



Stewart Title Guaranty Company Commercial Services  
(Denver)  
55 Madison Street, Suite 400  
Denver, CO 80206

**Date:** March 29, 2021  
**File Number:** 18000310504- Revision No. 4  
**Property:** Erie Highlands Flg No 17, Town of Erie, CO

**Please direct all Title inquiries to:**

Chesney Horn  
**Phone:** (303) 780-4006 (303) 780-4041  
**Email Address:** Chesney.Horn@stewart.com

**OWNER:**

Clayton Properties Group II, Inc., a Colorado corporation,  
and  
Erie Highlands Metropolitan District No. 1; Erie Highlands  
Metropolitan District No. 2; Erie Highlands Metropolitan  
District No. 3; Erie Highlands Metropolitan District No. 4;  
Erie Highlands Metropolitan District No. 5

**LISTING AGENT:**

Terracina Design  
10200 East Girard Avenue, Suite A-314  
Denver, CO 80231  
Attn: Mike Weiher  
Phone: 303.632.8867  
Email: mweiher@terracinadesign.com  
Delivery Method: Emailed

**THIS REVISION OF THE TITLE COMMITMENT INCLUDES THE FOLLOWING CHANGES:**

Schedule A - Updated Vesting to include missing Erie Highlands Metropolitan District No. 5.  
Schedule BII - none.

***We Appreciate Your Business and Look Forward to Serving You in the Future.***



## ALTA COMMITMENT FOR TITLE INSURANCE

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### NOTICE

**IMPORTANT - READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

### COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I - Requirements; Schedule B, Part II - Exceptions; and the Commitment Conditions, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I - Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Countersigned by:

  
Authorized Countersignature

Stewart Title Guaranty Company  
55 Madison Street, Suite 400  
Denver, CO 80206  
(303) 331-0333  
Agent ID: 06J050



  
Matt Morris  
President and CEO

  
Denise Carraux  
Secretary

For purposes of this form the "Stewart Title" logo featured above is the represented logo for the underwriter, Stewart Title Guaranty Company.

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## COMMITMENT CONDITIONS

### 1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I - Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I - Requirements;
- (f) Schedule B, Part II - Exceptions; and
- (g) a countersignature by the Company or its issuing agent that may be in electronic form.

### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

### 5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I - Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II - Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

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- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I - Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

#### **6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT**

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II - Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

#### **7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

#### **8. PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

#### **9. ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <<http://www.alta.org/arbitration>>.

## **STEWART TITLE GUARANTY COMPANY**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252-2029.

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# ALTA COMMITMENT FOR TITLE INSURANCE SCHEDULE A

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

## **Transaction Identification Data for reference only:**

Issuing Agent: Stewart Title Guaranty Company  
Issuing Office: 55 Madison Street, Suite 400, Denver, CO 80206  
Issuing Office's ALTA® Registry ID:  
Loan ID Number: N/A  
Commitment Number: 18000310504  
Issuing Office File Number: 18000310504  
Property Address: Erie Highlands Flg No 17, Town of Erie, CO  
Revision Number: 4

**1. Commitment Date:** March 12, 2021 at 5:30 P.M.

**2. Policy to be issued:**

**Proposed Policy Amount**

(a) ALTA Owner's Policy

(b) ALTA Loan Policy

**3. The estate or interest in the Land described or referred to in this Commitment is:**

Fee Simple

**4. The Title is, at the Commitment Date, vested in:**

Clayton Properties Group II, Inc., a Colorado corporation, as to Tracts QQ and X,

and

Erie Highlands Metropolitan District No. 1; Erie Highlands Metropolitan District No. 2; Erie Highlands Metropolitan District No. 3; Erie Highlands Metropolitan District No. 4; **Erie Highlands Metropolitan District No. 5**, as to Tract G

**5. The Land is described as follows:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**STEWART TITLE GUARANTY COMPANY**

  
Authorized Countersignature

## **STATEMENT OF CHARGES**

These charges are due and payable  
before a policy can be issued

Informational Commitment  
Informational Commitment Fee: \$500.00

Sch. # 146720134017 - Tract G  
Sch. # 146720148032 - Tract X  
Sch. # 146720148042 - Tract  
QQ

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**ALTA COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**EXHIBIT "A"  
SCHEDULE A**

**LEGAL DESCRIPTION**

A Replat of all of Tract G, Erie Highlands Filing No. 11 and all of Tracts X & QQ, Erie Highlands Filing No. 16 Located in the Northeast Quarter of Section 20, Township 1 North, Range 68 West of the Sixth Principal Meridian, Town of Erie, County of Weld, State of Colorado.

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# ALTA COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B PART I

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Requirements

File No.: 18000310504- Revision No. 4

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Payment to or for the account of the grantor(s) or mortgagor(s) of the full consideration for the estate or interest to be insured.
6. Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record:

NONE

NOTE: This product is for informational purposes only. It is not a title insurance product and does not provide any form of coverage. This product is not a guarantee or assurance and does not warrant, or otherwise insure any condition, fact or circumstance. This product does not obligate this Company to issue any policies of title insurance for any subsequent transaction based on the information provided or involving the property described herein. This Company's sole liability for any error(s) relating to this product is limited to the amount that was paid for this product.

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# ALTA COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Exceptions

File No.: 18000310504- Revision No. 4

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Rights or claims of parties in possession, not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land and not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) minerals of whatsoever kind, subsurface and surface substances, in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records or listed in Schedule B.
7. Water rights, claims or title to water.
8. Any and all unpaid taxes and assessments and any unredeemed tax sales.
9. The effect of inclusions in any general or specific water conservancy, fire protection, soil conservation or other district or inclusion in any water service or street improvement area.
10. Right of way for county roads 30 feet wide on either side of section and township lines, as established by the Board of County Commissioners for Weld County, recorded October 14, 1889 in [Book 86 at Page 273](#).
11. Reservation of all coal and other minerals in instrument recorded September 27, 1945 in [Book 1162 at Page 31](#), together with the appurtenant rights to use the surface of the Land.  
NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
12. Grant of minerals in instrument recorded December 22, 1967 at [Reception No. 1511171](#), together with the

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# ALTA COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Exceptions

appurtenant rights to use the surface of the Land.

NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

13. Oil and Gas Lease recorded March 23, 1976 at [Reception No. 1684120](#).  
NOTE: Amendment of Oil and Gas Lease recorded June 25, 2012 at [Reception No. 3854517](#).  
NOTE: Affidavit of Production recorded August 2, 2013 at [Reception No. 3952922](#).  
NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
14. Easement as granted to Panhandle Eastern Pipe Line Company in instrument recorded February 10, 1982 at [Reception No. 1882642](#).
15. Notice Concerning Underground Facilities recorded June 26, 1986 at [Reception No. 2058722](#).
16. Notice Concerning Underground Facilities of United Power, Inc., formerly Union Rural Electric Association, Inc. recorded January 24, 1991 at [Reception No. 2239296](#).
17. Notice of Right to Use Surface of Lands recorded December 26, 1996 in [Book 1583 at Page 410](#).
18. Notice of Right to Use Surface of Lands recorded December 26, 1996 in [Book 1583 at Page 411](#).
19. Notice of Right to Use Surface of Lands recorded August 3, 1999 at [Reception No. 2711405](#).
20. Request For Notification of Surface Development recorded May 28, 2002 at [Reception No. 2954714](#).
21. Notice of Right to Use Surface of Lands recorded December 13, 2005 at [Reception No. 3346989](#).
22. Request For Notification of Surface Development recorded April 21, 2006 at [Reception No. 3381087](#).
23. Request For Notification of Surface Development recorded December 21, 2007 at [Reception No. 3525268](#).
24. Surface Use Agreement recorded August 1, 2013 at [Reception No. 3952706](#).
25. Order and Decree Organizing Erie Highlands Metro Districts recorded December 02, 2013 at Reception No(s). [3981399](#), [3981400](#), [3981401](#).
26. Memorandum of Compatible Development and Surface Use Agreement recorded December 09, 2013 at [Reception No. 3982954](#).  
NOTE: First Amendment to Compatible Development and Surface Use Agreement recorded October 27, 2020 at [Reception No. 4644317](#).
27. Grant of Permanent Avigation Easement Agreement recorded December 16, 2013 at [Reception No. 3984166](#).
28. Declaration of Covenants, Conditions and Restrictions for Erie Highlands recorded July 21, 2014 at [Reception No. 4032135](#).

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# ALTA COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Exceptions

NOTE: First Amendment to Declaration of Covenants, Conditions and Restrictions for Erie Highlands recorded April 03, 2015 at [Reception No. 4095671](#).

NOTE: Notice of Inclusion (Erie Highlands Filing Nos. 14 and 15), recorded September 30, 2020 at [Reception No. 4635303](#).

29. Erie Highlands Zoning Map recorded September 10, 2014 at [Reception No. 4044913](#).  
NOTE: Erie Highlands Zoning Map-Amendment No. 1 recorded August 23, 2016 at [Reception No. 4230394](#).
30. Erie Highlands PUD Zoning Map recorded September 10, 2014 at [Reception No. 4044914](#).  
NOTE: Erie Highlands PUD Zoning Map-Amendment No. 1 recorded August 23, 2016 at [Reception No. 4230395](#).
31. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Erie Highlands Filing No. 1 recorded September 10, 2014 at [Reception No. 4044915](#).
32. Erie Highlands Property Vested Rights Development Agreement recorded September 10, 2014 at [Reception No. 4044916](#).
33. Erie Highlands Property Master Pre-Development Agreement recorded September 10, 2014 at [Reception No. 4044917](#).
34. Erie Highlands Filing No. 1 Development Agreement recorded September 10, 2014 at [Reception No. 4044918](#).
35. Metropolitan Public Disclosure Statement(s) recorded October 1, 2014 at Reception No(s). [4050503](#), [4050504](#), [4050505](#) and [4050506](#).
36. Intergovernmental Agreement Between The Town of Erie Colorado and Erie Highlands Metropolitan District Nos. 1-5 recorded November 20, 2014 at [Reception No. 4063179](#).
37. Order for Inclusion of Lands Within the Boundaries of Municipal Subdistrict, Northern Colorado Water Conservancy District, recorded December 1, 2014 at [Reception No. 4065129](#).
38. Order for Inclusion of Lands Within the Boundaries of the Northern Colorado Water Conservancy District, recorded December 4, 2014 at [Reception No. 4066298](#).
39. Grant of Easement to United Power, Inc., recorded August 5, 2015 at [Reception No. 4131075](#).
40. **[Intentionally deleted.]** Supplemental Deed of Trust Incorporating by Reference a Master Form of Deed of Trust (With Security Agreement and Assignment of Rents and Leases), recorded November 25, 2015 at [Reception No. 4160949](#).  
NOTE: Disburser's Notice recorded November 25, 2015 at [Reception No. 4160950](#).
41. Grant of Permanent Public Access Easement Agreement recorded December 21, 2015 at [Reception No. 4166771](#).
42. Grant of Easement recorded January 15, 2016 at [Reception No. 4173297](#).
43. Request for Notification of Application for Development recorded July 12, 2016 at [Reception No. 4218393](#).

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# ALTA COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Exceptions

44. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Erie Highlands Filing No. 8, recorded August 23, 2016 at [Reception No. 4230396](#).
45. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Erie Highlands Filing No. 9, recorded November 18, 2016 at [Reception No. 4251920](#).
46. Erie Highlands Filing No. 9 Development Agreement recorded November 8, 2016 at [Reception No. 4251921](#).
47. Easements, notes, covenants, restrictions and rights-of-way as shown on the plat of Erie Highlands Filing No. 11, recorded April 06, 2017 at [Reception No. 4291875](#).
48. Grant of Easement recorded January 15, 2018 at [Reception No. 4367458](#).
49. Existing leases and tenancies.
50. Orders of Exclusion of Real Property recorded August 16, 2018 at [Reception No. 4423713](#) and [Reception No. 4423714](#) and [Reception No. 4423715](#).  
NOTE: Corrected Order For Exclusion, Case Number 2013CV30840, recorded April 2, 2019 at [Reception No. 4478270](#).  
NOTE: Corrected Order For Exclusion, Case Number 2013CV30841, recorded April 2, 2019 at [Reception No. 4478271](#).  
NOTE: Corrected Order For Exclusion, Case Number 2013CV30842, recorded April 2, 2019 at [Reception No. 4478272](#).
51. Request for Notification of Surface Development recorded June 19, 2019 at [Reception No. 4498653](#).  
NOTE: Affects East half of Section 20.  
NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
52. Request for Notification of Surface Development recorded June 19, 2019 at [Reception No. 4498654](#).  
NOTE: Affects North half of Section 20.  
NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
53. Request for Notification of Surface Development recorded July 17, 2019 at [Reception No. 4506257](#).  
NOTE: Affects North half of Section 20.  
NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
54. Declaration of Pooling recorded November 20, 2019 at [Reception No. 4543019](#).  
NOTE: Affects East half of the East half of Section 20.  
NOTE: The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
55. Development Agreement (Erie Highlands Filing No. 14 and Filing No. 15) recorded May 1, 2020 at [Reception No.](#)

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.*

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File No. 18000310504

CO ALTA Commitment For Title Insurance Schedule 8-1-16 (4-2-18) COM

Page 4 of 5



# ALTA COMMITMENT FOR TITLE INSURANCE

## SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Exceptions

[4587177.](#)

- 56. 8' Utility Easement as shown on the plat of Erie Highlands Filing No. 14, recorded May 1, 2020 at [Reception No. 4670781.](#)
- 57. Development Agreement (Erie Highlands Filing No. 16 recorded January 13, 2021 at [Reception No. 4670779.](#)
- 58. Reserved Temporary Construction and Pipe Line Easements as shown on the plat of Erie Highlands Filing No. 16 recorded January 13, 2021 at [Reception No. 4670781.](#)

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.*

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File No. 18000310504

CO ALTA Commitment For Title Insurance Schedule 8-1-16 (4-2-18) COM

Page 5 of 5





Stewart Title Guaranty Company -  
Commercial Services  
55 Madison Street, Suite 400  
Denver, CO 80206  
Phone  
Fax

## **MINERAL DISCLOSURE**

To comply with the provisions of C.R.S. 10-11-123, the Company makes the following disclosure:

- a. That there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- b. That such mineral estate may include the right to enter and use the property without the surface owner's permission.

NOTE: THIS DISCLOSURE APPLIED ONLY IF SCHEDULE B, SECTION 2 OF THE TITLE COMMITMENT HEREIN INCLUDES AN EXCEPTION FOR SEVERED MINERALS.

# STG Privacy Notice Stewart Title Companies

## WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its title affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

| Reasons we can share your personal information.  | Do we share | Can you limit this sharing?   |
|--|-------------|---|
| <b>For our everyday business purposes</b> — to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.  | Yes         | No  |
| <b>For our marketing purposes</b> — to offer our products and services to you.   | Yes         | No  |
| <b>For joint marketing with other financial companies</b>  | No          | We don't share  |
| <b>For our affiliates' everyday business purposes</b> — information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. <i>Our affiliates may include companies with a Stewart name; financial companies, such as Stewart Title Company</i> | Yes         | No  |
| <b>For our affiliates' everyday business purposes</b> — information about your creditworthiness.   | No          | We don't share  |
| <b>For our affiliates to market to you</b> — For your convenience, Stewart has developed a means for you to opt out from its affiliates marketing even though such mechanism is not legally required.  | Yes         | Yes, send your first and last name, the email address used in your transaction, your Stewart file number and the Stewart office location that is handling your transaction by email to <a href="mailto:optout@stewart.com">optout@stewart.com</a> or fax to 1-800-335-9591. |
| <b>For non-affiliates to market to you.</b> Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.  | No          | We don't share  |

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

## SHARING PRACTICES

|  |   |
|--|---|
| <b>How often do the Stewart Title Companies notify me about their practices?</b> | We must notify you about our sharing practices when you request a transaction.  |
| <b>How do the Stewart Title Companies protect my personal information?</b>       | To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer, file, and building safeguards.   |
| <b>How do the Stewart Title Companies collect my personal information?</b>       | <p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>▪ request insurance-related services</li> <li>▪ provide such information to us</li> </ul> <p>We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.</p> |
| <b>What sharing can I limit?</b>   | Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.  |

**Contact us:** If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1360 Post Oak Blvd., Ste. 100, Privacy Officer, Houston, Texas 77056



**ERIE HIGHLANDS PROPERTY  
MASTER PRE-DEVELOPMENT AGREEMENT**

**THIS MASTER PRE-DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this 12<sup>th</sup> day of November 2013, by and among the **TOWN OF ERIE**, a Colorado municipal corporation, hereinafter referred to as "Erie;" **OAKWOOD HOMES, LLC**, a Colorado limited liability company, hereinafter referred to as "Developer;" and **J DEARMIN LLC, J GAZ LLC, THE JACK SHELL & SONYA SHELL FAMILY TRUSTS**, and **WY&K HOLDINGS, LLC**, (collectively, the "Owners").

**RECITALS**

**WHEREAS**, Developer is the contract purchaser of an approximately 295.8 acre parcel of land located on the west side of County Road 5 to the south of Erie Parkway, in the Town of Erie, Weld County, state of Colorado, commonly known as the Erie Highlands Property (the "Property"), and as more particularly described in "Exhibit A" attached hereto and incorporated herein by reference; and

**WHEREAS**, the Owners are collectively the owners of the Property; and

**WHEREAS**, Developer has applied to Erie for a rezoning of various tracts of the Property as Low Density Residential-LR, Medium Density Residential-MR, and Community Commercial-CC, Public Lands & Institutions-PLI, Agricultural/Opens Space-AG/OS (the "Rezoning") all with a Planned Unit Development Overlay (the "PUD") in order to develop a mixed use project within the Property (the "Development"); and

**WHEREAS**, the Owners have consented to the submission of such application by Developer; and

**WHEREAS**, the Board of Trustees of Erie held a public hearing on Developer's application for Rezoning and PUD on October 22, 2013 ("Public Hearing"), at which time evidence and testimony were received by the Board of Trustees, and which evidence and testimony was relied upon by the Board of Trustees in making findings and in determining whether or not the criteria set forth in the Erie Municipal Code ("Code") for rezoning had been met by Developer; and

**WHEREAS**, Developer presented evidence and testimony at the Public Hearing, including uses, maximum numbers of units, lot size, densities, phasing, open space dedication, park land dedication, and infrastructure for the Property, which evidence and testimony was specifically relied upon by the Board of Trustees in making findings and in determining that the for rezoning set forth in the Code had been met by Developer and in approving the Rezoning and PUD of the Property; and

**WHEREAS**, the Board of Trustees of Erie approved the Rezoning of the Property by Ordinance No. 35-2013 dated November 12, 2013, and approved the PUD by Ordinance No. 36-2013 dated November 12, 2013, as depicted on the Property zoning maps, attached hereto as "Exhibit B-1" and "Exhibit B-2" and incorporated herein by reference; and



**WHEREAS**, Erie and Developer now desire to enter into this Agreement to bind Developer to those uses, maximum numbers of units, lot sizes, densities, phasing, open space dedication, park land dedication, and infrastructure for the Property specifically relied upon by the Board of Trustees in approving the Rezoning and PUD; and

**WHEREAS**, the Development will be developed in multiple phases, wherein each phase will require Final Plat approval; and

**WHEREAS**, both Erie and Developer understand and agree that Developer intends to submit subsequent applications for Final Plats for each phase of development of the Property at some future date in accordance with the subdivision regulations set forth in the Code, and that at that time of subdivision a separate Development Agreement for each Final Plat will be required of Developer in conjunction with the subdivision process, which Development Agreement will address the required improvements and special provisions related to the subdivision and development of the Property located within each such Final Plat; and

**WHEREAS**, this Agreement is not intended to replace the Development Agreement for each Final Plat, but is intended only to bind the parties hereto to those items specifically relied upon by the Board of Trustees in making findings and in determining that the Code's criteria for rezoning had been met by Developer and provide assurances to the Developer regarding the overall process and Town interpretations applicable to the entire Property. Accordingly, a separate Development Agreement will be entered into with each Final Plat of the Property that will address matters related to the Property located within each such Final Plat; and

**WHEREAS**, the execution by Owners of this Agreement is only an acknowledgement of their agreement that Developer is authorized to enter into this Agreement with respect to the Property, and not an agreement by the Owners to undertake any development of the Property.

