

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("Agreement") is effective this 12th day of December, 2008, and is between KERR-McGEE OIL & GAS ONSHORE LP ("KMG") with an address of 1099 18th Street, Suite 1800, Denver, CO 80202, and TALON POINTE, LLC, with an address of 1610 Wynkoop St. Suite 500 Denver, CO 80202 ("Surface Owner").

A. Surface Owner owns the surface estate for that certain tract of land more particularly described on Exhibit A attached hereto, being a portion of the SE/4 of Section 8, Township 1 South, Range 67 West, Adams County, Colorado, and hereinafter referred to as the "Property."

B. Surface ownership of the Property is subject to the rights of the oil and gas mineral leasehold estate, a portion of which is owned by KMG.

C. Surface Owner plans to develop the surface of the Property as residential lots to be known as Talon Pointe.

D. KMG currently operates one (1) well(s) on the Property known as the Quebec North 34-8 which is/are hereinafter referred to as the "Existing Well(s)," and KMG also has the right to develop its oil and gas leasehold estate by drilling additional wells on the Property hereinafter referred to as the "Future Wells," and the Existing Well(s) and Future Wells are referred to collectively as the "Wells."

E. This Agreement sets forth the parties' rights and obligations regarding the relationship between the development of the Property by Surface Owner and KMG's operation and development of its oil and gas leasehold estate underlying the Property, such rights and obligations to be binding upon the parties' successors and assigns.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. OIL AND GAS OPERATIONS AREAS FOR THE EXISTING WELL AND FUTURE WELLS.

Surface Owner shall set aside and provide to KMG the three (3) areas on the Property hereinafter referred to as the "Oil and Gas Operations Areas," such areas being the location for the Existing Well in the Southeast quarter and the areas being located generally in the Southeast quarter as depicted on Exhibits B1, B2, B3, and B4 attached hereto. Surface Owner shall make the Oil and Gas Operations Areas available to KMG in their present condition for all operations conducted by KMG in connection with the Existing Well and four (4) Future Wells, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing, re-fracturing, and the drilling of twinned and replacement wells. Except for the Oil and Gas Operations Areas and the access roads and easements for flowlines, gathering lines and

pipelines provided for in this Agreement, KMG shall not occupy the surface of the Property except in the event of an emergency.

KMG shall also have the right to locate, build, repair and maintain tanks separators, dehydrators, compressors and all other associated oil and gas drilling and production equipment and facilities within the Oil and Gas Operations Areas. If Surface Owner wants KMG to install low-profile tanks for new or replacement tanks, KMG and Surface Owner will negotiate in good faith with respect to the liability of the parties to this Agreement for the incremental expense over the standard stock tanks KMG uses to install such tanks.

KMG and Surface Owner agree that Surface Owner may utilize the outer 50 feet of the Oil and Gas Operations Areas for shallow root landscaping, paths and trails (and no other purpose), provided that KMG shall have no liability to Surface Owner and its successors and assigns for any damage to the landscaping, paths and trails caused by KMG's oil and gas operations in the Oil and Gas Operations Areas. KMG acknowledges that other oil and gas operators, including but not limited to Windsor Energy, are authorized to use the Oil and Gas Operations Areas provided that the use of the Oil and Gas Operations Areas by other oil and gas operators does not impair KMG's ability to drill its Future Wells.

2. WELL LOCATIONS.

KMG shall have the right to drill four (4) Future Wells within all Oil and Gas Operations Areas in the locations shown on Exhibits B2, B3 and B4, including horizontal and directional wells that produce from and drain lands other than the Property; provided that, such lands are validly pooled with all or any portion of the lands included in KMG's oil and gas lease covering the Property and so long as the well locations are permitted locations under the then applicable well spacing or well location regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions to the regulations granted thereto by the COGCC or its Director.

As part of the consideration for this Agreement, Surface Owner hereby consents to, waives its right to, and covenants that it will not protest or object to any exception location or application for an exception location applied for by KMG; provided that, the exception location request or application is consistent with this Agreement.

3. WAIVER OF SETBACK REQUIREMENTS/ OTHER STATE AND LOCAL RULES AND REGULATIONS.

Surface Owner will not locate any lot line or any permanent or temporary building, structure or other improvement within the Oil and Gas Operations Areas or within the access roads or pipeline, gathering line or flow line easement areas described in this Agreement. Except as stated in this Agreement, the Oil and Gas Operations Areas shall be for the exclusive use of oil and gas operations and production and for the location of oil and gas wells and associated oil field drilling and production equipment.

Surface 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 and surface property lines, among other things. In order to give full effect to the purposes

of this Agreement, Surface Owner hereby consents to and waives its right to object to the location of any of KMG's wells or facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time, so long as such facilities are located within an Oil and Gas Operations Area as shown herein. Surface Owner further and similarly waives its rights to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KMG or its successors and assigns to explore for and produce the oil and gas in accordance with this Agreement KMG or its successors and assigns may cite the waiver in this section 3 in order to obtain a location exception or variance under COGCC rules or from any other state or local jurisdiction so long as such locations are within the Oil and Gas Operations Areas as shown herein.

Surface Owner agrees that it will not object to the use of the surface of the Property by KMG so long as the use is consistent with this Agreement and Surface Owner will provide KMG or its successors and assigns with whatever written support it may reasonably require to obtain permits or approvals from the COGCC or any local jurisdiction.

KMG agrees that it will not object to the development plans and use of the Property by Surface Owner and agrees that it will reasonably cooperate with Surface Owner in obtaining permits or approvals from any local government or jurisdiction in order to develop the surface of the Property provided that such surface development is consistent with this Agreement.

4. GATHERING LINES AND FLOWLINES/ PIPELINE EASEMENTS.

Subject to the limitations hereinafter described, KMG and its affiliated companies have a continuing right and entitlement to own, operate, maintain, repair and replace all flowlines, gathering lines and other pipelines that may be necessary or convenient to its operations on the Property. Although this Agreement is intended to confine the placement of pipelines to certain specified locations within the Property, nothing herein shall be construed as a limitation on KMG's and its affiliate's right to make connections for flowlines, gathering lines and pipelines to the Existing Well and Future Wells; provided that, the placement of the lines is consistent with this Agreement or is otherwise compatible with the development of the surface by Surface Owner. In the event the Surface Owner requires that any flowline or pipeline blanket easement be amended to show the actual location of the pipeline and/or flowline, KMG agrees to reasonably cooperate with the Surface Owner in review and execution of such amendment.

Current development plans for the Property anticipate the relocation of certain existing pipelines or flowlines ("Existing Pipelines"). All Existing Pipelines that are relocated and all pipelines to be installed in the future ("Future Pipelines") shall be located within the Pipeline Easements, as identified on Exhibit C, unless otherwise agreed upon in writing between Surface Owner and KMG. Relocations of Existing Pipelines shall be at the cost and expense of Surface Owner and pursuant to a separate pipeline relocation agreement.

