

## SURFACE DAMAGE AGREEMENT

This Surface Damage Agreement ("the Agreement") is entered into by and between **Fred H. Poss and Joie Poss, husband and wife, 39145 County Road 28, Hugo, CO 80821**, as Owner, and **Nighthawk Production, LLC, 1805 Shea Center Drive, Suite 290, Highlands Ranch, CO 80129**, as Lessee.

### RECITALS

**WHEREAS**, Lessee is the owner of certain rights to develop the oil and gas mineral estate underlying the following described property (the "Property"):

**Township 12 South, Range 56 West, 6<sup>th</sup> P. M.**

Sections 20: All

as set forth in the Oil and Gas Lease recorded in **Lincoln** County, Colorado, **Reception No. 328874** (the "Lease"), and

**WHEREAS**, Owner is the owner of the surface estate in and to the Property; and

**WHEREAS**, Lessee and Owner have agreed upon the terms and conditions by which Lessee may enter upon and use certain portions of the Property for oil and gas drilling and producing operations, and have agreed that damages will necessarily result therefrom and are incident thereto, and they desire to further set forth their agreement in this regard.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, Owner and Lessee hereby agree as follows:

1. **Use of Property.** Owner hereby consents to the location of Lessee's proposed **Knoss 9-20 Well** (the "Well") at a location specified on **Exhibit "A"** to this Agreement. Lessee's use of the Property is limited to the Well Site (as defined below) and the Road (as defined below) as described in this Agreement, which uses of the Well Site and Road may include reasonable use in the drilling and operating of the Well and access to the Well. All construction, maintenance and use of the Property shall be in accordance with the Lease and this Agreement. Lessee shall confine its drilling and production activities on the surface to a well site ("Well Site") that shall not exceed **Two and one half (2.5) acres** while drilling and no more than **One and one half (1.5) acres** for permanent facilities. The Well Site shall be located as indicated on Exhibit "A.". Prior to commencement of construction of the Well Site location, Lessee agrees to provide Owner with a letter describing measures acceptable to Owner that Lessee will implement to prevent, contain and remedy any spill during drilling and completion of the Well.

2. **Drilling and Production Facilities.** The Well Site location shall be constructed so as to result in the least interference with surface usage as reasonably practicable under the circumstances. All pits shall be constructed so as not to pollute the adjoining land. Lessee shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Property. Lessee shall take all reasonable precautions necessary to prevent land, air and water pollution, including pollution to all underground fresh water zones, as well as to prevent blowouts. Lessee shall collect all trash that accumulates in connection with its operations and promptly remove such trash and all junk or surplus equipment from the Property and properly dispose of same off of any adjacent lands owned by Owner pursuant to applicable regulations. Lessee shall at all times keep the Well Site, Road, and the Property safe and in good order, free of noxious weeds, litter and debris. Lessee shall take all reasonable steps to minimize or prevent wind erosion, dust on the Property, and loss of soil due to vehicle movement, including utilizing mulch, cover crops, spraying down roads, straw bales, or matting. Lessee shall take all reasonable precautions to prevent blowouts from occurring on the Property. Lessee shall utilize only such area around the Well as is reasonably necessary for such purposes, and Lessee shall, weather permitting, restore the remainder of the Well Site to its original condition as soon as practicable as nearly as possible after the completion of the drilling operations or no later than three months after completion of the drilling operations. . No later than five days prior to Lessee's intended commencement of drilling operations, Lessee shall provide Owner a location improvement survey or similar detailed drawing showing the location of the Well and other fixtures and equipment to be used at the location during production operations including all equipment and accessory structures necessary to the operation of the Well, including but not limited to production flow lines, pits, flares, tanks, separators, meters, pipelines, power lines and fences, placed or to be placed on the surface or in the subsurface of the Property by Lessee, and such map and list shall become a part of this Agreement; provided,

