SURFACE USE AGREEMENT

This Surface Use Agreement (hereinafter "**Agreement**"), is made and entered into effective this 24th day of October, 2017 (the "**Effective Date**"), by and between Extraction Oil & Gas, Inc. ("**Operator**" or "**Extraction**"), a Delaware corporation located at 370 17th Street, Suite 5300, Denver, CO 80202 and the City and County of Broomfield, Colorado, a municipal corporation, with an address of One DesCombes Drive, Broomfield, Colorado 80020 ("**Surface Owner**" or "**City**"). Operator and Surface Owner may each be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, City owns the surface and the minerals of certain lands located in City and County of Broomfield, which are more particularly described as:

> **TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6th P.M.**
> Section 9: Part of the N½ of Section 9, the City and County of Broomfield, State of Colorado and also designated as City and County of Broomfield Open Space ("**Open Space**"); and
>
> **TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6th P.M.**
> Section 7: Part of the NE¼ of the SE¼ of Section 7, the City and County of Broomfield, State of Colorado and also designated as City and County of Broomfield Open Lands ("**Open Lands**") on which the Livingston 43-7 well is currently owned and operated by Operator

Both as more particularly depicted on the map attached hereto as **Exhibit A** (the "**Surface Lands**" or "**Lands**");

WHEREAS, Operator owns interests in oil and gas leases covering lands adjacent to and including the Surface Lands (the "**Leases**");

WHEREAS, Operator intends to explore, develop, drill, construct, complete, produce, maintain, rework, operate, plug and abandon, and reclaim horizontal oil and gas wells ("**Northwest and United Wells**" and "**Livingston Wells**" or "**New Wells**") from the Surface Lands for purposes of producing oil, gas and other minerals from the Leases and other nearby lands. New Wells shall be located on the oil and gas Well Sites described on **Exhibit B** attached hereto known as production pads for the Northwest A & B and United B Well Site (the "**Northwest & United Well Sites**") and the Livingston Well Site (the "**Livingston Wells**", and collectively with the Northwest & United Well Sites, the "**Well Sites**");

WHEREAS, it is necessary that Operator enter, occupy and use a portion of the Surface Lands to explore, survey, develop, drill, construct, complete, produce, maintain, rework, operate, plug and abandon, and reclaim the Surface Lands of the New Wells, and all Facilities associated therewith including for Oil and Gas Operations. "**Oil and Gas Operations**" has the meaning set

forth for such term in the 100 Series of the Rules and Regulations of the Colorado Oil and Gas Conservation Commission ("**COGCC**");

WHEREAS, Operator also desires to access and use on a non-exclusive basis the surface and subsurface of certain portions of the Lands in connection with Operator's Oil and Gas Operations for the construction, use, and maintenance of access roads (including existing roads on the Lands) (**"Access Roads"**), oil, gas and water pipelines (the "**Pipelines**"), and the installation and location of electrical power lines and other specialized equipment necessary to support its Oil and Gas Operations, including but not limited to constructing production facilities, emission control devices, vapor recovery towers, vapor recovery units, flowlines, gathering lines, gas gathering systems, temporary above ground water lines, temporary above ground completion fluid lines or fresh water lines, separators, pig launchers, compressor sites, and receivers (each a "**Facility**" or collectively **"Facilities"**);

WHEREAS, the location of necessary Access Roads, Pipelines, and Facilities are more particularly depicted on the map attached hereto as **Exhibit C**;

WHEREAS, it is expected that Operator will need to use approximately thirty-two and one-half (32.5) acres of the City's Lands for its Oil and Gas Operations and related Facilities;

WHEREAS, the Pipelines will connect wells to be developed at approved sites where Operator has rights to drill New Wells on the property pursuant to an Amended and Restated Oil and Gas Operator Agreement ("**Operator Agreement**");

WHEREAS, the Operator Agreement shall be approved by City Council Resolution and executed contemporaneously with this Agreement and will have an effective date coinciding with the Effective Date of this Agreement;

