

Anadarko E & P Company LP  
Attn: Melissa Henemann  
1099 18th Street, Suite 1800  
Denver, CO 80202

Reception #: D1093836, 09/29/2011 at  
02:55:52 PM, 1 OF 12, NSD, Rec Fee  
\$66.00  
Arapahoe County CO Nancy A. Doty,  
Clerk & Recorder

## MEMORANDUM OF SURFACE USE AND DAMAGE AGREEMENT

This Agreement is made and entered into effective this 1st day of August, 2011, by and between Watkins Road Associates II, LLP, as the owner of the surface of the lands described hereafter whose address is 7400 East Crestline Circle, Suite 150, Greenwood Village, CO 80111, hereinafter referred to as "Owner", and Anadarko E&P Company LP, whose address is 1099 18<sup>th</sup> Street, Suite 1800, Denver, CO 80202, hereinafter referred to as "Operator".

### WITNESSETH:

**WHEREAS**, Owner owns the surface estate described on Exhibit "A" attached hereto (the "Lands") as well as the mineral estate under portions of the Lands; and

**WHEREAS**, Owner plans to develop the Lands to include in planned communities for residential, commercial, agricultural, industrial and other development; and

**WHEREAS**, Operator holds one or more valid oil and gas leases from Owner or from third parties covering all or portions of the Lands; and

**WHEREAS**, the parties wish to enter into an agreement concerning the use by Operator of portions of the Lands for the purposes of drilling, completing, and operating one or more oil and gas wells on the Lands consistent with Owner's ownership of the Lands for development.

**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:

1. **Right of Use.** Owner hereby gives and grants to Operator, its agents, employees, drilling contractors, and related service companies, subject to the terms of this Agreement, the non-exclusive right to enter upon and use the Lands for the purpose of drilling, completing, and producing one or more oil and gas wells at legal locations or at such exception locations as are approved by the Colorado Oil & Gas Conservation Commission ("COGCC"), together with rights-of-way across the Lands and adjacent lands owned by Owner necessary to construct and maintain one or more access roads, well sites, tank batteries, and pipelines in connection with the oil or gas wells to be drilled by Operator upon the Lands in accordance with this Agreement. The rights of Operator to use the Lands as set forth herein are non-exclusive, and Owner reserves the right to use all access roads, and all surface and sub-surface uses of the Lands, and to grant successive easements on or across the Lands on such terms and conditions as Owner deems necessary or advisable, provided that Owner's use and all other uses authorized by Owner do not unreasonably interfere with the operations of Operator.

2. **Notification and Consultation**

(a) Prior to commencing any operations, initiating the drilling of any well or initiating the conduct of seismic activities on said Lands, Operator shall notify Owner prior to entry upon the Lands and shall consult with Owner and receive Owner's consent, which consent shall not be unreasonably withheld, as to the location of each well, road, pipeline, power line, tank battery, or other facility to be placed upon or under the Lands. Such agreed-upon locations shall be known as the "Oil and Gas Operations Areas". All of Operator's activities shall be restricted to the Oil and Gas Operations Areas and Owner shall not occupy any portion of the Oil and Gas Operations Areas for any purpose, it being specifically agreed that the Oil and Gas Operations Areas are for the exclusive use of Operator.

(b) Provided mutually acceptable alternate locations are agreed upon by Owner and Operator, Owner shall have the right to require Operator to relocate any roads, pipelines, power lines, or other surface or underground facilities (excluding any well) upon 90 days prior written notice to Operator in the event that such relocation is necessary to Owner's use of the Lands. All relocation expenses will be borne by Owner and Operator will not be required to move any of its

facilities until provision has been made for the payment of such expenses to the reasonable satisfaction of Operator.

**3. Compensation.** As compensation for surface damages and as rental for use of Owner's surface estate, Operator shall pay to Owner the following:

(a) The sum as agreed upon per permanently disturbed acre for the drilling of any well or location of any facilities upon the Lands owned by Watkins Road Associates, II, LLP; Purview Associates, LLP; and Sun Empire IV, LLC, East Side Sunset, LLC and Bravada/Neher 160, LLC, and for the access road across the Lands to the well location, payable within 30 days of permanent facility installation.

(b) In the event that Operator desires to construct buried oil or gas pipelines, Operator shall pay Owner a one-time payment of an agreed upon sum per rod for such pipelines.

(c) Operator shall not use Owner's water for drilling or other purposes.

