

SURFACE DAMAGE AND RELEASE AGREEMENT

This Surface Damage and Release Agreement ("Agreement") is made and entered into as of July 25, 2014 (the "**Effective Date**"), by and between HERGERT LIMITED PARTNERSHIP NO. 3, a Colorado limited partnership ("**Owner**"), and EXTRACTION OIL & GAS, LLC, a Delaware limited liability company ("**Operator**"); sometimes referred to each as a "**Party**," or collectively as the "**Parties**."

WITNESSETH:

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

1. **OWNERSHIP.** Owner is the surface owner of certain lands located in Weld County, Colorado as more specifically described as follows ("**Lands**");

Township 7 North, Range 67 West, 6th P.M.

Section 35: That part of the E/2 more particularly described in Exhibit "A" of that certain Quit Claim Deed dated October 11th, 2002 and recorded at Reception No. 3011753 of the records of Weld County, Colorado.

Operator, and/or its affiliates, owns a working interest in valid leases covering all or portions of the Lands or lands pooled or included in a spacing unit therewith or lands adjacent thereto (each a "**Lease**," and collectively, the "**Leases**"). Additionally, Operator may have responsibilities under a Joint Operating Agreement ("**JOA**") with respect to the Lands.

2. **TERM.** This Agreement, and the rights and benefits granted and created herein shall be effective as of the Effective Date and shall continue in full force and effect until the later to occur of (a) permanent cessation of Operations (as defined below) being conducted on the Lands, or (b) the date that is five (5) years from the Effective Date (the "**Term**"), and in either event, Operator has plugged and abandoned all wells owned or operated by Operator and has complied with all requirements of this Agreement and all applicable oil and gas leases and applicable laws, rules and regulations pertaining to removal of equipment, reclamation, and cleanup of the Lands.

3. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator desires to drill or cause to be drilled up to twenty five (25) oil and/or gas wells on its Leases (the "**Wells**") within the area from drill sites (each, a "**Well Pad**" and collectively, the "**Well Pads**") located on the Lands as depicted on **Exhibit A** and the subsurface locations of which may be under other lands than Owner's Lands. After all Wells have been drilled from a Well Pad, such Well Pad shall be reduced to the greatest extent as is reasonably practical, as approximately depicted on **Exhibit A**. The Parties acknowledge that Operator's oil and gas operations on the Lands will be limited to the following operations, all subject to the terms and conditions of this Agreement (the "**Operations**"): drill, construct, complete, produce, maintain, rework, and operate the Wells and all facilities associated therewith, including, but not limited to, access roads ("**Access Roads**"), pipelines and flow lines ("**Pipelines**"), separators, tank batteries, power

lines and any other facilities or property necessary for Operator to conduct operations on the Wells, all at the locations on the Lands as depicted on **Exhibit A** (each "Facility," collectively, the "Facilities").

The Parties desire to address the terms and conditions of Operator's use of the Lands, to mitigate any surface damage to the Lands and to set forth their agreements with respect to future Operations on the Lands to accommodate Operator's Operations and development of the surface estate. The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

Owner hereby grants to Operator, its successors and assigns, and each of their agents, employees, contractors and subcontractors, the right, privilege and easement during the Term, subject to the provisions of this Agreement and limited to the Operations, for the purpose of locating and surveying the Facilities, and for constructing, entrenching, operating, maintaining, repairing, altering, replacing and removing the Facilities and appurtenant facilities, for the purposes specified herein, and including the rights of ingress to and egress from the Facilities across the Lands.

Owner further hereby grants to Operator, its successors and assignees, and each of their agents, employees, contractors and subcontractors, a non-exclusive subsurface easement, during the Term, for passage of any portion of any well bore for any of the future Wells, whether producing or nonproducing, including the right to occupy and use the subsurface pore space displaced by the well bore; *provided, however*, that all Wells must be permitted locations under the then applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC; and, provided further, that all Wells may only be drilled after consultation with the mineral owners and lessees of the mineral estate underlying the Lands so as to not adversely impact their ability to explore for and produce hydrocarbons underlying the Lands, whether such exploration and production activities are carried out from the surface of the Lands or from other lands.

4. **LOCATION.** The Well Pads, the Access Roads to the Well sites and, the Pipelines and all other Facilities to be constructed on the Lands shall be confined to the designated operating areas as depicted on **Exhibit A** (the "Operating Areas"). All activities carried out within the Operating Areas shall not unreasonably interfere with Owner's current use thereof including, without limitation, the private ditch irrigation pipeline which crosses portions of the Operating Areas. Material changes to the Operating Areas may be made by Operator with the consent of Owner, which shall not be unreasonably withheld, but will not unduly interfere with Owner's existing or intended use of the surface estate. In that regard, the Parties acknowledge that Owner intends to develop the Lands for residential subdivision use at a future date. Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its Operations. In addition, the following provisions shall apply to the Facilities on the Lands:

(a) **Well Pads.** The Well Pads are depicted on **Exhibit A**. Each Well Pad shall cover no more than twelve (12) acres. All Operations and all associated Facilities and equipment related to the drilling, completion, maintenance and production activities

for a Well (including without limitation workovers, recompletions and deepenings, twinning, stimulation and fracturing operations), and all production equipment, separators and tank batteries, shall be restricted to the Well Pads.

(b) Access Roads. It is Operator's intent to confine the location of the Access Road Area to the corridors set forth on **Exhibit A**. Either Party, however, may propose relocation of an Access Road to a location other than the location indicated on **Exhibit A**, or Operator may propose an additional Access Road. Such relocation or additional roadway shall be subject to the consent of the other Party, which consent shall not be unreasonably withheld. Such relocation or additional roadway, and compensation, if any, payable to Owner therefor, shall be further subject to a mutually acceptable amendment to this Agreement to be negotiated by the Parties. The Party proposing the relocation of the Access Road Area shall bear all costs associated with the relocation. Any Access Roads constructed or used by Operator shall be constructed or used to the following specifications:

(i) To the maximum extent possible, Operator will use existing roads designated by Owner for the Operations.

(ii) The surface of all roadways shall not exceed twenty (20) feet in width for traveled surface, plus the minimum additional width required for installation of power lines, if any.

(iii) If requested by Owner, access to the Lands and/or the Operating Areas shall be controlled by a swinging metal gate in addition to a cattle guard, which gate and cattle guard constructed by Operator. Owner may lock gates across all roads, provided that Operator shall have the right to place its own locks on such gates.

(iv) No off-road travel is permitted outside the Operations Areas.

(v) 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 for their share of maintenance work performed by Operator. Owner shall have no responsibility for road maintenance.

(vi) Operator agrees, if requested by Owner, to place sign(s) on any road designating them as "private roads" and to assist Owner in the control of the use of such roads by unauthorized users.

(vii) Operator shall maintain existing and newly constructed roads used by Operator 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.

(viii) No roads on the Lands shall be constructed or used by Operator for access to other lands of Owner not subject to this Agreement.