WHEREAS, the Parties desire to enter into this Agreement to establish their respective rights and obligations with respect to the Surface Lands in accordance with the terms and provisions set forth herein, with such terms and provisions being expressly subject to the terms and conditions of the Operator Agreement entered into on even date herewith;

WHEREAS, all terms defined herein are intended to be consistent with the definitions set forth in the Operator Agreement and will have the definition set forth in the Operator Agreement, if available, and in the event of any inconsistency between the Operator Agreement and this Agreement, the Operator Agreement shall control; those terms not defined in the Operator Agreement but defined herein will have the definition set forth herein;

WHEREAS, Operator is the successor-in-interest to the Surface Use Agreement (the "**Prior SUA**") between the Surface Owner and Noble Energy, Inc., and approved by the City Council for the City and County of Broomfield on November 13, 2012, and recorded at Reception No. 2012014944 and is the successor-in-interest to a Use by Special Review ("**USR**") Permit that was approved by the City on July 12, 2011 and recorded at Reception No. 2011006781; and

WHEREAS, the City is willing to confirm and expressly convey to Operator rights to the Surface Lands as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Incorporation of Recitals**. The foregoing recitals are hereby incorporated by reference and the Parties agree that they are true and correct.

2. **Livingston Well and Lands Presently Subject to the Prior SUA**. Operator presently owns and operates the Livingston 43-7 Well generally located in the NE/4SE/4 of Section 7, Township 1 South, Range 68 West (the "**Livingston Well**"). The Livingston Well is located on lands subject to the Prior SUA as discussed in Recital D and in other provisions of the Prior SUA. The Parties agree that Operator may continue to operate, maintain and produce from the Livingston Well and related facilities, subject to the requirement to plug and abandon such well in accordance with Section 8 of the Operator Agreement. All provisions of the Prior SUA and the USR permit limited to those applicable to the operation of the Livingston Well and related facilities, including those provisions relevant to access, roads, flowlines and pipelines, and compliance with state and local regulations, will remain in full force and effect until such time as Operator plugs and abandons such well in accordance with Section 8 of the Operator Agreement. After the Effective Date, the development of any New Wells and related facilities on or near lands subject to the Prior SUA shall be governed by the terms of the Operator Agreement and by this Agreement.

3. **Surface and Subsurface Use Rights**. City hereby grants Operator the non-exclusive right for it, its agents, employees, and contractors, and their agents and employees, to enter upon and conduct Oil and Gas Operations, including the use of all required Facilities, upon the surface and subsurface of the City's Lands, as such Lands are more particularly described in **Exhibit A**. This grant shall be pursuant to the terms and conditions described herein and in accordance with the Operator Agreement. Any use of the Lands or Surface Lands by the Operator shall be limited to such uses.

4. **New Wells and Well Sites**. The locations of New Wells and all associated Facilities to be constructed on the Surface Lands on the Well Sites have been discussed in negotiations between the City and the Operator and have been defined and designated in the Operator Agreement. New Wells may only be located upon the Well Sites as generally shown on **Exhibit B**. The Operator shall have exclusive use of the Well Sites until all drilling and completion phases of the Operator's Oil and Gas Operations have been completed for each individual Well Site; provided, however, nothing in this Agreement shall limit any of the City's rights of entry and inspection of the Well Sites as set forth in the Operator Agreement. Once all drilling and completion phases have been completed on any individual Well Site, such Well Site shall automatically reduce to only such portions of the Surface Lands that are reasonably

required for the Operator to safely conduct the operational phase of its Oil and Gas Operations. Any portion of the Surface Lands removed from a Well Site ("Reclaimed Premises") shall be considered a Shared Premises in accordance with Section 5 herein; provided that, some or all of such Reclaimed Premises may be re-utilized by Operator on a temporary basis from time to time as necessary to conduct maintenance, workover, re-entry or other well work so long as any such Reclaimed Premises are again reclaimed in accordance with this Agreement following such temporary use. Operator shall have the right to locate, build, repair and maintain Facilities of the New Wells within the Well Sites, in accordance with the terms and conditions of the Operator Agreement.