At the time or times that Surface Owner desires to have Existing Pipelines relocated to the Pipeline Easements, Surface Owner shall give written notice to KMG, and KMG shall prepare or cause to be prepared a cost estimate to perform the proposed relocation. Such cost estimate shall include a 15% markup for administrative, supervision and other overhead costs

related to the relocation. KMG will provide the cost estimate to Surface Owner as soon as practicable, and Surface Owner will thereafter determine whether or not to proceed with the relocation. If Surface Owner elects to have KMG perform the pipeline relocation, Surface Owner shall pay KMG the estimated costs and request in writing that the pipelines be relocated. KMG shall commence operations to relocate the pipelines as soon as practicable thereafter.

The Pipeline Easements are non-exclusive, and KMG agrees that it will not object to the use of the Pipeline Easements by other oil and gas operators or utilities, as Surface Owner may grant from time to time, so long as the other parties comply with KMG's pipeline guidelines, attached hereto as Exhibit D; provided however, Surface Owner shall not permit the placement or allow others to place any utility or structure within ten feet (10') horizontally or two feet (2') vertically of a KMG pipeline, gathering line or flow line. The Pipeline Easements and Oil and Gas Operations Areas shall be depicted and labeled on all subdivision plats submitted to the City of Thornton or other local jurisdiction.

If Surface Owner proposes to construct roads that will cross over Existing Pipelines or Future Pipelines that are then installed on the Property, Surface Owner shall pay KMG the costs to have KMG sleeve the portions of the pipelines that are to be crossed by the roads, such payment to be made in advance of the work. Unless otherwise agreed in writing, Surface Owner shall not install the portion of the road that crosses a pipeline until the pipeline has been sleeved.

All flowlines and pipelines shall be buried to a depth of approximately forty-eight inches (48") from the surface. Surface Owner shall maintain a minimum of forty-eight inches (48") and not more than seventy-two inches (72") of cover over pipelines and flowlines during and following Surface Owner's operations on the Property.

5. ACCESS.

Surface Owner understands and acknowledges that KMG will continue to have the right to use the access route that it is currently using to access the Oil and Gas Operations Area with the Existing Well as identified on Exhibit E as the "Access."

Surface Owner, in all events and at all times, shall provide and not impede KMG's continuous access to the Oil and Gas Operations Areas and the Pipeline Easements. No party shall unreasonably interfere with the use by the other of an access road.

Roads that are constructed by Surface Owner as part of its development of the Property (including replacement or alternate access roads) shall be constructed and installed at Surface Owner's sole cost and expense and be of sufficient width and construction for KMG to conduct its oil and gas operations.

At such time as Surface Owner constructs the Paved Access Roads, Surface Owners shall keep the portions of the Paved Access Roads that are jointly used by KMG and Surface Owner in good condition and repair until such roads are dedicated to a local jurisdiction. Damage to any access roads resulting from oil and gas operations shall be promptly repaired by KMG.

Surface Owner agrees that it will obtain and pay the costs to obtain from the local jurisdiction permits for curb cuts as deemed necessary by KMG. Said curb cuts shall be forty (40) feet in width

Access roads or portions of access roads that are jointly used by KMG and Surface Owner shall be thirty feet (30') or more in width and constructed by Surface Owner to withstand the weight of oilfield equipment. Specifically, Surface Owner shall construct the roads so that they can withstand the weight of a minimum of 104,000 pounds and 26,000 pounds per axle.

Access roads or portions of access roads that are used exclusively by KMG shall be generally thirty feet (30') in width, and KMG shall install and maintain such roads or portions of roads to those state and local standards that apply to oil and gas operations.

6. BATTERIES AND EQUIPMENT.

KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and all other associated oil and gas equipment and facilities necessary or convenient for the operation and production of the Wells (hereinafter the "Production Equipment") within the Oil and Gas Operations Areas. With respect to certain specific equipment and facilities to be installed by KMG on the Property in the future:

a. KMG shall install and maintain at its sole cost and expense fences around the Wells in compliance with the rules and regulations of the COGCC.

b. KMG shall install and maintain at its sole cost and expense all gates and locks reasonably necessary for the security of the Wells and Production Equipment within the Oil and Gas Operations Areas; such gates and locks to be the standard gates and locks used by KMG.

c. KMG shall paint production facilities for Wells, including wellhead guards, with paint approved by the COGCC.

d. Surface Owner shall not inhibit KMG's access to the Oil and Gas Operations Areas and Pipeline Easements or inhibit KMG's operations within the Oil and Gas Operations Areas and Pipeline Easements by landscaping or other improvements, unless otherwise agreed upon in writing between Surface Owner and KMG.

7. NOTICE OF FUTURE OPERATIONS.

KMG shall provide Surface Owner or the then current owner of the specific parcel of Property, as applicable, with notice of future oil and gas operations on the Property in accordance with COGCC rules and regulations. KMG shall also provide applicable written notice at least thirty (30) days prior to drilling operations for a Future Well within an Oil and Gas Operations Area. Regardless of the foregoing notice requirements, KMG shall have immediate access to all its Wells and facilities in the event of an emergency.

After receipt of the notice of the commencement of drilling operations, but not less than five (5) working days prior to the commencement of drilling operations, either KMG or Surface Owner may request an on-site meeting. The purpose of the meeting shall be to inform Surface Owner of the prospective oil and gas operations on the Property and to coordinate site access, hazards, barricades, site restoration or other matters that affect the development of the surface and oil and gas estates for the particular activity for which notice has been given.

8. NOTICES TO HOMEOWNERS AND BUILDERS.

Surface Owner shall furnish all buyers of the Property from Surface Owner with a plat or map showing the Oil and Gas Operations Areas and Pipeline Easements, and Surface Owner shall also provide notice to all builders, homeowners, homeowner associations and other buyers of the Property from Surface Owner that:

- a. there may be ongoing oil and gas operations and production within the Oil and Gas Operations Areas and Pipeline Easements on the surface of the Property;
- b. there are likely to be additional Wells drilled and oil and gas operations and production operations conducted on the Property within the Oil and Gas Operations Areas and the Pipeline Easements that affect the surface of the Property;
- c. heavy equipment may be used by KMG from time to time for oil and gas drilling and production operations and such operations may be conducted on a 24-hour basis;
- d. homeowner associations and buyers of individual lots or homes, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming the obligations undertaken by Surface Owner pursuant to this Agreement, and be subject to the waivers and consents and requirements contained in sections 2, 3, 4, 10 and 23, among others, and the covenants herein prohibiting the location of any building or structure within the Oil and Gas Operations Areas or the Pipeline Easements and waiving objections to the setback rules of the COGCC and local jurisdictions and waiving surface damage payments and granting the pipeline easements identified herein.

Notice of the foregoing may be accomplished by the use of notes on the plat of the Property and providing the purchaser with a copy of this Agreement.

