

SURFACE USE AGREEMENT

This Surface Use Agreement ("Agreement") is made and entered into effective this ^{JULY} 31 day of 2013, by and between **David and Lynn McDonough** and **The David M. McDonough Trust**, with an address of **307 N. County Line Rd 1, Johnstown, CO 80534** and **Judith Elaine Folley Family Trust** with an address of **1608 E. County Line Rd 72 Wellington CO 80549** (hereinafter collectively referred to as "Owner" or "Surface Owner") and Kerr-McGee Oil & Gas Onshore LP, a Delaware limited partnership, with an address of 1099 18th Street, Suite 1800, Denver, CO 80202 (hereinafter referred to as "Operator") and Kerr-McGee Gathering LLC. ("KMGG"), a Delaware limited liability company, with an address of 1099 18th Street, Suite 1800, Denver, Colorado 80202 (hereinafter referred to as "KMGG").

WITNESSETH:

WHEREAS, Owner owns the surface estate described on Exhibit A attached hereto (the "Lands") as well as the mineral estate under the Lands; and

WHEREAS, Owner has developed portions of the Lands and has plans to develop other portions of the Lands which plans may include planned communities for residential, commercial, agricultural, industrial and other development; and

WHEREAS, the parties have, on this date, entered into an Oil and Gas Lease covering the mineral estate as shown on Exhibit A.

WHEREAS, Operator plans to drill oil and gas wells on the Land at different times pursuant to Oil and Gas Leases from Operations Areas in accordance with the terms of this Agreement ("Wells").

WHEREAS, the parties wish to enter into an agreement concerning the use by Operator of portions of the Lands for the purposes of drilling, completing, and operating oil and gas wells on the Lands consistent with Owner's existing and planned development of the Lands.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Right of Use.** Owner hereby gives and grants to Operator, its agents, employees, drilling contractors, and related service companies, subject to the terms of this Agreement, the non-exclusive right to enter upon and use the Lands for the purpose of drilling, completing, and producing one or more oil and gas wells at legal locations or at such exception locations as are approved by the Colorado Oil & Gas Conservation Commission ("COGCC"), together with rights-of-way across the Lands and adjacent lands owned by Owner necessary to construct and maintain one or more access roads, well sites, tank batteries, and pipelines in connection with the oil or gas wells to be drilled by Operator upon the Lands, all in accordance with, and subject to the limitations set forth in, this Agreement. The rights of Operator to use the Lands as set forth herein are non-exclusive, and Owner reserves the right to use all access roads, and all surface and sub-surface uses of the Lands, and to grant successive easements on or across the Lands on such terms and conditions as Owner deems necessary or advisable, provided that Owner's use and all other uses authorized by Owner do not unreasonably interfere with the operations of Operator.

2. **Notification and Consultation.**

(a) Attached hereto is an Exhibit B that depicts generally three (3) oil and gas operations areas in which Operator will conduct its operations ("Oil and Gas Operations Areas"). Consistent with the Colorado Oil and Gas Regulations and prior to commencing any operations or initiating the drilling of any well within the Oil and Gas Operations Areas, Operator shall notify Owner of its plans to include the location of each road, pipeline, power line, tank battery, or other facility to be placed in the Oil and Gas Operations Area(s) in which operations are to be conducted. Except as otherwise provided in this Agreement with respect to roads, power lines, underground powerlines, transformers, electrical boxes,

cabinets, flowlines, water pipelines and pipelines, all of Operator's activities shall be restricted to the Oil and Gas Operations Areas and Owner shall not occupy any portion of the Oil and Gas Operations Areas for any purpose, it being specifically agreed that the Oil and Gas Operations Areas are for the exclusive use of Operator. No gas treatment or gas processing facility shall be placed on the Lands, other than standard wellsite separation, artificial lift equipment and dehydration equipment.

(b) To the maximum extent possible, Operator's access to its Oil and Gas Operations Areas and the placement of pipelines and power lines (to the extent they are located outside of the Oil and Gas Operations Areas) will be along the section lines of the Lands. Owner recognizes that Operator will have to construct access roads, pipelines and power lines from the section lines of the Lands to the Oil and Gas Operations Areas. The location of such access roads, pipelines and power lines will be done in consultation with Owner.

(c) Provided mutually acceptable alternate locations are agreed upon by Owner and Operator, Owner shall have the right to require Operator to relocate any roads, pipelines, power lines, or other surface or underground facilities (excluding any well) upon ninety (90) days prior written notice to Operator in the event that such relocation is necessary to Owner's use of the Lands so long as the alternative location is technologically and operationally feasible. All relocation expenses will be borne by Owner and Operator will not be required to move any of its facilities until provision has been made for the payment of such expenses to the reasonable satisfaction of Operator.

