

## **SURFACE USE AGREEMENT**

This Surface Use Agreement ("**Agreement**") is dated and made effective this 5<sup>th</sup> day of February, 2009, and is between K.P. Kauffman Company, Inc., a California corporation ("**KPK**") with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202-4628, RML Property Investors, LLC, a Colorado Limited Liability Company ("**RML**") with an address of c/o Harvey Deutsch, 9145 East Kenyon Avenue, Suite 101, Denver, Colorado 80237, and Aggregate Industries WCR, Inc. ("**AI**") with an address of 1707 Cole Boulevard, Suite 100, Golden, Colorado 80401. RML and AI may collectively be referred to as the "**Mining Parties**". KPK, RML, and AI may collectively be referred to as the "**Parties**".

### **Whereas:**

A. RML is the current landowner and lessor and AI is the current lessee under one or more sand, gravel and aggregate mining leases covering certain tracts of land located in Weld County, more particularly described on Exhibits A1, A2, and A3 (collectively "**Exhibit A**") attached hereto, being a portion of Section 8, T4N, R66W 6th P.M., Weld County, Colorado (hereinafter referred to as the "**Property**"). There is an agricultural lease affecting all or a portion of the Property.

B Surface ownership of the Property is subject to the rights of the oil and gas mineral leasehold estate, all or a portion of which is now owned by KPK.

C AI has received a mining permit from the State of Colorado Division of Reclamation, Mining and Safety, formerly known as the Division of Minerals & Geology ("**DMG**") for the purpose of open pit sand and gravel mining operations, permit number M-2000-087 (Weld County Permit #1354). Portions of the mined out Property are to be reclaimed for use as water storage reservoirs and any lawful purpose after mining activities cease.

D KPK currently operates the following wells on the Property, (the "**Existing Wells**"): the Edkam 1-21, located in the SW/4NW/4 of Section 8, T4N, R66W, the Edkam 2-23, located in the SE/4NW/4 of Section 8, T4N, R66W, the Edkam 5-34, located in the SW/4SW/4 of Section 8, T4N, R66W, and the Ed Kammerzell 3-28, located in the NW/4SW/4 of Section 8, T4N, R66W.

E KPK shall continue to have the right to exercise its oil and gas leasehold rights on the Property by drilling additional wells or twinned wells in the "Oil and Gas Operations Area" as defined below and in accordance with Colorado Oil and Gas Conservation Commission ("**COGCC**") rules (the "**Future Wells**"). The Future Wells are depicted on Exhibit A attached and made a part hereto. The Future Wells and Existing Wells may hereinafter be referred to as the "**Wells**".

F The Parties acknowledge the existence of a Surface Use Agreement dated July 1, 2002, between WCR, Inc. and their successors and assigns and KPK covering the above described Property (the "**2002 Agreement**"). The Parties agree that this Agreement, as dated above, shall supersede the 2002 Agreement and any and all previous agreements covering the Property.

G This Agreement sets forth the Parties' rights and obligations regarding the relationship between the operations and development of the Property by the Mining Parties and KPK's operation and development of its oil and gas leasehold estate underlying the Property, such rights and obligations to be binding upon the Parties' successors and assigns.

**Now Therefore:** In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. AREAS RESERVED FOR THE WELLS; WELL LOCATIONS.**

The Mining Parties shall set aside and provide to KPK that portion of the Property hereinafter referred to as the Oil and Gas Operations Areas (the "OGOAs"), such areas being depicted on Exhibit A attached hereto. Except as provided for in this Agreement, the OGOAs shall be comprised of an area, without surface improvements including but not limited to roadways, fences, and structures, which is defined by a circle with the existing wellbore or proposed wellbore at the center and extending to a radius of 150 feet from the wellbore, as shown on Exhibit A. Upon sending thirty (30) days prior written notice to KPK, the Mining Parties may conduct temporary mining operations within the OGOAs provided, however, such mining operations are no closer than 75 feet from a Well on a quarter circle basis, as outlined below. The OGOAs are to be made available to KPK in their present condition for any operations conducted by KPK in connection with any Well, including, but not limited to, drilling new wells and production activities, workovers, well deepening, recompletion, fracturing and drilling replacement wells. All Wells will be limited to the OGOAs shown on Exhibit A, unless this Agreement is amended by consent of the Mining Parties and KPK. Except for the OGOAs, the access roads, and Petroleum Pipeline Easements (as defined below) as provided in this Agreement, KPK shall not occupy the surface of the Property except in the event of an emergency or for reasonable incidental, temporary and non-damaging activities, for which KPK shall be strictly and solely responsible for any damages that may occur to the Property, including without limitation, damages caused by KPK to the agricultural operations on the Property and related irrigation systems, including crop damage. Notwithstanding the above, the Mining Parties shall be strictly and solely responsible for any damages that may occur to the Property if the direct or indirect actions of the Mining Parties are the sole or major contributing factor to such damage.

**2. EXTRACTION IN VICINITY OF OIL AND GAS OPERATIONS AREAS;  
SETBACK REQUIREMENTS.**

The Mining Parties reserve the right, at their option, to mine the gravel within each of the OGOAs in accordance with the terms of Paragraph 1 above and this Agreement. The Mining Parties shall conduct their mining operations in the OGOAs as quickly as reasonably practicable and in accordance with this Agreement. The Mining Parties shall conduct their mining within the OGOAs by excavating pie shaped wedges of gravel and aggregate and thereafter backfilling and compacting the area with overburden or other suitable material prior to excavating the next pie shaped area; provided, however, that in no event shall the Mining Parties mine within 75 feet of any Well or Production Facilities (defined below) and provided further that in no event shall more than one quarter circle segment of the pie shape be excavated at any one time. The Mining Parties may commence mining operations on lands adjacent to the mined segment within the OGOAs provided no more than one cumulative quarter circle segment within an OGOA is subject to mining operations at any one time. All mined segments within the OGOAs shall be reclaimed to original grade at 95% compaction within 90 days of conclusion of mining operations at the sole cost and expense of the Mining Parties. Excavation in the OGOAs will be coordinated with KPK in a mutually acceptable manner so as to avoid conflict with KPK's oil and gas operations and to ensure there is an appropriate safety plan and interim emergency procedures. The Mining Parties will bear all costs associated with the mining operation, including permanent or temporary rerouting and replacement of access roads, and flowlines and utility lines in order to prevent unnecessary interruption of production from any affected Well. In addition, the Mining Parties and their successors and assigns shall indemnify and hold KPK harmless from any and all damage, loss and liability, including attorney's fees, incurred by KPK as a result of the Mining Parties' operations in an OGOA.

