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Surface Use Agreement

APR 11 07

6th THIS SURFACE USE AGREEMENT (the "Agreement") is made and entered into this day of November, 2006, by and between Boomerang Properties, LLC, a Colorado limited liability company, 3900 E. Mexico Ave, Suite 1400, Denver, CO 80210 (hereby referred to as "Developer") and Noble Energy Production, Inc., a Delaware corporation, 1625 Broadway Suite 2000, Denver, Colorado 80202, (hereby referred to as "NEPI").

RECITALS

A Developer is the owner of the surface estate in an approximate 160 acres of land located in portions of the SW/4 of Section 4, Township 5 North, Range 66 West of the 6th P M, County of Weld, State of Colorado (the "Property") as shown on Exhibit "A" attached hereto and made apart hereof

B. This Agreement is entered into as a condition set forth under that certain oil and gas lease dated May 11, 2006 subject to the mineral estate in and under the Property (the "Lease") by and between Developer and NEPI

C. Developer desires to undertake development of the surface of the Property including residential and commercial development as shown on Exhibit "A1" attached hereto and made apart hereof. The surface rights granted to NEPI hereunder are limited to the "Oil & Gas Operations Areas" and Pipeline Easements, as defined in Section 1 hereof

D Developer acknowledges that NEPI's leasehold rights include, among other things, the right of ingress and egress for the purposes of exploration, development, drilling, re-drilling, testing, completion, re-completion, re-entry, deepening, fracturing, re-fracturing, stimulation, reworking, production and maintenance operations associated with oil and gas wells and the associated pipelines and production facilities ("Oil and Gas Operations") located within the Oil & Gas Operations Areas

E. NEPI shall continuously drill at least five (5) and as many as eight (8) wells (the "Wells") as shown on Exhibit "A".

F. NEPI and Developer enter into this Agreement to provide for the coexistence and joint development of the surface estate as limited hereto, and the oil and gas estate of the Property, and to delineate the process with which the parties shall comply with respect to the development of the two estates. Should the terms and provisions of this Agreement be inconsistent with or in conflict with any of the terms and provisions of the Lease, then the terms and provisions of this Agreement shall prevail.

NOW, THEREFORE, in consideration of the covenants set forth herein and the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. AREAS RESERVED FOR OIL AND GAS OPERATIONS.

1.1 Oil and Gas Operations NEPI shall have the right to undertake Oil and Gas Operations of the Wells located on the Property. In order to provide for such, Developer shall, and does hereby ratify and, to the extent necessary, grant to NEPI an easement, to utilize the areas illustrated as Proposed Lot 1, Block 1 on Exhibit "A" and "A1" attached hereto and made a part hereof as the "Oil and Gas Operations Areas". Additionally, Oil and Gas Operations Areas shall include the surface area of a thirty foot (30') wide temporary drilling access road and a twenty foot (20') permanent access road as shown on Exhibit "A".

1.2 Oil and Gas Operations Areas. The Oil and Gas Operations Areas shall be reserved and utilized for the exclusive purpose of any and all Oil and Gas Operations by NEPI. After the Wells are drilled, Developer may landscape and/or post monument signage within the Oil and Gas Operations Area in accordance with Greeley development requirements and conditional upon maintaining a minimum one hundred fifty feet (150') setback from the Wells and Production Facilities as shown on Exhibit "A"

1.3 Pipeline Easements. Developer has granted a Pipeline Easement to Duke Energy Field Services, LP as more particularly described in Exhibit "B" attached hereto and made apart hereof



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Developer shall reasonably cooperate in granting additional pipeline easements to NEPI or third parties used to facilitate the transportation of oil, gas and or condensate to market for the Wells.

1.4 Production Facility Area. NEPI shall have the right to locate, relocate, build, repair and maintain oil tanks, separators, dehydrators, emissions burners, compressors and other equipment necessary, appropriate or convenient for the operation and production of the Wells within (the "Production Facility Areas") as shown on Exhibit "A" and "A1".

1.5 Limitation on Use of the Property. Except for the Oil and Gas Operations Areas, Production Facility Areas, Pipeline Easements and Access Roads as provided in Section 5, NEPI shall not use or occupy any part of the surface of the Property except in the event of an emergency or for necessary incidental and temporary activities

1.5.1 Developer shall place no new property lines, buildings, structures or improvements (including streets, sidewalks, driveways, curbs and gutters, detention or retention ponds, irrigation systems, sewage or drainage systems or pathways) of any kind within the Oil and Gas Operations Areas except as shown on Exhibit "A" or "A1". Without the prior written consent of NEPI, Developer shall not alter or modify the existing grade within the Oil and Gas Operations Areas or Pipeline Easements except in accordance with proposed grading plan shown on Exhibit "C" attached hereto and made apart hereof.