9. DRILLING AND COMPLETION OPERATIONS.

KMG shall use best efforts to diligently pursue drilling operations to minimize the total time period within the Oil and Gas Operations Area and to avoid rig relocations or startup during the course of drilling. Surface Owner waives any objections to continuous (i.e., 24-hour) drilling operations.

10. GOVERNMENTAL PROCEEDINGS.

Surface Owner agrees that it will not object in any forum to the use by KMG of the surface of the Property consistent with this Agreement and hereby waives any such right to object. Surface Owner further agrees that it will provide such other written approvals and waivers that are requested by KMG and consistent with this Agreement, including, but not limited to, all approvals and waivers to drill a well or to conduct oil and gas operations on the Property because of any law or regulation, including any local ordinance and regulations of the COGCC, and including, for example, waivers to state and local setback requirements from a surface property line or for an exception location. Surface Owner further waives any rights it has to require or request a surface inspection for wells proposed to be drilled on the Property for the purpose of requesting that conditions be attached to a permit to drill the well. Surface Owner further consents to the location of multiple wells within an Oil and Gas Operations Area that are greater or less than fifty feet apart so long as all such wells are located within the Oil and Gas Operations Area.

KMG agrees that it will not oppose Surface Owner in any agency or governmental proceeding, including, but not limited to, the City of Thornton, Adams County or the proceedings for any other governing body related to Surface Owner's development of the surface estate, and including, but not limited, to applications for rezoning, and subdivision and plat approval; provided that, Surface Owner's position in the proceedings is consistent with this Agreement.

11. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.

a. No party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken within the scope of this Agreement. This limitation is not intended to limit actual or compensatory damages.

b. Except as to claims arising out of pollution or environmental damage (which claims are governed by section 12 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each party shall be and remain responsible for its own liability for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation, attorneys' fees, expert witness fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations on the Property, no matter when asserted, subject to applicable statutes of limitations. Each party shall release, defend, indemnify and hold the other party, its officers, directors, employees, successors and assigns, harmless against all such Claims if made by non-parties to this Agreement or their successors and assigns. This provision does 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 for Claims as provided herein.

c. Upon the assignment or conveyance of a party's entire interest in the Property, the party shall be released from the indemnifications in section 11.b. for all actions or occurrences after the assignment or conveyance.

12. ENVIRONMENTAL INDEMNITY.

The provisions of section 11 above, except for section 11.a. shall not apply to environmental matters, which shall be governed exclusively by the following, but subject to the limitations of section 11.a. above:

a. "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 on or ownership of the Property or ownership of the oil and gas leasehold interests, 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 or relating to asbestos or to naturally occurring radioactive materials. Environmental Claims shall not include the costs of 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;

b. "Environmental Laws" shall mean any law, regulation, rule, ordinance, or order of any governmental authorities which relate to or otherwise impose liability, obligations, 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. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

c. KMG shall defend, indemnify, and hold harmless Surface Owner from Environmental Claims relating to the operations of KMG on the Property in its exploitation of the oil and gas leasehold interests that KMG owns and KMG's ownership and operation of the pipeline easements on the Property and its use of the access roads on the Property. Surface Owner shall defend, indemnify and hold harmless KMG from any and all Environmental Claims relating to the Property that arise out of Surface Owner's development of the Property or to the operations of the homeowner's association on the Property.

13. EXCLUSION FROM INDEMNITIES.

The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from its obligations to third parties or to each other as set forth in this Agreement.

14. NOTICE OF CLAIM FOR INDEMNIFICATION.

If a Claim is asserted against a party for which the other party would be liable under the provisions of section 11 or section 12 above, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim, setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within five (5) days of receipt of a Claim and in all events shall provide notice within such time as will allow the indemnifying party to defend against the Claim.

15. COMPLIANCE WITH REGULATIONS

KMG shall conduct its oil and gas operations in accordance with COGCC rules and regulations and valid and applicable regulations and ordinances of governmental authorities; provided, however, nothing in this Agreement creates a private right of action under any state statute or state or local rule or regulation, including the regulations of the COGCC and the provisions of the Colorado Oil and Gas Conservation Act at C.R.S. 34-60-101 et seq.

16. REPRESENTATIONS.

Each party represents that it has the full right and authority to enter into this Agreement. KMG does not represent that it has rights to settle matters for any mineral owner or any other oil and gas lessee for the Property and this Agreement shall only apply to and bind KMG only with respect to the oil and gas leasehold interests it owns in the Property.

17. SUCCESSORS AND ASSIGNS.

The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns; provided, however, successors and assigns with respect to KMG shall be limited to only the assignees of the oil and gas leasehold rights that KMG currently owns.

18. COVENANTS RUN WITH THE LAND.

This Agreement and all of the covenants in it shall be covenants running with the land. Any subsequent sale of the Property by Surface Owner shall be subject to the terms of this Agreement, and, to the extent that such successors acquire a property interest in the Property or portion thereof, such buyers, as successors in interest to Surface Owner, will be acquiring all of the rights of Surface Owner under this Agreement and assuming those obligations undertaken by Surface Owner pursuant to this Agreement

19. TERM.

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KMG's oil and gas leasehold rights and the rights of its successors and assigns expire or are terminated and KMG, or its successors and assigns, as applicable, have

plugged and abandoned all wells owned in whole or in part by KMG or its successors and assigns and complied with the requirements of all applicable oil and gas leases pertaining to the abandonment of wells, removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and all existing laws and regulations.

2726. 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; iii) United States mail, postage prepaid, and registered or certified mail with return receipt requested; or iv) prepaid telecopy or fax, the receipt of which shall be addressed as follows:

If to KMG:

Kerr McGee Oil & Gas Onshore LP
1999 Broadway, Suite 3700
Denver, Colorado 80202
Attention: Director of Land Denver Basin

If to Surface Owner:

Talon Pointe LLC
1610 Wynkoop St., Suite 500
Denver CO 80202

And

Fuller Land Investments
9055 E Mineral Circle #100
Centennial CO 80112

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

21. RECORDING.

This Agreement and any subsequent amendment hereto shall be recorded by KMG in the Office of the Clerk and Recorder for Adams County, and KMG shall provide Surface Owner with a copy of the recorded agreement as soon as is reasonably practicable thereafter.

22. WAIVER OF SURFACE DAMAGE PAYMENTS.

Surface Owner hereby waives all surface damage payments pursuant to any existing or future COGCC or local regulation, state statute, common law or prior contract or agreement or provision in any oil and gas lease for each and every well that has been drilled or will be drilled in the future on the Property within the Oil and Gas Operations Areas and for the location of

Production Equipment, as well as for access roads and flowlines and for pipelines relocated or constructed within the Pipeline Easements. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver. Surface Owner does not waive any damage payments or liability of KMG resulting from trespass or negligent or willful mineral operations of KMG and/or its employees, agents, contractors, subcontractors and invitees.