**NOW, THEREFORE**, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

**1. Incorporation of Recitals.** The parties agree that the aforesaid recitals are true and correct, and those recitals are hereby incorporated into the body of this Agreement.

**2. Phasing.** Construction of the Development is anticipated to occur in multiple phases, as shown on the Phasing Map attached as "Exhibit C." The Owner shall determine the sequence of development of each phase provided that such sequencing meets the subdivision regulations of the Code.

**3. Separate Development Agreements.** Erie and Developer acknowledge and agree that the development obligations for the Property shall be set forth in separate development agreements, known herein as Development Agreements, to be entered into by the parties at the time of Final Plat for each such Final Plat, in accordance with the subdivision regulations of the Code and in conjunction with the subdivision process.

**4. Uses, Maximum Number of Dwelling Units, Lot Sizes, Densities.** The uses, maximum number of dwelling units, minimum lot sizes, and densities for the Development shall be as depicted on the PUD, attached as "Exhibit B-2." The parties expressly acknowledge that



the Rezoning of various tracts of the Property to Low Density Residential-LR, Medium Density Residential-MR, Community Commercial-CC, Public Lands & Institutions-PLI, and Agricultural/Open Space-AG/OS generally complies with the development standards of the respective zone districts, except as accounted for by the PUD which allows deviations from the underlying zoning in compliance with the Code.

**5. Open Space Dedication.** Developer shall not be required to dedicate open space at the time of approval of the Preliminary Plat or the Rezoning and shall, instead, dedicate open space to Erie as shown on "Exhibit B-2" attached hereto and incorporated herein by reference, within each Final Plat at the time of Final Plat approval for each phase of the Development. The minimum public open space dedication is shown on "Exhibit B-2." Erie acknowledges and agrees there is minimal open space dedication in the Phase 1 Final Plat and in other early phases of the Development and that most of the open space dedication identified on "Exhibit B-2" will occur in later phases of the Development. The minimum open space dedication of 31.33 acres, illustrated on "Exhibit B-2" is adequate to fulfill the open space dedication requirement for 667 dwelling units. The parties agree that after 667 dwelling units have been approved by final plats that for the Development to conform with the aggregate open space dedication requirements of the Code, the Developer shall either dedicate additional open space (above the 31.33 acres) or make a payment of cash in-lieu of land dedication for open space pursuant to the Code with each Final Plat. The Parties agree that the cash in-lieu for open space land dedication shall be \$1,278.58 per dwelling unit, which amount is agreed upon and fixed for a period of five years from the effective date of this agreement. In the event that residential portions of the Development have not been final platted by such date, then the Developer shall be required to obtain an appraisal for submittal with the remaining Final Plat(s), which appraisal of then-current value shall be used to calculate a new cash in-lieu.

**6. Park Land Dedication.** The parties acknowledge and agree that the Pocket Park and Neighborhood Park land dedication requirements for the Development shall be based on the maximum number of dwelling units shown on "Exhibit B-2." Developer shall not be required to dedicate park land at the time of approval of the Preliminary Plat or the Rezoning and shall, instead, dedicate Pocket Park and Neighborhood Park land to Erie as shown on "Exhibit B-2" attached hereto and incorporated herein by reference, within each Final Plat at the time of Final Plat approval for each phase of the Development. The minimum Pocket Park and Neighborhood Park land dedication is shown on "Exhibit B-2" attached hereto and incorporated herein by reference. The parties agree that a cash in-lieu of Community Park land dedication will be required for the residential portion of the Development to conform to the Community Park land dedication requirements at the time of Final Plat. Developer shall make a payment of cash in-lieu of land dedication pursuant to the Code with each Final Plat. The Parties agree that the cash in-lieu for park land dedication shall be \$376.12 per dwelling unit, which amount is agreed upon and fixed for a period of five years from the effective date of this agreement. In the event that residential portions of the Development have not been final platted by such date, then the Developer shall be required to obtain an appraisal for submittal with the last Final Plat(s), which appraisal of then-current value shall be used to calculate a new cash in-lieu.

**7. School Land Dedication.** The Development is anticipated to increase the demand on the St. Vrain Valley School District RE-1J (the "School District") due to the predictable increase in the number of school age children who will reside in the Development.



Developer has agreed to mitigate a portion of the costs and to meet its obligations under the Intergovernmental Agreement Concerning Fair Contributions for Public School Sites, dated June 8, 2011, between the Town of Erie and the School District ("IGA") by dedicating land for school purposes which would be reasonably necessary to serve the Development and the future residents thereof.

**8. Erie Parkway.** Future improvements are anticipated for Erie Parkway which runs along the northern border of the Development. The parties acknowledge and agree that Developer shall be responsible for improving the southern half of the Erie Parkway road section to Towns' principal arterial standards. In addition, Developer shall be responsible for making improvements (acceleration, deceleration, turn lanes, etc.) to provide fully functional intersections proposed adjacent to Erie Parkway. Developer shall be responsible for dedication of additional Erie Parkway right-of-way with the first final plat approved for the Development. However, the Parties agree that the obligation of Developer to construct improvements to Erie Parkway and to improve Erie Parkway shall be phased in accordance with the phasing of the overall Development, and the improvements to Erie Parkway required to serve each phase shall be required as part of each Final Plat, and addressed in the Development Agreement for each Final Plat.

**9. County Road 5.** Future improvements are anticipated for County Road 5 which runs along the east border of the Development. The parties acknowledge and agree that the Developer shall be responsible for improving the western half of the County Road 5 road section to the Towns' arterial standards. In addition, Owner shall be responsible for making improvements (acceleration, deceleration, turn lanes, etc.) to provide fully functional intersections proposed adjacent to County Road 5. Owner shall be responsible for dedication of additional County Road 5 right-of-way with the first final plat approved for the Development.

**10. Prototype Site Plans.** The parties acknowledge and agree that, prior to building permit application for any individual lot less than 5,000 square feet in size, the Town may require submittal of one or more Site Plans for each planning area within each filing. Site Plans shall be reviewed for approval in accordance with the Code.

**11. Public Improvements.** The parties acknowledge and agree that Developer shall not be required to construct or install public improvements or construct public infrastructure at the time of Preliminary Plat or the Rezoning and shall, instead, construct or install public improvements outlined in each separate Development Agreement as determined at the time of Final Plat for each phase of the Development based on the relevant engineering studies for each phase.

**12. Default by either Party.** If any material condition, obligation, or duty is not timely made, tendered, or performed by either Party under this Agreement, the non-defaulting Party may declare the defaulting party in default, following the notice and cure period referenced in Paragraph 15 of this Agreement, may proceed to seek any remedy available at law or in equity, including specific performance, damages, court costs, and attorney fees and costs as may be proper. In addition, if Developer fails to fulfill the terms and conditions of this Agreement, Erie, in its reasonable discretion, may declare Developer in default and may withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or



services until the default is cured. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

**13. Notice of Default and Cure Period.** In the event of an alleged Default by either Party under this Agreement, the non-defaulting Party may deliver written notice to the allegedly defaulting Party of such Default, at the address specified herein, and the allegedly defaulting Party shall have thirty (30) days from and after receipt of such notice to cure such Default. If such Default is not of a type which can be cured within such thirty (30) day period and the allegedly defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing such cure, then the allegedly defaulting Party shall have a reasonable period of time given the nature of the Default following the end of such thirty (30) day period to cure such Default, provided that the allegedly defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

**14. Separate Vested Rights Agreement.** The parties acknowledge and agree that the parties have entered into a separate Vested Rights Agreement, entered into in accordance with the Code, acknowledging that the Rezoning, Preliminary Plat, Phase 1 Final Plat and any future Final Plats that are approved by Erie for the various phases of the Development, as such Preliminary Plat and plats may be amended from time to time, shall be considered a site specific development plan ("SSDP") for the purposes of the Vested Rights Statute and Sections 10.7.18 and 10.11.3 of the Code.

**15. Representations and Warranties by Developer.** Developer represents and warrants to Erie that:

a. Developer is duly organized, validly existing and in good standing under the laws of the State of Colorado and has the legal capacity and the authority to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto;

b. The execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part, and such documents and such performance and observance are valid and binding upon Developer;

c. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (1) conflict with or contravene any law, order, rule or regulation applicable to Developer or to Developer's governing documents, (2) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which Developer is a party or by which it may be bound or affected, or (3) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of Developer; and

d. This Agreement constitutes a valid and binding obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy,



insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

**16. Indemnification and Release of Liability.** Developer agrees to indemnify and hold harmless Erie, its officers, employees, agents, or servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by arising from, or on account of acts or omissions by Developer, its officers, employees, agents, consultants, contractors, and subcontractors, and/or suit, action, or claim resulting from Developer's failure to abide by the terms of this Agreement, and to pay to Erie and said persons their reasonable expenses, including but not limited to, reasonable attorney's fees and reasonable expert witness fees, incurred in defending any such suit, action or claim. Developer's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents, or servants of Erie or conformance with requirements imposed by Erie.

**17. Title and Authority.** Owners warrant to Erie that Owners are the record owners of the Property. The Owners further warrants that the Developer has full power and authority to enter into this Agreement.

**18. Recording Agreement.** Erie shall record this Agreement at Developer's expense in the office of the Clerk and Recorder, County of Weld, State of Colorado, and Erie shall retain the recorded Agreement.

**19. Binding Effect of Agreement.** This Agreement shall run with the Property and shall inure to the benefit of and be binding upon Erie and the successors, heirs, assigns, and any other person or entity acquiring or purchasing any interest in any of the Development.

**20. Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any sections of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

**21. Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, sent via overnight delivery service or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

Erie:

Town of Erie  
Town Administrator  
P.O. Box 750  
Erie, CO 80516-0750

With a copy (which shall not  
constitute notice) to:

Developer:

Oakwood Homes, LLC  
Attn: Chad Ellington  
4908 Tower Road  
Denver, CO 80249

With a copy (which shall not  
constitute notice) to:



Mark Shapiro  
Mark R. Shapiro, PC  
1650 38th Street, Suite 103  
Boulder, CO 80301-2624

Carolynne C. White  
Brownstein Hyatt Farber Schreck, LLP  
410 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

**22. Previous Agreements.** This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Development.

**23. Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have ratified this Agreement including each part, section, subsection, sentence, clause or phrase thereof; irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

**24. Additional Documents or Action.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement or is reasonably requested by the other party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. If all or any portion of this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the parties, within the scope of their powers and duties, shall cooperate in the joint defense of such documents and, if such defense is unsuccessful, the parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each party substantially receives the benefits that it would have received under this Agreement.

**25. Attorney Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this Agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.

**26. Situs, Venue and Severability.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Boulder, State of Colorado.

**27. Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

**28. Limited Third Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities only as to the parties hereto and is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.

**29. No Presumption.** The parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the party causing the Agreement to be drafted.


**30. Parties Not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the parties shall not be deemed to be partners or joint venturers, and no party shall be responsible for any debt or liability of any other party.

**31. No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any party under applicable state law.

**32. Nonliability of Officials, Agents and Employees.** No trustee, board member, commissioner, official, employee, consultant, attorney or agent of any party shall be personally liable to any party under this Agreement or in the event of any Default or for any amount that may become due to any party.

**33. Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

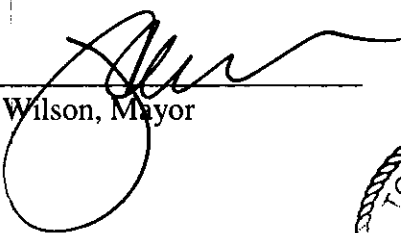
**[SIGNATURES ON FOLLOWING PAGE]**

4044917      Pages: 8 of 26  
09/10/2014 12:16 PM R Fee:\$161.00  
Steve Moreno, Clerk and Recorder, Weld County, CO  




IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**TOWN OF ERIE:**

  
\_\_\_\_\_  
Joseph A. Wilson, Mayor



**ATTEST:**


  
\_\_\_\_\_  
Nancy J. Parker, Town Clerk

**[SIGNATURES CONTINUE ON FOLLOWING PAGES]**

4044917      Pages: 9 of 26  
09/10/2014 12:16 PM R Fee:\$161.00  
Steve Moreno, Clerk and Recorder, Weld County, CO



**OAKWOOD HOMES, LLC,**  
a Colorado limited liability company

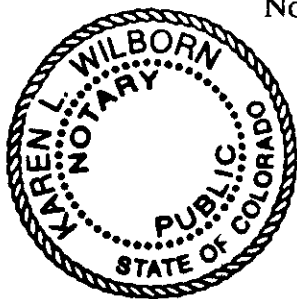
By:   
Name: Robert J. Sanderman  
Title: Executive Vice President

STATE OF COLORADO )  
 ) SS.  
COUNTY OF *Denver* )

Subscribed and sworn to before me this 18<sup>th</sup> day of October, 2013, by Robert J. Sanderman as EVP of **Oakwood Homes, LLC**, a Colorado limited liability company.

Witness my hand and official seal.  
My Commission expires 6/17/2016

Karen L. Welborn  
Notary Public



**[SIGNATURES AND ACKNOWLEDGEMENTS OF OWNERS ON THE FOLLOWING PAGES]**

4044917      Pages: 10 of 26  
09/10/2014 12:16 PM R Fee:\$161.00  
Steve Moreno, Clerk and Recorder, Weld County, CO



Solely for the purpose of acknowledging and consenting:

**OWNERS:**

**J DEARMIN LLC**, a Colorado limited liability company

By:

Name:

Title:

*Debra M. Dearmin*  
*James R. Dearmin*  
*Debra M. Dearmin*  
*Attorney in fact*

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

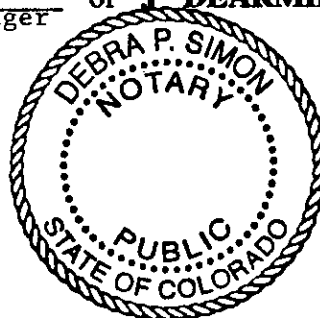
Subscribed and sworn to before me this 11<sup>th</sup> day of October, 2013, by  
Debra M. Dearmin as attorney-in-fact for James R. Dearmin, Manager of **J DEARMIN LLC**, a  
Colorado limited liability company.

Witness my hand and official seal.

My Commission expires 8/10/2014.

*Debra P. Simon*

Notary Public



My Commission Expires 08/10/2014

**[SIGNATURES AND ACKNOWLEDGEMENTS OF  
OWNERS ON THE FOLLOWING PAGES]**



**J GAZ LLC, a Colorado limited liability company**

By: Emmalou Gaz  
Name: Emmalou Gaz  
Title: Attorney-in-fact

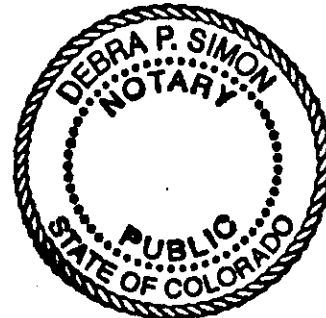
STATE OF COLORADO     )  
CITY AND                     ) SS.  
COUNTY OF DENVER        )

Subscribed and sworn to before me this 14th day of October, 2013, by  
Emmalou Gaz as attorney-in-fact for Johnny Gaz, Manager of **J GAZ LLC** a Colorado  
limited liability company.

Witness my hand and official seal.

My Commission expires 8/10/2014.

Debra P. Simon  
Notary Public



My Commission Expires 08/10/2014

**[SIGNATURES AND ACKNOWLEDGEMENTS OF  
OWNERS ON THE FOLLOWING PAGES]**



**JACK SHELL FAMILY TRUST**

By: Jack Shell  
Jack Shell, Trustee

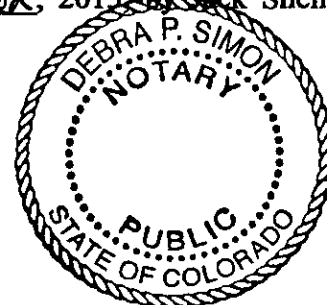
STATE OF COLORADO )  
CITY AND ) SS.  
COUNTY OF DENVER )

Subscribed and sworn to before me this 2<sup>nd</sup> day of December, 2013, by Jack Shell as Trustee of **JACK SHELL FAMILY TRUST**.

Witness my hand and official seal.

My Commission expires 8/10/14.

Debra P. Simon  
Notary Public



My Commission Expires 08/10/2014

**[SIGNATURES AND ACKNOWLEDGEMENTS OF  
OWNERS ON THE FOLLOWING PAGE]**

4044917 Pages: 13 of 26  
09/10/2014 12:16 PM R Fee:\$161.00  
Steve Moreno, Clerk and Recorder, Weld County, CO  
[Barcode]

**SONJA SHELL FAMILY TRUST**

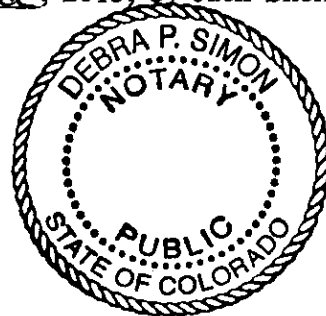
By: Jack Shell  
Jack Shell, Successor Trustee

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

Subscribed and sworn to before me this 2<sup>nd</sup> day of December, 2013, by Jack Shell as Successor Trustee of **SONJA SHELL FAMILY TRUST**.

Witness my hand and official seal.  
My Commission expires 8/10/14.

Debra P. Simon  
Notary Public



My Commission Expires 08/10/2014

**[SIGNATURES AND ACKNOWLEDGEMENTS OF  
OWNERS ON THE FOLLOWING PAGE]**

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09/10/2014 12:16 PM R Fee:\$161.00  
Steve Moreno, Clerk and Recorder, Weld County, CO





WY & K HOLDINGS, LLC,  
a Colorado limited liability company

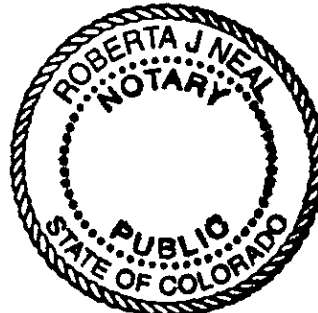
By: Robert E Youle  
Name: ROBERT E YOULE  
Title: Manager

STATE OF COLORADO     )  
  ) SS.  
COUNTY OF DENVER )

Subscribed and sworn to before me this 14<sup>th</sup> day of October, 2013, by  
ROBERT E YOULE as MANAGER of WY & K HOLDINGS, LLC,  
a Colorado limited liability company.

