

*Copy*

## **SURFACE USE AGREEMENT**

**THIS SURFACE USE AGREEMENT** (the "Agreement") is made and entered into this 19th day of December, 2005, by and between BROE LAND ACQUISITIONS II, LLC, a Colorado limited liability company, with an address of 252 Clayton Street Fourth Floor, Denver, Colorado 80206, hereinafter referred to as "Surface Owner," and GREAT WESTERN OIL AND GAS COMPANY, LLC, a Colorado limited liability company, with an address of 252 Clayton Street, Fourth Floor, Denver, Colorado 80206, hereinafter referred to as "GWOG." GWOG and Surface Owner are sometimes jointly referred to herein as the "Parties," and individually as a "Party."

### **RECITALS**

A. Surface Owner is the owner of the surface estate in and to the following real property located in Weld County, Colorado (the "Property" hereinafter):

Township 6 North, Range 67 West, of the 6th P.M.

Section 26: E $\frac{1}{2}$

Section 27: All Except: SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$

Section 34: All Except: E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$

Section 35: All Except: N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$

Notwithstanding the above description, this Agreement shall be applicable to all lands owned or hereafter acquired by Surface Owner in Sections 26, 27, 34 and 35, Township 6 North, Range 67 West, of the 6<sup>th</sup> P.M., Weld County, Colorado, which lands shall be included within the term "Property" as used herein.

B. Surface Owner has developed portions of the surface of the Property for industrial and other purposes, and may further develop that surface in the future.

C. GWOG has certain rights to develop its oil and gas mineral estate, including the drilling of wells.

D. In order to permit the coordinated development of the surface and mineral estates in the Property to the mutual benefit of the Parties, and to set forth the accommodations to be made by each Party with respect to those efforts, the Parties desire to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the covenants set forth herein and the mutual benefits to be derived, GWOG and Surface Owner hereby agree as follows:

#### **1. AREAS RESERVED FOR FUTURE OPERATIONS.**

##### **1.1. Future Oil and Gas Operations.**

1.1.1. Under applicable law, including the rules, regulations and orders of the Colorado Oil and Gas Conservation Commission (the "COGCC"), GWOG has certain rights to drill, complete, produce, deepen, rework, frac, and recomplete vertical or directional wells to bottom hole locations on the Property, or to adjacent property in which GWOG holds an oil and gas mineral or leasehold interest, or which is pooled with the Property (collectively referred to herein as "Future Wells"). Subject to the terms and conditions hereof and applicable law, GWOG shall be entitled use the areas described on **Exhibit A** for such drilling, completion, production, deepening, reworking, fracing and recompletion activities. GWOG shall not use more than two and one-half (2.5) acres of land within any Temporary Drilling Area for each Future Well drilled therein. Exact locations of the Temporary Drilling Areas shall be selected by GWOG, in consultation with Surface Owner prior to drilling.

1.1.2. Whenever a Future Well with a surface location within a Temporary Drilling Area is drilled and completed as a well capable of commercial production, GWOG may designate, by written notice to Surface Owner, an area within such Temporary Drilling Area (each, a "Permanent Operating Area") in which wellheads, separators, oil tanks and other production equipment may be located. Each Permanent Operating Area shall be of the minimum size reasonably necessary for production, taking into account the rules, regulations and orders of the COGCC (the "COGCC Rules"), operational needs and the number of Future Wells drilled therein. Once a Permanent Operating Area is designated, any additional Future Wells drilled within the applicable Temporary Drilling Area shall be in the same Permanent Operating Area; provided that, acting in its reasonable discretion, GWOG may designate, by written notice to Surface Owner, one or more additional Permanent Operating Areas within a Temporary Drilling Area, for the location of combined tank batteries and/or other production facilities, provided however, that such additional Permanent Operating Areas shall be limited to one per governmental quarter-section. Temporary Drilling Areas and Permanent Operating Areas may be jointly referred to herein as the "Areas."

