

## COMPATIBLE DEVELOPMENT AND SURFACE USE AGREEMENT

This Compatible Development and Use Agreement ("Agreement") is made and entered into this 30<sup>th</sup> day of OCTOBER 2008, by and between Aggregate Industries-WCR, Inc., ("Surface Owner" or "Owner") with an address of 1707 Cole Boulevard, Suite 100, Golden, CO 80401 and 35 Acre, LLC ("35 Acre") with an address of P.O. Box 983, Broomfield, CO 80038. 35 Acre and Owner may be referred to as a "Party" or collectively as the "Parties".

### RECITALS

A. Owner owns all or a part of the surface of that tract of land described in that lease dated October, 26<sup>th</sup> 1979 and recorded on December, 3<sup>rd</sup> 1979 in the real property records for the county of Weld, State of Colorado, at Reception Number 1810719 ("the Lease") including the NW/4 of the NE/4 of Section 17, Township 2 North, Range 68 West, Weld County, Colorado. The NW/4 of the NE/4 is hereinafter referred to as the "Described Premises" and is delineated on Exhibit "A" attached hereto. Owner has the right and plans to continue to develop the Described Premises and to permit, enter, explore, mine and reclaim portions of the surface estate of the Described Premises for sand and gravel reserves. The Lease also covers lands not included in the Described Premises. All existing agreements pertaining to lands other than the NW/4 of the NE/4 are not affected by this Agreement and remain in full force and effect.

B. 35 Acre will be the Operator of the NE/4, working under a JOA (joint operating agreement) with Nobel Energy "hereinafter referred to as Nobel" which is the owner of the Oil and Gas Lease more particularly described on Exhibit A covering all or parts of the Described Premises hereinafter referred to as the "Distel lease". Nobel Energy operates the Niwot 1 well located in the NE/4 of the SW/4 of section 8 2N 68W which holds the Distel lease by production. Nobel has the continued right to conduct operations on said well and to drill development wells ("Future Wells") on the Described Premises subject to the terms and conditions of the Lease.

C. 35 Acre, as Operator under the JOA governing operations in the NE/4, has the right and authority to enter into this Agreement for the compatible development and future use of the surface of the lands,

D. Colorado Oil & Gas Conservation Commission ("COGCC") rules and regulations allow the owner of the oil and gas rights under the Described Premises to drill, twin, deepen or recomplete a well for production from any of the Cretaceous Age formations from drilling locations comprised of a square with sides four hundred (400) feet in length, the center of which is the center of any quarter/quarter section, and a square with sides eight hundred (800) feet in length, the center of which is the center of any quarter section ("Drilling Location Windows"). Owner and 35 Acre recognize that 35 Acre, has the right to a reasonable use of the surface of the Described Premises for oil and gas operations.

E. Owner and 35 Acre wish to enter into an agreement providing for the mutual use and compatible development of the surface estate of the Described Premises.

NOW THEREFORE, in consideration of the covenants and mutual promises set forth in this Agreement, including in the recitals, the parties agree as follows:

1. Oil and Gas Operations Areas.

a. 35 Acre agrees to limit its oil and gas operations conducted on the Described Premises to the locations depicted on Exhibit "A" and identified as "Oil and Gas Operations Areas". The Oil and Gas Operations Areas may be used for drilling, completion, and maintenance of wells and equipment, production operations, workovers, well recompletions and deepenings, fracturing, twinning, the drilling of replacement wells and the location of associated oil and gas production and facilities and also the location and drilling of oil and gas wells that produce from and drain the Described Premises as well as lands which are pooled or communitized with the Described Premises that are directionally or horizontally drilled to bottomhole locations outside the Described Premises. The Oil and Gas Operations Areas shall be limited to the size and configuration as depicted on Exhibit "A". 35 acre shall be permitted to place landscaping, including but not limited to shrubbery, trees, grass, alfalfa, and other screening landscaping inside each Oil and Gas Operations Area.

b. Owner agrees that no gravel mining shall be permitted within the Oil and Gas Operations Areas.

c. Owner shall not plat any surface property line within the Oil and Gas Operations Areas and no temporary or permanent building, or structure shall be located within the Oil and Gas Operations Areas.