5. **Shared Premises.** Each Party hereby agrees and consents to each other Party's right, on a non-exclusive basis, to the use and access of those certain portions of the surface of the Surface Lands (collectively, "**Shared Premises**"), that are not Well Sites, provided that such use by any Party shall remain subject to the terms of this Agreement.

6. **Pipelines, Gathering Lines, Lines and Flowlines.**

6.1 **Grant of Easement**. Surface Owner hereby grants, conveys and warrants to Operator, its agents, successors and assigns, a non-exclusive permanent and perpetual right-of-way and easement ("**Easement**") to enter upon the Surface Lands and occupy and use the areas described on **Exhibit C** (the "**Easement Area**"), subject to the Term as set forth in Section 15 of this Agreement. The Easements are subject to the terms, conditions and limitations herein and subject to all existing easements and rights-of-way and all existing Surface Owner improvements, if any, located on, over or under the Surface Lands and shall be Shared Premises under this Agreement. Operator shall cross existing Surface Owners rights-of-way at the designated locations. The route and course of the right-of-way and easement granted and conveyed are more particularly described on **Exhibit C**. The width of the Easement Area shall be one-hundred feet (100') during initial construction and during subsequent repairs, replacement, relocation, rebuilding, reconstruction, or removal of the Lines (as defined below) and, at all other times, the width of the Easement Area shall be thirty feet (30'). In consideration for the grant of the Easement, Operator shall make a cash payment to the Surface Owner in an amount equal to $20.00 per linear foot for the length of the Easement Area within the Open Space and there shall be no payment for use of the Easement Area within the Open Lands.

6.2 **Scope of Easement**. The Easement granted to Operator is limited in scope to the following permitted rights: to survey, lay, place, travel across, use, construct, maintain, inspect, operate, repair, replace, relocate, modify, rebuild, change the size of, reconstruct, mark, monitor, abandon, remove and reclaim a pipeline and/or transmission line system consisting of one or more pipelines, electric power lines, equipment and appurtenances (collectively, the "**Lines**"), all of which shall be below ground, for the transportation or transmission of oil, gas, petroleum products, produced water, electricity, hydrocarbons and any other substances, whether electronic, fluid, solid or gaseous, and any products, derivatives, combinations or mixtures of any of the foregoing, in, on, over, under, or through the Easement Area except for the fresh water line that will carry fresh

water above ground from the Weber H Unit 1 Well Pad, which was approved by the City on February 12, 2013 for a use by special review permit by Resolution No. 2013-22, to the New Well Sites. Operator shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Agreement, including but not limited to, the right of ingress and egress in, to, over and through the Surface Lands for the exercise of each of the permitted rights granted herein and in the Operator Agreement, as well as the right to maintain, add to, increase or decrease the diameter of any replacement Lines, modify, repair, replace or remove the Lines, and to replace all or any part of the Lines or any portion thereof by first laying replacement Lines.

6.3. **Temporary Work Easement**. During the initial and any subsequent construction of the Lines, Surface Owner does hereby grant to Operator the right, as reasonably needed from time to time, to additional temporary workspace on and adjacent to the Surface Lands in order to access, travel across, use, survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove the Lines or install additional equipment or appurtenances. Operator will require one-hundred feet (100') feet in width of temporary work easement in order to complete the necessary work to bury the Lines at least 48 inches beneath the surface and complete other repairs, replacement, relocation, rebuilding, reconstruction, or removal of the Lines. Operator may install and operate temporary Lines on the surface while permanent Lines are being constructed, repaired, or maintained. Any temporary surface Lines shall be limited in use, and shall not be used for any period of greater than 90 days without the express written authorization of the City.

