

**Surface Use and Damage Agreement**  
**(26-12S-43W)**

This surface use and damage agreement ("**Agreement**") is made effective the 1<sup>st</sup> day of September, 2022, by and between Harker Family Registered LLLP ("**OWNER**"), having an address of 3437 County Road U, Rexford, KS 67753 and WAVETECH HELIUM, INC. ("**WHI**"), having an address of 1801 Broadway, Suite 600, Denver, Colorado 80202. OWNER and WHI may sometimes be referred to individually as a "**party**" or collectively as the "**parties**" in this Agreement.

**RECITALS:**

1. OWNER owns certain surface estate acreage in the Southwest Quarter of Section 26, Township 12 South, Range 43 West, 6<sup>th</sup> P.M., in Cheyenne County, Colorado (the "**Subject Lands**").
2. Pursuant to certain oil and gas leases (the "**Leases**"), WHI has the right to explore for and develop oil and gas mineral interests underlying the Subject Lands and other lands in Section 26, Township 12 South, Range 43 West, 6<sup>th</sup> P.M.
3. WHI desires to drill an oil and gas well on the site described on **Exhibit A** as the #1 Wavetech Harker Farms 14-26 which will require the use of 2.1 acres for a drilling pad and a maximum disturbance area of 3.5 acres including the drilling pad, parking, set up, and equipment storage (the "**Well Location**") in addition to the construction of an access road, that is not greater than 30 feet wide, from the west boundary of the Subject Lands directly to the Well Location (the "**Access Route**").
4. The parties desire to enter into this Agreement to set out WHI's right to access and use the Well Location to accommodate WHI's drilling, completion and operation of a single oil and gas well on the Well Location and to compensate OWNER for its loss of use and ordinary surface damages to the Subject Lands as a result of WHI's operations on the Well Location and the Access Route.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**I**

OWNER hereby grants to WHI and its agents, employees, contractors and assigns ("**Affiliates**") the right to access the Well Location on the Subject Lands on, over and across the Access Route unless otherwise mutually agreed by the parties for the purposes of surveying, marking and staking the Well Location and Access Route, developing, building facilities, drilling, completing a single oil and gas well to be drilled on the Well Location prior to expiration of the Leases and for operating, maintaining, reworking, producing, transporting hydrocarbons, and any other Substances subject to the Leases, and eventually abandoning operations associated with such oil and gas activities on the Well Location (collectively "**WHI Operations**"). In conjunction with the WHI Operations, WHI may construct tank batteries and production equipment on the Subject Lands as long as such facilities are located within the Well Location. WHI may construct a flow line for the transportation of hydrocarbons offsite from the Well Location as long as such flow line is located within the 30 foot Access Route corridor. Any such flow line shall be buried below plow depth. If a producing well is achieved, WHI will remove excess equipment and material from the Well Location, shrink down the

size of the Well Location and Access Route used for the WHI Operations as much as reasonably practical, within the discretion of WHI, and remediate and restore areas of the Well Location and Access Route that are no longer needed for WHI Operations. In connection with WHI Operations, WHI and its Affiliates shall take appropriate measures to protect livestock from accessing WHI's facilities by fencing off the Well Location and installing gates or autogates as necessary.

## II

As consideration for the rights granted herein, the loss of use of the Well Location during WHI Operations, disturbance of the area within the Access Route, damages to crops or native grasses and ordinary surface damages reasonably expected from oil and gas operations such as WHI Operations, , WHI shall pay the following to OWNER:

- A. Five thousand and NO/100 Dollars (\$5,000.00) for the Well Location on the Subject Lands;
- B. Twenty-five and NO/100 Dollars (\$25.00) per rod for the Access Route; and
- C. One thousand five hundred and NO/100 Dollars (\$1,500.00) annually for so long as there is an oil and/or gas well completed as a producing well (or well capable of production) on the Well Location (the "Annual Use Payment"). Such payment shall be due on the anniversary date of this Agreement first recited above after a well is established as producing.

Surface damage payments, as herein described, are hereby acknowledged by OWNER as being sufficient and payment in full for damages to the Subject Lands caused or created by the reasonable entry, right-of-way, drilling operations and subsequent operation of said well site, roads, and production facilities, as may be the case.

