.* Operator will conduct dust suppression in such areas and at such times as Owner reasonably requests or as required by Applicable Laws.

(m) *Landscaping.* Operator will comply with the City's landscaping requirements and provisions of the applicable City oil and gas permit, provided, however, that Operator will request (and Owner will support) the deferral of landscaping requirements until such time as lots are platted upon the Lands within three hundred fifty (350') feet of the subject Equipment Area within an OGOA (the "Platting Trigger") or the maximum period allowed by the City, whichever is shorter. The 350' Platting Trigger is independent of any distance requirement imposed by the City, and is intended to provide Operator with flexibility in addressing landscaping requirements imposed by the City, to the extent permitted by the City. Until a permanent irrigation water supply is present, landscaping will be xeriscaped so as to minimize the requirements for water or intensive maintenance. Operator will be responsible for maintaining such landscaping until the Platting Trigger occurs for an OGOA, at which time: (i) Operator will bring the landscaping for the subject OGOA into compliance with the standards imposed by Applicable Laws for the then-current level of development; (ii) Owner will accept maintenance responsibility for the landscaping associated with the OGOA; and (iii) Owner will have the right, but not the obligation, to intensify or upgrade the landscaping for the OGOA within the landscaped area established by Operator and to install an irrigation system for the landscaped area (which improvements will be considered to be and will be governed by the provisions of this Agreement applicable to Permitted OGOA Improvements pursuant to Section 3(m)).



(n) *Noise Mitigation.* Unless stricter standards are imposed by an applicable Noise Mitigation Plan as provided below, drilling and completion operations that occur within an OGOA must comply with the Commission noise standards set out in Rule 802.b, as it may hereafter be amended, but may not exceed the levels specified in Rule 802.b as it is in effect as of the execution date of this Agreement. During oil and gas production, the noise generated by the facility may not exceed the Commission noise standards set out in Rule 802.b, as it may hereafter be amended, but may not exceed the levels specified in Rule 802.b as it is in effect as of the execution date of this Agreement. Measurements protocols shall be governed by Commission Rule 802.c, as it may hereafter be amended. The noise levels described in this paragraph are referred to herein as the “Noise Standard.”

Pursuant to Sections 3(a) and 3(b), the Operator will provide a Noise Mitigation Plan (the “NMP”) prescribing noise limits or mitigation procedures to be followed while conducting its operations within a specified OGOA(s). Operator will consult with Owner on the NMP and if necessary, revise the plan to accommodate the current adjacent land use, or to address changes in mitigation measures that will be necessary to accommodate foreseeable future land uses if and as they occur, to ensure compliance with the Noise Standard. Subject to compliance with the Noise Standard, specific mitigation measures in the NMP will be selected at the Operator’s sole discretion. If Owner desires Operator to revise the NMP to accommodate specific or additional noise mitigation measures to reduce noise levels below the Noise Standard (the “Suggested Revisions”), Operator will evaluate such requests and will make commercially reasonable efforts to accommodate the Suggested Revisions to the extent that the Suggested Revisions are technologically sound and reasonably available to Operator. In the event that Operator reasonably estimates any Suggested Revisions to have an increased cost over and above the cost of the Operator’s initial NMP Operator will afford Owner a reasonable opportunity to pay increased costs in a manner consistent with the payment of re-location costs pursuant to Section 3(k), or withdraw the request.

(o) *Flaring.* Except during initial flowback of a well, or during upset or emergency conditions, Operator will not utilize direct venting or open flaring for the purpose of removing natural gas or other vapors.

(p) *Closed-Loop.* Drilling operations will utilize a closed-loop or “pit-less” drilling fluid system

(q) *Produced Water.* With respect to any water produced from wells drilled on the OGOAs in connection with the production of oil, gas, or other hydrocarbons, Operator agrees to remove the same from the Lands and properly dispose of such produced water off the Lands. Operator will not construct evaporation pits for produced water. Class II injection wells will not be permitted within the OGOAs for liquid waste disposal.