The Mining Parties will not locate any lot line, permanent building, or permanent structure within any OGOA, provided however, that this restriction shall not prohibit temporary mining operations no closer than 75 feet of any well, as provided above. The Mining Parties understand and acknowledge 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, the Mining Parties hereby waive their right to object to the location of any of KPK's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time, provided KPK is in compliance with the terms and conditions hereunder. The Mining Parties further and similarly waive their 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 KPK, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement. KPK 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; provided that the Mining Parties shall not be required to alter the agreed boundary of the OGOAs to accommodate the location exception or variance. The Mining Parties agree not to object to the use of the surface in the OGOAs so long as such use is consistent with this Agreement and the Mining Parties will reasonably cooperate at no material cost to the Mining Parties in any efforts of KPK or its successors and assigns to obtain permits from the COGCC or any local jurisdiction.

### **3. GATHERING LINES AND FLOWLINES.**

Subject to the limitations hereinafter described, KPK has a continuing right and entitlement to own, operate, maintain, repair and replace all existing and future flowlines, gathering lines and other pipelines that may be necessary or convenient to its operations on the Property ("Pipelines"). The construction and burying of additional new Pipelines shall be at the sole cost and expense of KPK or its gas purchaser.

Although this Agreement is intended to confine the placement of the Pipelines to certain specified locations within the Property, nothing herein shall be construed as a limitation on KPK's ultimate right to make all necessary well connections to any Well. The Mining Parties shall grant a recorded easement, in the form attached hereto as Exhibit B, for KPK's use of an area of fifty feet (50') during construction, installation or relocation operations of a Line and otherwise reduced to thirty feet (30') in width for post-construction usage, as shown on Exhibit A ("Petroleum Pipeline Easement"). With Mining Parties' written permission, the Petroleum Pipeline Easement may be expanded to accommodate new pipeline, but in no event will the Easement exceed sixty feet (60'), with ten feet (10') separating each pipeline. Pipelines will be placed a minimum of fifteen feet (15') inside any Petroleum Pipeline Easement.

The Mining Parties' operating plans anticipate that roadways may cross over Existing and Future Pipelines. "Existing Pipelines" shall mean any Pipeline now existing or hereafter constructed within a Petroleum Pipeline Easement prior to the Mining Parties' construction of a road for its operations or the Mining Parties' extraction of sand and gravel and backfilling of the Petroleum Pipeline Easement. In particular, when crossing KPK Existing Pipelines with heavy equipment, like earth moving equipment, the Mining Parties will comply with the shut in provisions of Paragraph 9 below. Within ninety days of execution of this Agreement, KPK shall install and maintain permanent markers on its Petroleum Pipeline Easements and Lines at minimum 50-foot intervals at KPK's expense, provided, however, that should the Colorado Oil and Gas Conservation Commission (COGCC) or any other governing agency with jurisdiction set a standard for the marking of Petroleum Pipeline Easements and Lines that is inconsistent with the marking procedure identified in this Paragraph, KPK shall comply with that governing standard and shall have no further obligation to mark said Petroleum Pipeline Easements and Lines in accordance



with this Paragraph. Notwithstanding the above, if the Mining Parties damage or destroy such markers, Mining Parties will replace the markers at the sole cost and expense of the Mining Parties.

The parties hereto agree that certain Existing Pipelines are parallel to, adjacent to or within existing access roads, and Mining Parties shall have the unrestricted right to utilize such existing access roads in a similar manner to KPK and using equipment of comparable weight to KPK's equipment without having to sleeve the pipeline within that easement, subject to the provisions of Paragraph 4 below. If, as a result of the Mining Parties' use of heavy equipment over the existing access roads, the Mining Parties directly or indirectly cause damage to the Existing Pipelines running parallel to, adjacent to or within existing access roads, the mining Parties shall be strictly and solely responsible for any damages caused to the Existing Pipelines.

The Mining Parties will not allow any extraction to occur, commencing at the surface of the original ground, closer than 40 feet from any Existing Pipeline of KPK as shown on Exhibit A unless a soils stability report prepared by an engineer licensed in the state of Colorado indicates that a lesser set back will be adequate for preservation of the integrity of said pipeline and KPK provides written approval, and provided that upon completion of such extraction the Mining Parties shall back fill and level the area within 40 feet from any Existing Pipeline or within any Petroleum Pipeline Easement designated on Exhibit A. The Mining Parties shall hold KPK harmless for any and all damages caused by the Mining Parties' actions under this paragraph.

The Mining Parties shall not allow any stockpile of soil to be placed over any Existing Pipeline of KPK or in any Petroleum Pipeline Easement as shown on Exhibit A.

After written notice of at least fifteen (15) days, the Mining Parties, shall have the right to cross any Pipeline Easement with roadways and other utilities, provided such crossing of any utilities is made with its acute angle being not less than 60° with respect to KPK's Pipelines, but in no event shall such utility cross above or run parallel above KPK's Lines, except as noted. KPK requires all subsurface utilities be not less than 18 inches below KPK's Pipelines. The depth of cover over the KPK Existing Pipelines shall not be reduced or drainage over KPK's Pipelines altered without KPK's written approval. Parallel utilities must maintain a minimum of 10-foot separation from KPK Pipelines, unless KPK grants a lesser distance of separation, in writing, which grant shall not be unreasonably withheld. It would not be unreasonable to withhold such consent due to reasonable safety or operational concerns. The Mining Parties will request that all utility companies contact KPK prior to laying lines parallel to KPK Existing Pipelines or within Petroleum Pipeline Easements designated in Exhibit A hereto.

Construction of any permanent structure within KPK's Petroleum Pipeline Easement is not permitted; provided however, that conveyors are not deemed to be permanent structures and may be located within KPK's Petroleum Pipeline Easement and the outer 75 feet of the OGOAs. The Mining Parties agree that KPK shall never be denied access to its Petroleum Pipeline Easements. As such, the Mining Parties shall remove any conveyors in the Petroleum Pipeline Easements upon reasonable notice by KPK requesting that the Mining Parties temporarily move such conveyors to accommodate KPK's operations on the Property. In the case of an emergency, the Mining Parties shall immediately remove the conveyors to allow access for KPK. KPK shall not be responsible for any damage caused to such conveyors located within KPK's Petroleum Pipeline Easement. Planting of trees and shrubs is not permitted on KPK's Petroleum Pipeline Easement.

