

## Surface Use Agreement

THIS SURFACE USE AGREEMENT (the "Agreement") is made and entered into this 19<sup>th</sup> day of August, 2008, by and between Boomerang Development Company, a Colorado corporation, 711 10<sup>th</sup> Street, #200, Greeley, CO 80631 (hereby referred to as "Boomerang") and Francis Energy, Inc., a Colorado corporation, 4539 14<sup>th</sup> Street, Greeley, CO 80634, (hereby referred to as "FEI").

### BACKGROUND OF AGREEMENT

The following background statements are made to aid in the understanding and interpretation of this Agreement and shall be deemed a substantive part of this Agreement and not merely recitals.

A. Boomerang is the owner of the surface estate in an approximate 12.55 acre tract of land located in the N½ of Section 4, Township 5 North, Range 66 West of the 6<sup>th</sup> P.M., County of Weld, State of Colorado) more specifically known and described as Tract 1, Northridge Estates, according to that certain map recorded at Reception No. 3289346, and as shown in Exhibit A hereto (the "Property").

B. This Agreement is entered into as a condition set forth under that certain Oil and Gas Lease dated 19<sup>th</sup> day of August, 2008, by and between Hartbart, LLC, as Lessor, and FEI, as Lessee, associated with the mineral estate in and under the Property (the "Lease").

C. This Agreement also relates to that certain Agreement for Assignment of Overriding Royalty dated the 19<sup>th</sup> day of August, 2008 by and between FEI and Brian Bartels, Gary Hoover and Charles Atwood (the "Overriding Royalty Agreement").

D. Boomerang desires to undertake residential and commercial development of the surface of the Property. The surface rights in and to the Property created for the benefit of FEI hereunder, under the Lease or under any other claim of right are limited to the "Oil and Gas Operations Area," "Pipeline Easement," and "Access Road" as defined herein and depicted on Exhibit A hereto.

E. In addition to the development of the oil and gas estate beneath the Property, FEI desires to utilize the Oil and Gas Operations Area to drill and produce oil and gas wells with bottom hole locations beneath lands other than the Property in the N1/2 Section 4, T5N, R66W, 6<sup>th</sup> P.M.

F. Boomerang acknowledges that FEI's leasehold rights include, among other things, the right of ingress and egress for the purposes of exploration, development, drilling, re-drilling, testing, completion, re-completion, re-entry, deepening, fracturing, re-fracturing, stimulation, reworking, production and maintenance operations associated with oil and gas wells and the associated pipelines and production facilities ("Oil and Gas Operations") located within the Oil and Gas Operations Area.

G. FEI intends to continuously drill no fewer than five (5) wells (the "Wells") as shown in Exhibit "A." The "Wells" as that term is used herein shall also refer to any additional wells that FEI drills from the surface of the Oil and Gas Operations Area.

H. FEI and Boomerang enter into this Agreement (i) to provide for the coexistence and joint development of the surface estate of the Property as well as the oil and gas estate underlying the N½ of Section 4, Township 5 North, Range 66 West of the 6<sup>th</sup> P.M., and (ii) to delineate the process with which the parties shall comply with respect to the development of the two estates. Should the terms and provisions of this Agreement be inconsistent with or in conflict with any of the terms and provisions of the Lease, then the terms and provisions of this Agreement shall prevail.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of payments required below, the covenants set forth herein and the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### **1. AREAS RESERVED FOR OIL AND GAS OPERATIONS**

**1.1 OIL AND GAS OPERATIONS.** FEI shall have the right to undertake Oil and Gas Operations for the Wells located on the Property and if Oil and Gas Operations are commenced on the Property, FEI agrees to continuously drill no fewer than five (5) Wells thereon with bottom hole locations in the NW¼ of Section 4, T5N, R66W of the 6<sup>th</sup> P.M. In order to provide for the drilling of the Wells, Boomerang shall, and does hereby ratify and, to the extent necessary, grant to FEI an easement to utilize the area illustrated on Exhibit "A" hereto as the "Oil and Gas Operations Area."

**1.2 OIL AND GAS OPERATIONS AREA.** The Oil and Gas Operations Area shall be reserved and utilized for the exclusive purpose of any and all Oil and Gas Operations by FEI (its successors and assigns) and those operations of other oil and gas operators which may be granted rights therein by Boomerang. If surface rights are granted by Boomerang to another oil and gas operator for direction drilling operations from the Property, then Boomerang will use reasonable efforts to cause any other such operator to reimburse FEI for one-half of its actual costs incurred for the laying of the natural gas pipe line that is constructed by FEI from its well heads to the main gas line but Boomerang shall not be obligated for such costs.