1.5.2 Without the prior written consent of Developer, NEPI shall not alter the location of the Wells or any other structures within the Oil & Gas Operations areas as shown on Exhibit "A"

1.5.3 Developer shall place no permanent building, or structures intended for human occupancy or above-ground improvements (excluding streets, sidewalks, driveways, curbs and gutters, retaining walls) within three hundred fifty (350) feet of any tank or separator located in the Production Facility Area without prior written consent from NEPI. Developer shall not construct or allow the construction of dwellings or structures intended for human occupancy within sixty (60) feet on either side of any Pipeline Easements granted to NEPI except at those locations where the pipeline is to be sleeved. At the locations where the pipeline is sleeved, without the prior written consent from NEPI, Developer shall not construct or allow the construction of dwellings or structures intended for human occupancy within ten (10) feet on either side of the Pipeline Easements

1.5.4 Developer hereby reserves the right to use the surface of the Property, excepting property located in the Oil and Gas Operations Areas, to directionally drill wells to leasehold interests other than those described in the Lease or any mineral or leasehold interests under the Property. Developer shall make all reasonable efforts to preserve and protect NEPI's leasehold rights. NEPI shall reasonably cooperate in granting easements to Developer that are necessary to directionally drill through NEPI's leasehold interest as it applies to the Property.

1.6 Waiver of Certain Requirements. Developer waives all setback requirements in Colorado Oil and Gas Conservation Commission ("COGCC") Rule 603, or any successor rule or amendment to the COGCC setback rules, and to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of NEPI to explore for and produce the oil and gas in accordance with this Agreement. Developer understands that NEPI may cite the waiver in this Section 1.5 in order to obtain a location requirement exception or variance under COGCC rules or from a local jurisdiction. Developer also agrees that it will not object in any forum to the use by NEPI of the surface of the Property consistent with this Agreement and that it will also provide NEPI with whatever support in writing they may reasonably require to obtain permits from the COGCC or any local jurisdiction

2. **PIPELINES.** NEPI shall construct new pipelines from Wells to the production facilities (the "Pipelines") within any Pipeline Easements granted to NEPI or within the Oil and Gas Operations Areas. When required, the Pipeline will be constructed with casing sleeves and risers, all in accordance with the following terms and conditions:

2.1 Line Crossings If Developer's surface development of the Property requires the crossing of NEPI's Pipeline (within five (5) feet of a location that is not sleeved) by a sewer line, water line or other utility, or if development of the Property requires the crossing of NEPI's



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Pipeline (of a location that is not sleeved) by streets, sidewalks, driveways, curbs and gutters, that were not shown on Exhibit "A", then Developer shall notify NEPI

(a) of the date and time of the line crossing (the "Commencement Time"), and (b) when the line crossing has been completed (the "Completion Time") If in response to Developer's notification, NEPI suspends production through the Pipeline, then Developer shall pay NEPI for each calendar day or part thereof between the Commencement Time and the Completion Time, the amount of which shall be the agreed amount to compensate NEPI for its response and any lost or delayed production, and shall be made to NEPI within fifteen (15) days of receipt of an invoice from NEPI Any such payments shall be in addition to the payment for lost and/or delayed production contained in relocating Pipelines. Developer shall maintain a distance of a minimum two (2) feet above or below the Pipeline at any such crossings

2.2 Modifications To Line Crossings. Upon installation of pipelines, NEPI shall place sleeves on pipelines in accordance with the Developers proposed surface development plats as they pertain to the crossing of sewer lines, water lines, utilities, streets, sidewalks, driveways, curbs and gutters limited to depictions shown on Exhibit "A" or "A1". If required by the City of Greeley, Developer modifies the location of sewer lines, water lines, utilities, streets, sidewalks, driveways, curbs and gutters prior to NEPI's installation of the pipelines, Developer shall notify NEPI of said changes and NEPI shall make reasonable efforts to coordinate the installation of sleeves on the pipelines in accordance with said modifications. All modifications after pipelines have been installed that are not shown on Exhibit "A" or "A1" shall be handled in accordance with Section 2.1 Line Crossings Any modifications to Developers proposed plats shall not conflict with NEPI's Oil and Gas Operations.