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

(i) 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. Overhead power lines will be constructed so as to cause the least possible interference with Owner's visual landscape and Owner's existing and future use of the surface and, to the maximum extent possible, overhead power lines will be constructed along property lines or Access Roads. Owner shall be entitled to receive payment from Operator's electricity provider for overhead power lines.

(ii) Within two (2) months after the first well drilled from a Well Pad 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 below plow depth.

(d) Pipelines. Operator has a continuing right and entitlement to install, own, operate, maintain, repair and replace all Pipelines that may be necessary or convenient to its Operations at the locations within the Operations Areas as depicted on **Exhibit A**. The Parties further agree to execute a recordable Pipeline Right-of-Way Agreement for all such Pipelines constructed in the Operations Areas. It is Operator's intent to confine the location of such Pipelines to what is set forth in **Exhibit A**. Either Party, however, may propose relocation of a Pipeline (including existing Pipelines) to a location other than the location indicated on **Exhibit A**, or Operator may propose an additional Pipeline outside of the Operations Areas. Such relocation or additional Pipeline shall be subject to the consent of the other Party, which consent shall not be unreasonably withheld. Such relocation or additional Pipeline, and any compensation payable to Owner therefor, shall be further subject to a mutually acceptable amendment to this Agreement to be negotiated by the Parties. The Party proposing the relocation of the Pipeline shall bear all costs associated with the relocation. Within a reasonable time after the completion of each Pipeline, Operator shall provide an as-built survey of the Pipeline to Owner, which shall be used as an exhibit to the recordable Pipeline Right-of-Way Grant described above. Any Pipelines constructed by Operator shall be constructed and maintained to the following specifications:

(i) The top of each pipeline shall be buried below plow depth.

(ii) Operator shall be responsible for backfilling, repacking, reseeding, and recontouring the surface. If pipeline trenches settle, upon request by Owner, Operator shall fill in, repack, and level such trenches.

(iii) Owner reserves the right to occupy, use and cultivate the Lands outside of the Well Pads affected by such Pipelines, and to grant such rights to others, so long as such use does not unreasonably interfere with Operator's Operations.

(iv) 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 cleanup and remove the Pipeline, or render the Pipeline environmentally safe and fit for abandonment in place. All such cleanup and mitigation shall be performed in compliance with this Agreement and all applicable federal, state and local laws and regulations.

(v) 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 will be removed and disposed away from the Lands no later than 30 days after the completion of the Wells. No such items will be burned or buried on the Lands.

5. COMPENSATION AMOUNT.

(a) Operator shall tender Owner the sum of [REDACTED] ("**Amount**") for each Well to be drilled and the associated Facilities and Access Roads shown on **Exhibit A**. The Amount shall be tendered prior to the commencement of any work in connection with each such Well. Notwithstanding, and within twenty (20) days of the Effective Date of this Agreement, Operator shall advance to Owner the Amounts due for the initial five (5) Wells. Furthermore, Operator agrees to tender the Amounts due attributable to a minimum of five (5) Wells each year beginning on the first anniversary of the Effective Date of this Agreement. Therefore, by the fifth (5th) anniversary, Operator shall have tendered the total sum of Amounts payable attributable to twenty five (25) Wells as permitted in this Agreement. For clarity, during any year of this Agreement Operator shall pay the Amount to Owner for the greater of (i) five (5) Wells or (ii) the actual number of Wells for which any work is commenced during such year.

(b) In addition to the Amounts described above, Operator shall pay to Owner a one-time fee for the use of the Operating Areas (the "**Facility Payment**"). The Facility Payment shall be equal to [REDACTED] per acre occupied by the Operating Area, as built. Prior to commencement of Facility construction in connection with any of the Wells, Operator shall advance to Owner a preliminary Facility Payment in the amount of [REDACTED]. After all Wells have been drilled from both Well Pads and the Well Pads shall have each been reduced as provided for in Paragraph 3, the Parties shall determine the final Facility Payment and Operator shall forthwith pay to Owner the positive difference between the final Facility Payment and the preliminary Facility Payment.

(c) The Amount and the Facility Payment shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the Wells and Facilities and the conduct of Operations with the exception of damages to be determined as a result of any amendments or modifications to this Agreement as provided herein. Such damages include, without limitation, damage to growing crops and crop land, the removal, transportation and care of any livestock, the construction and use of access roads, and the

preparation and use of the Well Pads. Any subsequent major operations for said Wells (refrac, recompletion, deepening, redrilling, etc.), except in case of emergency, shall require ten (10) days prior notice to Owner. Operator shall pay Owner all actual damages caused by said subsequent operations. This Agreement does not relieve Operator from liability due to Operator's negligence or due to spills or discharges of any hydrocarbons or toxic substances or hazardous chemicals or wasters, or leaks or breaks in Operator's Pipelines, equipment or other Facilities. If in any way arising from Operator's Operations or other activities on the Lands, there is damage to real or personal property upon the Lands which is not associated with usual and customary Operations, including, but not limited to, damage to livestock, crops, structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural waterways, such damage will be repaired or replaced by Operator, or Operator will pay reasonable compensation to Owner for such additional damage or an amount equal to the reasonable costs to repair such actual damage.

6. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of the Leases, this Agreement (including Paragraph 4 and this Paragraph 6), the rules and regulations of the COGCC, and applicable federal, state and local law. The following additional provisions shall apply to the Operations on the Lands:

(a) Prior to initiating the drilling of any Well or constructing any Facilities, Operator shall notify Owner prior to entry upon the Lands.

(b) Operator shall consult with Owner concerning mitigating the visual impacts of the Facilities, if reasonably practical. Owner, at its own risk and expense, shall have the right to install landscaping and other improvements outside the Operators Areas for the purpose of buffering or isolating the Operations Areas from the Lands or Owner's adjacent lands, provided that Owner shall not unreasonably inhibit Operator's access to the Operations Area or unreasonably inhibit Operations within the Operations Areas by such landscaping or other improvements.

(c) There will be no time of day restrictions with regard to drilling, completing, re-completing, workover, development, production, or reservoir fracture stimulation Operations. With respect to other routine ongoing maintenance, Operator agrees to limit such activities (except in the case of emergency) to between the hours of 6:00 o'clock a.m. and 9:00 o'clock p.m.

(d) Equipment installed on the Well Pads and Operating Areas shall be modern and well maintained. Operator will evaluate noise generation from equipment and require contractor s to refit mufflers etc. in situations where the volume of sound produced may exceed applicable standards.

(e) If a drilling rig is within 1,000 feet of an occupied dwelling, Operator and its subcontractors will align the drilling rig lighting equipment to minimize the proportion of the lights that are directed toward the dwelling and will install lighting shield devices on all of the more conspicuous lights. Lighting shall be directed inward and downward except as deemed necessary by Operator to illuminate other areas for safety reasons.

Operator shall use appropriate technology to minimize light pollution emanating from the Lands.

