

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("**Agreement**") is dated and made effective this 3 day of March, 2009, and is between KERR-MCGEE OIL & GAS ONSHORE LP, a Delaware limited partnership ("**KMG**") with an address of 1099 Eighteenth Street, ATTN: Wattenberg Land Dept., Denver, Colorado 80202, and ENCORE, 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 NW 1/4 of Section 12, Township 5 North, Range 68 West of the 6th 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 that specific portion of the Property hereinafter referred to as the "**Oil and Gas Operations Area**", such area being as depicted on Exhibit "B" attached hereto. The Oil and Gas Operations Area is to be made available to KMG in its 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 deepenings, recompletions, fracturing and replacement wells. Except for the Oil and Gas Operations Area, 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-

damaging activities, for which KMG shall be strictly and solely responsible for any damages that may occur.

2. WELL LOCATIONS.

KMG shall have the right to drill Future Wells within the Oil and Gas Operations Area, including horizontal and directional wells that produce from and drain all or portions of the Property, and including horizontal and directional wells that produce from and drain lands other than the Property, provided that the Future Wells drilled from the Oil and Gas Operations Area shall be limited to the Future Wells that are illustrated on Exhibit "B," and further provided that such locations must be permitted locations under the then applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC. As part of the consideration for this Agreement, Surface Owner hereby waives its right to, and covenants that it shall not protest or object to any such exception location or application for same by KMG, provided that such exception location is consistent with this Agreement (including, without limitation, the restriction of Future Wells with respect to the Oil and Gas Operations Area). KMG shall not otherwise have the right to drill new wells on the Property. Notwithstanding the foregoing, the wellhead location of any Future Well drilled from the Oil and Gas Operations Area shall not be closer than 150' from a residential lot line.

Surface Owner and KMG have agreed to the location and the size of one Oil and Gas Operations Area from which the operations on the Lease for the drilling, operation and maintenance of the Future Wells is to take place. The location of the Oil and Gas Operations Area is depicted on Exhibit "B" attached hereto and the same is labeled "Operations Area" Exhibit "B" also illustrates the Future Wells that are to be drilled from the Operations Area. Exhibit "B" also illustrates one (1) bottom hole location in the NE 1/4 of Section 12 (the "Off Lease Location") that may be drilled by KMG from a surface location within the Operations Area. Surface Owner specifically agrees that KMG may drill the Off Lease Location, on the Operations Area, from the surface location assigned to it within the Oil and Gas Operations Area PROVIDED THAT KMG drills all of the Future Wells illustrated on Exhibit "B" for the Operations Area for which drilling operations are commenced before it drills the Off Lease Location from the Operations Area.

Surface Owner acknowledges that the bottom hole locations for the Future Wells and the Off Lease Location illustrated on Exhibit "B" are not the actual bottom hole locations for those wells. The actual bottom hole locations for each of the Future Wells and the Off Lease Location will be determined by KMG in the ordinary course of KMG's economic, engineering and geologic evaluations of potential oil and gas well drillsites.

KMG acknowledges that a substantial portion of the consideration for Surface Owner in agreeing to the terms and conditions of this Agreement, is the commitment by KMG to drill five (5) wells with bottom hole locations underlying the Property. If KMG elects to cease drilling operations in connection with any of the Future Wells that may be drilled from the Operations Area before all of the Future Wells assigned to the Operations Area are drilled, KMG may still drill the Off Lease Location assigned to the Operations Area. If KMG commences drilling operations for the Off Lease Location assigned to the Operations Area for which drilling

operations for Future Wells have ceased before it drills the Future Wells assigned to the Operations Area, Surface Owner will be entitled to the compensation provided for in paragraph 23 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 the 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 Area 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 Area 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 expense. At such time as Surface Owner desires to have any Future Pipelines relocated to the Petroleum Pipeline Easement or an alternative location selected by Surface Owner, Surface Owner shall give written notice to KMG who shall promptly prepare, or commission the

preparation of, a cost estimate to accomplish the relocation. As soon as available, KMG will then provide the cost estimate to Surface Owner who will then have the opportunity to review same and make a final determination about whether it wishes to proceed with the relocation. If Surface Owner elects to have KMG effectuate the pipeline relocation, it shall tender the estimated costs of such to KMG together with its written request to commence the project as soon as reasonably practicable, or as otherwise requested by Surface Owner.

Surface Owner shall from time to time, as appropriate, deliver to KMG an executed and acknowledged Pipeline Right of Way Grant on the form that is attached hereto as Exhibit "C" in order to convey the Petroleum Pipeline Easement(s). The Petroleum Pipeline Easement(s) shall be fifty feet (50') in width during construction, installation or relocation operations and otherwise reduced to thirty feet (30') in width for post-construction usage. KMG shall abandon all pipeline locations that will no longer be used due to any relocation but only after the completion of such relocations and after such time as Surface Owner has provided KMG with a new Pipeline Right of Way Grant if such relocation requires a new Petroleum Pipeline Easement.

All relocated and Future Pipelines shall be located within the Petroleum Pipeline Easement(s) unless otherwise agreed upon between Surface Owner and KMG. KMG acknowledges that the Petroleum Pipeline Easement will be non-exclusive and agrees that it will not object to its concurrent use by other oil and gas operators or utilities, as Surface Owner may grant from time to time, so long as such other parties comply with KMG's pipeline guidelines, attached hereto as Exhibit "D." Notwithstanding the foregoing, Surface Owner shall not permit, nor shall it place any other utility or structure within ten feet horizontally or two feet vertically of any KMG pipeline. The Petroleum Pipeline Easements and Oil and Gas Operations Area shall be depicted and labeled on all subdivision plats submitted to Larimer County or the Town of Johnstown.

If Surface Owner's development plans anticipate that roadways will or may in the future cross over any then existing Pipelines, Surface Owner agrees to pay for the cost to have KMG sleeve or lower, as KMG may elect, any such Pipeline that is to be crossed by such roadways, such payment to be made in advance of the work and Surface Owner shall not permit any roadway crossing of any such Pipeline until the sleeving or lowering of the affected line has been completed.

KMG shall not, without the prior written consent of Surface Owner, have the right to lay additional flowlines or pipelines on the Property, outside the Petroleum Pipeline Easement. All flowlines and pipelines shall be buried to a depth of approximately 48 inches from the surface. Surface Owner shall maintain a minimum of 48 inches and not more than 72 inches of cover over all pipelines and flowlines during any of Surface Owner's operations on the Property. The construction and burying of additional flowlines, gathering lines and pipelines shall be at the sole cost and expense of KMG or its gas purchaser.

5. ACCESS.

Surface Owner shall provide KMG with continuous access to the Oil and Gas Operations Area and the Petroleum Pipeline Easement; provided that unless otherwise agreed to by Surface

Owner, KMG shall access the Oil and Gas Operations Area, the Pipelines and any Future Pipelines over and across roadways located within the Petroleum Pipeline Easement(s) and/or the Access Easement; provided further that KMG shall be responsible for the construction, repair and amintenance of any such access roadway. At the option of Surface Owner, the access roads to be used by KMG will be those roads, if any, that are eventually constructed by Surface Owner at its sole cost and expense as part of Surface Owner's development of the Property. Nothing contained herein shall be construed as obligating Surface Owner to construct any such roads. If any such access roads are to be used by KMG, Surface Owner shall cause such roads to be constructed of sufficient scope to allow KMG to conduct it oil and gas operations (at least 30 feet in width and built to withstand a minimum of 104,000 pounds and 26,000 pounds per axle). At Surface Owner's option, and provided that the foregoing specifications are met, KMG agrees to access the Property according to such roads once the roads are constructed by Surface Owner and Surface Owner provides KMG notice of such. Pending construction of such roads, KMG may use such access routes as are depicted on the attached Exhibit "B" or as otherwise agreed by Surface Owner, until that time and until receipt of notice from Surface Owner of Surface Owner's election to provide alternative access. KMG shall have the right to move derricks, drilling tools, vehicles and other machinery and equipment necessary or incident to the drilling, testing, completion or operation of the Oil and Gas Operations Area, but shall promptly repair any damages caused to any access roads or any other portion of the Property (but not to growing crops) in connection with such activities.