23. APPLICABLE LAW AND COMPLIANCE WITH LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions. KMG and Surface Owner expressly acknowledge that this Agreement satisfies each party's obligation to consult in good faith with each other regarding the proposed oil and gas operations and surface uses. Surface Owner further expressly acknowledges that this Agreement shall be deemed to be specifically applicable to and to fully satisfy, the obligation of KMG to accommodate Surface Owner's use of the surface of the Property, existing or future, and waives any statutory or common law claims with respect thereto.

24. 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.

25. ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding between the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

26. EXECUTION AND BINDING EFFECT

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument.

The parties have executed this Agreement on the dates set forth in the acknowledgments, to be effective on the date first above written.

KERR-MCGEE OIL & GAS ONSHORE LP

By: Michael A. Nixon
Name: Michael A. Nixon
Its: Agent & Attorney-in-Fact *one of*

TALON POINTE, LLC

By: Christopher L. Phillips
Name: Christopher L. Phillips
Its: Manager

ACKNOWLEDGMENTS

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 4th day of December, 2008, by Michael A. Nixon, as Agent & Attorney-in-Fact of KERR McGEE OIL & GAS ONSHORE LP, on behalf of the partnership.

Witness my hand and official seal.

Katharine J McKay
Notary Public

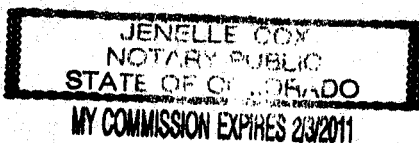
My Commission Expires: 2/11/2012



STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 12th day of December, 2008, by Christopher L. Phillips, as Manager of TALON POINTE, LLC, on behalf of the corporation.

Witness my hand and official seal.



Jenelle Cox
Notary Public

My Commission Expires: 2/3/2011

Exhibit A
to Surface Use Agreement effective _____, 2008
between Kerr-McGee Oil & Gas Onshore LP and Fuller Land Investments Inc.

LEGAL DESCRIPTION

EXHIBIT A

PROPERTY DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN; CITY OF THORNTON, COUNTY OF ADAMS, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 8 IS ASSUMED TO BEAR S 00°34'50" E, A DISTANCE OF 2644.48 FEET.

COMMENCING AT THE EAST CORNER OF SECTION 8; THENCE S 00°34'41" E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 8, A DISTANCE OF 43.00 FEET; THENCE S 89°34'42" W, A DISTANCE OF 80.00 FEET TO THE WEST RIGHT OF WAY LINE OF QUEBEC STREET BEING 80.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER AND THE **POINT OF BEGINNING**;

THENCE S 00°34'41" E ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 2514.28 FEET;

THENCE A CURVE IN AN WESTERLY DIRECTION TURNING TO THE RIGHT WITH A RADIUS OF 5.00 FEET, HAVING A CHORD BEARING OF S 44°31'44" W AND A CHORD DISTANCE OF 7.08 FEET, HAVING A INTERIOR ANGLE OF 90°12'50" AND AN ARC LENGTH OF 7.87 FEET TO THE NORTH RIGHT-OF-WAY LINE OF EAST 152ND AVENUE;

THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID NORTH RIGHT-OF-WAY LINE:

- 1) THENCE S 89°38'09" W, A DISTANCE OF 114.82 FEET;
- 2) THENCE S 85°32'19" W, A DISTANCE OF 310.04 FEET;
- 3) THENCE S 89°38'09" W, A DISTANCE OF 2078.56 FEET TO THE EAST RIGHT-OF-WAY LINE OF MONACO STREET BEING 40.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 8;

THENCE N 00°33'16" W ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 2501.36 FEET;

THENCE N 43°49'20" E, A DISTANCE OF 59.42 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF EAST 156TH AVENUE;

THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID SOUTH RIGHT-OF-WAY LINE:

- 1) THENCE N 89°34'42" E, A DISTANCE OF 2208.50 FEET;
- 2) THENCE S 84°08'47" E, A DISTANCE OF 45.74 FEET;
- 3) THENCE N 89°34'42" E, A DISTANCE OF 211.17 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 6,373,136 SQUARE FEET OR 146.307 ACRES MORE OR LESS.

Exhibit B
to Surface Use Agreement effective _____, 2008
between Kerr-McGee Oil & Gas Onshore LP and Fuller Land Investments Inc.

OIL & GAS OPERATIONS AREAS(s)

EXHIBIT B1



Manhard™

CONSULTING

348 Inverness Dr S, Suite A110, Englewood, CO 80118 tel: (808) 708-0600 fax: (808) 708-0400 www.merhard.com
Civil Engineers • Surveyors • Water Resources Engineers • Water & Wastewater Engineers
Construction Managers • Environmental Scientists • Landscape Architects • Planners

THORNTON, COLORADO

OVERALL PLAN

PROJ. NO. TWH SHEET 1

DATE: 10/10/1964

DATE: 11/12/08

Scale: 1"=500'