(f) Operator will utilize mats, soil tack and/or liquid dust suppressants as necessary to mitigate fugitive dust emissions from the Well Pads and the Operating Areas. Completion processes shall be designed to consolidate the number of hydraulic fracture stimulation flow-back events. No flaring of wells shall be permitted within 2,000 feet of an occupied dwelling, except in the event of emergency. Operator may flare a well within 2,000 feet of an occupied dwelling if such flaring is conducted utilizing flare suppression containment. Glycol dehydrators, tanks, treaters, and flares shall comply with applicable CDPHE and COGCC regulations governing VOC emissions.

(g) Sanitary facilities will be on site at all times during drilling, testing and completion Operations. Sewage will be placed in a portable chemical toilet. The toilet will be replaced periodically utilizing a licensed contractor. Toilet contents will be delivered to local wastewater treatment facilities in accordance with state and county regulations.

(h) Operator shall at all times keep the Operations Areas safe and in good order, free of noxious weeds, litter, debris, trash, or spilled hydrocarbons. All refuse, trash and other solid waste, (including cans, paper, cable, etc.) generated during Operations will be contained in enclosed receptacles, removed from the Lands promptly, and hauled to an authorized disposal site.

(i) All project-related activities involving hazardous materials use will be conducted in a manner that minimizes potential environmental impacts. Operator shall maintain a file of current Material Safety Data Sheets (MSDS) for all chemicals, compounds, and/or substances that are used in the course of site preparation, drilling operations, production operations and reclamation.

(j) 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.

(k) Operator will implement a spill prevention, control and counter measure control plan (SPCC). No hazardous materials in toxic concentrations will be permanently stored on any Well Pad or Operating Areas. Hazardous materials for use in the production of oil, gas or water will be allowed but will be stored and in use in reasonable quantities necessary for Operator's Operations on such Well Pad or Operating Areas. No bulk storage of hazardous materials is allowed.

(l) Operator shall ensure that all personnel and contractors employed in Operations shall receive appropriate training in safety and environmental protection practices as required by state and federal laws and regulations.

(m) Operator will conduct and maintain its operations in a safe manner and protect the public from any hazardous conditions. In the event of an emergency, Operator will take immediate appropriate action to safeguard life and prevent significant environmental degradation.

(n) No centralized compressors will be located on the Lands, except that wellhead compression will be permitted subject to the noise abatement requirements provided for below.

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

(p) The perimeter of the Well Pads and any pits shall be fenced. Operator will also install cattle guards and/or gates where reasonably necessary. Operator shall not fence any Access Roads located outside the Well Pads without the prior consent of Owner. After completion of the Wells and in the event of production, all production tanks shall be bermed.

(q) All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed.

(r) Any valve sites, exposed pipeline structures, wellhead compressor housing, permanent tanks intended to contain hydrocarbons or produced water shall all be low profile when technically feasible.

(s) Operator shall use a closed loop drilling process for the drilling and completion of all Wells. Operator will pipe or haul away any water produced from Wells drilled on 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.

(t) If by reason of the Operator's Operations there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner has not been previously compensated pursuant to Paragraph 5, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Wells construction and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence.

(u) Operator shall rehabilitate, restore, reclaim, and reseed all disturbed areas caused by the Operations and other activities on the Lands within six (6) months after

termination of construction activities on such sites, unless inclement weather prevents such rehabilitation and restoration within that time period. All cleanup and restoration activities of those portions of the Well Pads no longer included therein after the Well Pads have been reduced in size for producing well sites shall be completed by Operator. 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. All areas disturbed by the Operations and other activities will be reseeded with suitable grasses selected by Owner, at a reseeding rate determined by Owner, and during a planting period selected by Owner. 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.

(v) Operator shall remove only the minimum amount of vegetation necessary for the construction of Access Roads, the Well Pads, and other Facilities. Topsoil shall be conserved during excavation, stockpiled and reused as cover on disturbed areas to facilitate regrowth of vegetation.

(w) No construction or routine maintenance activities will be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of three inches deep, the soil shall be deemed too wet to adequately support equipment.

(x) 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.

(y) 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. 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, marijuana or illegal drugs while on the Lands.

(z) No open fires shall be permitted on the Lands. 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 the Operations or other activities on the Lands, including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

(aa) Operator shall not be entitled to the use of any waters (streams, ponds, groundwater surface water, subsurface water or otherwise) located on or under the Lands. Operator will pipe or haul away any water produced from Wells drilled on 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.

(bb) Operator shall not drill any salt-water disposal well on the Lands, and shall not be allowed to convert any dry-hole for use as a salt-water disposal well.

(cc) Seismic operations on the Lands are not permitted by this Agreement. Any proposed seismic operations on the Lands and the compensation payable to Owner therefor, shall be subject to a separate agreement between the Parties.

7. **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 will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have thirty (30) days from the date of mailing of the written notification in which to dispute or otherwise respond to the notification before Owner may allege default. If Operator remedies the alleged default within thirty (30) days of Owner's notice, or if the alleged default is of a nature that cannot be remedied within thirty (30) days, then if Operator commences the remedy of the alleged default within that thirty (30) day period and diligently pursues such remedy, then no default shall be deemed to have occurred.

Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach; however in no event will Operator be liable for consequential damages.

8. **INDEMNITY/RELEASE.** To the maximum extent permitted by law, Operator hereby releases, waives and discharges Owner from any and all Claims for personal injury, death, property damage, or otherwise arising from Operator's Operations or other activities on the Lands, unless such injury, death or property damage arises from Owner's intentional act or willful misconduct.

(a) Operator shall protect, defend, indemnify and hold harmless Owner, and any subsequent owner of the Lands, from and against any and all Claims, including without limitation Environmental Claims, that in any way arise out of Operator's Operations or other activities on the Lands; *provided, however*, Operator will not protect, defend, indemnify and hold harmless Owner, and any subsequent owner of the Lands, from any Environmental Claim arising out of a pre-existing condition which existed on the Lands at the time Operator executed this Agreement. Owner shall protect, defend, indemnify and hold harmless Operator, along with any of Operator's successors or assigns, from any and all Environmental Claims relating to the Lands that arise out of Owner's use of the Lands. Owner represents that Owner has no actual knowledge of any material latent condition or defect on the Lands which existed at the time Operator executed this Agreement that would subject Operator to an Environmental Claim.

(b) **“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 or other activities on or ownership of the Lands 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. 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.

(c) **“Claim”** shall mean any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims.

(d) **“Environmental Laws”** shall mean any laws, regulations, rules, ordinances, or order (whether currently existing or hereafter adopted) of any federal, state or local 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, et seq.), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), and the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.).

9. **WAIVER OF 30-DAY NOTICE.** Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other notice or consultation requirements of the COGCC. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owner after it has submitted a request for permit to drill from the COGCC. By signing this Agreement Owner specifically agrees to the location of the Wells identified on **Exhibit A** and waives any objections to such location.

10. **NOTICE FOR ADDITIONAL OPERATIONS.** Operator will 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.