AI shall notify KPK at least 5 business days prior to commencing construction and trenching of its slurry wall, and shall protect KPK's pipeline and flowline during such operations. In the event the slurry wall to be constructed by Mining Parties will cross KPK's Lines or in the event the Pipeline Easements will be within 75 feet of an ignition source related to the construction and trenching of the

slurry wall or any other potential source of ignition, then the Lines(s) shall be "encased" at the expense of Mining Parties or the associated wells shut-in as provided in Paragraph 9; provided, however, that should the Pipeline Easements be within 75 feet of a permanent ignition source, the Line(s) must be encased at the Expense of the Mining Parties. The term "encased" shall mean that KPK's Lines(s) shall be enclosed in a second steel pipe with inspection vents on each end of the Lines(s). In addition to the encasement, the Mining Parties shall provide KPK with an easement for a work area of 30 feet by 75 feet at each end of the encasement (Work Area). No encasement shall exceed 400 feet without Mining Parties providing intermediate Work Areas. All Lines that must be encased shall be constructed straight and without curves from Work Area to Work Area.

#### **4. ACCESS.**

The Mining Parties shall provide KPK with continuous access to all of the OGOAs and the Petroleum Pipeline Easements. The access roads to be used by KPK will be those roads that currently are in place or those that are anticipated to be constructed by the Mining Parties at their sole cost and expense as part of the Mining Parties' operations on the Property. All access roads will be constructed or maintained to adequately accommodate the use of large, heavy equipment on the Property. If the Mining Parties relocate an existing road being used by KPK for access to any OGOA, such relocated road shall be built to at least the quality of the road it replaces. The easements for KPK's access roads for its OGOAs are shown on Exhibit A hereto and the Mining Parties hereby grant KPK the non-exclusive right to the use of such easements for so long as KPK or its successors or assigns has rights in and to the oil and gas estate in the Property. KPK agrees to access the Property according to the routes depicted and described on the attached Exhibit A. Access to the OGOAs may be changed by mutual agreement of the Mining Parties and KPK, however, at no time shall KPK's access to the OGOAs be denied or impeded for any reason, unless alternate routes are established prior to the access closure and are approved by KPK in writing.

Mining Parties shall maintain and keep any access jointly used by Mining Parties and KPK in a condition and state of repair that serves the needs of Mining Parties; however, if either party to this Agreement causes damage to a road that renders the road unusable by the other party, the party causing the damage, agrees promptly to repair any damage that it caused which is a direct result of its use of the road. In the event such joint access roads need to be improved in order to serve the needs of either party to this Agreement, the parties agree to coordinate any such improvements as may be required by the party who requires the improvement, provided that any such improvements shall be at such party's sole cost and expense. Neither KPK, nor Mining Parties shall unreasonably interfere with the use by the other party of access roads. Any agricultural lessee shall be allowed to use any access road to the extent permitted by the agricultural lease.

The Mining Parties agree that they will not mine or extract any portion of areas designated as access roads set forth on Exhibit A or as mutually agreed to by the Parties without the written consent of KPK.

Mining Parties reserve the right to relocate the portion of the access road that diagonally crosses the "Outparcel" depicted on Exhibit A to a new location on the northern side of the Outparcel as indicated on Exhibit A, subject to compliance with applicable state and local regulations. Mining Parties shall, at their expense, obtain all necessary permits for such relocation and shall grade and gravel such relocated access road to standards commensurate with existing access roads used by KPK on the Property.

#### **5. BATTERIES AND EQUIPMENT.**

KPK shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and other equipment ("Production Facilities") reasonably appropriate for the operation and

production of the Wells at the locations depicted on Exhibit A. With respect to KPK's Production Facilities other than flowlines or pipelines:

A. KPK shall install and maintain, at its sole cost and expense, 6 foot chain link fences around the Wells and all Production Facilities in compliance with the Rules and Regulations of the COGCC;

B. KPK shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of any Wells or Production Facilities in the OGOAs. Such gates and locks shall be the standard gates and locks used by KPK;

C. At KPK's discretion, KPK shall paint any Production Facilities for any Wells, including wellhead guards, with paint that complies with by the COGCC regulations; and

D. The Mining Parties shall not inhibit KPK's access to the OGOAs or inhibit KPK's operations within the OGOAs or in the vicinity of the Production Facilities by landscaping or other improvements, unless otherwise agreed upon between the Mining Parties and KPK. The Mining Parties shall place temporary concrete barriers around all Production Facilities as directed by KPK before any mining operations commence within an OGOA for the Production Facilities. In no event shall the Mining Parties mine within 75 feet of any Production Facilities or stockpile mined materials within a radius of 50 feet of any Production Facilities.

#### **6. NOTICE OF FUTURE OPERATIONS.**

KPK shall provide at least seven (7) days prior notice to the Mining Parties of any operations in connection with the reworking, fracturing, deepening or recompletion operation on a Well or Wells. Regardless of the foregoing notice requirements, KPK shall have immediate access to any of its facilities in the event of an emergency.

After receipt of the above notice, but not less than five (5) working days prior to KPK's mobilization on the applicable OGOAs, either KPK or the Mining Parties may request an on-site meeting. The purpose of the meeting shall be to inform the Mining Parties of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of the Mining Parties' operations.

#### **7. COMPLIANCE WITH SAFETY REGULATIONS.**

KPK and the Mining Parties acknowledge that the Mining Parties' surface mining operations on the Property are subject to certain Mining Safety and Health Administration ("MSHA") regulations. KPK agrees that while conducting operations on Property, it will cooperate with such MSHA requirements which the Mining Parties notify KPK are applicable to KPK's operations on the Property. KPK also agrees to inform its contractors and subcontractors about such agreement to cooperate.

#### **8. DRILLING AND COMPLETION OPERATIONS.**

KPK shall endeavor to diligently pursue any drilling operations to minimize the total time period and to avoid rig relocations or startup during the course of drilling. The Mining Parties waive any objections to continuous (i.e., 24-hour) drilling operations.



