

## **SURFACE USE AGREEMENT**

This Surface Use Agreement ("Agreement") is made effective this 10<sup>th</sup> day of May, 2013, by and between Taoka Family Limited Partnership, whose address is 1964 S. Parfet Drive, Lakewood, Colorado 80228, hereinafter referred to sometimes herein as "Owner" and Great Western Operating Company, LLC, a Colorado Limited Liability Company, with offices at 1700 Broadway, Suite 650, Denver, Colorado 80290, hereinafter sometimes referred to as "Operator"; each of the foregoing are sometimes referred to individually as a "Party" or collectively as the "Parties."

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

### **1. OWNERSHIP.**

Owner is the surface owner of lands and improvements thereon (hereinafter referred to as the "Lands") located in Weld County, Colorado, more specifically described as follows:

TOWNSHIP 1 NORTH, RANGE 65 WEST, 6<sup>TH</sup> P.M.  
Section 1: SE/4

Operator, or its affiliates, owns a leasehold interest in leases covering the Lands (each a "Lease," collectively, the "Leases"). Additionally, Operator may have responsibilities under a Joint Operating Agreement ("JOA") with respect to the Lands.

### **2. OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.**

The oil and gas operations areas consisting of the area required to drill and complete the wells (the "Temporary Operations Area") and the Permanent Operations Area required thereafter are depicted on Exhibit "A" attached hereto and incorporated herein by this reference. Also shown on Exhibit A are the access roads ("Access Roads"), pipelines, flow lines, separators, tank battery, electric lines, and any other facilities, necessary for Operator to conduct its drilling operations (each a "Facility," collectively, the "Facilities"). Any material changes to the location of the well sites, Access Roads and Facilities may be made by Operator with the consent of Owner, which consent shall not be unreasonably withheld.

The Temporary Operations Area will be used for drilling, completing, and equipping the Wells and for recycling the frac fluid and reclaiming the pit. Thereafter, only the Permanent Operations Area shall be occupied by the Operator. The Temporary Operations Area shall be no greater than 600 feet by 600 feet and the Permanent Operations Area shall be no greater than one-half acre (.05 ac.) for the well site and one and one-half acre (1.5 ac.) for the tank battery site.

Other than the operations areas, Access Roads and Facilities, the Lands shall not be disturbed by the Operator except in the event of an emergency or for reasonable incidental and temporary activities. Operator shall be strictly and solely responsible for any damages that may occur as a result of such emergency or incidental and temporary activity. Owner shall not use the Temporary Operations Area until drilling and completion operations have been concluded and thereafter Owner may use or occupy the operations area except for the Permanent Operations Area.

For any grading operations, top soil shall be stripped and stockpiled, and replaced at the conclusion of operations in each location.

The operations areas shall not be disturbed during the farming season except in the case of emergency in which case Operator shall reimburse Owner for all damages caused to crops as a result of its operations.

Use of the Land shall be limited to facilities that are reasonably necessary to produce, transport, treat, and store oil and gas and other products produced from the Lease and lands pooled therewith.

Pipeline easements shall be 50 feet in width during construction and 30 feet in width thereafter. No compressors or above ground equipment which is appurtenant to the pipeline shall be located outside of the Permanent Operations Area. Owner shall have the right to cross pipeline easements with roadways and other utilities; provided that, such crossing is made at an angle of not less than 60 degrees and not more than 90 degrees. Owner shall also have the right to install and maintain easements that are both adjacent to and/or within the pipeline easements for utility lines, including, but not limited to those for water, gas, sewer, electric, telephone, cable, television, and fiber optic and other pipelines; provided, however: i) any new underground facilities that travel along a pipeline easement shall be located a distance horizontally of at least ten (10) feet from parallel existing pipelines; and ii) any new underground facilities shall have at least twenty-four (24) inches of vertical clearance between such new facility and a pipeline. Landowner agrees that it will notify each utility company that, except in cases of emergency, the Operator must be contacted at least ten (10) business days prior to commencement of any trenching or digging activities within ten (10) feet of their easement areas. Owner may plant shallow root vegetation in the right-of-way and may maintain irrigation systems thereon. Owner may also build and maintain unpaved trails along the pipeline easements. Operator shall not be liable for damage to the vegetation, irrigation system, or trails as a result of maintenance operations in the pipeline easements.

### **3. CONDUCT OF OPERATIONS.**

Operator's operations on the Lands shall be conducted pursuant to the terms of the Leases, this Agreement, the rules and regulations of the Colorado Oil & Gas Conservation Commission ("COGCC"), and applicable Colorado statutes.