2.3 Pipeline Depth. Without the prior written consent of Developer, pipelines shall be buried at a minimum depth of four feet (4')

3. CONSTRUCTION COORDINATION. Upon commencement by NEPI of the construction operations pursuant to Section 2 above, Developer shall cease those operations on Proposed Lot 1, Block 1 of the Property or any operations that would be likely to interfere with NEPI's obligations pursuant to this Agreement To the extent that Developer's operations delay NEPI's operations, or upon the occurrence of an event of Force Majeure (as defined in Section 28), NEPI will not be subject to the performance time frames set forth in Section 2 . In the event Developer's operations delay or interfere with NEPI's operations to the extent that standby, shutdown or re-mobilization charges are incurred by NEPI, NEPI shall provide written notice to Developer of any pending delay and expenses associated with standby, shutdown or re-mobilization. Developer shall have a period of fifteen (15) days to cure delay and shall repair, replace, reimburse or pay reasonable compensation to NEPI for said delay.

4. SURFACE RECLAMATION. NEPI or succeeding oil and gas operators shall be responsible for their respective costs of interim and final reclamation and surface restoration related to such future operations to the extent required by the COGCC.

5. ACCESS.

5.1 During Developer's development of the surface of the Property and at all times thereafter, Developer shall at all times provide NEPI access to the Oil and Gas Operations Areas and any Pipeline Easements granted to NEPI, though the location of that access may vary from time to time in accordance with the needs and progress of such surface development The temporary thirty (30) foot wide access roads to be used for drilling operations and the permanent twenty (20) foot wide access roads shall be located as shown on Exhibit "A" (the "Access Roads").

5.2 If applicable, and as Developer constructs paved roads, curbs, gutters and sidewalks to accommodate Developer's infrastructure design, Developer shall continue to provide NEPI access to the Oil and Gas Operations Areas and Pipeline Easements and shall provide curb cuts at all access points. The curb cuts at the access points shall be at least thirty (30) feet wide. The paved roads, leading to the access points and the curb pans and, gutters at the access points shall be reinforced to accommodate a gross vehicle weight of at least 18,000 pounds per axle.

6. PRODUCTION FACILITIES. NEPI shall have the right to locate, relocate, build, repair and maintain oil tanks, separators, dehydrators, compressors and other equipment necessary, appropriate or convenient for the operation and production of the Wells, only within



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the Production Facility Area designated for such purpose on Exhibit "A" and "A1". All tanks and separators shall be "low profile" as defined by the City of Greeley. With respect to the Wells and production facilities of NEPI, other than pipelines and access roads, NEPI shall install and maintain fences, gates and locks reasonably necessary for the security of the Wells within the Oil and Gas Operations Areas and the production facilities in the Production Facility Area. Such fences, gates and locks shall be installed at the expense of NEPI and maintained at the expense of NEPI and shall be of a type and quality customarily used for such purpose.

7. NOTICE OF FUTURE OPERATIONS. NEPI shall provide at least seven (7) days prior written notice to Developer in advance of any operations (other than the drilling of new wells) within the Oil and Gas Operations Areas in connection with the reworking, fracturing, deepening or other unusual or other than routine operations on the Wells; provided, however, that NEPI shall have immediate access in the event of an emergency.

8. NOTICES TO HOMEOWNERS AND BUILDERS. Within fifteen (15) days of the Effective Date as described in Section 29 below, NEPI shall record in the real property records of the County of Weld, Colorado a "Notice of Oil and Gas Operations", substantially in the form attached hereto as Exhibit "D" that conspicuously states that.

8.1 there will be ongoing Oil and Gas Operations in the Oil and Gas Operations Areas, Production Facility Areas and Pipeline Easements,

8.2 Purchasers of all or a portion of the Property, as successors in interest to Developer, will be subject to Developer's rights and obligations under this Agreement and will be subject to the waivers contained in this Agreement which, with respect to operations within the Oil and Gas Operations Areas, Production Facility Areas and Pipeline Easements subject to Section 1.5 above, shall constitute a waiver of the setback requirements provided in Commission Rule 603 c(6) or any successor or amended state setback rule and also local setback requirements, among other obligations.

