

## SURFACE USE AGREEMENT

This Agreement is made and entered into between \_\_\_\_\_, whose address is \_\_\_\_\_ ("Owner") and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Operator").

WHEREAS, Operator has leased from \_\_\_\_\_, coalbed methane gas ("CBM") rights in and underlying certain lands in \_\_\_\_\_ and \_\_\_\_\_ Counties, Wyoming, and

WHEREAS, Owner owns or leases the surface estate over a portion of the CBM rights leased by Operator, and

WHEREAS, Owner's surface estate subject to Operator's oil and gas lease is described on **Exhibit "A"** attached hereto and referred to herein as the "Lands," and

WHEREAS, Owner and Operator desire to enter into an agreement which will govern Operator's use of the Lands for the purpose of Operator's exploration for and development of coalbed methane gas pursuant to its oil and gas lease in a fashion which will preserve the value and productivity of the Lands.

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

### SECTION 1- OPERATOR'S RIGHTS

1.1 **Grant of Right-of-Way.** Owner grants Operator, its employees and designated agents, a private right-of-way to enter upon and use the Lands for the purpose of drilling, completing, equipping, producing and operating CBM wells on the Lands and for constructing and maintaining production facilities, access roads and power lines and installing pipelines to gather gas and water produced from wells drilled on the Lands, subject to the terms of this Agreement.

1.2 **Shallow Rights Only.** Notwithstanding any other provision of this Agreement, the rights granted to Operator hereunder shall be limited to operations related to the drilling and producing of wells to (a) the Fort Union coal formation, or (b) 2,500 feet below the surface, whichever is less. Surface damages for operations related to the drilling and producing of wells to greater depths shall be by a separate agreement to be negotiated by Operator and Owner.

1.3 **Termination of Rights.** This Surface and Damage Agreement and Operator's obligations hereunder will terminate upon the last to occur of (a) termination of the oil and gas leases underlying the Lands, or (b) upon complete reclamation and restoration of the surface according to the standards prescribed herein and in the Development Plan and approval of such reclamation by state and/or federal authorities

which have jurisdiction over such reclamation. In addition, in the event of default by Operator under any of the material terms and conditions of this Agreement, and the failure of Operator to cure such default within the time specified in this Agreement, Owner may elect to suspend the rights of Operator hereunder until such default is cured, or to terminate this Agreement.

**1.4 Non-Exclusive Rights.** The rights granted by Owner to operator are non-exclusive, and Owner reserves the right to use all access roads and reserves all surface and subsurface uses of the Lands and the right to grant successive easements on or across the Lands on such terms and conditions as Owner deems necessary or advisable, except that successive easements shall not interfere with or obstruct Operator's rights of access.

**1.5 Limitation on Rights.** Except as otherwise provided in the Development Plan, the Lands may not be used by Operator in connection with operations on other premises without Owner's written consent. No seismic operations will be conducted by Operator on the Lands without Owner's written consent. Absent Owner's consent, only truck mounted drilling rigs will be used on the Lands.

## **SECTION 2 - DEVELOPMENT PLAN**

**2.1 Development Plan.** Prior to the commencement of operations on the Lands, Operator shall present to Owner a draft of a Development Plan which details the scope and timing of development on the Lands or portions thereof. Owner and Operator shall jointly develop a final version of the Development Plan (which shall be revised from time to time as conditions warrant), and it shall become the document from which orderly development proceeds. Operator may elect to develop the Lands in separate stages, in which case multiple Development Plans shall be agreed to. The Development Plan shall provide the general framework for Operator's activities on all of the Lands and shall be developed according to the requirements and standards set out in this Agreement. Operator agrees that it will not commence any surface disturbing activities on the Lands, or any part thereof, unless and until Owner has approved the Development Plan, which approval will not be unreasonably withheld.

**2.2 Contents of Development Plan.** The Development Plan shall contain at least the following:

- a. A base map or maps, either USGS 7.5 minute topographical quadrangles or maps of similar detail and quality, showing the location of all of Owner's existing roads, fences, buildings, springs, wells, water sources, domestic water supplies and sources, facilities, residences, headquarters, and other assets. Other base maps or overlays may be developed to show the vegetative cover, timber assets, existing power lines and rights-of-way, parcels of federally and state owned lands within the Lands, drainage patterns, important geologic features, hydrologic characteristics, meteorological characteristics including rain and snowfall

with dry/wet and hot/cold time periods, wildlife assets, viewsheds and visually important features, archaeological and historic assets, gas seeps, burning coals, bad water, areas of fire and safety concern, irrigated lands and crop lands, and any other characteristic which Owner and Operator or both consider important to be established as baseline considerations. Owner will assist Operator in the development of the map with respect to information within Owner's knowledge.

b. A base map or maps, either USGS 7.5 minute topographical quadrangles or maps of similar detail and quality, showing the location of Operator's proposed access points, additional roads, water and gas gathering lines, power lines, approximate drilling locations, pod buildings, central facilities, compressors and central compression facilities, water treatment facilities, water impoundments and distribution lines, central electric facilities, telemetry and other communications facilities and sites, equipment storage yards, employee housing areas, vehicle storage and service yards, secure storage areas for chemicals and hazardous materials or wastes, locations of gas line drips and pig launchers/receivers, employee rest and residence areas, toilet facilities, emergency medical locations, vehicle inspection areas, fire suppression stations, and other sites or facilities considered important for baseline identification purposes. The map shall show all of Operator's facilities on the Lands and within three (3) miles of any portion of the Lands.

c. A preliminary schedule of development showing the project build-out in years. The first two years of activity shall be detailed by month, especially relating activity to weather limitations, describing how surface damage will be controlled and minimized by appropriate scheduling of operations.

d. The general standards for construction of building used on the Lands, including size and number, location, access, floors, siding, roofs, drainage, security, fencing, colors, landscaping, and other important features.

e. A water management plan for the discharge and storage of produced water on the lands, including the general standards for pond and water impoundment construction, if any, proposed by Operator, including size of ponds, heights of dams, contouring, reseeding, landscaping, quality and quantity of liner materials, size and location of inlets and outlets, general plan for filling and releasing times and quantities, relationship to downstream uses and storage, and other important features, and further including those items specified in Section 6 below.

f. A detailed description and schematic of the various combinations of common corridor/shared right-of-way gathering and

power lines, showing the standards for excavation, back-filling, reclamation and revegetation, and other important features.

g. The general standards for gas gathering line construction, including size and type of pipe, pressure ranges, measuring points, compression requirements and locations, drips, dehydration, cleaning facility locations, and other important features.

h. The general standards for landscaping on the Lands, including species, size, distribution, and location of trees, types of grasses and reseeded flora.

i. The fire plan, including methods and time of notification, location and activation of fire suppression and fighting personnel and equipment, evacuation and treatment of injured personnel.

j. The gas and water leak detection and remediation plan, including methods and time of notification, schedule and procedure of remediation.

k. The automation plan, including methods, times, and access procedures for telemetric or other well control and data transmission.

l. The general location and standards for construction of roads, fences, cattle guards, culverts, road cuts and fills.

m. The main points of entry to the Lands.

n. The size, construction quality, and design specifications of all cattle guards and gates for both main road points of entry and minor road minor points of entry.

o. The size, design specifications, fencing, time of use, reclamation period, and standards, waste and hazardous waste removal, and disposal of fluids for drilling pits.

p. Methods of weed control to be employed by Operator, which may include the reseeded of disturbed areas, the inspection of vehicles, and the washing or spraying of vehicles.

q. The dates of the big game hunting seasons applicable to the Lands and the efforts which will be undertaken by Operator to minimize the effects of its operations on hunting activity on the Lands.

r. The noise control methods to be used by Operator for compressors and other noise generating facilities located on or adjacent to

the Lands.

s. The dust control methods to be used by Operator on various parts of the Lands.

t. The portable toilet facilities to be installed by Operator on the Lands.

u. Such other information as Operator and Owner consider important.