11. **INSURANCE.** Before and during Operations on the Lands, Operator shall at all times maintain appropriate insurance, including, without limitation, workers' compensation insurance, in compliance with Colorado law for its employees or contractors involved in the conduct of Operations on any portion of the Lands and general public liability insurance in such amounts as are customarily maintained for Operations similar to those conducted by Operator. Operator shall provide Owner with a Certificate of Insurance evidencing such coverage and shall not cancel, reduce, restrict or change in any way the insurance coverage provided, without giving at least thirty (30) days prior written notice to Owner.

12. **LAND DEVELOPMENT.** In order to permit the use of the Lands for oil and gas development while also allowing Owner to develop wind, solar, mineral, other energy resources, or for any other similar or dissimilar use in such a manner as to permit both activities to be pursued simultaneously, Operator and Owner agree that Operator will reasonably accommodate the enjoyment of, and avoid impairment of, any other improvements on the Lands placed there in connection with other surface uses undertaken or granted by Owner. Owner shall use best efforts in their use and development of the surface so as not to unreasonably interfere with Operator's Operations. Owner shall promptly notify Operator of any planned real estate development, new irrigation system (e.g. pivots), residences, or other structures to be installed or located on the Lands after the Effective Date or of any plans to move any irrigation systems, residences, or other structures located on the Lands before the Effective Date.

13. **NO LIENS.** Operator shall keep the Lands free and clear of any and all liens for labor or work performed by it or its contractors and subcontractors upon the Lands. Notwithstanding the above, Operator may contest the validity of any alleged lien, including the enforcement thereof. Operator agrees to pay any and all property taxes, assessments, governmental charges imposed upon its interest in the Lands and upon the Facilities and any building, structure or other improvements, equipment or personal property placed or erected upon the Lands.

14. **NOTICES.** Notice by either Party will be promptly given, orally if possible (with the exception of the default notice described in Paragraph 7), with subsequent written confirmation (optional) 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 notice to the other:

Owner

Hergert Limited Partnership No. 3
C/O Betty J. Bechtholdt
4644 W 21st Circle
Greeley, CO 80634
Phone: 970-215-6637

Operator

Extraction Oil & Gas, LLC
1800 Sherman Street, Suite 500
Denver, CO 80203
Phone: 720-382-2693
Attn: John Tonello

15. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owner agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owner.

16. **CONFIDENTIALITY.** The Parties agree to keep the terms and conditions of this Agreement confidential and will not disclose such matters to any third party, except their respective tax and legal advisors, without the advance written consent of the other, or if ordered to do so in a legal proceeding. While the specific terms hereof are to remain confidential

between the Parties, Operator or Owner may record a memorandum of this Agreement in Weld County, Colorado.

17. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective successors or assigns,

18. **NO PARTNERSHIP, JOINT VENTURE.** This Agreement does not create any agent-principal or principal-agent relationship, joint venture, partnership, or other similar relationship between the Parties, and neither Party shall have the power to bind the other except as expressly set forth in this Agreement.

19. **NO THIRD-PARTY BENEFICIARIES, BROKERS.** Except as otherwise expressly set forth in this Agreement, the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective assigns and successors, and the Parties do not intend to confer third-party beneficiary rights upon any other person. Except for counsel, Owner has had no consultations, dealings, or negotiations with any broker in connection with this Agreement. No commissions, finders' fees, or other charges are due any agent, broker, or other party in connection with the execution or negotiation of this Agreement or any development associated with this Agreement.

20. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. **REASONABLE ACCOMMODATION.** Owner acknowledges the right to use of the surface estate of the Lands by Operator as herein described are expressly granted to Operator, its successor, and assigns; therefore, Owner further acknowledges Operator's use of the surface estate of the Lands as granted herein to Operator shall constitute "reasonable accommodation" by Operator, its successor, and assigns with respect to Colorado revised statute 34-60-127.

22. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.

23. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed and enforced in accordance with the laws of Colorado. Venue shall be deemed to be in Weld County, Colorado.

24. **ATTORNEY'S FEES AND COSTS.** The Parties agree that the prevailing Party in any action resulting from a breach of this Agreement will be entitled to its reasonable attorneys' fees and costs incurred therein.

25. **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.

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

27. **OTHER.** OWNER ACKNOWLEDGES AND AGREES THAT OPERATOR HAS CONSULTED IN GOOD FAITH WITH OWNER AS TO ITS PROPOSED OPERATIONS IN ACCORDANCE WITH COGCC REQUIREMENTS, OR HEREBY WAIVES SUCH REQUIREMENTS. OWNER EXPRESSLY WAIVES THE APPLICATION OF ANY COGCC SETBACKS INCONSISTENT WITH THIS AGREEMENT.

- (a) Operator will provide Owner with the COGCC Form 2A ("**Oil and Gas Location Assessment**") for OGOA when submitted to the COGCC, and Operator will undertake to ensure that said Form 2A accurately reflects the provisions of this Agreement.
- (b) Owner agrees not to object to the Form 2A, so long as it is consistent with this Agreement, and if consistent with this Agreement, Owner hereby waives any right granted by COGCC rule to comment on the Form 2A, to request an extension of the comment period, to request an onsite inspection pursuant to COGCC policy, or to appeal the approval and issuance of the Form 2A, and any related Form 2 ("**Application for Permit to Drill**").
- (c) Owner shall not oppose Operator in any COGCC or other governmental proceeding related to Operator's Operations, including, but not limited to, permitting, formation of drilling units, well spacing, well density, pooling, drilling, completion, stimulation, re-stimulation, workovers, deepening and recompleting, provided that Operator's position and contemplated undertakings in such proceedings are consistent with this Agreement. Owner will provide Operator or its successors and assigns with any and all written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.
- (d) Owner grants consent to locate the Wells greater than 50 feet from an existing well pursuant to COGCC Rule 318A(c). Owner grants consent to locate the proposed Wells outside of the GWA windows as defined in COGCC Rule 318A(a).
- (e) Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units, buildings, and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Owner hereby waives its right to object to the location of any of Operator's Facilities on the basis of setback requirements in the rules and regulations of the COGCC, including, but not limited to, the 150 foot setback from surface property lines and

other requirements of rules 603.a.(2), and 604.a, except that the Parties intend to rely upon one or more exceptions of rule 604.b of the rules and regulations of the COGCC relating to property lines and urban mitigation areas and/or designated outside activity areas, as those terms may change or be defined and amended from time to time. For the operations contemplated by this Agreement, Owner hereby waives the high density setback distances, as required by COGCC rules and regulations.

- (f) Owner understands that Operator may provide a copy of this Agreement in order to obtain a waiver, exception location, or variance from under the COGCC rules or from a local jurisdiction.

28. **Memorandum of Agreement.** The Parties shall enter into and record, in the Weld County records, a Memorandum of Agreement, giving notice of the existence of this Agreement.

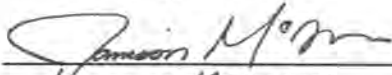
IN WITNESS WHEREOF, the Parties have set their hands, the day and year first written above.

