

## SURFACE DAMAGE AND RELEASE AGREEMENT

This Surface Damage and Release Agreement ("**Agreement**") is made and entered into this 6<sup>th</sup> day of March, 2007, by and between Eldon L. Bower, Trustee of The Eldon and Martha Bower Family Revocable 1992 Trust, established 1992, ("**Owner**"), and Apollo Operating, LLC, ("**Operator**"); sometimes referred to each as a "**Party**," or collectively as the "**Parties**."

### WITNESSETH:

For and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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

**Lot B of Recorded Exemption No. 0807-10-4-RE-291 (being part of the E/2SW/4, Section 10, Township 6 North, Range 67 West, 6<sup>th</sup> P.M., Weld County Colorado) recorded January 11, 1978 as Reception No. 1741253**

Operator, and/or its affiliates, owns a working interest in valid leases covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "**Lease**," collectively, the "**Leases**"). Additionally, Operator may have responsibilities under a Joint Operating Agreement ("**JOA**") with respect to the Lands.

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator intends to drill or cause to be drilled oil and/or gas wells on the Lands, as depicted approximately on Exhibit "A" attached hereto ("**Wells**"). In order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities associated therewith, including, but not limited to, access roads ("**Access Roads**"), pipelines, flow lines, separators, tank batteries, electric lines and any other facilities or property necessary for Operator to conduct operations on the Wells (each a "**Facility**," collectively, the "**Facilities**"), it is necessary that Operator enter and utilize a portion of the surface of the Lands.

The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

3. **LOCATION.** The approximate location of the Wells, the Access Roads to the Well sites and certain other Facilities to be constructed on the Lands are depicted on Exhibit "A." Any material changes to the Well, Access Roads and Facilities locations may be made by Operator with the consent of Owner, which will not be unreasonably withheld, but will not unduly interfere with Owner's existing use of the surface estate. Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations.

4. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of the Leases, this Agreement, the rules and regulations of the Colorado Oil & Gas Conservation Commission ("**COGCC**"), and applicable Colorado statutes and case law.

5. **COMPENSATION AMOUNT.** Operator will pay Owner the sum of ("**Amount**") for each wellsite prior to the commencement of drilling operations for each such Well. The Amount shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, associated tank location and/or Facility construction, rights-of-way, drilling, completion, production and maintenance operations associated with the Wells and

Facilities. Such damages will include, without limitation, damage to growing crops and crop land; the removal, transportation and care of any livestock; the re-seeding, construction and use of access roads; and the preparation and use of the wellsite areas. Any subsequent major operations for said Wells (refrac, deepening, redrilling, etc.), except in case of emergency, shall require 10 days prior notice to Owner. Operator shall pay Owner all actual damages caused by said subsequent operations.

**6. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES.** With respect to its operations on the Lands, Operator will comply with the following provisions:

A. Access Roads:

- (i) Access Roads will not exceed 15 feet in width.
- (ii) Operator will maintain all Access Roads in good repair and condition.

B. Surface Restoration:

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be restored by Operator to their original contour as nearly as is reasonably practicable.

C. Other:

(i) Operator will install culverts on the Lands that may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.

(ii) If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner has not been previously compensated pursuant to Paragraph 5, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Wells construction and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence.

(iii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands that are not necessary for continued operations of the Wells will be removed and disposed away from the Lands no later than 30 days after the completion of the Wells. No such items will be burned or buried on the Lands.

(iv) During drilling operations the well sites and any pits shall be fenced if requested by Owner. After completion of the Wells and in the event of production, all production tanks shall be bermed. Additionally, the well sites shall be kept free and clear of all noxious weeds, unsightly growth and trash either during drilling operations or after completion and production.

(v) All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed.



(vi) Operator agrees to fence off the perimeter of the well sites with temporary fencing if reasonably requested by Owner. Operator will also install cattle guards and/or gates where reasonably necessary.

7. **DEFAULT AND RIGHT TO CURE.** In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owner will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have 30 days from receipt of the written notification in which to dispute or otherwise respond to the notification before Owner may allege default.

Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach; however in no event will Operator be liable for consequential damages.

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

Operator agrees to indemnify and hold Owner harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the premises at the request of Operator.

9. **WAIVER OF 30-DAY NOTICE.** Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other notice or consultation requirements of the COGCC. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owner after it has submitted a request for permit to drill from the COGCC.

10. **NOTICE FOR ADDITIONAL OPERATIONS.** Operator will comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

11. **NOTICES.** Notice by either Party will be promptly given, orally if possible (with the exception of the default notice described in Paragraph 7), with subsequent written confirmation (optional) sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by notice to the other:

Owner  
Eldon L. Bower  
2730 Montgomery Way  
Sacramento, CA 95818  
Phone: 916 452 1536

Operator  
Apollo Operating, LLC  
1557 Ogden St., Suite 300  
Denver, CO 80218  
Phone: (303) 830.0888 x 14  
Fax: (303) 830.2818

12. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owner agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence

of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owner.

13. **CONFIDENTIALITY.** The Parties agree to keep the terms and conditions of this Agreement confidential and will not disclose such matters to any third party without the advance written consent of the other, or if ordered to do so in a legal proceeding. While the specific terms hereof are to remain confidential between the Parties, Operator or Owner may record a memorandum of this Agreement in Weld County, Colorado.

14. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective successors or assigns.

