

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

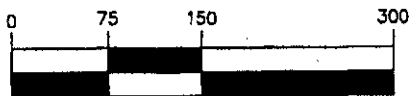
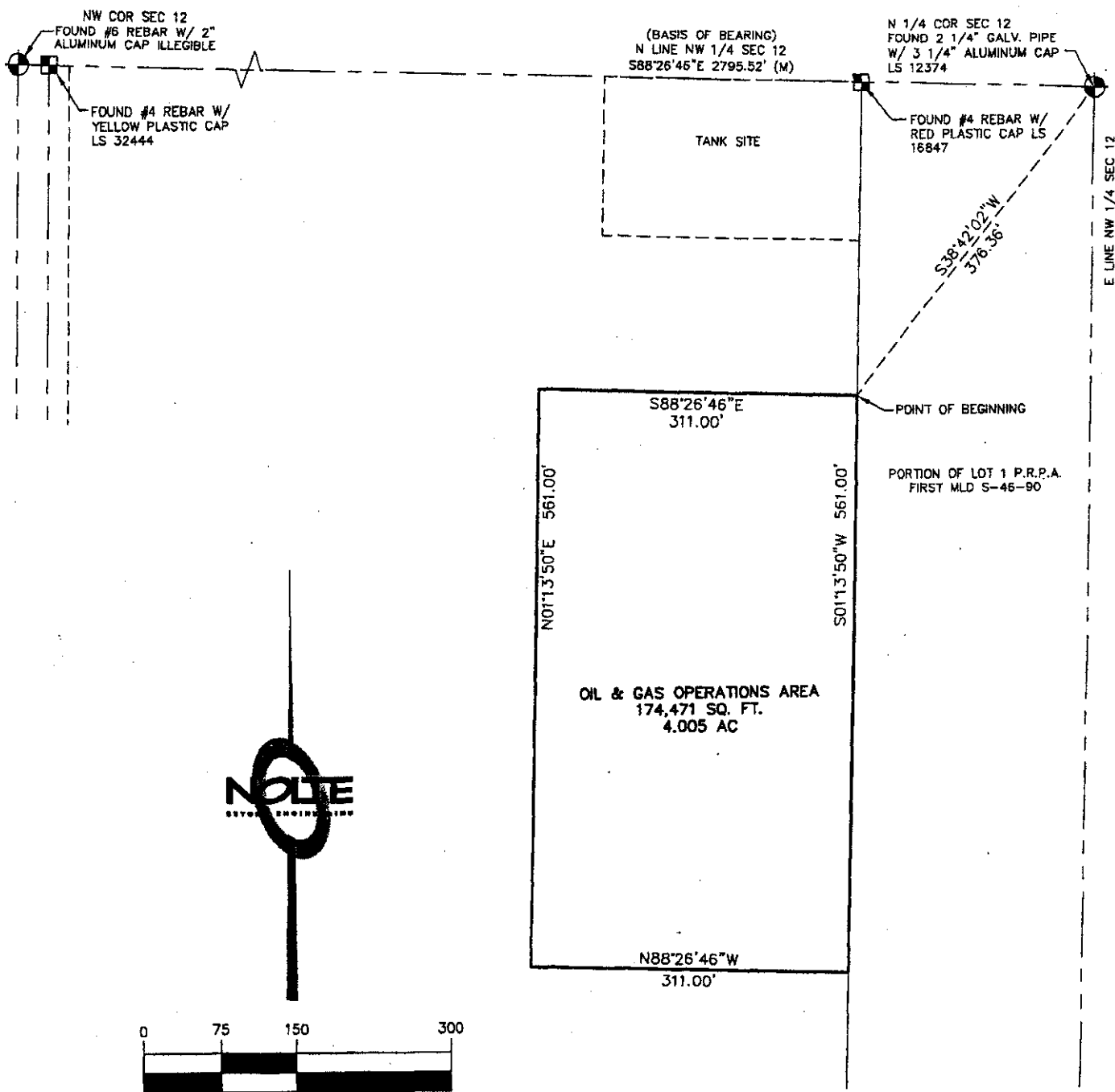
The parties have executed this Surface Use Agreement on the day and year first above written.

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

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

ENCORE, LLC,
a Colorado limited liability company

By: Gary Hoover
Gary Hoover, Manager



1 inch = 150 ft.