Operator:

Owner:

Extraction Oil & Gas, LLC

Hergert Limited Partnership No. 3

By: 
Name: JAMISON MCILVAIN
Title: LANDMAN

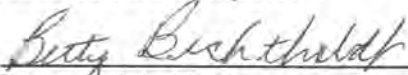
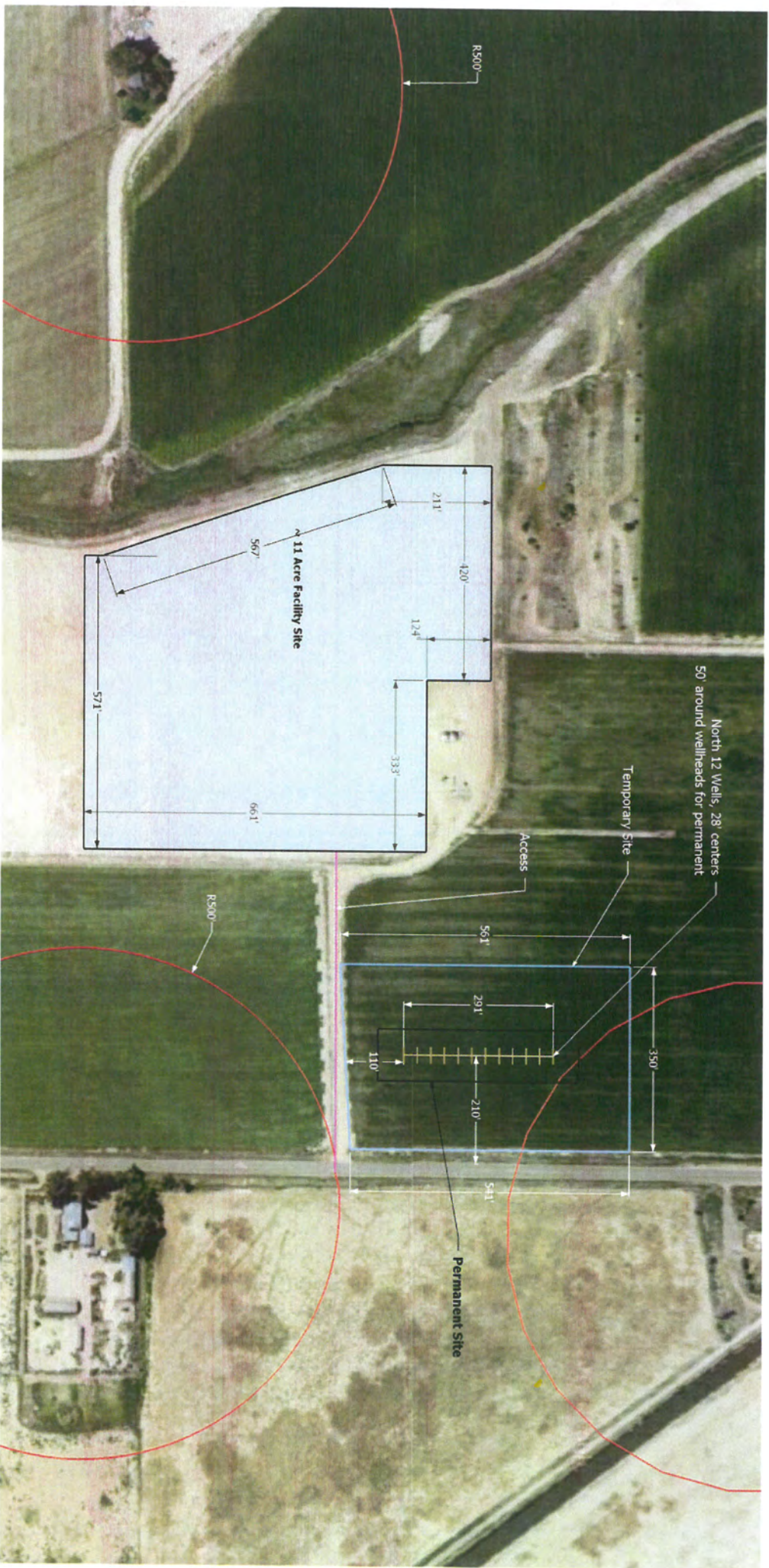
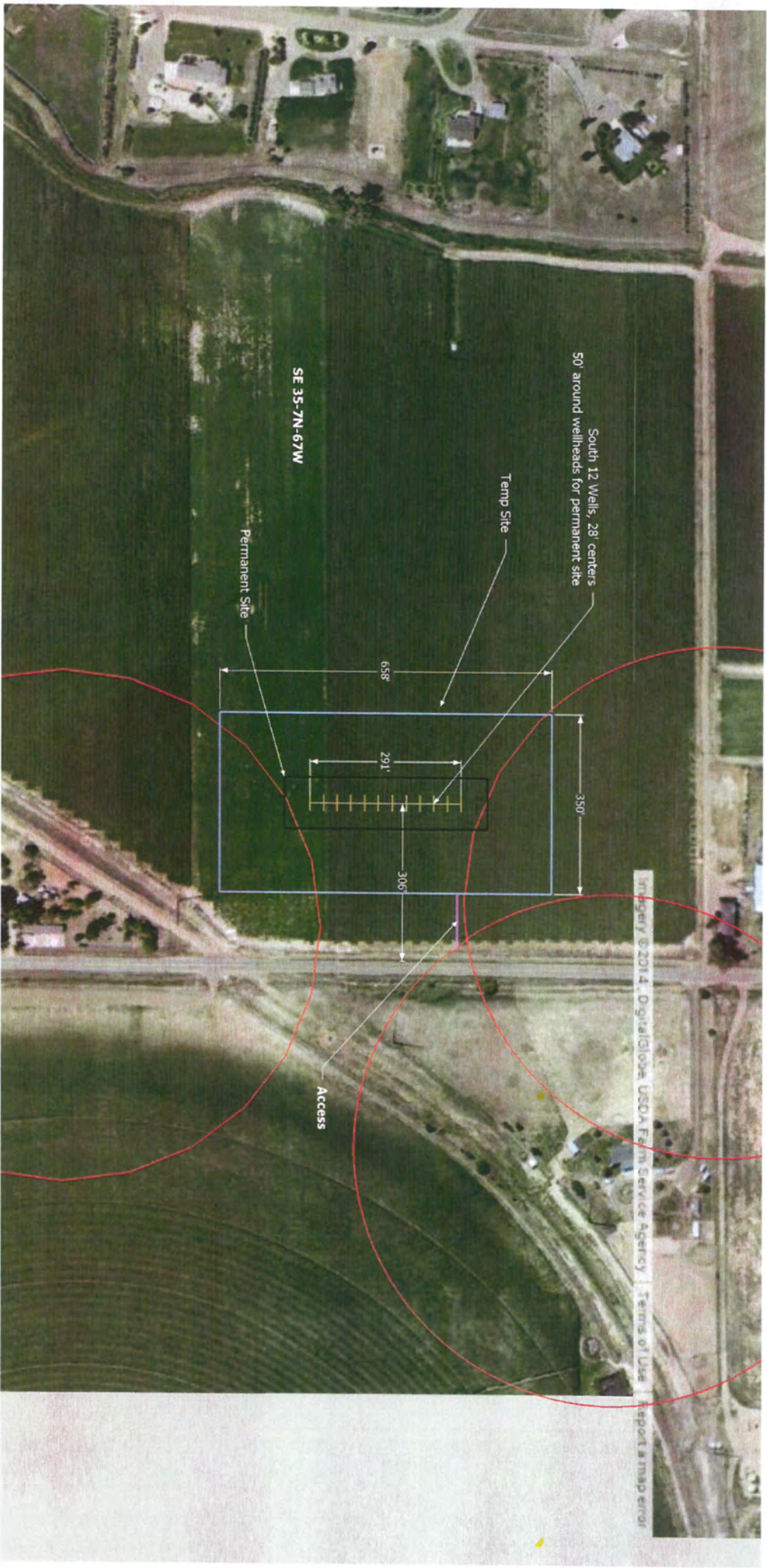
By: 
Betty Bechtholdt, General Partner