1.2. Oil and Gas Operations Areas. During the term of this Agreement, the Areas shall remain available to GWOG for the purposes of drilling all Future Wells and for the conduct of any and all related operations by GWOG in connection with the Future Wells, including, but not limited to, drilling and production activities, workovers, deepenings, completions and recompletions, fracing, and other similar activities, together with the drilling, completion and operating of replacement or substitute wells. In the conduct of oil and gas operations, and subject to Section 10 hereof, GWOG shall comply with all federal, state and local rules and



regulations, environmental and otherwise, including the COGCC Rules, applicable to oil and gas operations. Without limiting the generality of the foregoing, all drilling locations within Areas shall be kept clean and materials cleaned up in a timely manner. No offsite fluids, mud, soil or other substances may be deposited on the Property, and no debris, slash, or other materials, except for gas flaring, shall be burned on the Property. Well pads shall be fenced at all times. The slope of any well pad located in an Area to any ditch, road, fence, or other surface improvement shall not exceed 2:1. Noise levels from oil and gas operations shall not exceed those allowed by the COGCC Rules, including during the flaring of gas. GWOG shall be responsible for controlling all noxious weeds in the Areas and for preventing such noxious weeds from spreading to other portions of the Property or any other adjacent lands. GWOG shall be responsible for controlling all erosion of soils within any Area, and on areas within or adjacent to the Property that is caused by the activities of GWOG or its employees, contractors or subcontractors. GWOG shall not be permitted to have, or allow, firearms, crossbows, pets, alcohol or illegal drugs on the Property. GWOG shall conduct all oil and gas operations on the Property as a prudent operator and in a manner which will minimize, insofar as reasonably practicable and otherwise in accordance with this Agreement, the impact on Surface Owner's use, occupation and enjoyment of, and operations on the Property.

1.3. Limitation on Use of the Property. Except for the Areas, areas covered by flowline and/or gas gathering lines described herein, existing access roads and areas covered by access roads described herein, GWOG shall not use or occupy any part of the surface of the Property except in the event (and only for the duration) of an emergency, or with the prior written consent of the Surface Owner.

1.4. Limitation on Surface Use Damages. Surface Owner acknowledges and agrees that GWOG's agreement to forbear or limit the exercise of surface use rights it otherwise has in respect of the Property by reason of the ownership of the oil and gas mineral estate in and under the Property constitutes adequate consideration for the rights granted to GWOG herein by Surface Owner. Accordingly, except as otherwise expressly provided for herein and without limiting the applicability of Sections 11 and 12 below, GWOG shall not be obligated to pay, and Surface Owner hereby waives any right to receive, any surface damage payments, or license or use fees, with respect to any operations conducted by GWOG on Areas or upon access roads, flowlines, gas gathering pipelines, or other easements granted herein and used in connection therewith. The waiver of surface damages provided herein shall include any claim for excessive surface use of the Areas in connection with the exploration for or production of oil and gas from any Future Well by GWOG. Notwithstanding the foregoing, in the event GWOG's activities within any Area result in damage to the surface of the Property in excess of that normally attributable to oil and gas exploration and production operations, in the event GWOG crosses, occupies or utilizes any part of the Property other than the Areas, or other than the access roads, flowlines and gas gathering lines, or areas covered by easements granted herein in connection therewith, or in the event GWOG's activities on the surface of the Property damage any crops or alter or damage the flow of Surface Owner's flood irrigation system, GWOG shall be liable for any and all damages that may occur as a result thereof. In addition, if GWOG's operations on the Property damage or destroy improvements of Surface Owner, including but not limited to buildings, fences, ditches and roads, GWOG shall promptly cause the same to be repaired or replaced, and shall restore the Surface, in a manner reasonably satisfactory to Surface Owner.



Further, if, as a result of GWOG's failure to conduct oil and gas operations on the Property as a prudent operator and in compliance with applicable laws, rules and regulations, any fresh water supply on the Property is rendered unfit for consumption by humans, cattle or other animals, GWOG shall be liable for actual damages incurred by Surface Owner as a result thereof. To obtain damages for injury to fresh water, Surface Owner will be required to provide to GWOG a water quality analysis with respect to the applicable water relating to a period prior to the activity that caused the claimed damage.

**2. WELL LOCATIONS.** Subject to the limitations of Section 1.1 above, GWOG shall have the right to drill one or more Future Wells within each Area at surface locations permitted under the then applicable COGCC Rules or exceptions thereto. In the event that the proposed surface location of a Future Well within an Area requires an exception to or variance from any applicable COGCC Rule (other than set back Rules), but is otherwise in accordance with the terms and conditions of this Agreement, Surface Owner shall neither protest nor object to any such exception location and, moreover, shall grant any waivers as described in Sections 8 and 9 below.