6. BATTERIES AND EQUIPMENT.

KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and other equipment reasonably appropriate for the operation and production of any Future Wells only within the Oil and Gas Operations Area.

With respect to KMG's equipment and facilities other than flowlines or pipelines:

a. KMG shall install and maintain, at its sole cost and expense, all fences around any Future Wells in compliance with the Rules and Regulations of the COGCC. Surface Owner has and shall have the right and option, at its sole discretion (and at Surface Owner's sole expense), to upgrade the design of the fence and fencing material provided only that in doing so Surface Owner shall not conflict with the Rules and Regulations of the COGCC, and further provided that such fences shall not materially interfere with KMG's access to the Oil and Gas Operations Area or KMG's pipelines contemplated by this Agreement or with KMG's operations in accordance with this Agreement. If Surface Owner elects to upgrade the fence, KMG shall not be responsible for any additional cost or expense in repairing or maintaining the upgraded fence to the extent impacted or damaged by KMG's normal and customary operations or for damage occurring in obtaining emergency access to the Oil and Gas Operations Area;

b. KMG shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of any wells or facilities in the Oil and Gas Operations Area. Such gates and locks shall be the standard gates and locks used by KMG;

c. KMG shall paint any production facilities for any wells, including wellhead guards, with paint of a color approved by Surface Owner (which approval shall not be unreasonably withheld), provided that same is in compliance with the Rules and Regulations of the COGCC. Without limiting any other maintenance obligation of KMG, KMG shall repaint all such facilities as reasonably needed;

d. Surface Owner shall have the right to install landscaping and other improvements for the purpose of buffering or isolating the Oil and Gas Operations Area from the remainder of the development of the Property, provided only that Surface Owner shall not unreasonably inhibit KMG's access to the Oil and Gas Operations Area or unreasonably inhibit KMG's operations within the Oil and Gas Operations Area by such landscaping or other improvements, unless otherwise agreed upon between Surface Owner and KMG, which agreement shall not be unreasonably withheld;

e. KMG shall install and maintain, at its sole cost and expense, the latest/best technology for equipment and facilities reasonably available to mitigate noise, odor and other adverse impacts of its operations with the Oil and Gas Operations Area, including, without limitation, maximum 8 foot tank batteries and similar equipment, enclosed separator units, vapor recovery units, and emission control devices. To the extent feasible, KMG shall use electric motors and underground electrical lines to power production operations;

f. KMG shall use commercially reasonable efforts to keep the Oil and Gas Operations Area free of weeds and debris; and

g. KMG shall not, pursuant to this Agreement, install gas collection facilities or other similar major gathering, treatment or processing facilities on the Oil and Gas Operations Area or anywhere else on the Property.

Without limiting any of the foregoing, KMG shall at all times properly maintain and keep in good repair and condition any landscaping installed by KMG, and all fences, roads, well drilling and production facilities and other improvements installed or permitted to be installed in connection with the Oil and Gas Operations Area, Petroleum Pipeline Easements or Access Areas, in order to keep such locations and facilities in good and safe working order and to maintain such facilities, use appropriate dust abatement procedures on all areas, including, without limitation, application of dust inhibitors as and when reasonably necessary, and otherwise maintain the sites in as good repair and conditions as is reasonably possible consistent with KMG permitted operations under this Agreement.

7. NOTICE OF FUTURE OPERATIONS.

KMG shall provide at least seven (7) days prior written notice to Surface Owner of any anticipated operations in connection with the reworking, fracturing, deepening or recompletion operation on any Future Well(s); provided, however, that KMG shall provide at least thirty (30) days prior written notice to Surface Owner and/or any homeowner's or property owner's association formed by Surface Owner that is associated with the Property upon the drilling of any Future Well or Wells. Regardless of the foregoing notice requirements, KMG shall have immediate access to any of its facilities in the event of an emergency.

After receipt of the above notice, but not less than five (5) working days prior to KMG's mobilization on the Oil and Gas Operations Area, either KMG or Surface Owner may request an on-site meeting. The purpose of the meeting shall be to inform Surface Owner of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of Surface Owner's development. In addition, KMG shall, at such meeting, consult with the Surface Owner regarding the anticipated location of operations and equipment facilities on the Oil and Gas Operations Area, use of access roads and installation and timing of pipelines and other associated production facilities.

8. NOTICES TO FUTURE SURFACE OWNERS AND BUILDERS.

Surface Owner shall furnish all buyers of all or any part of the Property from Surface Owner with a plat or map showing the Oil and Gas Operations Areas and the Petroleum Pipeline Easement(s). Surface Owner may comply with such requirement by providing a copy of this Agreement, with Exhibit "B" attached. In addition, Surface Owner shall provide notice to all builders, owners, homeowner or property owner associations and other buyers of the Property from Surface Owner that:

a. There may be ongoing oil and gas operations and production in the Oil and Gas Operations Area on the surface of the Property;

b. There are likely to be additional Future Wells drilled and oil and gas operations and production from the Oil and Gas Operations Area that affect the surface of the Property;

c. Heavy equipment may be used by KMG from time to time for oil and gas production operations and that such operations may be conducted on a 24 hour basis; and

d. Future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, will be subject to the terms, conditions, covenants, obligations and restrictions contained in this Agreement. Without limiting the foregoing, homeowner or property owner associations and buyers of individual lots, homes or buildings, as successors in interest to Surface Owner, will be subject to the waivers contained in paragraphs 3, 9, and the covenants contained in paragraph 3 prohibiting the location of any building or structure within the Oil and Gas Operations Area or the Petroleum Pipeline Easements and waiving objection to any setback rules of the COGCC or any local jurisdiction.

9. DRILLING/COMPLETION/ABANDONMENT OPERATIONS.

a. KMG shall endeavor to diligently pursue any drilling operations to minimize the total time period 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, provided that such operations are conducted in compliance with the Rules and Regulations of the COGCC and of any other applicable governmental authority with lawful jurisdiction over such matters provided that such Rules and Regulations do not create operational conflicts with COGCC Rules and Regulations.

b. KMG acknowledges that it is the intent of Surface Owner to further develop the surface of the Property and adjacent property, and KMG shall use commercially reasonable efforts in the conduct of all operations pursuant to this Agreement to accommodate such use and development, and to conduct its operations in such a way as not to interfere with such use and development, provided that such operations in compliance with this Agreement shall be deemed to conform to the requirements of this subparagraph. Surface Owner acknowledges that it is the intent of KMG to conduct further drilling and production operations on specified portions of the Property, and Surface Owner shall use commercially reasonable efforts in its use and development of the surface so as not to interfere with such drilling and production operations, provided that nothing contained herein shall be construed as requiring Surface Owner to allow KMG to conduct any such operations at any location other than the Oil and Gas Operations Area, the access routes provided for in this Agreement and Petroleum Pipeline Easements identified in this Agreement, nor shall this provision be construed as precluding Surface Owner from using and developing the Property for any residential, commercial or other purpose permitted by any applicable governmental zoning laws, rules and regulations.

c. Upon abandonment of any well, KMG shall promptly plug and abandon same in complete accordance with any requirement of the COGCC and any other applicable governmental authority with lawful jurisdiction over such matters provided that such requirements do not create operational conflicts with COGCC requirements. In addition, upon abandonment of the Oil and Gas Operations Area (or any part thereof), KMG shall fully restore the location as near as practical to its predrilling state (provided that, at the option of Surface Owner, any berms and landscaping installed by KMG or Surface Owner may remain in place). Without limiting the foregoing, KMG shall also fully reclaim and restore to its original condition any temporary access roads or Pipeline Easement Areas used by KMG (subject to the option of Surface Owner, exercisable in its sole discretion, to maintain such roads in place). Without limiting the foregoing, KMG shall remove all fixtures and property, including, without limiting, drawing and removing all casing (except to the extent permitted to plug and abandon same in place by the Rules and Regulations of the COGCC), within ninety (90) days after the earlier of abandonment of any individual well or expiration or termination of KMG's oil and gas leasehold pertaining to the Property. KMG shall reclaim the Oil and Gas Operations Area as nearly as practicable to its original condition and if the location is in a pasture, reseed the location with native grasses. Weather permitting; reclamation operations shall be completed within ninety (90) days following drilling and subsequent related operations, provided that the necessary equipment is available, unless KMG and Surface Owner mutually agree to postponement because of crop, weather or other considerations.

d. Any structures or facilities placed on the Oil and Gas Operations Area may be used for injection of salt water, fluids or other substances and may be also be used for operations hereunder on lands other than the Property. The right to use any such facilities with respect to operations on lands other than the Property may continue beyond the term of KMG's oil and gas leasehold with respect to the Property, subject to payment to Surface Owner by KMG, the sum of \$2,500.00 per year, per well, payable upon termination of KMG's oil and gas leasehold with respect to the Property and annually thereafter on or before the anniversary of such date.