9. PRELIMINARY AND FINAL PLATS. The Final Plat prepared by the Developer as part of the subdivision approval process for the Property shall include the Wells, Pipeline Easements and Access Roads. Within fifteen (15) days of approval by the County of Weld of a Final Plat, Developer shall record a copy of the Final Plat in the real property records of the County of Weld, Colorado.

10. CONSIDERATION FOR DIRECTIONAL DRILLING. NEPI shall be responsible for costs related to directional drilling.

11. FUTURE OPERATIONS. NEPI shall make all reasonable efforts to pursue any Oil and Gas Operations in a diligent manner so as to minimize the total time period on location and to avoid rig relocations or startup delays during the course of drilling. Developer waives and shall not assert any right to require that wellhead or production equipment be located in conformance with setback requirements different from those agreed to in this Agreement (including but not limited to those concerning any "high density" rules of the COGCC).

12. GOVERNMENTAL PROCEEDINGS.

12.1 Developer shall not, directly or indirectly, oppose or encourage opposition to NEPI in any agency, administrative or other governmental proceedings, including but not limited to the COGCC, the County of Weld, the City of Greeley or other governing body proceedings, related to the operations of NEPI on the Property, including but not limited to drilling and production activities, workovers, well deepening, recompletions, fracturing, replacement wells and re-fracturing, provided that the position of NEPI in such proceedings is not materially inconsistent with this Agreement.

12.2 NEPI shall not directly or indirectly oppose or encourage opposition to Developer in any agency, administrative, or other governing body proceedings, relating to Developer's operations on and development of the Property, including residential and associated development, provided that Developer's position in such proceedings is not materially inconsistent with this Agreement.

13. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.



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13.1 NO PARTY SHALL BE LIABLE FOR, OR BE REQUIRED TO PAY FOR, SPECIAL PUNITIVE OR EXEMPLARY DAMAGES TO ANY OTHER PARTY FOR ACTIVITIES UNDERTAKEN WITHIN THE SCOPE OF THIS AGREEMENT.

13.2 Each party shall be and remain responsible for all liability for 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, including each such parties' employees, agents, contractors, sub-contractors or other invitees on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold harmless against all such Claims that arise from its negligence. 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.

14. **EXCLUSION FROM INDEMNITIES.** The indemnities of any party herein shall not cover or include any amounts, which the indemnified party may recoup from any third party, or that for which the indemnified party is reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

15. **NOTICE OF CLAIM FOR INDEMNIFICATION.** If a Claim is asserted against a party for which another party would be liable under the provisions of Section 13 above, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within thirty (30) days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

16. **REPRESENTATIONS.** Each party represents that it has the full right and authority to enter into this Agreement and Developer specifically confirms its capacity to validly execute the rights of way and easements provided for herein. NEPI represents that it owns the oil and gas leasehold interest in the Lease as set forth in Recital B under the Property. NEPI does not represent and specifically asserts that they do not have the right to bind any other oil and gas leasehold interest owner, mineral owner, lessee or assignee for the Property.

17. **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. This Agreement and all of the covenants herein shall be covenants running with the land.

18. **NOTICES.** Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in the U.S. Mail, postage prepaid, with a copy sent via facsimile, addressed to each of the following:

If to NEPI:

Noble Energy Production, Inc.
1625 Broadway, Suite 2000
Denver, Colorado 80202
Attention: Land Department
FAX (303) 228-4285

If to Developer:

Boomerang Properties, LLC
3900 E. Mexico, Suite 1400
Denver, CO 80210
Attention: Keith Redmond
FAX (303) 388-8898

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



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19. **RECORDING.** Within fifteen (15) days of the Effective Date, NEPI shall record a complete copy of this Agreement along with a Memorandum evidencing the existence of the Lease in the real property records of the County of Weld, Colorado NEPI shall provide Developer with a copy thereof showing the recording information as soon as practicable thereafter.
20. **SURFACE DAMAGES.** In consideration of the parties' respective rights, obligations and benefits, as outlined herein, this Agreement shall constitute a surface use or surface damage agreement provided for under the COGCC's Rules and Regulations.
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 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. **HEADINGS.** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
24. **TIME OF ESSENCE.** Time is of the essence in this Agreement.
25. **NON-WAIVER.** Waiver by either party or of the failure of any party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of the right or prevent any such party from requiring the strict performance of any provision in the future.
26. **SEVERABILITY.** Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice a party in its rights and obligations contained in valid covenants, conditions or provisions. 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
27. **FORCE MAJEURE** In the event either party is rendered unable, by an event of Force Majeure (defined below) to perform, wholly or in part, any obligation set forth in this Agreement, other than the obligation to pay money, then the performance by the affected party will be suspended during the continuance of such event of Force Majeure The party experiencing an event of Force Majeure will provide reasonable notice to the other party as soon as possible with all reasonable dispatch As used herein, the term "Force Majeure" shall mean any act of God, acts of the public enemy, wars, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, severe weather, floods, washouts, arrests and restraints of the federal, state or local government, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, delay in securing environmental approvals, the inability to obtain necessary supplies, material, equipment, machinery or labor and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome
28. **NO JOINT VENTURE.** This Agreement is not intended to, nor shall it be interpreted to create a joint venture, partnership or any other relationship among the parties.
29. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.
30. **COUNTERPARTS.** This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