Witness my hand and official seal.  
My Commission expires 03-20-2014

Robert J Neal  
Notary Public



My Commission Expires 03/20/2014

[END OF SIGNATURES AND ACKNOWLEDGEMENTS]

## EXHIBIT A

### Legal Description of the Erie Highlands Property

The North half of Section 20, Township 1 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado, except those parcels as conveyed by instruments recorded in Book 509 at Page 79 and in Book 814 at Page 251 and in Book 1179 at Page 541 and under Reception No. 1983198 in Book 1044 and November 8, 2005 at Reception No. 3338315, County of Weld, State of Colorado.

The above legal also described as:

A PARCEL OF LAND BEING A PART OF THE NORTH HALF OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 20, AND CONSIDERING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 20 TO BEAR NORTH 00°21'37" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 44°24'15" WEST, A DISTANCE OF 42.88 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF WELD COUNTY ROAD NO. 5 AND THE POINT OF BEGINNING;

THENCE SOUTH 00°00'29" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1695.42 FEET TO A POINT ON THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 509 AT PAGE 79;

THENCE SOUTH 78°55'29" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 400.27 FEET TO A POINT ON THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 1179 AT PAGE 541;

THENCE NORTH 89°59'31" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 27.20 FEET TO THE NORTHWEST CORNER THEREOF;

THENCE SOUTH 00°00'29" WEST, ALONG THE WESTERLY LINE OF SAID PARCEL, A DISTANCE OF 5.33 FEET TO A POINT ON THE NORTHERLY LINE OF THE PARCEL OF LAND DESCRIBED IN SAID BOOK 509 AT PAGE 79;

THENCE SOUTH 78°55'29" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 769.23 FEET TO THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 814 AT PAGE 251;

THENCE ALONG THE NORTHERLY, WESTERLY AND SOUTHERLY LINES OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:



1. CONTINUING SOUTH 78°55'29" WEST, A DISTANCE OF 250.00 FEET;  
2. SOUTH 11°04'31" EAST, A DISTANCE OF 125.00 FEET;  
3. NORTH 78°55'29" EAST, A DISTANCE OF 250.00 FEET TO THE SOUTHWESTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN SAID BOOK 509 AT PAGE 79;

THENCE CONTINUING NORTH 78°55'29" EAST, ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 744.75 FEET TO THE WESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN SAID BOOK 1179 AT PAGE 541;

THENCE SOUTH 00°00'29" WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 76.02 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 1044 UNDER RECEPTION NUMBER 1983198;

THENCE SOUTH 89°05'16" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 225.19 FEET TO THE NORTHWESTERLY CORNER THEREOF;

THENCE SOUTH 00°00'29" WEST, ALONG THE WESTERLY LINE OF SAID PARCEL, A DISTANCE OF 650.48 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 20;

THENCE SOUTH 89°05'16" WEST, ALONG SAID SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 20, A DISTANCE OF 1962.78 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20;

THENCE SOUTH 89°05'29" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 20, A DISTANCE OF 2610.98 FEET;

THENCE NORTH 00°21'37" WEST, PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 20, A DISTANCE OF 2598.72 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WELD COUNTY ROAD NO. 8;

THENCE NORTH 88°48'44" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 2617.94 FEET;

THENCE NORTH 88°48'01" EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 2618.25 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION DEDICATED FOR RIGHT-OF-WAY ON NOVEMBER 8, 2011 UNDER RECEPTION NO. 3338315.



EXHIBIT B-1

Erie Highlands Property Zoning Map

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Steve Morend, Clerk and Recorder, Weld County, CO



## ERIE HIGHLANDS ZONING MAP

A PART OF THE NORTH HALF OF  
SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST  
OF THE SIXTH PRINCIPAL MERIDIAN,  
TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO

### OVERALL BOUNDARY DESCRIPTION

[illegible]

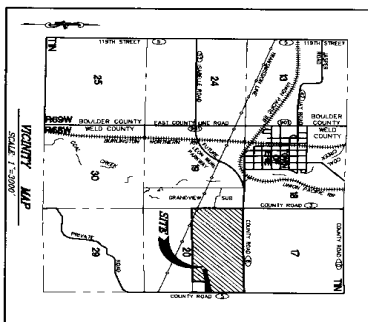
**MEDIUM RESIDENTIAL ZONING DISTRICT**

[illegible]

**COMMUNITY COMMERCIAL ZONING DISTRICT:**

[illegible]

**LOW RESIDENTIAL ZONING DISTRICT**



## AG-OPEN SPACE ZONING DISTRICT

[illegible]

**PUBLIC LANDS - INSTITUTIONS ZONING DISTRICT**

[illegible]

### GENERAL NOTES:

[illegible]

**BUYER'S CERTIFICATE**

I, ROCK BECK, A QUALIFIED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS ZONING MAP MAY BE CORRECTLY REPRESENTED THE ABOVE DESCRIBED LEGAL DESCRIPTIONS FOR EACH ZONE DISTRICT.

DAY OF \_\_\_\_\_ 2013

I ATTEST TO THE ABOVE ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2013.

NOTARY PUBLIC

### PLANNING COMMISSION CERTIFICATE

THIS EXHIBIT WAS RECEIVED BY THE PLANNING COMMISSION ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.


[illegible]

**BOARD OF TRUSTEES APPROVAL CERTIFICATE.**  
THIS TRUSTING AGREEMENT TO BE KNOWN AS THE **EDM. HENNINGSEN TRUSTING** AGREEMENT WAS APPROVED AND ACCEPTED BY ORDINANCE NO. \_\_\_\_\_ PASSED AND ADOPTED AT THE REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE CORPORATION HELD ON \_\_\_\_\_ 2013.

**CLERK & RECORDER CERTIFICATION**

I DO HEREBY CERTIFY THAT THIS DOCUMENT WAS FILED IN MY OFFICE ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013 A.D. AND WAS RECORDED AT RECEPTION NUMBER \_\_\_\_\_.

MCQ



**AZTEC**  
CONSULTANTS, INC.

2475 Hwy. No. 100, Ste. 201  
Tucson, Arizona 85710  
Phone: (520) 741-1800  
Fax: (520) 741-1801  
www.aztecc.com

**ZONING MAP**

**ERIE HIGHLANDS**

PART OF THE NORTH HALF  
SECTION 26, T10N, R09E, S14W  
TOWNSHIP 10 NORTH, RANGE 9 EAST,  
SOUTHERN PLAINS MERIDIAN,  
YAVAPAI COUNTY, ARIZONA

| DATE OF<br>REVISION |  |
|---------------------|--|
| 300-04              |  |

| SCALE |  |
|-------|--|
| IN    |  |

SHEET 1 OF 2

**ERIE HIGHLANDS ZONING MAP**

A PART OF THE NORTH HALF OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN,  
TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO.  
305.126 ACRES  
R2-13-00020

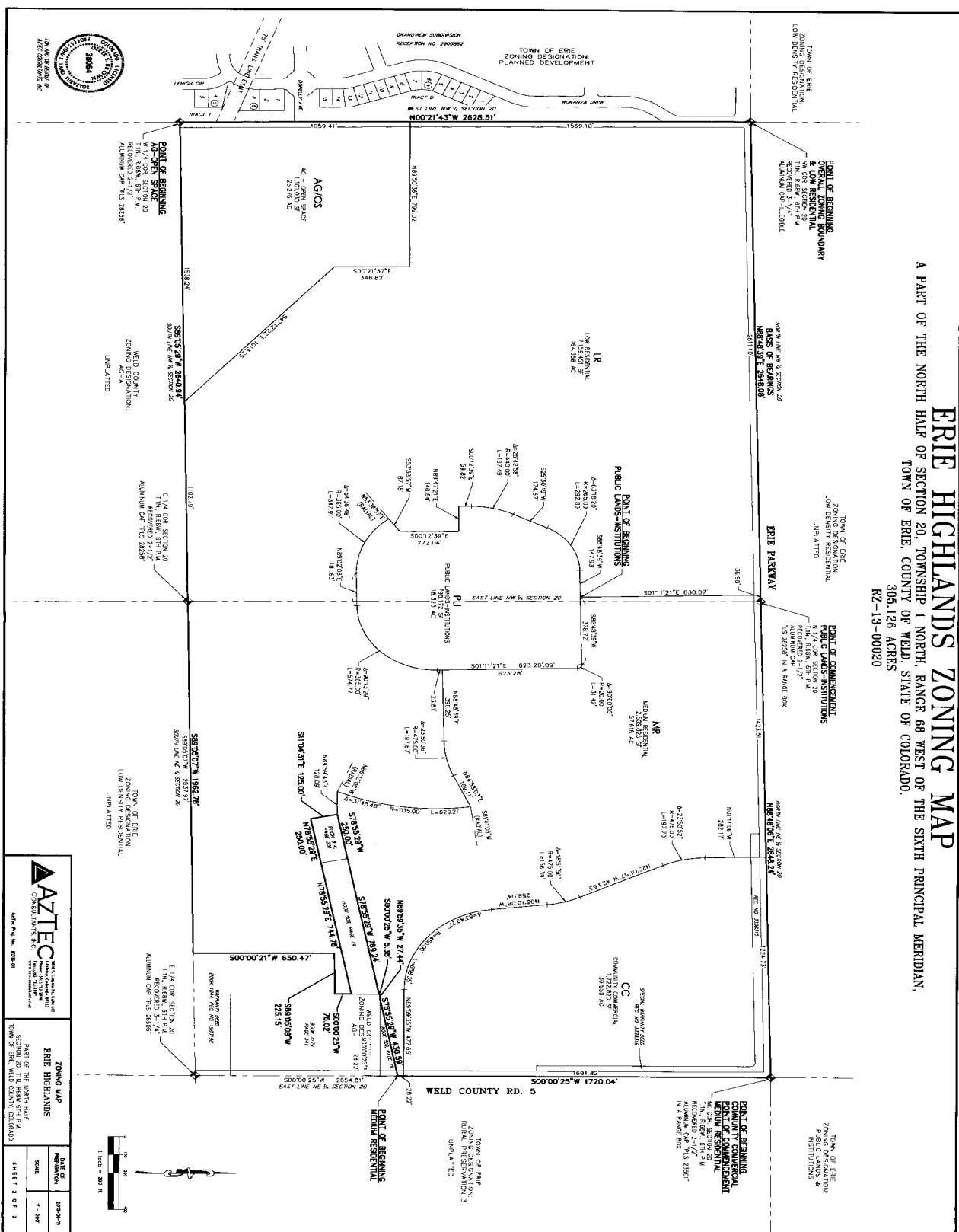


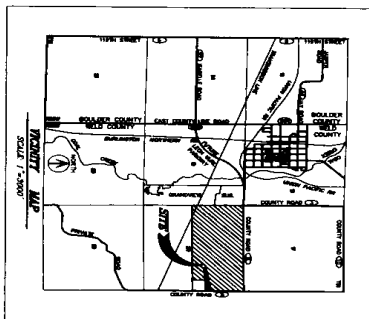
EXHIBIT B-2

Erie Highlands Property PUD Overlay Zoning Map

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Steve Moreno, Clerk and Recorder, Weld County, CO



305.126 ACRES  
PUD-13-00021



1. THIS PLO ZONING MAP MODIFIED THE DIMENSIONAL STANDARDS SET FORTH IN THE TOWN OF BURLINGAME ZONING ORDINANCE, CHAPTER 21.02, D.
2. IN THE EVENT THAT THERE IS ANY DISCREPANCY BETWEEN THE CODE AND THIS PLO, THE PLO SHALL CONTROL, AND PROVISIONS THAT ARE NOT SPECIFICALLY ADDRESSED IN THIS PLO ZONING MAP SHALL COMEY WITH THE CODE.
3. THE MAXIMUM NUMBER OF UNITS ALLOWED IN THIS PLO IS 994.

DEREK BROWN  
COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR #

THIS FUD ZONING MAP WAS REVIEWED BY THE PLANNING COMMISSION ON THE  
 \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

**DAT**

THIS PLUD ZONING MAP IS TO BE KNOWN AS THE "ERIE HIGHLANDS PLUD ZONING MAP" AND IS APPROVED AND ACCEPTED BY ORDINANCE NO. \_\_\_\_\_, PASSED AND ADOPTED AT THE REGULAR MEETING OF THE BOARD OF TRUSTEES OF ERIE, COLORADO, HELD ON \_\_\_\_\_, 2013.

**CLERK ■ RECORDER CERTIFICATE**

I DO HEREBY CERTIFY THAT THIS PUD ZONING MAP WAS FILED IN MY OFFICE ON THIS  
DAY OF \_\_\_\_\_, 2013 A.D. AND WAS RECORDED AT RECEIPT  
NUMBER \_\_\_\_\_

COUNTY CLERK AND RECORDER

| <b><u>SHEET INDEX</u></b> |           |
|---------------------------|-----------|
| 1                         | COVER     |
| 2                         | PUD PLAN  |
| 3                         | PUD NOTES |

SEPTEMBER 13, 20

COVER SHEET

**ERIE HIGHLANDS**  
**PUD ZONING MAP**  
**TOWN OF ERIE, COLORADO**

**PROJECT NAME** *Terracina Design*  
Landscape Maintenance & Landscape Architecture  
9075 Kenyon Ave., Ste 219 Phone: (731) 263-4866  
Denver, CO 80231 [www.TerracinaDesign.com](http://www.TerracinaDesign.com)



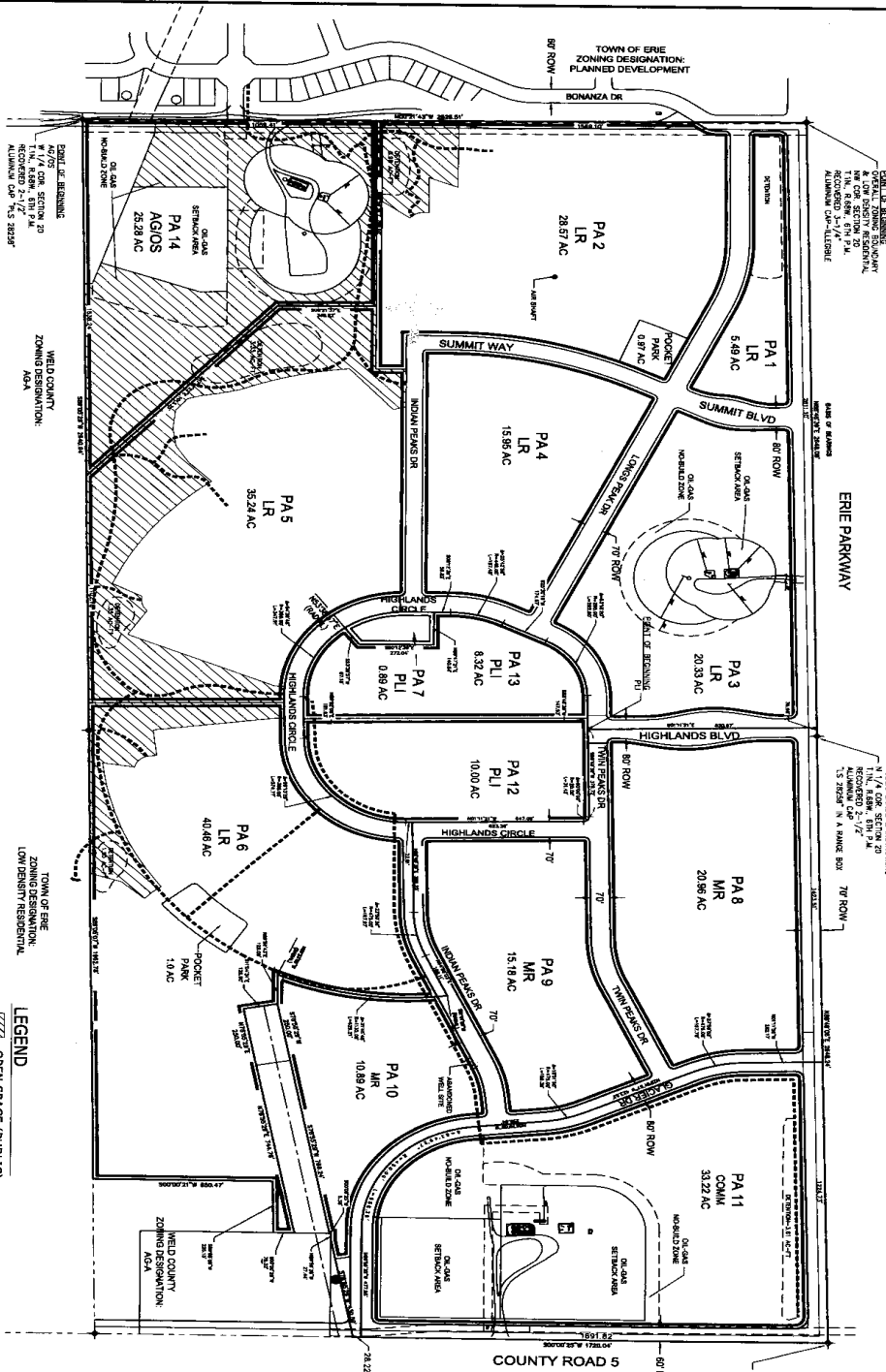
**PARKS & OPEN SPACE**

| PARK AREA           | ACRES REQUIRED | ACRES TO BE PROVIDED |
|---------------------|----------------|----------------------|
| COMMUNITY PARK      | 13.87          | FEE IN LIEU          |
| NEIGHBORHOOD PARK   | 8.32           | 8.32                 |
| POCKET PARK         | 1.39           | 1.97                 |
| OPEN SPACE (PUBLIC) | 47.15          | 32.65 + FEE IN LIEU  |

**ERIE HIGHLANDS PUD ZONING MAP**  
 A PORTION OF THE NORTH HALF OF SECTION 20,  
 TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN  
 TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO  
 305.126 ACRES  
 PUD-13-00021

**DEVELOPMENT SUMMARY**

| LAND USE            | ACRES         | % ACRES |
|---------------------|---------------|---------|
| Residential         | 175.66        | 57.6%   |
| Commercial          | 33.22         | 10.9%   |
| School              | 10.00         | 3.3%    |
| Parks & Open Space  | 51.90         | 17.0%   |
| Open Space (In-Use) | 34.35         | 11.3%   |
| <b>TOTAL</b>        | <b>305.13</b> |         |