10. GOVERNMENTAL PROCEEDINGS.

Surface Owner shall not oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, the Town of Johnstown or other governing body proceedings, related to KMG's operations on the Property, including but not limited to drilling, workovers, well deepenings and recompletions, provided that KMG's position in such proceedings is consistent with this Agreement, and in compliance with the Rules and Regulations of the COGCC and any other applicable governmental authority, including, without limitation, the Town of Johnstown.

KMG shall support Surface Owner in any agency or governmental proceedings, including but not limited to the Town of Johnstown or other governing body proceedings, related to Surface Owner's development of the Property provided that Surface Owner's position in such proceedings is consistent with this Agreement. Without limiting the foregoing, KMG agrees to deliver written evidence of its consent to such development consistent with this Agreement, including, without limitation, execution of any plats if required by the Town of Johnstown.

11. COMPLIANCE WITH APPLICABLE LAWS.

Surface Owner and KMG shall each, at all times, conduct their respective operations in compliance with all conditions or requirements of any and all applicable laws, rules, regulations, and requirements imposed by any governmental agency, including, without limitation, the COGCC. In the event that any condition set forth in any such law, rule and regulation, and any condition contained in this Agreement are in conflict, the more restrictive shall apply. In addition, each party shall conduct its operations, at a minimum, in compliance with the standards imposed by the COGCC and any other governmental authority with lawful jurisdiction over such matters provided that such standards do not create operational conflicts with COGCC standards, or agreed to by such party in connection with any use permit obtained from any governmental authority with respect to such party's operations. Nothing contained herein shall be construed as waiving the right of either party to contest any requirement sought to be imposed by any such governmental authority.

Without limiting any other provisions of this Agreement, each party shall conduct its respective operations in compliance with any and all governmental regulations and industrial standards with respect to health and safety considerations, and proper environmental protection, including, without limitation, mitigation of noise, drainage and erosion control, dust control, air, soil and water quality protection and visual impacts. Each party shall indemnify and hold harmless the other party from any loss incurred as a result of breach of any such standards. KMG shall also promptly remediate any contamination to soil or water, whether on the Oil and Gas Operations Area, or elsewhere, caused by its operations on or about the Property.

12. 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;

b. If by any reasons resulting from the operations of KMG, there is damage to real or personal property upon the Property which is not associated with usual and customary operations, such as (but not limited to) damage to livestock, structures, buildings, fences, culverts cement ditches, irrigation systems, and natural water ways, such damage will be repaired or replaced by KMG, or KMG will pay reasonable compensation to Surface Owner for such additional damage.

c. Except as to claims arising out of pollution or environmental damage (which claims are governed by paragraph 13, 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 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 such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. 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;

d. Upon the assignment or conveyance of a party's entire interest in the Property, that party shall be released from its indemnification in paragraph 12.c., above, for all actions or occurrences happening after such assignment or conveyance.

13. ENVIRONMENTAL INDEMNITY.

The provisions of paragraph 12, above, except for paragraph 12.a., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of paragraph 12.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 interest, 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 material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;

b. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order (whether currently existing or hereafter adopted) of any governmental authority(is), which relate to or otherwise impose liability, obligation, 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. Environmental Indemnification. KMG shall protect, indemnify, and hold harmless Surface Owner, any homeowners or property owners association and any subsequent owner of all or any portion of the Property from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of KMG's ownership and operation of the Oil and Gas Operations Area and its ownership and operation of its pipeline easement or rights-of-way on the Property. Surface Owner shall fully protect, defend, indemnify and hold harmless KMG from any and all Environmental Claims relating to the Property that arise solely out of Surface Owner's development of the Property (provided that discovery by Surface Owner, during the course of such development, of previously unknown Environmental Claims caused by KMG shall be the responsibility of KMG).

14. 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 any obligations to third parties.

15. 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 paragraph 12 or 13, 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 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. INSURANCE.

Before and during drilling and production operations on the Property, KMG shall at all times maintain appropriate insurance, including, without limitation, workers compensation insurance, in compliance with Colorado law for its employees or contractors involved in the conduct of operations on any portion of the Property and general public liability insurance in such amounts as are customarily maintained for operations similar to those conducted by KMG.

17. REPRESENTATIONS.

Each party represents that it has the full right and authority to enter into this Agreement. Surface Owner does not represent that it has rights to settle matters for any of the mineral owners in the Property and this Agreement shall apply only to and bind Surface Owner's surface interest in the Property. KMG does not represent that it has rights to settle matters for all of the mineral

owners or any other lessees in the Property and this Agreement shall only apply to and bind the KMG leasehold interest in the Property.

18. DEFAULT REMEDIES.

The parties to this Agreement acknowledge and declare that it would be impossible or difficult to measure in money the damages which would accrue to either party by reason of the failure of the other party to perform its obligations as set forth herein. Therefore, should any dispute arise or any action be instituted by either party to this Agreement, to enforce the provisions of this Agreement, it is agreed that this Agreement shall be enforceable in a court of equity by decree of specific performance, and also that appropriate injunctions may be issued. Each of the parties hereto waives, for itself and its successors and assigns, any claim or defense that an adequate remedy exists in law. The remedies provided herein shall be cumulative, and not exclusive, and shall be in addition to any other remedies available to a non-defaulting party. In the event it is necessary for any party to engage in the services of legal counsel in order to enforce its rights hereunder, the prevailing party in any such proceedings shall be entitled to an award of its reasonable costs and expenses (including attorneys' fees).

Any controversy or claim arising out of or relating to this Agreement, except for equitable claims for which equitable relief is sought pursuant to this paragraph 18 of this Agreement, shall be submitted to non-binding mediation at the Judicial Arbitrator Group of Denver, Colorado ("JAG") before one mediator selected by the mutual agreement of Surface Owner and KMG. The completion of the mediation provided for by this paragraph 18 is a condition precedent to the commencement of any civil action with respect to the claim or controversy. If the parties are not able to agree on a suitable mediator, the mediator will be selected by the Administrator of JAG. The mediation will be held within thirty (30) days of any demand for mediation and each party may be represented by counsel at the mediation. Each party will pay half of the mediator's fees as well as their own legal fees and costs. Any demand for mediation will include a statement in reasonable detail of the facts and documents giving rise to the claim. The party receiving the demand for mediation will serve a written response to the demand within ten (10) days of the receipt of the demand which will include a statement in reasonable detail of the facts and documents relevant to the response. If the mediation does not result in the resolution of the claim or controversy, the parties will then be free to seek relief in a court of competent jurisdiction.

19. 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; provided, as to KMG, successors and assigns shall be deemed to be limited to lessees under the oil and gas leases which KMG owns.

KMG may assign its interest in the Oil and Gas Lease(s) covering the subject property only following written disclosure to Surface Owner, and such assignment shall be expressly subject to all terms and conditions of this Agreement, and the assumption by assignee of all obligations of KMG under this Agreement. KMG shall make any such assignment only

following written disclosure to the assignee of the existence of this Agreement, and such assignment shall be expressly subject to all terms and conditions of this Agreement (whether or not so stated therein), and the assumption by assignee of all obligations of KMG under this Agreement (whether or not so stated therein). If Surface Owner so consents, which consent shall not be unreasonably withheld, KMG shall be released from any ongoing liability under this Agreement with respect to matter which first arise after the effective date of such assignment.