6.4. **Limitations of Use**. Operator acknowledges and agrees that City utilizes the Surface Lands for its water line (the "**Water Line**"), and that any Lines installed by Operator hereunder shall be separated from Surface Owner's Water Line. City retains the right to the use and occupancy of the Easement Area insofar as such use and occupancy is consistent with and does not in any way interfere with or impair the rights herein granted. Operator agrees that its use of the Easement Area is non-exclusive and that other uses, including pipelines and utilities, may be installed in the Easement Area as long as such uses do not interfere with Operator's rights as herein granted. City agrees not to build, construct, or permit to be built or constructed any building, fence, landscaping, reservoir, engineering works, or other structures or improvements over, under or across the Easement Area which may interfere with the Operator's use of the Easement Area without prior written consent of Operator which consent will not be unreasonably withheld. The Parties acknowledge that City may use the Easement Area for public access and may construct an access drive, fence, landscaping, signs, sidewalk, or trail upon or within the Easement Area provided such improvements do not interfere with the Operator's use of the Easement Area.

Lines shall be placed on certain specified locations called "**Line Easements**", which are depicted on **Exhibit C**. Any deviation of the location of the Line Easements shall be mutually agreed upon in writing giving due consideration to utilizing the most direct economic routing and such agreement shall not be unreasonably withheld,

conditioned or delayed. If any Lines require relocation at City's written request, City shall provide written notice of the request with an alternative route and allow a reasonable amount of time for Operator to construct the alternative Line route and tie in. Operator may not object to any such relocation so long as relocation is reasonable and feasible from a technical and engineering standpoint and complies with all applicable rules and regulations and received notice and the time to construction the alternative route. All such relocations shall be at City's cost and expense as hereafter described. Operator shall abandon any portion of a Line, Easement Area, or Line Easements that will no longer be used for its operations. All abandoned flowlines or pipelines shall be abandoned in accordance with the Operator Agreement, the COGCC, and local, state and federal regulations. Additionally, Operator will provide notice to the City in writing of the abandonment and a map showing the location of the abandoned pipeline.

6.5 **Power Lines**. Operator will consult with City and, if applicable, with an independent power company supplying power to Operator with respect to the location of power lines prior to construction. All power lines will be underground in accordance with City policy.

7. **Access Roads**.

7.1 **Access Roads**. City agrees to allow Operator to construct new access roads or improve existing access roads on the Surface Lands at Operator's own expense (the "**Access Roads**"). The Access Roads shall be on the locations depicted on **Exhibit C**.

7.2 **Existing Access Roads**. With respect to Access Roads existing as of the Effective Date, Operator shall maintain such Access Roads in at least as good or better condition as such roads are found prior to Operator's use. The Operator retains the right to abandon use of an Access Road at any time. There will not be any additional consideration for use of the Access Roads.

7.3 **Grant of Easement**. Owner hereby grants to Operator, its successors and assigns, a non-exclusive right-of-way and easement over and across the Surface Lands for purposes of vehicular and pedestrian ingress, egress and regress. The location of the right-of-way and easement is more particularly described and shown on the survey included on **Exhibit C** (the "**Road Access Area**"). The Road Access Area shall be a Shared Premises under this Agreement.

7.4 **Maintenance**. Operator shall have the financial responsibility for maintenance of the Access Roads. Maintenance of the Access Roads shall include the use of preventive measures as are necessary to mitigate dust and maintain the surface of the Access Roads in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability.

7.5 **No Interference with Use**. Neither Party shall use the Access Roads in

any manner that would interfere with or be inconsistent with the other Party's use thereof. The Parties acknowledge that the City may use the Access Roads for authorized City use and shall also be permitted to allow use otherwise in accordance with City regulations for Open Space and Open Lands, as applicable, provided that such use does not interfere with the Operator's use of the Access Roads. The Parties acknowledge that the City shall be permitted to construct fencing, landscaping, signage, sidewalks or trails adjacent to the Access Roads.

8. **Location of New Wells, Access Roads and Facilities**. The City and the Operator have discussed the locations of New Wells, the Access Roads and all associated Facilities to be constructed on the Surface Lands and shall be located as provided in the Operator Agreement or this Agreement.