(d) For buried power lines and telecommunication lines, Operator shall pay Owner a one-time payment of an agreed upon sum per rod, unless such power lines or telecommunication lines are installed at the same time and in the same ditch as the pipelines described herein, in which case there shall be no duplication of payment.

(e) On the fourth anniversary of this Agreement, and every five years thereafter, payments provided for in this Agreement shall be increased or decreased (but never below the amounts stated herein) by a percentage equal to the increase or decrease in the Consumer Price Index as published by the United States Department of Commerce for the preceding five-year period.

(f) The fees and compensation payable by Operator to owner for the installation and location and operation of any compressor on the Lands shall be negotiated in good faith by Owner and Operator under a separate agreement.

(g) Provided Owner is in compliance with this Agreement, Operator agrees that it will not object, oppose or seek to prevent Owner from (i) obtaining any required permits to develop the Lands for such residential, commercial, industrial and other uses of any kind as Owner determines from time to time, or (ii) so developing the Lands, subject to Operator's rights under this Agreement. Operator agrees to execute and deliver letters of support of and non-objection to such development by Owner as may be requested by Owner from time to time. Likewise, provided Operator is in compliance with this Agreement, Owner will not oppose any permit application Operator submits to the COGCC or any state or local entity having jurisdiction of some or all of Operator's activities hereunder or under the Oil and Gas Lease of even date so long as said application or permit is consistent with this Agreement.

**4. Road Construction and Use.** Any roads constructed or used by Operator on the Lands shall be constructed or used to the following specifications:

(a) To the maximum extent reasonably possible, Operator will use existing roads designated by Owner for its operations if such use is operationally and economically feasible in Operator's judgment reasonably exercised.

(b) The surface of all roadways shall be made of compacted gravel, shall not exceed 24 feet in width for traveled surface, and shall comply with all regulations or laws applicable to such roadways. Operator shall control dust from all roadways through the application of an appropriate dust suppressant. Any roads constructed by Operator shall be improved as may be necessary and Owner and Operator agree that once surface development begins, the parties will consult with each other and agree on how the roads used in the operations of the oil and gas activities will be merged into the development roads.

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

(d) Culverts shall be placed in low areas for proper drainage.

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

(f) The use and construction of roads by Operator on the Lands is a non-exclusive use, and Owner may allow other parties to use said roads and make a charge therefor. However, Operator shall have the right to assess other non-agricultural users of the roads (except for Owner) for their share of maintenance work performed by Operator. Owner shall have no responsibility for road maintenance.

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

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

(i) Operator shall maintain existing and newly constructed roads used by Operator to the extent necessary for Operator's needs and to the reasonable satisfaction of Owner, which maintenance may include shaling, ditching, graveling, blading, mowing grass to avoid fire danger, installing and cleaning cattle guards, and spraying for noxious weeds. This work shall be done at such reasonable times as Owner shall request.

(j) No roads on the Lands shall be used by Operator for access to lands not subject to the Lease without a separately negotiated agreement.

**5. Well Sites.** Well sites located on the Lands shall be limited to no more than ten (10) acres in size during drilling, completion, and reworking activities, and no more than four (4) acres permanently disturbed in size for producing well sites, including any tank batteries constructed by Operator. Operator agrees to fence the pits and other dangerous areas and at all times keep its well sites in good order and free of litter, debris, trash, or spilled hydrocarbons. In the event that Operator does not encounter commercial quantities of oil, gas, or other hydrocarbons at any well location and determines the location to be a "dry hole," Operator shall promptly fill in, smooth over, and clean up the well site and rights-of-way and shall restore and reseed the area with a seed mix reasonably approved by Owner after replacing topsoil. All cleanup and restoration activities shall be completed by Operator as soon as the reserve pit has been allowed to dry so that proper backfilling can be accomplished. If the reserve pit is not dry within six months of completion of drilling operations, it shall be pumped dry by Operator and the contents properly disposed of off the Land pursuant to applicable law. In the event that any well drilled upon the Lands is completed as a commercial producer of oil and/or gas, Operator shall promptly clean up the well site location and use only so much of the area as is reasonably necessary for its operations, and Operator shall restore such well location, reseeding the same with a seed mix specified by Owner, and Operator shall keep all well site locations neat, orderly, and clean at all times.

**6. Pipelines.** Any pipelines constructed by Operator on the Lands shall be constructed and maintained to the following specifications:

(a) The top of each pipeline shall be buried at least 48 inches below the surface of the ground and shall be constructed in such a manner to safely permit Owner to construct roads and utilities over such pipeline in such locations as may be designated by Owner.

