

MEMORANDUM OF SURFACE USE AGREEMENT

This Memorandum of Surface Use Agreement ("Memorandum") is made and entered into effective this 16 day of March, 2017, by and between DAYBREAK RECOVERY ACQUISITION LLC, a Delaware limited liability company, with an address of 1251 Avenue of the Americas, 50th Floor, New York, NY 10020, (hereinafter referred to as "Owner") and KERR-MCGEE OIL & GAS ONSHORE LP (hereinafter referred to as "KMG"), with an address of 1099 18th Street, Suite 1800, Denver, CO 80202; and KERR-MCGEE GATHERING LLC ("KMGG"), also with an address of 1099 18th Street, Suite 1800, Denver, CO 80202. Owner, KMG and KMGG are sometimes referred to alone or together as a "Party" or the "Parties."

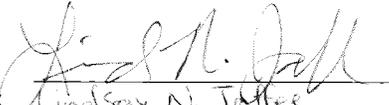
- A. Owner owns the surface estate of that certain tract of land more particularly described on Exhibit "A" attached hereto, being a portion of the SE/4 of Section 8, Township 1 North, Range 68 West, 6th P.M., Weld County, Colorado (hereinafter referred to as the "Section 8 Property");
- B. KMG has the right to develop its oil and gas leasehold estate by drilling wells on the Section 8 Property ("Future Wells"). Surface ownership of the Section 8 Property is subject to the rights of the oil and gas leasehold estate, all or a portion of which is owned by KMG;
- C. The Parties have entered into an agreement that sets forth the Parties' rights and obligations regarding the relationship between the development of the Section 8 Property by Owner and KMG's operation and development of its oil and gas leasehold estate, such agreement entitled the "Surface Use Agreement" ("Agreement"); and
- D. The Parties desire, through the execution and recording of this Memorandum, to reaffirm and give notice of the Agreement and the rights and interests created thereby.

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

1. The Parties have reached an agreement regarding development of KMG's leasehold estate, including but not limited to the location of wells, production facilities, access routes and pipelines on the Section 8 Property, under the terms, provisions and conditions set forth in the Agreement;
2. This Memorandum is not a complete summary of the Agreement and shall not be used in interpreting the provisions of the Agreement, nor in any way or manner does it amend, modify or affect the terms, provisions, conditions and exceptions of the Agreement, and the Agreement shall govern and control in all respects, the duties, obligations, covenants, warranties and agreements of the Parties;
3. Exhibit A is incorporated into this Memorandum by this reference;
4. This Memorandum shall be recorded in the Office of the Clerk and Recorder of Weld County; and
5. This Memorandum may be executed in counterparts, each of which shall be deemed an original, but together of which shall constitute one and the same instrument. Facsimile and/or scanned signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the Parties have executed this instrument on the dates set forth in the acknowledgements, but to be effective on the date first above written.

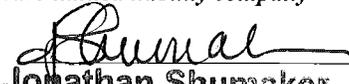
KERR-MCGEE OIL & GAS ONSHORE LP

By: 

Name: Agent & Attorney-in-Fact

Its: Agent & Attorney-in-Fact

DAYBREAK RECOVERY ACQUISITION LLC,
A Delaware limited liability company

By: 

Name: Jonathan Shumaker

Its: Authorized Signatory

KERR-MCGEE GATHERING LLC

By: [Signature]
Name: Lindsay N. Jaffee ^{AKA}
Its: Agent & Attorney-in-Fact

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

The foregoing instrument was acknowledged before me this 16 day of MARCH, 2017, by Jon Shumaker, individually, and as AUTHORIZED SIGNATORY of Daybreak Recovery Acquisition LLC, a Delaware limited liability company.

Witness my hand and official seal.

[S E A L]

[Signature]
Notary Public **HSINYI LONKER**
My Commission Expires: **Notary Public, State of New York**
No. 01LO6222974
Qualified in Westchester County
Commission Expires June 1, 2018

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 20 day of March, 2017, by Lindsay N Jaffee as Agent & Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP.