- LEGEND**
- OPEN SPACE (PUBLIC)
  - TRAIL CONNECTIONS
  - OIL & GAS- NO BUILD ZONE



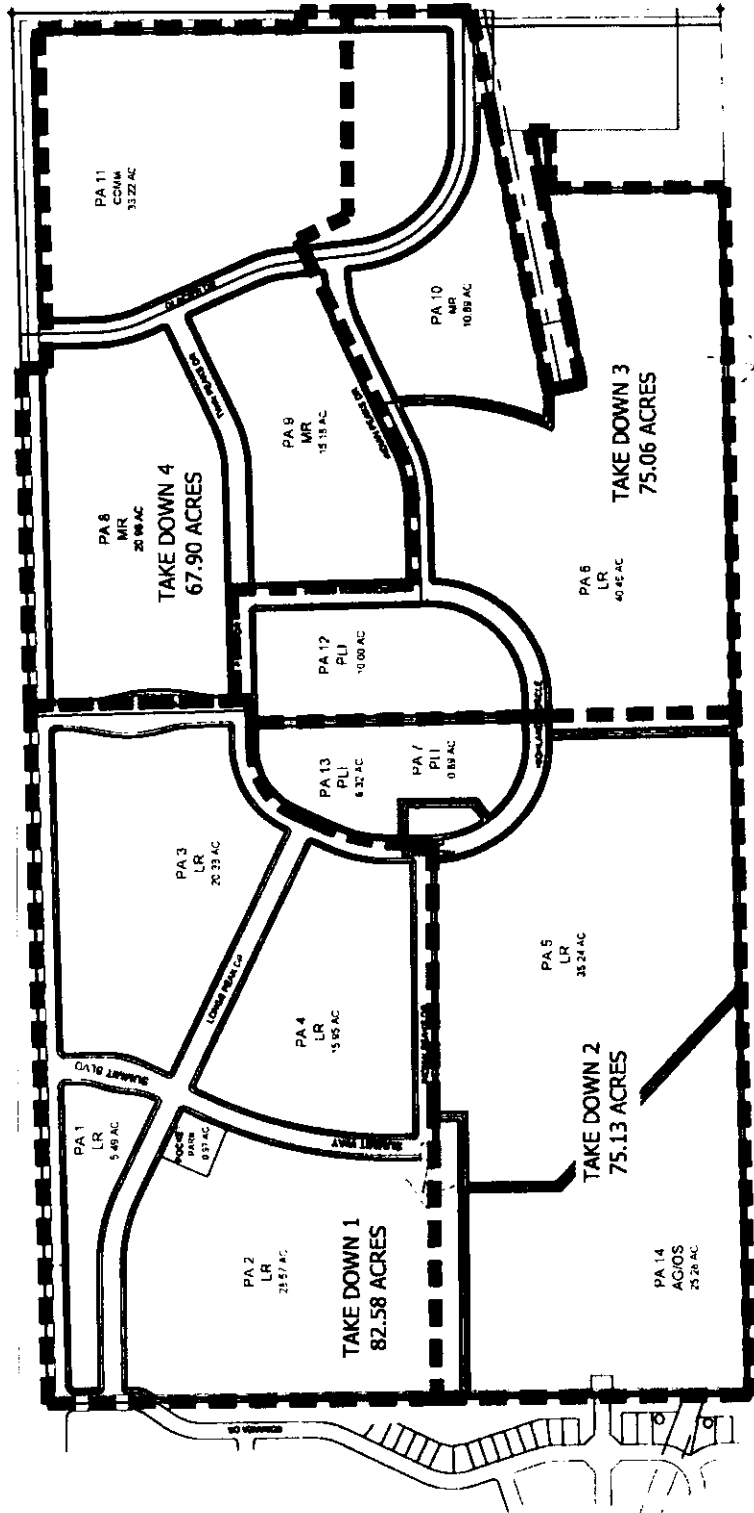


EXHIBIT C

Phasing Map

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09/10/2014 12:16 PM R Fee:\$161.00  
Steve Moreno, Clerk and Recorder, Weld County, CO





Scale in Feet  
 0 100 200 400 600  
 October 1, 2013

# ERIE HIGHLANDS Takedown - Phasing Exhibit

## COMPATIBLE DEVELOPMENT AND SURFACE USE AGREEMENT

THIS COMPATIBLE DEVELOPMENT AND SURFACE USE AGREEMENT ("Agreement") is effective this 31<sup>st</sup> day of July, 2013, by and between Encana Oil & Gas (USA) Inc. (hereinafter referred to as "Encana"), with an address of 370 17<sup>th</sup> Street, Suite 1700, Denver, Colorado 80202, and J Dearmin LLC ("Dearmin"), J Gaz LLC ("Gaz"), the Jack Shell Family Trust and the Sonya Shell Family Trust, and WY&K Holdings, LLC ("WY&K") (hereinafter Dearmin, Gaz, Shell F/T and WY&K may be referred to collectively as "Owner"), with an address of 10343 Federal Blvd, #J515, Westminster, Colorado 80260. Encana and Owner may be referred to as a "Party" or collectively, as the "Parties."

### RECITALS

A. Owner owns the surface estate in that tract of land described as the N/2 of Section 20, Township 1 North, Range 68 West, Weld County, Colorado (the "Described Premises") as delineated on Exhibit A, and Owner intends to develop the Described Premises.

B. Encana owns certain working interests in the Oil and Gas Leases covering the Described Premises ("Leases"), currently operates one or more oil and gas wells ("Existing Wells") on the Described Premises, and has the right to develop its oil and gas leasehold estate by drilling additional wells ("Future Wells") on the Described Premises. Existing Wells and Future Wells are sometimes referred to herein as "Wells."

C. 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 Window"). Owner and Encana recognize that Encana has the right to a reasonable use of the surface estate of the Described Premises for oil and gas development and operations.

D. The Parties enter into this Agreement to provide for the coexistence and joint development of the surface estate and the oil and gas estate for the Described Premises and to delineate the process with which they shall comply with respect to the development of the two estates.

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 (OGOA):**

a. Encana agrees to limit its oil and gas operations conducted on the Described Premises to the Oil & Gas Operations Areas ("OGOA") outlined in solid red on Exhibits B, C and D. The OGOA set forth on Exhibit D (the "North OGOA") may be used for maintenance of the Existing Well and appurtenant equipment, production operations, workovers and plugging and abandonment operations. Encana agrees that it shall not expand the size or scope of use of the North OGOA unless otherwise required by new COGCC Rules; provided, however, Encana shall have the right to expand the size and scope of use of the OGOA set forth on Exhibit B (the



"East OGOA") and OGOA set forth on Exhibit C (the "West OGOA") to accommodate additional production. The East and West OGOAs may be used for all oil and gas operations including, but not limited to, drilling, completion, and maintenance of wells and equipment, production operations, workovers, well recompletions and deepenings, fracturing, twinning, the drilling of replacement wells, plugging and abandonment operations, 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 and/or are directionally or horizontally drilled to bottomhole locations outside the Described Premises to the extent such activities are authorized by local and state authorities and regulations; provided, however, that Encana's associated oil and gas production facilities and Future Wells shall only be located in the Equipment Areas of the East OGOA and the West OGOA. Surface Owner and KMG acknowledge that Encana and KMG each shall be permitted to use the Joint Encana and KMG Equipment Area shown on Exhibit B as a co-location for wells and permanent production equipment so long as such use is acceptable to the other operator.

b. The Parties recognize that a fifty (50) foot no-build zone exists around each OGOA, as illustrated in red hatch marks on Exhibits B, C and D ("No Build Zone"). The Parties agree that the No Build Zone prohibits the construction of habitable structures. Encana acknowledges that Owner may use the No Build Zone for the planting and maintenance of shallow-root landscaping provided that Encana shall have no liability for damage to such landscaping and that such landscaping shall not unreasonably interfere with Encana's operations on the Described Premises.

c. Encana agrees to locate its production facilities within the Equipment Areas of the East OGOA and the West OGOA provided that, as set forth above, Encana is able to expand those facilities to accommodate additional production. Such expansion may involve, among other things, installation and connection of flowlines, installation of additional temporary tank batteries, separators, combustors, vapor recovery units, temporary water and oil tanks.

d. Within the Equipment Areas of the East and West OGOAs only, Encana shall continue to have the right to drill more than one well with attendant facilities and to deepen, complete, recomplete, fracture, workover, replace, plug and abandon, or twin any well that is drilled or has been drilled, as well as to drill directional and horizontal wells that produce from and drain the Described Premises or lands other than the Described Premises.

e. Owner shall not plat any surface property line within the OGOAs or within the one hundred and fifty foot (150') Tank Battery Setback. Owner shall not locate any temporary or permanent habitable building or other habitable structure within the OGOAs, Tank Battery Setback or No Build Zone, nor shall Owner locate any improvement within the OGOAs or Tank Battery Setback.

f. The area within the East OGOA but outside the Equipment Area ("Ancillary Operations Area") may be used by Encana for construction and completion staging and operations, production operations and other temporary oil and gas mineral development uses. Encana understands and agrees that Kerr McGee Oil & Gas Onshore, L.P. ("KMG") or other mineral interest owners of the Described Premises may also use the Ancillary Operations Area for construction and completion staging and operations, production operations and other temporary oil and gas mineral development uses other than drilling operations and the placement of permanent surface equipment and facilities. Owner will include in its surface use agreement with KMG a covenant requiring KMG to cooperate with Encana in its use of the



Ancillary Operations Area so that each operator does not directly interfere with the other's temporary production and completion equipment and facilities. Owner will also include in its surface use agreement with KMG a covenant requiring KMG to maintain a minimum distance of 200' between its wellheads and Encana's wellheads. Encana agrees that in its use of the Ancillary Operations Area, it will not directly interfere with KMG's temporary production and completion equipment and facilities and will maintain a minimum distance of 200' between its wellheads and KMG's wellheads..

**2. Access to the Oil and Gas Operations Area (OGOA).**

a. Access to the OGOAs shall be at the locations identified on Exhibits B, C and D. Owner agrees that neither it nor its agents, contractors, subcontractors, lessees, invitees or guests shall interrupt Encana's access to all of its oil and gas operations on the Described Premises at any time, and no such access may be closed to Encana until an acceptable replacement access route is available.

b. Access may be changed by mutual agreement of the Parties, provided however, all costs and expenses of such relocations shall be borne by the Party which requests them.

c. No party shall unreasonably interfere with the use by the other of an access road.

d. Owner shall keep the portions of access roads jointly used by Owner, its subdivision occupants, and Encana in good condition and repair until such roads are dedicated to the local jurisdiction; provided, however, if Encana causes damage to a portion of a road that is jointly used by both Owner or its subdivision occupants and Encana which is constructed to the specifications in Section 2.e.(1), Encana agrees to promptly repair any damage that is caused by a direct result of its use of the road.

**e. Construction and Width of Access Roads.**

(1) Access roads or portions of access roads that are jointly used by Encana and Owner shall be thirty (30) feet or more in width. For roads jointly used by Owner and Encana, Owner shall construct or improve all paved or improved joint access roads so as to withstand the weight of oilfield equipment; specifically, Owner shall construct the roads so that they can be used to withstand the weight of 110,000 pounds and 28,000 pounds per axle.

(2) Access roads or portions of access roads that are used exclusively by Encana shall be thirty (30) feet or more in width, and Encana shall install and maintain them to those state and local standards that apply to oil and gas operations.

f. Owner shall provide curb cut access to Encana's oil and gas operation on the Described Premises of forty (40) feet in width with a turn radius of no less than twenty-two (22) feet.



### **3. Pipelines, Flowlines and Pipeline Easements.**

a. Owner acknowledges and understands that Encana has the right to continue to use the existing gathering lines identified on Exhibits B, C and D, as well as any other flowlines and pipelines, that it is currently utilizing to service the Existing Wells and to construct, repair, maintain and replace such lines.

b. Upon request of Encana, Owner shall grant Encana easements for future flowlines and pipelines servicing the Wells in the approximate locations shown on Exhibit B, and such flowlines and pipelines shall be installed to a minimum depth of forty eight (48) inches below the surface of the ground.

c. Within thirty (30) days from the date installation of any flowlines or pipelines is complete, Encana shall provide Owner with a set of as-builts to identify the location of such improvements.

d. The location of gathering lines, flowlines and pipelines and easements for future flowlines and pipelines may be changed at the request of Owner, provided that, the change does not interfere with oil and gas operations and is paid for by Owner. In the event that Owner requests the relocation of an existing pipeline or flowline, Encana will provide Owner with a written estimate of the relocation costs. If, after receipt of the written estimate, Owner elects to proceed with the relocation, Encana will designate the contractor to complete the work and schedule the work with Owner. Owner will remit the amount of the estimate to Encana prior to the commencement of the relocation work. After completion of the work Encana will provide to Owner an itemized statement showing the actual cost of the work. Should the actual cost of the work be less than the estimate, Encana will pay the difference to Owner. Should the actual cost of the work be greater than the estimate, Owner will pay the difference to Encana within ten (10) days of receipt of the itemized statement.

e. All pipeline easements shall be fifty (50) feet in width during original construction activities and, after construction, the pipeline easements shall be reduced to thirty (30) feet in width for all other operations, maintenance and transportation activities.

f. Owner shall have the right to cross the pipeline easements at an angle of not less than sixty (60) degrees and not more than ninety (90) degrees, and Owner shall also have the right to install and maintain access to such easements for utility lines, including those for water, gas, sewer, electric, telephone, cable, television and fiber optic and other pipelines that travel along, but not within, the pipeline easements provided for herein; provided however;

i) any new underground facilities which travel along a pipeline easement identified herein shall be located a distance horizontally of at least ten (10) feet from parallel existing pipelines;

ii) any new underground facilities shall have at least twenty-four (24) inches of vertical clearance between such new facility and a pipeline provided for herein; and

iii) any overhead power lines shall be at least twenty (20) feet above the ground.

Owner shall pay Encana all costs and expenses incurred by Encana to encase its pipelines and flowlines to the extent that such pipelines and flowlines intersect and underlie any street or any



other road either in advance of or at the time that Owner commences construction of any street and/or such other road.

g. Under no circumstances shall Owner prohibit Encana from flowing gas through its flowlines and pipelines at any time.

h. Conditioned on Owner's provision of a copy of the as-built drawings identifying the location of any pipelines and flowlines, Owner shall maintain a minimum ground cover of 48 inches and not more than 72 inches over such pipelines and flowlines in the conduct of its operations and its construction activities.

i. Owner, its successors and assigns, hereby agrees to cooperate, at its sole cost and expense, with Encana in its efforts to obtain all necessary permits, licenses and other approvals from state, county and municipal authorities for applications to drill all future wells within the OGOAs.

j. Encana acknowledges that any pipeline easements Owner grants to Encana will be non-exclusive and agrees that it will not object to KMG, other oil and gas operators or utilities concurrently using such easements as Owner may grant from time to time, so long as KMG's, other oil and gas operators' and utilities' concurrent use does not interfere with Encana's pipelines or its oil and gas operations on the Described Premises.

#### **4. Surface Use and Damages.**

a. Encana shall pay Owner the sum of \$10,000 per Future Well ("Damage Payment") upon or prior to the date that each Future Well is spudded. Payments shall be made to Owner at the below address in cash, certified funds or cashiers' check. Such payment shall constitute a onetime payment in full by Encana and its affiliates for all normal damages for the applicable Well, including, but not limited to, damages to growing crops associated with the access to and the drilling, construction, completion, recompletion, reworking, re-entry, production, operation and maintenance of the applicable Well within that designated OGOA. Normal damages include, but are not limited to, reasonable and customary ingress, egress, rights-of-way, construction of all access roads, preparation and use of the drillsite area, preparation and use of reserve pits, and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil and/or gas therefrom.

b. The Damage Payment provided herein for surface damage shall release and discharge Encana, its agents, contractors and employees from all ordinary claims, losses, demands and causes of action for damage to the Described Premises, loss of and damage to crops, and loss of dwelling units for the anticipated residential land use and loss of commercial value use of the Described Premises, hereafter arising as a result of Encana's oil and gas operations and other activities conducted pursuant to this Agreement including marketing operations on the Described Premises.

c. Except the Damage Payment set forth in Section 4(a), Owner hereby waives all surface damage payments pursuant to any present or future COGCC rule or regulation or local regulation, state statute, common law or prior agreement for each and every Well and related wellsite that is drilled within an OGOA and for each production facility and access and pipeline easement. Encana or its lessees or assignees may provide a copy of this Agreement to the



COGCC or to any local jurisdiction, person or entity or any court of law as evidence of this waiver.

5. **Subdivision Plat.** Owner shall identify the OGOA, Tank Battery Setback, No Build Zone and all access routes and pipeline easements on its subdivision plat and in all applications for development it files with the local jurisdiction, and the plat shall include restrictions that no property line or temporary or permanent building, structure or other improvement related to the surface development shall be located, constructed or installed within the OGOA, Tank Battery Setback, or the No Build Zone. Owner shall record the subdivision plat in the Office of the Clerk and Recorder of Weld County and provide written evidence to Encana within fifteen (15) days of recording.

6. **Waiver of Setback Requirements.** 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. Owner hereby waives all setback requirements in COGCC Rule 603 and 318A, or other rule or amendment to the COGCC setback rules, and to any other state or local setback requirements that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Encana to explore for and produce the oil and gas in accordance with this Agreement. Owner understands (and shall notify parties who purchase any portions of the Described Premises) that Encana may cite the waiver in this Section 7 in order to obtain a location exception or variance consistent with this Agreement under COGCC rules or from a local jurisdiction. Notwithstanding the foregoing, Owner reserves all rights to contest or otherwise object to any proposed rule, regulation or proceeding by any governmental authority that would seek to apply setbacks to the Owner's development of the Described Premises, and the foregoing waiver shall not be effective against Owner in any such proceeding.

7. **Governmental Proceedings.**

a. **Owner Will Not Object.** Owner agrees that it will not object in any forum to the use by Encana of the surface of the Described Premises, provided such use is in compliance with this Agreement, and Owner hereby waives such right to object to such use so long as it is in compliance with this Agreement. Owner further agrees that it will provide such other written approvals and waivers which are reasonably requested by Encana and consistent with this Agreement, including, but not limited to, all approvals and waivers to drill a well or to conduct oil and gas operations within the OGOA that are needed because of any law or regulation, including any local ordinance and regulations of the COGCC, and including, for example, waivers to state and local setback requirements and to any setback requirements from a surface property line or for an exception location for a well drilled within the OGOA.

b. **Encana Will Not Object.** Encana agrees that it will not object to the use by Owner of the surface of the Described Premises or to the sale or development by Owner of all or portions of the Described Premises consistent with this Agreement, and Encana will not object in any forum to a request by Owner to annex, zone, rezone, plat or re-plat all or any portion of the Described Premises to extent such request is consistent with this Agreement. Encana further agrees that it will provide such other written approvals or waivers, which are reasonably requested by Owner consistent with this Agreement in connection with the development of the surface estate in any state or local jurisdiction.



8. **Notices of Hearings.** Owner shall provide Encana 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 of the Described Premises to be held before the Town of Erie or other local jurisdiction.