### **SECTION 3 - OPERATIONS ON THE LANDS**

**3.1 Notification and Consultation.** Operator shall notify Owner prior to initial entry upon the Lands and shall consult with and receive Owner's approval as to the location of each well, road, pipeline, power line, gathering system and facility to be placed on the Lands. To the maximum extent possible, Operator will use existing roads on the surface of the Lands for its operations, and, if construction of a new road is required, Operator will locate the new road in a manner so as to cause the least interference with Owner's existing or proposed future operations on the Lands. If a pipeline, power line or gathering system is to be installed by Operator, Operator will locate the pipeline, power line and gathering system in a manner so as to cause the least interference with Owner's existing or proposed future operations on the Lands. The location of all new roads, facilities, pipelines and power lines must be approved by Owner before construction or installation, which approval will not be unreasonably withheld. Operator shall notify Owner 48 hours prior to commencing operations for any well drilled on the Lands.

### **3.2 Construction of Gas and Water Gathering Lines.**

a. The gas or water gathering lines referred to in this paragraph are gas or water gathering lines and power lines used in connection with wells drilled on the Lands, and, except as otherwise provided for in the Development Plan, all such gas or water gathering lines shall be used only for gas and water produced from wells on the Lands. Surface use and damages for gas or water transmission pipelines serving lands other than those owned by Owner shall be by separate agreement to be negotiated by Owner and Operator.

b. Operator shall be responsible for backfilling, repacking, reseeding and recontouring the surface so as not to interfere with Owner's operations. Operator shall provide Owner with a map or as-built drawing showing the precise surface location and depth of all gas or water gathering lines, power lines and gas or water gathering systems promptly after their installation. All gas or water lines and gas or water gathering systems located by Operator on the premises shall be buried to a depth of

at least five (5) feet below the surface or to a depth below the frost line, whichever is deeper. All rights-of-way for gas or water gathering lines and power lines shall be limited to twenty (20) feet in width, being ten (10) feet on each side of the centerline of the gas or water gathering line, except during construction when the right-of-way shall be 50 feet in width.

c. If Operator fails to use any pipeline for a period in excess of 24 consecutive months, the pipeline shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the pipeline environmentally safe and fit for abandonment in place. All such clean-up and mitigation shall be performed in compliance with all federal, state, and local laws and regulations.

### **3.3 Power Lines.**

a. Operator will consult with Owner and with the independent power company supplying power to Operator with respect to the location of overhead power lines prior to construction. Overhead power lines will be constructed so as to cause the least possible interference with Owner's visual landscape and Owner's existing and future ranching operations. Construction shall not begin unless Owner has consented to the location of such power lines, which consent will not be unreasonably withheld. In the event the location of power lines will unreasonably interfere with Owner's visual landscape or Owner's existing or future ranching and farming operations, Operator shall pay any additional costs required by the power company in order to bury or relocate overhead power lines to locations which do not unreasonably interfere with Owner's farming and ranching operations or visual landscape. Existing power lines need not be relocated.

b. To the maximum extent possible, Operator shall use power from any existing power lines which currently cross the Lands. All power lines downstream of the main transmission line shall be buried and all power line trenches shall be fully reclaimed and reseeded to the satisfaction of Owner, so as to minimize the number and length of overhead power lines on the Lands and to preserve, to the maximum extent possible, the natural visual landscape of the Lands. Overhead power lines shall not be constructed in Owner's irrigated or cultivated fields.

c. At such time as Operator desires to abandon any overhead or buried power line located on the Lands, it shall notify Owner of such desire, and Owner shall have thirty (30) days within which to make an election to take over such power line for Owner's own use. If Owner elects to take over a power line, Owner shall assume all costs and reclamation

obligations associated therewith, and Operator shall have no further liability for costs or reclamation for the power line, or that portion thereof, which Owner elects to take over.

### **3.4 Construction of Pod Buildings and Compressor Stations.**

a. To the greatest extent possible, and in accordance with the Development Plan, buildings and facilities which serve groups of wells will be located on well pads. No other pod buildings or other buildings will be located on the Lands without Owner's prior written consent. Compressors which serve Operator's lease may be located on Owner's lands other than the Lands with Owner's prior approval.

b. Compressors will be located only on sites designated by Owner. In constructing compressor buildings, Operator will employ all reasonable measures to minimize compressor noise perceptible outside compressor buildings, which measures may include burying the compressor buildings below ground, double doors, keeping doors closed even during summer months, using large compressor fans, burying exhaust pipes, constructing earthen berms around compressor sites, screening compressor sites with vegetation, and installing best available muffler technology. The specific methods used to minimize noise for each compressor shall be agreed to by Operator and Owner in the Development Plan.

c. In the event that Operator desires to have compressor stations on the Lands, or within sight of any portion of Owner's lands or the approach to Owner's lands along Lower Powder River Road, or within hearing of any portion of Owner's lands, Owner shall have the first option to provide such areas at a location or locations jointly agreed to by Owner and Operator, and Operator agrees to use such areas for compressor stations, to the exclusion of all other areas. The rental rates for compressor sites shall be as set out in paragraph 4.8.b. below.

**3.5 Wells and Locations.** The general location of well sites shall be reviewed and shall be approved by Owner in the Development Plan prior to Operator commencing surface disturbing activities. If Owner reasonably requests that proposed well locations be moved because of topographical considerations or to avoid cutting into hillsides, Operator agrees to seek exception locations from the Wyoming Oil and Gas Conservation Commission, if necessary. All CBM well site locations shall be limited to approximately one (1) acre of land, not including access roads. No wells shall be drilled within 1,500 feet of any residence or occupied house or within 1,000 feet of any barn, corral, or feedlot, or within 200 feet of any windmill or water well on the Lands without the prior written consent of Owner. The wellheads of those wells designated by Owner shall be buried in below ground vaults. Electric meters shall be installed in well houses or other buildings or shall be buried in vaults. To the maximum extent technologically

and economically feasible, Operator shall use telemetry to monitor its operations so as to reduce the frequency of travel by Operator's employees, agents, or contractors on the Lands.

**3.6 Maintenance.** Operator shall at all times keep the well sites, road rights-of-way, and other areas used by Operator safe and in good order, free of noxious weeds, litter and debris. Operator shall conduct periodic trash pickup if requested by Owner. Operator shall not permit the release or discharge of any petroleum products or toxic or hazardous chemicals or wastes on the Lands. All buildings, equipment and facilities placed on the property by Operator which can be painted shall be painted in earth tones consistent with the surrounding area and colors shall be specified in the Development Plan.

