

EXCEPTION WAIVER

prior to the time that it commences drilling operations on the Property where Kerr-McGee's operations will interfere with existing access to the Barnes residence.

6. Notice of Commencement of Surface Construction and Drilling Activities.

a. Surface Owner Notice. Surface Owner shall give advance notice to and meet at the site with representatives of Kerr-McGee or KMGG, as applicable, to locate existing pipelines and flowlines and to coordinate proposed surface construction activities with current and prospective oil and gas operations.

b. Kerr-McGee Notice. Kerr-McGee shall give notice to Surface Owner of proposed drilling activities on the Property in accordance with COGCC rules and regulations and this Agreement.

7. Plats and Site Plans and Local Regulations. Surface Owner shall identify the Oil and Gas Operations Areas, Existing Production Facility Location, Production Facility Location, Flowline Corridors and all present and future access routes and Pipeline Easements in all subdivision plats, site plans and applications for development it files with a local jurisdiction, as well as setbacks between the Oil and Gas Operations Areas, Existing Production Facility Location and the Production Facility Location, on the one hand, and planned and existing lot lines. The plats and site plans 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 or beneath the Oil and Gas Operations Areas, Existing Production Facility Location, Production Facility Location, Flowline Corridors or pipeline easement areas, except as may be otherwise provided in this Agreement. Surface Owner shall record the site plan or subdivision plat in the Office of the Clerk and Recorder of Weld County and provide written evidence to Kerr-McGee of the recording.

8. Waiver of Surface Damage Payments. Except as specifically provided in the Letter Agreement with respect to wells drilled within the Oil and Gas Operations Area in the W/2NW/4SW/4 of Section 24 on the Section 24 Property and within the Oil and Gas Operations Area in the E/2SE/4SE/4 on the Section 23 Property, Surface Owner hereby waives all surface damage payments pursuant to any COGCC or local regulation, state statute, common law, lease, or prior agreement for each and every well and related wellsite that is drilled and located within the Existing Oil and Gas Operations Area and for all associated oil and gas equipment and facilities, flowlines, pipeline easements and access roads. Kerr-McGee may provide a copy of this Agreement to the COGCC or any local jurisdiction, person or entity or court of law as evidence of this waiver.

9. Waiver of Setback Requirements. 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. Surface Owner hereby waives all setback requirements in COGCC Rules 603 and 604 (including high density setback rules and all Exception Zone setbacks), or any successor 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

Kerr-McGee to explore for and produce the oil and gas in accordance with this Agreement. Surface Owner understands that Kerr-McGee may cite the waiver in this section 9 in order to obtain a location exception or variance under COGCC rules or from a local jurisdiction.

10. Governmental Proceedings.

a. Surface Owner will not Object. Provided that the location for a proposed well is within an Oil and Gas Operations Area and that the proposed oil and gas operations are otherwise consistent with this Agreement, Surface Owner agrees that: i) it will not object in any forum to the use by Kerr-McGee of the surface of the Property and hereby waives any such right to object; ii) it will provide such other written approvals and waivers which are reasonably requested by Kerr-McGee, including, but not limited to, all approvals and waivers to drill a well or to conduct oil and gas operations on the Property 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; iii) it waives any rights it has to require or request a surface inspection for wells proposed to be drilled on the Property for the purpose of requesting that conditions be attached to a permit to drill a well and hereby agrees not to request such conditions; iv) it consents to the location of multiple wells within an Oil and Gas Operations Area that are greater or less than fifty feet apart so long as all such wells are located within an Oil and Gas Operations Area; v) it consents to, waives its rights, and covenants that it will not protest or object to any exception location or application for an exception location by Kerr-McGee; and vi) it waives its rights to object, request a hearing before the COGCC or request that conditions be attached to a COGCC permit to drill and to allege noncompliance with COGCC rules or applicable statutes, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the jurisdiction of the COGCC with respect to COGCC Applications for Permit to Drill ("Form 2") and COGCC Oil and Gas Location Assessments ("Form 2A").

b. Kerr-McGee Will Not Object. Kerr-McGee agrees that it will not object in any forum to a request by Surface Owner to annex, zone, rezone, plat or replat all or any portion of the Property to extent such request is consistent with this Agreement and the attached Exhibits.

11. Notices of Hearings. Surface Owner shall provide Kerr-McGee 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 Property or portions of the Property to be held before a local jurisdiction.

12. Notice of Oil and Gas Operations. Kerr-McGee shall provide Surface Owner with notice of drilling operations and subsequent well operations in accordance with COGCC rules and regulations.

13. Impact Mitigation.

a. Kerr-McGee Mitigation. Kerr-McGee shall install and maintain at its sole cost and expense such fences, gates and locks around wells and production facilities as are required