9. **Notice to Homeowners and Builders.** Owner shall furnish all builders and developers and others which purchase all or any portion of the Described Premises from Owner and each person or entity who proposes to enter into a contract to purchase or lease a lot or other portion of the Demised Premises from Owner which is adjacent to, or within, 350 feet from the OGOA, Tank Battery Setback, No Build Zone or a flowline or pipeline easement, with a plat that shows the locations of the OGOA, No Build Zone and Tank Battery Setback and the flowlines and pipeline easements. In addition, Owner shall provide written notice to all such purchasers that shall include the following:

- i there may be ongoing oil and gas operations and production within the OGOA, Tank Battery Setback, pipeline and flowline easements and access routes;
- ii. there are likely to be wells drilled and additional oil and gas production facilities constructed and installed within the OGOA, Tank Battery Setback and additional flowlines and pipelines constructed and maintained on the Described Premises,
- iii. heavy equipment will be used by Encana from time to time for oil and gas drilling and production operations and such operations may be conducted on a 24-hour basis; and
- iv. homeowner associations and buyers of individual lots or homes or portions of the Described Premises 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:
  - a) prohibiting the location of any temporary or permanent building, structure, or other improvement within the OGOA, No Build Zone and Tank Battery Setback;
  - b) waiving objections to the drilling of wells, the construction of facilities, and the conduct of oil and gas operations performed in accordance with this Agreement;
  - c) waiving surface damages payments as provided herein;
  - d) granting the easements described herein for pipelines; and
  - e) waiving the setback requirements under the rules of the COGCC or any local jurisdiction consistent with this Agreement, among other things.

10. **Notice of Oil and Gas Operations.** Encana shall provide the Owner with notice of drilling operations and subsequent well operations in accordance with COGCC rules and regulations.

11. **Notice of Construction Activities by Owner.** Owner shall provide Encana with thirty (30) days written notice prior to commencement of any dirt work, grading or other surface construction activities it will be conducting on the Described Premises. Owner shall meet with Encana 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.

12. **Impact Mitigation.** Encana agrees that it will install and maintain at its sole cost and expense such fences, gates and locks around the wells and production facilities as are required by the COGCC. Owner may upgrade fences, gates and locks at its expense and with the



consent of Encana, such consent not to be unreasonably withheld, provided that such fences, gates and locks comply with COGCC and local regulations. Encana shall paint production facilities for wells, including wellhead guards, with paint approved by the COGCC and the local jurisdiction. Owner shall have the right of subjacent and lateral support to whatever extent is necessary or desirable for full and complete use and enjoyment of the surface of the Described Property provided that it does not interfere with Encana's operations. Owner shall bear all costs and expense to install such noise and visual impact mitigation measures it desires or the County or other local jurisdiction requires at or around the OGOA which are in excess of or in addition to those measures which are required by COGCC regulations for areas which are not high density; provided, however, Encana shall have reasonable discretion to refuse to allow impact mitigation measures interfere with, or prevent, safe oil and gas operations.

**13. Compliance with Common Law and Statutory and Regulatory Requirements.**

Owner expressly acknowledges that this Agreement satisfies the obligations and requirements of Encana 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. Owner, on the one hand, and Encana, on the other hand, each further expressly acknowledge that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligations of Encana and Owner to accommodate the use of the surface of the Described Premises by the other, existing and future, and Owner and Encana each waive any statutory and common law claims to the contrary, including, but not limited to, any claims pursuant to C.R.S. 34-60-127. Unless expressly waived in this Agreement, Encana shall comply with all applicable rules and regulations of COGCC, the Town of Erie and any other applicable governing jurisdiction in conducting its oil and gas operations on, under or within the Described Premises. Encana, its employees, lessees, assignees, successors and authorized agents and licensees shall have no right to disturb, access, use or travel upon any portion of the Described Premises which is located outside of the OGOA, the No Build Zone, the Tank Battery Setback and the Access Roads, unless operating within an easement area.

**14. Environmental Indemnification.**

- a. "Environmental Claims" shall mean all claims asserted by governmental bodies, Owner or other third parties for pollution or environmental damage of any kind, arising from a violation of Environmental Law and related to operations on the Described Premises or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith. 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 Environmental Claim by a governmental body or other third party.
- b. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), 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).



- c. Encana shall defend, indemnify and hold harmless the Owner, its successors and assigns, from Environmental Claims caused by Encana's oil and gas activities on and under the Described Premises or those of its agents, contractors and subcontractors, except to the extent caused by Owner.
  - d. Owner shall defend, protect, indemnify, and hold harmless Encana and its employees, directors, officers, managers, agents, contractors, subcontractors, successors and assigns from all Environmental Claims relating to the Described Premises or this Agreement in any manner caused by, directly or indirectly resulting from, incident to, connected with or arising out of Owner's or its tenants', lessees', invitees', guests' and the like's development or use of the Described Premises.
15. **Authority to Execute Agreement.** Each party represents that he/she/it has the full right and authority to enter into this Agreement with respect to the surface rights, oil and gas interests, or oil and gas leasehold interests that he/she/it owns in the Described Premises, as applicable.
16. **No Waiver of Rights.** Encana 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 OGOA, except as specifically provided in this Agreement. Owner does not waive any of its rights to the Described Premises, except as specifically provided in this Agreement.
17. **Successors and Assigns.** This Agreement and all of the covenants in it shall be binding upon the subsequent lessees and assignees of lessees and also the personal representatives, heirs, successors and assigns of all of the Parties, and the benefits of this Agreement shall inure to all of them. This Agreement and all of the covenants in it shall be covenants running with the land. Encana shall advise Owner of any agreements it enters into with any other entity or person which purport to grant or assign any interests conveyed to Encana under this Agreement to a third party.
18. **Recording.** Encana shall record a memorandum of this Agreement with the Clerk and Recorder of Weld County and provide evidence to Owner of the recording.
19. **Governing Law.** The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the local jurisdiction and the State of Colorado without reference to its conflict of laws provisions.
20. **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.
22. **Notices.** Any notice or communication required or permitted by this Agreement shall be given in writing 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(s):**

J Dearmin LLC  
10343 Federal Blvd, #J515  
Westminster, Colorado, 80260  
Attn: James Dearmin

Jack Shell Family Trust  
10015 Meade Ct.  
Westminster, CO 80031

Sonya Shell Family Trust  
10015 Meade Ct.  
Westminster, CO 80031

J Gaz LLC  
4955 W. 65<sup>th</sup> Ave  
Arvada, CO 80003  
Attn: Johnny Gaz

WY&K Holdings, LLC  
c/o Fairfield & Woods  
1700 Lincoln Street, Suite 2400  
Denver, CO 80203

**ENCANA:**

Encana Oil & Gas (USA) Inc.  
370 17<sup>th</sup> Street, Suite 1700  
Denver, CO 80202  
Attn: DJ Land Department

Any Party may, by written notice as provided in this Section, change the address of the individual to which delivery of notices shall be made thereafter.

**23. Incorporation by Reference.** Exhibits A, B, C and D are incorporated into this Agreement by this reference.

**24. Entire Agreement.** This Agreement sets forth the entire understanding among the Parties and supersedes any previous communications, representations or agreements, 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 each Party.

**25. Counterpart Executions.** This Agreement may be executed in counterparts, each of which shall be deemed an original and together of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed by a duly authorized representative on the dates set forth in the acknowledgements, but to be effective on the date written above.

**[Signatures on following pages]**



ENCANA OIL & GAS (USA) INC.

By: Helen M. Capps

Helen M. Capps, Attorney-in-Fact

dp co

**ACKNOWLEDGMENT**

State Of Colorado )  
City and )ss  
County Of Denver )

On this 31<sup>st</sup> day of July, 2013, before me personally appeared Helen M. Capps, who, being by me duly sworn, did say that he is Attorney-in-Fact for Encana Oil & Gas (USA) Inc, that he signed the foregoing instrument on behalf of said corporation for the uses and purposes therein set forth.

My Commission Expires: 03/18/2017

(SEAL)

Notary Public: C. Diaferio



J DEARMIN LLC

By: James R. Dearmin by Debra M. Dearmin  
James R. Dearmin, by Debra M. Dearmin, attorney-in-fact  
Title Attorney in fact

**ACKNOWLEDGMENT**

State Of Colorado )  
County Of Adams ) ss

On this 29th day of \_\_\_\_\_, 2013, before me personally appeared Debra M. Dearmin, as attorney in fact for James R. Dearmin, who, being by me duly sworn, did say that he is the Power of Attorney for J Dearmin LLC., that he signed the foregoing instrument on behalf of said company and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein set forth.

My Commission Expires: 11-18-13

(SEAL)



Notary Public: Marianne Dickerson



J GAZ LLC

By: Emmalou Gaz  
Emmalou Gaz, as Attorney in Fact for Johnny Gaz

Title: Manager

**ACKNOWLEDGMENT**

State Of Colorado )  
City and ) ss  
County Of Denver )

On this 30<sup>th</sup> day of July, 2013, before me personally appeared Emmalou Gaz, who, being by me duly sworn, did say that she is the Attorney in Fact for Johnny Gaz, that she signed the foregoing instrument on his behalf as Manager of said company and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein set forth.

My Commission Expires: 8/10/2014

(SEAL)

Notary Public: Debra P. Simon



My Commission Expires 08/10/2014

WY&K HOLDINGS, LLC

By: Robert E. Voile  
Name: ROBERT E. VOILE  
Title: MANAGER

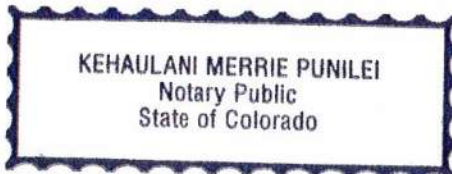
ACKNOWLEDGMENT

State Of Colorado )  
City and Denver )ss  
County Of DENVER )

On this 31<sup>st</sup> day of July, 2013, before me personally appeared Robert E. Voile who, being by me duly sworn, did say that he is the MANAGER for WY&K HOLDINGS, LLC., that he signed the foregoing instrument on behalf of said company and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein set forth.

My Commission Expires: 3/15/16

(SEAL)



Notary Public: Kehaulani M. Punilei

**JACK SHELL FAMILY TRUST**

**SONYA SHELL FAMILY TRUST**

By: Jack Shell

Name: Jack Shell  
Title: Trustee

By: Jack Shell

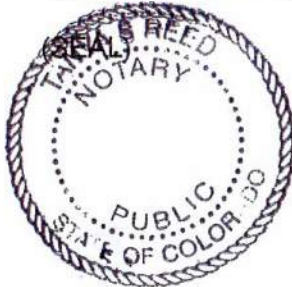
Name: Jack Shell  
Title: Trustee

**ACKNOWLEDGMENT**

State Of Colorado )  
County Of Adams )ss  
)

On this 30th day of July, 2013, before me personally appeared Jack Shell, who, being by me duly sworn, did say that he is the Trustee for the Jack Shell Family Trust., that he signed the foregoing instrument on behalf of said trust and acknowledged the instrument to be the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

My Commission Expires: My Commission Expires 08/25/2014



Notary Public: Tanya S. Reed

**ACKNOWLEDGMENT**

State Of Colorado )  
County Of Adams )ss  
)

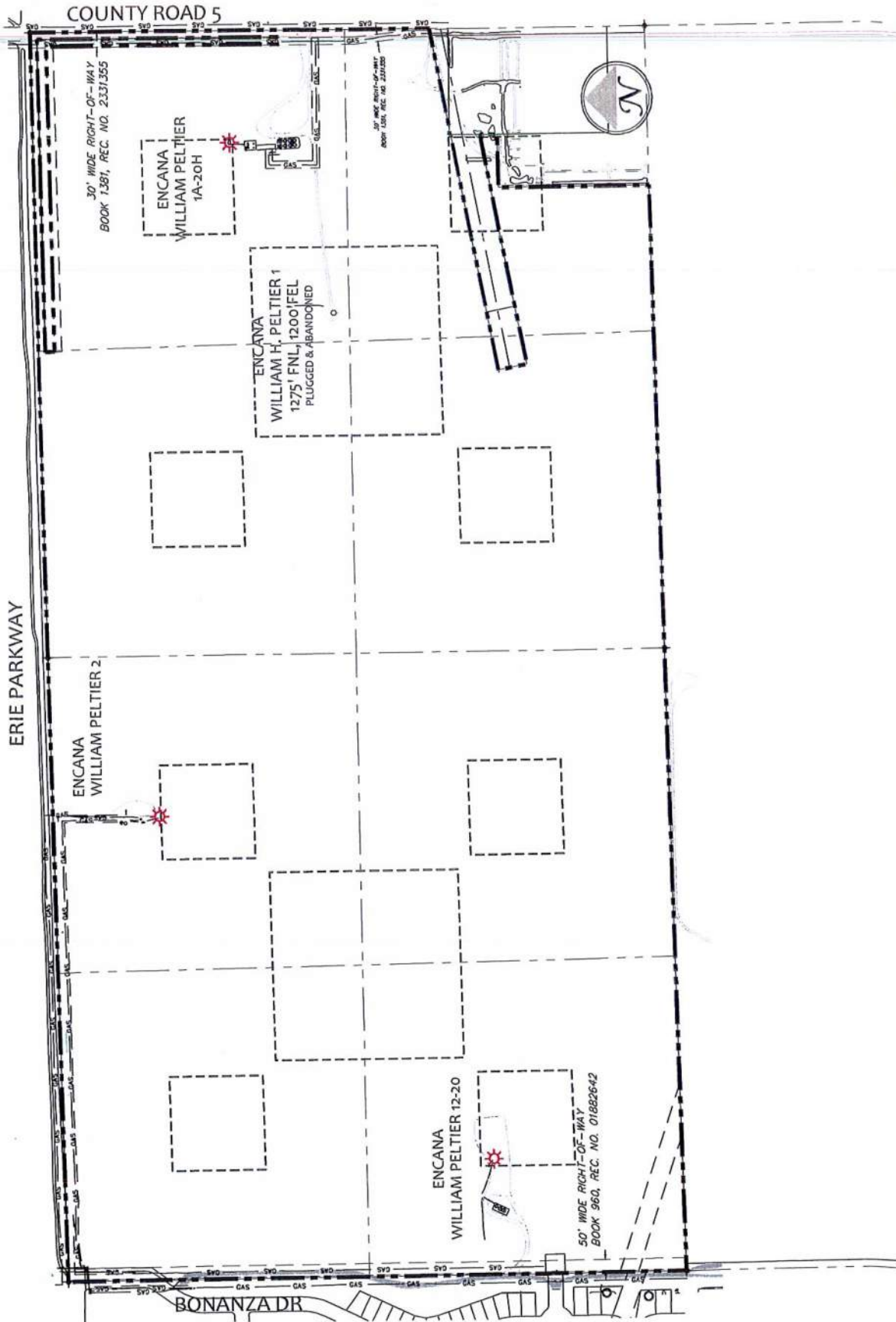
On this 30th day of July, 2013, before me personally appeared Jack Shell, who, being by me duly sworn, did say that he is the Trustee for the Sonya Shell Family Trust., that he signed the foregoing instrument on behalf of said trust and acknowledged the instrument to be the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