(r) *Storage.* The OGOAs and Right-of-Way will not be used for storage of construction materials, equipment or other personal property except as may be incidental to Operator's on-going operations.

10. **Limitation on Rights.** The OGOAs and Right-of-Way may not be used in connection with operations on premises other than the Lands and lands pooled therewith for Operator's oil and gas operations without Owner's written consent. Operator shall not occupy or utilize the surface of the Lands outside of the OGOAs and Right-of-Way except in the event of an emergency or with Owner's prior written consent, which may be withheld at Owner's sole discretion.

11. **[Intentionally omitted]**

12. **Seismic Operations.** Seismic operations on the Lands are specifically permitted provided Operator tenders Owner five dollars (\$5.00) per acre comprising the Lands and that such operations are completed before the date that Construction Drawings are submitted for those portions of the Lands upon which seismic operations are to be conducted. As used in this Section, "Construction Drawings" means plans and specifications submitted to the City for approval prior to the commencement of on-site development activities.

13. **Extraordinary Damages.** The compensation provided for herein is acknowledged by Owner as sufficient and in full satisfaction for damages and use of the Lands caused or created by the reasonable and customary entry, rights-of-way, and operation and use of OGOAs and Right-of-Way, but does not include damage to livestock, buildings, or improvements, or injuries to persons. This Agreement does not relieve Operator from liability due to Operator's negligence or due to spills or discharges of any hydrocarbon or toxic substance or hazardous chemicals or wastes, or from leaks or breaks in Operator's pipelines. Damage to or loss of livestock will be paid for by Operator at market value or replacement cost.

14. **Reclamation and Reseeding.**

(a) *Compliance With Laws.* Portions of the Lands disturbed by Operator's activities pursuant to this Agreement will be reclaimed on an interim and final basis in compliance with Commission Rules 1003 and 1004, other Applicable Laws, this Agreement and the Minimum Standards. Except as expressly provided herein, nothing in this Agreement will be deemed to waive or relieve Operator from the obligation of complying with such rules, laws and standards. If Commission Rules contain different time limits for the performance of reclamation work on different categories of real property, the shortest time limit will be deemed to be applicable to the Lands.

(b) *Restoration.* Unless Owner otherwise agrees in writing, within the times provided in applicable Commission Rules in connection with Operator's operations on any OGOA or the Right-of-Way, Operator will comply with the following provisions:

(i) Operator will perform interim reclamation in accordance with Commission Rule 1003. Operator will use its best efforts to complete interim reclamation

within the time limits prescribed by such rule, without requesting an extension thereof unless a delay is caused by conditions outside of the control of Operator.

(ii) Upon the plugging and abandonment of a well, Operator will fully restore and level the surface of the Lands affected by such terminated operations as near as possible to the contours that existed prior to such operations (except as provided in Section 14(b)(iii) below). Operator will use water bars and other measures as appropriate to prevent erosion and non-point source pollution. Unless Owner, in its sole discretion, consents to the abandonment of such facilities in place, pipelines and underground utilities appurtenant to the well will be removed and the surface restored. Unless a shorter time is prescribed by Commission Rules, Operator will use its best efforts to complete its work under this subsection within one year after the final plugging and abandonment of the last well within an OGOA, without requesting an extension thereof unless a delay is caused by conditions outside of the control of the Operator.

(iii) In lieu of restoration pursuant to Section 14(b)(ii), Owner, in its sole discretion, may: (A) direct Operator in writing not to reclaim specific areas, such as roads or utilities, that Owner desires to utilize for its future use of the Lands; or (B) to the extent permitted by Applicable Laws, require Operator to pay Operator's estimated costs of reclamation work as required by Applicable Laws or this Agreement to Owner and, in such event, Owner will conduct restoration work and Operator will be relieved of any obligation in connection therewith except as provided herein and Owner will execute a written release of Operator to that effect. To the extent required for the operation of this Section 14(b)(iii), Operator may seek an exemption from Commission Rule 1004 pursuant to the provisions of Rule 1001.c. Any reclamation work performed by Owner pursuant to this Section 14(b)(iii) will comply with or exceed the minimum reclamation standards imposed by Commission Rules. Notwithstanding any other provision of this Section, however, the performance of reclamation work by Owner pursuant to Section 14(b)(iii) will not relieve Operator of its environmental indemnity under Section 16 below.