**3.7 Consolidation of Facilities.** Whenever possible, and in accordance with the Development Plan, Operator will consolidate its gathering and processing facilities for as many wells as practical. Operator will locate incoming electric power at a central point and construct all well-site power lines underground. To the maximum extent possible, Operator will place all roads, power lines, water gathering lines, and pipelines in common corridors or rights-of-way. To the maximum extent possible, water lines, gas lines, and underground power lines will be placed in the same trench at the same time. The consolidated facilities may not be used for operations connected with lands outside the Lands without Owner's written permission.

**3.8 Roads.** In accordance with the Development Plan, existing two track, unimproved roads shall be used by Operator whenever possible. New all weather roads will be constructed only when necessary. Operator shall provide Owner with a plat showing the location and length of all roads promptly after their first use, construction or improvement. Any road constructed upon the Lands shall be constructed and maintained to the following specifications:

a. The surface of all roadways shall not exceed sixteen feet (16') in width for traveled surface. Improved roads shall be constructed with a two percent (2%) crown from the center of the road to the shoulder to promote positive drainage. Where requested by Owner, Operator shall install side ditches along roads to transport runoff to appropriate drainage structures.

b. If requested by Owner, access to the Lands of Owner from any County road, or from the land of any adjoining landowner, shall be controlled by a gate in addition to a cattle guard, which gate Operator shall construct and install in accord with the reasonable specifications of Owner. Owner may require Operator to install automatic solar powered security gates at property access points, provided that Operator is given the access codes for such gates.

c. Culverts shall be placed in low areas for proper drainage. Culverts shall be designed to pass the estimated runoff from a 10 year, 24

hour storm event for the associated drainage area.

d. All roads shall be limited to fifteen feet (15') from the centerline of each road for fills, shoulders and crossings, unless altered by the parties in writing.

e. No off-road travel is permitted, and particularly no off road travel which has the effect of widening the road or area of disturbance.

f. Operator agrees to keep its roads free of weeds, debris, litter, and trash, and, if necessary, shall perform periodic trash pickup when requested by Owner.

g. Operator shall negotiate the location of all new roads with the Owner prior to construction, and at that time the parties shall determine what low spots or other specific locations have a need for graveling, and whether road repairs might be needed on existing roads, including the installation of culverts and cattle guards.

h. Operator shall regularly maintain existing roads used by Operator to the reasonable satisfaction of Owner, which maintenance may include shaling, graveling, blading, installing and/or cleaning culverts, and spraying for noxious weeds.

i. Owner shall have the right to close private roads to all traffic for one twenty-four (24) hour period during each twelve-month period and shall give Operator at least ten (10) days' notice of when said road shall be closed. Owner shall provide Operator access during this period of time.

j. The use and construction of roads by Operator across the Lands is a non-exclusive use and Owner may allow other parties to use said roads and make a charge therefor.

k. Operator agrees, if requested by Owner, to place an appropriate sign or signs on any roads 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 shall be subject to Owner's approval. Owner may lock gates across its private roads provided that Operator shall have the right to place its own locks on such gates.

**3.9 Fence Creek Road.** The private road known as the Fence Creek Road shall be maintained by Operator as required by a separate Right-of-Way Agreement between Owner and Operator. As other entities may now or in the future have right-of-way agreements to use the Fence Creek Road or other roads on the PeeGee Ranch, each operator will be severally liable for all road maintenance requirements. If in Owner's reasonable opinion safety is an issue on blind curves, steep grades and the

crests of hills located on the Fence Creek Road, Operator will, at its expense, widen and shale those portions of the Fence Creek Road to Owner's reasonable satisfaction.

**3.10 Operator's Use of Owner's Improved Roads.** In the interests of safety, Operator and its contractors, agents, and employees shall not exceed 30 miles per hour on improved roads (including Fence Creek Road) located on the Lands, except that on the crests of hills and on corners where full visibility of the improved road is less than 200 feet, the speed limit shall be 15 miles per hour. If livestock is present, the speed limit shall be 15 miles per hour. Livestock and wildlife species, including but not limited to deer, antelope, game birds, and songbirds, shall have the right-of-way on improved roads located on the Lands, and Operator and its contractors, agents, and employees shall come to a complete stop and give ample time for wildlife and livestock to move from the roadway. There shall be no honking of vehicle horns, revving of engines, or shouting in order to encourage livestock or wildlife to move from the road. Operator will notify all of its contractors, agents, and employees of this restriction. Any contractor, employee, or agent of Operator who violates this restriction shall be forever denied entry to the Lands.

**3.11 Fences.** Operator shall construct stock-tight fences around any dangerous area, including any pits where Operator drills wells. Operator shall, at its expense, construct permanent fencing around all wellheads and other surface facilities, which fencing shall be constructed of portable type livestock panels anchored to the ground and painted natural earth tone colors as specified in the Development Plan. Maintenance around Operator's surface facilities shall be the responsibility of Operator, and Owner shall not be responsible for damage to such fences or Operator's surface facilities in the event livestock gain access to these areas. Construction techniques and materials of fences constructed by Operator shall be approved by Owner in advance and shall be installed to Owner's satisfaction.

**3.12 Gates and Cattle Guards.** In those instances where roads cross fence lines, steel gates or cattle guards (autogates) shall be installed at the sole cost and expense of Operator. Determination of the use of a cattle guard or gate, or both, shall be at the discretion of the Owner. The steel gates shall not be less than twenty (20) feet wide by four (4) feet high constructed and mounted so as to prevent the passing through or under of adult and young livestock. The gates shall be hinged and mounted so as to permit the gate to swing to a position parallel to and adjacent to the fence. The cattle guards shall be not less than sixteen (16) feet wide by eight (8) feet across and shall be set on concrete sills not less than twenty-four (24) inches high by sixteen (16) inches wide. Fence braces shall be installed on each side of the gates or cattle guards. The fence braces shall be constructed of like quality material and installed in like style and form as the fence braces currently being constructed on the Lands. Owner shall determine construction materials used, design, and construction techniques employed. Owner shall have the right of first refusal to install gates, cattle guards, and fence braces on each side of said gates and cattle guards for a negotiated and agreed upon fee. Said fee shall include labor and materials for such work. The maintenance of said gates and cattle guards shall be the responsibility of Operator. Operator shall keep

gates utilized in good repair to prevent the passing through by livestock. Operator shall keep cattle guards utilized in good repair and cleaned to prevent crossing by livestock. Any gate opened for access shall be closed immediately following such access. No gate shall be left open unattended. Operator shall be liable for any and all costs, losses, and damages resulting from a gate being left open, including the cost of gathering livestock which has strayed or mixed with other livestock as a result of open gates. Owner's employees shall be compensated at the rate of Fifty Dollars (\$50.00) per man hour expended in the gathering, sorting and trailing of such livestock, which amount shall be paid to Owner by Operator within fifteen (15) days of receipt of a statement therefor.