9. **Modifications and Variances Affecting Surface Use**. Modifications and variances to the designated Oil and Gas Operations areas may be required from time-to-time at the request of the Surface Owner or the Operator. The Operator agrees to consider such variances or modifications to COGCC rules, Broomfield Municipal Code or other law as requested by the Surface Owner for surface use pursuant to this Agreement and agrees to prepare the modification or variance requests according to the applicable rules, regulation and laws. The Surface Owner also agrees to consider the Operator's requests for modifications or variances sought by Operator, with consent to such requests to not be unreasonably withheld, conditioned or delayed. It is also understood and agreed that additional Access Roads and Facilities located outside of the designated operating areas may be necessary for Operator's activities and in these circumstances Surface Owner and Operator agree to designate a mutually agreeable location for said Access Roads and Facilities. Operator agrees not to use any more of the surface of the Surface Lands than is reasonably necessary to conduct its operations.

10. **Best Management Practices**. The Oil and Gas Operations on the Well Sites shall be conducted in accordance with the BMPs set forth in **Exhibit B** to the Operator Agreement.

11. **Reclamation**. Operator shall reclaim any disturbed areas in accordance with the terms of the Operator Agreement.

12. **Conduct of Operations**. Operator's operations on the Surface Lands will be conducted pursuant to the terms of this Agreement, the Operator Agreement, the rules and regulations of the COGCC, applicable Colorado statutes and case law, and any applicable federal statutes and case law. This Agreement does not grant or otherwise vest in the Surface Owner a private right to enforce the rules and regulations of the COGCC or any other state statute, rule or law.

13. **City's Cooperation and Assistance with Operator's Other Regulatory Filings.** In the Operator Agreement and this Agreement, the City and Operator have reached agreement

on the location and other matters relating to designated Well Sites from which the Operator may drill, complete, and operate New Wells. The Operator Agreement and this Agreement also, among other things, established BMPs and other comprehensive processes by which the Operator will provide advance notice to the City of proposed oil and gas operations and otherwise work with the City as those operations move forward. As a result, the City agrees that, so long as Operator is in compliance with the terms of the Operator Agreement and this Agreement:

(a) the City hereby waives any right it may have under COGCC Rules or other law, as presently enacted or amended in the future, to receive advance notice of, or consult with the Operator about, proposed oil and gas operations subject to this Agreement. This waiver includes, but is not limited to, a waiver of the City's right, if any, to receive notice and consult with the Operator as provided in COGCC Rules 305, 305A and 306. The City agrees that the Operator may submit a copy of this Agreement to the COGCC as evidence of this waiver by the City.

(b) the City hereby waives any right it may have under COGCC rules or other law, as presently enacted or amended in the future, to protest or otherwise object to any permit application or other regulatory filings by Operator with the COGCC or any other government. This waiver includes, but is not limited to, a waiver of the City's right, if any, to receive notice and consult with the Operator as provided in COGCC Rule 303. The City agrees that the Operator may submit a copy of this Agreement to the COGCC as evidence of this waiver by the City.

(c) the City hereby waives any right it may have under COGCC rules or other law, as presently enacted or amended in the future, to protest or otherwise object to any setback proposed for a New Well by Operator with the COGCC or any other government. This waiver includes, but is not limited to, a waiver of the City's right, if any, to receive notice and consult with the Operator as provided in COGCC Rule 603. The City agrees that the Operator may submit a copy of this Agreement to the COGCC as evidence of this waiver by the City.

14. **Surface Use Payment**. The Parties acknowledge that prior compensation has been paid by Operator for surface use hereunder of the Livingston Well Site. The Parties intend that, in exchange for Operator's surface use hereunder of the Northwest & United Well Sites, which are designated as open space lands by the City, that Operator will convey to the City approximately thirty-nine (39) acres of other lands, as described in more detail on **Exhibit D** (the "**Exchange Lands**"), and the cash payment of a surface damage payment in the amount of $650,000 (the "**Cash Payment**") and the Operator will execute a special warranty deed no later than March 1, 2018 to convey the Exchange Lands to the City (the "**Conveyance Agreement**"), a form of which is attached hereto as **Exhibit E**. Operator will apply for a minor subdivision with the City to allow for a conveyance of the Exchange Lands to the City. City Council for the City has approved this Agreement at a public meeting through Resolution and has determined that the Exchange Lands and the Cash Payment are just compensation for Operator's surface use hereunder of the Northwest & United Well Sites and for the other use of the Surface Lands set forth in this Agreement.