After the Wells are drilled, FEI shall complete berming or other visual mitigation measures to screen the Oil and Gas Operations Area and the equipment located therein from the balance of the Property and in accordance with any use by special review permit obtained from the City of Greeley. Boomerang may landscape and construct fencing within the Oil and Gas Operations Area in accordance with any additional visual or safety mitigation desires it may have and conditional upon maintaining a minimum one hundred fifty feet (150') setback from the Wells and production facilities as shown in Exhibit "A." Any such additional visual or safety

mitigation measures shall be completed in such a way as to not unreasonably interfere with FEI's rights to access the Oil and Gas Operations Area and to operate the wells therein and shall be done at Boomerang's sole cost and expense.

**1.3 PIPELINE EASEMENTS.** Boomerang shall grant a Pipeline Easement to FEI's gas purchaser in the area and along the route shown on Exhibit "A" attached hereto and made apart hereof. Any such pipeline shall be located in the center of such easement. Boomerang shall reasonably cooperate in granting additional pipeline easements within such Pipeline Easement area only to FEI or third parties used to facilitate the transportation of oil, gas and/or condensate to market from the Wells.

**1.4 PRODUCTION FACILITY AREA.** FEI shall have the right to locate, relocate, build, repair and maintain oil tanks, separators, dehydrators, emissions burners, compressors and other equipment necessary, appropriate or convenient for the operation and production of the Wells within (the "Production Facility Area") as shown in Exhibit "A." The Production Facility Area is located wholly within the Oil and Gas Operations Area.

**1.5 LIMITATION OF USE OF THE PROPERTY.** Except for the Oil and Gas Operations Area, Production Facility Area, Pipeline Easement and Access Road as provided herein and depicted on Exhibit A hereto, FEI shall not use or occupy any part of the surface of the Property except in the event of an emergency.

1.5.1 Boomerang shall place no new property lines, buildings, structures or improvements (including, but not limited to, streets, sidewalks, driveways, curbs and gutters, detention or retention ponds, irrigation systems, sewage or drainage systems or pathways) of any kind within the Oil and Gas Operations Area. Without the prior written consent of FEI, which consent shall not be unreasonably withheld, Boomerang shall not alter or modify the existing grade within the Oil and Gas Operations Area or Pipeline Easement.

1.5.2 Without the prior written consent of Boomerang, FEI shall not alter the location of the Wells or any other structures within the Oil and Gas Operations Area as shown on Exhibit "A" the precise location of all such Wells and equipment is a material term in this Agreement. If any alteration for purposes of city or state approval is required, FEI must seek written consent for such alteration which consent shall not be unreasonably withheld.

1.5.3 Boomerang shall place no permanent building, or structure intended for human occupancy or above-ground improvements (excluding streets, sidewalks, driveways, curbs and gutters, retaining walls) within two hundred (200) feet of any tank or separator located in the Production Facility Area without prior written consent from FEI. Boomerang shall not construct or allow the construction of dwellings or structures intended for human occupancy on its property within thirty (30) feet of the Pipeline Easement area except at those locations where the pipeline is to be sleeved. At the locations where the pipeline is sleeved, without the prior written consent from FEI, Boomerang shall not construct or allow the construction of dwellings or structures intended for human occupancy within ten (10) feet on either side of the Pipeline Easement.

1.5.4 Boomerang hereby reserves the right for itself to use the surface of the Property, including property located in the Oil and Gas Operations Area, to directionally drill wells to leasehold interests other than those owned by FEI or to any other mineral or leasehold interests reasonably accessible from the surface of the Property as long as such operations from the Oil and Gas Operations Area do not unreasonably interfere with the operations of FEI. Such reserved rights may be assigned by Boomerang to third parties in Boomerang's sole and absolute discretion. FEI shall reasonably cooperate in granting easements to Boomerang which may be necessary to directionally drill through FEI's leasehold interest to access such other Leasehold interests or minerals.

**1.6 WAIVER OF CERTAIN REQUIREMENTS.** Boomerang waives all setback requirements in Colorado Oil and Gas Conservation Commission ("COGCC") Rule 603, or any successor rule or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of FEI to explore for and produce oil and gas in accordance with this Agreement.