#### **4. COMPENSATION.**

Operator shall pay Owner the sum of [REDACTED] ("Amount") prior to the commencement of drilling operations for the six (6) wells and Tank Battery Site prior to the commencement of drilling operations for the Wells. The wells to be drilled are the Taoka KF #1-2HN, Taoka KF #1-27HN, Taoka KF #1-27HC, Taoka KF #1-7HN, Taoka KF #1-1HN, and Taoka KF 1-1HC ("Wells"). This amount shall be deemed full and agreed consideration for damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and Tank Battery Site prior to the commencement of drilling operations for the Wells. Such damages will include, without limitation, damages to growing crops and crop land, the removal, transportation and care of any livestock, construction and use of access roads, and the preparation and use of the operations areas. Any subsequent major operations for said wells (refrac, deepening, re-drilling, etc.) except in case of emergency, shall require thirty (30) days' prior notice to owner.

#### **5. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES.**

With respect to its operations on the Lands, Operator shall comply with the following provisions:

##### **A. Access Roads:**

(i) Access Roads shall not exceed 20 feet in width, shall be constructed according to Weld County Road standards, and shall be kept free of noxious weeds, litter and debris by Operator. Access roads shall not be used to access other lands for oil and gas operations or for any other purpose.

(ii) Operator shall maintain all Access Roads in good repair and condition.

##### **B. Surface Restoration:**

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

##### **C. Other:**

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

(ii) If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, for which Owner has not been previously

compensated pursuant to Paragraph 4, and upon Owner's notification to Operator, Operator shall repair or replace such items after consultation with and to the reasonable satisfaction of the Owner, which repair or replacement shall be accomplished by Operator within twenty-one (21) days after final consultation with Owner.

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

(iv) Operator shall keep the operations areas, pipeline and Facilities free and clear of noxious weeds and trash and control erosion during operations.

(v) Operator shall remove all guy line anchors for drilling and completion rigs promptly after Operator's rig use is completed.

(vi) Operator agrees to fence off the perimeter of the Temporary Operations area with temporary fencing and shall fence off the Permanent Operations area with permanent chain link fencing if reasonably requested by Owner. Gates into the Permanent Operations Area shall remain closed except when necessary for vehicles to enter or leave the Permanent Operations Area. Operator shall install cattle guards where necessary and shall be responsible for restoring Owner's existing fence to its original condition at any point of access.

(vii) Operators' employees shall not park on the Lands outside of the operations areas and are permitted to park in the operations areas only while conducting operations on behalf of the Operator. Operator's employees shall not be housed on the Lands.

(viii) There shall be no above ground power lines located on the Lands.

(ix) Operator shall utilize generally available noise suppression or abatement equipment on all equipment to reduce noise impact.

## **6. DEFAULT AND RIGHT TO CURE.**

In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owner shall notify Operator of such alleged default, in writing. Operator shall have seven (7) days from the date of the written notification in which to pay, in the event of alleged non-payment, or to commence and diligently pursue a cure of any other alleged default, and upon such lapse of time, should such alleged default still remain in effect, then and only then shall Owner have the right and option to declare a default under this Agreement.

**7. WAIVER.**

Except as otherwise agreed in a subsequent writing subscribed to by both parties, no waiver by owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder shall be deemed to be a waiver of any subsequent or continuing breach of the same, nor shall any forbearance by Owner to seek a remedy for any particular alleged or actionable breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to any other alleged or actionable breach; however, in no event shall either party be liable for consequential damages.

**8. INDEMNITY/RELEASE.**

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

**9. NOTICE FOR ADDITIONAL OPERATIONS.**

Operator shall comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

**10. NOTICES.**

Notice by either Party shall be timely given, orally if possible (with the exception of notices described in Paragraphs 6(C)(ii) and 7 above), with additional and immediate subsequent written confirmation sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by written notice delivered in the way described in this paragraph to the other:

Owner:  
Taoka Family Limited Partnership  
1964 S. Parfet Dr.  
Lakewood, CO 80228  
Phone #: (720)962-5846

Operator:  
Great Western Oil and Gas Company, LLC  
ATTN: Wade Pollard, Land Manager  
1700 Broadway, Suite 650  
Denver, Colorado 80290  
Facsimile: 303-776-1056

**11. BINDING EFFECT.**

The covenants and conditions herein contained and all of the provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their respective heirs, representatives, successors and assigns. Owner agrees to notify any and all tenants of Lands and any other third parties utilizing the surface of the Lands who may be affected by Operator's activities on the Lands. It shall be Owner's sole

responsibility to advise such third party lessees of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement; and payment of consideration, if any, which may be due any such third party lessee from Owner as a result of Operator's actions on the Land under this Agreement shall be the sole obligation of Owner, and Owner shall protect, defend and indemnify Operator from any and all claims and demands from such third party lessee as a result of Operator's actions under this Agreement.

