

SURFACE AND DAMAGE AGREEMENT

This agreement is made and entered into effective the 26th day of September, 2018 between **Mary R. Millican**, Life Tenant, 3400 Carlton Ave, Fort Collins, CO 80525-2982, **Vincent Millican**, Remainderman, 147 Dusty Canal, Boerne, TX 78006, and **Stephanie Hund and Mark Hund**, Remainderman Assignee, P.O. Box 327, Walsh, CO 81090 (Life Tenant, Remainderman, and Remainderman Assignee, hereinafter collectively referred to as "Owner"), and **Waulco Resources LLC**, (hereafter referred to as "Operator"), 146 Capulin Place, Castle Rock, CO 80108.

1. **Lands.** The following described lands are subject to this Agreement and are hereafter sometimes referred to as the "Lands":

Township 32 South, Range 47 West, 6th P.M.
Section 7: E½

Owner represents to Operator that it owns the surface estate to the Lands and that Owner has the right and authority to enter into this Agreement and grant Operator the rights, easements, licenses, right-of-ways and access contemplated under hereunder subject, however, to all existing easements, rights of way and agreements affecting the Lands.

Owner and Operator agree that this Agreement is valid only as to that portion of the Lands which is subject to a valid oil and gas lease between Owner and Operator.

Operator will use the Lands only for the purpose of conducting oil and gas operations on the Lands. The parties enter into this agreement to define reasonable use of the Lands for the exploration and production of oil and gas, to provide compensation to the surface owner, and to resolve and avoid disputes between the parties concerning operations on the Lands.

2. **Notification and Location of Facilities.** Operator shall notify Owner before entry upon the Land and shall consult with Owner as to the location of each well, road, pipeline, power line, tank battery, and other facility to be placed on the Lands. If Owner reasonably requests in writing that a proposed well location be moved because of topographical considerations or to avoid cutting into hillsides, then Operator agrees to seek an appropriate exception location from the Colorado Oil and Gas Conservation Commission. In the event that Operator is unable to obtain an appropriate exception location, Operator may proceed to conduct operations on the proposed location and use commercially reasonable efforts to minimize the impact of erosion or other deleterious effects created by its operations on said location. To the maximum extent possible, Operator will use existing roads on the Owner's surface of the Lands for its operations, and, if construction of a new road is required, Operator will locate the new road in a manner so as to cause, to the extent practicable, the least interference with Owner's operations on the Lands. Operator will locate the wells, pipelines, tank batteries, and other facilities in a manner so as to cause the least interference with Owner's operations on the Lands.

3. **Termination of Rights.** Unless sooner terminated due to a breach of this

agreement, this agreement shall terminate when Operator's oil and gas leases on the Lands terminate or when Operator ceases its operations on the Lands, whichever shall occur first. Upon termination of this agreement, Operator will execute and deliver to Owner a good and sufficient recordable release and surrender of all Operator's rights under this agreement and will promptly remove all equipment and property used or placed by Operator on the Lands unless otherwise agreed by Owner in writing.

4. **Non-Exclusive Rights.** The rights granted by Owner to Operator are non-exclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the Lands and the right to grant successive easements thereon or across on such terms and conditions as Owner deems necessary or advisable, provided that Owner and Operator shall each conduct their operations so as not to unreasonably and materially interfere with the operations of the other. In the event Owner enters into an agreement and grants a third party any rights, easements, licenses, right-of-ways or access to Lands, Owner will provide Operator written notice of such agreement. Additionally, the parties will record a memorandum of this Agreement promptly after its execution to give third parties notice of the priority of the rights granted to Operator under this Agreement.