15. **Term, Abandonment and Reclamation.** This Agreement will be effective upon City Council's approval by resolution and signature by both Parties (the "**Effective Date**"), and will continue in full force and effect as long as the Operator has operations or owns or controls wells at the Well Sites and has Oil and Gas Operations at the Well Sites ("**Term**"), unless and until terminated as herein provided or unless otherwise terminated by law. The Term shall be extended if it is necessary for the Operator to access the Surface Lands to plug and abandon the New Wells and to reclaim the Surface Lands as provided in this Agreement and for such other purposes as necessary to comply with the BMPs, the rules and regulations of the COGCC or any other government or other law. The Term of the Agreement will hereby continue until such wells are plugged and the land is reclaimed consistent with the BMPs, the rules and regulations of the COGCC or any other government or other law. The provisions of Section 23 shall survive following the end of the Term.

16. **Limitations on Use.** Operator shall not commit or permit any waste, injury or nuisance upon the Surface Lands, and shall not use or permit the Surface Lands to be used for any purpose contrary to state or federal law.

17. **Taxes.** Surface Owner shall pay any property taxes or taxes attributable to the Surface Lands assessed, due and payable against the Surface Lands during the Term of this Agreement.

18. **Surface Lands Excluded from New Special Taxing Districts**. To the extent not prohibited by law, the City and Operator agree that the City shall not take any affirmative action to approve, without Operator's written consent, the inclusion any of the Well Sites or any of the Surface Lands used by Operator for Oil and Gas Operations in any new or materially modified special districts or limited purpose governmental entities organized pursuant to the Colorado Special District Act, Article 1 of Title 32 of the Colorado Revised Statutes, or any other similar Colorado statutes or laws.

19. **Mineral Lands Excluded from New Special Taxing Districts**. Operator represents that, at present, it owns certain oil and gas leasehold or other mineral interests in the Lands (the "**Minerals**"). To the extent not prohibited by law, the City and Operator agree that the City shall not take any affirmative action to approve, without Operator's written consent, the inclusion of the Well Sites or any of the Minerals in any new or materially modified special districts or limited purpose governmental entities organized pursuant to the Colorado Special District Act, Article 1 of Title 32 of the Colorado Revised Statutes, or any other similar Colorado statutes or laws.

20. **Representations**. Each Party represents that it has the full right and authority to enter into this Agreement, and Surface Owner specifically confirms its capacity to validly execute the rights of way and easements provided herein. Surface Owner represents that it owns certain oil and gas leasehold interests on the Lands. Operator represents, and specifically asserts, that it does not have the right to bind any other oil and gas leasehold interest owner, mineral owner, lessee, or assignee for the Property.

21. **Successors and Assigns.** The Parties may transfer their respective rights or

interests in the Surface Land. No Party shall assign, sublet, mortgage, or otherwise transfer or encumber this Agreement or any right or privilege contemplated herein, without the prior written consent of each other Party hereto, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement constitutes an easement, right-of-way, and covenant running with the Surface 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.

22. **Notices.** Any notice or other communication required or permitted under this Agreement shall be given in writing either by i) personal delivery; ii) expedited delivery service with proof of delivery; or iii) United States Mail, postage prepaid, and registered or certified mail with return receipt requested, addressed as follows:

If to OPERATOR:

Extraction Oil & Gas, Inc.
370 17th Street, Suite 5300
Denver, CO 80202
Attention: Land Department

If to SURFACE OWNER:

City & County Manager
City and County of Broomfield
One DesCombes Dr.
Broomfield, CO 80020

with a copy to:

City & County Attorney
City and County of Broomfield
One DesCombes Dr.
Broomfield, CO 80020

Any Party may, by written notice so delivered to the other Party, change the address or individual to whom delivery shall thereafter be made.