**2. PIPELINES.** All flowlines from the Wells to the production facilities shall be located wholly within the Oil and Gas Operations Area. Boomerang shall grant a reasonably acceptable pipeline right of way to FEI's gas purchaser within the Pipeline Easement area for the limited purpose of transporting produced gas off of the Property. All flowlines and pipelines shall be buried to a minimum depth of four (4) feet.

**3. SURFACE RECLAMATION.** FEI, its successor and assigns, shall be responsible for the costs of interim and final reclamation and surface restoration related to such operations to the extent required by the COGCC and to the extent required to make the area usable for surface development consistent with the surrounding area and to satisfy any additional requirements as set forth in any use by special review permit obtained by FEI from the City of Greeley.

**4. ACCESS.**

4.1 During Boomerang's development of the surface of the Property and at all times thereafter, Boomerang shall at all times provide FEI access to the Oil and Gas Operations Area and the Pipeline Easement granted to FEI, though the location of that access may vary from time to time in accordance with the needs and progress of such surface development. The temporary thirty (30) foot wide access road to be used for drilling operations and the permanent twenty (20) foot wide access road shall be located as shown on Exhibit "A" (the "Access Road").

4.2 If applicable, and as Boomerang constructs paved roads, curbs, gutters and sidewalks to accommodate Boomerang's infrastructure design, Boomerang shall continue to provide FEI access to the Oil and Gas Operations Area and Pipeline Easements and shall provide curb cuts at all access points. The curb cuts at the access points shall be at least thirty (30) feet wide. The paved roads leading to the access points, and the curb pans and gutters at the access points shall be reinforced to accommodate a gross vehicle weight of at least 18,000 pounds per axle. Boomerang at its sole cost and expense shall be entitled to relocate the Access Road as deemed appropriate by Boomerang in its surface development so long as such other access is reasonably acceptable to FEI.

4.3 All access for Oil and Gas Operations shall be subject to approval of the City of Greeley as part of FEI's use by special review permit.

4.4 FEI agrees to construct and maintain the Access Road in a good condition and at its sole cost and expense and to utilize materials for the surface of the access road that will prevent the tracking of mud, as reasonably as practicable, onto the paved surfaces connecting to the Access Road. FEI also agrees to maintain the present gate located on 66<sup>th</sup> Avenue.

**5. PRODUCTION FACILITIES.** FEI shall have the right to locate, relocate, build, repair and maintain oil tanks, separators, dehydrators, compressors and other equipment necessary, appropriate or convenient for the operation and production of the Wells limited, however, to the Production Facility Area designated for such purpose on Exhibit "A." All tanks and separators shall be "low profile" as defined in the rules and regulations of the City of Greeley. With respect to the Wells and production facilities of FEI, other than pipelines and access roads, FEI shall install and maintain fences, gates and locks reasonably necessary for the security of the Wells within the Oil and Gas Operations Area and the production facilities in the Production Facility Area. Such fences, gates and locks shall be installed at the expense of FEI and maintained at the expense of FEI and shall be of a type and quality customarily used for such purpose in an urban area and subject to approval of the City of Greeley.

**6. NOTICE OF FUTURE OPERATIONS.** FEI shall provide at least seven (7) days prior written notice to Boomerang in advance of any operations (other than the drilling of new wells) within the Oil and Gas Operations Area in connection with the reworking, fracturing, deepening or other unusual or other than routine operations on the Wells; provided, however, that FEI shall have immediate access in the event of an emergency.

**7. PRELIMINARY AND FINAL PLATS.** The Final Plat prepared by the Boomerang as part of the subdivision approval process for the Property (if any) shall include the Wells, production facilities, Pipeline Easement, and Access Road.

**8. CONSIDERATION FOR DIRECTIONAL DRILLING.** FEI shall be responsible for any and all costs related to directional drilling of the Wells.

**9. FUTURE OPERATIONS.** FEI shall make all reasonable efforts to pursue any and all Oil and Gas Operations in a diligent manner so as to minimize the total time period on location and to avoid rig relocations or startup delays during the course of drilling. Boomerang waives and shall not assert any right to require that wellhead or production equipment be located in conformance with setback requirements different from those agreed to in this Agreement (including, but not limited to, those concerning any "high density" rules of the COGCC).