My Commission Expires: My Commission Expires 08/25/2014



Notary Public: Tanya S. Reed

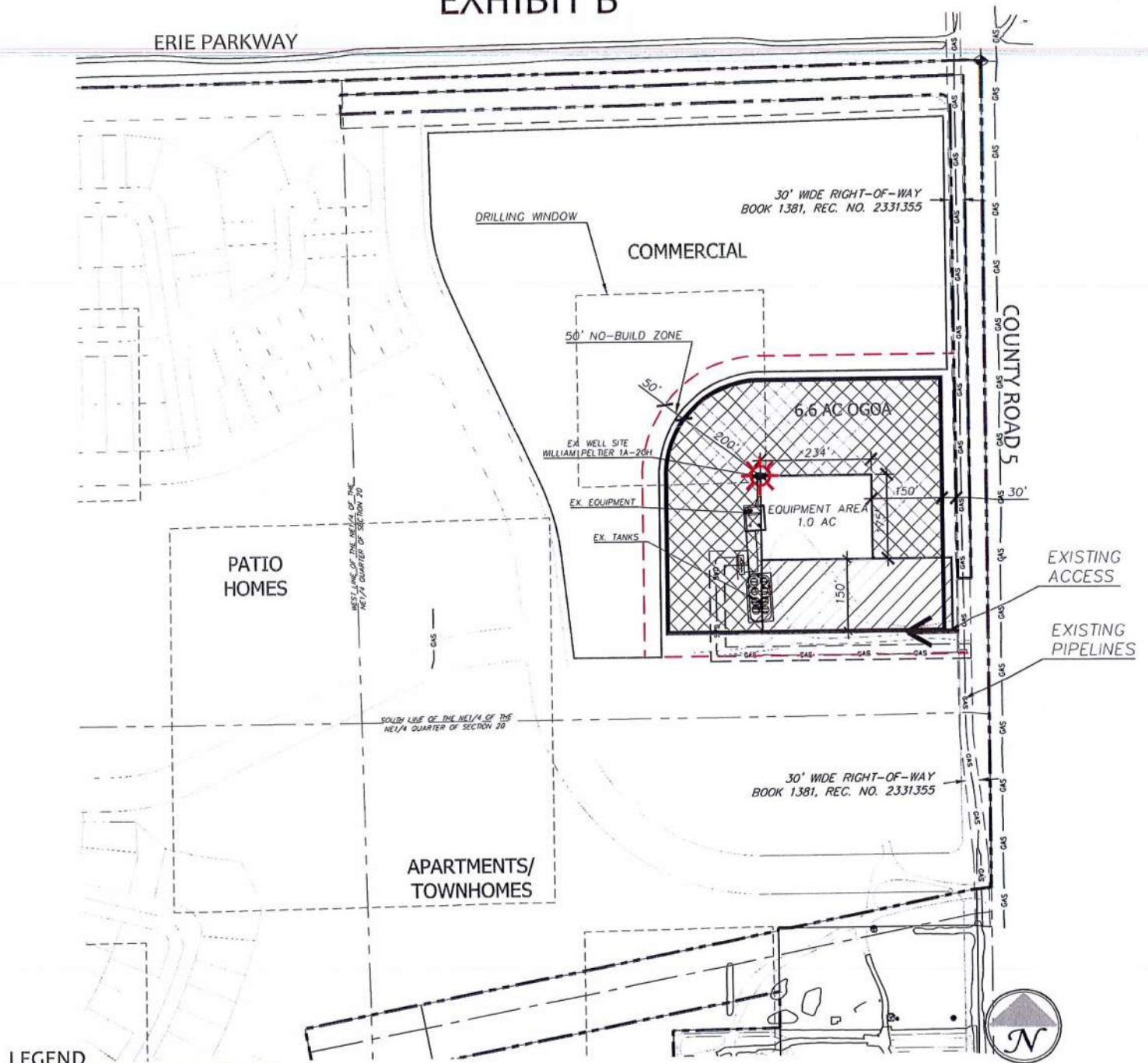
# EXHIBIT A



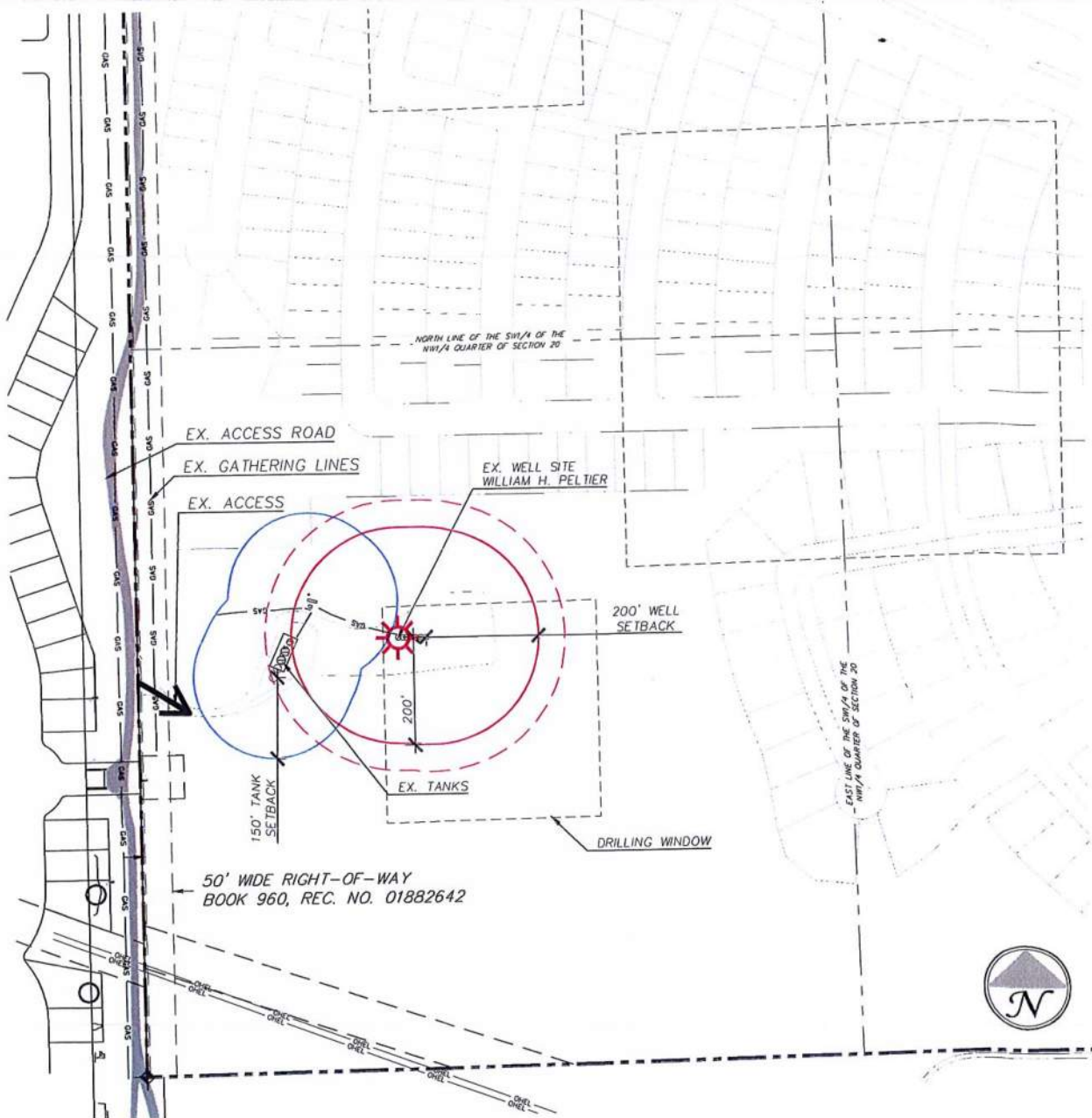
TOWNSHIP 1 NORTH, RANGE 68 WEST  
SECTION 20: N $\frac{1}{2}$  OIL & GAS  
WELD COUNTY, COLORADO  
Scale: 1"=600' July 30, 2013



# EXHIBIT B



# EXHIBIT C



## LEGEND

- OIL & GAS OPERATIONS AREA  
(200' SETBACK)
- 50' NO BUILD ZONE
- TANK BATTERY SETBACK  
(150' SETBACK)
- DRILLING WINDOWS

LOCATION OF ROADS, LOTS AND OTHER LAND DEVELOPMENT COMPONENTS ARE CONCEPTUAL AND SUBJECT TO CHANGE.

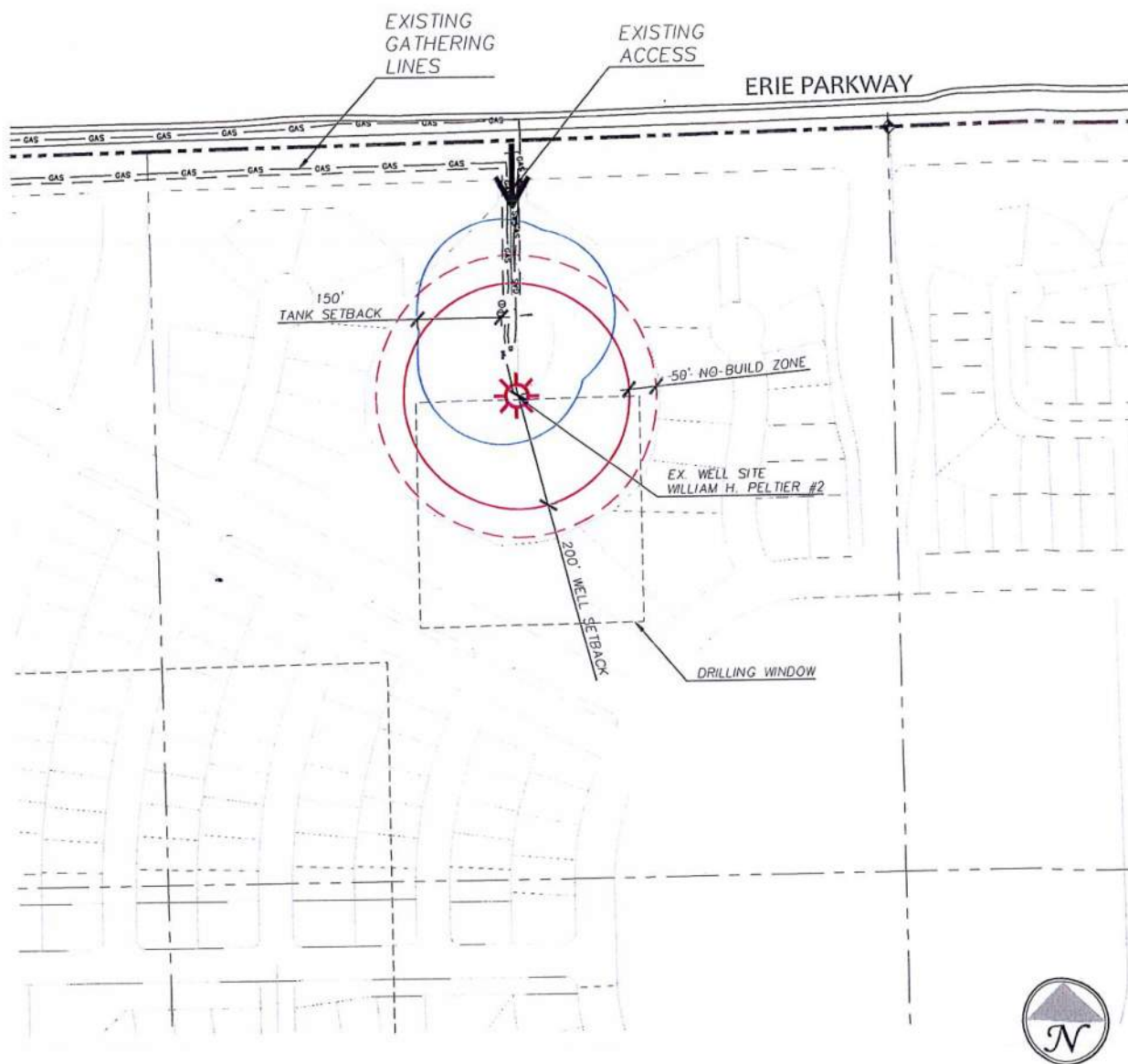
TOWNSHIP 1 NORTH, RANGE 68 WEST

**SECTION 20: NW1/4**



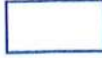

WELD COUNTY, COLORADO

Scale: 1"=300' July 30, 2013

# EXHIBIT D



## LEGEND

-  OIL & GAS OPERATIONS AREA  
(200' SETBACK)
-  50' NO BUILD ZONE
-  TANK BATTERY SETBACK  
(150' SETBACK)
-  DRILLING WINDOWS

LOCATION OF ROADS, LOTS AND OTHER LAND DEVELOPMENT COMPONENTS ARE CONCEPTUAL AND SUBJECT TO CHANGE.

TOWNSHIP 1 NORTH, RANGE 68 WEST

**SECTION 20: NW1/4**

WELD COUNTY, COLORADO

Scale: 1"=300' July 30, 2013



## SURFACE USE AGREEMENT

This Surface Use Agreement ("**Agreement**") is dated and made effective this 1<sup>ST</sup> day of AUGUST, 2013, and is between Kerr-McGee Oil & Gas Onshore LP, a Delaware limited partnership, with an address of 1099 18<sup>th</sup> Street, Suite 1800, Denver, CO 80202 ("**KMG**") and Kerr-McGee Gathering LLC, a Colorado limited liability company (KMGG), J Dearmin LLC ("**Dearmin**"), J Gaz LLC ("**Gaz**"), Jack Shell Family Trust and Sonya Shell Family Trust (collectively "**Shell F/T**"), and WY&K Holdings, LLC ("**WY&K**") (hereinafter Dearmin, Gaz, Shell F/T and WY&K may be referred to collectively as "**Owner**"), with an address of 10343 Federal Blvd, #J515, Westminster, Colorado, 80260 ("**Surface Owner**"). KMG and Surface Owner may be referred to collectively as "**Parties**" and individually as a "**Party**."

- A. Surface Owner owns the surface estate of that certain tract of land more particularly described on Exhibit A attached hereto, being a part of the N/2 of Section 20, T1N, R68W, Weld County, Colorado (hereinafter referred to as the "**Property**");
- B. Surface Owner plans to develop the surface of the Property as a residential and commercial development known as "Erie Highlands";
- C. The Parties acknowledge that Encana Oil & Gas (USA) Inc. ("**Encana**") owns certain working interests in oil and gas leases covering the Property;
- D. Encana currently operates wells on the Property under such leases and subject to an unrecorded Compatible Development and Surface Use Agreement with the current owners of the property dated March 6, 2012;
- E. This Agreement sets forth the Parties' rights, obligations and agreements regarding the relationship between the development of the Property by Surface Owner and KMG's use of the surface of 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 are hereby acknowledged, the parties agree as follows:

### 1. **FUTURE WELL LOCATIONS, VERTICAL, DIRECTIONAL and HORIZONTAL DRILLING.**

KMG shall drill and operate oil and gas wells on the Property only within the two locations identified and depicted on Exhibits B and C as the "Permanent Operations Areas" ("**POA**"). The POAs shall include the areas that are in the configurations and sizes depicted on Exhibits B and C. KMG shall have the right to drill future wells within the Permanent Well and Production Area as described below within the POAs identified on Exhibit B and C, including horizontal, vertical and directional wells that produce from and drain the Property ("**Future Wells**"), and so long as such locations are permitted locations under the then applicable well spacing regulations of the COGCC or exceptions granted thereto by the Director of the COGCC.



The POAs include a Permanent Wellhead and Production Equipment Area and an Ancillary Operations Area to be used for purposes as follows:

The POAs shall be the location for wells and production facilities, flowlines and portions of pipelines and pipeline easements and for oil and gas drilling and production operations and facilities as more particularly described on Exhibits B and C.

The POAs shall be made available to KMG for its exclusive use for all oil and gas operations to be conducted by KMG, including, but are not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing, re-fracturing, twinning, and the drilling of replacement wells and the location of associated oil and gas production and drilling equipment and facilities and flowlines and portions of pipeline easements.

a. Within the designated POAs is an area specifically identified as the Permanent Wellhead and Production Equipment Area. This area is the only location for future wells but this does not limit KMG's rights to install production facility equipment necessary for production of the wells. KMG still will have the right to install and construct production facility equipment and ancillary equipment such as flowlines, pipelines, electrical lines, electrical poles, pedestals, transformers and all other associated equipment necessary for the wells and the production facility. The setbacks from the Permanent Wellhead and Production Equipment Area shall be 250' from that area line to permanent habitable structures. The Permanent Production Area, also more particularly described on Exhibits B and C, shall be limited to use for the installation and operation of production facilities other than wellheads, and the setback shall be 200' from that area line to permanent habitable structures.

b. The Ancillary Operations Areas may be used for operations that include the preparation, drilling and completion of wells to be drilled at locations within a Permanent Operations Area and for the temporary location of production facilities and equipment. Except for portions of pipeline easements, electrical easements and flowlines, KMG may not locate wells or permanent production facilities within the Ancillary Operations Areas, but may use the Ancillary Operations Areas only for temporary uses relating to the drilling and completion of the wells and the temporary location of production facilities.

c. With respect to the POA, Surface Owner shall not plat any surface property lines or install or construct fences, roadways, trees, bushes or any other permanent or temporary improvements within the POAs or upon the pipeline easements provided for herein, and no temporary or permanent building or other structure or improvement shall be located by Surface Owner within the Permanent Operations Areas or the pipeline easement areas. The Permanent Operations Areas shall be for the exclusive use of oil and gas operations and production.

d. Surface Owner may use the Ancillary Operations Areas for grazing and ranching purposes and, with the consent of KMG not to be unreasonably withheld, for landscaping and the installation of irrigation systems; provided, however, KMG shall in



no event be liable for damages to such landscaping and irrigation systems caused by its non-negligent oil and gas operations, and KMG shall at all times have priority of use.

e. KMG shall have the right to locate build, repair and maintain tanks, separators, dehydrators, flowlines, pipelines and all other associated drilling and production equipment and gathering equipment within the POAs and otherwise, as provided in this subsection 4.a. and c.

KMG understands and agrees that the Ancillary Operations Areas is being set aside by Surface Owner to accommodate Encana Oil & Gas (USA) Inc. or other mineral interest owners of the Property to be used for construction and completion staging and operations, production operations and other oil and gas mineral development uses other than drilling operations and the placement of its surface equipment and facilities. Surface Owner will include in its surface use agreement with Encana a covenant requiring Encana to cooperate with KMG in its use of the Ancillary Operations Areas so that each operator does not directly interfere with the wellheads, tanks, and other surface equipment and facilities of the other operator and to require a minimum distance of 150' between the wellheads of each operator. KMG agrees that in its use of the Ancillary Operations Areas, it will not directly interfere with the wellheads, tanks and other surface equipment and facilities of Encana. KMG acknowledges that the perimeter outside the Ancillary Operations Areas fifty feet (50') in width may be used by Surface Owner for the planting and maintenance of shallow-root landscaping provided that KMG shall have no liability for damage to such landscaping and that such landscaping shall not unreasonably interfere with KMG's operations on the Property.

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 COGCC exception location or application for same by KMG. Notwithstanding the foregoing, the wellhead location of any Future Well drilled from the oil and gas operations areas located in the Property shall not be closer than 250' from a residential lot line or publicly dedicated roadway whether platted or planned. KMG shall locate its wellheads, tanks and other surface equipment and facilities entirely within the Permanent Operations Area depicted on Exhibit B and C.

In its preliminary and final plats of Erie Highlands, Surface Owner shall set aside for use by KMG the POAs as referenced above. Any mining tailings or remnants shall be removed and remediated from the POAs; otherwise the POAs are to be made available to KMG in their present condition for any oil and gas operations conducted by KMG in connection with the Future Wells, including, but not limited to, production activities, workovers, well deepening, recompletions, hydraulic fracturing and replacement wells and for a tank battery and all potential flowline routes

In its use of the POAs upon the Property, KMG agrees not to interfere with the separate Encana Equipment Area, as described on Exhibit B, provided for by Surface Owner to Encana in their separate surface use agreement, understanding that all mineral owners and operators are obligated, to the extent possible, to access their separate POAs/OGOAs from the joint or existing access roads contained in Exhibits B and C.



## **2. RELEASE OF SURFACE RIGHTS**

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KMG hereby permanently releases, all of KMG's rights to enter upon, access or otherwise use the surface of the Property except as specifically otherwise provided herein. Notwithstanding the foregoing, KMG expressly reserves, retains and excludes from this release of surface rights all of its mineral interest it may own currently or in the future. This Release shall have no effect whatsoever on KMG's subsurface rights in the Property. KMG reserves all necessary subsurface easements to produce the mineral estate in the Property. KMG retains and reserves in connection with its mineral rights the right to develop through vertical, horizontal or directional drilling or otherwise its mineral interest from the OGOAs provided, however, such mineral interest development does not damage or interfere with the Surface Owner's ownership, use and development of the Property. Further, nothing in this release shall be deemed to release any surface rights that may be currently owned by any other person or entity.

This agreement is contingent upon and subject to KMG owning a mineral interest in the Property.

## **3. SETBACK REQUIREMENTS.**

Surface Owner will not locate any lot line, building, or structure within the entirety of the POAss. Surface Owner will not construct habitable structures within the No Build Zone depicted on Exhibit B. 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 made in accordance with this Agreement on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time. Surface Owner further and similarly waives its right to object to the location of any KMG facilities based upon any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement provided such locations are made 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 OGOA 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. This setback distance shall be binding upon Surface Owner's successors and assigns.

Notwithstanding the foregoing, and provided KMG's rights under this Agreement are not adversely affected, Surface Owner reserves all rights to contest or otherwise object to any proposed rule, regulation or proceeding by any governmental authority that would seek to increase setbacks beyond those specified in this Agreement or to apply setbacks to the development of the Property by the Surface Owner, and the foregoing waiver shall not be effective against Surface Owner in any such proceeding.



#### **4. PIPELINES and FLOWLINES.**

Subject to the limitations hereinafter described, KMG has a continuing right and entitlement to own, operate, maintain, repair and replace all flowlines and pipelines that may be necessary or convenient to its operations on the OGOAs. This Agreement is intended to generally confine the placement of future flowlines, electrical lines and water lines within the POAs and gathering lines and pipelines to certain specified locations within the Property along County Road 5, and West and center section lines as shown on Exhibit D hereto. Surface Owner understands that the installation of the gathering lines that will service Future Wells will have to be accomplished by entering into a separate petroleum pipeline easement with KMGG. If flowlines or pipelines are not located entirely within a POA that is immediately adjacent to County Road 5, or the West and center section lines as shown on Exhibit D, then Surface Owner agrees to grant an easement from the POAs to the specified flowline or pipeline easement locations by the most direct route.

With respect to the POAs, KMG will need to construct or have constructed by KMGG or the purchaser of gas from the well(s) drilled on the POAs gas sales lines to transport gas from the gas sales meters within the POAs to the location at which the gas will be processed. Subject to the agreement of KMGG or purchaser, the pipelines will be constructed at the sole expense of KMG or KMGG in the Petroleum Pipeline Easements.