**3.13 Improvements, Cultivated Land, Stock Water Pipelines.** No existing fences, cattle guards, or other improvements shall be cut or damaged by Operator without the prior written consent of Owner and the payment of additional damages or the institution of other safeguards to protect the rights and property of the Owner. Operator shall use its best efforts not to place any above ground facilities on any irrigated or cultivated land. In accordance with the Development Plan, Operator shall not place or construct any facilities over any underground stock water pipelines on the Lands and, except for the work necessary to replace the underground stock water pipeline, shall not disturb, damage or destroy the stock water pipelines or tanks used in connection with such pipelines.

**3.14 Fencing of Access Roads.** Operator will not fence any access roads without the prior consent of Owner.

**3.15 Non-Disturbance.** Except as otherwise provided in the Development Plan, Operator and its employees and authorized agents shall not disturb, use or travel on any of the land of Owner not subject to this Agreement without Owner's prior consent.

**3.16 Fire.** Operator shall take reasonable steps to prevent fire and to promptly extinguish fire, including, but not limited to, (a) maintaining a fire extinguisher, shovel, ax, bucket, and, if requested by Owner, a filled water backpack spray in each service vehicle entering upon the property, and (b) utilizing spark arresters on all gas or diesel powered equipment. Operator shall endeavor to use diesel powered vehicles whenever possible to avoid fires resulting from catalytic converters. Operator may not construct open fires on the property. No trash or timber slash will be burned by Operator on the Lands. Operator shall promptly and fully 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, replacement of fences and other property damaged or destroyed by fire, the reasonable cost of moving livestock to unburned pastures, and, if necessary, the reasonable cost of renting unburned pastures.

**3.17 Behavior of Operator's Employees, Agents and Contractors.** Operator shall not permit any of its employees or contractors operating hereunder to bring any firearm, explosive device, weapon, alcoholic beverage, or illegal drug on Owner's property. Operator's employees, agents, and contractors shall at all times carry

identification which identifies them as agents of Operator, and shall promptly and courteously produce such identification upon request by Owner's representatives. Operator's employees will not bring dogs or other animals in vehicles or otherwise onto the Lands. Operator shall not place any trash, rubbish or debris on the Lands. No employee or contractor of Operator shall hunt, prospect for antlers, fossils or antiquities, recreate, consume alcoholic beverages, or carry on any illegal activities on the Lands. Personnel employed by DCD, Inc. or any of its affiliated entities shall not be permitted on the Lands. Any employee, agent or contractor who violates any of the provisions of this paragraph may, in Owner's sole discretion, be forever denied access to the Lands. Operator shall instruct each of its employees, agents and contractors concerning the material terms of this Agreement, and Operator's major contractors shall be provided with a copy of this Agreement, prior to their entry upon the Lands.

**3.18 Communication and Contacts Between Owner and Operator.** Prior to the commencement of operations, Operator shall identify the individuals who will be conducting operations on Owner's property and specify which are representatives of and who have authority to act in behalf of each other. As provided in the Development Plan, Owner and Operator shall also provide to each other details for rapid communications among authorized representatives, including 24-hour office and cell telephone and fax numbers, and e-mail addresses.

**3.19 Insurance.** All vehicles traveling upon the Lands and owned or operated by Operator, its contractors, agents, or employees shall be covered by automobile liability insurance covering owned, non-owned, and hired automobiles with limits of at least One Million Dollars (\$1,000,000) for injury to or death of any one person for any one occurrence, and Five Hundred Thousand Dollars (\$500,000) property damage per occurrence. In addition, Operator shall carry comprehensive general liability insurance with minimum coverage limits of Five Million Dollars (\$5,000,000) for injury or death for any one occurrence, and One Million Dollars (\$1,000,000) for property damage per occurrence. Such insurance shall contain a waiver of subrogation and shall name Owner as an additional insured. Upon Owner's request, Operator and its contractors, agents, and employees using the Lands shall provide Owner with certificates evidencing such insurance.

**3.20 Equipment Storage and Maintenance; Employee Housing.** Absent Owner's consent, Operator's equipment shall not be stacked or stored or maintained on the Lands nor shall employees be housed on any of the Lands. However, in the event that Operator desires to have equipment storage and maintenance areas or employee housing areas on the Lands or within five (5) miles of any portion of the Lands, Owner shall have the first option to provide such areas at a location or locations designated by Owner which are reasonably convenient to Operator, and Operator agrees to use such areas designated by Owner for such purposes to the exclusion of all other such areas within five (5) miles of the Lands or any portion thereof. The rental rates for equipment storage and maintenance areas or employee housing areas shall be as set out in paragraph 4.8.a. below.

## SECTION 4 - PAYMENTS TO OWNER

As consideration for the rights granted herein by Owner to Operator, Operator shall pay to Owner the amounts set out below. Unless Owner directs otherwise, all payments shall be made to " \_\_\_\_\_ "

**4.1 Initial Payment.** Upon execution of this Agreement, Operator shall pay to Owner the sum of Forty Thousand Dollars (\$40,000).

**4.2 Annual Payments.**

a. The payments made by Operator to Owner for each calendar year of the term of this Agreement shall be the greater of (a) revenues attributable to the overriding royalty interest described in paragraph 4.3 below (net of conservation, ad valorem, and severance taxes) actually received by Owner during such calendar year, and (b) the "well location payments" as provided in paragraph 4.4 below. The amount annually payable to Owner shall be calculated as provided in paragraph 4.5 below.

b. Operator shall also pay to Owner the payment for loss of agricultural production set out in paragraph 4.7 below, the rental payments set out in paragraph 4.8 below, and the management cost reimbursement payments set out in paragraph 4.9 below, which shall be in addition to the annual payments provided for in paragraph 4.2.a. above.

**4.3 Overriding Royalty Interest.** Operator shall convey to Owner, or as Owner may otherwise direct, an undivided two and one-half percent (2½%) overriding royalty interest in its oil and gas lease or leases affecting the Lands, which overriding royalty interest shall not be proportionately reduced in the event Operator owns less than 100% of the oil and gas leasehold interest in the Lands. Such overriding royalty interest shall be conveyed to Owner by a good and recordable assignment, in the form attached hereto as **Exhibit B**, prior to the commencement of any surface disturbing activities on the Lands.

In the event that Operator acquires leasehold interests in other mineral interests located in or under other lands over which Owner owns or leases the surface estate (including minerals owned by the United States or by the State of Wyoming), within sixty (60) days after Operator's acquisition of such additional leasehold interests, Operator shall convey to Owner an overriding royalty interest in such additional leasehold interests equal to one-half of the difference between existing leasehold burdens and twenty percent (20%), but in no event less than two and one-half percent (2½%), which conveyance shall be in the form attached hereto as Exhibit B. This overriding royalty interest shall not be proportionately reduced in the event that Operator owns 100% of the oil and gas leasehold interest in such additional lands. Upon the conveyance of such overriding royalty interest to Owner, the scope of this Agreement shall be

expanded to include such additional leasehold interests, Exhibit A attached hereto shall be revised accordingly, and the surface estate over such additional leasehold interests will become part of the Lands, subject to this Agreement.