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

RECEIVED.

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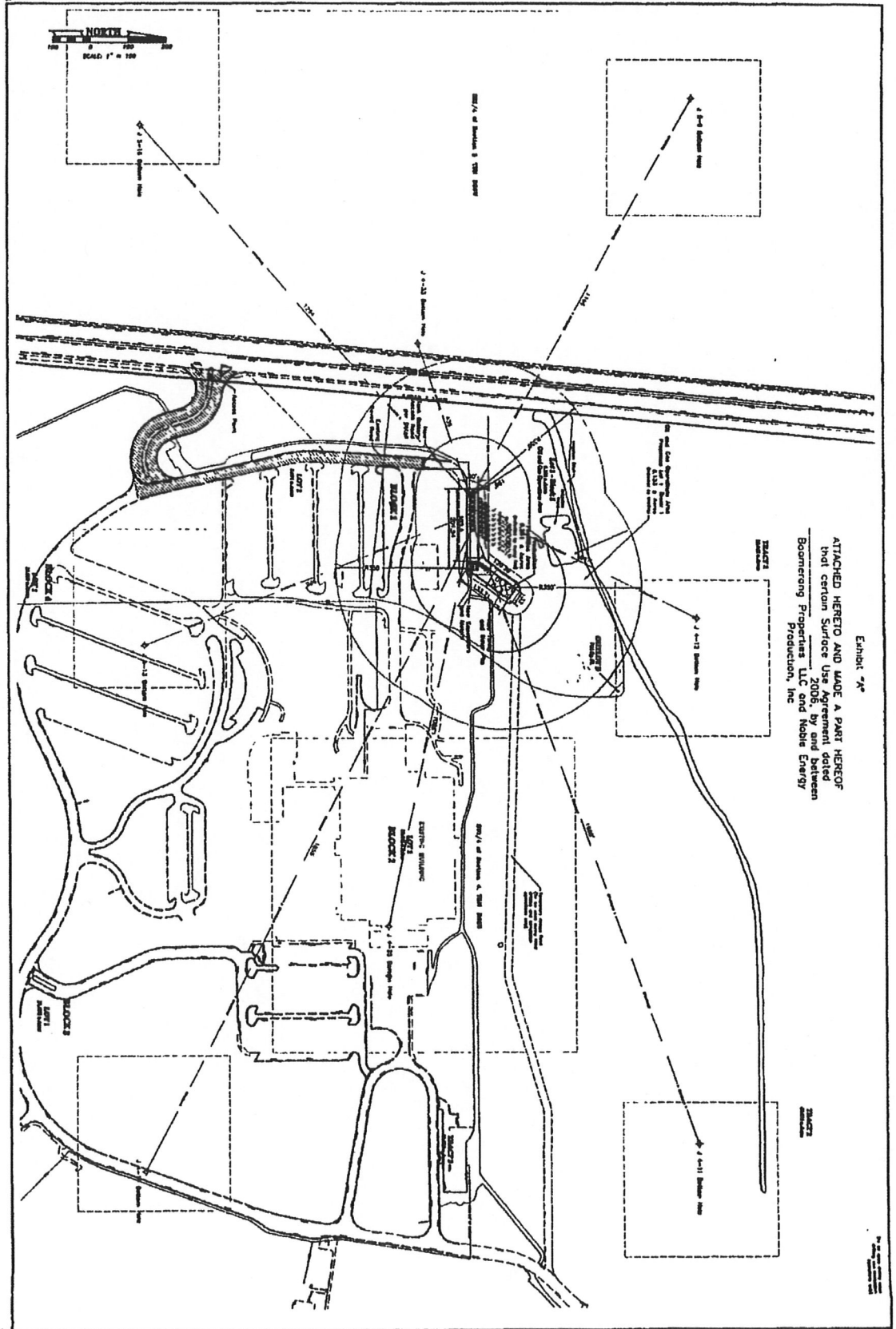