## **9. SHUT-IN OF WELLS.**

The parties recognize that the Pipelines now installed by KPK are made of fiberglass and/or metal and the running of the Mining Parties' earth moving equipment over said Pipelines without appropriate dirt coverage in place may crack them, which may cause an oil and/or gas spill and potential environmental damage. KPK represents that in its opinion it is not safe to continue to use such Pipelines after heavy earth moving equipment is in use and there is no appropriate dirt coverage in place. If the Mining Parties begin to use heavy equipment on the property it shall maintain an overburden minimum of four feet (4') and a maximum of six feet (6') of dirt coverage in addition to the existing cover over the Pipeline during the Mining Parties' operation of such equipment on the property. The Mining Parties shall remove the four foot (4') to six foot (6') overburden upon completion of its operations involving heavy earthmoving equipment on the property. KPK will, for safety purposes, shut in any well that has had heavy earth moving equipment run over its Pipeline(s) without appropriate dirt coverage in place. The Mining Parties shall have the right to request that KPK shut in one or more of its wells during construction activity on the surface, including during construction and trenching of the proposed slurry wall. KPK shall not unreasonably refuse to shut in its wells. KPK shall shut-in no more than one well at a time.

a. Notification. The Mining Parties agree\ to notify KPK at least twenty (20) days before the Mining Parties begin any activities on the property which will utilize any heavy equipment or other equipment likely to damage KPK's Pipeline(s) that are not covered appropriately.

b. Payment. During the period of any shut in, the Mining Parties shall pay KPK for each shut in the following amounts:

<u>Shut In Duration</u>	<u>Fee per Well per Day</u>
5 days or less	None
6 – 29 days	\$150
30 days or more	\$200

The Mining Parties shall also pay KPK any reasonable costs to rework the well(s) in order to place the well(s) in production status after the shut in provided that such work is required as a result of the temporary shut in and costs to replace pipeline(s) and flowline(s) that are damaged by the surface construction activities of the Mining Parties.

## **10. GOVERNMENTAL PROCEEDINGS.**

The Mining Parties shall not oppose KPK in any agency or governmental proceedings, including but not limited to the COGCC, Weld County, or other governing body proceedings, related to KPK's operations on the Property, including but not limited to drilling, workovers, well deepenings and recompletions, provided that KPK's position in such proceedings is consistent with this Agreement and provided further the proposed operations are in accordance with applicable laws, COGCC regulations and lawful local ordinances, resolutions or permit conditions.

## **11. MINING PLAN.**

The Mining Parties have provided herewith copies to KPK of their Mining Permit and the engineering structural report prepared in connection with the Mining Permit (the "Plans"). KPK acknowledges receipt of said Plans and has no objections to said Plans as approved by the DMG and Weld County. Further, KPK agrees that upon execution of this Agreement, it shall not oppose any other

surface use or surface development plan of Mining Parties if such use or plan is proposed and carried out consistent with the terms of this Agreement. Mining Parties will notify KPK in writing of any amendments to the Mining Permit Application or the Use by Special Review Application at the time any such amendment is filed with the Division of Reclamation, Mining and Safety or with the Weld County Planning Department. This acceptance by KPK and agreement to not oppose Mining Parties' applications in no way waives KPK's rights in this Agreement or obligations of Mining Parties under the terms of this Agreement. The Mining Parties acknowledge that KPK may conduct oil and gas activities within the applicable OGOAs as provided herein and shall not oppose KPK before any agency or governmental proceeding if such oil and gas activities are proposed and carried out in accordance with the terms of this Agreement and applicable laws, COGCC regulations and lawful local ordinances, resolutions or permit conditions.

## **12. 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 13 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. Upon the assignment or conveyance of a party's entire interest in the Property, that party shall be released from its indemnification in Section 12.b. above, for all actions or occurrences happening after such assignment or conveyance.

## **13. ENVIRONMENTAL INDEMNITY.**

The provisions of Section 12 above, except for Section 12.A. shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 12.A. above:

A. "Environmental Claims" shall mean all Claims asserted by governmental bodies, the parties hereto 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. KPK shall fully protect, indemnify, and hold harmless the Mining Parties, their successors and assigns, from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of KPK's ownership and operation of the OGOAs and its ownership and operation of its Petroleum Pipeline Easements or rights-of-way on the Property unless such Environmental Claims are the result of the Mining Parties' conduct. The Mining Parties shall fully protect, defend, indemnify and hold harmless KPK from any and all Environmental Claims against KPK, its successors and assigns, relating to the Property that arise out of the Mining Parties' operations on the Property, unless such Environmental Claims are the result of KPK's conduct.

KPK acknowledges that it has been informed by the Mining Parties that the Property will be used for non-potable water storage and there is a potential for adverse consequences if such stored water becomes contaminated.

#### **14. EXCLUSION FROM INDEMNITIES.**

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.

#### **15. 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 12 or 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 five days of receipt of a Claim and shall effect such notice in all events within such time as will allow the indemnifying party to defend against such Claim. An indemnifying party shall not be obligated to reimburse an indemnified party for amounts paid in settlement of an indemnified claim unless the indemnifying party has agreed to the settlement, which agreement shall not be unreasonably withheld or delayed.

#### **16. REPRESENTATIONS.**

Each party represents that it has the full right and authority to enter into this Agreement. KPK 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 KPK leasehold interest in 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 successors and assigns; provided, as to KPK, successors and assigns shall be deemed to be limited to lessees under the oil and gas leases which KPK owns.

## **18. TERM.**

This Agreement shall become effective as of the date first written above, when it is fully executed and shall remain in full force and effect until the earlier to occur of the following: (a) KPK's leasehold estate expires or is terminated, and KPK has plugged and abandoned all wells and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations or (b) the Mining Parties' sand, gravel and aggregate mining lease expires or is terminated (as to the portion of the Property leased by RML) and the Mining Parties have complied with the requirements of the mining lease and Mining Permit pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the lease, Mining Permit and existing laws and regulations. When this Agreement ceases to be in full force and effect, the Parties shall execute any and all releases necessary to evidence the fact that this Agreement shall no longer apply to the Property, except as to any indemnities set forth herein, which indemnities shall survive termination.

## **19. AMENDMENTS.**

This agreement may be amended by an instrument in writing signed by the parties hereto.