**10. DEFAULT UNDER OVERRIDING ROYALTY AGREEMENT.** The parties hereto do hereby agree any default under the terms of the Overriding Royalty Agreement shall be deemed a default under this Agreement and shall be cause for the termination of FEI's right to access the surface of the Property in any way whatsoever. Additionally, the parties hereto agree that no well shall be drilled from the surface of the Oil and Gas Operations Area unless and until satisfaction of all requirements of the Overriding Royalty Agreement have been confirmed by all parties thereto.

11. **DEFAULT AND RIGHT TO CURE.** In the event of alleged default by either party in the payment of any of the sums herein provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement said party will be notified, by certified mail, return receipt requested, of the alleged default. The receiving party will have thirty (30) business days from receipt of written notification in which to cure the alleged default, dispute or otherwise respond to the notification before the other party may allege default in any court. Except as otherwise agreed in writing, no waiver by either party of any breach by the other party of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by either party to seek a remedy for any breach by the other party be deemed to be a waiver of rights or remedies with respect to such breach. In no event will either party be liable to any party for consequential or exemplary damages for activities undertaken within the scope of this Agreement.

**12. GOVERNMENTAL PROCEEDINGS.**

12.1 Boomerang shall not, directly or indirectly, oppose or encourage opposition to FEI in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, the County of Weld, the City of Greeley, or other governing body proceedings related to the operations of FEI within the Oil and Gas Operations Area, including but not limited to drilling and production activities, workovers, well deepenings, recompletions, fracturing, replacement wells and re-fracturing, provided that the position of FEI in such proceedings is not materially inconsistent with this Agreement.

12.2 FEI shall not directly or indirectly oppose or encourage opposition to Boomerang in any agency, administrative, or other governing body proceedings, relating to Boomerang's operations on and development of the Property, including residential and associated development, provided that Boomerang's position in such proceedings is not materially inconsistent with this Agreement.

12.3 This Agreement is subject to approval of the City of Greeley in its use by special review permitting procedures and by the COGCC in its application for permit to drill procedures. Should the City of Greeley or the COGCC have requirements that are contrary to the provisions of this Agreement, the parties hereto agree to work in good faith to resolve said conflicting provisions in a way that allows the oil and gas development contemplated herein without increasing the burdens on the use of the surface of the Property.

**13. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.**

13.1 NO PARTY SHALL BE LIABLE FOR, OR BE REQUIRED TO PAY FOR, SPECIAL PUNITIVE OR EXEMPLARY DAMAGES TO ANY OTHER PARTY FOR ACTIVITIES UNDERTAKEN WITHIN THE SCOPE OF THIS AGREEMENT.

13.2 Each party shall be and remain responsible for all liability for losses, claims, damages, demands, suits, cause of action, fines, penalties, expenses and liabilities, including without

limitation attorneys' 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, including each such parties' employees, agents, contractors, subcontractors or other invitees on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold harmless against all such Claims that arise from its negligence. 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.

**14. EXCLUSION FROM INDEMNITIES.** The indemnities of any party herein shall not cover or include any amounts, which the indemnified party may recoup from any third party, or that for which the indemnified party is reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

**15. NOTICE OF CLAIM FOR INDEMNIFICATION.** If a Claim is asserted against a party for which another party would be liable under the provisions of 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 thirty (30) days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

**16. REPRESENTATIONS.** Each party represents that it has the full right and authority to enter into this Agreement and Boomerang specifically confirms its capacity to validly execute the rights of way and easements provided for herein. FEI represents that it owns oil and gas leasehold associated with the Wells anticipated to be drilled from the surface of the Property.

**17. SUCCESSORS.** The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, devisees, executors, administrators, successors and assigns. This Agreement and all of the covenants herein shall be covenants running with the land.

**18. NOTICES.** Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in the U.S. Mail, postage prepaid, with a copy sent via facsimile, addressed to each of the following:

**If to FEI:**

Francis Energy, Inc.  
4539 14<sup>th</sup> Street  
Greeley, CO 80634

AND

Petroleum Exploration & Management, LLC  
20203 Hwy 60  
Platteville, CO 80651

**If to Boomerang:**

Boomerang Development Company  
711 10<sup>th</sup> Street, #200  
Greeley, CO 80631

With a copy to:

Otis, Coan & Stewart, LLC  
ATTN: G. Brent Coan  
1812 56<sup>th</sup> Avenue  
Greeley, CO 80634

Any party may, by written notice so deliver to the other party, change the address, fax number or individual to which delivery shall thereafter be made.