2. Access to the Oil and Gas Operations Areas.

a. Owner shall provide 35 Acre with continuous access to all Oil and Gas Operations Areas, production facility locations and pipeline easements. Access to the Oil and Gas Operations Areas and production facility shall be at the locations identified on Exhibit A. Access to the Oil and Gas Operations shall be from 35 Acres property to the South as shown on Exhibit A.

b. No party shall unreasonably interfere with the use by the other of an access road. Access roads or portions of access roads that are used exclusively by 35 Acre may be twenty (20) feet in width and 35 acre shall install and maintain them in accordance with COGCC standards that apply to oil and gas operations.

3. Pipelines, Flowlines and Pipeline Easements.

a. Flowlines and pipelines to be installed in the future shall be installed at depths of approximately forty two (42) inches below the surface of the ground.

b. Owner shall maintain a minimum ground cover of 42 inches and not more than 60 inches over pipelines and flowlines in the conduct of its operations and its construction activities on the Described Premises.

c. The flowline and pipeline easements shall be 30 feet in width for all post-construction operations, maintenance and transportation activities of the Line(s), and during the period of construction or relocation of any lines, the such easements shall not exceed 50 feet in width.

4. Subdivision or Other Development Plat. Owner shall identify the Oil and Gas Operations Areas and all access, flowline and pipeline easements on any plats and in all applications for development that it files with a local jurisdiction. 35 Acre shall provide to Owner and record in the real property records of the clerk and recorder of Weld County, Colorado as-built drawings of all access, flowline and pipeline easements. The plats shall include restrictions that no property lines, buildings, structures, or other improvements, except those identified herein, shall be located, constructed or installed within the Oil and Gas Operations Areas and that 35 Acre shall have full, continuous and unimpeded access to its operations areas and access roads at all times. Owner will

record any development plat in the Office of the Clerk and Recorder of Weld County and provide written evidence of recording to 35 Acre.

5. Application to Governing Agencies. 35 Acre will file a Memorandum of this Agreement showing the location of the Oil and Gas Operations Areas. Owner agrees to cooperate fully with and support 35 Acre in all applications for drilling operations of oil and gas wells when presented for approval to Weld County or the State of Colorado which comply with the terms of this Agreement.

6. Governmental Proceedings. 35 Acre agrees that it will not object in any forum to a request by Owner to annex, zone, rezone, plat or replat or any other application for development of the Described Premises of all or any portion of the Described Premises to the extent such request is consistent with this Agreement.

7. Notices of Hearings. Owner shall provide 35 Acre with written notice not less than thirty (30) days before each hearing for consideration of a plat application or other land use application for the Described Premises or portions thereof that is to be held before the County or other local jurisdiction.

8. Notice to Homeowners Builders and/or other Developers. Owner shall furnish all homeowners, builders and developers which purchase all or any portion of the Described Premises with a plat that shows the locations of the Oil and Gas Operations Areas, access routes, and pipeline easements. In addition, Owner will provide written notice to all purchasers that includes the following:

a. There may be ongoing oil and gas operations and production on the surface of the Described Premises within the Oil and Gas Operations Areas, pipeline easements and access routes;

b. There are likely to be wells drilled and oil and gas production facilities constructed and installed within the Oil and Gas Operations Areas and flowlines and pipelines constructed and maintained on the Described Premises;

c. Heavy equipment will be used by 35 Acre from time to time for oil and gas drilling and production operations and such operations may be conducted on a 24-hour basis; and

d. Homeowner associations and buyers of individual lots or homes will be subject to and burdened by all of the covenants and waivers made by Owner in this Agreement, including, but not limited to those covenants and waivers; i) prohibiting the location of any building, structure, or other improvement within the Oil and Gas Operations Areas;

e. Owner expressly acknowledges that this Agreement satisfies the obligations and requirements of 35 Acre pursuant to COGCC rules and regulations and Colorado statutes to consult in good faith with Owner regarding existing and proposed oil and gas operations on the Described Premises.