Surface Owner may assign an interest in this Agreement only in connection with the conveyance of all or any portion of the Property, and then only insofar as the Agreement pertains to that portion of the Property so conveyed. Surface Owner shall make any such assignment only following written disclosure to the assignee of the existence of this Agreement, and such assignment shall be expressly subject to all terms and conditions of this Agreement (whether or not so stated therein).

20. TERM.

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KMG's leasehold estate expires or is terminated, and KMG has plugged and abandoned all wells owned all or in part by KMG and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations.

21. NOTICES.

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

If to KMG:

Kerr McGee Oil & Gas Onshore LP
1099 Eighteenth Street
Denver, Colorado 80202
Attention: Wattenberg Basin Land Manager

If to Surface Owner:

Encore, LLC
1218 West Ash, Suite A
Windsor, Colorado 80550
Attention: Gary Hoover

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

22. RECORDING.

This Agreement (and any amendment hereto) shall be recorded by KMG, which shall provide the other parties with a copy showing the recording information as soon as practicable thereafter.

23. SURFACE DAMAGES.

Subject to the terms and conditions of this Agreement, Surface Owner hereby waives all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled, tank battery and emissions control device located on the Property within the Oil and Gas Operations Area and also including but not limited to any access road, flowline, or pipeline constructed within the Easement. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver.

KMG shall pay to Surface Owner prior to commencement of each well drilled upon the Oil and Gas Operations Area (whether or not the bottom hole location is located on the Property or off the Property), the sum of Two Thousand Five Hundred Dollars (\$2,500.00) for surface damages, for each such well. Any amount so paid shall be non-refundable and shall not be credited against any other payments due and payable from KMG to Surface Owner pursuant to this Agreement.

In addition, KMG shall pay to Surface Owner prior to commencement of any well drilled upon the Oil and Gas Operations Areas to a bottom hole location off the Property, the additional sum of Ten Thousand Dollars (\$10,000.00) for surface damages, for each such well if KMG commences any such well prior to having drilled all Future Wells to all of the bottom hole locations within the Property which were intended to be drilled from the Oil and Gas Operations Area. Any amount so paid shall be non-refundable and shall not be credited against any other payments due and payable from KMG to Surface Owner pursuant to this Agreement.

In addition to the above payments, if pursuant to the provisions of this Agreement (in particular, paragraph 2 hereof) and of the Oil and Gas Lease pertaining to the Property, KMG becomes entitled to use a site within the Oil and Gas Operations Area to drill wells bottoming off the Property prior to having drilled Future Wells to all five (5) bottoming locations within the Property as illustrated on the attached Exhibit "B," then and in such event, KMG agrees to pay to Surface Owner, as additional compensation for the right to use the surface of the Oil and Gas Operations Area for drilling to such off-site location, a sum equal to 1.5% of all oil, gas or other liquid hydrocarbons produced, saved or marketed from or allocated to such well (excluding oil and gas and associated hydrocarbons used in operations thereon) (subject only to deduction of a proportionate share of any ad valorem, production and excise taxes thereon and any costs of transportation from the point of delivery to an interstate pipeline). Such interest in production shall be accounted for and paid to Surface Owner in the same manner as landowner's royalties are paid to mineral owners with interests in production from such well. If for whatever reason KMG does not ultimately obtain any production from Future Wells with bottom hole locations in the Property, then the sum payable with respect to production from the well with a bottom hole location off the Property shall increase from 1.5% of all oil, gas or other liquid hydrocarbons

produced, saved or marketed therefrom to 2.5% of same.

24. 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.

25. ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding among 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. HEADINGS.

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

27. EXECUTION AND BINDING EFFECT

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the Effective Date set forth above.

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: Michael A. Nixon
Michael A. Nixon, Agent & Attorney-in-Fact *W*
KME

ENCORE, LLC,
a Colorado limited liability company

By: Gary Hoover
Gary Hoover, Manager

ACKNOWLEDGMENTS

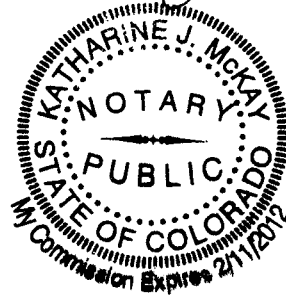
STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 19th day of January, 2009, by Michael A. Nixon, as Agent & 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.

Katharine J. McKay
Notary Public

My Commission Expires: 2/11/2012



STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 3rd day of March, 2009, by Gary Hoover as Manager of ENCORE, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Virginia Johnson
Notary Public

My Commission Expires: 7/9/12

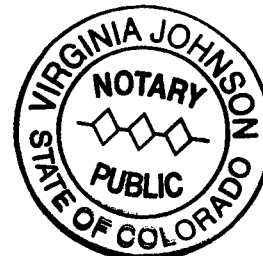


EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE SURFACE USE AGREEMENT BETWEEN KERR-MCGEE OIL & GAS ONSHORE LP, A DELAWARE LIMITED PARTNERSHIP ("KMG") AND ENCORE, LLC, A COLORADO LIMITED LIABILITY COMPANY ("SURFACE OWNER").

Legal Description of the Property

A parcel of land located in the Northwest quarter of Section 12, Township 5 North, Range 68 West of the 6th P.M., said parcel being a portion of Lot 1 P.R.P.A. First MLD S-46-90, being more particularly described as follows:

Beginning at the Northwest corner of said Section 12, thence South 88°26'46" East, along the North line of the Northwest quarter of Section 12, a distance of 2566.55 feet; thence South 01°13'50" West, a distance of 2621.39 feet to the South line of the Northwest quarter of Section 12; thence North 88°53'15" West, along the South line of the Northwest quarter of Section 12, a distance of 2546.86 feet to the West line of the Northwest quarter of Section 12; thence North 00°48'14" East, along the West line of the Northwest Quarter of Section 12, a distance of 876.21 feet; thence South 89°36'06" East, a distance of 463.85 feet; thence North 88°06'41" East, a distance of 32.25 feet; thence North 71°00'07" East, a distance of 25.90 feet; thence North 60°47'23" East, a distance of 43.90 feet; thence North 56°04'50" East, a distance of 8.67 feet; thence North 19°39'57" West, a distance of 320.07 feet; thence South 89°27'16" East, a distance of 46.37 feet; thence North 00°48'14" East, a distance of 350.00 feet; thence North 89°27'16" West, a distance of 500.00 feet to the West line of the Northwest quarter of said Section 12; thence North 00°48'14" East, along the West line of said Section 12 a distance of 1076.71 feet to the Point of Beginning;
County of Larimer, State of Colorado.

EXHIBIT "B" ATTACHED TO AND MADE A PART OF THE SURFACE USE AGREEMENT BETWEEN KERR-MCGEE OIL & GAS ONSHORE LP, A DELAWARE LIMITED PARTNERSHIP ("KMG") AND ENCORE, LLC, A COLORADO LIMITED LIABILITY COMPANY ("SURFACE OWNER").

Depiction of Oil and Gas Operations Areas, Future Wells,
Petroleum Pipeline Easements and Access Routes

[SEE ATTACHED]

[TO BE SUPPLIED]

EXHIBIT "B"

OIL AND GAS OPERATIONS AREA

A oil and gas operations area over and across a portion in the Northwest Quarter of Section 12, Township 5 North, Range 68 West of the 6th P.M. being more particularly described as follows:

Commencing at the North Quarter corner of said Section 12, Thence South 38°42'02" West, a distance of 376.36 feet to the **Point of Beginning**;

Thence South 01°13'50" West, a distance of 561.00 feet;
Thence North 88°26'46" West, a distance of 311.00 feet;
Thence North 01°13'50" East, a distance of 561.00 feet;
Thence South 88°26'46" East, a distance of 311.00 to the **Point of Beginning**;

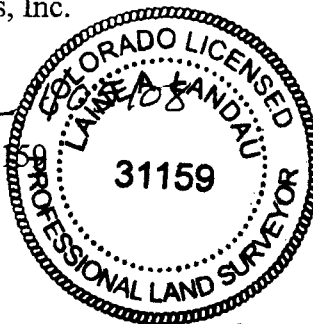
Said oil and gas operations area contains a gross area of 174,471 square feet (4.005 acres), more or less, subject to all easements and rights of way of record.