## III

Insurance. Prior to access to the Subject Lands, WHI and Affiliates shall secure the following insurance coverage:

- (A) Statutory Workers Compensation insurance required by all applicable laws, rules or regulations of the States;
- (B) General Liability Insurance with minimum limits of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) including products/completed operations, contractual liability coverage, Property Damage, Action Over/Indemnity buyback, underground resources and equipment coverage, and sudden and accidental pollution liability that also includes a waiver of subrogation and additional insured status in favor of Surface Owner with respect to liabilities assumed by Operator under this Agreement; sudden and accidental pollution liability may be carried on a separate standalone policy; Blowout, explosion, collapse, cratering liability coverage as known as "XCU" and saline substances contamination coverage shall not be specifically excluded.
- (C) Umbrella/Excess Liability Insurance being at least as broad as underlying coverages or "follow form" and providing coverage of TWO MILLION DOLLARS and 00/100 DOLLARS (\$2,000,000.00) in excess of that provided in policies described above.

Upon request, WHI shall provide OWNER with the certificates of insurance verifying such coverage is in place

WHI Indemnity. In conducting WHI Operations, WHI shall be liable for any injury to or death of persons or damage to real or personal property caused by WHI's or Affiliate's negligence or willful misconduct. WHI agrees to indemnify and hold OWNER harmless from and against any and all third-party costs, damages, causes of action, claims, demands or expenses of every kind (including, but not limited to, reasonable attorneys' fees) in, arising out of, or connected with WHI Operations, including any environmental remediation of the Lands ordered by any governmental agency having jurisdiction, resulting from WHI or Affiliate's acts or omissions on the Subject Lands; provided, however, WHI and Affiliates shall not be liable for injuries, deaths or damages resulting from the gross negligence or willful and intentional misconduct of OWNER or its employees.

OWNER Indemnity. OWNER agrees to indemnify and hold WHI and its Affiliates harmless from and against all claims, losses, liabilities or damages to WHI's oil/gas operations, equipment and/or production facilities on the Subject Lands caused by the negligence or willful misconduct of OWNER, or the negligence of OWNER's employees or other persons on the Subject Lands who are under the direct control of Owner.

#### IV

Gates and Fences. WHI shall notify and receive the consent of OWNER prior to the cutting any fences on the Subject Lands. Any area where an existing fence is cut for access reasons, WHI agrees to install a gate or auto gate at WHI's expense. Any area where an existing gate needs to be widened, WHI, at its expense, will properly widen the gate area and replace with a gate not to exceed sixteen (16) feet. WHI will properly brace fence with an "H"-brace prior to cutting any fence. Upon completion of construction, temporary gaps shall be replaced with a permanent gate. Gates shall be kept closed, secured and locked at all times and keys distributed only to personnel authorized to act on behalf of WHI.

No-Firearms Policy. WHI and Affiliates will not enter the Subject Lands with a firearm on their person or in their vehicle and shall not use or access the Subject Lands for hunting or recreational purposes or any purpose except for WHI Operations.

Pollution or Damages Caused Outside the Well Location. If during and as a direct result of WHI Operations any hazardous substance escapes onto any part of the Subject Lands or WHI or Affiliates cause any surface damages to the Subject Lands that are located outside of the Well Location or Access Route, WHI shall notify OWNER of such escape or damage and coordinate with OWNER on how to address the issue.

Removal of Equipment and Facilities. Except for WHI's obligation to remove its equipment and facilities from the Subject Lands and otherwise remediate and restore the Subject Lands pursuant to the standards established by the Colorado Oil and Gas Conservation Commission, the rights and duties of the parties to this Agreement and the easements, rights and uses granted herein shall terminate upon the later of (i) the cessation of operations for the production of oil, gas and other hydrocarbons substances from the Well Location or (ii) upon the expiration or termination of the rights of WHI or any successor to any of the mineral interests underlying the Subject Lands. Upon termination of the Agreement, WHI shall have one hundred and eighty (180) days within which to remove all equipment, materials and improvements on the Subject Lands. In accordance with applicable state regulations, WHI shall reclaim the Well Location and Access Route, as nearly as reasonably practical, to its original condition, and if the site was originally in native grass, re-seed all disturbed areas and take diligent measures to restore the site.

#### V

Upon the final termination of drilling activities, in the event of a dry hole, or the cessation of the production of oil, gas and other hydrocarbons from a producing well on the Well Location, WHI shall remediate and restore the Subject Lands pursuant to the standards established by the Colorado Oil and Gas Conservation Commission. WHI shall return the Well Location and Access Route to a condition as nearly as reasonably practicable to their original condition, and reseed them, unless otherwise agreed by the parties. Autogates shall be removed and fences restored as nearly as reasonably practicable to their original condition, unless otherwise provided or agreed by the parties.

