

## SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("Agreement") is dated and made effective this 1st day of MAY, 2008, and is between KERR-MCGEE OIL & GAS ONSHORE LP ("KMG") with an address of 1099 Eighteenth Street, ATTN: Wattenberg Land Dept., Denver, Colorado 80202, and MIRACLE ON 34, LLC, a Colorado Limited Liability Company ("Surface Owner") with an address of 1218 West Ash, Suite A, Windsor, Colorado 80550.

A. Surface Owner owns the surface estate of that certain tract of land more particularly described on Exhibit "A" attached hereto, being a portion of the S1/2 of Section 12, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., Larimer County, Colorado (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, some or all of which is now owned by KMG;

C. Surface Owner plans to develop the surface of the Property in the future;

D. KMG has the right to develop its oil and gas leasehold estate by drilling wells (the "Future Well(s)") on the Property; and

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 is hereby acknowledged, the parties agree as follows:

### 1. AREAS RESERVED FOR FUTURE WELLS.

Surface Owner shall set aside and provide to KMG those specific portions of the Property hereinafter referred to as the "Oil and Gas Operations Areas", such area(s) being as depicted on Exhibit "B" attached hereto. The Oil and Gas Operations Areas are to be made available to KMG in their present condition for any operations conducted by KMG in connection with any Future Well(s), including, but not limited to, drilling and production activities, workovers, well deepening, recompletions, fracturing and replacement wells. Except for the Oil and Gas Operations Areas, and the access roads and easements associated with flowlines, gathering lines and pipelines as provided in this Agreement, KMG shall not occupy any part of the surface of the Property except in the event of an emergency or for reasonable incidental, temporary and non-

before it drills the Future Wells assigned to the other Operations Area. If KMG commences drilling operations for the Off Lease Locations assigned to the Operations Area for which drilling operations for Future Wells have ceased before it drills the Future Wells assigned to the remaining Operations Area, Surface Owner will be entitled to the compensation provided for in paragraph 23 on an Off Lease Location by Off Lease Location basis IN ADDITION to all other payments provided for in this Agreement and the Lease.

### 3. SETBACK REQUIREMENTS.

Surface Owner will not locate any lot line, building, or structure within any Oil and Gas Operations Area. 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 waives its right to object to the location of any of KMG's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time, provided that in no event shall such waiver be construed as permitting any operation or location of any structure, improvement or equipment by KMG outside the boundaries of the Oil and Gas Operations Areas or the Petroleum Pipeline Easement. Surface Owner further and similarly waives its right 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, 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 paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. Surface Owner agrees not to object to the use of the surface in the Oil and Gas Operations Areas so long as such use is consistent with this Agreement and Surface Owner will provide KMG or its successors and assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction, provided that Surface Owner shall not be required to incur any cost or expense, or undertake any obligation or liability, in doing so.

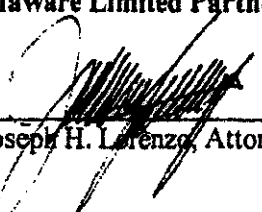
### 4. GATHERING LINES AND FLOWLINES.

Subject to the limitations hereinafter described, KMG has 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, at the locations depicted as "Petroleum Pipeline Easement(s)" on the attached Exhibit "B." This Agreement is intended to confine the placement of those pipelines to certain specified locations within the Property, but Surface Owner shall consent to such other or additional locations as may be reasonably necessary for KMG to make all necessary well connections to any Future Well, provided that Surface Owner shall not be required to consent to any such location that will materially burden, impact or interfere with the development and use of the Property.

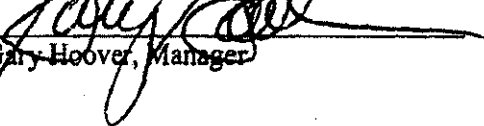
It is anticipated that any additional pipelines, flowlines and gathering lines that may be required in the future ("Future Pipelines") will also be placed within, or relocated to the Petroleum Pipeline Easement(s). Any such relocations shall be at Surface Owner's cost and

The parties have executed this Surface Use Agreement on the day and year first above written.

**KERR-MCGEE OIL & GAS ONSHORE LP,  
a Delaware Limited Partnership**

By:   
Joseph H. Lorenzo, Attorney-in-fact 

**MIRACLE ON 34, LLC,  
a Colorado Limited Liability Company**

By:   
Gary Hoover, Manager

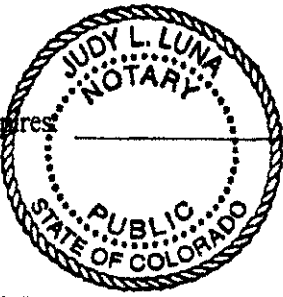
ACKNOWLEDGMENTS

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

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2008, by Joseph H. Lorenzo, as Attorney-in-Fact of KERR-MCGEE OIL & GAS ONSHORE LP, a Delaware Limited Partnership, on behalf of such corporation.

Witness my hand and official seal.