EXHIBIT A

MAP OF THE LANDS
AND DEPICTION OF WELL PADS, OPERATING AREAS AND FACILITIES

SEE ATTACHED

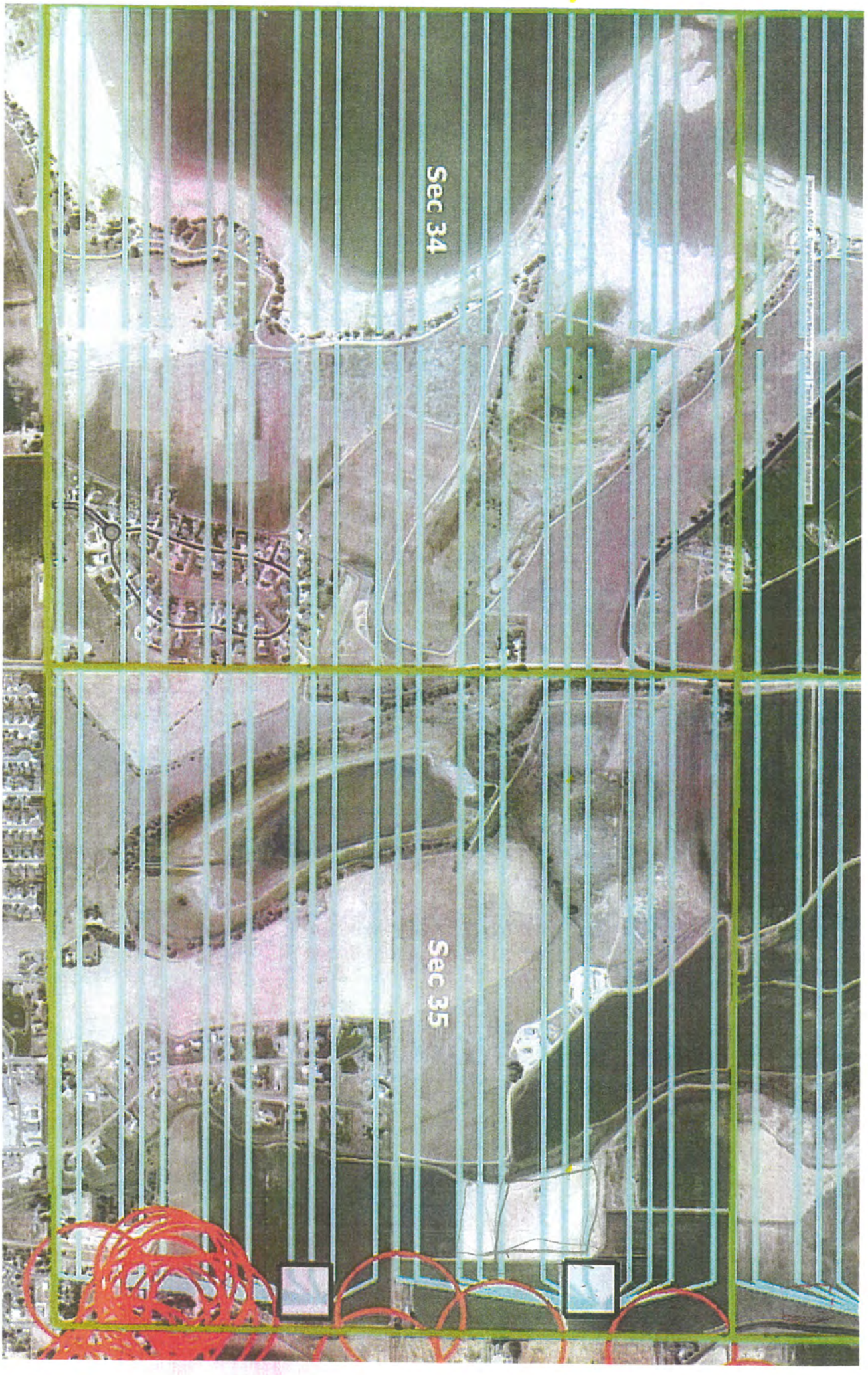




Map of 10000' Contour Line, 10000' Contour Line, 10000' Contour Line, 10000' Contour Line

Sec 34

Sec 35



MEMORANDUM OF SURFACED DAMAGE AND RELEASE AGREEMENT

THIS MEMORANDUM OF SURFACE DAMAGE AND RELEASE AGREEMENT ("Memorandum") is made and entered into as of August 9, 2017, by and between HERGERT LIMITED PARTNERSHIP NO. 3, a Colorado limited partnership ("Owner"), and EXTRACTION OIL & GAS, INC., a Delaware corporation, f/k/a Extraction Oil & Gas, LLC ("Operator"); sometimes referred to each as a "Party" or collectively as the "Parties."

A. The Parties entered into a Surface Damage and Release Agreement dated as of July 25, 2014 (the "Original Agreement"), governing certain activities of Operator on surface lands owned by Owner in Weld County, Colorado, as more particularly described as follows (the "Lands"):

Township 7 North, Range 67 West, 6th P.M.

Section 35: That part of the E/2 more particularly described in Exhibit "A" of that certain Quit Claim Deed dated October 11, 2002, recorded at Reception No. 3011753 of the records of Weld County, Colorado.

B. The Agreement was amended by the First Amendment to Surface Damage and Release Agreement dated as of August 9, 2017 (the "First Amendment"), and the Original Agreement as amended by the First Amendment is referred to herein as the "Agreement."

C. The Agreement contains the following provisions:

1. Term. The Agreement shall continue in full force and effect until the later to occur of (a) permanent cessation of the Operator's Operations (defined in the Agreement as, activities to "drill, construct, complete, produce, maintain, rework, and operate the Wells and all facilities associated therewith, including, but not limited to, access roads ... pipelines and flow lines ... separators, tank batteries, power lines and any other facilities or property necessary for Operator to conduct operations on the Wells...") being conducted on the Lands, or (b) the date that is five (5) years from the Effective Date.