(b) Operator shall be responsible for backfilling, repacking, reseeding, and recontouring the surface so as not to interfere with Owner's present or future agricultural operations and its present or planned future development or other use of the Lands. If pipeline trenches settle so as to interfere with Owner's irrigation or ranching activities, upon request by Owner, Operator shall fill in, repack, and level such trenches.

(c) Operator shall provide Owner with a plat showing the "as built" length and location of all pipelines promptly after their installation.

(d) Owner reserves the right to occupy, use, and cultivate the lands affected by such pipelines, and to grant such rights to others, so long as such use does not interfere with Operator's operations. No structures may be built by Owner within fifteen (15) feet of any pipeline.

(e) The pipelines referred to in this Agreement are limited to and include only those gathering system pipelines used in connection with wells drilled on the Lands.

(f) If Operator fails to use any pipeline for a period in excess of twenty-four (24) consecutive months, the pipeline shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to clean up and remove the pipeline, or render the pipeline environmentally safe and fit for abandonment in place, and restore the surface. All such cleanup and mitigation shall be performed in compliance with all applicable federal, state, and local laws and regulations.

7. **Power Lines.** Any buried or overhead power lines constructed on the Lands shall be constructed and maintained to the following specifications:

(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, and shall obtain Owner's written consent for such locations which consent shall not be unreasonably withheld. Overhead power lines will be constructed so as to cause the least interference reasonably possible with Owner's visual landscape and Owner's existing and planned future uses of the Lands, and, to the maximum extent reasonably possible, overhead power lines will be constructed along fence lines or property lines. All overhead power lines will be located in a manner to minimize or avoid interference with Owner's existing or future uses of the Lands. No overhead power line will be located where it will interfere with Owner's existing or planned future uses of the Lands planned by Owner at the time of construction of overhead power lines. Owner shall be entitled to receive payment from Operator's electricity provider for overhead power lines.

(b) Subject to compliance with any guidelines and policies of the power provider, within two months after a well has been placed on production, all power lines constructed by or for Operator downstream of the independent power company's meters shall be buried, and all power line trenches shall be fully reclaimed and reseeded to the reasonable satisfaction of Owner. Buried power lines shall be installed at least 48 inches below the surface of the ground, and shall be constructed in such a manner to safely permit Owner to construct roads and utilities over such power line in such locations as may be designated by Owner.

(c) Operator agrees that it will not construct overhead power lines that will interfere with irrigation in those portions of the Lands which are developed or are being irrigated or cultivated or which may, in the future, be developed or irrigated or cultivated or which are fallow as part of a crop rotation or management program.

8. **Operations.** Operator's operations on the Lands shall be conducted according to the following specifications:

(a) Operator shall at all times keep its well sites and road rights-of-way safe and in good order, free of noxious weeds, litter and debris, and shall spray for noxious weeds upon reasonable demand by Owner as required by the rules of the COGCC.

(b) Operator shall rehabilitate, restore, reclaim, and reseed all disturbed areas caused by Operator's operations within six (6) months after termination of construction activities on such sites, unless inclement weather prevents such rehabilitation and restoration within that time period or within such other time as provided in the then applicable rules of the COGCC.

(c) All cattle guards and fences installed by Operator shall be kept clean and in good repair and will become the property of Owner when Operator ceases ownership of its oil and gas lease covering that portion of the Lands.

(d) Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Lands. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Lands which are reportable to regulatory authorities under applicable law or regulations shall be immediately (within 24 hours) reported to Owner by telephone, fax, or e-mail, to be followed by copies of written notices which Operator has filed with regulatory authorities within five (5) business days after such filing.

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

(f) Operator shall use reasonable efforts to assure that construction or routine maintenance activities will not be performed during periods when the soil is too wet to adequately support construction equipment. Once a well is completed, Operator shall also access the Lands with heavy trucks and tankers as may be necessary for the efficient operation of the Lease taking into account the levels of production from wells drilled on the Lease; it being understood that access will be more frequent earlier in the production process. Once development of the surface has started, Owner and Operator will consult with one another to determine if changes need to be made with respect to heavy truck and tanker access taking into account then current and anticipated levels of production from the Lease and the safe and efficient use of the surface development.

(g) All surface facilities not subject to safety requirements shall be painted Operator's colors, which shall blend with the natural color of the landscape.

(h) No living quarters shall be constructed upon the Lands, except that drilling crews and geologists or service personnel may use temporary "dog houses" during drilling, completion, or reworking activities.

