

## SURFACE DAMAGE AGREEMENT

This Surface Damage Agreement ("the Agreement") is entered into this 20th day of January, 2014 by and between **Glenda L. Kinkel, Charles D. Kinkel and, Lois Linnea Kenney a/k/a Linnea Kenney and Brian R. Kenney, 32721 County Road 3X, Genoa, CO 80818** as Owner, and **Nighthawk Production, LLC, 1805 Shea Center Drive, Suite 290, Highlands Ranch, CO 80129**, as Operator.

### RECITALS

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

**Township 6 South, Range 54 West, 6<sup>th</sup> P. M.**

Sections 33: W2

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

**WHEREAS**, Operator and Owner have agreed upon the terms and conditions by which Operator 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 Operator hereby agree as follows:

1. Use of Property. Owner hereby consents to the location of Operator's proposed **Snow King #13-33 Well** (the "Well") at a location specified on **Exhibit "A"** to this Agreement. Operator's use of the Property is limited to reasonable use in the drilling and operating of the Well, access to the Well and the production flow line, if any, to be used solely for production from the proposed Well. All construction, maintenance and use of the Property shall be in accordance with the Lease and this Agreement. Operator shall confine its drilling and production activities on the surface to a well site ("Well Site") that shall not exceed **Three and one half (3.5) acres**. The Well Site and access road shall be located as indicated on **Exhibit "A,"** which Exhibit shall consist of a standard U.S. Geological Survey topographic map showing the Well Site location and access road. Prior to commencement of construction of the Well Site location, Operator agrees to provide Owner with a letter describing measures acceptable to Owner that Operator 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. Operator 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. Operator 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. Operator shall take all reasonable precautions to prevent blowouts from occurring on the Property. Operator shall utilize only such area around the Well as is reasonably necessary for such purposes, and Operator 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. Operator agrees the construction easement for any production flow line shall initially be 25 feet in width, which upon completion of said construction shall revert to 15 feet, being 7.5 feet left and 7.5 feet right of the center line as laid out and/or surveyed. Within thirty (30) days of completion of drilling activities, Operator 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 and list of all equipment and accessory structures necessary to the operation of the Well, including but not limited to tanks, separators, meters, pipelines, power lines and fences, placed or to be placed on the surface or in the subsurface of the Property by Operator, and such map and list shall become a part of this Agreement. If such map and list show that surface area in addition to that shown on Exhibit "A" will be used and

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Operator's use of such additional surface area is acceptable to Owner, then Operator shall pay Owner at the rates prescribed in Paragraph 4 of this Agreement. Thereafter, should Operator desire to add additional equipment or accessory structures for production purposes, which additional equipment or accessory structures have not been identified previously by Operator, then prior to installation of any such equipment or accessory structures, Operator 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.

3. Road. Owner consents to Operator's construction of a temporary access road in the specific location shown on Exhibit "A". Such road shall be an unimproved two track road, limited to twenty five (25) feet in width. Operator agrees to use the road only when weather permits and to confine all travel incident to the drilling, maintenance and production of the Well and Well Site to this road. During the period of Operator's operations on the Property, Operator agrees to maintain the road used by Operator on the Property in good condition and repair and to promptly repair on demand from Owner any damage caused by Operator to such road. Upon completion of Operator's operations on the Property, Operator shall fully reclaim the road. Operator shall construct and maintain metal gates and bison-width auto-passes (cattle guards) at all places where any roads used by Operator cross through fences on the Property, and Operator, 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 Operator provided the Owner shall not interfere with the Operator's use thereof.

4. Surface and Crop Damage Compensation. Within five (5) days following the Effective Date, Operator shall pay to Owner ~~the amount of compensation to be determined by a court of competent jurisdiction~~ as compensation to Owner for all normal and customary damages associated with and incident to drilling the Well, constructing the access road and using the Well Site. If Operator requests and Owner approves use of acreage in excess of the amount prescribed in Paragraph 1 of this Agreement, Operator shall pay additional compensation at the rate of ~~one hundred dollars per acre~~ or portion thereof. Operator shall pay ~~the amount of compensation to be determined by a court of competent jurisdiction~~ per rod or portion thereof for any linear right-of-way to serve gas gathering pipelines (which pipelines will be no more than four (4) inches in diameter) and any underground electrical lines or water flow lines not laid in the same ditch as the gas gathering pipeline. In no event shall Operator install any overhead power lines on the Property. **If Operator obtains the Owner's consent to use water from the ranch on which the Property is located, then Operator shall pay Owner compensation of ~~one hundred dollars per acre~~ for the right to use such water.** Owner, at Owner's sole discretion, may refund some or all of these damage payments if Operator performs mutually agreed upon water development or land clean-up activities. All of this compensation is for normal and customary damages to the Property and does not cover any damages other than normal and customary damages. Operator 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 livestock, including but not limited to bison; and
- (g) Any damages arising from Operator's operations and resulting from unreasonable use, negligence or willful misconduct.