2. Operator's Operations. The Agreement describes the Operations that the Operator may conduct on the Lands, as defined therein and recited in the preceding paragraph. The Owner grants to the Operator certain rights, privileges, and easements (A) "for the purpose of locating and surveying the [oil and gas] Facilities, and for constructing, entrenching, operating, maintaining, repairing, altering, replacing and removing the [oil and gas] Facilities and appurtenant facilities, for the purposes specified herein, and including the rights of ingress to and egress from the Facilities across the Lands, and (B) a non-exclusive subsurface easement, during the Term, for passage of any portion of any well bore for any of the future Wells, whether producing or

nonproducing, including the right to occupy and use the subsurface pore space displaced by the well bore..." subject to the regulations of the COGCC.

3. Location. The Agreement depicts the agreed location of the Operator's well pads, access roads, power lines, pipelines, and all other oil and gas Facilities on the Lands, in Exhibit A attached to the Agreement and attached hereto.

4. Conduct of Operations. The Agreement provides that the Operator shall conduct all Operations on the Lands pursuant to the terms of oil and gas leases, this Agreement, the rules and regulations and applicable federal, state and local law. The Agreement further sets out the following provisions and restrictions that shall apply to the Operator's Operations on the Lands:

(a) "Prior to initiating the drilling of any Well or constructing any Facilities, Operator shall notify Owner prior to entry upon the Lands.

(b) Operator shall consult with Owner concerning mitigating the visual impacts of the Facilities, if reasonably practical. Owner, at its own risk and expense, shall have the right to install landscaping and other improvements outside the Operators Areas for the purpose of buffering or isolating the Operations Areas from the Lands or Owner's adjacent lands, provided that Owner shall not unreasonably inhibit Operator's access to the Operations Area or unreasonably inhibit Operations within the Operations Areas by such landscaping or other improvements.

(c) There will be no time of day restrictions with regard to drilling, completing, re-completing, workover, development, production, or reservoir fracture stimulation Operations. With respect to other routine ongoing maintenance, Operator agrees to limit such activities (except in the case of emergency) to between the hours of 6:00 o'clock a.m. and 9:00 o'clock p.m.

(d) Equipment installed on the Well Pads and Operating Areas shall be modern and well maintained. Operator will evaluate noise generation from equipment and require contractor s to refit mufflers etc. in situations where the volume of sound produced may exceed applicable standards.

(e) If a drilling rig is within 1,000 feet of an occupied dwelling, Operator and its subcontractors will align the drilling rig lighting equipment to minimize the proportion of the lights that are directed toward the dwelling and will install lighting shield devices on all of the more conspicuous lights. Lighting shall be directed inward and downward except as deemed necessary by Operator to illuminate other areas for safety reasons. Operator shall use appropriate technology to minimize light pollution emanating from the Lands.

(f) Operator will utilize mats, soil tack and/or liquid dust suppressants as necessary to mitigate fugitive dust emissions from the Well Pads and the Operating Areas. Completion processes shall be designed to consolidate the number of hydraulic fracture stimulation flow-back events. No flaring of wells shall be permitted within 2,000 feet of an occupied dwelling, except in the event of emergency. Operator may flare a well within 2,000 feet of an occupied dwelling if such flaring is conducted utilizing flare suppression containment. Glycol dehydrators, tanks, treaters, and flares shall comply with applicable CDPHE and COGCC regulations governing VOC emissions.

(g) Sanitary facilities will be on site at all times during drilling, testing and completion Operations. Sewage will be placed in a portable chemical toilet. The toilet will be replaced periodically utilizing a licensed contractor. Toilet contents will be delivered to local wastewater treatment facilities in accordance with state and county regulations.

(h) Operator shall at all times keep the Operations Areas safe and in good order, free of noxious weeds, litter, debris, trash, or spilled hydrocarbons. All refuse, trash and other solid waste, (including cans, paper, cable, etc.) generated during Operations will be contained in enclosed receptacles, removed from the Lands promptly, and hauled to an authorized disposal site.

(i) All project-related activities involving hazardous materials use will be conducted in a manner that minimizes potential environmental impacts. Operator shall maintain a file of current Material Safety Data Sheets (MSDS) for all chemicals, compounds, and/or substances that are used in the course of site preparation, drilling operations, production operations and reclamation.

(j) 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.

(k) Operator will implement a spill prevention, control and counter measure control plan (SPCC). No hazardous materials in toxic concentrations will be permanently stored on any Well Pad or Operating Areas. Hazardous materials for use in the production of oil, gas or water will be allowed but will be stored and in use in reasonable quantities necessary for Operator's Operations on such Well Pad or Operating Areas. No bulk storage of hazardous materials is allowed.

(l) Operator shall ensure that all personnel and contractors employed in

Operations shall receive appropriate training in safety and environmental protection practices as required by state and federal laws and regulations.

(m) Operator will conduct and maintain its operations in a safe manner and protect the public from any hazardous conditions. In the event of an emergency, Operator will take immediate appropriate action to safeguard life and prevent significant environmental degradation.

(n) No centralized compressors will be located on the Lands, except that wellhead compression will be permitted subject to the noise abatement requirements provided for below.

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

(p) The perimeter of the Well Pads and any pits shall be fenced. Operator will also install cattle guards and/or gates where reasonably necessary. Operator shall not fence any Access Roads located outside the Well Pads without the prior consent of Owner. After completion of the Wells and in the event of production, all production tanks shall be bermed.

(q) All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed.

(r) Any valve sites, exposed pipeline structures, wellhead compressor housing, permanent tanks intended to contain hydrocarbons or produced water shall all be low profile when technically feasible.

(s) Operator shall use a closed loop drilling process for the drilling and completion of all Wells. Operator will pipe or haul away any water produced from Wells drilled on 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.

(t) If by reason of the Operator's Operations there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner has not been previously compensated pursuant to Paragraph 5, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Wells construction and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence.

(u) Operator shall rehabilitate, restore, reclaim, and reseed all disturbed areas caused by the Operations and other activities on the Lands within six (6) months after termination of construction activities on such sites, unless inclement weather prevents such rehabilitation and restoration within that time period. All cleanup and restoration activities of those portions of the Well Pads no longer included therein after the Well Pads have been reduced in size for producing well sites shall be completed by Operator. 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. All areas disturbed by the Operations and other activities will be reseeded with suitable grasses selected by Owner, at a reseeding rate determined by Owner, and during a planting period selected by Owner. 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.

Operator shall remove only the minimum amount of vegetation necessary for the construction of Access Roads, the Well Pads, and other Facilities. Topsoil shall be conserved during excavation, stockpiled and reused as cover on disturbed areas to facilitate regrowth of vegetation.

(v) No construction or routine maintenance activities will be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of three inches deep, the soil shall be deemed too wet to adequately support equipment.

(w) 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.

(x) 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. 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, marijuana or illegal drugs while on the Lands.

(y) No open fires shall be permitted on the Lands. 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 the Operations or other activities on the Lands, including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

(z) Operator shall not be entitled to the use of any waters (streams, ponds, groundwater surface water, subsurface water or otherwise) located on or under the Lands. Operator will pipe or haul away any water produced from Wells drilled on 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.