All Future Pipelines shall be located as identified above unless otherwise agreed upon between Surface Owner and KMG and KMGG, which agreement shall not be unreasonably withheld. Future Pipelines shall be installed at KMG's or KMGG's sole cost and expense. KMG or KMGG shall abandon all flowline locations that will no longer be used due to any relocations. KMG and KMGG acknowledges that any pipeline easements will be non-exclusive and agrees that it will not object to its concurrent use by Encana, other oil and gas operators or utilities, as Surface Owner may grant from time to time, so long as such other parties comply with KMGG's pipeline guidelines, attached hereto as Exhibit E, and so long as such concurrent use does not unreasonably interfere with KMG's or KMGG's operations. Any pipeline easements and the POAs shall be depicted and labeled on all subdivision plats submitted to the Town of Erie.

The location of gathering lines, flowlines and pipelines and easements for future flowlines and pipelines may be changed at the request of Surface Owner, provided that, the change does not interfere with oil and gas operations and is paid for by Surface Owner. In the event that Surface Owner requests the relocation of an existing pipeline or flowline, KMG or KMGG will provide Surface Owner with a written estimate of the relocation costs. If, after receipt of the written estimate, Surface Owner elects to proceed with the relocation, KMG or KMGG will designate the contractor to complete the work and schedule the work with Surface Owner. Surface Owner will remit the amount of the estimate to KMG or KMGG prior to the commencement of the relocation work. After completion of the work KMG or KMGG will provide to Owner an itemized statement showing the actual cost of the work. Should the actual cost of the work be less than the estimate, KMG will pay the difference to Surface Owner. Should the actual cost of the work be greater than the estimate, Surface Owner will pay the difference to KMG within ten (10) days of receipt of the itemized statement.



All flowlines and pipelines shall be buried to a depth of approximately forty-eight (48) inches from the surface. Surface Owner shall maintain a minimum of forty-eight (48) inches and not more than seventy-two (72) inches of cover over all pipelines and flowlines. The construction and burying of additional flowlines, gathering lines and pipelines shall be at the sole cost and expense of KMG, KMGG or its gas purchaser.

Notwithstanding the preceding paragraph, KMG or KMGG, shall be entitled, from time to time and if necessary to conduct its operations, to locate temporary waterlines within the pipeline easements. The temporary waterline can be used by KMG or KMGG during the duration of the drilling and completion of the Future Wells drilled in the POAs.

Such waterlines will be above ground lines constructed on the Property and shall be constructed and maintained to the following specifications:

a. Temporary above ground waterline easements shall be at the locations identified on Exhibit D as the pipeline easements. If a certified survey has not been completed for existing and future pipeline corridors, the locations of such pipelines as depicted on Exhibit D are approximate locations. In the event that KMG prepares a certified survey for a pipeline, KMG and KMGG shall furnish a copy of the survey to Surface Owner upon its written request.

b. The width of this easement shall be as reflected in Exhibit D for all operations, maintenance and transportation activities or as otherwise agreed to between the parties.

c. Locations of waterline easements may be changed by mutual agreement of Surface Owner and KMG; provided, however, all costs and expenses of such relocations shall be borne by the Party which requests the relocation. KMG or KMGG, as applicable, and Surface Owner shall enter into a separate relocation agreement for the relocation of lines and easements, all costs and expenses of such relocations to be paid by the Party which requests the relocation.

## **5. ACCESS.**

KMG agrees to access the POAs according to the joint or existing access roads depicted and described on the attached Exhibit "D". Surface Owner shall have the right to relocate any access in the future at Surface Owner's cost and expense so long as KMG has convenient and uninterrupted access. Roads no longer used by KMG shall be abandoned. Surface Owner shall not inhibit KMG's access to the POAs or inhibit KMG's operations within the POAs. KMG acknowledges that access to the POAs will be non-exclusive to accommodate use of such access by the other mineral operator upon the Property, Encana, however no third party – including EnCana - shall impact KMG's access.

## **6. BATTERIES, EQUIPMENT, and OPERATIONS.**

Any necessary additional future tanks and related surface equipment shall be located by KMG in the POAs. 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 POAs. No compressors, other than wellhead compressors, shall be located on the Property.

With respect to KMG's equipment and facilities, flowlines or pipelines, KMG shall comply with all requisite mitigation measures contained in the COGCC Rules and Regulations and Erie Rules, Regulations and Ordinances that are not inconsistent with those of the COGCC, and shall include the following:

- a. KMG shall install and maintain, at its sole cost and expense, all fences around any Future Wells and production facilities in compliance with the Rules and Regulations of the COGCC and the Town of Erie. The fence material may be upgraded at Surface Owner's option and expense, so long as the upgrade complies with COGCC and Town of Erie rules and regulations and provided Surface Owner obtains the prior written consent of KMG which consent shall not be unreasonably withheld;
- 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 POAs. Such gates and locks shall be the standard gates and locks used by KMG;
- c. KMG shall paint all production facilities for all wells, including wellhead guards, with paint that is approved by the COGCC. The color may be selected by Surface Owner, provided that any additional costs of using the color is paid by Surface Owner and that it is in compliance with COGCC and Town of Erie Rules and Regulations; and
- d. KMG shall remediate and reclaim the Joint Use Areas depicted on Exhibit B and C in accordance with COGCC and Erie Rules and Regulations, and as soon as reasonably practicable following completion of the last of the Future Wells drilled within a particular POAs.
- e. KMG shall not dispose of or permanently store upon or in the Property sludge, cuttings, produced water, chemicals or any hazardous or noxious substances.

Surface Owner shall not inhibit KMG's access to the POAs or inhibit KMG's operations within the POAs.

## **7. NOTICES TO PROPERTY OWNERS AND BUILDERS.**

Surface Owner shall deliver to all buyers of the Property from Surface Owner a plat or map showing the POAs and then existing easements for flowlines, pipelines and access. In addition, Surface Owner shall provide notice to all builders, property owners, property owners' associations, special districts and other buyers of the Property from Surface Owner that:

- a. There may be ongoing oil and gas operations and production in the POAs 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 POAs 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 upon access roads and within the POAs;

d. Future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming those obligations undertaken by Surface Owner pursuant to this Agreement; and

e. Property owner associations, special districts and buyers of individual lots, as successors in interest to Surface Owner, will be subject to the waivers contained in Sections 2 and 3, and the covenants contained in Section 3 prohibiting the location of any building or structure within the POAs or the easements and waiving objection to any setback rules of the COGCC or any local jurisdiction.

f. Surface Owner may comply with such notice obligation by including the above items as notes on the final plats of Erie Highlands.

## **8. GOVERNMENTAL PROCEEDINGS.**

Surface Owner shall not, directly or indirectly, oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, the Town of Erie or other governing body, 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.

KMG shall not, directly or indirectly, oppose Surface Owner in any agency or governmental proceedings, including but not limited to the Town of Erie or other governing body, related to Surface Owner's application for development of the Property including but not limited to zoning, platting, subdivision, dedications, and subdivision improvement agreements, provided that Surface Owner's applications are consistent with this Agreement. KMG shall withdraw any such opposition previously filed in any agency or governmental proceedings.

## **9. 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. Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 10 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.

c. Notwithstanding the foregoing, to the maximum extent permitted by applicable law, KMG releases, waives and discharges Surface Owner, its affiliates, and its respective members, managers, officers, directors, employees, agents, attorneys, successors and assigns, from and against any and all liability for personal injury, death, property damage or other liability arising out of KMG's or its agents' operations upon, or use of, the Property unless such liability is the result of Surface Owner's gross negligence or willful misconduct.

## **10. ENVIRONMENTAL INDEMNITY.**

The provisions of Section 9 above, except for Section 9.a, shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 9.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 of any governmental authority(ies), 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 property owners' association, any special district and any lot owner who purchases a lot from Surface Owner from any Environmental Claims relating to the Property or mineral interest thereunder that arise out of KMG's ownership



of the minerals and oil and gas operations upon the Property and its ownership and operation of its pipeline easement or rights-of-way and access easements 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 out of Surface Owner's development of the Property.

#### **11. EXCLUSION FROM INDEMNITIES AND INSURANCE REQUIREMENTS.**

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.

1. Insurance. KMG shall maintain during the term of this Agreement:

a. Workmen's Comp. Insurance which shall comply with all applicable Workers' Compensation and Occupational Disease Laws and which shall cover all of the KMG's employees performing any work or activities as to the Property.

b. Liability. Commercial General Liability Insurance, including contractual liability coverage as well as sudden and accidental pollution liability coverage, with a combined bodily injury and property damage limit of not less than \$5,000,000 per occurrence.

c. Environmental. Environmental Impairment Liability Insurance with a limit of not less than \$5,000,000 per occurrence.

KMG shall ensure that it and its contractors' insurers waive all rights of recovery or subrogation against Surface Owner, its parent, subsidiaries, affiliates, agents, directors, officers, employees, servants, co-lessees or co-venturers. As to such liability insurance, Surface Owner shall be named as an additional insured to the extent of KMG's liabilities and obligations hereunder that are covered by such liability insurance. Such liability insurance of KMG shall be written on customary policy forms and by insurance companies with ratings of no less than A- VII or better. Upon request, KMG shall endeavor to furnish Surface Owner with certificates of insurance evidencing compliance with this provision. All such certificates must be signed by authorized representatives of the insurance companies and provide for not less than ten days prior written notice to Owner in the event of cancellation affecting Surface Owner's interest. Neither failure to comply, nor full compliance with the insurance provisions of this Agreement, shall limit or relieve KMG from its indemnity obligations in accordance with this Agreement. KMG agrees to maintain all such liability insurance in accordance with the terms of this Section 11\_\_ until the termination of this Agreement. On the second anniversary date of this Agreement, and every two years thereafter (or, upon request of Surface Owner if the parties have failed to meet during any biennial period), the parties shall meet to discuss whether the policy limits stated in this Section 11 should be adjusted and, as appropriate, adjust such policy limits to reflect then-current economic conditions and industry practices.

Alternatively, KMG may elect to self-insure for so long as such self insurance is the obligation of KMG's parent, Anadarko Petroleum Corporation, and such parent corporation has a

market capitalization in excess of \$1 billion. If KMG elects to self-insure, such self-insurance shall include its common law and assumed liability under this Agreement for bodily injury and/or property damage to third parties in connection with accidents arising out of its operations, but only to the extent of those liabilities assumed herein. KMG self-insures the first \$5,000,000 of its general liability, with excess liability insurance covering all operations and attaching over its self-insurance retention. KMG's self-insurance will respond to the same extent as if an insurance policy had been purchased naming Owner as an additional insured, but only to the extent of those liabilities assumed herein. Any limitations of KMG's self-insurance shall not limit its obligations to Surface Owner as provided in this Agreement or the Owner OGL. In the event of an assignment or transfer of this Agreement, as a condition precedent to the effectiveness of such assignment, the assignee or transferee shall be required to provide insurance coverage that is reasonably acceptable to Surface Owner before Surface Owner shall be required to consent to such assignment.

## **12. 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 Section 9 or 10 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.

## **13. REPRESENTATIONS.**

Each Party represents that it has the full right and authority to enter into this Agreement. 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 mineral interest in the Property.

## **14. 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.

## **15. TERM.**

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



**16. NOTICES.**

Any notice or other communication required or permitted under this Agreement shall be deemed to have been given and effective and 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 18<sup>th</sup> Street, Suite 1800  
Denver, Colorado 80202  
Attention: Surface Land Manager

**If to Surface Owner:**

J Dearmin LLC  
10343 Federal Blvd, #J515  
Westminster, Colorado, 80260  
Attn: James Dearmin

Jack Shell Family Trust  
10015 Meade Ct.  
Westminster, CO 80031

Sonya Shell Family Trust  
10015 Meade Ct.  
Westminster, CO 80031

J Gaz LLC  
4955 W. 65<sup>th</sup> Ave  
Arvada, CO 80003  
Attn: Johnny Gaz  
with a copy to:

WY&K Holdings, LLC  
c/o Fairfield & Woods  
1700 Lincoln Street, Suite 2400  
Denver, CO 80203

Oakwood Homes LLC  
4908 Tower Road  
Denver, Colorado 80249  
Attn: Bruce Rau

Dufford & Brown, P.C.  
1700 Broadway, Suite 2100  
Denver, Colorado 80290-2101  
Attn: Randall J. Feuerstein, Esq.

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

**17. RECORDING.**

This Agreement, 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.

**18. SURFACE DAMAGES.**

Damages for each Future Well in the amount of \$10,000.00 per well shall be paid by KMG to Surface Owner upon or prior to the date that each Future Well is spudded provided that Surface Owner still owns the Property on the date that the Future Wells is spudded. Payments shall be made to Surface Owner at the above address in cash, certified funds or cashiers' check. Upon conveyance of the Property to Oakwood Homes, LLC or an affiliated entity from the individually named surface owners, such damages shall no longer be payable.

**19. COVENANT RUNNING WITH THE PROPERTY.**

This Agreement constitutes a covenant running with the Property and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, representatives, affiliates, administrators, trustees, executors and assigns.

**20. ARBITRATION.**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted in Denver, Colorado and shall be administered by the American Arbitration Association under its commercial rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing Party in any Arbitration, any other dispute resolution proceeding, or any regulatory or judicial proceeding shall be entitled to recover its reasonable attorneys' fees, experts' fees, costs and expenses from the other Party.

**21. 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.

**22. 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.

**23. 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.

**24. ACKNOWLEDGMENT BY SURFACE OWNER.**

Surface Owner expressly acknowledges that this Agreement satisfies KMG's obligation under COGCC rules to consult in good faith with the Surface Owner regarding the proposed oil and gas operations. The Parties further expressly acknowledge that this Agreement shall be deemed to be specifically applicable to and to fully satisfy, the obligation of the Parties to reasonably accommodate each other's use of the surface of the Property.

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

*[Remainder of page intentionally blank]*

Kerr-McGee Oil & Gas Onshore LP

By: [Signature]  
Name: David Bell  
Title: Agent and Attorney-In-Fact

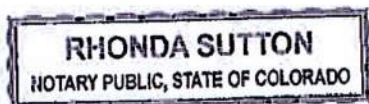
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 31 day of July, 2013  
by David Bell, as Agent and Attorney-In-Fact of  
Kerr-McGee Oil & Gas Onshore LP, a Delaware limited partnership.

Witness my hand and official seal.

Rhonda Sutton

Notary Public  
My Commission Expires: May 4, 2016



My Comm. Expires May 4, 2016



Kerr-McGee Gathering LLC

By: [Signature]  
Name: Ronald H. Olsen  
Title: Land Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August 2013  
by Ronald H. Olsen, as Land Manager of  
Kerr-McGee Gathering LLC, a Colorado limited liability company.

Witness my hand and official seal.



Lorri L. Simpson  
Notary Public  
My Commission Expires: 4/27/2017

J DEARMIN LLC

By: James R. Dearmin by Debra M. Dearmin, attorney-in-fact  
Title: Attorney in fact

**ACKNOWLEDGMENT**

State Of Colorado )  
County Of Adams ) ss

On this 29th day of July, 2013, before me personally appeared Debra M. Dearmin, as attorney in fact for James R. Dearmin, who, being by me duly sworn, did say that he is the Power of Attorney for J Dearmin LLC., that he signed the foregoing instrument on behalf of said company and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein set forth.

My Commission Expires: 11-18-13

(SEAL)



Notary Public: Marianne Dickerson

J GAZ LLC

By: Emmalou Gaz  
Emmalou Gaz, as Attorney in Fact for Johnny Gaz

Title: Manager

**ACKNOWLEDGMENT**

State Of Colorado )  
City and ) ss  
County Of Denver )

On this 30<sup>th</sup> day of July, 2013, before me personally appeared Emmalou Gaz, who, being by me duly sworn, did say that she is the Attorney in Fact for Johnny Gaz, that she signed the foregoing instrument on his behalf as Manager of said company and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein set forth.

My Commission Expires: 8/10/2014

(SEAL)



My Commission Expires 08/10/2014

Notary Public: Debra P. Simon

WY&K HOLDINGS, LLC

By: [Signature]  
Name: ROBERT E YOLE  
Title: [Signature]

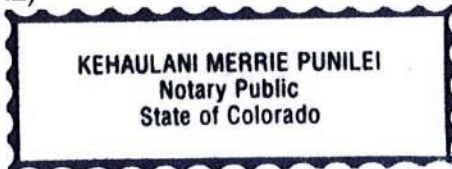
**ACKNOWLEDGMENT**

State Of Colorado )  
City and )ss  
County Of DENVER )

On this 31<sup>st</sup> day of July, 2013, before me personally appeared ROBERT E YOLE who, being by me duly sworn, did say that he is the MANAGER for WY&K HOLDINGS, LLC,, that he signed the foregoing instrument on behalf of said company and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein set forth.

My Commission Expires: 3/15/16

(SEAL)



Notary Public: [Signature]



**JACK SHELL FAMILY TRUST**

By: Jack Shell

Name: Jack Shell  
Title: Trustee

**SONYA SHELL FAMILY TRUST**

By: Jack Shell

Name: Jack Shell  
Title: Trustee

**ACKNOWLEDGMENT**

State Of Colorado )  
County Of Adams )ss  
)

On this 30th day of July, 2013, before me personally appeared Jack Shell, who, being by me duly sworn, did say that he is the Trustee for the Jack Shell Family Trust., that he signed the foregoing instrument on behalf of said trust and acknowledged the instrument to be the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

My Commission Expires: My Commission Expires 08/25/2014



Notary Public: Tanya S. Reed

**ACKNOWLEDGMENT**

State Of Colorado )  
County Of Adams )ss  
)

On this 30th day of July, 2013, before me personally appeared Jack Shell, who, being by me duly sworn, did say that he is the Trustee for the Sonya Shell Family Trust., that he signed the foregoing instrument on behalf of said trust and acknowledged the instrument to be the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

My Commission Expires: My Commission Expires 08/25/2014



Notary Public: Tanya S. Reed



Oakwood Homes LLC, as an optionee to purchase the Property from Surface Owner, hereby consents to this Agreement and upon its acquisition of all or any part of the Property, agrees to be bound by the terms and provisions of this Agreement.

OAKWOOD HOMES LLC

By: *Robert J. Sanderman*  
Name: Robert J Sanderman  
Title: Executive Vice President

STATE OF Colorado )  
 ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of July 2013 by Robert J. Sanderman, as EVP of Oakwood Homes LLC, a Colorado limited liability company.

Witness my hand and official seal.