**19. RECORDING.** Within fifteen (15) days of the Effective Date, Boomerang shall record a complete copy of this Agreement in the real property records of the County of Weld, Colorado. Boomerang shall provide FEI with a copy thereof showing the recording information as soon as practicable thereafter.

**20. SURFACE DAMAGES AND PAYMENT.** FEI shall provide not less than thirty (30) days written notice to Boomerang of its intent to drill the Wells and pay Boomerang \$10,000.00 per well described in such notice upon approval of COGCC application for permit to drill and City of Greeley use by special review permits said Well or Wells. In consideration of the parties' respective rights, obligations and benefits, as outlined herein, this Agreement shall constitute a surface use or surface damage agreement provided for under the COGCC's Rules and Regulations.

**21. APPLICABLE 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.

**22. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding among the Parties 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.

**23. 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.

**24. TIME OF ESSENCE.** Time is of the essence in this Agreement.

**25. NON-WAIVER.** Waiver by either party or of the failure of any party to insist upon the strict performance of any provisions 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.

26. **SEVERABILITY.** Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice a party in its rights and obligations contained in valid covenants, conditions or provisions. In the event that any part of this Agreement would otherwise be unenforceable or in conflict with applicable laws due to the term or period for which such part is in effect, the term or period for which such part of this Agreement shall be in effect shall be limited to the longest period allowable which does not cause such part to be unenforceable or in conflict with applicable laws.

27. **FORCE MAJEURE.** In the event either party is rendered unable, by an event of Force Majeure (defined below) to perform, wholly or in part, any obligation set forth in this Agreement, other than the obligation to pay money, then the performance by the affected party will be suspended during the continuance of such event of Force Majeure. The party experiencing an event of Force Majeure will provide reasonable notice to the other party as soon as possible with all reasonable dispatch. As used herein, the term "Force Majeure" shall mean any act of God, acts of the public enemy, wars, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, severe weather, floods, washouts, arrests and restraints of the federal, state or local government, civil disturbances, explosions, breakage or accidents to machinery or pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, delay in securing environmental approvals, the inability to obtain necessary supplies, materials, equipment, machinery or labor and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspensions and which by exercise of due diligence such party is unable to prevent or overcome.

28. **NO JOINT VENTURE.** This Agreement is not intended to, nor shall it be interpreted to create a joint venture, partnership or any other relationship among the parties.

29. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.

30. **TERMINATION.** Unless otherwise agreed in writing, the rights of FEI its successors and assigns to use the Oil and Gas Operations Area shall terminate upon the later of the expiration or termination of the Lease or the plugging and abandonment of the Wells with a surface location within the Oil and Gas Operations Area operated by FEI.

30. **COUNTERPARTS.** This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

The parties have executed this Agreement as of the day and year first above written, and shall be binding on Boomerang and FEI, their successors and assigns.

Francis Energy, Inc.

*[Handwritten Signature]*

By: Nicholas D. Francis  
Its: president

Boomerang Development Company

By: *[Handwritten Signature]*  
Its: VP

**ACKNOWLEDGMENTS**

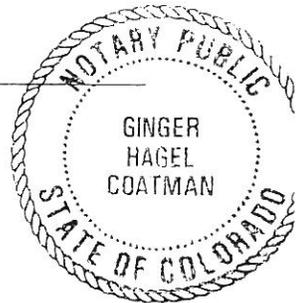
STATE OF COLORADO )  
 )ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of August, 2008, by Nick Francis, as President of Francis Energy, Inc., on behalf of said corporation.

Witness my hand and official seal.

My Commission Expires:  
April 26, 2011

*[Handwritten Signature]*  
Notary Public



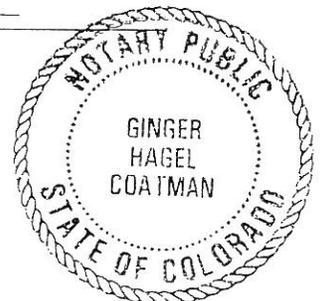
STATE OF COLORADO )  
 )ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of August, 2008, by Brian Bartels, as Vice President of Boomerang Development Company on behalf of said corporation.

Witness my hand and official seal.