**4.4 Well Location Payments.** For each calendar year during the term of this Agreement, Owner shall be entitled to receive from Operator the sum of Three Thousand Dollars (\$3,000) per well location located on the Lands. For the purpose of this paragraph, all well locations in existence or under construction at any time during the calendar year shall be counted, without regard to whether or not the wells on said locations are then producing gas. Only when all CBM wells on a location have been properly plugged and abandoned, and the well location has been fully reclaimed and restored as provided for herein, shall a location no longer be counted for the purposes of calculating the annual payment.

**4.5 Calculation of Annual Payments.** On or before January 31 of each year commencing January 31, 2002, Operator and Owner shall calculate the number of well locations located on the Lands during the prior calendar year as provided in paragraph 4.4 above. On or before January 31, Owner shall also notify Operator of the total revenues attributable to the overriding royalty interest provided for in paragraph 4.3 above (net of conservation, ad valorem, and severance taxes) actually received by Owner during the prior calendar year. If the overriding royalty interest revenues actually received by Operator during the prior calendar year exceed the well location payments provided for in paragraph 4.4 above, no further payments are due to Owner. If, however, the overriding royalty interest revenues actually received by Owner during the prior calendar year are less than the well location payments, Operator shall pay to Owner the difference between the two amounts on or before February 15 of each year commencing on February 15, 2002.

**4.6 Livestock Loss.** Operator shall pay Owner the fair market value of any livestock killed or injured as a result of its operations.

**4.7 Payment for Loss of Agricultural Production.** Parts of the Lands are customarily used for the production of hay and crops. In accordance with the Development Plan, and in addition to the annual payments provided for in paragraph 4.2 above, Operator shall pay to Owner for all such lands in production which are taken out of agricultural production, whether by well sites, new roads or otherwise, as a result of Operator's activities, at the rate of Seven Hundred Dollars (\$700) per acre per year for hay lands actually taken out of production and at the rate of Seven Hundred Dollars (\$700) per acre per year for crop lands actually taken out of production. Payment shall be made at the time lands are removed from production and shall continue until they are available to be placed back in production.

**4.8 Rental Payments.** In addition to the annual payments provided for in Section 4.2 above, Operator shall annually pay to Owner the following:

- a. Rental in the amount of Two Thousand Dollars (\$2,000) per

acre per year, prorated to the nearest one-tenth (1/10) acre, for equipment storage and maintenance areas and employee housing areas agreed to by Owner and Operator as provided in paragraph 3.20 above.

b. Rental in the amount of Ten Thousand Dollars (\$10,000) per acre per year, prorated to the nearest one-tenth (1/10) acre, for compressor sites agreed to by Owner and Operator as provided for in paragraph 3.4 above.

c. Rental in the amount of Three Dollars (\$3.00) per rod per year of new or existing road constructed for use by Operator on the Lands or on other lands owned or leased by Owner. For the purposes of this paragraph, all roads in use or under construction at any time during the calendar year shall be counted.

d. Rental in the amount of Ten Dollars (\$10.00) per rod per year for overhead power lines constructed for or used by Operator on the Lands or on other lands owned or leased by Operator. For the purposes of this paragraph, all overhead power lines in existence or under construction at any time during the calendar year shall be counted, without regard to whether or not the power lines are then carrying power.

e. Rental in the amount of Five Dollars (\$5.00) per rod of buried power line or gas or water gathering line installed on the Lands or on other lands owned or leased by Operator. This shall be a one-time payment, and, for the purposes of this paragraph, all buried power lines or gas or water gathering lines installed or constructed at any time during the calendar year shall be counted. However, buried power lines or gas or water gathering lines installed or constructed during prior years shall not be counted.

Roads, overhead power lines and buried power lines for gas or water gathering lines shall continue to be counted for the purpose of calculating annual rental payments until such time as such facilities have been fully reclaimed and restored as provided for herein.

**4.9 Payments Sufficient.** The payments herein provide are acknowledged as sufficient and in full satisfaction for damages caused or created by the reasonable and customary entry, rights of way, operation and use of the roads and well sites, but do not include damage to livestock, buildings or improvements or injuries to persons or to any damage or destruction to Owner's water wells or water supply. This Agreement does not relieve Operator from liability for damage caused by Operator's negligence or by spills or discharges of any hydrocarbon or toxic or hazardous chemicals or wastes due to Operator's operations or by gas or water leakage due to Operator's operations or by leaks or breaks in Operator's gas or water gathering lines.

## SECTION 5 -OWNER'S RIGHTS

**5.1 Temporary Power.** In the event Operator elects to use temporary or semipermanent diesel or other electric power generators on the Lands for the purpose of its operations, Operator shall notify Owner of its intent and Owner shall have the opportunity to submit a bid for the provision of temporary or semi-permanent electric power generators.

**5.2 Owner's Gas Tap.** Owner may take gas from any one well for use in the presently existing dwellings and office building located at ranch headquarters, provided that Owner shall be responsible for maintenance of pressure regulation and odorization equipment. Any gas used by Owner for this purpose shall be metered and the value of gas taken by Owner shall be deducted from the overriding royalty payable to Owner pursuant to Section 4.3 above. Operator will provide, at Owner's expense, a gas tap from the selected well, and will locate a connection point at a safe distance from the well. Owner will equip the tap from Operator's connection point and extend a safe gas line to Owner's point of use. Owner and Operator will execute a mutually acceptable agreement governing the installation and use of such gas tap, in which Operator will be indemnified by Owner from any liability whatsoever arising out of Owner's use of the tap and the gas flowing from it.

**5.3 Dry Holes, Abandonment.** If Operator does not discover oil or gas in paying quantities at a well site containing multiple well bores and determines a well to be a "dry hole" or upon cessation of production from a well, Operator may use the well for various needs within the spaced area such as, without limitation, a relief well for compressor downtime, an re-injection or stimulation well for produced water, a secondary recovery injection well, a monitoring well for gas or water, or other legally permissible productionrelated activity. Upon cessation of production or Operator's other activities from all wells in the well site, Operator shall offer one or more of the well bores to Owner for use as a water well. If Owner elects not to accept such well, Operator shall abandon, reclaim and restore the site.

**5.4 Purchase of Shale and Water.** To the extent that Operator's activities require the use of shale, gravel, or water, where reasonable and practicable Operator shall purchase shale, gravel, or water from Owner at the rates prevailing in the area. Operator recognizes Owner's concern about importation of noxious weeds onto the Lands and, therefore, agrees wherever possible to purchase shale or gravel from Owner.

**5.5 First Preference for Work.** Operator shall give first preference to Owner in awarding contracts for any work required to be performed on the Land pursuant to the terms of this Agreement, including but not limited to earthmoving, grading or plowing roads, spraying noxious weeds, reseeding, fencing, or installing gates or cattle guards, provided that Owner has the equipment necessary to accomplish the work, is capable of adequately performing the work and is willing to perform the work at rates prevailing in

the area.