5. **Payments.** Operator will pay to Owner the following amounts:

a. **Well Locations.** A payment of \$400.00 per acre for each acre or part thereof disturbed for each well drilled and operated by Operator. The payment for wells shall be made before any surface on the Lands is disturbed in connection with the drilling of the well.

b. **Roads.** Operator shall pay to Owner a payment of \$10.00 per rod for Operator's use of any portion of existing private roads and any new private roads constructed. The payment for roads shall be made before any surface on the Lands is disturbed in connection with the drilling of the well.

c. **Pipelines / Power Lines.** Operator shall pay Owner a payment of \$2.00 per rod for all pipelines or and power lines installed on the Lands associated with Operator's oil and gas operations. Operator shall be responsible for backfilling, repacking, re-seeding and re-contouring the surface disturbed in the construction or maintenance of any pipeline or power line so as not to interfere with Owner's operations. Wherever possible, all pipelines and power lines located by Operator on the premises shall be buried to the depth of at least three (3) feet below the surface. All rights-of-way for pipelines and power lines shall be limited to fifteen feet (15') on each side of such pipeline or power line. Notwithstanding the foregoing, if any pipeline or power line is buried in the same trench as another pipeline or power line at the same time, Operator shall only be required to pay for one line.

d. **Tank Batteries / Other Facilities.** Operator shall pay Owner \$400.00 per acre for each acre or part thereof occupied by a tank battery or other facility not located on lands disturbed by the drilling of a well, which is used by Operator on the Lands for its oil and gas operations. The tank battery site or

facility/structure, including all equipment and pits normal and incident thereto, shall not exceed 2 acres in size without Owner's written consent.

e. Well Locations, Roads, Pipelines / Powerlines, and Tank Batteries / Other Facilities located on Conservation Reserve Program Contract lands.

i. Operator shall pay to Owner the cost of CRP Contract refund, liquidated damages, and any filing fees relative to the termination of any portion of the Lands from the CRP Contract necessitated by Operator's oil and gas operations. The payment due under this Section i shall be made before any surface on the Lands is disturbed in connection with the drilling of the well, or construction of roads, pipelines, powerlines, tank batteries, or other facilities.

ii. Operator shall make payment to Owner for any rental payments which would have been due Owner pursuant to the CRP Contract but for the termination of CRP Contract lands due to Operator's oil and gas operations. Payment shall be due under this Section ii on the same date(s) as provided by the CRP Contract. Operator is given the option, at Operator's sole discretion, to aggregate any and all future anticipated annual rentals for payment to Owner in advance of actual due dates.

f. **Payments.** The payments herein provided are acknowledged as sufficient and in full satisfaction for damages caused or created by the reasonable and customary entry, rights-of-way and operation and use of the roads, pipelines, power lines, tank batteries and well sites, but do not include damage to livestock, buildings or improvements or injuries to persons or to any damage or destruction caused to Owner's water wells or water supply. This agreement does not relieve Operator from liability for damage caused by Operator's negligence or by spills or discharges of any hydrocarbon or toxic or hazardous chemicals or wastes due to Operator's operations or by oil or gas leakage or oil or gas released due to Operator's operations or by leaks or breaks in Operator's pipelines.

g. **Payment Recipient.** Remainderman, and Remainderman Assignee designate, agree and acknowledge that payments due Owner pursuant to Sections 5.a through 5.e shall be made by Operator to Life Tenant during life tenancy.

6. **Conservation Reserve Program Lands.** Owner is a party to a Conservation Reserve Program contract ("CRP Contract") with the United States Department of Agriculture pursuant to 7 C.F.R. Part 1410 which encompasses a portion of the Lands. Owner shall provide to Operator a true and complete copy of such CRP Contract, together with all plan(s) of operations, amendments and modifications.

7. **Locations.** No wells shall be drilled within 500 feet of any existing residence or house on the Lands without the prior written consent of Owner. No housing or dwelling unit shall be constructed or placed by Operator on the Lands, except that drilling crews and geologists or service personnel may use temporary portable housing (trailers on tires or skids) in such locations as approved by Owner during drilling, completion, or reworking activities.

8. **Consolidation.** Whenever possible and economically feasible, Operator will consolidate its facilities for as many wells as practical, locating in-coming power at a central point and placing all roads, power lines, and pipelines in the same corridor.

9. **Roads.** Any roads on the Lands shall be limited to twenty (20) feet in width for the actually traveled road bed. Operator will reasonably maintain, as needed, all roads used by Operator. At Owner's request, Operator will place appropriate signs on any roads or rights of way designating the road or right of way as a "private road" and will assist Owner in the control of the use of the roads by unauthorized persons: Operator shall keep all gates and cattle guards used by Operator clean and in good order and repair and promptly repair any damage to gates or cattle guards resulting from Operator's operations.