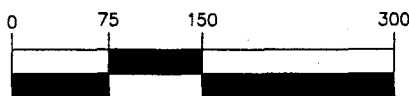
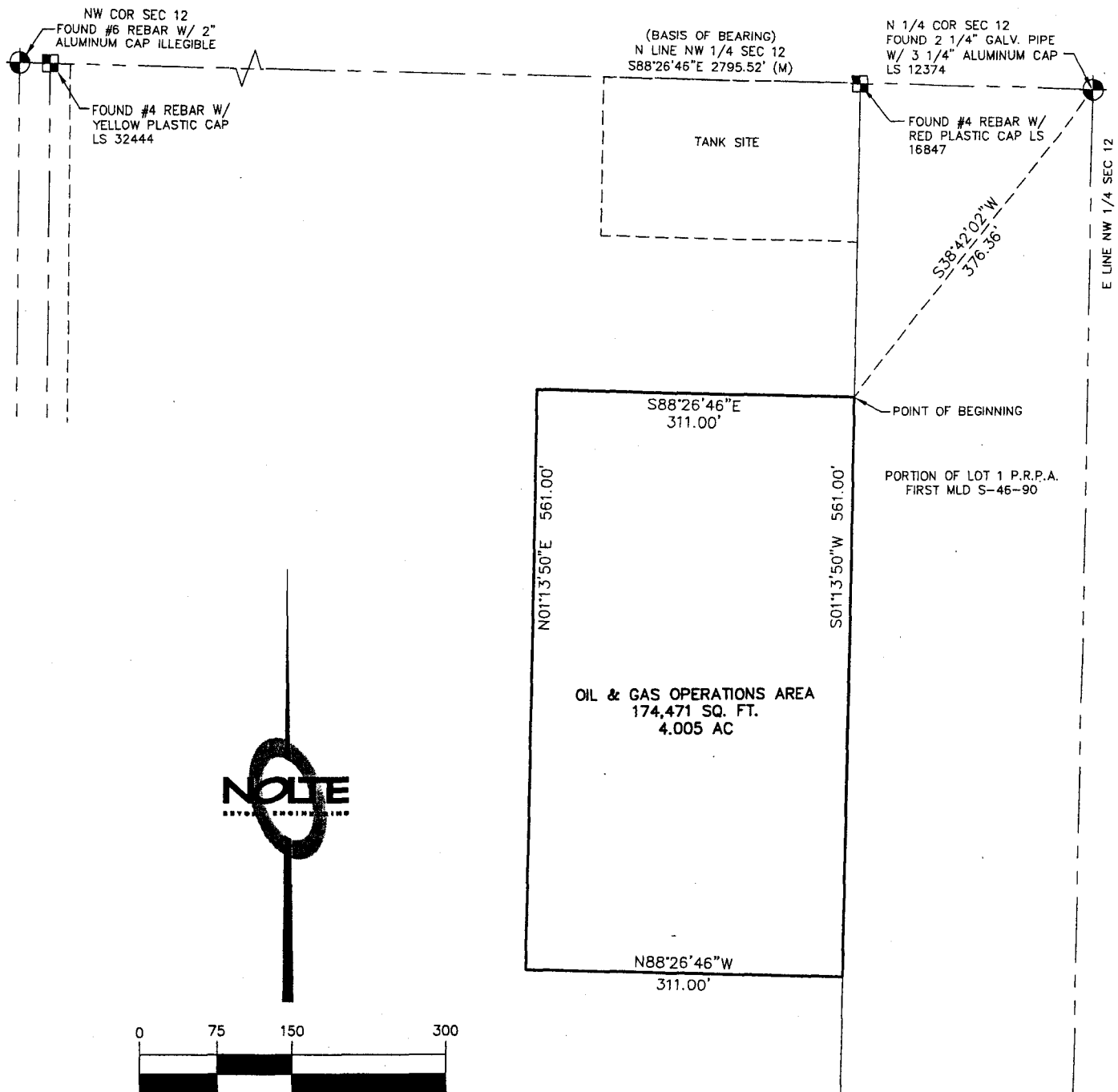
Basis of Bearings: Assumed South 88°26'46" East, along the north line of the Northwest Quarter of said Section 12, said line being monumented at the Northwest corner by a # 6 rebar with 2" aluminum cap, illegible and at the North Quarter corner by a 2 1/4" galvanized pipe with a 3 1/4" aluminum cap stamped "LS 12374".

For and on behalf of Nolte Associates, Inc.

Laine A. Landau

Laine A. Landau, Colorado P.L.S. 31159
1901 Sharp Point Drive, Suite A
Fort Collins, Colorado 80525
970.221.2400





1 inch = 150 ft.



NOLTE
BEYOND ENGINEERING

1901 SHARP POINT DRIVE, SUITE A
970.221.2400 TEL. 970.221.2416 FAX

FORT COLLINS, CO 80525
WWW.NOLTE.COM

EXHIBIT B
OIL & GAS OPERATIONS AREA
NW 1/4, SEC.12, T.5N., R.68W., JOHNSTOWN, CO

PREPARED FOR: GERRARD DEVELOPMENT

DATE SUBMITTED: 11/03/08

SHEET NUMBER

2

OF 2 SHEETS

JOB NUMBER
FCB0160

EXHIBIT "B"

ACCESS EASEMENT

A access easement over and across a portion in the Northwest Quarter of Section 12, Township 5 North, Range 68 West of the 6th P.M. being more particularly described as follows:

Commencing at the North Quarter corner of said Section 12, Thence South 38°42'02" West, a distance of 376.36 feet to the **Point of Beginning**;

Thence South 01°13'50" West, a distance of 2321.39 feet to the south line of the Northwest Quarter of said Section 12;

Thence North 88°53'15" West, along the south line of the Northwest Quarter of said Section 12, a distance of 40.00 feet;

Thence North 01°13'50" East, a distance of 2321.70 feet;

Thence South 88°26'46" East, a distance of 40.00 to the **Point of Beginning**;

Said access easement contains a gross area of 92,862 square feet (2.132 acres), more or less, subject to all easements and rights of way of record.