however, that such uses are acceptable to Owner and evidenced by written amendment to this Agreement, which amendment is a prerequisite to drilling operations and placement of the described fixtures, equipment, and similar. If such map and list show that surface area in addition to that shown on Exhibit "A" will be used and Lessee's use of such additional surface area is acceptable to Owner and evidenced by a written amendment to this Agreement, then Lessee shall pay Owner at the rates prescribed in Paragraph 4 of this Agreement. Thereafter, should Lessee desire to add additional equipment or accessory structures for production purposes, which additional equipment or accessory structures have not been identified previously by Lessee, then prior to installation of any such equipment or accessory structures, Lessee shall identify and advise Owner of its desire to install such additional equipment or accessory structures, work with Owner to mutually select a site or sites for locating such additional equipment or accessory structures, and pay Owner at the rates prescribed in Paragraph 4 of this Agreement for normal and customary damage to the surface of the Property caused by the addition of such equipment or accessory structures; provided, however, that such uses are acceptable to Owner and evidenced by a written amendment to this Agreement.

3. Road. Owner consents to Lessee's use and construction of a road that is generally depicted on the attached Exhibit B (the "Road"); provided, however, that no use or construction of the Road shall occur until written amendment to this Agreement specifying the actual and surveyed location of the Road. Lessee shall provide Owner with five days written notification of an onsite meeting for the purposes of locating and surveying the Road. At such meeting Lessee and Owner shall identify the specific location of the Road including the location of any improvements along any existing road, construction of the new road, cattle guards, and similar infrastructure needed to minimize the impacts on the Property while providing a functional road for Lessee's drilling operations. Lessee shall then provide Owner with map identifying the same, and if the same meets with Owner's approval, then a written amendment to this Agreement shall be signed by Owner and Lessee defining the location of the Road. Upon execution of the written amendment, Lessee may begin use and construction of the Road. Such road shall be an unimproved two track road, limited to fifteen (15) feet in width. Lessee agrees to use the Road only when weather permits and to confine all travel incidental to the drilling, maintenance and production of the Well and Well Site to this road. During the period of Lessee's operations on the Property, Lessee agrees to maintain the Road used by Lessee on the Property in good condition and repair and to promptly (or no more than within ten days) repair on demand from Owner any damage caused by Lessee to such road. Upon completion of Lessee's operations on the Property, Lessee shall fully reclaim the Road to its condition as exists at the time of executing this Agreement. Lessee shall construct and maintain metal gates and bison-width auto-passes (cattle guards) at all places where any roads used by Lessee cross through fences on the Property, and Lessee, its agents and representatives shall keep such gates closed when not actually passing through such gates. The Owner may take such actions as it deems appropriate to ensure that the public does not use any road constructed by Lessee provided the Owner shall not interfere with the Lessee's use thereof.

4. Surface and Crop Damage Compensation. Within five (5) days following the Effective Date, Lessee shall pay to Owner [REDACTED] as compensation to Owner for all normal and customary damages associated with and incident to drilling the Well and using the Well Site. Upon written amendment as provided in paragraph 3 defining the location of the Road, Lessee shall pay to Owner, [REDACTED] thereof for use and construction of the Road. If Lessee requests and Owner approves use of acreage in excess of the amount prescribed in Paragraphs 1 to 3 of this Agreement, Lessee shall pay additional compensation at the rate of [REDACTED] thereof or [REDACTED] or portion thereof for any additional road, pipeline or other right of way related to access to and from the Well, transportation of gas and/or oil from the Well, or any underground electrical lines or flow lines. . In no event shall Lessee install any overhead power lines on the Property. **If Lessee obtains the Owner's consent to use water from the ranch on which the Property is located, then Lessee shall pay Owner compensation of [REDACTED] for the right to use such water.** Owner, at Owner's sole discretion, may refund some or all of these damage payments if Lessee performs mutually agreed upon water development or land clean-up activities. All of this compensation is for normal and customary damage to the Property and does not cover any damages other than normal and customary damages. Lessee agrees to additionally compensate Owner for any additional damages including but not limited to the following:

- (a) Trespass on any lands other than the designated Well Site, access road, flow line easement and production site;
- (b) The use of the Property in a manner inconsistent with the terms of this Agreement and the Lease;

- (c) The failure to maintain the Property in accordance with the terms of this Agreement and the Lease;
- (d) The failure to reclaim and restore the surface of the Property in accordance with the terms of this Agreement and the Lease;
- (e) The failure to comply with the terms of this Agreement and the Lease or with the terms of any federal, state or local statutes, regulations or ordinances;
- (f) The death of or serious injury to persons or livestock, including but not limited to bison;
- (g) Any damages arising from Lessee's operations and resulting from unreasonable use, negligence or willful misconduct;
- (h) Any damage to the soil of the Property;
- (i) Any damage or liability relating to any fires caused by Lessee; and
- (j) Any damage to the water quality or quantity including the reservoir located on the Property

5. Maintenance of the Property. Lessee, at its sole expense, shall maintain the Property in accordance with the terms of the Lease and this Agreement. In addition, at its sole expense and in accordance with Lessee's obligation to conduct its operations so as not to interfere unreasonably with Owner's use of the surface of the Property, Lessee shall use low profile tanks and horizontal separators unless waived in writing by Owner. For noise reduction purposes, any permanent production engine shall use the best available mufflers (hospital-grade or more effective) and equipment available for oil and gas production operations. No later than ten (10) days following completion of construction on the Well Site, Lessee shall install and maintain rail guards or a fence around the production equipment and wellhead in a position and manner acceptable to Owner, which fence shall contain gates if necessary. The rail guards, gates and fence at a minimum shall prevent access of bison and other livestock. Lessee will paint the production equipment and tankage in subdued colors approved by Owner, and Lessee will repaint the same from time to time to keep it appearing clean and well kept. No used or surplus equipment or material shall at any time be stored on the Property. Lessee will maintain the production site and all related facilities in a good, clean workmanlike manner, will prevent the growth of noxious and other weeds, and will generally operate the facilities as a prudent operator, responding to Owner's reasonable requests for maintenance.

6. Pipelines: Proximity to Structures. All pipelines and/or flowlines are to be buried at least **48 inches** below the ground, which will be from the top of the pipe to the surface of the ground. Only crude oil and natural gas (no other derivatives) and produced waters will be allowed to be transported through any pipelines and/or flowlines located on the Property. Lessee shall not conduct any operations within one thousand three hundred twenty (**1,320**) feet of any residence, four hundred (**400**) feet of any permanent livestock holding pens, permanent livestock corrals or permanent livestock barns or two hundred (**200**) feet of any permanent livestock watering facilities without express written consent of Owner.

7. Restoration and Reclamation. Lessee shall comply with all applicable statutes, rules, regulations and ordinances of all federal, state and local governments, agencies and authorities in regard to restoration and reclamation. Upon completing a well, completing drilling operations, plugging and abandoning the Well, or ceasing use of any portion of the Property by Lessee, Lessee shall reclaim and restore all disturbed areas caused by Lessee's activities to the condition which they were in prior to the execution of this Agreement and restored in such way that normal and routine agricultural and crop production can be resumed. All compacted ground shall be ripped to a depth of three feet and soil chunks worked to tillable levels and sizes. Lessee shall remove any gravel placed on the Property. Such restoration and reclamation shall be completed as soon as practicable, but no later than ninety (90) days after said completion or abandonment, weather permitting. In the case of reasonable delay in such restoration and reclamation by Lessee due to inclement weather, Lessee shall complete such restoration and reclamation as soon as reasonably possible, but no later than one hundred eighty (180) days after completion or abandonment. Such restoration and reclamation includes, but is not limited to, the removal of all drilling and associated equipment and facilities, the removal of all drilling and produced substances and disposal of such substances off the Property, the leveling of all drilling pits and other excavations, and the reseeded, with native grass seed mix selected and provided by Owner and paid for by Lessee, of all areas affected by Lessee's use of the Property, subject to repeat reseeding(s) and weed control as reasonably required and directed by Owner, until such time as a satisfactory native grass covering is obtained. Within ninety (90) days after the

termination of the Lease and weather permitting, Lessee shall remove any and all property placed by Lessee on the Property or Owner may cause same to be removed at Lessee's expense, but in no event shall Lessee remove any and all property more than one hundred eighty (180) days after termination of the Lease. Lessee's obligations and liabilities under this Paragraph are continuing and shall survive the termination of the Lease.