10. **Livestock Losses and Fences.** Operator shall pay Owner the current fair market value at the time of loss of any livestock killed or injured as a direct result of Operator's operations. Operator shall construct and keep in good repair stock-tight fences around any dangerous area, including any pits and pump jacks. Operator shall use its best efforts to take all reasonable actions to see that all gates are kept shut by Operator's personnel and contractors to prevent the escape of Owner's livestock and conduct its operations so as to prevent Owner's livestock from escaping from the pastures in which they are confined.

11. **Improvements.** No fences, cattle guards or other improvements shall be damaged by Operator without the prior written consent of Owner.

12. **Reclamation.** As soon as reasonably practicable, and in any event within twelve (12) months, after the disturbance, weather permitting, Operator shall rehabilitate and restore to its original condition, as near as is reasonably possible, all areas disturbed by Operator's operations and reseed the disturbed areas and establish a sustainable growing ground cover. Operator shall use best efforts to conserve and preserve topsoil. If earth covering a pipeline or power line settles or sinks, Operator will return and fill, compact, reclaim and reseed the area of settlement or sinkage. If a well is plugged and abandoned, Operator shall restore the location, any new access road constructed by Operator (unless the Owner requests that the road stay as it is) and other disturbed areas to as close to its original condition as is reasonably possible and use best efforts to establish a sustainable growing ground cover and remove from the Lands all above ground power lines and poles to that well. All reseeding shall be done with seeds approved by Owner and during a planting period approved by Owner. Operator shall, weather permitting, promptly restore and level the surface of all land disturbed by the construction or maintenance of any power line, pipeline or gathering line, as nearly as can reasonably be done, to the same condition it was in before any operations so that there are no permanent mounds, ridges, sinks, or trenches. Upon final termination of Operator's rights under this agreement and unless otherwise agreed by Owner, Operator shall return areas disturbed by oil and gas operations on the Lands as near as practical to the condition they were in before the disturbance.

13. **Fencing of Access Roads.** Operator will not fence any access roads without the prior written consent of Owner.

14. **Fire and Use Restrictions.** Operator shall take reasonable steps to prevent fire and to promptly extinguish fire, including, but not limited to, maintaining a fire extinguisher in each service vehicle entering upon the property and utilizing spark arresters on all gas or diesel powered equipment. Operator may not construct open fires on the property. No trash or timber slash will be burned by Operator on the lands.

15. **Owner's Water Sources.** Operator shall not without the Owner's prior written consent use any water from Owner's wells, reservoirs or springs on the Lands. Operator shall not disturb, interfere with, fill, contaminate, or block any creek, reservoir, spring or other source of water on the Lands. Operator shall not disturb, damage or destroy Owner's water wells, stock water pipelines or tanks used in connection with the stock water pipelines.

16. **Operator Indemnification.** To the maximum extent permitted by law, Operator will indemnify, defend and hold Owner, its managers, members, employees, agents, successors and assigns harmless from any and all claims, liabilities, demands, suits, losses, damages and costs (including without limitation, any attorney fees) which may arise out of or be related to Operator's activities on or off the Lands, including without limitation, any claims that Operator's operations hereunder are either illegal, unauthorized, or constitute an improper interference with any parties' rights, or have damaged the lands or operations of adjacent landowners, and including any claims based on the alleged concurrent negligence of Owner.

17. **Operator's Release.** To the maximum extent permitted by law, Operator releases and waives and discharges Owner, its managers, members, employees, agents, successors and assigns from any and all liabilities for personal injury, death, property damage or otherwise arising out of Operator's operations under this agreement or use of Owner's property unless such injury, death or property damage is the result of Owner's willful or intentional misconduct.