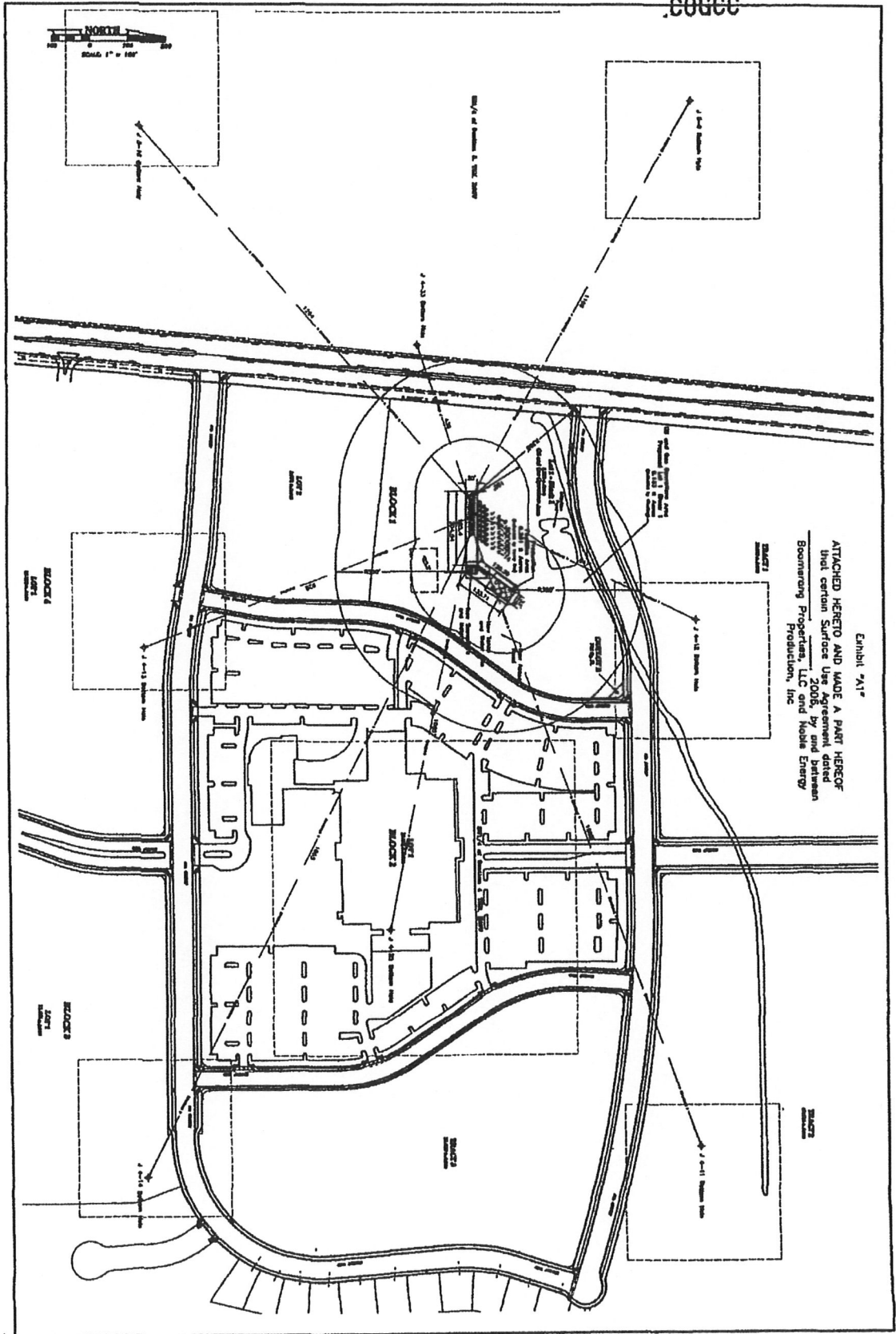
Exhibit "A"
ATTACHED HERETO AND MADE A PART HEREOF
is a true and correct copy of the original
that certain Surface Use Agreement dated
12/20/06, by and between
Barrington Properties, LLC and Noble Energy
Production, Inc.

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