## **20. NOTICES.**

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

K.P. Kauffman Company, Inc.  
1675 Broadway, 28<sup>th</sup> Floor  
Denver, Colorado 80202-4628  
Attention: Land Department

RML Property Investors, LLC  
9145 East Kenyon Avenue, Suite 101  
Denver, Colorado 80237  
Attention: Harvey Deutsch

Aggregate Industries WCR, Inc.  
1707 Cole Boulevard  
Golden, Colorado 80401  
Attention: Mike Refer

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

## **21. RECORDING.**

This Agreement and any amendment hereto shall be recorded by either party in the Records of Weld County, Colorado, which shall provide the other party with a copy showing the recording information as soon as practicable thereafter.

## 22. SURFACE DAMAGES.

Provided KPK is in compliance with the provisions of this Agreement, the Mining Parties hereby waive all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled within the OGOAs and for any access road, flowline, or pipelines constructed on the Property. KPK may provide a copy of this Agreement to the COGCC as evidence of this waiver. This waiver of Surface Damage Payments does not waive nor shall it be construed to limit the Environmental Indemnities in Paragraph 13, nor does it waive payments for actual crop damage, damage to areas landscaped or reclaimed by the Mining Parties, damage to agricultural irrigation systems, or damage to the slurry wall caused by KPK and its operations.

## 23. 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.

## 24. ARBITRATION.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration 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.

## 25. 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.

## 26. 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 successors and assigns and is executed by the parties as of the Effective Date set forth above.


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

**RML PROPERTY INVESTORS, LLC**

  
\_\_\_\_\_  
Harvey E. Deutsch, Manager

  
\_\_\_\_\_  
Reginald V. Golden, Manager

**K.P. KAUFFMAN COMPANY, INC.**

  
\_\_\_\_\_  
Kevin P. Kauffman  
President and CEO

**AGGREGATE INDUSTRIES WCR, INC.**

  
\_\_\_\_\_  
By: MICHAEL C. RISHER  
Title: VICE PRESIDENT

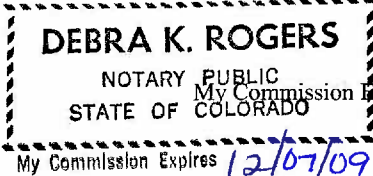


# ACKNOWLEDGMENTS

STATE OF COLORADO )  
COUNTY OF DENVER )

The foregoing instrument of writing was acknowledged before me on this 5<sup>th</sup> day of Feb, 2009 by Kevin P. Kauffman as President and CEO for and on behalf of the K.P. Kauffman Company, Inc., a California corporation, for the uses and purposes stated herein.

Witness my hand and seal:

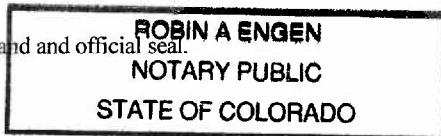


Debra K. Rogers  
Notary Public  
Print Name: Debra K. Rogers  
Address: 1675 Broadway, Ste. 2800  
Denver, CO 80502

STATE OF COLORADO )  
COUNTY OF Boulder )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2009, by Reginald V. Golden as Manager for RML Property Investors, LLC, on behalf of such company.

Witness my hand and official seal.



My Commission Expires 08/20/2012

Robin A. Engen  
Notary Public  
Print Name: Robin A. Engen  
Address: 105 S. Sunset St., Ste H  
Longmont, CO 80501

STATE OF COLORADO )  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of February, 2009, by Harvey E. Deutsch as Manager for RML Property Investors, LLC, on behalf of such company.

Witness my hand and official seal.

My Commission Expires: 10-25-2011

Cheryl Bradley  
Notary Public  
Print Name: Cheryl Bradley  
Address: 9145 E. Kenyon Ave. Ste. 101  
Denver CO 80237

STATE OF COLORADO )  
                                  *Jefferson* )  
COUNTY OF ~~DENVER~~ )

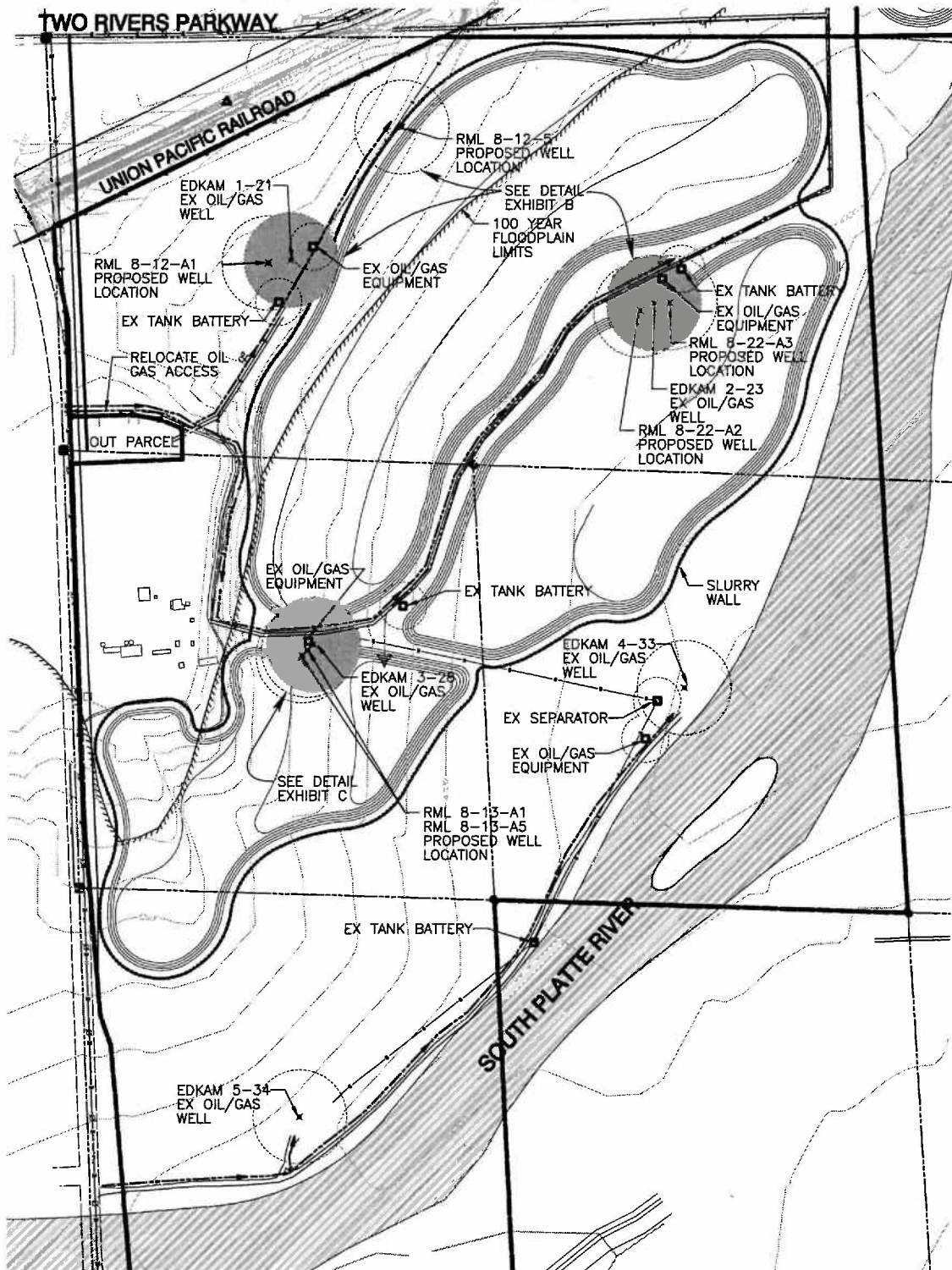
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of March, 2009, by Michael  
C. Repp, as Vice President for Aggregate Industries WCR, Inc., on behalf of  
such company.