(aa) Operator shall not drill any salt-water disposal well on the Lands, and shall not be allowed to convert any dry-hole for use as a salt-water disposal well.

(bb) Seismic operations on the Lands are not permitted by this Agreement. Any proposed seismic operations on the Lands and the compensation payable to Owner therefor, shall be subject to a separate agreement between the Parties."

5. Default and Right to Cure. The Agreement provides that in the event of an alleged default by Operator, the Operator will have 30 days from the date of mailing of the written notification thereof by the Owner in which to dispute or otherwise respond to the notification before Owner may allege default. If Operator remedies the alleged default within 30 days of Owner's notice, or if the alleged default is of a nature that cannot be remedied within 30 days, then if Operator commences the remedy of the alleged default within that thirty 30-day period and diligently pursues such remedy, then no default shall be deemed to have occurred.

6. Indemnity/Release. The Agreement contains the following provisions:

"To the maximum extent permitted by law, Operator hereby releases, waives and discharges Owner from any and all Claims for personal injury, death, property damage, or otherwise arising from Operator's Operations or other activities on the Lands, unless such injury, death or property damage arises from Owner's intentional act or willful misconduct.

(a) Operator shall protect, defend, indemnify and hold harmless Owner, and any subsequent owner of the Lands, from and against any and all Claims, including without limitation Environmental Claims, that in any way arise out of Operator's Operations or other activities on the Lands; *provided, however*, Operator will not protect, defend, indemnify and hold harmless Owner, and any subsequent owner of the Lands, from any Environmental Claim arising out of a pre-existing condition which existed on the Lands at the time Operator executed this Agreement. Owner shall protect, defend, indemnify and hold harmless Operator, along with any of Operator's successors or assigns, from any and all

Environmental Claims relating to the Lands that arise out of Owner's use of the Lands. Owner represents that Owner has no actual knowledge of any material latent condition or defect on the Lands which existed at the time Operator executed this Agreement that would subject Operator to an Environmental Claim.

(b) "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 or other activities on or ownership of the Lands 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. 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.

(c) "Claim" shall mean any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims.

(d) "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order (whether currently existing or hereafter adopted) of any federal, state or local 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, et seq.), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), and the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.)."

7. Insurance. The Agreement provides that "the Operator shall at all times maintain appropriate insurance, including, without limitation, workers' compensation insurance, in compliance with Colorado law for its employees or contractors involved in the conduct of Operations on any portion of the Lands and general public liability insurance in such amounts as are customarily maintained for Operations similar to those conducted by Operator. Operator shall provide Owner with a Certificate of Insurance evidencing such coverage and shall not cancel, reduce, restrict or change in any way the insurance coverage provided, without giving at least 30 days prior written notice to Owner."

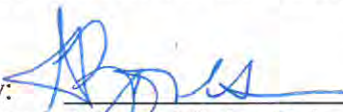
8. Land Development. The Agreement provides that, "in order to permit the use of the Lands for oil and gas development while also allowing Owner to develop wind, solar, mineral,

other energy resources, or for any other similar or dissimilar use in such a manner as to permit both activities to be pursued simultaneously, Operator and Owner agree that Operator will reasonably accommodate the enjoyment of, and avoid impairment of, any other improvements on the Lands placed there in connection with other surface uses undertaken or granted by Owner. Owner shall use best efforts in their use and development of the surface so as not to unreasonably interfere with Operator's Operations. Owner shall promptly notify Operator of any planned real estate development, new irrigation system (e.g. pivots), residences, or other structures to be installed or located on the Lands after the Effective Date or of any plans to move any irrigation systems, residences, or other structures located on the Lands before the Effective Date.

9. Successors. The Agreement provides that, this Agreement constitutes a covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, affiliates, administrators, trustees, executors and assigns."

OPERATOR:

EXTRACTION OIL & GAS, INC.

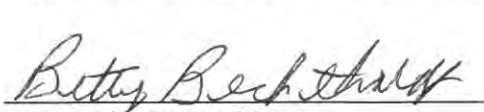
By: 

Name: Allyson Vistica Boies

Title: Land Manager

OWNER:

HERGER LIMITED PARTNERSHIP NO. 3

By: 

Betty Bechthold, General Partner

Exhibit A
to
Memorandum of Surface Damage and Release Agreement

See Attached

HERGERT 35-D WELL PAD HERGERT 35-D FACILITY PAD HERGERT 35-L PAD EXHIBIT A

NE 1/4 SECTION 35
T7N R67W

PARCEL OWNER
HERGERT LIMITED PARTNERSHIP NO 3

HERGERT WELL PAD
OIL & GAS OPERATIONS AREA
= 4.95 ACRES

HERGERT 35-D FACILITY PAD
OIL & GAS OPERATIONS AREA
= 11.35 ACRES

EXISTING
CONCRETE DITCH

EAST LINE
SECTION 35,
T7N, R67W

WCR 23
60' R.O.W.

EXISTING
PRIVATE ROAD

EXISTING
DITCH

EXISTING
PRIVATE ROAD

70' TEMPORARY
WORKSPACE

20' PERMANENT
RIGHT-OF-WAY

EXISTING
DITCH

CENTER LINE
SECTION 35, T7N, R67W

EXISTING
DITCH

HERGERT 35-L PAD
OIL & GAS OPERATIONS AREA
= 5.97 ACRES

SE 1/4 SECTION 35
T7N R67W

PARCEL OWNER
ABDIEL HOLDINGS LLC

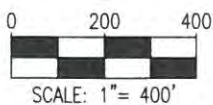
LEGEND

● = PROPOSED WELL
□ = FACILITY EQUIPMENT
— = ROAD CENTERLINE
— = PROPOSED ACCESS

— = PERMANENT OGOA
— = PAD EDGE
— = PARCEL LINE
▨ = FLOWLINE CORRIDOR

DISCLAIMER:
THIS PLOT DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND SHOULD NOT BE
RELIED UPON TO DETERMINE BOUNDARY LINES, PROPERTY OWNERSHIP OR OTHER
PROPERTY INTERESTS. PARCEL LINES, IF DEPICTED HAVE NOT BEEN FIELD VERIFIED AND
MAY BE BASED UPON PUBLICLY AVAILABLE DATA THAT ALSO HAS NOT BEEN
INDEPENDENTLY VERIFIED.

DATA SOURCE:
PARCEL LINES: WELD COUNTY ASSESSOR
PUBLICLY AVAILABLE DATA SOURCES HAVE NOT BEEN
INDEPENDENTLY VERIFIED BY PFS.



PREPARED BY:



7535 Hilltop Circle
Denver, CO 80221
(303) 928-7128
www.ascenigmatic.com

FIELD DATE:
03-21-17

DRAWING DATE:
07-14-17

BY:
JLG

CHECKED BY:
MMP

SITE NAME:
HERGERT NORTH AND SOUTH

SURFACE LOCATION:
NE 1/4 SE 1/4 & NE 1/4 NE 1/4 SEC. 35, T7N, R67W, 6TH P.M.
WELD COUNTY, COLORADO

PREPARED FOR:

