

After Recording, Return to:



I-2025-008436 Book 2796 Pg 133
10/09/2025 8:25am Pg 0133-0138
Fee: \$28.00 Doc: \$0.00
Hope Trammell - Pittsburg County Clerk
State of OK **BW**

WAIVER OF SURFACE RIGHTS

STATE OF OKLAHOMA §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF PITTSBURG §

WHEREAS, BLACK MOUNTAIN ENERGY STORAGE II, LLC, a Texas limited liability company, or its affiliate/assigns (herein called the "Surface Owner") is the owner of, or is currently under contract to purchase, that certain tract of land (herein called the "Surface Lands") situated in Pittsburg County, Oklahoma, and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes; and SPESS OIL COMPANY, INC. (herein called the "Mineral Party") leases all or a portion of the oil, gas and other mineral rights in, on and under or that may be produced from the Surface Lands ("Minerals"); and

WHEREAS, Mineral Party currently operates an existing well (Weaver D #1; API# 35-121-20645) on a portion of the Surface Lands (the "Existing Well"); and

WHEREAS, except for the Existing Well and associated equipment, facilities, and activities described in Paragraph 2 below, Surface Owner has requested the Mineral Party release and waive all rights of ingress and egress and all other rights of every kind and character whatsoever owned or held by Mineral Party to enter upon or to use all or any part of the surface of the Surface Lands for purposes of exploring for, developing, drilling, producing, transporting, mining, treating, storing or any other purposes incident to the development or production of the oil, gas and other minerals in, on and under the Surface Lands.

NOW, THEREFORE, for and in consideration of the premises, and the further consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid to the Mineral Party, the receipt and sufficiency of which consideration are hereby acknowledged and confessed by the Mineral Party, the Mineral Party and the Surface Owner do hereby COVENANT, STIPULATE AND AGREE in favor of each other and their respective heirs, successors and assigns, as follows:

1. **Surface Rights Waiver.** Except for the Existing Well and associated equipment, facilities, and activities described in Paragraph 2 below, Mineral Party hereby waives, releases, and relinquishes, on behalf of itself and its respective heirs, assigns and legal representatives, all of its rights to use the surface of the Surface Lands, including, the right to enter upon the surface of the Surface Lands for purposes of exploring for, developing, drilling, producing, treating, storing or transporting the Minerals or for any other purpose incident thereto, including the right to use or occupy the area 1,000 feet beneath the surface of the Surface Lands. Nothing herein contained shall ever be construed to prevent the Mineral Party, or its heirs or assigns, from developing or producing the oil, gas and other minerals in and under the Surface Lands by directional drilling under the Surface Lands from the Existing Well or from well sites located on tracts other than the Surface Lands. All waivers and agreements by the Mineral Party in this Agreement regarding the Surface Lands apply only to those portions of the Surface Lands on which Mineral Party leases the Minerals ("Mineral Land"). Mineral Party is not waiving any rights outside of the Mineral Land area.

2. **Access to Well Site.** Nothing in this Agreement shall in any manner inhibit or prevent Mineral Party from crossing the Surface Lands by utilizing any existing roads or in any other fashion as is reasonably necessary to access the Existing Well and its associated equipment and facilities so as to undertake any activity or action deemed necessary or appropriate by Mineral Party to enhance the production from the Existing Well or to repair, replace, or add to any existing facility, including but not limited to the wellbore, deemed necessary or appropriate by Mineral Party. Surface Owner shall not in any unreasonable manner inhibit or prevent Mineral Owner from undertaking any of the above described activities at any time deemed by Mineral Party to be necessary or useful. Further, Surface Owner will not construct or erect any facility or building within 100 feet from the wellbore and related equipment, nor shall Surface Owner construct or erect any facility or building closer than 20 feet to the natural gas flow line servicing the Existing Well.

3. **Successors, Mortgage, Right to Assign.** The parties to this instrument confirm to each other that they each have the right and authority to agree to the provisions of this Agreement. The terms and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, legal representatives, successors and assigns, and shall be covenants running with the land and the mineral and the surface estates therein owned by the parties hereto. All of Mineral Party's Minerals lease rights in the Surface Lands (whether assigned, modified, subject to joint operating agreement or otherwise) shall be expressly subject to the terms of this Agreement, including but not limited to Paragraph 2 above. Surface Owner may mortgage, pledge, encumber, or collaterally assign to any entity ("Mortgagee") all or any part of Surface Owner's interest under this Agreement without the need for any consent of any party. Mineral Party and Surface Owner possess the right to assign, transfer, change their ownership, or otherwise alienate its respective rights, title, and interest, in whole or in part, in this Agreement, to any third-party without the necessity of approval from the other parties to this Agreement; provided, that each party will give the other notice of any change of ownership.

4. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (a) hand delivery, (b) one (1) business day after being deposited with FedEx or another reliable overnight courier service, with receipt acknowledgment requested, (c) upon receipt if transmitted by facsimile telecopy, with a copy sent on the same day by one of the other permitted methods of delivery, or (d) upon receipt or refused delivery deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Mineral Party:

Spess Oil Company, Inc.
200 South Broadway Street
Cleveland, Oklahoma 74020
Attn: Jeffrey Spess

If to Surface Owner:

Black Mountain Energy Storage II LLC
1717 W. 6th Street, Suite 295
Austin, Texas 78703
Attn: Rhett Bennett

With a copy to:

Baker Monroe Huston, PLLC
1612 Summit Ave., Ste. 100
Fort Worth, TX 76102
Attn: Justin P. Huston

or such other address as either party may from time to time specify in writing to the other.

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5. **Miscellaneous.** This Agreement is governed by and interpreted under the laws of the State of Oklahoma and may be recorded by any party. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement may be recorded in the Official Real Property Records where the Surface Land is located.

[Signatures on Following Page]

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MINERAL PARTY:

SPESS OIL COMPANY, INC.,
an Oklahoma corporation

By: Jeffrey Spess
Jeffrey Spess, President

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ACKNOWLEDGMENT

STATE OF OKLAHOMA

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COUNTY OF PAWNEE

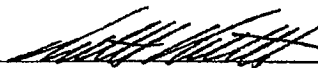
This instrument was acknowledged before me on this 24th day of September 2025, by Jeffrey Spess, President of Spess Oil Company, Inc., an Oklahoma corporation, on behalf of said entity.



Susan Shay
Notary Public in and for the State of Ok
My Commission Expires: 1-30-2029

SURFACE OWNER:

BLACK MOUNTAIN ENERGY STORAGE II LLC,
a Texas limited liability company

By: 
Rhett Bennett, CEO

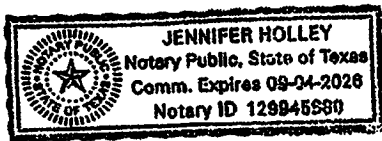
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Hope Trammell - Pittsburg County Clerk
State of OK

ACKNOWLEDGMENT

STATE OF Texas
COUNTY OF Tarrant

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This instrument was acknowledged before me on this 22 day of September 2025, by Rhett Bennett, CEO of Black Mountain Energy Storage II LLC, a Texas limited liability company, on behalf of said entity.



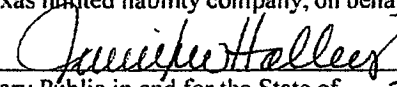

Notary Public in and for the State of Texas
My Commission Expires: 09-04-2026

EXHIBIT A

Surface Lands Property Description

South Half (S/2) of Section 26, Township 3 North, Range 13 East, Pittsburg County, Oklahoma

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