(c) *Revegetation.* Unless otherwise agreed by Owner, all areas disturbed by Operator's activities will be reseeded with suitable grasses or crops approved by Owner (not to be unreasonably withheld if Operator's selection complies with rules of the Commission). In the absence of direction from Owner, no reseeded (except for borrow pits) will be required on any access roads existing as of the date of this Agreement or roads designated by Owner for retention pursuant to Section 14(b)(iii). It will be the duty of Operator to ensure that a growing ground cover is established upon disturbed soils and Operator will reseed as necessary to fulfill that obligation. If Owner so requests, Operator will construct and remove fences for the purpose of temporarily excluding livestock from newly seeded areas.

(d) *Weed Control.* It will further be the duty of Operator to inspect and control all noxious weeds as may become established within areas used or disturbed by Operator. Operator will inspect disturbed areas from time to time and as Owner will reasonably request in order to determine the growth of ground cover and/or noxious weeds. Operator

will reseed ground cover and control noxious weeds from time to time to the extent necessary to accomplish its obligations hereunder. Operator recognizes that this will be a continuing obligation during the duration of this Agreement and Operator will reseed ground cover and/or control noxious weeds until areas disturbed by Operator are returned to as near a condition as existed prior to construction.

15. **Indemnification.** No party to this Agreement will be liable for, or be required to pay for, consequential, punitive or exemplary, incidental or indirect damages to any other party to this Agreement for activities undertaken within the scope of this Agreement.

Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 16 below) or out of other provisions of this Agreement (which claims will be governed by the terms of this Agreement), each party will be and remain responsible for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations or activities on the Lands, no matter when asserted, subject to applicable statutes of limitation. Each such party will release, defend, indemnify and hold the other parties, their officers, directors, employees, agents and contractors, successors and assigns, harmless against all such Claims. This provision does not, and will not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein. Notwithstanding anything in this Agreement to the contrary, Operator will compensate Owner for any damage, loss, or claim which Owner sustains because Operator did not act as a reasonable and prudent operator. The liability under this Section of the entities comprising Owner will be several, and not joint or joint and several.

Upon the assignment or conveyance of a party's interest in any portion of the Lands, that party will be released from its indemnification provided above for such assigned or conveyed Lands, for all actions or occurrences happening after such assignment or conveyance.

16. **Environmental Indemnity.** The provisions of Section 15 above, except for the first paragraph thereof, will not apply to any environmental matters, which will be governed exclusively by the following:

"Environmental Claims" will mean all claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims will not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a claim by a governmental body or other third party;

"Environmental Laws" will mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards

with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

Operator will protect, indemnify, and hold harmless Owner from any Environmental Claims relating to the Lands or the Owner OGL(s) that arise out of Operator's ownership and operation on the Lands and its ownership and operation of any pipeline easement or right-of-way on the Lands. Owner will fully protect, defend, indemnify and hold harmless Operator from any and all Environmental Claims relating to the Lands that arise out of Owner's operations on the Lands. This indemnity specifically covers the completion or fracturing or refracturing of any well drilled by Lessee on the leased premises or lands pooled or unitized therewith.

**17. Exclusion From Indemnities.** The indemnities of the parties herein will not cover or include any amounts which the indemnified party is actually reimbursed by any third party, net of reasonable attorneys fees and costs incurred by the indemnified party in recovering such amounts. The indemnities in this Agreement will not relieve any party from any obligations to Third Parties.