23. **Indemnification and Hold Harmless Provisions**.

a. **Each Party Responsible for Its Operations/Ownership**. Each Party shall be and remain responsible for all losses, claims, damages, demands, court awards, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation, attorneys' fees and other costs associated therewith (all of the foresaid collectively referred to "**Claims**"), arising out of or connected with each such Party's ownership or operations on the Surface Lands, regardless of when asserted, subject to

statute of limitations. The provisions in this section do not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in Parties to this Agreement, other than the right to be indemnified or held harmless for Claims as specifically provided herein.

b. **Operator's Hold Harmless, Indemnity and Release Agreement**. Operator shall release, defend, indemnify and hold the City and its Representatives harmless against all Claims that are threatened or awarded or incurred as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone including, but not limited to, any person, firm, partnership, or corporation arising out of any action, inaction or act of commission by the Operator or any of its Representatives in the Operator's operations on or development of the Surface Lands to the extent the Claim is attributable to the action, inaction or act of commission of the Operator or its Representatives. This hold harmless provision running from the Operator to the City applies to all matters, including Environmental Claims (as defined below).

c. **Environmental Claims**. "**Environmental Claims**" shall mean all Claims asserted by the City, governmental bodies or other third parties for pollution or environmental damage of any kind, arising from Oil and Gas Operations on or ownership of Surface Lands or ownership of oil and gas interests or oil and gas leasehold interests by the Operator on the Surface Lands, whichever is applicable, and all cleanup and reclamation and/or remediation costs, fines and penalties associated therewith, including any Claims arising from any federal or state 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.

d. **Release**. Operator hereby releases, waives and discharges the City and its Representatives (the "**City Group**") from any and all liability for personal injury, death, property or other damage, or otherwise arising out of Operator's Oil and Gas Operations, actions, inactions or act of commission of the Operator or its Representatives under this Agreement, unless such injury, death or damage is the result of the City's negligence or willful misconduct or that of a member of the City Group.

e. **Exclusion from Indemnities and Hold Harmless Provisions**. The indemnities or hold harmless agreements of the Parties in this section shall not cover or include any amounts which the indemnified Party is actually reimbursed for by any third party. The indemnities in this Agreement shall not relieve any Party from any obligations to third parties.

24. **Injunctive Relief.** No section of this Agreement shall restrict either Party's right to seek injunctive relief or specific performance. Each Party shall be entitled to enforce specifically the terms and provisions of this Agreement in addition to any other remedy to which such holder may be entitled at Law, in equity, or otherwise.

25. **Further Assurances**. The Parties agree to execute and deliver such other documents as are reasonably necessary in order to effectuate the terms and intent of this Agreement.

26. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties waive the right to trial by jury with respect of any action, suit, or proceeding arising out of or relating to this Agreement or any contemplated transaction.

27. **Insurance.** Operator shall maintain insurance at all times during the Term of this Agreement in accordance with the terms and conditions set forth on **Exhibit H** to the Operator Agreement.

28. **Third-Party Beneficiaries**. Nothing herein, express or implied, is intended to or does confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

29. **Binding Effect**. This Agreement, all provisions, and the covenants and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns. Surface Owner agrees to contact any and all tenants of Surface Lands or other third parties utilizing the surface of the Surface Lands that may be affected by Operator's activities on the Surface Lands. It will be Surface 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 Surface Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Surface Owner.

30. **Recording**. The Parties agree Operator may record this Agreement in the real estate records of City and County of Broomfield, Colorado.

31. **Entire Agreement**. This Agreement and all its attachments, together with the Conveyance Agreement, Operator Agreement, Pipeline Easement Agreement and Settlement Agreement (the "**Other Agreements**") constitute the complete and exclusive statement of the entire understanding between and among the Parties regarding the matters addressed herein. This Agreement supersedes any prior agreements or understandings regarding the matters addressed herein, whether written or oral. In the event that there are conflicting terms between this Agreement and the Other Agreements, the terms of this Agreement shall control. This Agreement and the Other Agreements include all the agreements and stipulations between the Parties, and no representations, oral or written, have been made, modifying, adding to, or changing the terms hereof.