Witness my hand and official seal.

*Connie N. Davis*  
Notary Public  
Print Name: Connie N. Davis  
Address: P.O. Box 337231  
Grady, CO 80633

My Commission Expires: 2-26-2013

# EXHIBIT A-1 KP KAUFFMAN SURFACES AGREEMENT MILLIKEN RESOURCE



0 250 500  
SCALE 1" = 500'  
DATE: OCT 6, 2008

## LEGEND

— OIL & GAS ACCESS ROAD



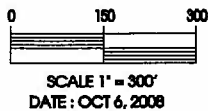
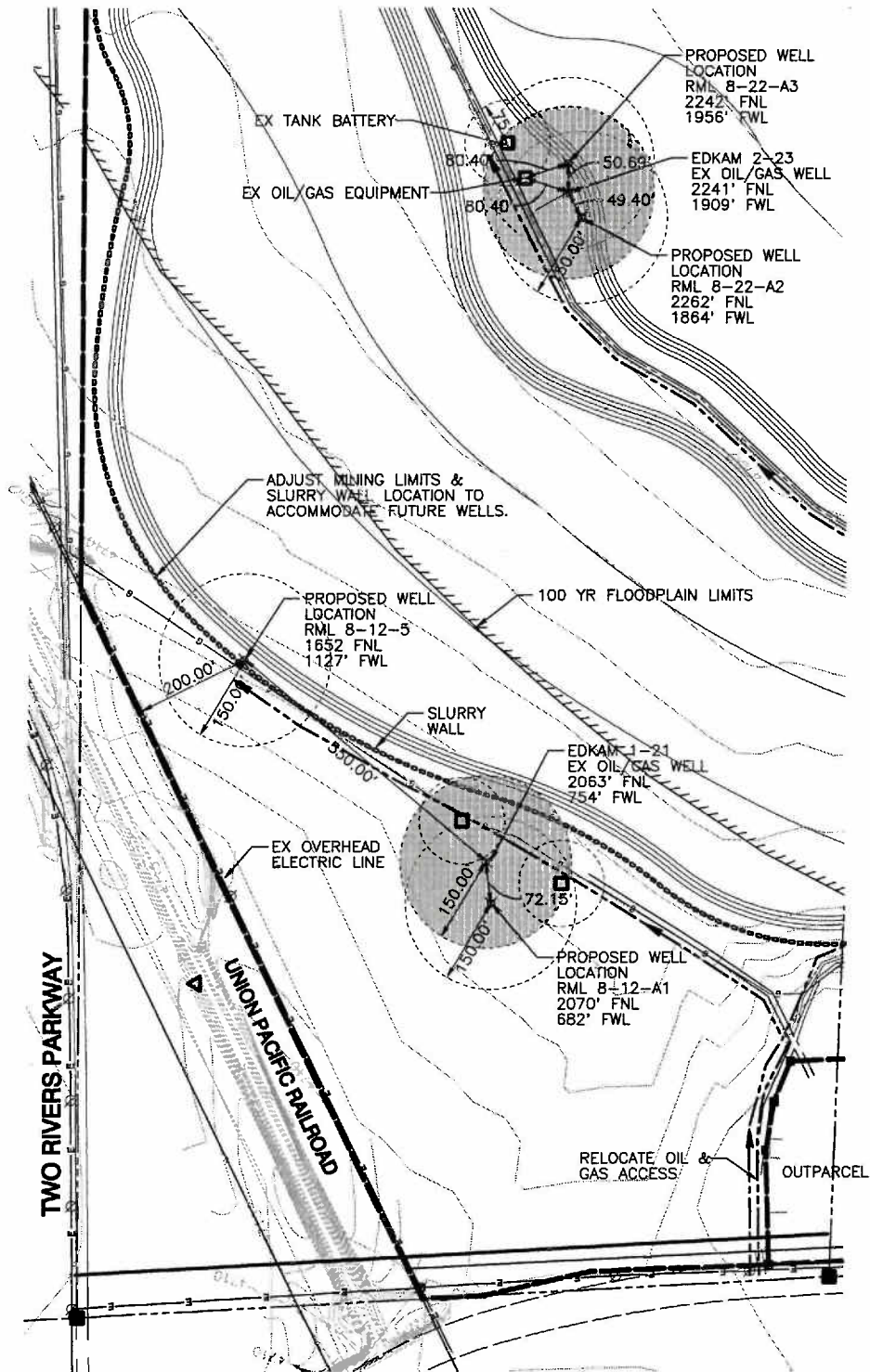
**TJB Consulting Group**