**18. Designated Contact Person; Notice.** Operator and Owner will each from time to time designate an individual (the "Designated Representative"), with appropriate 24-hour telephone and fax numbers, who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement. Current contact information for each party's Designated Representative is as follows:

Owner:	Alpert Corporation 3033 East 1st Avenue, Suite 725 Denver, CO 80206 Attn: Mark Nickless Telephone: (303) 773-3400 Facsimile: (303) 694-6445
Operator:	Burlington Resources Oil & Gas Company LP Attention: Manager, Real Property Administration P. O. Box 7500 Bartlesville, OK 74004-7500 Telephone: 303-268-3711 Facsimile: 303-268-3729

24-hour Emergency Number: 855-595-8258

Except as specifically permitted by this Agreement, any notice required or permitted by this Agreement must be given to the recipient's Designated Representative, in writing and will be effective, as applicable: if notice is personally delivered, upon the date of personal delivery; if sent by facsimile, upon the date of transmission as evidenced by the sender's facsimile records showing error

free transmission; if delivered by nationally recognized overnight carrier, one business day after the timely deposit of the notice with such carrier, next business day delivery fee pre-paid; if sent by United States mail, certified mail return receipt requested, three business days after the notice is deposited, postage pre-paid. Additionally, a copy of any notice given to Owner must also be given by overnight delivery or certified mail, return receipt requested, to:

Cooper Investments  
3515 South Tamarac Drive, Suite 300  
Denver CO 80237  
Attn: Marc L. Cooper

and to:

EH 2002 LLC  
250 Pilot Road, Suite 140  
Las Vegas, NV 89119  
Attn: Robert M. Evans, Senior Vice President

Additionally, a copy of any notice given to Operator must also be given by overnight delivery or certified mail, return receipt requested, to:

ConocoPhillips Company  
Surface Land Department  
34501 E. Quincy Ave  
Watkins, Co 80137  
Attn: Supervisor

Any recipient may change the contact information for notices by giving notice to the other parties pursuant to this Section.

**19. Assignment.** This Agreement runs with the Lands and, with Owner's prior written consent, will be assigned by Operator in connection with an assignment of all of Operator's oil and gas leasehold rights under any Owner OGL or the designation of operatorship for any well(s) or Owner OGL to a Third Party. Owner's consent to an assignment will not be withheld if: (i) a reasonable business person would conclude that the proposed assignee has the financial strength and technical ability to perform the obligations of Operator under this Agreement and to discharge any liabilities assumed in connection with the assignment; and (ii) the proposed assignee has satisfied the requirements of Sections 21(d) and 22(b) applicable to an assignee. No assignment or designation will be effective unless and until the assignee or designee has executed an instrument expressly agreeing to assume all of Operator's obligations under this Agreement, the subject Owner OGL, and the UCCA.

**20. Enforcement Costs.** If either party defaults under this Agreement, the defaulting party will pay all costs and expenses, including a reasonable attorney's fee, incurred by the non-defaulting party in enforcing this Agreement, with or without litigation.

21. **Insurance.** Operator will maintain during the term of this Agreement:

(a) *Workmen's Comp.* Insurance which will comply with all applicable Workers' Compensation and Occupational Disease Laws and which will cover all of the Operator's employees performing any work or activities as to the Property.

(b) *Liability.* Commercial General Liability Insurance, including contractual liability coverage as well as sudden and accidental pollution liability coverage, with a combined bodily injury and property damage limit of at least \$5,000,000 per occurrence.

(c) *Environmental.* Environmental Impairment Liability Insurance with a limit of at least \$5,000,000 per occurrence. Operator will ensure that it and its contractors' insurers waive all rights of recovery or subrogation against Owner, its parent, subsidiaries, affiliates, agents, directors, officers, employees, servants, co-lessees or co-venturers. As to such liability insurance, Owner will be named as an additional insured to the extent of Operator's liabilities and obligations hereunder that are covered by such Liability insurance. Such liability insurance of Operator will be written on customary policy forms and by insurance companies with ratings of no less than A- VII or better. Upon request, Operator will endeavor to furnish Owner with certificates of insurance evidencing compliance with this provision. All such certificates must be signed by authorized representatives of the insurance companies and provide for not less than ten (10) days prior written notice to Owner in the event of cancellation affecting Owner's interest. Neither failure to comply, nor full compliance with the insurance provisions of this Agreement, will limit or relieve Operator from its indemnity obligations in accordance with this Agreement. Operator agrees to maintain all such liability insurance in accordance with the terms of this Section 23 until the termination of this Agreement.