3. **Compensation.** As compensation for surface damages for use of Owner's surface estate, Operator shall pay to Owner the following:

(a) The sum of Ten Thousand Dollars (\$10,000) for each horizontal well and Two Thousand Five Hundred Dollars (\$2,500) for each vertical or directional well in each Oil and Gas Operations Area for the drilling of wells and the location of related facilities upon the Oil and Gas Operations Areas which payment includes the access road, transformers, electrical boxes, cabinets, flowlines, and water pipelines to the Oil and Gas Operations Areas, payable prior to commencement of surface disturbing activities.

(b) If applicable, the fees and compensation payable by Operator to Owner for the installation and location and operation of any compressor on the Lands shall be negotiated in good faith by Owner and Operator under a separate agreement.

(c) Provided Owner is in compliance with this Agreement, Operator agrees that it will not object, oppose or seek to prevent Owner from (i) obtaining any required permits to develop the Lands for such residential, commercial, industrial and other uses of any kind as Owner determines from time to time, or (ii) so developing the Lands, subject to Operator's rights under this Agreement. Operator agrees to execute and deliver letters of support of and non-objection to such development by Owner as may be requested by Owner from time to time. Likewise, provided Operator is in compliance with this Agreement, Owner will not oppose any permit application Operator submits to the COGCC or any state or local entity having jurisdiction of some or all of Operator's activities hereunder or under the Oil and Gas Lease of even date so long as said application or permit is consistent with this Agreement, and, if necessary, Owner will reflect its support to applicable local government designees ("LGDs") concerning Operator's activities on the Lands.

(d) Owner and Operator agree that once the Oil and Gas Operations Areas have been established in accordance with Section 5 hereof, Owner, with the exception of the setback requirement of COGCC rule 603.a.(1), shall automatically be deemed to waive the setbacks provided for in COGCC rules including, but not limited to, the setback and other requirements of rules 603.a.(2), and 604. of the rules and regulations of the COGCC relating to property lines and high density and designated outside activity areas, as they may be amended from time to time. Owner further and similarly shall be deemed to waive its right to object 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 Operator, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement. Operator 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 over the oil and gas operations contemplated hereby including the City. Once the Oil and Gas Operations Areas have been established, as set forth in Section 5 hereof, Owner agrees not to object to the use of the surface in the Oil and Gas Operations Areas so long as such use is consistent with this Agreement and Owner will provide Operator or its successors and assigns with any and all written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction. In consideration of the foregoing, Operator waives its rights to object to future development of the Lands based upon any state or local setback requirement that regulates how close such future development may encroach upon Operator's facilities, and further agrees that Owner may cite the waiver in this paragraph in order to obtain an exception or variance to setback requirements from any state or local governmental body having jurisdiction over the Lands.

4. Road Construction and Use. Subject to Section 2 above, any roads constructed or used by Operator on the Lands shall be constructed or used to the following specifications:

(a) To the maximum extent reasonably possible, Operator will use existing roads designated by Owner for its operations if such use is operationally and economically feasible in Operator's judgment reasonably exercised.

(b) The surface of all roadways shall be made of compacted gravel, and shall comply with all regulations or laws applicable to such roadways. All interior roadways, within the Oil and Gas Operations Areas, shall not exceed thirty (30') feet in width for traveled surface. All roadways along the section lines of the Lands shall be thirty (30') feet or more in width for traveled surface. Operator shall control dust from all private and public (subject to COGCC and local governmental approval) roadways through the application of an appropriate dust suppressant. Any roads constructed by Operator shall be improved as may be necessary and Owner and Operator agree that once surface development begins, the parties will consult with each other and agree on how the roads used in the operations of the oil and gas activities will be merged into the development roads. Any shared roads with the development and required upgraded material for roads and transitions to the standard oil and gas roads (streets, aprons and sidewalks) will be paid for by the Owner or future developers of the Lands.

(c) If requested by Owner, access to the Lands of Owner from any public road, or from the land of any adjoining Landowner, shall be controlled by a swinging metal gate in addition to a cattle guard.

(d) Culverts shall be placed in low areas for proper drainage.

(e) Through diligent communication, operator will exercise its best efforts to assure that no off-road travel is permitted and particularly no off-road travel which has the effect of widening the road or area of damage occurs.

(f) The use and construction of roads by Operator on the Lands is a non-exclusive use, and Owner may allow other parties to use said roads and make a charge therefor. However, Operator shall have the right to assess other non-agricultural users of the roads (except for Owner) for their share of maintenance work performed by Operator. Owner shall have no responsibility for road maintenance.

(g) Owner may lock gates across its private roads, provided that Operator shall have the right to place its own locks on such gates.

(h) No roads on the Lands shall be used by Operator for access to lands not subject to the Lease without a separately negotiated agreement.

5. Oil and Gas Operations Areas. The Three (3) Oil and Gas Operations Areas depicted on Exhibit B shall be limited to that number and such Oil and Gas Operations Areas will be utilized for drilling, completion and reworking/recompleting activities. During these activities, these 3 Oil and Gas Operations Areas shall comprise and impact approximately twenty (20) total acres of the Lands.