9. Notice of Oil and Gas Operations. 35 Acre shall provide Owner with 30 days notice of drilling operations and subsequent well operations and any other notices required to be provided to Owner in accordance with Commission rules and regulations.

10. Notice of Construction Activities by Owner. Except for the ongoing farming operations on the Described Premises, Surface Owner will notify 35 Acre 30 days prior to commencement of any dirt work, grading or other surface construction activities it will be conducting on or within the pipeline easements or Oil and Gas Operations Areas. If requested by 35 Acre, Owner shall meet with 35 Acre representatives at the Described Premises to locate existing flowlines, gathering lines or pipelines and to coordinate proposed surface construction activities with current and prospective oil and gas operations.

11. Authority to Execute Agreement. Each party represents that it has the full right and authority to

enter into this Agreement with respect to the surface rights or oil and gas interests or oil and gas leasehold interests that it owns in the Described Premises, as applicable.

12. No Waiver of Rights. 35 Acre does not waive the rights it has pursuant to its oil and gas interests to explore for, drill and produce the oil and gas underlying the Described Premises or for ingress and egress to the Oil and Gas Operations Areas, except as specifically provided in this Agreement.

13. Successors and Assigns. This Agreement and all of the covenants in it shall be binding upon the successors and assigns of the parties and the benefits of this Agreement shall inure to their successors and assigns. This Agreement and all of the covenants in it shall be covenants running with the land.

14. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with such laws; however, the remainder of this Agreement shall be in full force and effect. In the event that any part of this Agreement would otherwise be unenforceable or in conflict with applicable laws due to the term or period for which such part is in effect, the term or period for which such part of this Agreement shall be in effect shall be limited to the longest period allowable which does not cause such part to be unenforceable or in conflict with applicable laws.

15. Incorporation of Exhibit. Exhibit A is incorporated into this Agreement by this reference.

16. Entire Agreement. This Agreement sets forth the entire understanding between the parties and supersedes any previous communication, representation or agreement, whether oral or written. No change of any of the terms or conditions herein shall be valid or binding on any party unless in writing and signed by an authorized representative of both parties.

17. Notices. Any notice or other communication required or permitted under this Agreement shall be given in writing and provided to the other party either by; i) personal delivery; ii) expedited delivery service with proof of delivery; iii) United States mail, postage prepaid, and registered or certified mail with return receipt requested; or iv) prepaid telecopy or fax, the receipt of which shall be acknowledged, addressed as follows:

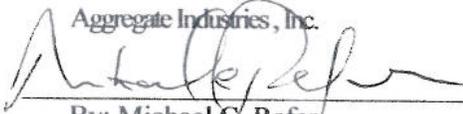
Owner:  
Aggregate Industries, Inc.  
1707 Cole Boulevard, Suite 100,  
Golden, CO 80401

Operator:  
35 Acre, LLC.  
P.O. Box 983  
Broomfield, CO 80038

Notices shall be effective upon receipt and either party may change its address by notice to the other party.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed by a duly authorized representative, to be effective on the date and year first above written.

Aggregate Industries, Inc.



By: Michael C. Refer  
Vice President

35 Acre, LLC



By: Jon P. File  
Managing Partner of Party of Five, LLLP  
the Managing Partner of 35 Acre, LLC

**ACKNOWLEDGEMENTS**

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Jefferson

On this 30th day of October 2008, before me personally appeared,  
Michael C. Pefer, known to me to be the Vice President of  
Aggregate Industries and acknowledged to me he executed the within and foregoing  
instrument as the free and voluntary act and deed of said company for the uses and purposes therein  
set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year  
first above written.