NOLTE
 BEYOND ENGINEERING

SHARP POINT DRIVE, SUITE A
 2212400 TEL. 970.2212400 FAX

FORT COLLINS, CO 80526
 WWW.NOLTE.COM

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

PREPARED FOR: GERRARD DEVELOPMENT

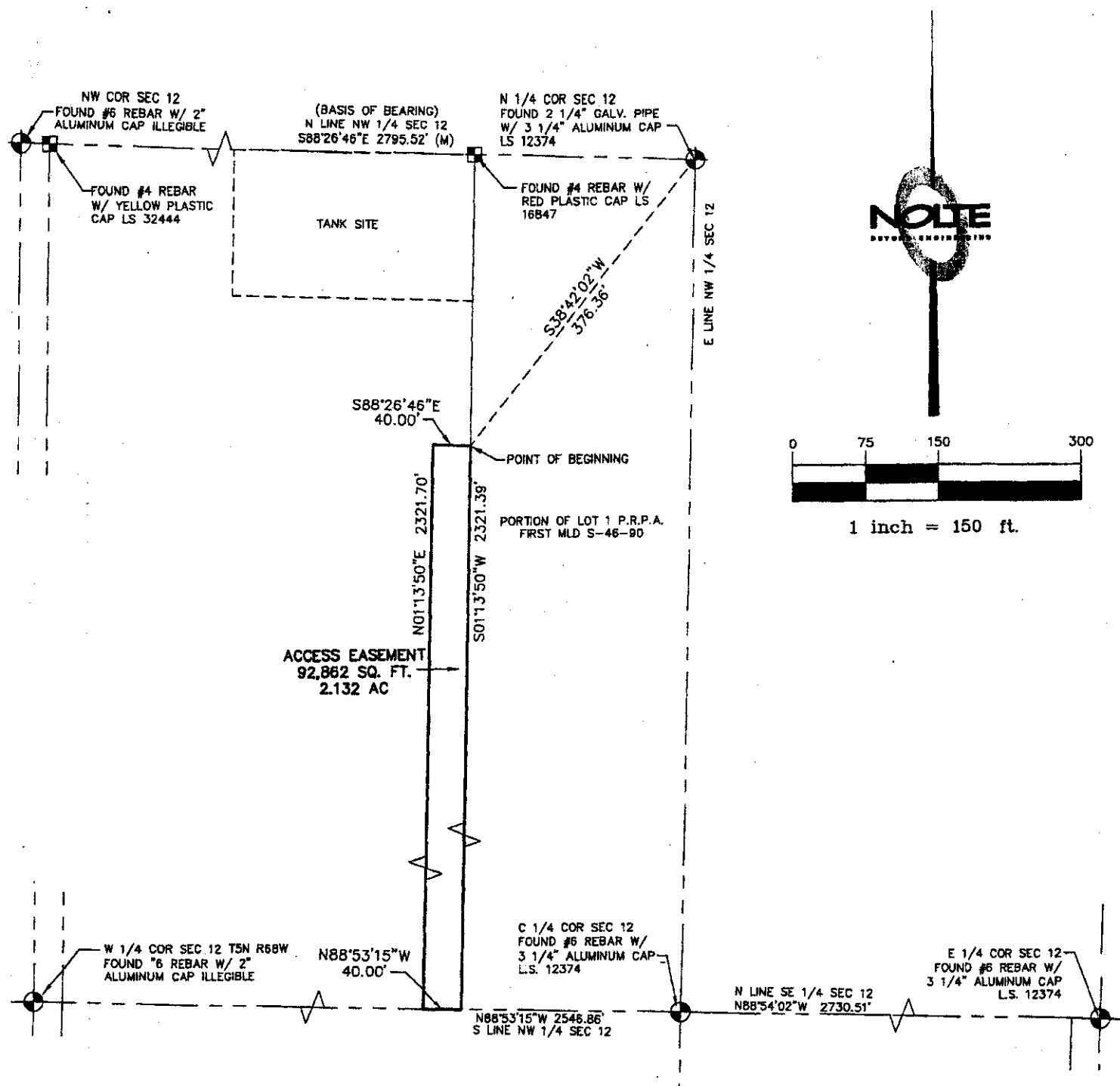
DATE SUBMITTED: 11/03/08

SHEET NUMBER

2

OF 2 SHEETS

JOB NUMBER
 FCB0160



NOLTE

BEYOND ENGINEERING

HARP POINT DRIVE, SUITE A
 12400 TEL. 970.221.2415 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

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