(i) Operator shall not fence any access roads without the prior consent of Owner.

(j) Operator shall construct stock-tight fences for both sheep and cattle around any dangerous areas, including any pits where Operator drills wells.

(k) Operator and its employees, agents, and contractors shall leave all gates located on the Lands as they found them; gates found closed are to be closed; gates found open are to be left open.

(l) None of Operator's employees, agents, or contractors, or any other person under the direction or control of Operator shall be permitted to carry firearms or any other weapon on the Lands and such persons shall not hunt, fish, or engage in recreational activities on the Lands. No dogs will be permitted on the Lands at any time. Operator will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing, or recreational activities will be allowed on the Lands. None of Operator's employees, agents, or contractors, or any other persons under the direction or control of Operator, shall possess or be under the influence of alcohol or illegal drugs while on the Lands.

(m) Operator shall conduct operations and activities on the Lands in accordance with, and shall strictly comply with all existing local, state, and federal laws, rules, and regulations. Operator shall also obtain any permit, consent, license, or other authorization required by law or by any governmental authority having jurisdiction.

(n) Operator shall take all reasonable steps to prevent fire and to promptly extinguish fire, including, but not limited to, maintaining a fire extinguisher, shovel, and bucket in each service vehicle entering upon the Lands. Operator shall fully and promptly compensate Owner for all damages caused by fire arising out of Operator's operations, including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

(o) Operator shall conduct dust suppression in such areas and at such times as Owner shall reasonably request as long as the dust being suppressed is the result of Operator's operations.

9. **Limitation on Rights.** The Lands may not be used in connection with operations on other premises not owned by Owner without Owner's written consent.

10. **Produced Water.** With respect to any water produced from wells drilled on the Lands in connection with the production of oil, gas, or other hydrocarbons, Operator agrees to reinject produced water or haul the same away from the Lands and properly dispose of such produced water off the Lands. Operator shall not construct evaporation pits for produced water, but may have a small "emergency pit" during drilling, completion, or reworking operations for produced water purposes.

11. **Dry Hole / Water.** Operator's use of water shall be governed by the applicable provisions of the Oil and Gas Lease between the parties. In the event that Operator discovers water during its drilling operations, Operator shall advise Owner of the location and quantity thereof. In the event Operator elects to abandon a well (either a "dry hole" or upon cessation of production from a producing well), Operator will give Owner forty-five (45) days written notice of the opportunity to take over any abandoned well and convert the well to a water well. If Owner elects in writing to take over the abandoned well and convert the well to a water well, then Owner will assume all liability and costs associated with the well thereafter, and both parties shall execute any and all documents necessary to provide that the water in the well shall become the property and the responsibility of Owner. If Owner does not elect to take over an abandoned well within such 45-day period, Operator shall plug and abandon the well as required by applicable law and regulations and reclaim the well site as provided herein.

12. **Seismic Operations.** Seismic operations on the Lands and the compensation payable to Owner therefor, shall be subject to a separate agreement between Owner and Operator.

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

14. **Reclamation and Reseeding.**

(a) Unless Owner otherwise agrees in writing or unless otherwise provided in the rules of the COGCC, within six (6) months after termination of any of Operator's operations on the Lands, Operator shall fully restore and level the surface of the lands affected by such terminated operations as near as possible to the contours which existed prior to such operations. Operator shall use water bars and other measures as appropriate to prevent erosion and non-source pollution.

(b) Unless otherwise agreed by Owner or unless otherwise provided in the rules of the COGCC, all areas disturbed by Operator's activities will be reseeded with suitable grasses or crops selected by Owner, at a reseeding rate determined by Owner, and during a planting period selected by Owner. In the absence of direction from Owner, no reseeding (except for borrow pits) will be required on any access roads existing as of the date of this Agreement. It shall be the duty of Operator to ensure that a growing ground cover is established upon disturbed soils and Operator shall reseed as necessary to accomplish that duty.

(c) 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 as required by the rules of the COGCC. 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 near the condition as existed prior to construction. If Owner so requests, Operator shall construct and remove fences for the purpose of temporarily excluding livestock from newly seeded areas.

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

Except as to claims arising out of pollution or environmental damage (which claims are governed by paragraph 16 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each party shall be and remain responsible for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations or activities on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, agents and contractors, successors and assigns, harmless against all such Claims. This provision does not, and 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 parties to this Agreement other than the right to be indemnified for Claims as provided herein. Notwithstanding anything in this Agreement to the contrary, Operator shall compensate Owner for any damage, loss, or claim which Owner sustains because Operator did not act as a reasonable and prudent operator.