## **SECTION 6 - WATER**

### **6.1 Discharge of Produced Water.**

a. Surface discharge or storage of produced water shall be permitted on the Lands only with Owner's prior written consent, and only after Owner has approved in writing a water management plan jointly developed by Owner and Operator for each water discharge point located on the Lands and each water discharge point located off the Lands where produced water will or is likely to flow onto the Lands or onto other lands where Owner owns or leases the surface.

b. The preferred method of handling produced water is treatment in order to meet Wyoming Department of Environmental Quality - Water Quality Division (WDEQ-WQD) Class 11 - Agricultural Use Suitability or Class III - Livestock Use Suitability Standards or discharge standards for discharging produced water to Powder River. Unless Owner otherwise agrees, water not meeting these standards will be transported off the Lands for disposal elsewhere. The contaminated byproduct of the treatment process shall be either concentrated, dehydrated, or solidified to reduce volume, and shall be disposed of by an acceptable means in landfills or disposal wells approved by regulatory authorities.

c. If Owner and Operator are unable to agree on an acceptable water management plan, Owner may reject any water management plan proposed by Operator and require Operator to reinject all produced water into subsurface formations in compliance with state and federal law or transport the water off the Lands and all other lands owned or leased by Owner by pipeline. Likewise, Operator may reject any proposed water management plan proposed by Owner and, instead, either reinject produced water into subsurface formations in compliance with state and federal law, or transport the water off the Lands and all other lands owned or leased by Owner by pipeline.

d. Surface discharge of produced water will be permitted by Owner only if (1) the discharged water meets all governmental standards for discharged water and will not create wetlands, (2) the discharged water does not unreasonably degrade or adversely affect the quality of water and water courses on or damage or threaten to damage the Lands or the soils or vegetation located thereon, and (3) the produced and discharged water can be put to beneficial use such as irrigation or livestock water. If Owner consents to the surface discharge or storage of produced water, Operator shall follow all applicable rules and regulations of any governmental authority concerning the method, quality, and location of the

discharge or storage of produced water. Operator will not appropriate any of the produced water for beneficial use, and Operator will fully cooperate with Owner to permit Owner, if Owner so desires, to appropriate and apply the produced water for beneficial use.

e. Prior to discharge or storage of produced water, at Operator's expense water analysis of any stream or reservoir will be conducted to determine representative baseline quality of any naturally available water. Sampling and analysis will be conducted in accordance with guidelines outlined below. In addition, soil sampling and analysis will be performed on any areas that will be affected by the discharge or storage including the immediate area of the point of discharge, any affected reach of drainage channel and inundated reservoir bottom areas. Along with water and soils data, vegetation in the affected areas will also be characterized in sufficient detail to establish baseline information of existing condition and vigor.

f. In any event, produced water shall be discharged or stored in a way so as to minimize surface disturbance and damage to the Lands. Operator's produced water shall not cause floods, ice flows, sedimentation, or noticeable erosion such as downcutting or headcuts on, or deny Owner reasonable access to, the Lands or on any other lands owned or leased by Owner. Operator may be required to "field-verify" estimates of discharge water velocity determined in the water management plan for any anticipated affected channel reach to ensure they are nonerosive. Operator shall, at its expense, analyze and test all produced water at each discharge or outfall point, prior to discharge upon Owner's lands and immediately provide Owner with the results of such tests. Operator shall also periodically (at least annually or at a lesser interval reasonably required by Owner), analyze waters from each well and provide the results to the Owner. In the event problems are noted with the quality of the water, Owner may require discharge operations to be suspended. Owner may request Operator to submit a revised water management plan detailing how the changes in water quality will be managed and Operator will receive approval from Owner prior to reinitiating discharge operations. In addition to water quality issues, water quantity discharge rates will also be recorded by the Operator on a periodic basis. If Operator's discharge quantity exceeds rates and volumes described and approved in the water management plan prepared by Operator and approved by Owner, Operator may also be required to cease discharging operations. As with water quality problems, Owner may request Operator to provide a revised water management plan detailing plans and procedures to handle the increased volume.

g. Operator shall also take at least one soil sample from each SCS/NRCS soil mapping unit, but not less than a total of three samples,

for soil analysis of the drainage that the produced water will influence. Affected soils will be sampled to a depth of sixty (60) inches or to depth of bedrock, whichever is less, and will be analyzed on six (6) inch increments for the top twelve (12) inches of soil, and on twelve (12) inch increments for the remaining depth of the sample for the constituents listed below. The initial tests will be performed prior to the discharge of any produced water to establish a baseline for soil chemistry and will be periodically monitored on a quarterly or more frequent basis. All water and soil sampling and analysis will be performed by a laboratory approved by Owner and Operator.

h. Water analyses shall, at a minimum, test for the following: pH, Total Hardness (as CaCO<sub>3</sub>), Conductivity (mmhos/cm), Sodium Adsorption Ratio, Adjusted Sodium Adsorption Ratio, Total Dissolved Solids (mg/l), Total Alkalinity (as CaCO<sub>3</sub>), Total Cations (meq/l), Total Anions (meq/l) and Cation/Anion Balance (%). Reported values shall be in ppm and meq/l for cations of Calcium, Magnesium, Potassium, and Sodium, and anions of Carbonate, Bicarbonate, Hydroxide, Chloride, Fluoride, Nitrate+Nitrite as N and Sulfate. Analysis shall also determine levels of acid-soluble metals including Aluminum, Cadmium, Chromium, Copper, Lead, Mercury, Nickel Selenium, Silver and Zinc. Total metal levels shall be determined for Antimony, Arsenic, Barium, Beryllium, Boron, Fluoride, Iron, Manganese and Thallium. Iron, Manganese and Boron shall be analyzed for both total and dissolved levels. Analysis of Total Petroleum Hydrocarbons (TPH) shall also be conducted. All testing shall be conducted in accordance with 40 CFR 136 "Guidelines Establishing Test Procedures for Analysis of Pollutants Under the Clean Water Act" as amended.

i. Soil samples will be analyzed by use of Saturated Paste Extract Analysis using distilled water or produced water as the extractant and will be analyzed for the following parameters: pH, Saturation (%), Electrical Conductivity (mmhos/cm), Nitrate (NO<sub>3</sub>-N) and Ammonium (NH<sub>4</sub><sup>+</sup>N), Chloride, Bicarbonate, Carbonate, Sulfur, Phosphorous, Calcium, Magnesium, Potassium, Sodium expressed in ppm, meq/l, and percent of total cations. Levels of Boron, Iron, Manganese, Copper, Zinc, and Aluminum expressed as ppm will also be determined. The analysis will also include calculated values of pH<sub>c</sub>, Exchangeable Sodium Percentage, Cation Exchange Capacity and Sodium Adsorption Ratio. Recommended analysis procedures are as outlined in USDA Handbook 60 or ASA Mono. No. 9, Pt. 2.

j. In the event Owner reasonably determines that any water management plan previously agreed to by Owner and Operator is causing, or is likely to cause, damage to Owner's water, soil, or vegetation resources, Owner may require Operator to cease the discharge or storage

of produced water. If Owner gives Operator notice that the previously agreed to water management plan is causing, or is likely to cause, damage to Owner's water, soil, or vegetation resources, Operator will have three months within which to develop and implement a revised water management plan acceptable to Owner or to reinject the water or transport the water off the Lands and any other lands owned or leased by Owner by pipeline, as provided above.