8. Water Use; Water Well Option; Wastewater. Lessee shall not use water from any fresh or usable water sands or strata, including water from any formation which would be protected under the federal Underground Injection Control program, for any water flood or other enhanced recovery operations for pressure maintenance purposes. Further, no fresh or useable water may be used for secondary recovery without the prior written consent of the Owner. Subject to the foregoing, Owner may, in its sole discretion, offer to sell Lessee fresh water from surface impoundments or other surface or ground water sources to the extent reasonably necessary for drilling and development operations on the Leased Premises so long as such use does not unreasonably interfere with agriculture or livestock operations. The Owner shall have the right to designate the location from which water shall be taken. Upon completion of the drilling operations any permits obtained by Lessee for water wells and any water wells drilled pursuant to such permits may be conveyed to the Owner if requested by Owner, or such water wells will be plugged by Lessee at its expense as required by law. In the event Lessee drills a water well as a fresh water source for drilling and desires to abandon the water well, Lessee shall give Owner written notice ten (10) days prior to plugging the water well and Owner shall have the option to take over the well. In the event Owner elects to exercise this option and notifies Lessee within five (5) days of Owner's receipt of said notice from Lessee, Lessee shall then complete the water well in accordance with government requirements and assign the water well to Owner who shall assume liability for all future well operations. Lessee shall handle, remove and dispose of off of the Property any and all wastewater associated with its operations thereof, which handling, removal and disposal shall be conducted pursuant to all applicable federal, state and local laws, rules and regulations. In no event shall any wastewater be stored on the Property or adjacent lands owned by Owner.

9. Compliance and Indemnification. Lessee shall comply with all applicable federal, state and local statutes, rules, regulations and ordinances applicable to the Property and Lessee's operations thereon. Lessee agrees to protect, defend, indemnify and hold harmless Owner, and his respective agents, employees, tenants, successors and assigns from and against all liabilities, losses, expenses, claims, demands, and causes of action of every kind and character, whether for death or personal injury to persons (including agents and employees of Lessee and Lessee's subcontractors) for loss or damage to the Property, in any way and at any time arising out of, incident to, or in connection with this Agreement, operations conducted on the Property, or breach of the terms hereof, regardless of whether any such liability, loss, expense, claim, demand or cause of action is based on the sole or concurrent negligence of any party indemnified hereunder. This obligation is continuing and shall survive the termination of this Agreement. Prior to commencement and construction of the drill site location for the Well, Lessee shall purchase and keep in force a policy or policies of commercial general liability insurance relating to the use of the Property in an aggregate amount of at least Five Million Dollars (\$5,000,000.00) and name Owner as an additional insured on the policy or policies. The Lessee agrees to furnish to Owner a certificate or certificates naming Owner as an additional insured and further providing that the insurer(s) shall give Owner ten (10) days prior written notice of any termination, cancellation or material modification made to such insurance policy(ies). Receipt by Owner of proof of this insurance is a prerequisite to any entry onto the Property by Lessee.