(d) *Self-Insurance.* Notwithstanding the above, Operator may elect to self-insure all or any part of its insurance requirements to the extent allowed by applicable law. Upon request, Operator will provide Owner with a letter of self-insurance. The Operator's contractual obligations are in no way diminished by the submittal of such self-insurance letter with respect to the liabilities assumed by the Operator in this Agreement. In the event of an assignment or transfer of this Agreement, as a condition precedent to the effectiveness of such assignment, the assignee or transferee will be required to provide insurance coverage that is reasonably acceptable to Owner before Owner will be required to consent to such assignment.

**22. Bond.**

(a) *Compliance with Laws.* Operator agrees to promptly purchase and post any and all bonds, supplemental bonds, or other security which may be required of it pursuant to Applicable Laws.

(b) *Well Abandonment Bond.* Except as provided herein, Operator will deliver to Owner a plugging and abandonment bond in the amount of \$100,000 per well to secure Operator's obligations to plug, abandon, and restore the well and well site in accordance with Applicable Laws and the Applicable Agreements, issued by an insurance company, surety, or other financial institution with a rating of A-VII or better. Operator will maintain this additional bond in full force and effect, at Operator's sole cost and expense, until the applicable well and well site have been permanently plugged, abandoned, and restored, all in accordance with Applicable Laws and the Applicable Agreements, and the Applicable Agency has accepted the notice of the plugging and abandonment of such well without requesting further action by Operator. Operator's intention not to renew, or its failure to maintain, the additional bond in force will entitle Owner to full payment of the face amount of the bond. The requirements of this Section 22(b) will run to the benefit of and be personal to the Owner signatories to this Agreement below, their affiliates and a metropolitan district that may succeed to ownership of portions of the OGOAs, but not to any other successors and assigns. The requirements of this Section 22(b) will not apply so long as BROG or any of its affiliates is the Operator under this Agreement.

(c) *Review.* Review will occur every two (2) years from the effective date of this Agreement or upon request of Owner if the parties have failed to meet during any biennial period, the parties will meet to discuss whether the bond amounts stated in this Section 23 should be adjusted and, as appropriate, adjust such bond amounts to reflect then current economic conditions and industry practices.

**23. As is/Where is.** Operator acknowledges that Owner makes no representation or warranty regarding title to the Lands or any conditions existing thereon or any natural and manmade hazards on the Lands. Operator assumes the risk of all such conditions and hazards, as is, where is.

**24. Conflicts.** In the event of any conflict between this Agreement and any Owner OGL that covers the Lands, the terms and provisions of this Agreement will control.

**25. Binding Effect.** This Agreement is binding upon and will inure to the benefit of the successors and assigns of the parties.

**26. Governing Law.** This Agreement will be construed under the laws of the State of Colorado.

**27. Recording & Covenant.** This Agreement will be recorded in the real property records of Arapahoe County, Colorado and will supersede and replace the Memorandum. This Agreement constitutes a covenant running with title to the Lands as a burden thereon, for benefit of the parties,



and enforceable by the parties and their successors and assigns. The parties will not record the UCCA, the terms of which will remain confidential as between the parties.

**28. Injunctive Relief.** Each party agrees that if this Agreement is breached, or if a breach hereof is threatened, without limiting any other remedy available at law or in equity, an injunction, restraining order, specific performance and other forms of equitable relief will be available to non-breaching party. The parties acknowledge and agree that in the event of a breach of this Agreement, that any remedy at law may be inadequate and that the non-breaching party would suffer immediate and irreparable injury, loss and damage; and, to the fullest extent not prohibited by applicable law, any action brought for such relief may be brought by the non-breaching party in accordance with the applicable rules of civil procedure. Any such relief or remedy will not be exclusive, but will be in addition to all remedies available at law or in equity.