## **6.2 Reservoirs and Crossings.**

a. If Owner permits the surface discharge of produced water into reservoirs but does not wish Operator to discharge any of its produced water into Owner's existing reservoirs, Operator shall be solely responsible for finding a suitable water discharge location acceptable to Owner, building the necessary catchment structures (including pipelines, dikes, dams, and outlet piping) and maintaining same at its sole cost, risk and expense. Similarly, if Operator requests and is granted permission to use any of Owner's reservoirs, should any such reservoirs require modification, upgrading and/or improvement to be able to hold Operator's produced water, any such modification, upgrading or improvement shall be done at Operator's sole cost, risk and expense.

b. Any reservoir construction or modification shall be designed according to all applicable rules and regulations of the Wyoming State Engineer's Office ("WSEO"). Operator shall be responsible for obtaining all necessary permits prior to construction of any reservoirs and, if requested by Owner, shall name Owner as co-applicant for any project requiring permits that will be constructed on Owner's property. Owner shall not be responsible for payment of any cost associated with Operator's development activities which shall include, but not be limited to water discharge, catchment of produced water or maintenance of any related facilities.

c. Owner reserves the right to have such structures that are constructed or modified by Operator retained or fully reclaimed by the Operator at such time as Operator's use of said structures) has ended. At such time, reservoir sediments for all reservoirs used by Operator shall be sampled and analyzed for toxic or hazardous constituents at Operator's expense and if necessary, Operator shall properly dispose of such material in accordance with state and federal law. All water rights for any reservoirs constructed or modified by the Operator that are retained following cessation of Operator's activities shall revert to the Owner if so requested by Owner and approved by the WSEO.

d. In the event that Operator's produced water is discharged into existing ephemeral drainage channels or other conveyances on

Owner's property and Owner's operations require dry crossings to be constructed, Operator shall properly design, supply and construct such crossings at Operator's sole cost, risk and expense. Each crossing shall be structurally sufficient to allow for its intended use and shall safely pass all discharge water volume plus an acceptable amount of precipitation runoff without accumulation of water on the upstream side of the structure. Crossing structures shall be designed to be safely over-topped for precipitation events of greater magnitude than the event used for passing capacity design. Operator shall be solely responsible for maintenance of such structures until Operator's activities cease. Owner may require Operator to remove crossings at that time or allow crossing(s) to remain in place for future use.

e. In the event that one or more of the reservoirs used by Operator are found to leak or seep and Owner reasonably believes that such leakage or seepage may cause damage to soils, vegetation or water resources located on the Lands or on other lands owned or leased by Owner, Owner may require Operator to cease discharging produced water into such reservoir and to develop an alternative method or location for the containment or disposal of produced water. Operator shall cease the discharge of produced water into such leaking or seeping reservoir within 72 hours after receipt of Owner's notice and alternative facilities shall be constructed and shall be in use within three months after Operator's receipt of Owner's notice.

### **6.3 Protection of Existing Water Resources.**

a. Operator is aware that its operations may impact domestic or stock water wells in the vicinity of CBM wells. In order to avoid future conflicts, Owner and Operator hereby adopt the Water Well Mitigation Agreement attached hereto as **Exhibit C**.

b. Owner shall, prior to the commencement of Operator's operations, and in accordance with the Development Plan, assist Operator in preparing a map showing the locations of all of Owner's water wells which are located within the Lands and within an area one mile outside the exterior boundaries of any parcel of land contained within the Lands. Owner shall also assist Operator in compiling the following information, to the extent such information is available:

- (i) a copy of the valid State of Wyoming permit for each of such wells;
- (ii) any available records of flowing or pumping capacity;
- (iii) a list and schematic of the well's casing, showing the

dates of purchase and installation;

(iv) a list and schematic diagram of the well's downhole equipment showing the dates of purchase, records of maintenance and service;

(v) a current water analysis (on a certified or mutually-observed flowing sample) from the well, showing major cations and anions, Total Dissolved Solids, pH, Specific Conductivity, Resistivity, Hardness as CaCO<sub>3</sub>, Alkalinity as CaCO<sub>3</sub>, Fecal Coliform content, Methane content, and any other measure which Owner presently considers or might in the future consider important;

(vi) the static water level and productive capacity of the well;

(vii) an estimate of Owner's actual volumetric use of water from the well during the past five years;

c. Owner and Operator shall at a mutually agreeable time prior to the commencement of Operator's operations, witness a flow rate test of each of Owner's wells and thereafter prior to the commencement of Operator's operations, sign a letter confirming the observed flow rate.

**6.4 Owner's Water Sources.** Operator shall not without Owner's prior written consent use any water from existing wells, reservoirs and springs on the Lands. Operator shall not disturb, interfere with, fill, or block any creek, reservoir, spring or other source of water on the Lands.

## **SECTION 7 - RECLAMATION**

**7.1 Reclamation and Restoration.** Unless Owner otherwise agrees in writing, upon termination of any of Operator's operations on the Lands, Operator shall fully restore and level the surface of the Land affected by such terminated operations as near as possible to the contours which existed prior to such operations. Operator shall use water bars and such other measures as appropriate to prevent erosion and non-source pollution. Operator shall fully restore all private roads, drainage and irrigation ditches disturbed by Operator's operations as near as possible to the condition which existed prior to such operations. Any surface disturbed by Operator's activities shall be reseeded as provided for in the Development Plan. Any surface facilities no longer in use shall be removed, and the surface restored, within one year after the date upon which Operator ceases to use such surface facility. All surface restoration shall be accomplished to the reasonable satisfaction of Owner. In order to have CBM infrastructure be compatible with the existing visual landscape and to have the CBM infrastructure not become the dominant visual feature of the landscape, Operator may be required by Owner to plant and maintain shrubs or other visual barring vegetation

surrounding these areas in order to screen these from view. Topsoil shall be saved separately and stored whenever Operator's activities disturb the surface of the Lands and shall be replaced as soon as possible after such activities are conducted.

## **7.2 Reseeding and Weed Control.**

a. All reseeded shall be done in accordance with the Development Plan with suitable grasses selected by Owner and during a planting period selected by Owner. Reseeding shall be done at the rate specified in the Development Plan for range land and for irrigated or cultivated ground. In the absence of direction from Owner, no reseeded (except for borrow pits) will be required on any access roads which existed prior to Operator's development. It shall be the duty of Operator to insure that a growing ground cover is established upon the disturbed soils and Operator shall reseed as necessary to accomplish that duty. It shall 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 shall inspect disturbed areas from time to time and as Owner shall reasonably request in order to determine the growth of ground cover and/or noxious weeds. Operator shall reseed ground cover and control noxious weeds from time to time to the extent necessary to accomplish its obligations hereunder. Operator recognizes that this shall be a continuing obligation and Operator shall reseed ground cover and/or control noxious weeds until areas disturbed by Operator are returned to as good condition as existed prior to construction.

b. Noxious weed species which Operator is required to control will be identified by Owner and shall include invasive species listed on the Sheridan County Noxious Weed list plus the invasive species of Henbane, Halogeton, Saltcedar (Tamarisk), Mullein, Showy Milkweed and other species of invasive plants determined by Owner. Operator or those performing the task of controlling noxious weeds for Operator shall possess a current Commercial Pesticide Applicators License and be knowledgeable in the identification of noxious weeds. Noxious weed control is to be done in a manner that does not result in the contamination of surface or ground water and performed in a manner that mitigates the unwanted toxic effects of the chemical applications. If possible, Operator will only "spot spray" areas or plants in need of control.

c. Operator shall be responsible for constructing fences for the purpose of temporarily excluding livestock from newly seeded areas. Fences shall be constructed to the reasonable specifications and satisfaction of Owner.

d. Operator shall certify and provide evidence that vehicles being used in operations are either not coming from areas which are

contaminated with noxious weed species, or that vehicles will have been washed prior to entering the Lands. In the event that contamination is reasonably believed to -be occurring, and at Owner's request, Operator shall be prepared to install and operate a vehicle-washing facility at the entrance to the Lands.