2802 Clover Bush Drive, Suite 2B  
P.O. Box 1348  
Longmont, CO 80502  
303.632.2288  
fax 303.702.0695

Civil Engineering - Site Design - Project Coordination



# EXHIBIT A-2 KP KAUFFMAN SURFACES AGREEMENT MILLIKEN RESOURCE



## LEGEND

— OIL & GAS ACCESS ROAD



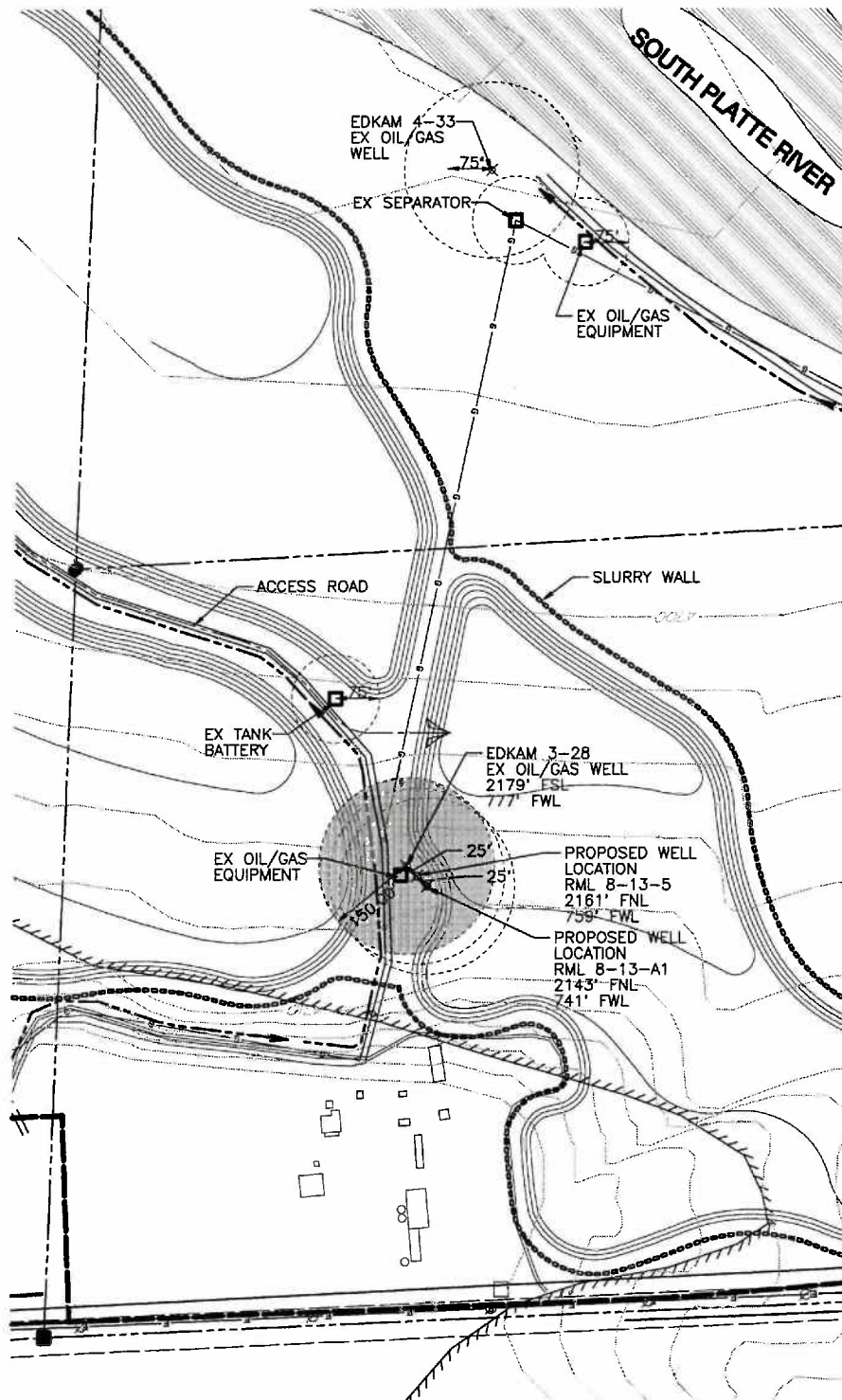
**TJB Consulting Group**

2802 Clover Basin Drive, Suite 25  
P.O. Box 1348  
Longmont, CO 80502

303.532.2266  
fax: 303.702.0585

Civil Engineering - Site Design - Project Coordination

# **EXHIBIT A-3** **KP KAUFFMAN SURFACES** **AGREEMENT MILLIKEN RESOURCE**



0 150 300  
 SCALE 1" = 300'  
 DATE: OCT 6, 2008

## **LEGEND**

— OIL & GAS ACCESS ROAD



**TJB Consulting Group**

2802 Clover Basin Drive, Suite 28  
 P.O. Box 1348  
 Longmont, CO 80502  
 303.532.2288  
 fax: 303.702.0685

Civil Engineering - Site Design - Project Coordination

## EXHIBIT B

To Surface Use Agreement dated February 5<sup>th</sup>, 2009, by and between  
K. P. Kauffman Company, Inc., RML Property Investors, LLC, and Aggregate  
Industries WCR, Inc.

### LINE EASEMENT AGREEMENT

THIS LINE EASEMENT AGREEMENT ("Agreement") is entered into this 5<sup>th</sup> day of February, 2009, between **K.P. KAUFFMAN COMPANY, INC.**, a California Corporation ("KPK"), whose address is 1675 Broadway, Suite 2800, Denver, Colorado 80202, **RML PROPERTY INVESTORS, LLC**, a Colorado Limited Liability Company ("RML"), whose address is c/o Harvey Deutsch, 9145 East Kenyon Avenue, Suite 101, Denver, Colorado 80237, and **AGGREGATE INDUSTRIES WCR, INC.** ("AI"), whose address is 1707 Cole Boulevard, Suite 100, Golden, Colorado 80401. RML and AI may collectively be referred to as the "Mining Parties".

WHEREAS, the parties have entered into a Surface Use Agreement dated February 5<sup>th</sup>, 2009, and recorded \_\_\_\_\_ at Reception No. \_\_\_\_\_ among the records of the \_\_\_\_\_ County Clerk and Recorder (the "Surface Use Agreement") covering the following described lands:

**See attached Exhibit A**

WHEREAS, the Surface Use Agreement provides that the Mining Parties will provide KPK with a separate Petroleum Pipeline Easement for its subsurface line(s) on the Property.