Witness my hand and official seal.

[S E A L]

REBECCA GILL
Notary Public - State of Colorado
Notary ID 20014036429
My Commission Expires Jan 8, 2018

[Signature]
Notary Public
My Commission Expires: 01.08.2018

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 20 day of March 2017, by Lindsay N Jaffee as Agent & Attorney-in-Fact of Kerr-McGee Gathering LLC.

Witness my hand and official seal.

[S E A L]

REBECCA GILL
Notary Public - State of Colorado
Notary ID 20014036429
My Commission Expires Jan 8, 2018

[Signature]
Notary Public
My Commission Expires: 01.08.2018

Exception Location Waiver SUA Language

1. **OGO A and Rights of Use.** Owner hereby sets aside and grants to KMG, KMGG, its agents, employees, contractors, and related service companies, the exclusive right (except as set forth herein) to use the OGOA on the Section 8 Property. The OGOA may be utilized for, but not limited to, drilling, completion, reworking/recompleting, production, well deepenings and grading activities related to the Wells. Additionally, KMG shall have the exclusive right (except as set forth herein) to locate equipment, facilities, access roads, flow line easements, electrical easements, waterline easements, and/or other pipeline easements (collectively referred to as "Easements", and as later defined in Paragraphs 6, 7, 8 and 9 of this Agreement) as it deems necessary in order to operate the Wells within the OGOA.

The OGOA located on the Section 8 Property shall be as follows:

As shown on Exhibit B, the OGOA will total approximately 11.37 acres, and will include a Permanent Operations Area consisting of approximately 2.42 acres, a No-Build Zone Area consisting of approximately 8.58 acres, and an Ancillary Operations Area consisting of approximately 0.37 acres.

The Parties agree to the following concerning the respective Permanent Operations Area, No-Build Zone Area and Ancillary Operations Area within the OGOA:

(a) **The Permanent Operations Area.** The Permanent Operations Area is for the exclusive use of KMG, KMGG, its agents, employees, contractors, and related service companies for its oil and gas operations related to the Wells on the Section 8 Property. The Permanent Operations Area shall be the area where KMG shall locate all Wells, and may also be used for, but not limited to, the location of tanks, separators, dehydrators, compressors, pumping units and all other associated oil and gas drilling and production equipment and facilities as may be authorized by COGCC permit, rules and regulations. Additionally, Owner consents to the location of multiple Wells within the Permanent Operations Area (as provided herein) that are greater or less than fifty (50) feet apart so long as all such Wells are located within the Permanent Operations Area.

(b) **The No-Build Zone Area.** The No-Build Zone Area is for the exclusive use of KMG, KMGG, its agents, employees, contractors, and related service companies for its oil and gas operations related to the Wells on the Section 8 Property. KMG may not locate any Wells within the No-Build Zone Area; however, KMG may conduct operations related to the preparation, grading, drilling, completion and production of Wells within the No-Build Zone Area.

(c) **The Ancillary Operations Area.** The Ancillary Operations Area is a twenty (20) foot wide strip along the eastern edge of the OGOA, and is for the non-exclusive use of KMG, KMGG, its agents, employees, contractors, and related service companies for its oil and gas operations related to the Wells on the Section 8 Property. KMG may not locate any Wells within the Ancillary Operations Area; however, KMG may conduct operations related to the preparation, grading, drilling, completion and production of Wells within the Ancillary Operations Area. Additionally, all portions of access roads, flow line easements, electrical easements, waterline easements and other pipeline easements within the Ancillary Operations Area, are for the non-exclusive use of KMG, KMGG, its agents, employees, contractors, and related service companies for its oil and gas operations of the Wells on the Section 8 Property.

The Ancillary Operations Area may be used by Owner only for the planting and maintenance of shallow-root landscaping subject to the following:

- i. KMG/KMGG shall have no liability for damage to such landscaping caused by its oil and gas operations and ancillary activities provided for in Section 1(c) above;
- ii. Owner assumes any and all liability for damage to landscaping in the Ancillary Operations Area;
- iii. Such landscaping shall not unreasonably interfere with KMG/KMGG's operations on the Section 8 Property; and

Exception Location Waiver SUA Language

- iv. KMG/KMGG shall in all events, and at all times have priority in the use of the Ancillary Operations Area.