## **SECTION 8 - ENFORCEMENT AND RESOLUTION OF DISPUTES**

**8.1 Enforcement Costs.** If Operator materially defaults under this Agreement, and such default remains uncured for more than thirty (30) days after the date of such default, Operator shall pay all costs and expenses, including a reasonable attorney's fee, incurred by Owner in enforcing this Agreement.

**8.2 Resolution of Disputes.** In the event Owner and Operator are unable to resolve disputes related to this Agreement or Operator's use of the Lands, resolution of disputes between Owner and Operator shall be performed by a qualified person trained in conflict resolution and mediation with a background in natural resource management. This person(s) will be selected and mutually agreed to by both Owner and Operator. However, in the event that this method of alternative dispute resolution is unsuccessful within thirty (30) days after dispute resolution begins, each party shall have all remedies available to them under the law.

**8.3 Default.** If Operator defaults under this Agreement, Owner shall give Operator written notice of the default. If Operator fails to correct the default within thirty (30) days after the delivery of the notice of default, Owner may, in addition to any other rights and remedies available to Owner, suspend the right of Operator to enter upon and use the Lands until the default is cured or terminate this Agreement. If Owner elects to terminate this Agreement, Operator shall remove all of its property and facilities from the Lands and restore and reclaim the property as required herein.

**8.4 Security for Operator's Obligations.** Prior to the commencement of surface disturbing activities on the Lands, Operator agrees to deposit in a local bank or financial institution agreeable to Owner and Operator, in an interest bearing account jointly controlled by Owner and Operator, the sum of Fifty Thousand Dollars (\$50,000) which will be dedicated as security for Operator's reclamation and other obligations contained herein. In addition, once gas is produced and sold from the Lands, Operator will fund this account with one-half of one percent of gross revenues (net of conservation, ad valorem, and severance taxes) obtained from wells on the Lands, until such time as such account has a total balance of Three Hundred Fifty Thousand Dollars (\$350,000). The funds in this account shall be used by Operator to mitigate surface damages and perform other obligations of Operator provided for in this Agreement in the event Operator fails to perform its obligations within thirty (30) days after written notice from Owner. During the time of construction, and prior to the date of first sale of gas from wells on the Lands, Operator agrees to replenish the account back to Fifty Thousand Dollars (\$50,000) if at any time the balance falls below Thirty Thousand Dollars (\$30,000). The jointly controlled account will be retained until such time as Owner reasonably determines that all surface damages are mitigated and all obligations

of Operator have been performed as required herein.

## SECTION 9 - MISCELLANEOUS

**9.1 Agricultural Emergencies.** In the event of agricultural emergencies such as diseases of livestock, Operator shall cooperate with Owner in attempts to prevent the spread of infectious disease as needed. Specifically with respect to hoof and mouth disease, if Owner so requests, Operator shall consult with Owner prior to allowing any vehicle on the Lands. Operator may be required to establish prevention activities including, without limitation, washing, spraying, or dipping stations at access points on the border of the Lands. Operator may also be required to enforce restrictions on human and other animal activity on the Lands.

**9.2 No Warranty.** Owner makes no warranty of title in entering into this Agreement.

**9.3 Release.** To the maximum extent permitted by law, Operator releases and waives and discharges Owner and Owner's officers, directors, employees, agents, successors and assigns from any and all liabilities for personal injury, death, property damage or otherwise arising out of Operator's operations under this Agreement or use of the Lands.

**9.4 Indemnification.** To the maximum extent permitted by law, Operator will indemnify, defend and hold Owner, and, if applicable, Owner's officers, directors, employees, agents, successors and assigns harmless from any and all claims, liabilities, demands, suite, losses, damages and costs (including, without limitation, any attorney fees) which may arise out of Operator's activities on the Lands including, without limitation, any claims that Operator's operations are either illegal, unauthorized, or improper, and any claims asserted by any person or state or federal agency for environmental damage or flooding or pollution resulting from operator's activities.

**9.5 Liability for Damage to Lands Owned by Other Landowners.** Operator shall be liable for any damage to other lands or the operations of other landowners, including but not limited to, roads, road crossings, bridges, fences, buildings and other improvements, livestock, crops, forage, and hay meadows, resulting from Operator's activities on the Lands, including damage resulting from the quality or quantity of produced water being discharged or escaping from Operator's control.

**9.6 Compliance with Law.** Operator shall conduct all of its operations and activities in accordance with all applicable local, state and federal laws, rules and regulations.

**9.7 Notice.** Notice may be given to either party to this Agreement by depositing the same in the United States Mail postage prepaid, duly addressed to the other party at the address set out on this Agreement, or at such other address as each

party may subsequently provide to the other. Such notice shall be deemed delivered when deposited in the United States Mail.

**9.8 Memorandum of Agreement.** This Agreement shall not be recorded, but the parties may record with the County Clerk of the county in which the Lands subject to this Agreement are located a memorandum reciting that the parties have entered into this Agreement which affects the Lands described in attached Exhibit A, as modified from time to time.

**9.9 Taxes.** Operator shall be responsible for and shall pay all additional taxes which may be assessed against the Lands by reason of any improvements placed thereon by Operator.

**9.10 Construction of Agreement.** This Agreement shall be construed under the laws of the State of Wyoming.

**9.11 Binding Effect.** This Agreement is binding upon the successors and assigns of the parties.

**9.12 Assignment.** This Agreement shall not be assigned by Operator to any other entity, either in whole or in part, except current affiliated, subsidiary, or parent companies of Operator, unless Owner consents in writing to such assignment. In the event that Operator attempts to assign this Agreement or any portion thereof without first obtaining Owner's written consent to such assignment, Owner may, at its option, elect to terminate this Agreement and all rights of Operator hereunder. Unless Owner otherwise agrees in writing, any assignment of this Agreement by Operator shall not relieve Operator of its obligations hereunder, and Operator and its assignees and successor assignees shall remain jointly and severally liable for the full, faithful, and complete performance of all promises and obligations undertaken herein by Operator.

This Agreement may be freely assigned by Owner to a subsequent purchaser of all or part of \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**OWNER:**

By \_\_\_\_\_  
Title \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**OPERATOR:**

By \_\_\_\_\_  
Title \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_