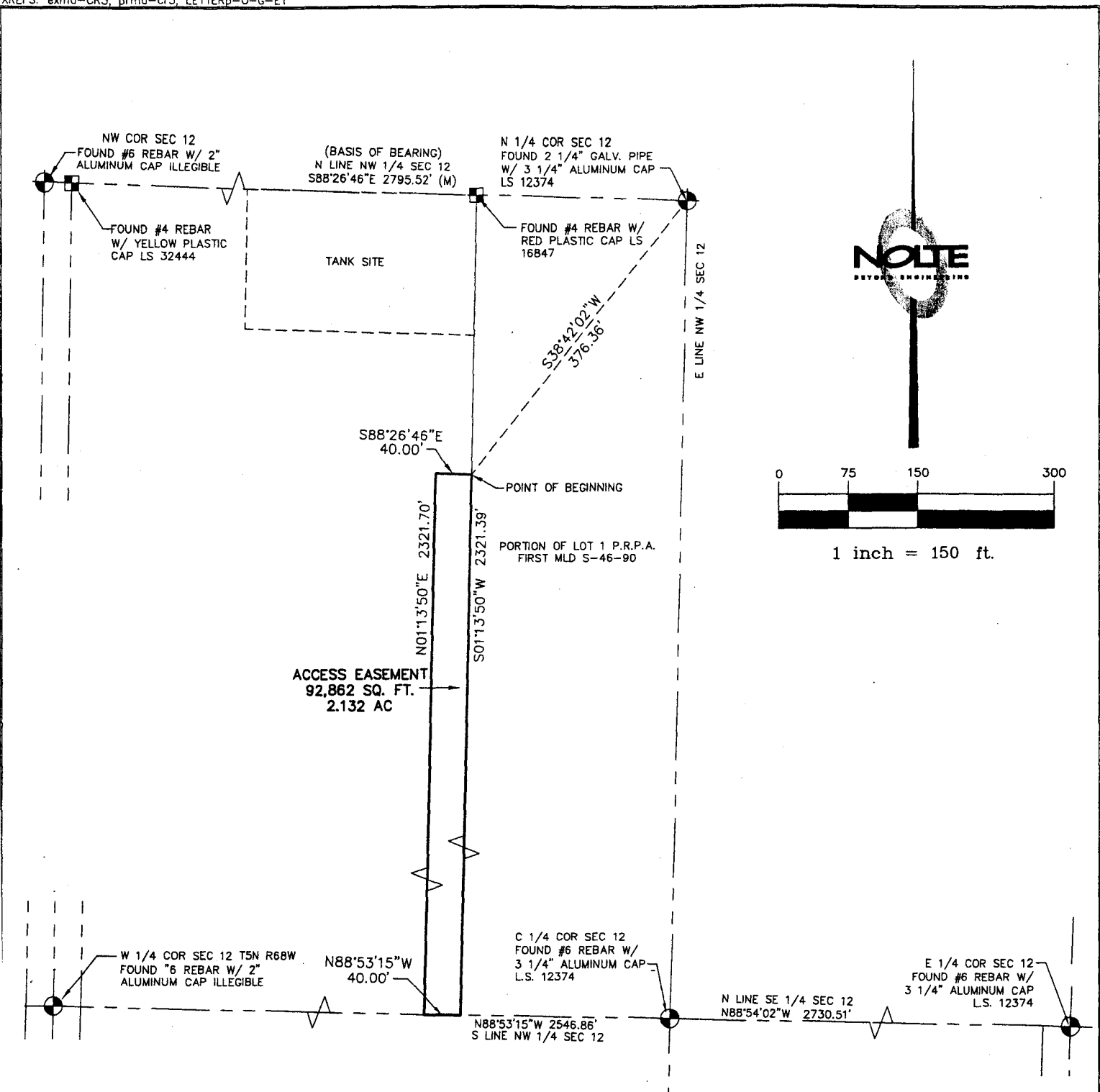
Basis of Bearings: Assumed South 88°26'46" East, along the north line of the Northwest Quarter of said Section 12, said line being monumented at the Northwest corner by a # 6 rebar with 2" aluminum cap, illegible and at the North Quarter corner by a 2 1/4" galvanized pipe with a 3 1/4" aluminum cap stamped "LS 12374".

For and on behalf of Nolte Associates, Inc.

Laine A. Landau

Laine A. Landau, Colorado P.L.S. 31159
1901 Sharp Point Drive, Suite A
Fort Collins, Colorado 80525
970.221.2400





NOLTE
BEYOND ENGINEERING

1801 SHARP POINT DRIVE, SUITE A
970.2212400 TEL. 970.2212416 FAX

FORT COLLINS, CO 80525
WWW.NOLTE.COM

EXHIBIT B
ACCESS EASEMENT
NW 1/4, SEC.12, T.5N., R.68W., JOHNSTOWN, CO

PREPARED FOR: GERRARD DEVELOPMENT

DATE SUBMITTED: 11/03/08

SHEET NUMBER

2

OF 2 SHEETS

JOB NUMBER
FCB0160

EXHIBIT "B"

PETROLEUM PIPELINE EASEMENT

A petroleum pipeline easement over and across a portion of the Northwest Quarter of Section 12, Township 5 North, Range 68 West of the 6th P.M. being more particularly described as follows:

Commencing at the North Quarter corner of said Section 12, Thence South 37°47'37" West, a distance of 384.35 feet to the **Point of Beginning**;

Thence South 01°13'50" West, a distance of 2311.39 feet to the south line of the Northwest Quarter of said Section 12;

Thence North 88°53'15" West, along the south line of the Northwest Quarter of said Section 12, a distance of 30.00 feet;

Thence North 01°13'50" East, a distance of 2311.62 feet;

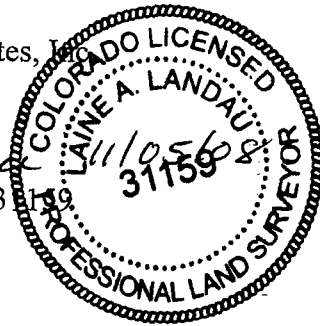
Thence South 88°26'46" East, a distance of 30.00 to the **Point of Beginning**;

Said petroleum pipeline easement contains a gross area of 69,345 square feet (1.592 acres), more or less, subject to all easements and rights of way of record.

Basis of Bearings: Assumed South 88°26'46" East, along the north line of the Northwest Quarter of said Section 12, said line being monumented at the Northwest corner by a # 6 rebar with 2" aluminum cap, illegible and at the North Quarter corner by a 2 1/4" galvanized pipe with a 3 1/4" aluminum cap stamped "LS 12374".

For and on behalf of Nolte Associates, Inc.

Laine A. Landau
Laine A. Landau, Colorado P.L.S. 31159
1901 Sharp Point Drive, Suite A
Fort Collins, Colorado 80525
970.221.2400