Upon the assignment or conveyance of a party's entire interest in the Property, that party shall be released from its indemnification provided above, for all actions or occurrences happening after such assignment or conveyance.

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

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

"Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et

seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

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

**17. Exclusion From Indemnities.** The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

**18. Release.** To the maximum extent permitted by law, Operator releases and waives and discharges Owner and, if applicable, Owner's officers, directors, employees, agents, successors, and assigns from any and all liability for personal injury, death, property damage, or otherwise arising out of Operator's or its agents' operations under this Agreement or Operator's use of Owner's property, unless such injury, death, or property damage is the result of Owner's negligent acts or omissions or those of its members, officers, directors, employees, agents, successors, and assigns.

**19. Inspections and Reports.** Operator and its authorized agents and representatives shall have access to the Oil and Gas Operations Areas, and to the surface location of any well drilled outside of the Lands that is or will be drilled into the Lands, and shall have the right to witness and observe all operations conducted thereon, including the drilling, logging, testing, casing, completing, Directional Surveying, and plugging and abandonment of any well thereon. Upon reasonable advance notice, Owner shall have the right to inspect Operator's records with respect to such operations to verify Operator's compliance with this Agreement. Owner shall maintain the confidentiality of all such information for so long as such information is not publicly available. Owner shall indemnify, defend and save and hold harmless Operator from and against any claims and liabilities for damage to property or injury to persons arising out of the acts or omissions of Owner or its agents or representatives in connection with such inspections, except to the extent such claim or liability is attributable to the negligence or willful misconduct of Operator or its contractors.

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

Owner: Steven Cohen  
Watkins Road Associates II, LLP  
7400 East Crestline Circle, Ste. 250  
Greenwood Village, CO 80111  
Phone: 303-221-8200  
Fax: 303-773-2501  
E-mail: smcohen@bravadapartners.com

Operator: Anadarko Petroleum Corporation  
1099 18<sup>th</sup> Street, Suite 1800  
Denver, CO 80202-1918  
Attn: Surface Land Manager

**21. Assignment.** This Agreement shall run with the Lands and shall be assigned by Operator in connection with any assignment of Operator's oil and gas leasehold rights under all or a portion of the lands described on Exhibit "A".



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

23. **Insurance.** Operator elects to self-insure its common law and assumed liability under this Agreement for bodily injury and/or property damage to third parties in connection with accidents arising out of its operations, but only to the extent of those liabilities assumed herein. Operator self-insures the first \$5,000,000 of its general liability, with excess liability insurance covering all operations and attaching over its self-insurance retention. Operator's self-insurance will respond to the same extent as if an insurance policy had been purchased naming Owner as an additional insured, but only to the extent of those liabilities assumed herein. Any limitations of Operator's self-insurance shall not limit its obligations to Owner as provided in this Agreement or the Lease. In the event of an assignment or transfer of this Agreement, the assignee or transferee shall be required to provide insurance coverage that is reasonably acceptable to Owner before Owner shall be required to consent to such assignment.

24. **As is/Where is.** Operator acknowledges that it is aware of all natural and manmade hazards on the Lands. Operator takes the Lands subject to all such hazards, as is, where is.

25. **Conflicts.** In the event of any conflict between this Agreement and any Oil and Gas Lease that covers the Lands, the terms and provisions of this Agreement shall control.

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

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

28. **Term.** This Agreement shall continue until the termination of the Oil and Gas Lease between Operator and Owner covering the Lands, at which time this Agreement shall terminate. All of Operator's obligations and liabilities under this Agreement shall survive the termination of the said Oil and Gas Lease.

29. **Applicable Law.** This Agreement shall be construed under the laws of the State of Colorado.

30. **Dispute Resolution.** In the event of any dispute, disagreement or controversy arising out of, relating to or connected with this Agreement including but not limited to the location of any well, surface sites or facilities, access roads and pipelines, the Parties shall use reasonable, good faith efforts to settle such dispute or claim through negotiations with each other. If such negotiations fail to produce a mutually acceptable resolution to the matter in dispute, the Parties will submit the same to non-binding mediation before a sole mediator. The mediation will be conducted by the Judicial Arbitrator Group, Inc., 1601 Blake St, Suite 400, Denver, CO 80202 ("JAG"). The matter in dispute will be submitted to mediation within fifteen (15) days of a written demand for mediation from one Party to the other. If the mediation is not successful, the matter in dispute shall be submitted for final reconciliation by a sole arbitrator to be chosen by the Parties from the pool of arbitrators at JAG by no later than thirty (30) days of a written demand for arbitration from one Party to the other (or such other time as may be agreed to by the Parties). The demand for arbitration and the response thereto shall concisely state the matter(s) in dispute, the position of the Party with respect to such matter(s) and the Party's proposed resolution of the same.