**3. SURFACE RECLAMATION.** Subject to Surface Owner's waiver of damages as set forth in Section 1.4 above, GWOG shall be responsible for all costs of interim and final reclamation and surface restoration for its oil and gas operations within the Areas or upon or relating to the access roads, flowlines and gas gathering lines or otherwise upon the Property, as required by any governmental agency or entity having jurisdiction. Without limiting the generality of the foregoing, each Future Well not completed as a producing oil or gas well shall be plugged, capped and abandoned and the applicable drilling location reclaimed and reseeded in accordance with applicable laws, regulations and this Agreement. After completion of any drilling activity (or cessation of any production activity, in the case of Future Wells which are capable of production in paying quantities), GWOG shall make a thorough, extensive cleanup of the portions of the Area affected by GWOG's activities including, without limitation, the removal of all waste material, trash, debris, drilling fluids, hydrocarbons and other materials from GWOG's activities or operations. All materials brought into an Area by GWOG in connection with the drilling or other activities on a Future Well shall be removed; no such materials may be buried. All cleanup, reclamation and restoration requirements shall be completed by GWOG as soon as practicable and in any event within 180 days after termination of drilling or producing activities on any Area.

**4. ACCESS ROADS AND PIPELINES.**

**4.1 Access Roads.** GWOG agrees to utilize existing roads on the Property to the extent practical in connection with its oil and gas operations within the Areas. In the event and to the extent existing roads are insufficient, Surface Owner hereby grants to GWOG a non-exclusive cost-free easement for additional or alternate road access to the Areas, over reasonably direct routes selected by GWOG in consultation with Surface Owner, and in accordance with good oil field practices. Such easements shall be for the private use of GWOG, its agents, employees, contractors, and subcontractors only, with no right of use by the public, or for access by the public to other lands. Unless otherwise agreed by the Parties, any access road constructed by GWOG on the Property shall not exceed twenty (20) feet in width, except as otherwise



required by applicable law or engineering requirements, and shall be properly graded and drained. GWOG's right to use of the existing and newly constructed access roads granted herein shall be non-exclusive. If any Future Well is completed as a producing or shut-in well, GWOG shall (a) gravel all or part of the applicable access road constructed by it in order that such road is usable in all weather conditions, (b) use best available methods (other than hard surfacing) to limit dust from the access road, and (c) install culverts and other improvements as may be necessary for the proper upkeep, maintenance and drainage of said access road. For so long as GWOG uses an access road constructed by it, GWOG shall maintain it in a state of good condition and repair, at the sole expense of GWOG; provided that Surface Owner shall be responsible, as between GWOG and Surface Owner, for the cost of all repairs to the extent attributable to the use of such road by Surface Owner and its invitees, contractors and subcontractors. The maximum speed limit on any such access road shall be twenty-five (25) miles per hour.

4.2 Relocation of Access Roads. Subsequent to construction of any access road by GWOG, and upon notice and consultation with GWOG, Surface Owner may relocate such roads and associated easements, so long as any substitute route does not materially interfere with GWOG's access. Any such relocated access road constructed by Surface Owner for the use of GWOG shall be of sufficient size to allow GWOG to conduct the operations contemplated for the Future Wells and shall be built to withstand a minimum of 26,000 pounds per axle.

4.3 Pipelines. All flowlines, gas gathering lines and pipelines outside of an Area and necessary in connection with the production, transportation or marketing of oil or gas from any Future Well shall be constructed along the reasonably direct routes selected by GWOG in consultation with Surface Owner, and in accordance with applicable laws and good oilfield practices. All flowlines, gas gathering lines and pipelines, whether located within or without an Area, shall be buried to a minimum depth of three (3) feet below the surface of the earth, and a maximum depth of five (5) feet below the surface of the earth for roads and railroads and eight (8) feet for utilities and ditches. In connection with the installation, construction, operation and maintenance of all such lines, GWOG shall use all reasonable care to avoid damaging or otherwise interfering with underground utilities on the Property. Without the prior written consent of Surface Owner, GWOG's activities in connection with such lines shall be limited to twenty-five (25) feet on either side of the line during construction and ten (10) feet on either side of the line at all other times.

**5. PRODUCTION FACILITIES AND EQUIPMENT.** GWOG shall have the right to locate, install, build, repair and maintain tanks, separators, dehydrators, compressors and other facilities and equipment reasonably necessary, appropriate or convenient for the operation and production of any Future Wells within Permanent Operating Areas. With respect to GWOG's equipment and facilities, other than flowlines, gas gathering lines and pipelines:

5.1 GWOG shall install and maintain fencing around its facilities and equipment within the Permanent Operating Areas in compliance with the COGCC Rules, unless more rigorous standards are otherwise agreed to in writing by the Parties.