*Karen L. Wilborn*  
Notary Public



My Commission Expires: 6/17/2016

**EXHIBIT A**  
**To**  
**Surface Use Agreement**

**PROPERTY DESCRIPTION**

## Exhibit A

### LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF THE NORTH HALF OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF SAID SECTION 20, AND CONSIDERING THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20 TO BEAR NORTH 88°48'39" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG SAID NORTH LINE, NORTH 88°48'39" EAST, A DISTANCE OF 2,648.08 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 20;

THENCE ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20, NORTH 88°48'06" EAST, A DISTANCE OF 2,648.24 FEET TO THE NORTHEAST CORNER OF SAID SECTION 20;

THENCE ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, SOUTH 00°00'25" WEST, A DISTANCE OF 1,720.04 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 509 AT PAGE 79, IN SAID RECORDS;

THENCE DEPARTING SAID EAST LINE AND ALONG SAID NORTHERLY BOUNDARY, SOUTH 78°55'29" WEST, A DISTANCE OF 430.59 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 1179 AT PAGE 541, IN SAID RECORDS;

THENCE ALONG SAID NORTHERLY BOUNDARY, NORTH 89°59'35" WEST, A DISTANCE OF 27.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 00°00'25" WEST, A DISTANCE OF 5.38 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL DESCRIBED IN BOOK 509 AT PAGE 79;

THENCE ALONG SAID NORTHERLY BOUNDARY, SOUTH 78°55'29" WEST, A DISTANCE OF 769.24 FEET TO THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 814 AT PAGE 251, IN SAID RECORDS;

THENCE ALONG THE NORTHERLY, WESTERLY AND SOUTHERLY BOUNDARIES OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:

- 1) SOUTH 78°55'29" WEST, A DISTANCE OF 250.00 FEET;
- 2) SOUTH 11°04'31" EAST, A DISTANCE OF 125.00 FEET;
- 3) NORTH 78°55'29" EAST, A DISTANCE OF 250.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL DESCRIBED IN BOOK 509 AT PAGE 79;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL, NORTH 78°55'29" EAST, A DISTANCE OF 744.76 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL DESCRIBED IN BOOK 1179 AT PAGE 541;



THENCE ALONG SAID WESTERLY BOUNDARY, SOUTH 00°00'25" WEST, A DISTANCE OF 76.02 FEET TO THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 1044 AT RECEPTION NO. 1983198, IN SAID RECORDS;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL, SOUTH 89°05'08" WEST, A DISTANCE OF 225.15 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, SOUTH 00°00'21" WEST, A DISTANCE OF 650.47 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL AND A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20;

THENCE ALONG SAID SOUTH LINE, SOUTH 89°05'07" WEST, A DISTANCE OF 1,962.78 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 20;

THENCE ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20, SOUTH 89°05'29" WEST, A DISTANCE OF 2,640.94 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 20;

THENCE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°21'43" WEST, A DISTANCE OF 2,628.51 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 305.126 ACRES, (13,291,297 SQUARE FEET), MORE OR LESS.

**EXCEPTING THEREFROM:**

A PARCEL OF LAND AS DESCRIBED IN SPECIAL WARRANTY DEED AS RECORDED AT RECEPTION NO. 3338315 OF THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER'S OFFICE, BEING A PART OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO DESCRIBED FURTHER MORE AS FOLLOWS;

**COMMENCING** AT THE NORTHEAST CORNER OF SAID SECTION 20, THENCE SOUTH 44°24'16" WEST, A DISTANCE OF 42.88 FEET TO A LINE PARALLEL WITH AND 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20 AND THE TO THE **POINT OF BEGINNING**;

THENCE ALONG SAID PARALLEL LINE, SOUTH 00°00'25" WEST, A DISTANCE OF 1,048.55 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH 89°59'35" WEST, A DISTANCE OF 30.00 FEET TO A LINE PARALLEL WITH AND 60 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20;

THENCE ALONG SAID PARALLEL LINE, NORTH 00°00'25" EAST, A DISTANCE OF 987.48 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEWESTERLY;

THENCE DEPARTING SAID PARALLEL LINE, NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 91°12'20", AN ARC LENGTH OF 31.84 FEET TO A LINE PARALLEL WITH AND 70 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20;

THENCE ALONG SAID PARALLEL LINE, SOUTH 88°48'06" WEST, A DISTANCE OF 1,272.60 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH  $01^{\circ}11'53''$  WEST, A DISTANCE OF 40.00 FEET TO A LINE PARALLEL WITH AND 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20;

THENCE ALONG SAID PARALLEL LINE, NORTH  $88^{\circ}48'06''$  EAST, A DISTANCE OF 1,323.87 FEET TO THE **POINT OF BEGINNING**;

CONTAINING AN AREA OF 1.912 ACRES, (83,275 SQUARE FEET), MORE OR LESS.

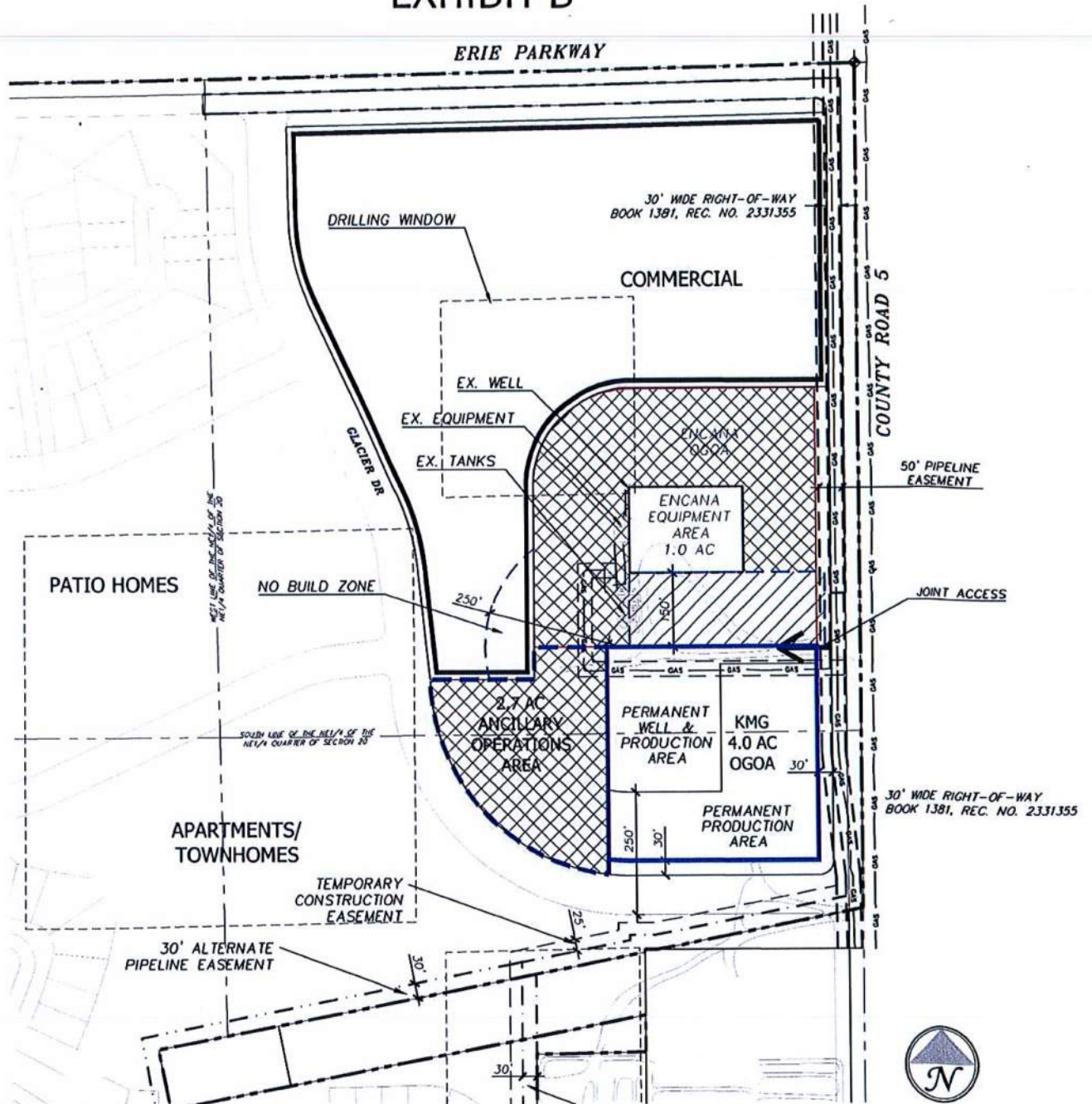
THE RESULTANT OR NET AREA FOR THE OVERALL BOUNDARY BEING 303.214 ACRES, (13,208,022 SQUARE FEET), MORE OR LESS.



**EXHIBIT B**  
**To**  
**Surface Use Agreement**

**PERMANENT OPERATIONS AREAS**  
**Section 20: NE1/4**

# EXHIBIT B



## LEGEND

-  PERMANENT OPERATIONS AREA
-  JOINT ENCANA & KMG ANCILLARY OPERATIONS AREA
-  JOINT ENCANA & KMG ANCILLARY EQUIPMENT AREA
-  JOINT ACCESS
-  DRILLING WINDOWS

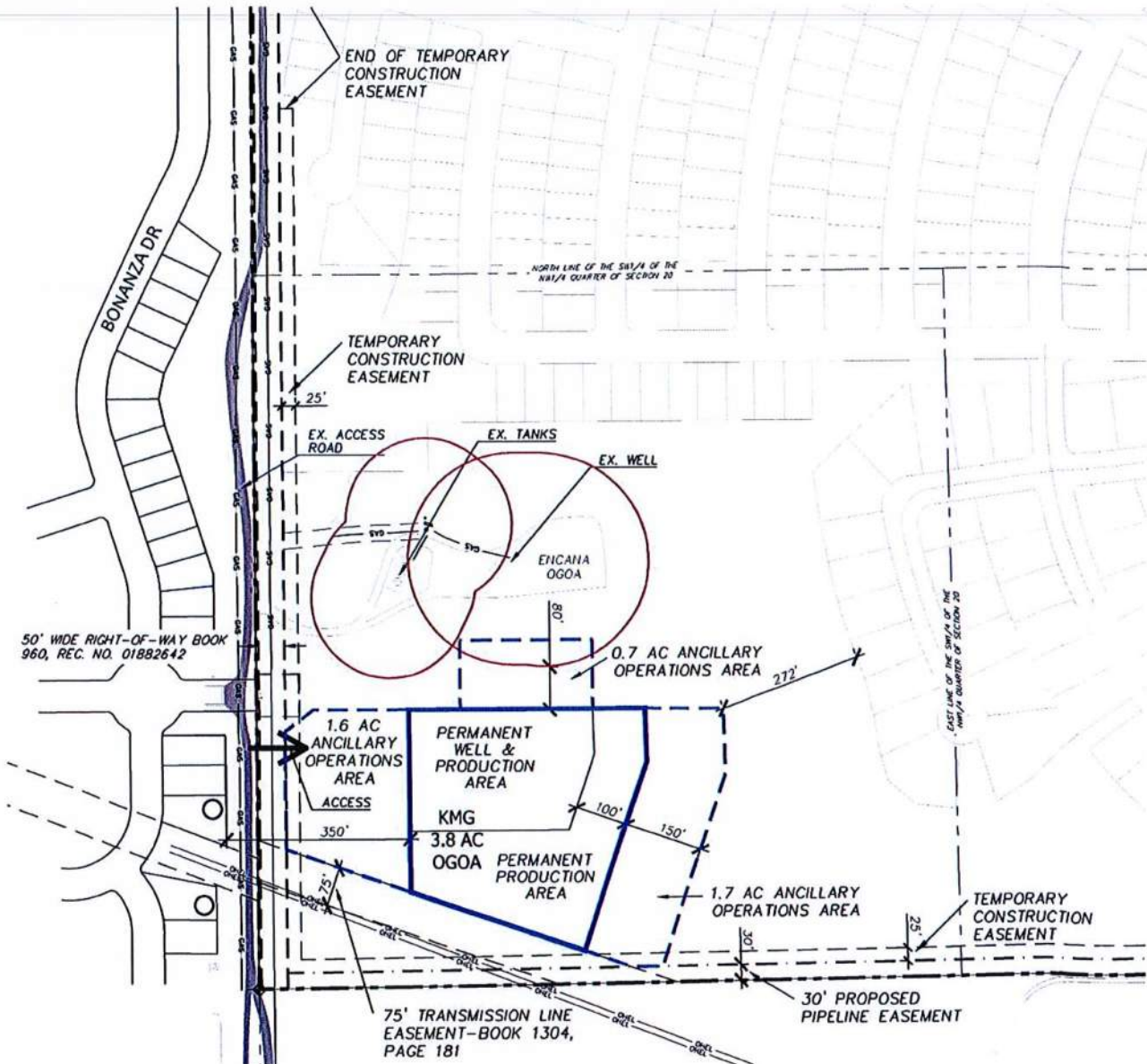
LOCATION OF ROADS, LOTS AND OTHER LAND DEVELOPMENT COMPONENTS ARE CONCEPTUAL AND SUBJECT TO CHANGE.

KERR MCGEE  
TOWNSHIP 1 NORTH, RANGE 68 WEST  
**SECTION 20: NE1/4**  
WELD COUNTY, COLORADO  
Scale: 1"=300' July 31, 2013

**Exhibit C**  
**To**  
**Surface Use Agreement**

**PERMANENT OPERATIONS AREAS**  
**Section 20: NW1/4**

# EXHIBIT C



## LEGEND

- PERMANENT OPERATIONS AREA
- ANCILLARY OPERATIONS AREA
- ➔ ACCESS

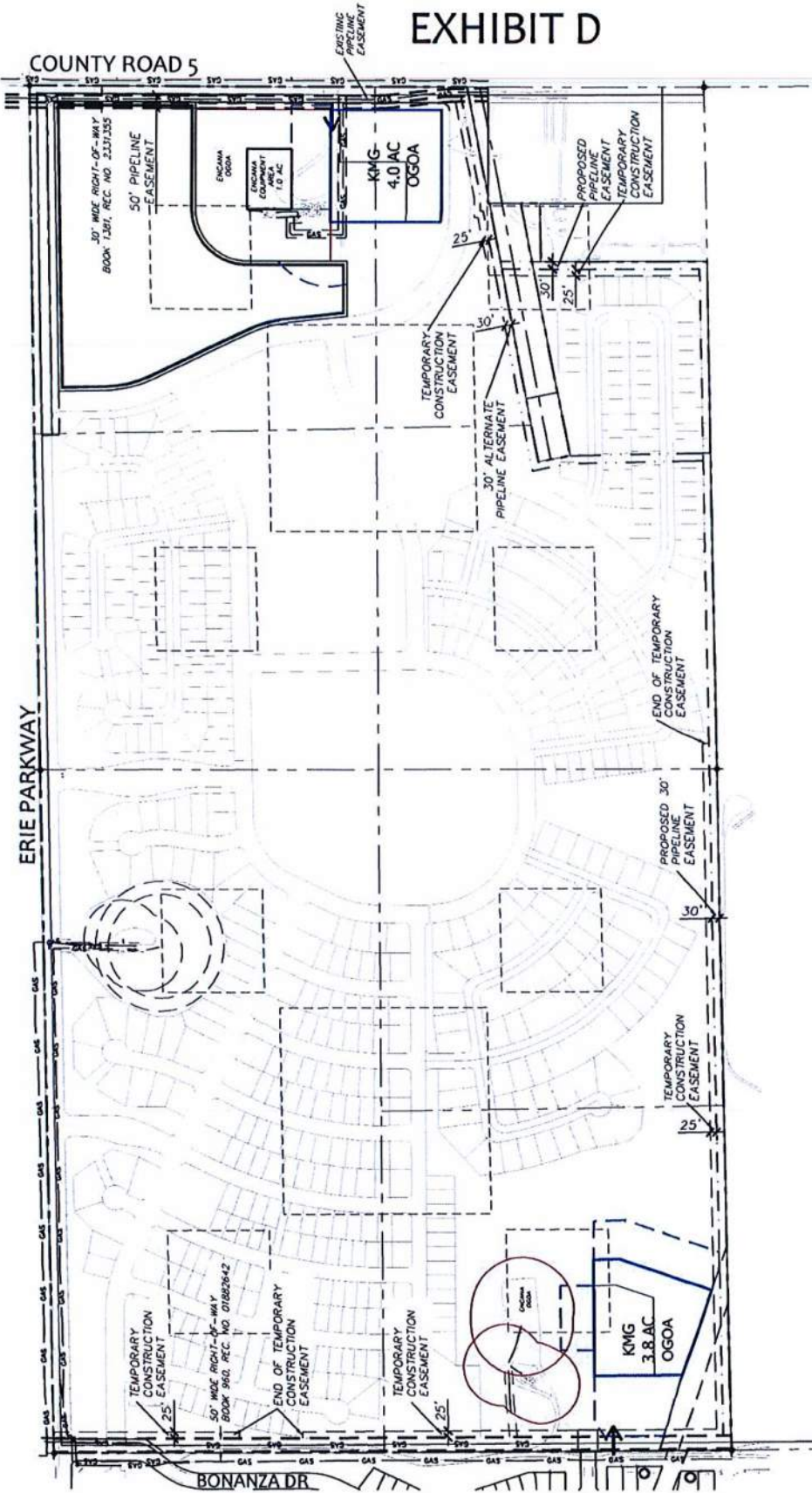
LOCATION OF ROADS, LOTS AND OTHER LAND DEVELOPMENT COMPONENTS ARE CONCEPTUAL AND SUBJECT TO CHANGE.

KERR MCGEE  
TOWNSHIP 1 NORTH, RANGE 68 WEST  
**SECTION 20: NW1/4**  
WELD COUNTY, COLORADO  
Scale: 1"=300' July 31, 2013



**EXHIBIT D**  
**To**  
**Surface Use Agreement**

**PETROLEUM PIPELINE EASEMENT LOCATIONS**



# EXHIBIT D

- LEGEND
- ENCANA OGA
  - KMG OGA
  - PROPOSED 30' PIPELINE EASEMENT
  - ALTERNATE 30' PIPELINE EASEMENT
  - EXISTING 50' PIPELINE ROW
  - BOOK 960, REC. NO. 01882642
  - EXISTING 30' PIPELINE ROW
  - BOOK 1381, REC. NO. 2331355

KERR MCGEE

TOWNSHIP 1 NORTH, RANGE 68 WEST

SECTION 20: N1/2

WELD COUNTY, COLORADO

Scale: 1"=600' July 31, 2013

**EXHIBIT E**  
**To**  
**Surface Use Agreement**  
**PIPELINE GUIDELINES**





## General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC 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, i.e., 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". 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.





## General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

- Foreign utilities shall not run parallel to KMGG pipelines within the KMGG easement without written permission by KMGG. **A minimum of 10 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' horizontal requirement must be approved in writing by KMGG and an "as built survey" provided to KMGG after installation.** In the instance that high voltage electric lines, greater than 20kV, are installed parallel to a KMGG pipeline a minimum horizontal distance of 15' must be maintained.
- 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 manipulated by the requesting entity to be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMGG. This does not preclude KMGG from installing the pipeline at a minimum cover of 36" as provided for in CFR 49 Part 192. 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.**





## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related 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.
- 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 notified prior to construction activities within twenty-five (25) feet of a KMGG pipeline or above ground appurtenance. The contractor **shall not** be allowed to work within twenty-five (25) feet of KMGG facilities without approval from the KMGG representative. The KMGG representative may or may not remain on site during the entire construction activity. Contractor shall use extreme caution and take appropriate measures to protect KMGG facilities. The contractor shall call the KMGG representative prior to backfilling around the KMGG facility to allow for a final inspection of the KMGG facility.
- 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.



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities**

- ♦ 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:**

Operations Manager  
Staff Engineer:  
Pipeline Foreman:

Tim Bates  
Wes Fortik  
Wayne Knight

Phone: (303) 655-4352  
Phone: (720) 929-6985  
Phone: (303) 655-4329

### **Emergency Contacts:**

On call integrated operation center  
One Call Emergency

Phone: (970) 506-5980  
Phone: 811