**12. CONFIDENTIALITY.**

In addition to any other confidentiality requirements provided for herein, Owner agrees to keep the terms and conditions of this agreement confidential and shall not disclose such matters to any third party, unless owner is ordered to do so by specific order of the court in a legal proceeding. Notwithstanding the foregoing, Owner may disclose terms to Owner's legal advisors, a prospective purchaser of Owner's interest in the Property and payment terms to Owner's official tax advisors and appropriate government taxing authorities. While the specific terms hereof are to be held in strict confidence by Owner, Operator shall record a memorandum of this agreement in Weld County, Colorado, and with any other appropriate agency of government.

**13. ENTIRE AGREEMENT.**

This instrument contains the entire agreement between the Parties pertaining to the Lands and shall govern the surface use of the Lands. All prior negotiations and representations are merged within this instrument, and the terms of such may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective heirs, representatives, successors, or assigns. This Agreement supersedes the Surface Use Agreement entered into on October 15, 2012, between Taoka Family Limited Partnership and Great Western Oil and Gas Company, LLC, which covers the Lands.

**14. TERMINATION.**

This Agreement shall remain in effect unless and until specifically abandoned by Operator in writing delivered to Owner, or filed by Operator in the records of Weld County, Colorado. All rights to indemnification and requirements for reclamation and provisions relating thereto shall survive termination of this Agreement.

**15. COUNTERPARTS.**

This Agreement shall be executed in duplicate originals, each party to retain one such original. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall be binding if properly signed and fully executed and sent by facsimile transmitted to the other Parties. Without affecting the validity of the

foregoing manner of execution, the Parties agree to follow-up such facsimile executions with standard paper originals signed by the parties as soon as may be practical.

**16. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the state of Colorado.

**17. FORCE MAJEURE.** The passage of any deadline or time relevant under this instrument shall be deemed tolled, and nonperformance of any required obligation that Operator may have under this instrument shall be excused without penalty to Operator as to any time period, in which Operator is prevented or hindered from performing due to any governmental action or inaction, and any force majeure which shall include without limitation any act, circumstance, event or condition beyond the control of Operator which shall include without limitation any act, warning or threat of terrorism, war, revolution, rebellion, insurrection, riot, civil commotion, blockade, embargo, and shortage or lack of transportation and delivery of necessary tools, equipment, material and supplies due to market conditions, act or restraint of government, strike, lockout, picketing, boycott, or damage by earthquake, fire, hurricane, tornado, flood, wind, storm, temperature extreme or other weather instability, disaster or condition, or by reason of any other circumstance or combination of same beyond Operator's control.

**18. ATTORNEY'S FEES AND COSTS.**

The Parties agree that in any action, claim or controversy resulting from a claimed breach of this Agreement, each party shall bears its own costs, expenses and attorney fees. The provisions of this paragraph do not apply to any actions other than breach, or a claim thereof, including without limitation indemnification provisions.

**19. AUTHORITY OF SIGNATORIES.**

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

**20. BINDING EFFECT.**

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

**21. SEVERABILITY.**

If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with such laws; however, the remainder of this Agreement shall be in full force and effect. In the event that any part of

this Agreement would otherwise be unenforceable or in conflict with applicable laws due to the term or period for which such part is in effect, the term or period for which such part of this Agreement shall be in effect shall be limited to the longest period allowable which does not cause such part to be unenforceable or in conflict with applicable laws.

IN WITNESS WHEREOF, the parties have caused this Surface Use Agreement to be executed by their duly authorized representatives on the dates set forth in the acknowledgements, but to be effective on the date first written above.

OWNER:  
Taoka Family Limited Partnership

OPERATOR:  
Great Western Oil and Gas Company, LLC

By: [Signature]  
Ronald Taoka as General Manager

By: [Signature]  
Tom Rand, Vice-President of Operations

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Jefferson )

The foregoing Surface Use Agreement was acknowledged before me this 10<sup>th</sup> day of May, 2013, by Ronald Taoka as General Manager of Taoka Family Limited Partnership.

Witness my hand and official seal.



MY COMMISSION EXPIRES 9/11/2015

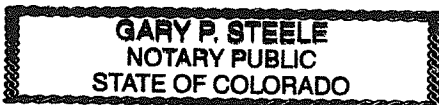
My commission expires: \_\_\_\_\_

[Signature]  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

The foregoing Surface Use Agreement was acknowledged before me this 13<sup>th</sup> day of May, 2013, by Tom Rand, Vice President of Operations of Great Western Oil and Gas Company, LLC, a Colorado limited liability company.

Witness my hand and official seal.



MY COMMISSION EXPIRES 9/11/2015

My commission expires: \_\_\_\_\_

[Signature]  
Notary Public



# EXHIBIT "A"

Attached to and made a part of that certain Surface Damage Agreement dated May 10th 2013, between Taoka Family Limited Partnership, "Owner" and Great Western Operating Company, LLC, as "Operator".

TOWNSHIP 1 NORTH, RANGE 65 WEST, 6TH P.M.  
SECTION 1: S/2