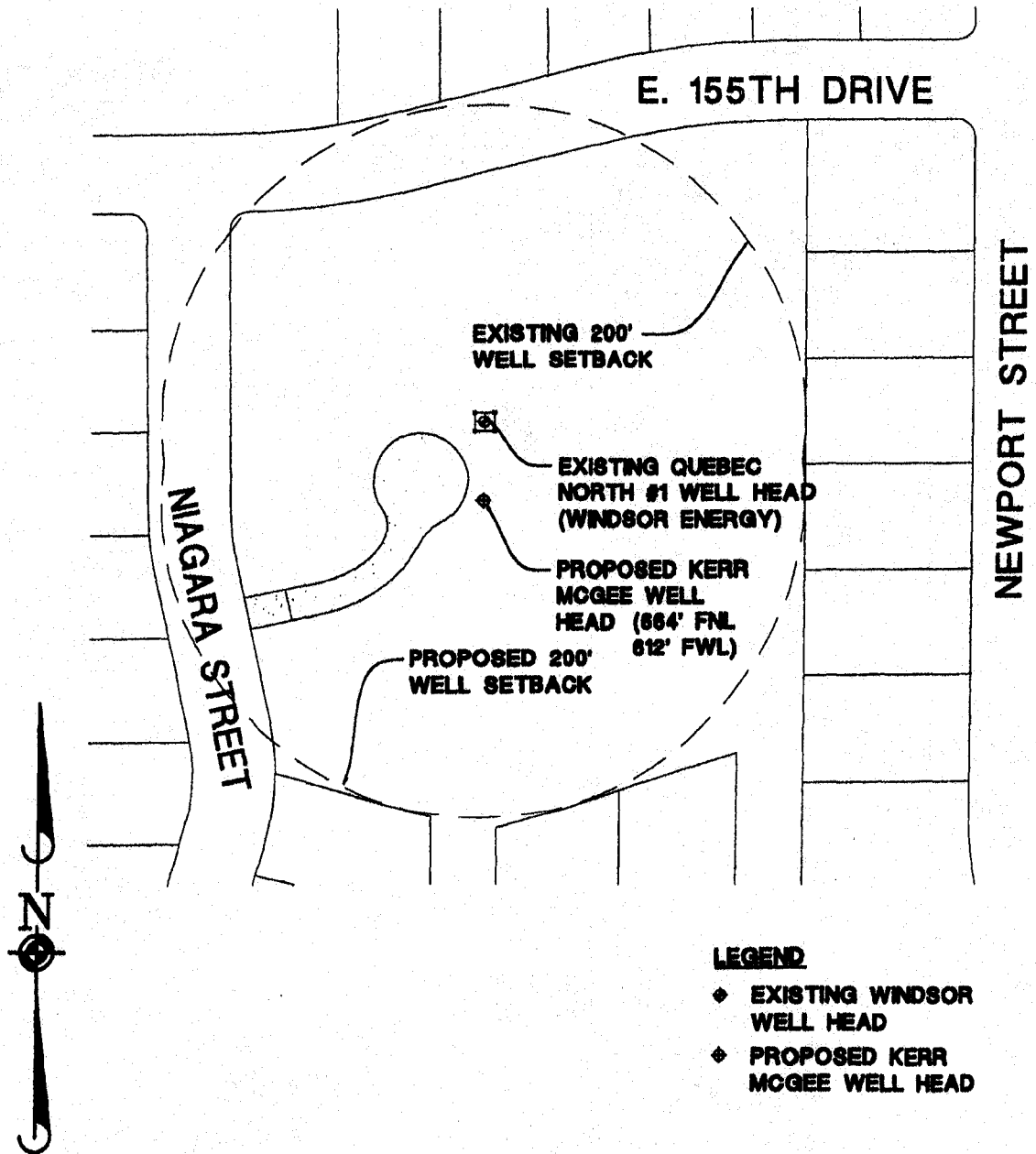
EVIDENCE

EVIDENCE

B1



EXHIBIT B2



LEGEND

- ◆ EXISTING WINDSOR WELL HEAD
- ◆ PROPOSED KERR MCGEE WELL HEAD

Manhard
CONSULTING

945 Inverness Dr. S, Suite A110, Englewood, CO 80112 tel: (303) 709-0500 fax: (303) 709-0400 www.manhard.com
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TALON POINTE - WELL SITES

THORNTON, COLORADO

OIL AND GAS OPERATION AREAS #1

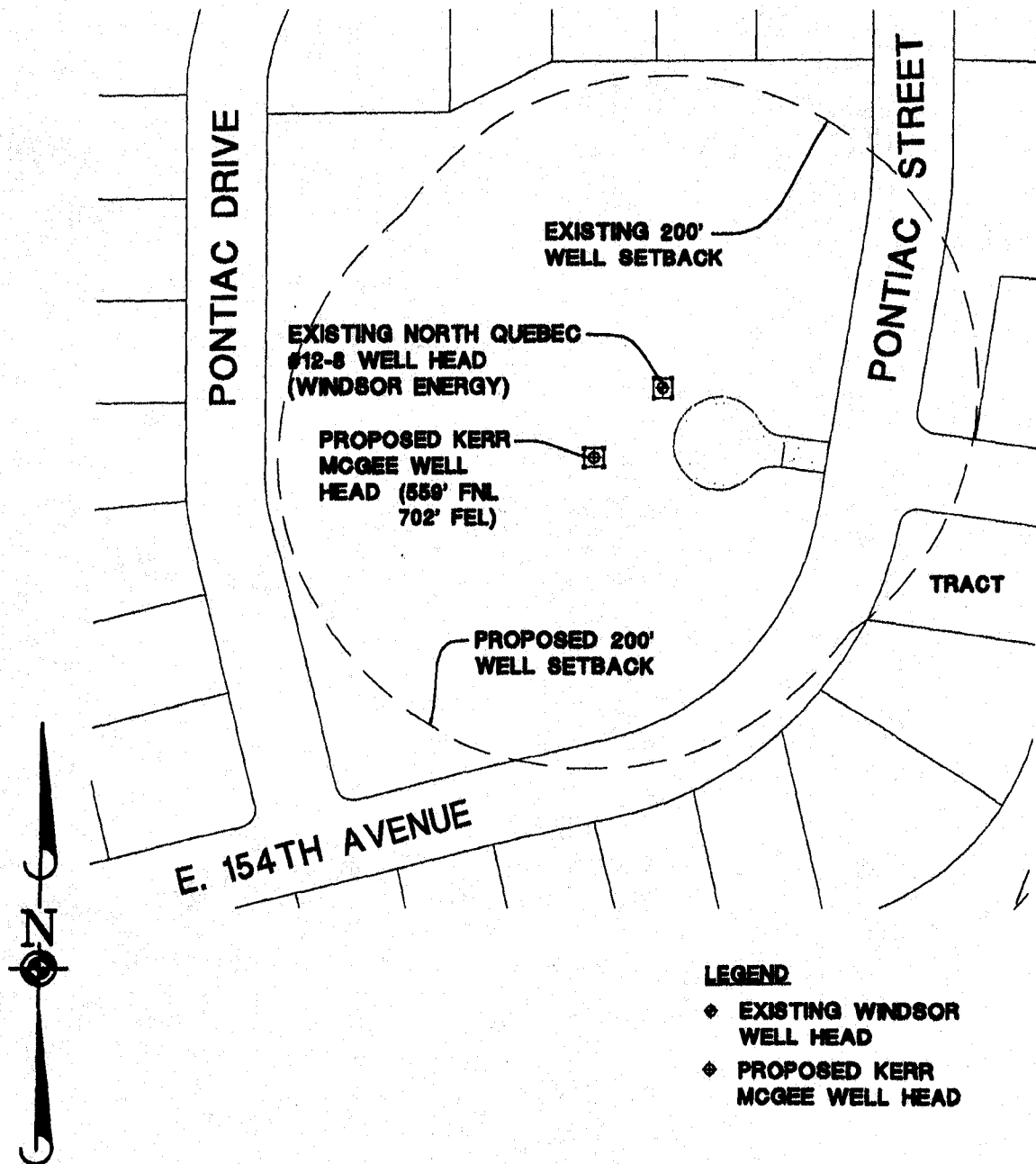
PROJECT NO. TWL
DRAWN BY JEH
DATE 11/07/08
SCALE 1"=100'

EXHIBIT
NOTING

B2
C300

Dwg Name: P:\Eginc\dwg\LandPlan\Exhibits\Exhibit B2 2008 11 07.dwg Updated By: jhubner 12:45