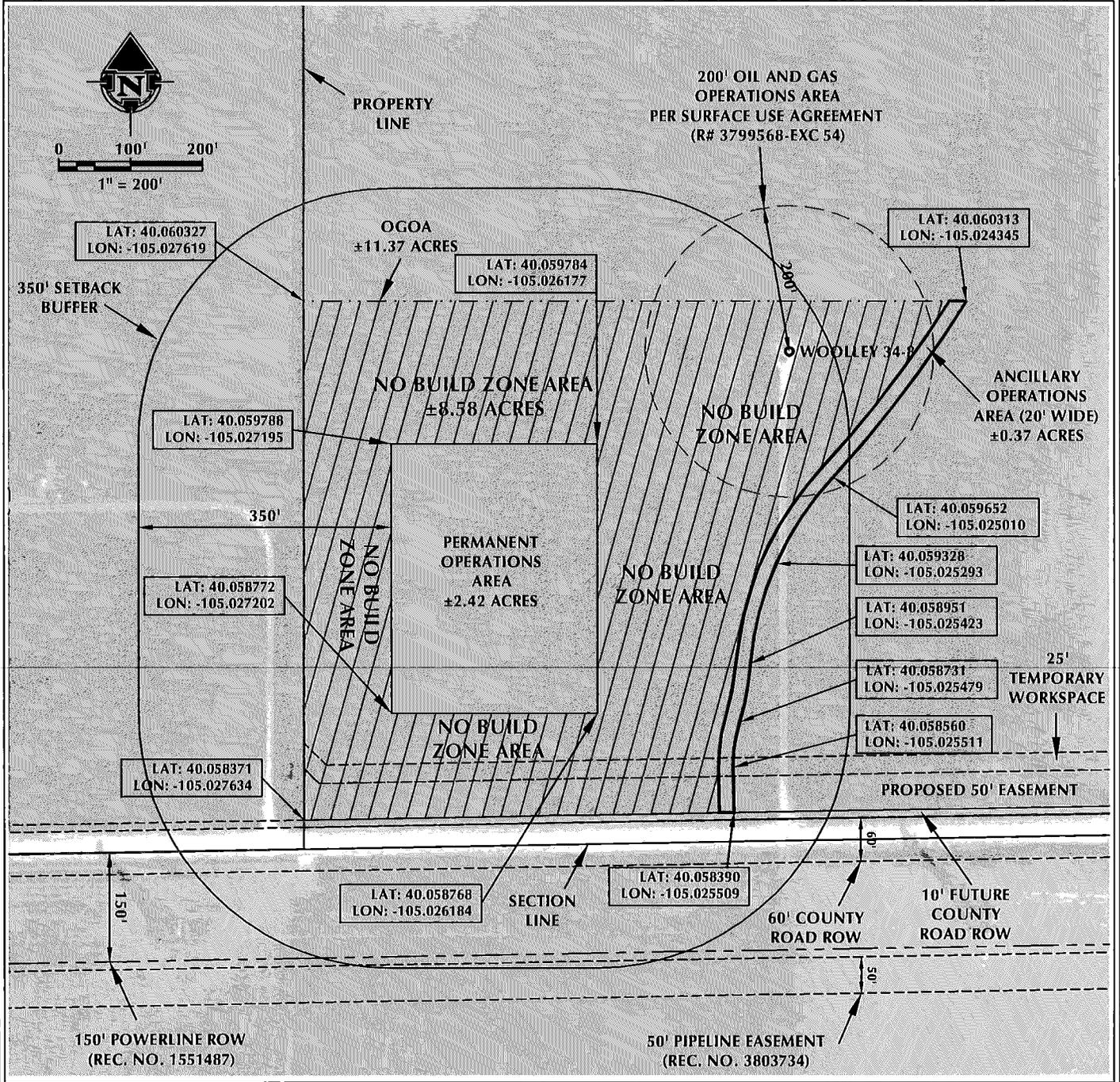
In the event KMG is unable to utilize the entire Permanent Operations Area, No-Build Zone Area, and/or Ancillary Operations Area of the OGOA on the Section 8 Property as depicted on Exhibit B, for whatever reason, including, but not limited to, permit or regulatory issues with the Colorado Oil and Gas Conservation Commission ("COGCC"), the State, Weld County, Erie, Army Corp of Engineers, the State of Colorado acting by and through the Department of Natural Resources, the Colorado Geological Survey, or any other governmental or regulatory entities that retain jurisdiction over such approval, the Parties agree that said OGOA shall be replaced and amended with another location on the Property. The new location(s) selected shall be of at least similar size and dimensions, and shall include areas for the Permanent Operations Area, No-Build Zone Area, and Ancillary Operations Area. The new location(s) will need to accommodate current technological limitations, as well as be economically feasible for KMG. Whether or not the new location(s) are economically feasible shall be at KMG's sole discretion.