**29. Dispute Resolution.**

(a) *Dispute Resolution.* In the event of any dispute, disagreement or controversy arising out of, relating to or connected with this Agreement or the Owner OGL(s), including but not limited to the Claims, the Environmental Claims, claims for compensation or damages, the location of any well, surface sites or facilities, access roads, power lines and pipelines, the parties will use reasonable, good faith efforts to settle such dispute or claim through negotiations with each other. If such negotiations fail to produce a mutually acceptable resolution to the matter in dispute, the parties will submit the same to non-binding mediation before a sole mediator. The mediation will be conducted by the Judicial Arbitrator Group, Inc., 1601 Blake St, Suite 400, Denver, CO 80202 ("JAG"). The matter in dispute will be submitted to mediation within fifteen (15) days of a written demand for mediation from one Party to the other. If the mediation is not successful, the matter in dispute will be submitted for final and binding arbitration by the same mediator to be held no later than thirty (30) days after the conclusion of the mediation, as signified by a written notice from the mediator that mediation has terminated. Within five (5) days of the date of the mediator's notice, any party desiring arbitration will concisely state the matter(s) in dispute, the position of the Party with respect to such matter(s) and the Party's proposed resolution of the same.

(b) *Record of Agreement.* During any negotiations conducted pursuant to this Agreement, the parties will keep and maintain a record of all issues upon which agreement has been reached. To narrow and focus the issues that may need to be resolved in an arbitration proceeding, each of the submittals by the parties will include all points that have been agreed to by the parties during their negotiations.

(c) *Arbitration.* Any arbitration proceeding will be conducted in accordance with the Uniform Arbitration Act found at C.R.S. §13-22-201 *et seq.* (or a successor statute). The purpose of the arbitrator's role is to produce a final decision of any matter submitted for arbitration to which the parties

herein agree to be bound. The place of arbitration will be at the offices of JAG in Denver, Colorado.

(d) *Arbitrator.* The JAG mediator/arbitrator will, ideally, be possessed of demonstrated experience in matters pertaining to the law of oil and gas development, and, at a minimum, Colorado law of real property governing the use and enjoyment of surface and subsurface estates. If the parties cannot reach agreement on the choice of JAG mediator/arbitrator within ten (10) days of the original demand for arbitration (or such other time as may be agreed to by the parties), they will abide by the assignment of JAG mediator/arbitrator made by the JAG Administrator.

(e) *Arbitration Standard.* In rendering an award, the arbitrator will consider the principles of mutual accommodation stated in Section 3(b) and in Colorado law.

(f) *Jurisdiction.* For any matter requiring judicial resolution in connection with the arbitration, including the enforcement of any award, enforcement of this agreement to arbitrate, or injunctive relief to preserve the status quo pending arbitration, the parties agree to the exclusive jurisdiction of the State District Court of the City and County of Denver, Colorado.

(g) *Fees and Costs.* The parties will share equally in the cost of retaining the services of JAG for any mediation or arbitration conducted hereunder and each will be solely responsible for its own costs and expenses of preparing for and pursuing any mediation or arbitration, and for converting any arbitration award into a judgment; provided, however, the arbitrator will have the power to award attorneys' and experts' fees to the prevailing party in his or her discretion.

30. **Objection to Surface Development.** Provided that an application for development of the Lands is consistent with this Agreement:

(a) Operator agrees that it will not file an objection to an application for development pursuant to the Colorado Surface Development Notification Act, §24-65.5-101, *et seq.* COLO REV STAT.

(b) Operator further agrees that it will not object to, oppose, or seek to prevent Owner from obtaining any required permits to develop the Lands for such residential, commercial, industrial and other uses of any kind as Owner determines from time to time, or to development of the Lands pursuant to such permits, subject to Operator's rights under this Agreement.

(c) Owner agrees that it will not object to, oppose, or seek to prevent Operator from obtaining any required permits for oil and gas drilling, completion, operations, production and maintenance by Operator, or to development of oil and gas resources pursuant to such permits, subject to Owner's rights under this Agreement.