My Commission Expires \_\_\_\_\_



My Commission Expires 01/18/2011

Judy L. Luna  
Notary Public

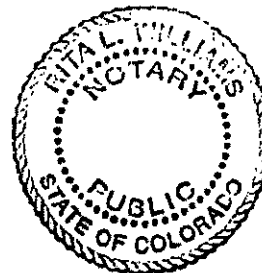
STATE OF COLORADO     )  
                                   ) ss.  
COUNTY OF WELD         )

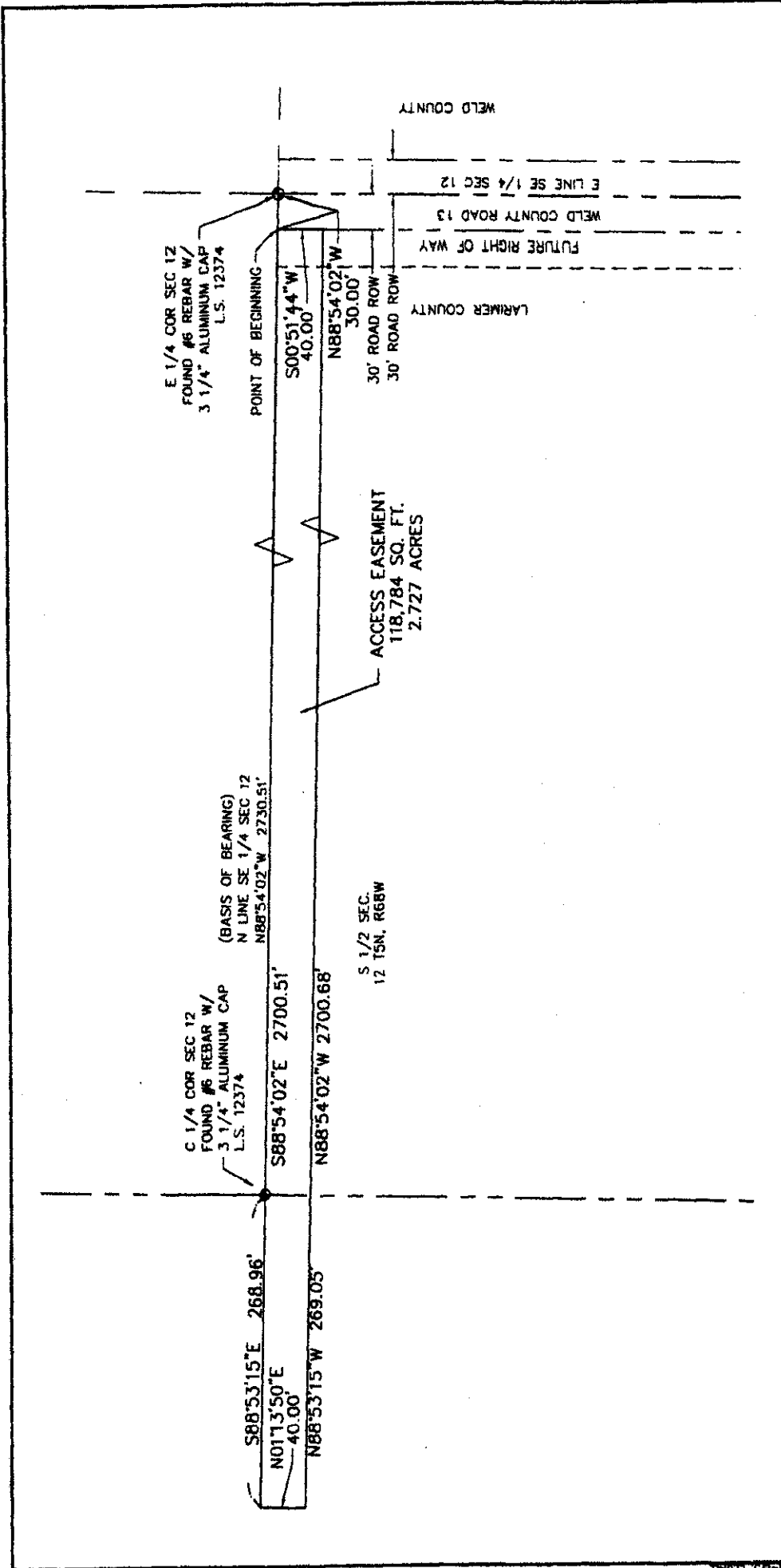
The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 2008, by Gary Hoover as Manager of MIRACLE ON 34, LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.