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

b. Any proceeding before the arbitrator shall be conducted in accordance with the Uniform Arbitration Act then currently in effect. The purpose of the arbitrator's role is to produce a final

decision of any matter submitted for arbitration to which the Parties' herein agree to be bound. The place of arbitration shall be at the offices of JAG in Denver, Colorado.

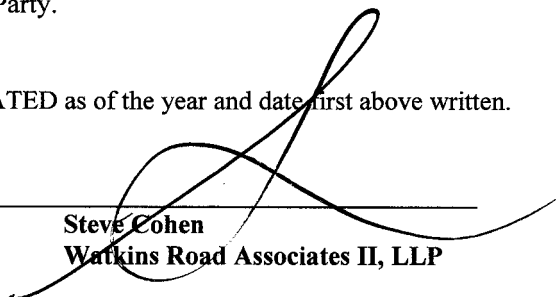
c. The JAG arbitrator shall, ideally, be possessed of demonstrated experience in matters pertaining to the law of oil and gas development, and, at a minimum, Colorado law of real property governing the use and enjoyment of surface and subsurface estates. If the Parties cannot reach agreement on the choice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

d. For any matter requiring judicial resolution in connection with the arbitration, including the enforcement of any award, enforcement of this agreement to arbitrate, or injunctive relief to preserve the status quo pending arbitration, the Parties agree to the exclusive jurisdiction of the State District Court of Arapahoe County, Colorado.


e. The Parties shall share equally in the cost of retaining the services of JAG for any mediation or arbitration conducted hereunder and each shall be solely responsible for its own costs and expenses of preparing for and pursuing any mediation or arbitration. With the exception of converting any arbitration award into a judgment, the prevailing Party for any matter requiring judicial resolution in connection with the arbitration shall be entitled to recover reasonable costs and attorneys' fees from the non-prevailing Party.

DATED as of the year and date first above written.

OWNER:

  
Steve Cohen  
Watkins Road Associates II, LLP

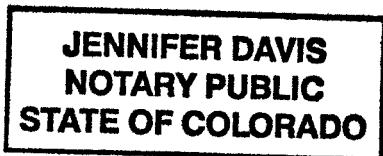
OPERATOR:

  
Agent and Attorney In Fact  
David Bell  
Anadarko E&P Company LP

AV

STATE OF Colorado )  
COUNTY OF Arapahoe ) :ss

On this 15 day of August, 2011, personally appeared before me  
STEVE COHEN, who acknowledged that he executed the foregoing as  
Managing General partner of Watkins Ranch II.

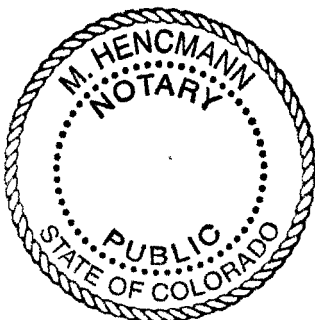


MY COMMISSION EXPIRES: 05/05/2014

J Davis  
Notary Public  
Residing at: 7400 E Crestline Dr #150, Greenwood Village CO 80111  
My commission expires: 5/5/2014

STATE OF COLORADO )  
COUNTY OF ADAMS ) :ss

On this 16<sup>th</sup> day of August, 2011, personally appeared before me David Bell, who  
acknowledged that he executed the foregoing as Agent & Attorney-In-Fact of Anadarko E&P Company LP.



My Commission Expires 9-27-2011

M Henckmann  
Notary Public  
Residing at: Arvado, CO  
My commission expires: 9/27/2011

## **EXHIBIT “A”**

Attached and made a part of that certain MEMORANDUM OF SURFACE USE AND DAMAGE AGREEMENT dated August 1<sup>st</sup>, 2011, between Watkins Road Associates II, LLP and Anadarko E&P Company LP.

**Township 4 South, Range 64 West, of the 6<sup>th</sup> P.M.**  
**Section 30: ALL**

Arapahoe County, Colorado