5.2 GWOG shall install and maintain gates and locks reasonably necessary for the security of any wells and/or facilities in the Permanent Operating Areas. Such gates and locks shall be of a type and quality customarily used by GWOG for such purpose.

5.3 GWOG shall paint any above-ground production facilities and equipment, including wellhead guards, with paint with appropriate earth-tone colors to blend with the surrounding landscape and that is otherwise approved by the COGCC and the Surface Owner.

5.4 If required by Surface Owner, GWOG shall place tanks below grade (with landscaped berms surrounding the tanks) remaining at the Permanent Operating Areas after the completion of drilling on such Permanent Operating Area.

6. **WAIVER OF THIRTY DAY NOTICES.** Surface Owner hereby waives the thirty (30) day advance notices required by COGCC Rules 305 and 306, as amended, with respect to Future Wells, and agrees to execute a separate waiver for filing with the COGCC if requested by GWOG. This waiver does not apply to any other wells that may be proposed by GWOG, unless subsequently accepted by Surface Owner and made a part of this Agreement.

7. **DRILLING AND COMPLETION OPERATIONS.** Subject to rig availability and the receipt of drilling permits and other necessary authorizations, GWOG shall use its commercially reasonable efforts to drill all Future Wells consecutively and to limit the aggregate amount of time between the spudding of the first Future Well and the completion or plugging and abandonment of the last Future Well. GWOG shall make all reasonable efforts to pursue any drilling operations in a diligent manner so as to minimize the total time period on location and to avoid rig relocations or startup delays during the course of drilling. To help expedite the drilling of Future Wells, Surface Owner hereby waives and shall not assert any objections to continuous (i.e., 24-hour) drilling or completion operations.

8. **BUILDING RESTRICTIONS; SETBACK REQUIREMENTS.**

8.1 Surface Owner Improvements. Surface Owner shall not build, construct or install any improvements upon any portion of the Property lying within the Areas, including, but not limited to landscaping, sprinkler system, fences, sidewalks, access or haul roads, paved streets, and water drainage and sewer systems without the prior written consent of GWOG which shall not unreasonably be withheld. If, after obtaining such consent and constructing any other improvements within the Areas, GWOG requests that such improvements be moved or removed to accommodate GWOG's oil and gas operations thereon, Surface Owner shall be obligated, at GWOG's expense, to move or remove such improvements as soon as commercially practicable after the date such request is received. GWOG shall use reasonable care in conducting its operations on the Areas, and shall be responsible for damage to any improvements constructed by Surface Owner in the Areas.

8.2 Setbacks. Except as otherwise consented to by Surface Owner, which consent may not be withheld unreasonably, GWOG agrees to comply with the setback requirements of the COGCC Rules.



## **9. GOVERNMENTAL PROCEEDINGS.**

9.1 Surface Owner. Surface Owner shall not, directly or indirectly, oppose, or encourage opposition to, GWOG in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, Town of Windsor, County of Weld, or other governing body proceedings, related to GWOG's oil and gas operations on the Property; provided that GWOG's actual or proposed operations and position in such proceedings are consistent with this Agreement. Surface Owner further agrees to provide GWOG with whatever written support it may reasonably request to obtain permits relating to oil and gas operations from the COGCC or any local jurisdiction.

9.2 GWOG. GWOG shall not, directly or indirectly, oppose, or encourage opposition to, Surface Owner in any agency, administrative, county, Town of Windsor, County of Weld or other governing body proceedings, relating to Surface Owner's operations on and development of the Property.

**10. COMPLIANCE WITH RULES AND REGULATIONS.** In addition to the terms and conditions of this Agreement, GWOG shall also comply with all applicable COGCC Rules, including, without limitation, COGCC's Series 1000 Rules. No part of this Agreement shall be construed to relieve GWOG from any or all of the COGCC Rules. If there is a conflict between this Agreement and any applicable COGCC Rule, then whichever of this Agreement or the COGCC Rule which requires stricter protection of the environment, public health, safety or welfare shall prevail and govern as to the point in conflict, unless specifically waived in writing by Surface Owner and as may be allowed by COGCC. This Agreement does not constitute a waiver of any COGCC Rule unless specifically provided for herein. To the extent this Agreement deals with a subject covered by any COGCC Rule, but the Agreement does not provide a standard for performance, then the standard shall be provided by the relevant COGCC Rule. GWOG shall timely provide Surface Owner with copies of any reports, notices or documents filed by it with the COGCC or any other regulatory agency having jurisdiction over GWOG's operations hereunder.