My Commission Expires: 10/30/2012

Barbara S. Ludemann  
Notary Public



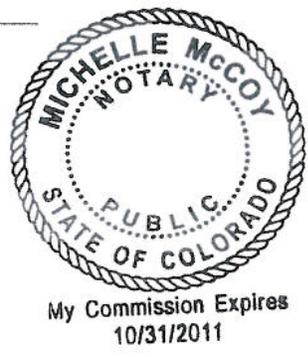
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Broomfield

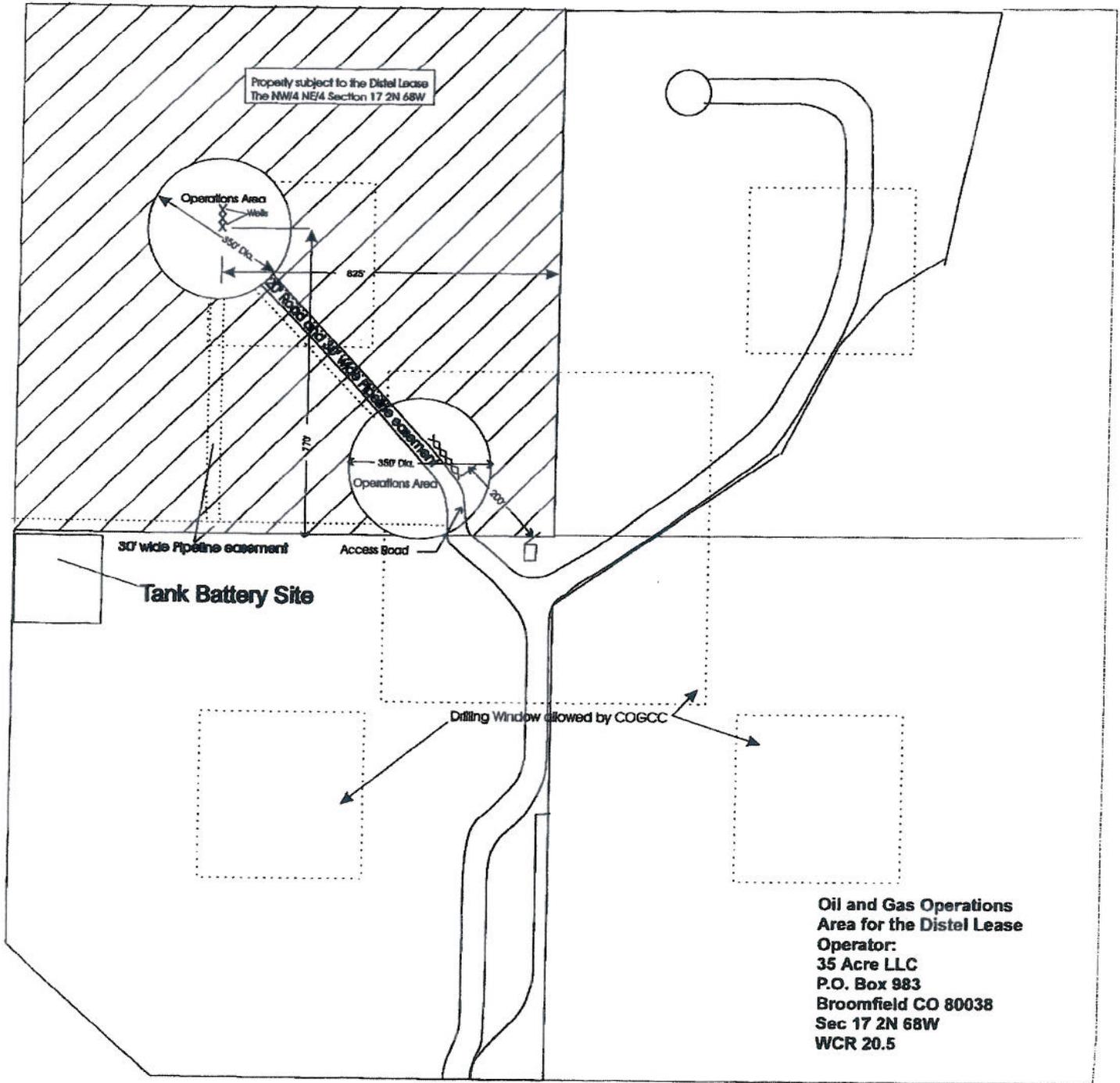
On this 21 day of November 2008, before me personally appeared,  
Jon P. File, known to me to be the Managing Partner of  
Party of Five and acknowledged to me he executed the within and foregoing  
instrument as the free and voluntary act and deed of said company for the uses and purposes therein  
set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year  
first above written.