10. Term. If not sooner terminated by the terms of this Agreement, this Agreement shall terminate upon termination of the Lease. If this Agreement has not terminated due to termination of the Lease, then if for a period in excess of 24 consecutive months, Lessee fails to use any line, road, or other area granted to Lessee under this Agreement for use in its operations, then the rights granted to Lessee shall be deemed abandoned and Lessee shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the area environmentally safe and fit for abandonment. In the event of default by Lessee of any of the terms and conditions of this Agreement, and the failure of Lessee to cure such default, Owner may elect to suspend the rights of Lessee to use the Property until such default is cured. The Lease shall not terminate so long as Lessee is engaged in drilling or re-working operations on the leased premises or on acreage pooled therewith, then the Lease shall continue so long as drilling or re-working operations are being continuously prosecuted on the leased premises or on acreage pooled therewith and so long as not more than one hundred and twenty (120) days lapses between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well; at the later of the expiration of the primary term or the expiration of continuous drilling, the Lease shall terminate as to all of the leased land except those tracts within a production unit, federal unit or spacing unit prescribed by law or administrative authority for which a well

producing or capable of producing oil and/or gas is located on or for which Lessee is engaged in drilling or reworking operations.

11. Owner acknowledges receiving from Company a brochure prepared by the COGCC which describes the rights and responsibilities of Owner as a surface owner.

12. Notice. Any notice or other communication required to be given by one party to the other pursuant to this Agreement shall be in writing and shall be given and deemed to have been given when delivered personally or by overnight courier or three (3) days after being mailed postage pre-paid, registered or certified, and addressed as follows:

To Lessee: Nighthawk Production LLC  
1805 Shea Center Drive  
Suite 290  
Highlands Ranch, Colorado 80129  
Chuck Wilson – Chief Operating Officer  
303-407-9600

To Owner: Fred H. Poss  
39145 County Road 28  
Hugo, Colorado 80821  
Phone: 719-743-2667

With Copies to:

or to such other address(es) as Lessee and Owner may from time to time designate by written notice to the other.

13. Release. Owner releases and discharges Lessee from all actions, causes of actions, suits, claims and demands for and on account of normal and customary damage to the Property or any growing crop, caused by or on account of Lessee's use of the Property to access and drill the Well. This release does not cover any damage caused by Lessee to the Property other than normal and customary damages.

14. Agents and Successors. The terms of this Agreement shall inure to the benefit of and be binding upon Owner, Lessee and their respective successors, assigns, agents, employees, partners, associated and affiliated companies, insurance carriers and contractors.

15. Terms of Lease; Effective Date. The parties intend that the terms of this Agreement supplement, not replace, the terms of the Lease. In the event of a conflict between the terms of this Agreement and the terms of the Lease, the terms most favorable to Owner shall control. The effective date ("Effective Date") of this Agreement shall be the date the latter of the two parties executes same.

16. Owner's Soil. Lessee shall remove only the minimum amount of vegetation and topsoil necessary for any construction. A frozen topsoil cutter or similar equipment shall be utilized to control the depth of any topsoil stripped. Topsoil shall be conserved during excavation and stock piled separately; this conserved top soil shall be reused as cover on disturbed areas and during reclamation. Tackifiers shall be used on top soil piles to prevent wind erosion. Before conducting any drilling operations, Lessee, at its sole cost and expense, will test the soil in five locations on the Well Site including the center, northeast corner, northwest corner, southeast corner, and southwest corner. Lessee shall provide Owner a chemical analysis of the soil, which analysis shall measure, at a minimum, the following:

- a. Sodium
- b. Soluble salts
- c. pH
- d. Phosphorous
- e. Potassium
- f. Chloride
- g. Gypsum

- h. Buffer pH
- i. Model EL Soil Test
- j. Soil electrical conductivity
- k. Organic Matters
- l. Nitrate nitrogen
- m. Sulfur
- n. Zinc
- o. Calcium
- p. Magnesium
- q. Copper
- r. Iron
- s. Manganese
- t. Boron
- u. Soil Texture

In the event that any soil located on or under the Property is lost or materially diminished in productivity, or the soil quality of soil is adversely impacted as a result of Lessee's operations, Lessee shall be liable for damages.

17. No Surface Discharge of Water. Lessee shall not cause or allow water discharge on the Property or to flow across the other lands of Owner without Owner's written consent, nor shall Lessee cause or allow water discharged on the Property to flow across lands owned by other parties without the consent of the owner of such lands.