5. Maintenance of the Property. Operator, at its sole expense, shall maintain the Property in accordance with the terms of the Lease and this Agreement. In addition, at its sole

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expense and in accordance with Operator's obligation to conduct its operations so as not to interfere unreasonably with Owner's use of the surface of the Property, Operator shall use low profile tanks and horizontal separators unless waived 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, Operator 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. Operator will paint the production equipment and tankage in subdued colors approved by Owner, and Operator 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. Operator 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 **36 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. Operator shall not conduct any operations within one five hundred **(500) 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. Operator 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 commercial well, completing drilling operations, plugging and abandoning the Well, or ceasing use of any portion of the Property by Operator, Operator shall reclaim and restore such portion of the Property as nearly as reasonably practical to allow it to be used for those purposes which Owner intends to use 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 Operator due to inclement weather, Operator shall complete such restoration and reclamation as soon as reasonably possible. 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 Operator, of all areas affected by Operator'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, Operator shall remove any and all property placed by Operator on the Property or Owner may cause same to be removed at Operator's expense. Operator's obligations and liabilities under this Paragraph are continuing and shall survive the termination of the Lease.

8. Water Use; Water Well Option; Wastewater. Operator 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 Operator 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 Operator for water wells and any water wells drilled pursuant to such permits may be conveyed to the Owner, or such water wells will be plugged by Operator at its expense as required by law. In the event Operator drills a water well as a fresh water source for drilling and desires to abandon the water well, Operator 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 Operator within five (5) days of Owner's receipt of said notice from Operator, Operator 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. Operator 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. Operator shall comply with all applicable federal, state and local statutes, rules, regulations and ordinances applicable to the Property and Operator's operations thereon. Operator 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 Operator and Operator'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 drillsite location for the Well, Operator 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 Operator 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).

10. Term. If not sooner terminated by the terms of this Agreement, this Agreement shall terminate upon the time at which the Operator's right to continue exploration terminates.

11. Owner acknowledges that this notice complies with, or hereby waives, all COGCC requirements that it be given advance notice by Company of the proposed Operations. 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 Operator: Nighthawk Production LLC

1805 Shea Center Drive  
Suite 290

Highlands Ranch, Colorado 80129

Chuck Wilson – Chief Operating Officer  
303-407-9600

To Owner:

**Glenda L. Kinkel and Charles D. Kinkel**

329 Pawnee Avenue  
P.O. Box 121

Flagler, CO 80815

719-765-4458 Home

719-765-4000 Charles work

**Lois Linnea Kenney and Brian R. Kenney**

5439 South Havana Court

Englewood, CO 80111

303-771-4421

With Copies to:

Georgia I. Link, Manager

32721 County Road 3X

Genoa, CO 80815

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

13. Release. Owner releases and discharges Operator 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 Operator's use of the Property to access and drill the Well. This release does not cover any damage caused by Operator 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, Operator and their respective successors, assigns, agents, employees, partners, associated and affiliated companies, insurance carriers and contractors.

THIS Instrument is binding upon and is effective as to the interest of each party who executed same without regard as to whether it is executed by an other person whomsoever and this agreement may be executed in any number of counter parts, each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto effective as of the Effective Date of January 20, 2014

BY: Glenda L. Kinkel  
Glenda L. Kinkel  
BY: Lois Linnea Kenney  
Lois Linnea Kenney

BY: Charles D. Kinkel  
Charles D. Kinkel  
BY: Brian R. Kenney  
Brian R. Kenney

#### INDIVIDUAL ACKNOWLEDGMENT

State of Colorado )  
 )  
County of Kit Carson

BEFORE ME, the undersigned, a Notary Public, in and for said County and State on this 22 day of January, 2014 personally appeared **Glenda L. Kinkel, a married woman** to me known to be the identical person, described in and who executed the within and foregoing instrument of writing and acknowledged to me that she duly executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires 1-9-17

Marian Louise Skipper  
Notary Public.



#### INDIVIDUAL ACKNOWLEDGMENT

State of Colorado )  
 )  
County of Kit Carson

BEFORE ME, the undersigned, a Notary Public, in and for said County and State on this 22 day of January, 2014 personally appeared **Charles D. Kinkel, a married man** to me known to be the identical person, described in and who executed the within and foregoing instrument of writing and acknowledged to me that he duly executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires 1-9-17

Marian Louise Skipper  
Notary Public.