15. **TERMINATION.** If Operator does not commence operations for the Wells within five (5) year(s) from this date, this Agreement will terminate in its entirety without penalty to either Party, or will otherwise be renegotiated.

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

17. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed and enforced in accordance with the laws of Colorado. Venue shall be deemed to be in Weld County, Colorado.

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

19. **AUTHORITY OF SIGNATORIES.** The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

20. **SUCCESSORS.** This Agreement constitutes a covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, affiliates, administrators, trustees, executors and assigns.

IN WITNESS WHEREOF, the Parties have set their hands, the day and year first written above.

APOLLO OPERATING, LLC

THE ELDON AND MARTHA BOWER FAMILY  
REVOCABLE 1992 TRUST

Operator:

Owner:

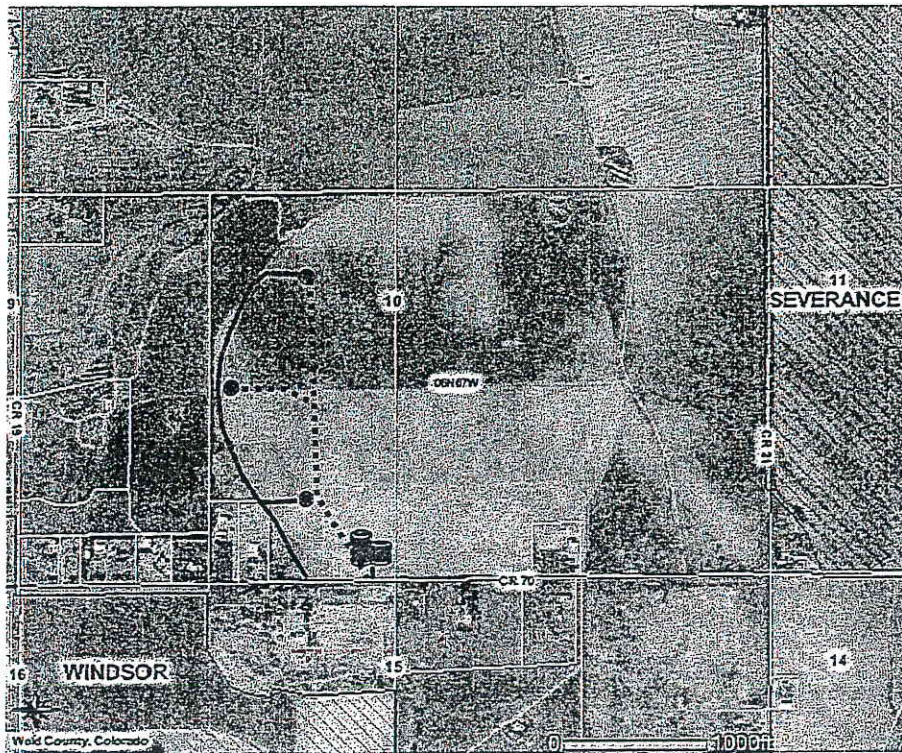
  
\_\_\_\_\_  
Jesse L. White, Manager





  
\_\_\_\_\_  
Eldon L. Bower, Trustee



## Exhibit "A"

Lot B of Recorded Exemption No. 0807-10-4-RE-291 (being part of the E/2SW/4, Section 10, Township 6 North, Range 67 West, 6<sup>th</sup> P.M., Weld County Colorado) recorded January 11, 1978 as Reception No. 1741253



	Permanent Road and Drilling Rig Access
	Flow Lines
	Tank Facility
	Well Head

\* All locations are approximate and subject to minor adjustments.

**MEMORANDUM OF SURFACE DAMAGE AND RELEASE AGREEMENT**

Pursuant to the terms of that certain Surface Use and Release Agreement (the "Agreement") by and between Eldon L. Bower, Trustee of the Eldon and Martha Bower Family Revocable 1992 Trust, established 1992 ("Owner") and Apollo Operating, LLC ("Operator"), whose address is, 1557 Ogden St., Suite 300, Denver, CO 80218, hereafter collectively referred to as the "Parties", and subject to the conditions set forth therein, the Parties have agreed to the approximate location(s) for the placement of oil and gas well(s) and related facilities including but not limited to tanks, meters, flowlines, separators, dehydrators on the following described lands (the "Lands"):

**Township 6 North, Range 67 West, 6<sup>th</sup> P.M.**

Section 10: Lot B of Recorded Exemption No. 0807-10-4-RE-291  
(being part of the E/2 SW/4) Weld County, CO

In addition to the above, in the Agreement the Parties have agreed on payment for damages to the surface of the Lands and other matters connected with oil and gas development of the Lands including but not limited to drilling, construction, completion, recompletion, reworking, re-entry, production, maintenance, and operations on the Lands.

This Memorandum of Surface Damage and Release Agreement is executed by Operator and placed of record in Weld County, Colorado for the purpose of placing all persons of interest on notice of the existence of the Agreement. A true and complete copy of the Agreement is available at the offices of Operator to persons with an interest in the Lands.

In witness whereof this instrument is executed this \_\_\_\_ day of April, 2007.

**APOLLO OPERATING, LLC**

  
\_\_\_\_\_  
Jesse L. White, as Manager

STATE OF COLORADO        }  
                                      } ss.  
CITY and COUNTY OF DENVER }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2007 by Jesse L. White, as Manager of Apollo Operating, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:



  
\_\_\_\_\_  
NOTARY PUBLIC