32. **Non-Waiver**. Waiver by either Party or of the failure of any Party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of the right or prevent any such Party from requiring the strict performance of any provision in the future.

33. **Reasonable Accommodation**. Surface Owner acknowledges the use of the Surface Lands by Operator as herein described in in full satisfaction of the requirement that Operator conduct its Oil and Gas Operations in a manner that accommodates Surface Owner. Surface Owner further acknowledges Operator's use of the Surface Lands as provided herein constitutes "reasonable accommodation" by Operator, its successors, and assigns as provided in Colorado Revised Statute 34-60-127.

34. **Relationship of the Parties**. This Agreement shall not be construed to create an association, partnership, joint venture, employment or other agency relationship between the Parties. No Party is now, nor will any Party be construed to be, an employee, contractor, partner, joint venturer, agent or representative of any other party for any purpose under this Agreement.

35. **Amendments**. No modification or amendment of this Agreement shall be valid or binding unless the same is in writing and duly executed by all Parties hereto.

36. **Severability**. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule, law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

37. **Force Majeure**. If any Party is rendered unable, wholly or in part, by Force Majeure (as defined in the Operator Agreement) to carry out its obligations under this Agreement, that party shall give to the other Party prompt written notice of the Force Majeure with reasonable full particulars concerning it; thereupon, the obligations of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during, but no longer than, the continuance of the Force Majeure.

The affected Party shall use all reasonable diligence to remedy the Force Majeure situation as quickly as possible and practicable. The requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or other labor difficulty by the party involved, contrary to its wishes; how all such difficulties shall be handles shall be entirely within the discretion of the Party concerned.

38. **Counterparts**. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a party by facsimile transmission or other electronic transmission shall be deemed an original signature hereto.

39. **References; Rules of Construction.** All references in this Agreement to

Exhibits, Sections, subsections, and other subdivisions refer to the corresponding Exhibits, Sections, subsections, and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Sections, subsections, and other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement, and shall be disregarded in construing the language hereof. The words "this Agreement," "herein," "hereby," "hereunder," and "hereof," and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection, or other subdivision unless expressly so limited. The word "including" (in its various forms) means including, without limitation. Pronouns in masculine, feminine, or neutral genders shall be construed to state and include any other gender, and words, terms, and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa unless the context otherwise requires. Except as expressly provided otherwise in this Agreement, references to any law or agreement means such law or agreement as it may be amended from time to time.

40. **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.

41. **Effective Date**. This Agreement shall become effective on the Effective Date upon the execution of this Agreement by all Parties hereto and upon the approval of this Agreement by Resolution of the City Council.

42. **Headings**. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

43. **Construction**. The Parties have participated jointly in the negotiating and drafting of this Agreement. In the event ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including, without limitation.

[Signature page to follow]

IN WITNESS WHEREOF, Surface Owner and Operator have executed, agreed to and delivered this Surface Use Agreement as of the Effective Date.

SURFACE OWNER:

THE CITY AND COUNTY OF BROOMFIELD, COLORADO,
A Colorado Municipal Corporation and County

Mayor

CITY & COUNTY OF BROOMFIELD SEAL COLORADO

ATTEST:

City & County Clerk

APPROVED AS TO FORM:

City & County Attorney Deputy

OPERATOR:

EXTRACTION OIL & GAS, INC.

Eric J. Christ, Vice President, General Counsel & Corporate Secretary

State of Colorado)
)ss.
County of Broomfield)

The foregoing instrument was acknowledged before me this 25TH day of October 2017 by Eric J. Christ, Vice President of Extraction Oil & Gas, Inc.

Notary Public

My Commission expires: October 7, 2021 (Seal)

LINDA J. VILLAREAL
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134063200
My Commission Expires Oct. 7, 2021