EXHIBIT B3



LEGEND

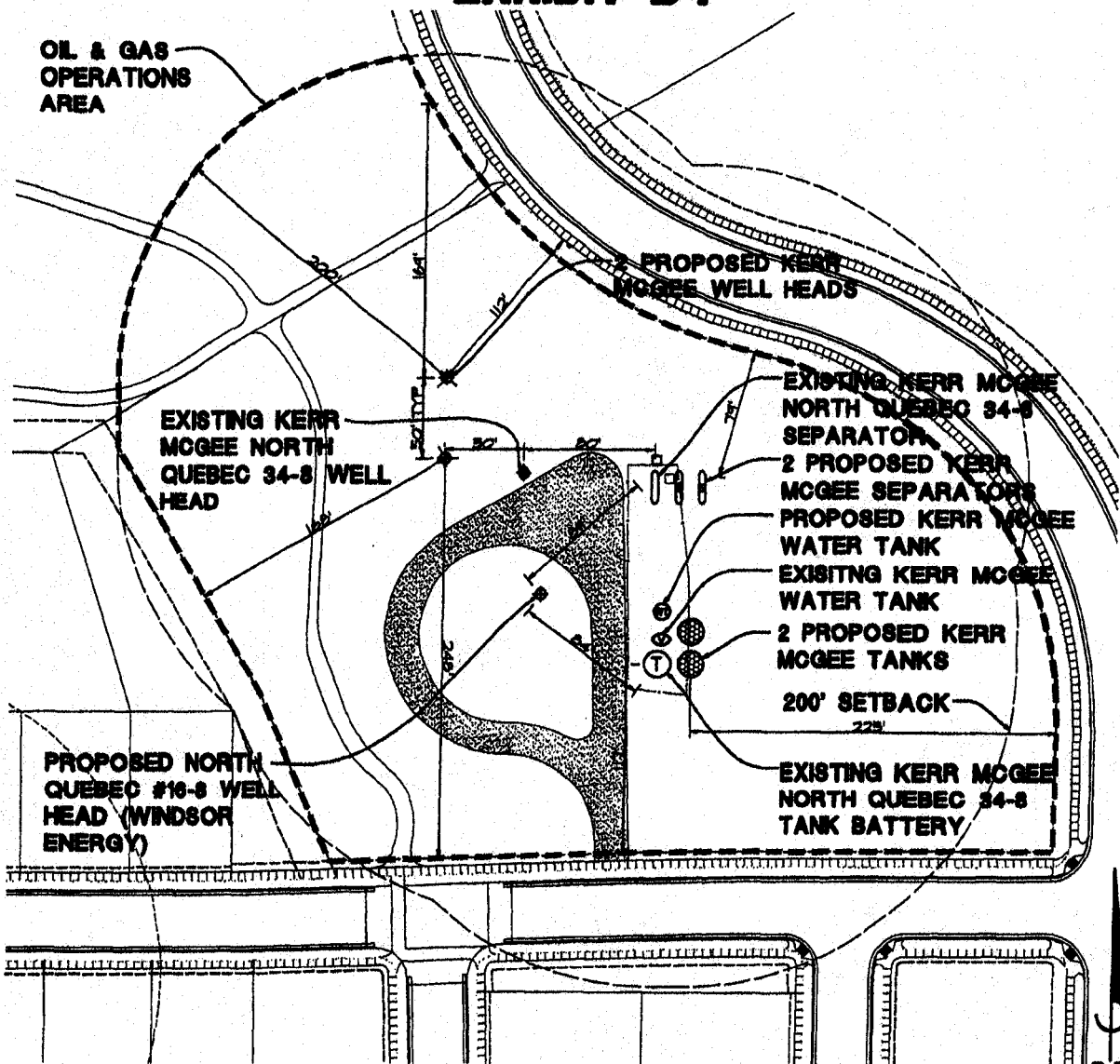
- ◆ EXISTING WINDSOR WELL HEAD
- ◆ PROPOSED KERR MOGEE WELL HEAD

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TALON POINTE - WELL SITES	
THORNTON, COLORADO	
OIL AND GAS OPERATION AREAS #2	
PROJECT NO.	TWH
DESIGN NO.	JCH
DATE	11/07/08
SCALE	1"=100'
<div>EXHIBIT B3</div>	

EXHIBIT B4



LEGEND

- ◆ EXISTING KERR MCGEE WELL HEAD
- ⊕ EXISTING KERR MCGEE WATER TANK
- Ⓣ EXISTING KERR MCGEE TANK BATTERY
- EXISTING KERR MCGEE SEPARATOR
- ◆ PROPOSED KERR MCGEE WELL HEAD
- PROPOSED KERR MCGEE SEPARATORS
- PROPOSED KERR MCGEE TANK BATTERY
- ⊕ PROPOSED KERR MCGEE WATER TANK
- ◆ PROPOSED WINDSOR ENERGY WELL HEAD



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TALON POINTE

THORNTON, COLORADO

COT WELL EXHIBIT

PROJ. NO.: SVB
DRAWN BY: THH
DATE: 11/12/08
SCALE: 1"=100'

SHEET

1

1

NOT TO SCALE

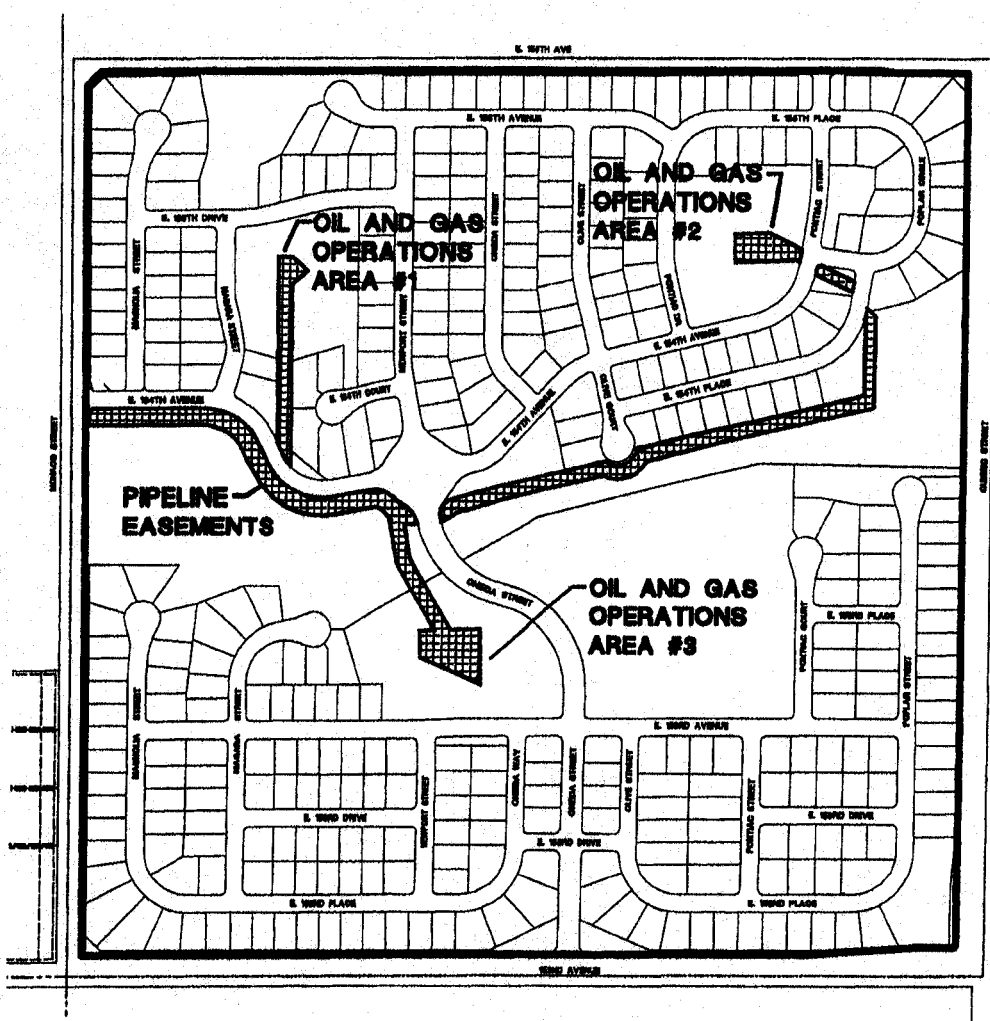
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Dwg Name: P:\Egtno\dwg\LandPlan\Exhibits\Exhibit B4 2008 11 12.dwg Updated By: jhubner 13:41

Exhibit C
to Surface Use Agreement effective _____, 2008
between Kerr-McGee Oil & Gas Onshore LP and Fuller Land Investments Inc.

PIPELINE EASEMENTS

EXHIBIT C



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TALON POINTE - WELL SITES

THORNTON, COLORADO

PIPELINE EASEMENTS

PROJ. NO.: TW1

DRAWN BY: JH

DATE: 11/12/08

SCALE: 1"=500'

SHEET

EXHIBIT

BTNC

C

C300

Exhibit D



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities

This list of design, construction and contractor requirements, including but not limited to the following, is for the design and installation of foreign utilities or improvements on Kerr McGee Gathering LLC (KMG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMG may have under existing easements or ROW agreements. For information regarding KMG's rights and requirements as they pertain to the existing easements, please reference existing easements and amendments documents. This list of requirements is applicable for KMG facilities on easements and in road rights of ways only. Encroachments on fee property should be referred to the Land & ROW Department. Any reference to KMG in the below requirements is meant to include and apply to any Kerr McGee entity.

Design

- KMG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMG's facilities and the general public. This prior notification is to be made before the actual work is to take place.
- The encroaching entity shall provide KMG with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KMG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMG, showing the facilities in the vicinity of KMG's ROW upon completion of the work.
- Only facilities shown on drawings reviewed by KMG will be approved for installation on KMG's ROW. All drawing revisions that affect facilities proposed to be placed on KMG's ROW must be approved by KMG in writing.
- KMG shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KMG on its "prior rights" ROW will be at the expense of the developer or landowner. In addition, any repair to surface facilities following future pipeline maintenance or repair work by KMG on replacement ROW granted to relocate KMG facilities will also be done at the expense of the developer or landowner unless expressly addressed in surface use agreements and approved in writing by KMG.
- The depth of cover over the KMG pipelines shall not be increased or reduced nor surface modified for drainage without KMG's written approval.
- Construction of any permanent structure within KMG pipeline easement is not permitted without written approval by KMG.
- Planting of shrubs and trees is not permitted on KMG pipeline easement without written approval by KMG.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMG easement without written approval by KMG.
- Foreign utility installations, i.e. distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMG pipeline(s) and the foreign utility. Any installation by a foreign utility with less than 18" of vertical separation is not allowed without written approval by KMG. In no case will vertical separation be less than 12" whether written or not. Constant line elevations must be maintained across KMG's entire ROW width, gravity drain lines are the only exception and must be approved in writing. Foreign line crossings below the KMG pipeline must be evaluated by KMG to ensure that a significant length of the KMG line is not exposed and unsupported during construction. Foreign line crossings above the KMG pipeline with less than 18" of clearance must be evaluated by KMG to ensure that additional support is not necessary to prevent settling on top of the KMG natural gas pipeline. A KMG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the KMG facility. All installations of foreign crossings done by boring and or jacking require the KMG facility to be exposed to verify clearances.
- Foreign utilities shall not run parallel to KMG pipelines within the KMG easement without written permission by KMG. A minimum of 10.0 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is placed within the KMG easement or adjacent to the KMG easement. Any deviation from the 10.0' horizontal requirement must be approved in writing by KMG and an "as built survey" provided to KMG after installation.



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities

- The foreign utility should be advised that KMG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMG's. At the request of KMG, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection interference. The KMG CP technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KMG. All costs associated with the correction of cathodic protection interference issues on KMG pipelines as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- The developer shall understand that KMG whether specifically required per federal law, or by company standard, will mark the routing of its underground facilities with aboveground pipeline markers and test leads and maintain those markers and test leads. Markers will be installed at every point the pipeline route changes direction and adequate markers will be installed on straight sections of pipeline to insure, in the sole opinion of KMG, the safety of the public, contractor, KMG personnel and KMG facilities.
- On all foreign utility crossings and / or encroachments, metallic foreign lines shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing.
- AC Electrical lines must be installed in conduit and properly insulated.
- On all foreign pipelines, DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KMG ROW.
- No power poles, light standards, etc. shall be installed in the KMG easement without written approval by KMG.
- KMG installs above ground appurtenances at various locations that are used in the operation of its facilities. Kerr McGee will install protective enclosures at the above ground appurtenances to protect them from outside damage. The design and placement of these above ground appurtenances and protective enclosures is done at KMG's sole discretion, and may exceed any regulatory requirements.

Construction

- If KMG will be relocating KMG facilities for any entity, grading in the new KMG ROW shall be +/- 6 inches before KMG will mobilize to complete the relocation. Final cover after the completion of the project will not be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMG. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMG representative is on site during the time cover is reduced.
- The entity requesting relocation shall survey top of pipe after installation but before backfill to determine proper final elevation of KMG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMG facility. Any deviation from cover requirements as outlined above will be corrected at the sole expense of the entity requesting relocation.
- Contractors shall be advised of KMG's requirements and be contractually obligated to comply.
- The continued integrity of KMG's pipelines and the safety of all individuals in the area of proposed work near KMG's facilities are of the utmost importance. Therefore, contractor must meet with KMG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. KMG's on-site representative will require discontinuation of any work that, in his or her opinion, endangers the operations or safety of personnel, pipelines or facilities.
- The Contractor must expose all KMG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMG representative must be present.
- The use of probing rods for pipeline locating shall be performed by KMG representatives only, to prevent unnecessary damage to the pipeline coating. A KMG representative shall do all line locating.
- Notification shall be given to KMG at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of KMG's work site representative. Any Contractor schedule changes shall be provided to KMG immediately.