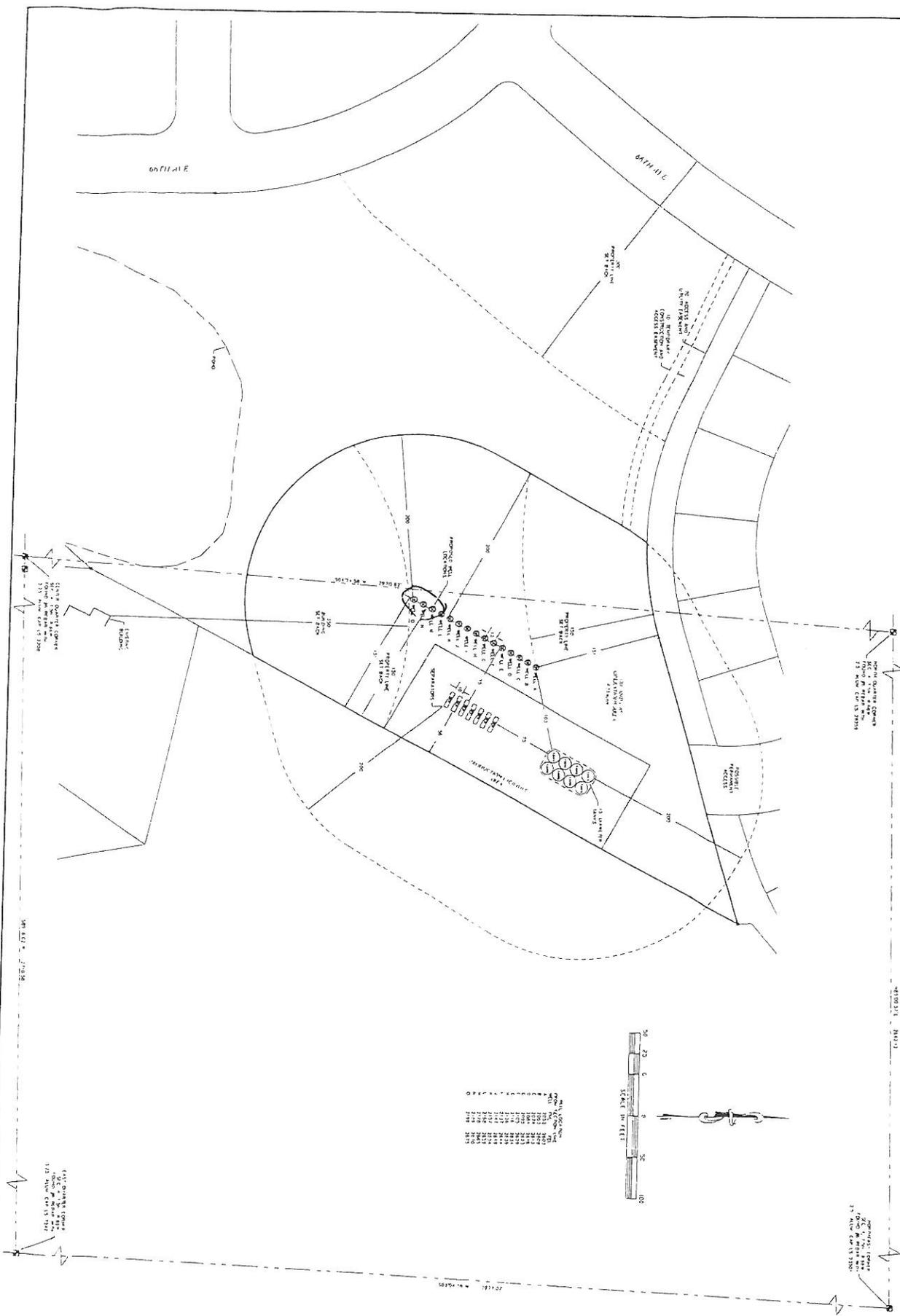
My Commission expires:  
April 24, 2011

*[Handwritten Signature]*  
Notary Public



# EXHIBIT A SITE PLAN

## TRACT 1, NORTH RIDGE ESTATES GREELEY, CO



PROJECT 7  
2008155

EXHIBIT A SITE PLAN  
FOR  
BRIAN BARTELLS  
TRACT 1, NORTH RIDGE ESTATES  
GREELEY, CO

REVISIONS	DATE



**KING SURVEYORS, INC.**  
650 Garden Drive | Windsor, Colorado 80550  
phone: (970) 686-5011 | fax: (970) 686-5821

DATE	6-30-08
PREPARED BY	2008155/DIC
CHECKED BY	
SCALE	1"=50'
DRAWN BY	
DATE	
CHECKED BY	
DATE	