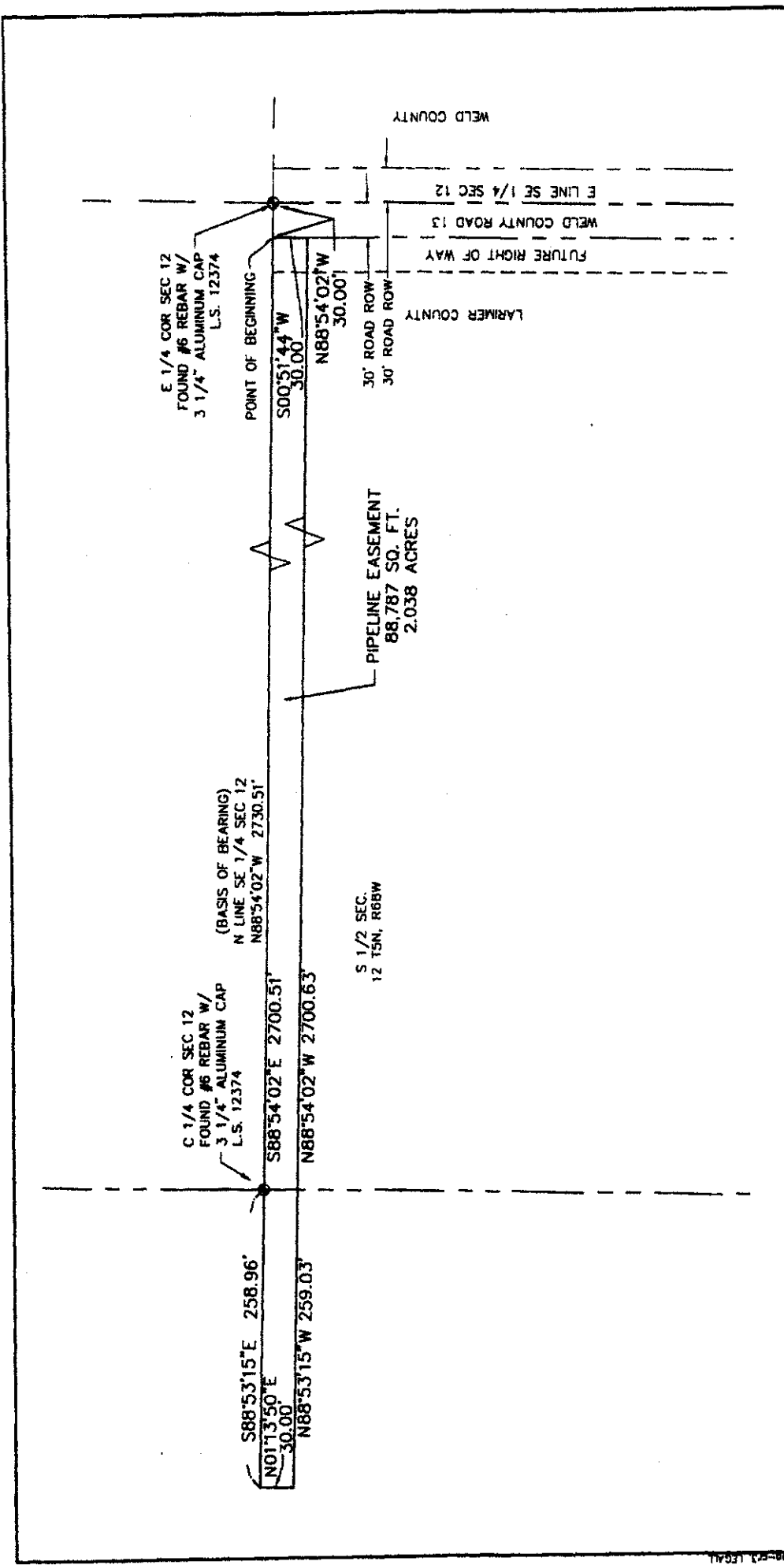
My Commission Expires: 10/21/2009

Rital Williams  
Notary Public





<b>NOIJE</b> SURVEY ENGINEERING 1000 WEST 10TH AVE. SUITE 100 FORT COLLINS, CO 80501		DATE: 4/28/08 TIME: 3:04:50 PM NETWORK: JTS PATH: H:\PROJECTS\ACQUVT DWG NAME: E1-ACCESS.DWG LAYOUT: Layout DESIGNER: AN MGR: LAL		SHEET NUMBER <b>3</b> OF 5 SHEETS JOB NUMBER PC00790	
<b>EXHIBIT B</b> <b>ACCESS EASEMENT</b> <b>S 1/2, SEC. 12, T. 5 N., R. 68 W. JOHNSTOWN, CO</b>		PREPARED FOR: HARTFORD HOMES DATE SUBMITTED: 04/28/08			



<b>NOTICE</b> SEE MAP FOR FULL AND A COMPLETE SET OF RECORDS INCLUDING ALL SURVEYING DATA AND FIELD NOTES	DATE: 4/28/08 TIME: 3:11:20 PM NETWORK: FST PATH: R:\COORDINATES\ET DWG NAME: ET-PIPELINE.DWG LAYOUT: LAYOUT DESIGNER: AN MICR LA	<b>EXHIBIT B</b> <b>PIPELINE EASEMENT</b> <b>S 1/2, SEC. 12, T. 5 N., R. 68 W., JOHNSTOWN, CO</b> PREPARED FOR: HARTFORD HOMES DATE SUBMITTED: 04/29/08	SHEET NUMBER <b>4</b> OF 8 SHEETS JOB NUMBER FCS0180
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LANDAU SURVEYING, INC. 15041