18. **Default/Dispute Resolution.** If either party defaults under this agreement, the other party must give the defaulting party written notice of the claimed default. If the default is not cured within forty-five (45) days following the party's receipt of the notice, then the party giving notice of default may enforce its rights under this agreement. If a dispute arises between the parties relating to this agreement, they will not file a lawsuit until they first submit the dispute the mediation pursuant to the laws of the State of Colorado. Within twenty (20) days after one party files a request for mediation, the parties will jointly agree upon a mediator and the mediator's compensation. If they cannot agree within the ten-day period upon the mediator or upon the compensation, the district court may appoint a mediator for them, and the parties shall each pay an equal share of the fees charged by the appointed mediator. The mediation shall be privileged and confidential as provided by Colorado law. Any applicable statute of limitations or repose shall be tolled between the time a party formally requests mediation and thirty days following the final mediation meeting. If either party defaults under this agreement, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing this agreement if that party is the prevailing party in

litigation.

19. **Compliance with Law.** Operator shall conduct operations and activities in accordance with applicable local, state and federal laws, rules and regulations.

20. **Notice.** Notice may be given to either party to this agreement by sending the same in the United States mail postage prepaid by way of certified mail with return receipt requested, duly and correctly addressed to the other party at the address set out in Section 20 below.

21. **Designated Contact Person.** Operator and Owner will each from time to time designate an individual who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement. Current contact persons and numbers are as follows:

Operator:

Clifford Murray, Agent

Phone: 435-724-1840 cell

Address: 146 Capulin Place, Castle Rock, CO 80108

Life Tenant:

Mary R. Millican

Phone: _____

Address: 3400 Carlton Ave., Fort Collins, CO 80525-2982

Remainderman:

Vincent Millican

Phone: 806-206-1500

Address: 147 Dusty Canal, Boerne, TX 78006

Remainderman Assignee:

Stephanie Hund and Mark Hund

Phone: 719-691-5338

Address: P.O. Box 327, Walsh, CO 81090

22. **Recording.** This agreement may not be recorded without the written consent of Owner and Operator; provided, however, Owner and Operator shall both execute a memorandum of this Agreement, which shall be recorded in the appropriate county records to give record notice of the existence of this Agreement.

23. **Construction of Agreement.** This agreement shall be construed under the laws of the State of Colorado.

24. **Binding Effect.** This agreement is binding upon the successors, heirs and assigns of the parties, and any party who succeeds to Operator's working interest in the leases on the Lands shall be required to comply with this agreement.

25. **Counterparts.** This agreement may be executed in counterparts, each of which shall be deemed a duplicate original for all purposes. Facsimile signatures

shall have the same force and effect as original signatures.

26. **No Warranties.** Owner makes no warranty of title or otherwise in entering into this agreement.

27. **Waivers.** Any failure by any party to comply with any of its obligations, agreements or conditions herein contained may be waived by the party to whom such compliance is owed by an instrument signed by such party and expressly identified as a waiver, but not in any other manner. No waiver of, consent to a change in, or any delay in timely exercising any rights arising from any of the provisions of this agreement shall be deemed or constitute a waiver of, or consent to a change in, other provisions hereof (whether or not similar), nor shall such a waiver constitute a continuing waiver unless otherwise expressly provided.

28. **Entire Agreement.** This agreement constitutes the entire agreement between the parties pertaining to the use of the Lands by Operator and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties, pertaining to the use of the Lands or access road by Operator.

29. **Amendment.** This agreement may be amended or modified only by an agreement in writing executed by all parties and expressly identified as an amendment or modification.

30. **No Third Party Beneficiaries.** Nothing in this agreement shall entitle any person other than the Owner and Operator or their respective successors and permitted assignees to any claims, cause of action or right of any kind.

31. **Severability.** The invalidity or unenforceability of any term or provision of this agreement in any situation or jurisdiction shall not affect the validity or enforceability of the other terms or provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction and the remaining terms and provisions shall remain in full force and effect, unless doing so would result in an interpretation of this agreement that is manifestly unjust.

Executed:

Mary R. Millican, Life Tenant

Date _____

Vincent Millican, Remainderman

Date _____


Stephanie Hund, Remainderman Assignee

Date 10/21/2016



M h H - d Date 10-21-2018
Mark Hund, Remainderman Assignee

C W Pollard Date 10-30-18
Charles W. Pollard, President, Waulco Resources LLC