## **11. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY; INSURANCE.**

**11.1 NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR, OR BE REQUIRED TO PAY THE OTHER PARTY FOR, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES FOR OR IN CONNECTION WITH ACTIVITIES UNDERTAKEN WITHIN THE SCOPE OF THIS AGREEMENT.**

11.2 Except as to Environmental Claims (which claims are defined in and governed by Section 12 below), GWOG shall be and remain responsible for all liability for losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (collectively, "Claims"), arising out of or attributable to its ownership of or operations (including the activities of its invitees, agents, employees, contractors and subcontractors) on the Property, the surface of the Property or the oil and gas mineral and leasehold estates in the Property, as applicable, no matter when asserted, subject to applicable statutes of limitations. GWOG shall release, defend,



indemnify and hold Surface Owner and its affiliates, and its and their officers, directors, employees, agents, successors and assigns, harmless against all such Claims. Each Party shall be and remain responsible for all liability for Claims arising out of or attributable to its breach of this Agreement or any default in the performance of its obligations hereunder, no matter when asserted, subject to applicable statutes of limitation, and shall release, defend, indemnify and hold the other Party and its affiliates, and its and their officers, directors, employees, agents, successors and assigns, harmless against all such claims. This provision does not, and shall 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 the Parties, other than the right to be indemnified for Claims as provided herein.

11.3 Upon the assignment or conveyance of a Party's entire interest in the Property, such Party shall be released from its indemnification obligation in Section 11.2 with respect to any Claims based on actions, occurrences or omissions occurring after such assignment or conveyance.

11.4 GWOG shall keep its operations insured, or comply with applicable self-insurance laws and regulations, for automobile, liability, and workmens' compensation insurance, and for any damages incurred on the Property.

11.5 GWOG hereby waives on behalf of itself and its insurers any claims that GWOG may have against Surface Owner for loss or damage resulting from perils covered by the standard form of all risk property insurance. The Parties understand that such waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault or negligence of Surface Owner and whether or not insurance is in force. If required by policy conditions, GWOG shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to Surface Owner if requested.

**12. ENVIRONMENTAL INDEMNITY.** Subject to the limitations of Section 11.1 above:

12.1 "Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, or for noncompliance with Environmental Laws, arising from or attributable to operations on or ownership of the Property or ownership of the oil and gas mineral and leasehold estates in the Property, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising under Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall 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 or to comply with any applicable Environmental Law.

12.2 "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or orders of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the human health, safety or 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) or their state counterparts.

12.3 GWOG shall release, protect, indemnify, defend and hold harmless Surface Owner and its affiliates, and its and their officers, directors, employees, agents, successors and assigns, any third party who purchases a portion of the surface of the Property from Surface Owner, from any and all Environmental Claims to the extent such Claims arise out of or are attributable to GWOG's operations on the Property. Surface Owner shall release, protect, indemnify, defend and hold harmless GWOG, its affiliates, and its and their officers, directors, employees, agents, successors and assigns, from any and all Environmental Claims to the extent such Claims arise out of or are attributable to Surface Owner's operations on the Property.

**13. NOTICE OF CLAIM FOR INDEMNIFICATION.** If a Claim is asserted against a Party for which another Party would be liable under the provisions of Section 11 or 12 above, it is a condition precedent to the indemnifying Party's obligations hereunder that the indemnified Party give the indemnifying Party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified Party, including a copy of any written Claim. The indemnified Party shall make a good faith effort to notify the indemnifying Party within five days of receipt of a Claim and in any event within such time as will allow the indemnifying Party to defend against such Claim.

**14. LIENS.** GWOG shall, at its sole expense, keep the Property free and clear of all liens and encumbrances resulting from GWOG's and its agents activities on the Property, and shall indemnify and hold harmless Surface Owner from and against any and all liens, claims, demands, costs and expenses, including without limitation attorney's fees and costs, in connection with or arising out of any work done, labor performed, or materials furnished.

**15. REPRESENTATIONS.** Each Party represents that it has the full right and authority to enter into this Agreement and Surface Owner specifically confirms its capacity to validly execute the rights of way and easements provided for herein. Notwithstanding the foregoing, this Agreement is made subject to any and all existing easements, rights of way, liens, agreements, burdens, encumbrances, restrictions and defects in title affecting the Property.

**16. SUCCESSORS; LESSEES.** The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. The Parties acknowledge that GWOG may lease all or portions of its mineral estate in and under the Property to one or more third parties (each, "Lessee"), and GWOG agrees to cause each Lessee to comply with and abide by all relevant terms and conditions of this Agreement. Except as provided herein, GWOG may not assign or delegate its rights or obligations hereunder to any third party without the prior written consent of Surface Owner.

**17. TERM.** This Agreement shall become effective when it is fully executed and shall remain in full force and effect for a period of ten (10) years, or until GWOG has plugged and abandoned all wells owned all or in part by GWOG (including ownership of a royalty interest



therein) and complied with the requirements of all applicable regulations and relevant oil and gas leases pertaining to removal of equipment, reclamation, cleanup and surface restoration, which ever is later in time. When this Agreement terminates, the Parties shall execute any further releases reasonably necessary to evidence the fact that this Agreement shall no longer apply to the Property. The indemnities set forth in Sections 11 and 12 hereof shall survive any termination or expiration of this Agreement.

**18. NOTICES.** Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

If to Surface Owner:            Broe Land Acquisitions II, LLC  
252 Clayton Street  
Denver, Colorado 80206  
Attn: Manager

If to GWOG:                      Great Western Oil and Gas Company, LLC  
252 Clayton Street, Fourth Floor  
Denver, Colorado 80206  
Attn: Eric D. Swanson, President

Any Party may, by written notice so delivered to the other parties, change the address or individual to which delivery shall thereafter be made.

**19. RECORDING.** A Memorandum of this Agreement, and of any amendment to this Agreement, shall be promptly recorded by GWOG, which shall provide the Surface Owner with a copy showing the recording information as soon as practicable thereafter.

**20. SUBSTITUTE AGREEMENT.** In consideration of the Parties' respective rights, obligations and benefits herein, this Agreement shall constitute the surface use or surface damage agreement provided for under the COGCC Rules or under any oil and gas lease covering the Property.

**21. DISPUTE RESOLUTION; FORUM.**

20.1 Except to the extent a Party deems it reasonably necessary to seek immediate injunctive or equitable relief, in which event a Party may seek such relief to protect its interests in an appropriate forum, in the event of any controversy or claim arising out of or relating to this Agreement, or any breach thereof, the Parties agree for a period of 30 days following notification that a controversy or breach has arisen or occurred to attempt in good faith to resolve any such controversy or breach between the respective senior officers for each Party who are responsible for administration of this Agreement. All applicable statutes of limitation, including without limitation any contractual statutes of limitation in this Agreement shall be tolled while the procedures of this Section 20.1 are pending. If such senior officers are unable to resolve the controversy or breach within the said 30 days, then the Parties shall submit the controversy or breach to the [President] of each Party for resolution for a period of 15 days. If the Parties'



respective senior officers or [Presidents] resolve the controversy or breach, the Parties will adhere to their resolution, and make such amendments to this Agreement as may be necessary.

20.2 In the event the [Presidents] are unable to resolve the controversy or breach within the said 15-day period, either Party may initiate an action in a federal or state court of competent jurisdiction located in the State of Colorado, and the Parties hereby irrevocably consent to the jurisdiction of all such courts.

**22. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

**23. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding among the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all Parties.

**24. HEADINGS.** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

**25. TIME OF ESSENCE.** Time is of the essence in this Agreement.

**26. NON-WAIVER.** Waiver by either Party or of the failure of either Party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of the right or prevent any such Party from requiring the strict performance of any provision in the future.

**27. SEVERABILITY.** Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice the Surface Owner or GWOG in their rights and obligations contained in valid covenants, conditions or provisions.

**28. NO JOINT VENTURE.** This Agreement is not intended to, nor shall it be interpreted to create a joint venture, partnership or any other relationship between the Surface Owner and GWOG, other than that of surface owner and oil and gas lessee or mineral owner, respectively.




29. **THE PARTIES** have executed this Agreement on the day and year first above written.

**GREAT WESTERN OIL AND GAS  
COMPANY, LLC**

By:   
Eric D. Swanson, President

**BROE LAND ACQUISITIONS II, LLC**

By:   
Name: Dwight N Johnson  
Title: Mgr.

3453554\_4.DOC