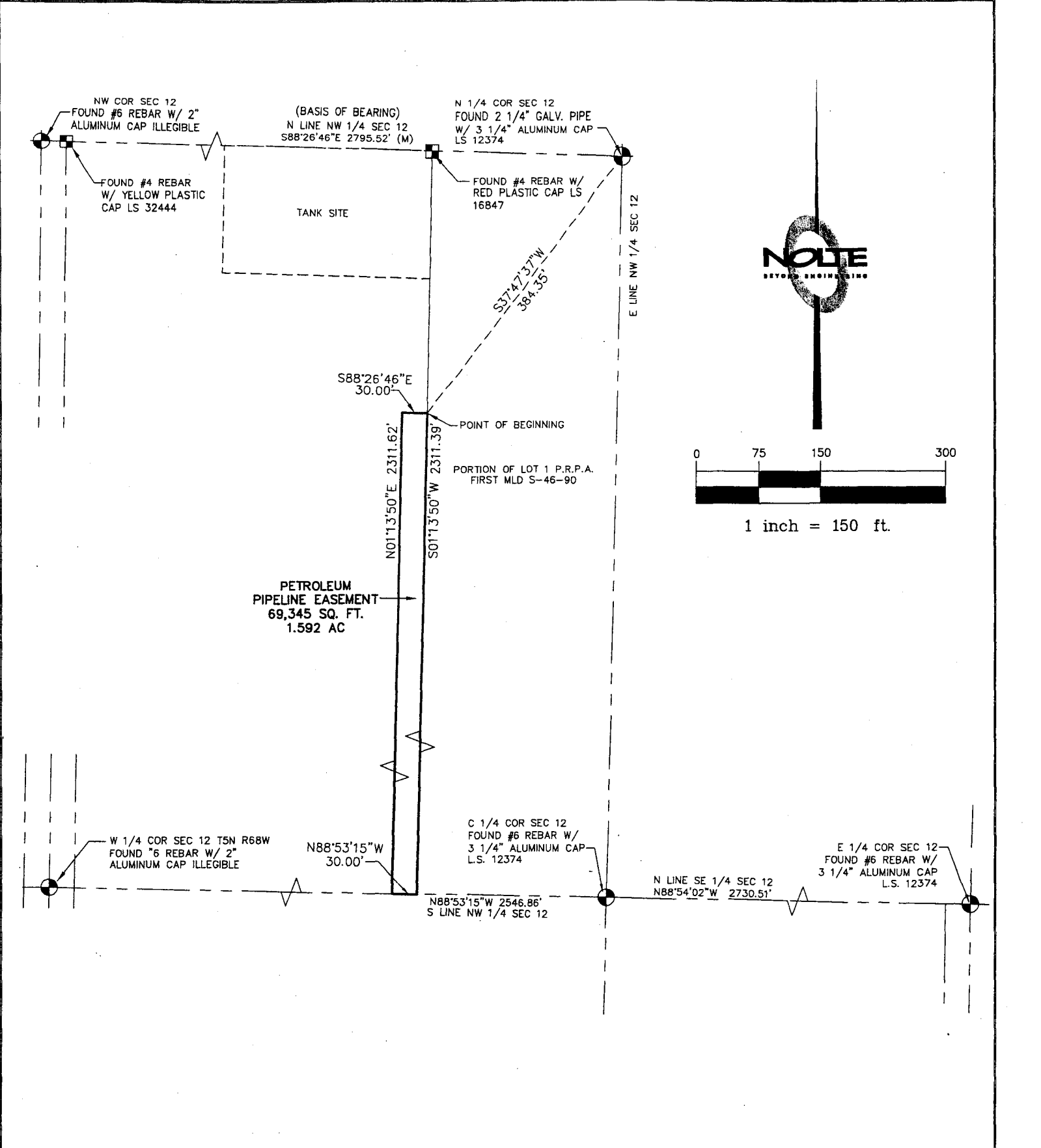
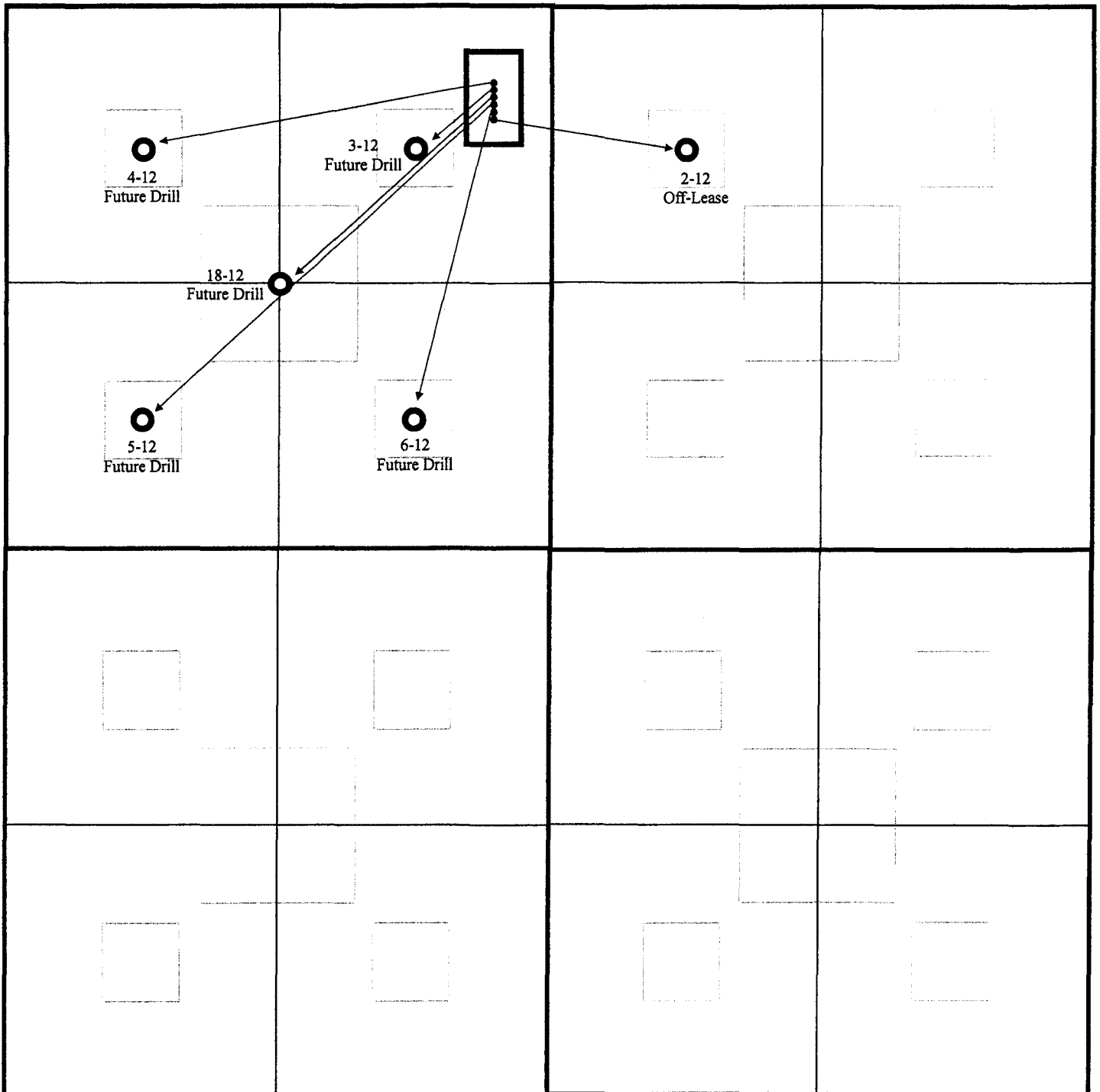


Exhibit B

Future Wells & Off-Lease Location
5 North, 68 West, Section 12



**KERR MCGEE OIL & GAS
ONSHORE LP**

**1099 18th STREET
DENVER, CO 80202**

**ENCORE LLC
TOWN OF JOHNSTOWN
COUNTY OF LARIMER
STATE OF COLORADO**

**DATE:
11/17/2008**

EXHIBIT "C" ATTACHED TO AND MADE A PART OF THE SURFACE USE AGREEMENT BETWEEN KERR-MCGEE OIL & GAS ONSHORE LP, A DELAWARE LIMITED PARTNERSHIP ("KMG") AND ENCORE, LLC, A COLORADO LIMITED LIABILITY COMPANY ("SURFACE OWNER").

Form of Pipeline Right of Way Grant

RIGHT-OF-WAY GRANT

THIS RIGHT-OF-WAY GRANT ("Grant") is made this ____ day _____, _____, from ENCORE, LLC, a Colorado limited liability company, the mailing address of which is 1218 West Ash, Suite A, Windsor, Colorado 80550 ("Grantor") to KERR-MCGEE OIL & GAS ONSHORE LP, a Delaware limited partnership, the mailing address of which is 1099 Eighteenth Street, ATTN: Wattenberg Land Dept., Denver, Colorado 80202 ("Grantee"). The parties agree as follows:

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys and warrants unto Grantee, its successors and assigns, a perpetual right-of-way(s) and non-exclusive easement(s) to survey, construct, maintain, inspect, operate, repair, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove, at Grantee's election, pipelines and all appurtenances, below and/or above ground, including, but not limited to, launchers and receivers, convenient for the transportation or transmission of oil, gas, petroleum products, water, hydrocarbons and any other substances, whether fluid, solid or gaseous, and any products, derivatives, combinations or mixtures of any of the foregoing, in, on, over, under or through the lands situated in Larimer County, State of Colorado, being described as follows:

[TO BE SUPPLIED]

The specific route and course of the right-of-way(s) and easement(s) conveyed hereby ("Right-Of-Way Lands") is more particularly described on Exhibit "A" attached hereto and made a part hereof. The width of the Right-Of-Way Lands during construction shall be fifty feet (50') and subsequent to construction shall be thirty feet (30').

Grantor represents and warrants to Grantee that Grantor is the sole owner in fee simple of the Right-Of-Way Lands and has full right, power and authority to make this Grant.

Grantee shall lay all pipe at a depth of not less than 48 inches. Grantee shall repair and/or restore any fence on or adjacent to the Right-Of-Way Lands removed or severed by Grantee in the course of the operations provided for in this Grant. If necessary to prevent the escape of Grantor's livestock, Grantee shall construct temporary gates or fences.