18. Purchase of Shale, Soil, Gravel, and Water. To the extent that Lessee's activities require the use of shale, soil, gravel, or water, where reasonable and practicable Lessee shall purchase shale, soil, gravel, or water from Owner. Lessee recognizes Owner's concern about importation of noxious weeds onto the Property and, therefore, agrees wherever possible to purchase shale, soil, gravel, or water from Owner.

20. First Preference for Work. Lessee shall give first preference to Owner in awarding contracts for any work required to be performed on the Property pursuant to the terms of this Agreement, including but not limited to earthmoving, grading or plowing roads, spraying noxious weeds, reseeded, or reclamation, 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.

21. Reservoir. Lessee shall not without the Owner's prior written consent use any water from existing wells, reservoirs and springs on the Property. Lessee shall not disturb, interfere with, fill, or block any creek, reservoir, spring or other source of water on the Property. Lessee acknowledges the existence of a reservoir located in the SE/4NW/4 of Section 21 of the Property, and Lessee agrees to construct a berm around the Well Site and take other precautions around the Well Site and Road to prevent run-off, erosion, and similar onto or from affecting this reservoir. Lessee also agrees to take such other and further actions as reasonably requested by Owner to prevent impacts to the reservoir.

22. Venue. Venue for any dispute under the Agreement shall be in the District Courts of Lincoln County, Colorado.

23. Amendment. This Agreement cannot be modified, except by an instrument in writing signed by both Owner and Lessee.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto effective as of the Effective Date.

**OWNER:**

Fred H. Poss  
Fred H. Poss

Joie Poss  
Joie Poss

Date: August 27, 2013

State of COLORADO }  
} ss.

County of LINCOLN }

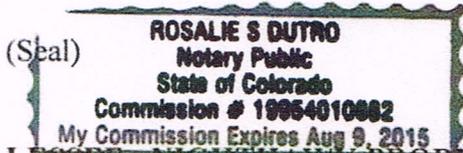
**ACKNOWLEDGMENT**

Before me, the undersigned, a Notary Public, in and for said County and State, on this 27<sup>th</sup> day of August, 2013, personally appeared **Fred H. Poss and Joie Poss**, who executed the within and foregoing instrument of writing and acknowledged to me that **they** did duly execute said instrument for the purposes and consideration therein expressed.

My commission expires:

August 9, 2015

Rosalie S. Dutro  
Notary Public  
19891 County Rd 39



Karval, CO 80823  
Address

LESSEE: NIGHTHAWK PRODUCTION LLC

BY: Craig Burbage  
Craig Burbage - Land Manager

DATE: 9/15/2013

**ACKNOWLEDGMENT**

State of COLORADO }  
} ss.

County of Douglas }

Before me, the undersigned, a Notary Public, in and for said County and State, on this 16<sup>th</sup> day of September, 2013, personally appeared **Craig Burbage, Land Manager**, who executed the within and foregoing instrument of writing and acknowledged to me that **he** did duly execute said instrument for the purposes and consideration therein expressed.

My commission expires:

7/27/16

Mindy Jo Obando  
Notary Public  
1805 Shea Center Dr. #290

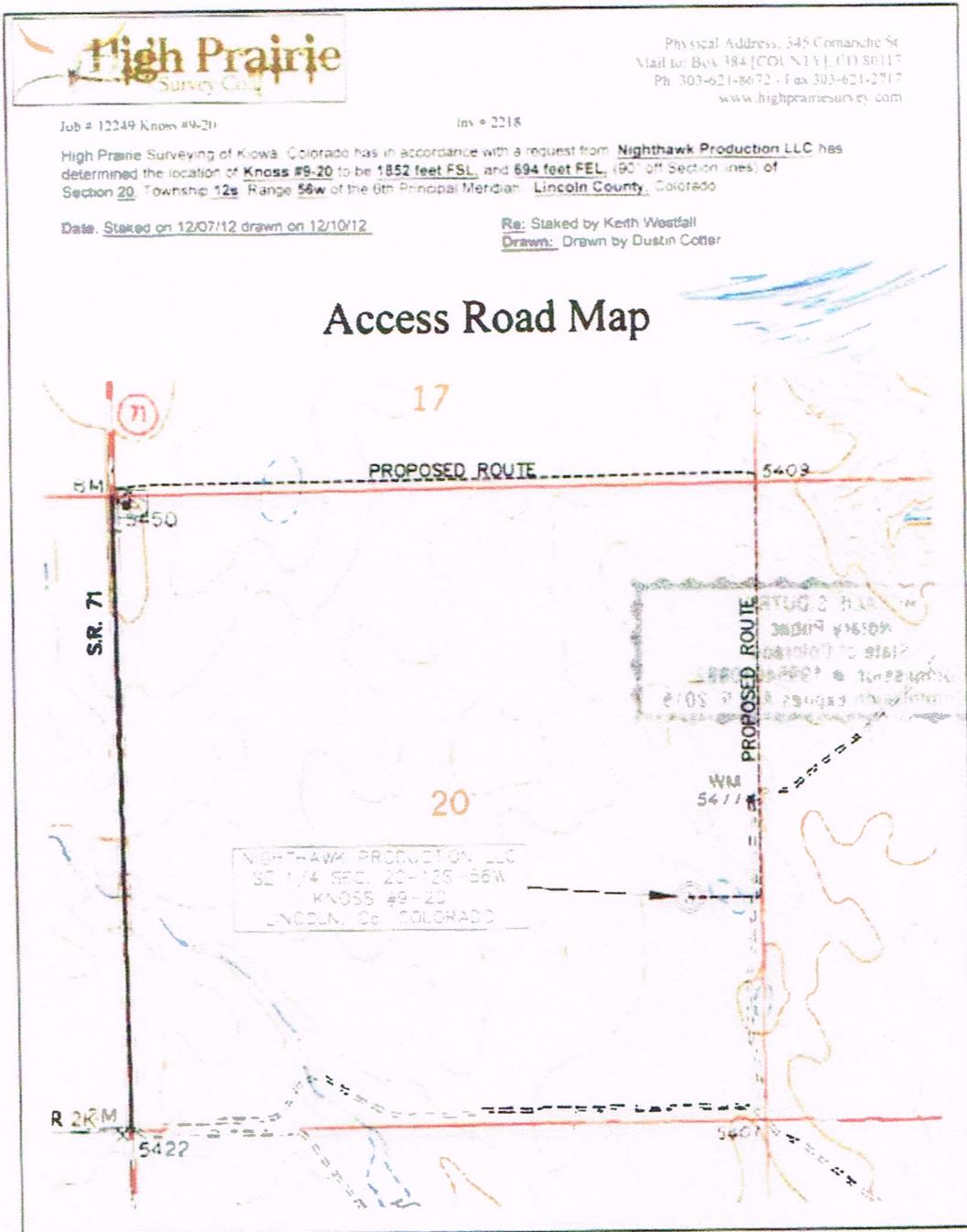
(Seal)



Highlands Ranch CO 80129  
Address

**Exhibit "A"**

**Access Road Map of Surface Use Agreement for Knoss 9-20 Well**



Physical Address: 345 Comanche St  
Mail to: Box 384 [COUNTY], CO 80117  
Ph: 303-621-8672 - Fax: 303-621-2717  
www.highprairiesurvey.com

Job # 12249 Knoss #9-20

Inv # 2218

High Prairie Surveying of Kiowa, Colorado has in accordance with a request from **Nighthawk Production LLC** has determined the location of **Knoss #9-20** to be **1852 feet FSL**, and **694 feet FEL**, (90' off Section lines), of Section **20**, Township **12s**, Range **56w** of the 6th Principal Meridian, **Lincoln County, Colorado**

Date: Staked on 12/07/12 drawn on 12/10/12

Re: Staked by Keith Westfall  
Drawn: Drawn by Dustin Cotter

**Access Road Map**

**Exhibit "A" Continued**

**Location Map of Surface Use Agreement for Knoss 9-20 Well**