(d) Each of Operator and Owner agree to execute and deliver letters of support of and non-objection to such development by the other party as may reasonably be requested by such other party from time to time.

31. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be considered an original for all purposes, with the same effect as if the signatures thereto and hereto were upon the same instrument.

32. **Exhibits.** The Exhibits referred to in this Agreement are hereby incorporated in this Agreement by reference and constitute a part of this Agreement.

33. **References.** References made in this Agreement, including use of a pronoun, will be deemed to include where applicable, masculine, feminine, singular or plural, individuals or entities. The word "including" will mean "including, without limitation." References herein to (or the incorporation by reference of) rules of the Commission; codes, rules and regulations of the City; or other applicable law will not give rise to a private contractual cause of action by Owner against Operator unless Owner or its interest in the Lands (including the future development potential of the Lands) is directly affected by an alleged violation of such rules, codes, regulations or other applicable law.

34. **Merger of Prior Agreements.** This Agreement, the Owner OGLs and the UCCA contain the sole and entire agreement and understanding of Owner and Operator with respect to the matters addressed in this Agreement and shall supersede all prior agreements between Owner and Operator with respect to the matters covered herein, including without limitation the Original Agreement and the Memorandum.

35. **Term.** This Agreement will continue until the termination of the Owner OGLs covering the Lands, and for a period of one (1) year following termination of Owner OGLs at which time this Agreement will terminate. All of Operator's obligations and liabilities under this Agreement will survive the termination of this Agreement.

36. **Relationship of the Parties.** Nothing in this Agreement will be construed to create a partnership, joint venture, agency or similar relationship between the parties, and neither party shall have the power to bind the other except as expressly stated in this Agreement.

[Signature Page – Amended and Restated Surface Use and Damage Agreement]

DATED as of the year and date first above written.

**OPERATOR:**

**Burlington Resources Oil & Gas Company LP**  
**By: BROG GP LLC, its sole general partner**

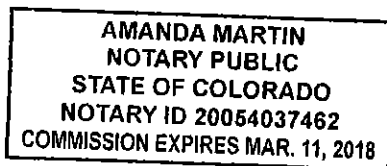
By: J.D. Adkins  
Name: J.D. Adkins  
Title: Attorney-In-Fact

STATE OF Colorado §  
COUNTY OF Wapahoe §

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of January, 2017 by J.D. Adkins, Attorney-in-Fact for BROG GP LLC, sole general partner of Burlington Resources Oil & Gas Company LP, a Delaware limited partnership.

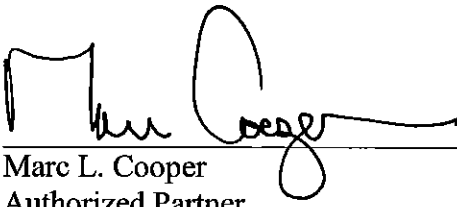
My Commission expires: 3/11/18

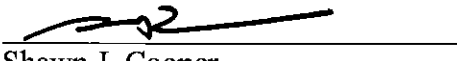
A. Martin  
Notary Public



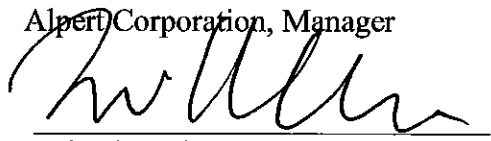
**OWNER:**

**CHERRY CREEK VISTA HOLDING PARTNERSHIP, LLP**, a Colorado limited liability partnership

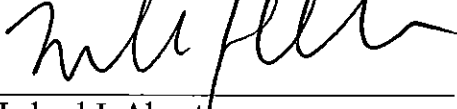
By:   
Name: Marc L. Cooper  
Title: Authorized Partner

By:   
Name: Shawn J. Cooper  
Title: Authorized Partner

**ALPERT VILLAGE 1, LLC**, a Colorado limited liability company

By: Alpert Corporation, Manager  
By:   
Name: Leland J. Alpert  
Title: President