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities

- Heavy equipment will not be allowed to operate directly over KMG pipelines or in KMG ROW unless written approval is obtained from KMG. Heavy equipment shall only be allowed to cross KMG pipelines at locations designated by KMG. Haul roads will be constructed at all crossings. The haul roads will be constructed using lightweight equipment. The existing depth of cover over the pipeline must be verified. Cover will be added such that a total of 8' of fill exists over the pipeline and extends a minimum of 10' on each side of the pipeline. Depth of cover will then taper as required for equipment access. Steel plates may be used for load dissipation only if approved in writing by KMG.
- Contractor shall comply with all precautionary measures required by KMG, at its sole discretion to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of fires.
- Excavating or grading which might result in erosion or which could render the KMG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMG's facility. At no time will cover be reduced to less than 36" without written approval by KMG and a KMG representative on site.
- A KMG representative shall be on-site to monitor any construction activities within twenty-five (25) feet of a KMG pipeline or aboveground appurtenance. The contractor shall not work within this distance without a KMG representative being on site. Contractor shall use extreme caution and take any appropriate measures to protect KMG facilities.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMG facility. KMG personnel must be present.
- Temporary support of any exposed KMG pipeline by Contractor may be necessary if required by KMG's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KMG's on-site representative and thoroughly compacted in 12" lifts to 96% of standard proctor dry density minimum or as approved by KMG's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.
- No blasting shall be allowed within 1000 feet of KMG's facilities unless blasting notification is given to KMG including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.

KMG shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KMG's facilities as a result of their activities whether or not KMG representatives are present. KMG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

No blasting shall be allowed within 200 feet of KMG's facilities unless blasting notification is given to KMG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMG shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KMG. A written emergency plan shall be provided by the organization responsible for blasting.

KMG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given. A pre-blast meeting shall be conducted by the organization responsible for blasting.

- Any contact with any KMG facility, pipeline, valve set, etc. shall be reported immediately to KMG. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- KMG personnel shall install all test leads on KMG facilities.

Local Kerr-McGee Gathering LLC Representation:

Manager of Construction & Facilities Engineering:
Facilities Engineer:
Foreman 1:
Foreman 1:

Kevin R. Osif, P.E.
Joseph E. Sanchez, P.E.
James Phillips
Rick Noffsinger

Phone: 303 855 - 4307
Phone: 303 855 - 4319
Phone: 303 855 - 4343
Phone: 303-855 - 4328



**General Guidelines for Design and Construction Activities On or Near
Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP
Pipelines and Related Facilities**

Emergency Contacts:

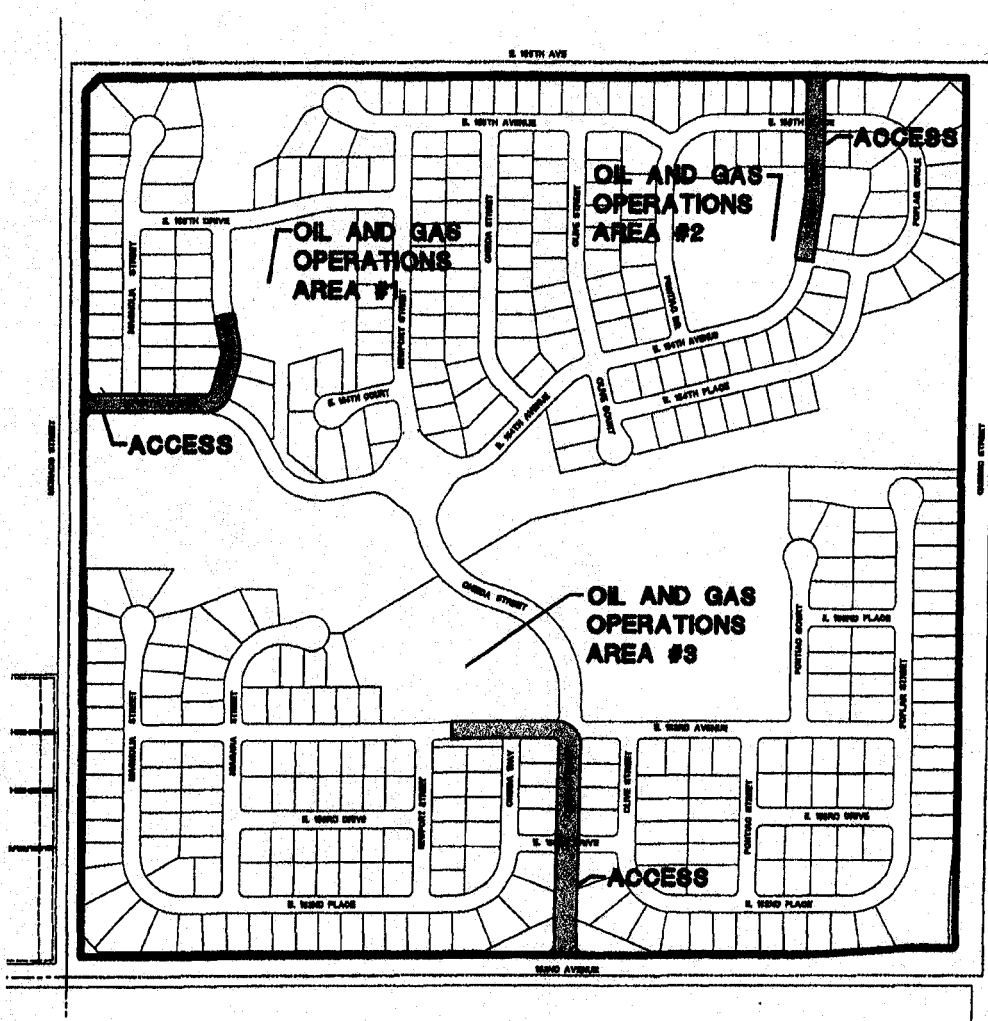
On call supervisor
Kerr McGee 24 hour emergency number
One Call Emergency

Phone: 303-559 - 4001
Phone: 303-559 - 5922
Phone: 800-922 -1987

Exhibit E
to Surface Use Agreement effective _____, 2008
between Kerr-McGee Oil & Gas Onshore LP and Fuller Land Investments Inc.

ACCESS

EXHIBIT E



Manhard
CONSULTING

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Civil Engineers • Surveyors • Water Resources Engineers • Water & Wastewater Engineers
Construction Managers • Environmental Scientists • Landscape Architects • Planners

TALON POINTE - WELL SITES

THORNTON, COLORADO

ACCESS EXHIBIT

PROJ. NO. TWH

DECLASSIFIED BY: JSH

11/12/08

SCALE 1"=500'

100

EXHIBIT

10