My Commission Expires: 10/31/11

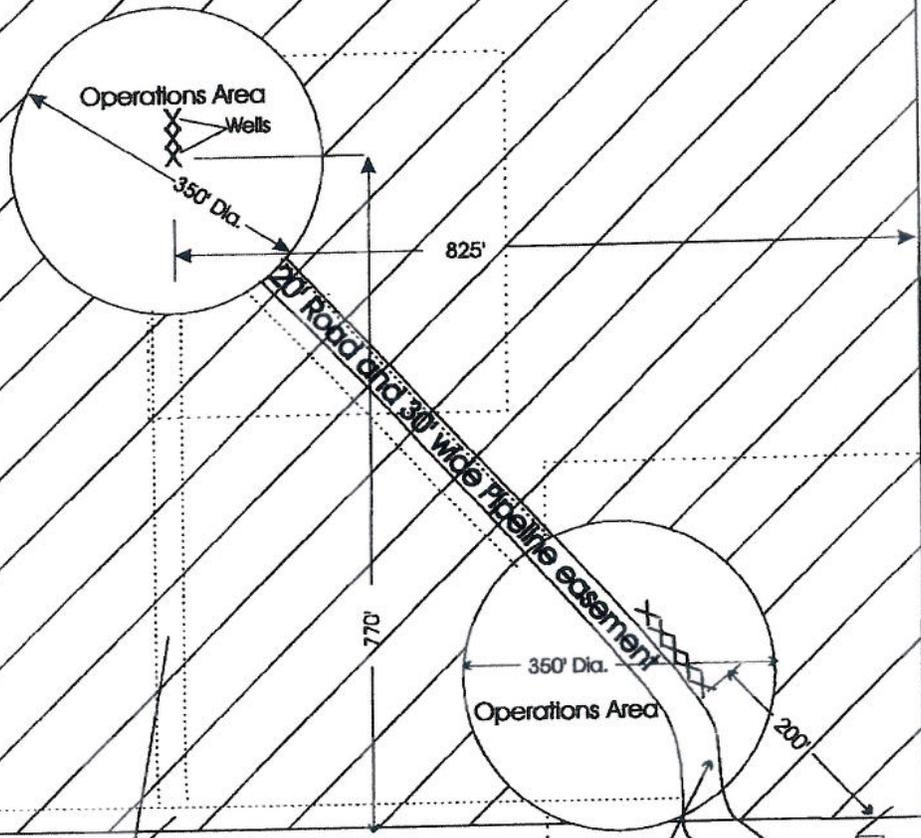
Michelle McCoy  
Notary Public





"Exhibit A"