**ALPERT CORPORATION**, a Colorado corporation

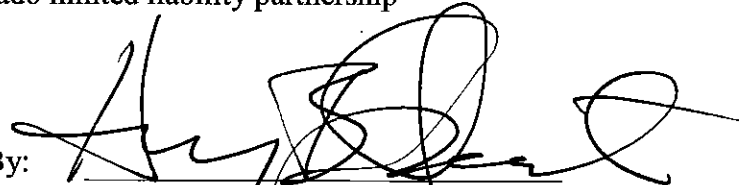
By:   
Name: Leland J. Alpert  
Title: Manager

**EASTERN HILLS, LLC**, a Colorado limited liability company

By: Alpert Corporation, a Colorado corporation

By:   
Name: Leland J. Alpert  
Title: President

**COAL CREEK RESERVE, LLP**, a Colorado limited liability partnership

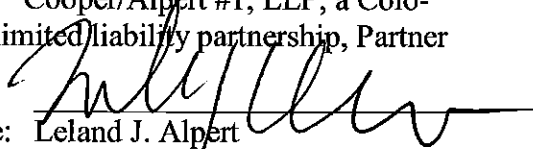
By:   
Name: Harvey B. Alpert  
Title: Manager

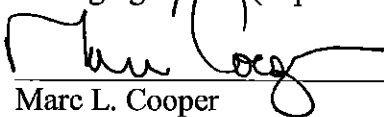
**YALE/MC LLC**, a Colorado limited liability company

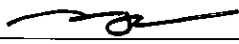
By:   
Name: Harvey B. Alpert  
Title: Manager

**ACJ PARTNERSHIP**, a Colorado partnership

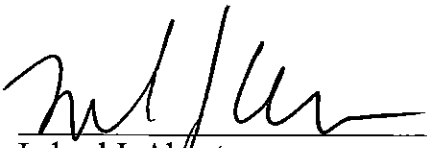
By: Cooper/Alpert #1, LLP, a Colorado limited liability partnership, Partner

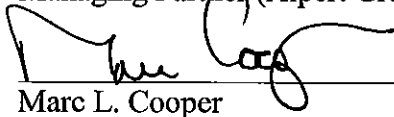
By:   
Name: Leland J. Alpert  
Title: Managing Partner (Alpert Group)

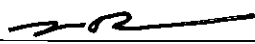
By:   
Name: Marc L. Cooper  
Title: Managing Partner (Cooper Group)

By:   
Name: Shawn J. Cooper  
Title: Managing Partner (Cooper Group)

**COOPER/ALPERT #3, LLP**, a Colorado limited liability partnership

By:   
Name: Leland J. Alpert  
Title: Managing Partner (Alpert Group)

By:   
Name: Marc L. Cooper  
Title: Managing Partner (Cooper Group)

By:   
Name: Shawn J. Cooper  
Title: Managing Partner (Cooper Group)

**HARVEST INVESTORS, LLC**, a Colorado limited liability company

By:   
Name: Harvey B. Alpert  
Title: Manager

**MURPHY CREEK LLC**, a Wyoming limited liability company

By:   
Name: Harvey B. Alpert  
Title: Manager

**HARVEST & JEWELL, LLC**, a Colorado limited liability company

By: 

Name: Harvey B. Alpert

Title: Manager

By: 

Name: Marc L. Cooper

Title: Manager

By: 

Name: Richard Frank

Title: Manager

**EH 2002 LLC**, a Colorado limited liability partnership

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

Name: Richard M. Evans

Title: Senior Vice President

[Signature Page – Amended and Restated Surface Use and Damage Agreement cont'd.]

**HARVEST & JEWELL, LLC**, a Colorado limited liability company

By: \_\_\_\_\_  
Name: Harvey B. Alpert  
Title: Manager

By: \_\_\_\_\_  
Name: Marc L. Cooper  
Title: Manager

By: \_\_\_\_\_  
Name: Richard Frank  
Title: Manager

**EH 2002 LLC**, a Colorado limited liability partnership

By: Robert M. Evans  
Name: Robert M. Evans  
Title: Senior Vice President