INDIVIDUAL ACKNOWLEDGMENT

State of Colorado )  
                                  )§  
County of Arapaho )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State on this 24<sup>th</sup> day of **January**, 2014 personally appeared **Lois Linnea Kenney a/k/a Linnea Kenney, a married woman** to me known to be the identical person, described in and who executed the within and foregoing instrument of writing and acknowledged to me that she duly executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires 1-9-17 Marian Louise Skipper  
Notary Public.



INDIVIDUAL ACKNOWLEDGMENT

State of Colorado )  
                                  )§  
County of Arapaho )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State on this 24<sup>th</sup> day of **January**, 2014 personally appeared **Brian R. Kenney, a married man** to me known to be the identical person, described in and who executed the within and foregoing instrument of writing and acknowledged to me that he duly executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires 1-9-17 Marian Louise Skipper  
Notary Public.

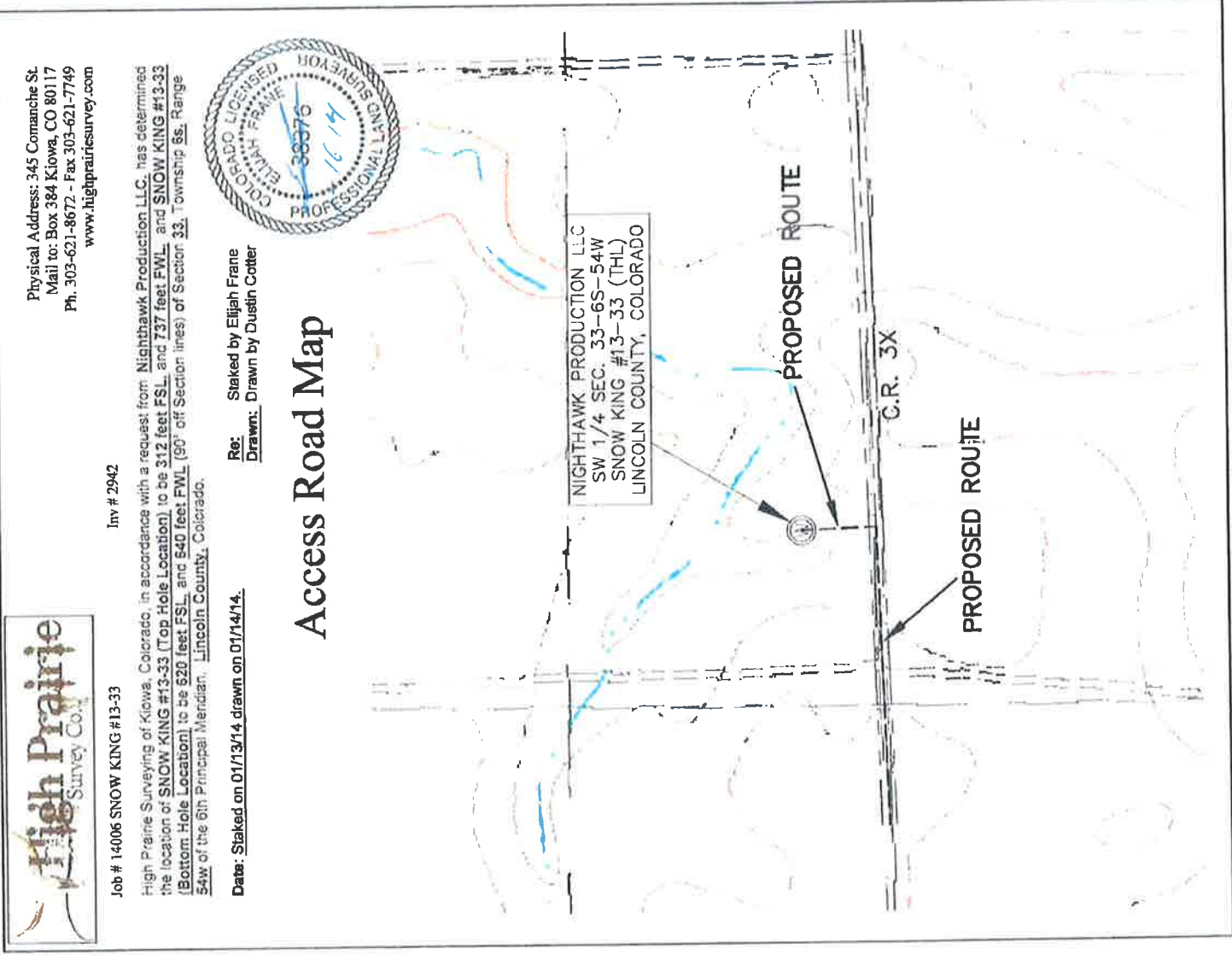


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Exhibit "A"

Snow King #13-33 Well

This Exhibit "A" is in reference to a certain Surface Use Agreement Dated January, 20 2014.



Handwritten signatures and initials in blue ink.