Owner and KMG agree that applicable setbacks are those shown on Exhibit B. If not otherwise depicted on Exhibit B, then applicable setbacks shall be three hundred fifty (350) feet from the Permanent Operations Area. It is expressly agreed that lot lines for surface development shall not be platted anywhere within the OGOA or within three hundred fifty (350) feet of the Permanent Operations Area, as identified on Exhibit B. Additionally, Owner agrees not to construct or install any permanent or temporary building, structure or other improvement within the OGOA or within the 350' buffer off of the Permanent Operations Area.

2. Release of Surface Rights. Upon execution of this Agreement, KMG hereby agrees to permanently release to Owner all of KMG's rights to enter upon, access, or otherwise use the oil and gas operations areas contemplated in the Tallgrass Section 8 SUA, except as otherwise provided in this Agreement. KMG will also plug, abandon, or otherwise remove the Existing Section 17 Wells at a time to be solely determined by KMG. Upon plugging, abandonment and removal of the Existing Section 17 Wells, KMG agrees to permanently release rights to enter upon, access or otherwise use the oil and gas operations areas contemplated in the Tallgrass Section 17 SUA. However, KMG shall retain the rights of ingress and egress to the Section 17 Property for access to the plugged and abandoned Existing Section 17 Wells. As partial consideration for such release, Owner will provide for, and hereby relinquishes its development rights within, a twenty-five (25) foot radius area surrounding each plugged and abandoned Existing Section 17 Wells where no lots or building will occur. Owner will further provide access at all times to each plugged and abandoned Existing Section 17 Wells.

EXHIBIT A TO MEMORANDUM

SW1/4 SE1/4 SECTION 8, TOWNSHIP 1 NORTH, RANGE 68 WEST, 6TH P.M.



LEGEND

- EXISTING WELL
- - - OIL AND GAS OPERATIONS AREA
- ▨ NO BUILD ZONE AREA

NOTES:

1. THIS EXHIBIT IS NOT A PROPERTY BOUNDARY SURVEY AND CANNOT BE RELIED UPON TO DETERMINE OWNERSHIP.
2. LATITUDE AND LONGITUDE COORDINATES ARE NAD 83 (2011)(EPOCH:2010)

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609 CONSULTING, LLC
 LOVELAND OFFICE: 1615 FOUNTAIN DRIVE, SUITE 204, LOVELAND, COLORADO 80538, Phone: 970-774-4311
 SHERIDAN OFFICE: 1293 S. GARDEN AVENUE, SHERIDAN, WYOMING 82801, Phone: 307-674-6009

DATE SURVEYED: N/A
 DATE: 10/28/16
 DRAFTER: JFE
 REVISED: 2/13/16

DATA SOURCES:
 - AERIAL COURTESY OF ESRI, INC.
 - WATER WELLS COURTESY OF COLORADO DIVISION OF WATER RESOURCES

PREPARED FOR:
Kerr-McGee Oil & Gas Onshore L.P.