## VI

This Agreement may not be amended except by writing signed by both parties. The electronic signature of a party delivered by facsimile or email shall be valid and binding. Any formal notice, payment, statement, or other communication provided for in this Agreement must be in writing and be (1) delivered by facsimile or email with acknowledgement of receipt by the other party; or (2) mailed by United States first class, certified, or registered mail, postage prepaid; (3) sent by express delivery service; or (4) delivered in hand, to the party's address as set forth in Section XII of this Agreement, or such other address as either party hereto may designate from time to time by giving ten days prior written notice to the other party.

## VII

The parties shall execute any and all other documents which may be necessary in order to effect the terms and purposes of this Agreement.

## VIII

The parties warrant that the terms of this Agreement and all negotiations leading up to this Agreement will be kept confidential. The parties will not disclose any of the terms or negotiations to anyone other than the parties, and their respective attorneys, accountants, or advisors, unless a party hereto makes the disclosure having been compelled to do so pursuant to the order of a court or competent jurisdiction as necessary to enforce the terms hereof or is required by law or taxing authorities. The parties further agree that this Agreement shall not be recorded. If it becomes necessary to give notice of this Agreement in the public record, then a short form of this Agreement will be prepared and executed by the parties describing only its existence between the parties, and it may then be recorded.

## IX

In the event of any dispute between the parties arising in connection with this Agreement, the parties agree to attempt to resolve any such dispute by good faith negotiations prior to initiating any mediation or judicial action. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to any conflict of laws provision. Venue for any legal action arising out of or concerning this Agreement shall be the District Court sitting in Cheyenne County, Colorado or the United States District Court in Denver, Colorado, as applicable.

## X

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, the offending provision shall be interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law.

## XI

All rights and obligations under this Agreement shall run with the lease and the lands and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of each party.

## XII

All notices and other communications hereunder shall be in writing and shall be deemed given to the Parties at the following addresses or email address or such other address as a Party may specify by like notice:

If to WHI:

Wavetech Helium, Inc.  
Attn: Land Dept.  
1801 Broadway, Suite 600  
Denver, CO 80202  
[info@wavetechenergy.com](mailto:info@wavetechenergy.com)

with an email copy to:

Igor Gendelman – [igendelman@wavetechenergy.com](mailto:igendelman@wavetechenergy.com)

If to OWNER:

Joan Todd  
3434 CR U  
Rexford, KS 67753  
[joantodd@ruraltel.net](mailto:joantodd@ruraltel.net)

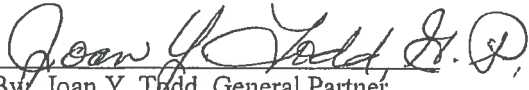
with an email copy to:

Jeff Todd – [jeff@daubeco.com](mailto:jeff@daubeco.com)

[Signature pages on the following pages]

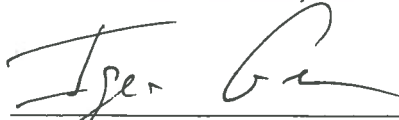


**OWNER: Harker Family Registered LLLP**

  
By: Joan Y. Todd, General Partner

DATED this \_\_\_\_\_ day of August, 2022.

**WAVETECH HELIUM, INC.**

  
By: Igor Gendelman, Vice President

DATED this 31 day of August, 2022.

STATE OF KANSAS )  
 )ss  
COUNTY OF CHEYENNE)



On the 1 day of September, 2022, before me, the undersigned authority, personally appeared Joan Y. Todd, personally known to me or proved to me by satisfactory evidence to be the person whose name is subscribed to the foregoing instrument as Managing Partner of Harker Family Registered, LLLP, and acknowledged to me he/she/they executed the same with property authority, and as the act of such corporation for the purposes therein stated.

My commission expires: 4-5-2025

Kristen King  
Notary Public

STATE OF COLORADO )  
 )ss  
COUNTY OF DENVER )

On the 31<sup>st</sup> day of August, 2022, before me appeared Igor Gendelman, the signor of the above instrument, who duly acknowledged to me that he executed the same on behalf of said corporation as Vice President.

My commission expires:

July 6 2026

Rosanne E. Manes  
Notary Public

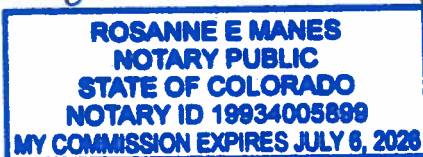


Exhibit A