Property subject to the Distel Lease  
The NW/4 NE/4 Section 17 2N 68W



30' wide Pipeline easement

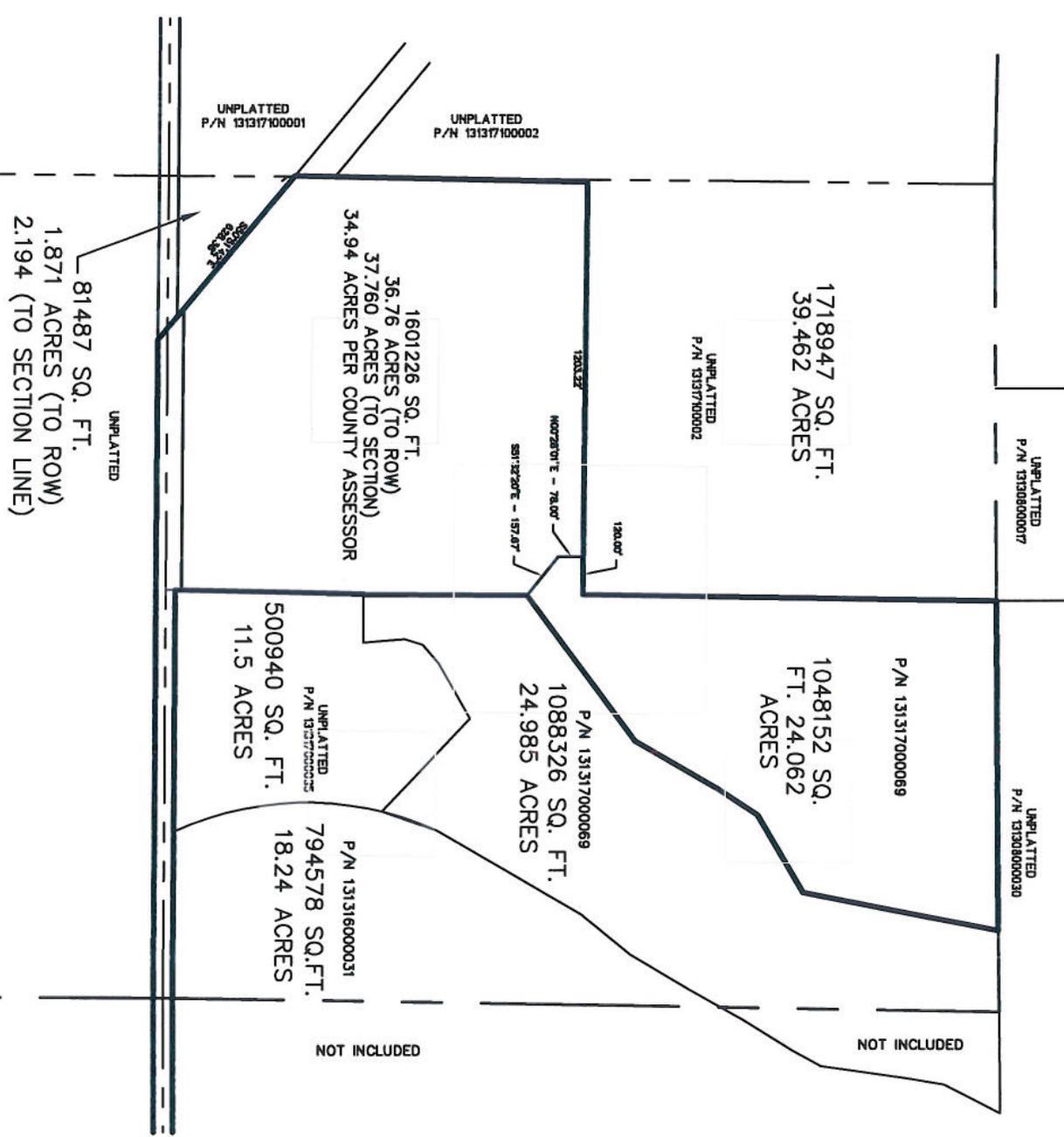
Access Road

Tank Battery Site

**Oil and Gas Operations  
Area for the Distel Lease  
Operator:  
35 Acre LLC  
P.O. Box 983  
Broomfield CO 80038  
Sec 17 2N 68W  
WCR 20.5**

**"Exhibit A"**

Drilling Window allowed by COGC



UNPLATTED  
P/N 131317100001

UNPLATTED  
P/N 131317100002

UNPLATTED  
P/N 131308000017

UNPLATTED  
P/N 131308000030

1718947 SQ. FT.  
39.462 ACRES

UNPLATTED  
P/N 131317100002

P/N 131317000069

1048152 SQ.  
FT. 24.062  
ACRES

P/N 131317000069

1088326 SQ. FT.  
24.985 ACRES

1601226 SQ. FT.  
36.76 ACRES (TO ROW)  
37.760 ACRES (TO SECTION)  
34.94 ACRES PER COUNTY ASSESSOR

500940 SQ. FT.  
11.5 ACRES

UNPLATTED  
P/N 131317000025

P/N 131316000031  
794578 SQ. FT.  
18.24 ACRES

NOT INCLUDED

NOT INCLUDED

UNPLATTED  
81487 SQ. FT.  
1.871 ACRES (TO ROW)  
2.194 (TO SECTION LINE)

S30°30'30"E  
242.33'

126.22'

N00°28'01"E - 78.00'

S81°32'00"E - 157.87'

128.00'