Grantee shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Grant, including, but not limited to, the right of ingress and egress over and across Grantor's lands lying adjacent to the Right-Of-Way Lands for any and all purposes necessary and incidental to exercising Grantee's rights hereunder. Grantor agrees not to build, create, construct or permit to be built, created or constructed, any obstruction, building, reservoir, engineering works or other structures or improvements over, under, on or across the Right-Of-Way Lands, except as provided herein, without prior written consent of Grantee, which consent shall not be unreasonably withheld. Other utilities may be placed in the Right-Of-Way Lands parallel to Grantee's pipeline so long as the horizontal separation from the centerline of Grantee's pipeline is at least ten feet (10'). Grantor retains the right to landscape over the Right-Of-Way Lands with grass, shallow root shrubs and gravel paths. Grantee shall not be liable for damage to landscaping or sprinkler systems placed in the Right-Of-Way Lands. Grantor shall have the right to cross the Right-Of-Way Lands with roads, utilities and fences placed at substantially right angles.

Grantee shall be obligated to pay for, repair, replace or otherwise compensate Grantor for any damages resulting from Grantee's activities and operations on the Right-Of-Way Lands, and Grantor shall pay for, reimburse, indemnify and hold Grantee harmless from any and all claims or damages resulting from Grantor's activities on the Right-Of-Way Lands. Grantor shall have the right to use and enjoy the Right-Of-Way Lands subject to the rights herein granted. This Grant cannot be modified, except in writing signed by all parties hereto.

The rights granted herein may be assigned in whole or in part, and the terms, conditions and provisions of this Grant are a covenant running with the land and shall extend to and be binding upon the successors and assigns of Grantor and Grantee.

Grantee agrees to level and restore any lands that may have excessive settling and sufficiently compact the soil within a reasonable period of time after completion of construction.

This Grant is given pursuant to the Surface Use Agreement between Kerr-McGee Oil & Gas Onshore LP and Grantor dated _____.

This Grant may be executed in counterparts each of which shall be considered one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Right-Of-Way Grant as of the date first above written.

ENCORE, LLC,
a Colorado limited liability company

By: _____
Gary Hoover, Manager

KERR-MCGEE OIL & GAS ONSHORE LP,
a Delaware limited partnership

By: _____
Michael A. Nixon, Agent & Attorney-in-Fact

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Gary Hoover as Manager of ENCORE, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael A. Nixon as Agent & Attorney-in-Fact for KERR-MCGEE OIL & GAS ONSHORE LP, a Delaware limited partnership.

WITNESS my hand and official seal.

My commission expires:

Notary Public

EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE RIGHT-OF-WAY GRANT FROM ENCORE, LLC, A COLORADO LIMITED LIABILITY COMPANY ("GRANTOR") TO KERR-MCGEE OIL & GAS ONSHORE LP, A DELAWARE LIMITED PARTNERSHIP ("GRANTEE").

Legal Description of the Right-Of-Way Lands

[TO BE SUPPLIED]

EXHIBIT “D” ATTACHED TO AND MADE A PART OF THE SURFACE USE AGREEMENT BETWEEN KERR-MCGEE OIL & GAS ONSHORE LP (“KMG”) AND ENCORE, LLC, A COLORADO LIMITED LIABILITY COMPANY (“SURFACE OWNER”).

KMG Pipeline Guidelines

[SEE ATTACHED]



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 (KMGG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMGG may have under existing easements or ROW agreements. For information regarding KMGG'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 KMGG 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 KMGG in the below requirements is meant to include and apply to any Kerr McGee entity.

Design

- KMGG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMGG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMGG'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 KMGG 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 KMGG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMGG, showing the facilities in the vicinity of KMGG's ROW upon completion of the work.
- Only facilities shown on drawings reviewed by KMGG will be approved for installation on KMGG's ROW. All drawing revisions that affect facilities proposed to be placed on KMGG's ROW must be approved by KMGG in writing.
- KMGG shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KMGG 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 KMGG on replacement ROW granted to relocate KMGG 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 KMGG.
- The depth of cover over the KMGG pipelines shall not be increased or reduced nor surface modified for drainage without KMGG's written approval.
- Construction of any permanent structure within KMGG pipeline easement is **not** permitted without written approval by KMGG.
- Planting of shrubs and trees is not permitted on KMGG pipeline easement without written approval by KMGG.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMGG easement without written approval by KMGG.
- Foreign utility installations, IE, distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMGG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMGG 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 KMGG. In no case will vertical separation be less than 12" whether written or not. Constant line elevations must be maintained across KMGG's entire ROW width, gravity drain lines are the only exception and must be approved in writing. Foreign line crossings below the KMGG pipeline must be evaluated by KMGG to ensure that a significant length of the KMGG line is not exposed and unsupported during construction. Foreign line crossings above the KMGG pipeline with less than 18" of clearance must be evaluated by KMGG to ensure that additional support is not necessary to prevent settling on top of the KMGG natural gas pipeline. A KMGG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the KMGG facility. All installations of foreign crossings done by boring and or jacking require the KMGG facility to be exposed to verify clearances.
- Foreign utilities shall not run parallel to KMGG pipelines within the KMGG easement without written permission by KMGG. A minimum of 10.0 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is placed within the KMGG easement or adjacent to the KMGG easement. Any deviation from the 10.0' horizontal requirement must be approved in writing by KMGG and an "as built survey" provided to KMGG 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 KMGG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMGG's. At the request of KMGG, 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 KMGG 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 KMGG. All costs associated with the correction of cathodic protection interference issues on KMGG 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 KMGG 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 KMGG, the safety of the public, contractor, KMGG personnel and KMGG 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 KMGG ROW.
- ♦ No power poles, light standards, etc. shall be installed in the KMGG easement without written approval by KMGG.
- ♦ KMGG 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 KMGG's sole discretion, and may exceed any regulatory requirements.

Construction

- ♦ If KMGG will be relocating KMGG facilities for any entity, grading in the new KMGG ROW shall be +/- 6 inches before KMGG 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 KMGG. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMGG 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 KMGG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMGG 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 KMGG's requirements and be contractually obligated to comply.
- ♦ The continued integrity of KMGG's pipelines and the safety of all individuals in the area of proposed work near KMGG's facilities are of the utmost importance. Therefore, contractor must meet with KMGG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KMGG'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 KMGG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMGG representative must be present.**
- ♦ The use of probing rods for pipeline locating shall be performed by KMGG representatives only, to prevent unnecessary damage to the pipeline coating. A KMGG representative shall do all line locating.
- ♦ Notification shall be given to KMGG 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 KMGG's work site representative. Any Contractor schedule changes shall be provided to KMGG 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 KMGG pipelines or in KMGG ROW unless written approval is obtained from KMGG. Heavy equipment shall only be allowed to cross KMGG pipelines at locations designated by KMGG. 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 KMGG.
- Contractor shall comply with all precautionary measures required by KMGG, 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 tires.
- Excavating or grading which might result in erosion or which could render the KMGG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMGG's facility. At no time will cover be reduced to less than 36" without written approval by KMGG and a KMGG representative on site.
- A KMGG representative shall be on-site to monitor any construction activities within twenty-five (25) feet of a KMGG pipeline or aboveground appurtenance. The contractor shall not work within this distance without a KMGG representative being on site. Contractor shall use extreme caution and take any appropriate measures to protect KMGG facilities.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMGG facility. KMGG personnel must be present.
- Temporary support of any exposed KMGG pipeline by Contractor may be necessary if required by KMGG'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 KMGG's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KMGG'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 KMGG's facilities unless blasting notification is given to KMGG including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.

KMGG 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 KMGG's facilities as a result of their activities whether or not KMGG representatives are present. KMGG 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 KMGG's facilities unless blasting notification is given to KMGG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMGG 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 KMGG. A written emergency plan shall be provided by the organization responsible for blasting.

KMGG 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 KMGG facility, pipeline, valve set, etc. shall be reported immediately to KMGG. 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.
- KMGG personnel shall install all test leads on KMGG facilities.

Local Kerr-McGee Gathering LLC Representation:

Manager of Construction & Facilities Engineering:	Kevin R. Osif, P.E.
Facilities Engineer:	Joseph E. Sanchez, P.E.
Foreman 1:	James Phillips
Foreman 1:	Rick Noffsinger

Phone: 303 655 - 4307
Phone: 303 655 - 4319
Phone: 303 655 - 4343
Phone: 303-655 - 4326



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: 303-659 - 5922

Phone: 800-922 -1987