**NOW THEREFORE**, in consideration of the covenants and mutual promises set forth herein, including the information set forth in the recitals, the parties agree as follows:

1. The Mining Parties hereby grant a perpetual, non-exclusive Pipeline Easement to install, construct, replace, repair, maintain and use subsurface lines on the Property as shown on Exhibit A attached hereto and made a part hereof. The Pipeline Easement shall be 30 feet in width for all post-construction operations, maintenance and transportation activities of the Line(s), and during the period of construction or relocation of any lines, the Pipeline Easement shall be 50 feet in width. With Mining Parties' written permission, the Pipeline Easement may be expanded to accommodate new pipeline, but in no event will the Pipeline Easement exceed sixty feet (60'), with ten feet (10') separating each pipeline. Pipelines will be placed a minimum of fifteen feet (15') inside any Pipeline Easement.

2. Line locations may be changed by mutual agreement of the parties, provided, however, all costs and expenses of the relocation shall be borne by the Mining Parties. KPK shall not unreasonably withhold its consent; and, further provided, that the relocation will not be administered in such a way as to interfere with KPK's ability to



exercise its rights to drill for and produce oil, gas and other hydrocarbons. If the lines are permanently relocated, the easement for the old line location will be vacated by KPK and replaced by this new Pipeline Easement.

3. The Mining Parties' operating plans anticipate that roadways may cross over Existing and Future Pipelines. "Existing Pipelines" shall mean any Pipeline now existing or hereafter constructed within a Pipeline Easement prior to the Mining Parties' construction of a road for its operations or the Mining Parties' extraction of sand and gravel and backfilling of the Pipeline Easement. In particular, when crossing KPK Existing Pipelines with heavy equipment, like earth moving equipment, the Mining Parties will comply with the shut in provisions of the Surface Use Agreement. Within ninety (90) days of execution of the Surface Use Agreement, KPK shall install and maintain permanent markers on its Pipeline Easements and Lines at minimum 50-foot intervals at KPK's expense, provided, however, that should the Colorado Oil and Gas Conservation Commission (COGCC) or any other governing agency with jurisdiction set a standard for the marking of Pipeline Easements and Lines that is inconsistent with the marking procedure identified in this Paragraph, KPK shall comply with that governing standard and shall have no further obligation to mark said Pipeline Easements and Lines in accordance with this Paragraph. Notwithstanding the above, if the Mining Parties damage or destroy such markers, Mining Parties will replace the markers at the sole cost and expense of the Mining Parties.

4. The parties hereto agree that certain Existing Pipelines are parallel to, adjacent to or within existing access roads, and Mining Parties shall have the unrestricted right to utilize such existing access roads in a similar manner to KPK and using equipment of comparable weight to KPK's equipment without having to sleeve the pipeline within that Pipeline Easement, subject to the provisions of Paragraph 9 below. If, as a result of the Mining Parties' use of heavy equipment over the existing access roads, the Mining Parties directly or indirectly cause damage to the Existing Pipelines running parallel to, adjacent to or within existing access roads, the mining Parties shall be strictly and solely responsible for any damages caused to the Existing Pipelines.

5. The Mining Parties will not allow any extraction to occur, commencing at the surface of the original ground, closer than 40 feet from any Existing Pipeline of KPK as shown on Exhibit B unless a soils stability report prepared by an engineer licensed in the state of Colorado indicates that a lesser set back will be adequate for preservation of the integrity of said pipeline and KPK provides written approval, and provided that upon completion of such extraction the Mining Parties shall back fill and level the area within 40 feet from any Existing Pipeline or within any Pipeline Easement designated on Exhibit B. The Mining Parties shall hold KPK harmless for any and all damages caused by the Mining Parties' actions under this paragraph.

6. The Mining Parties shall not allow any stockpile of soil to be placed over any Existing Pipeline of KPK or in any Pipeline Easement as shown on Exhibit B.

7. After written notice of at least fifteen (15) days, the Mining Parties, shall have the right to cross any Pipeline Easement with roadways and other utilities, provided such crossing of any utilities is made with its acute angle being not less than 60° with respect to KPK's Pipelines, but in no event shall such utility cross above or run parallel above KPK's Lines, except as noted. KPK requires all subsurface utilities be not less than 18 inches below KPK's Pipelines. The depth of cover over the KPK Existing Pipelines shall not be reduced or drainage over KPK's Pipelines altered without KPK's written approval. Parallel utilities must maintain a minimum of 10-foot separation from KPK Pipelines, unless KPK grants a lesser distance of separation, in writing, which grant shall not be unreasonably withheld. It would not be unreasonable to withhold such consent due to reasonable safety or operational concerns. The Mining Parties will request that all utility companies contact KPK prior to laying lines parallel to KPK Existing Pipelines or within Pipeline Easements designated in Exhibit B hereto.

8. Construction of any permanent structure within KPK's Pipeline Easement is not permitted; provided however, that conveyors are not deemed to be permanent structures and may be located within KPK's Pipeline Easement and the outer 75 feet of the Oil and Gas Operation Areas (OGOAs), as depicted on Exhibit B. The Mining Parties agree that KPK shall never be denied access to its Pipeline Easements. As such, the Mining Parties shall remove any conveyors in the Pipeline Easements upon reasonable notice by KPK requesting that the Mining Parties temporarily move such conveyors to accommodate KPK's operations on the Property. In the case of an emergency, the Mining Parties shall immediately remove the conveyors to allow access for KPK. KPK shall not be responsible for any damage caused to such conveyors located within KPK's Pipeline Easement. Planting of trees and shrubs is not permitted on KPK's Pipeline Easement.

9. AI shall notify KPK at least 5 business days prior to commencing construction and trenching of its slurry wall, and shall protect KPK's pipeline and flowline during such operations. In the event the slurry wall to be constructed by Mining Parties will cross KPK's Lines or in the event the Pipeline Easements will be within 75 feet of an ignition source related to the construction and trenching of the slurry wall or any other potential source of ignition, then the Lines(s) shall be "encased" at the expense of Mining Parties or the associated wells shut-in as provided in the Surface Use Agreement; provided, however, that should the Pipeline Easements be within 75 feet of a permanent ignition source, the Line(s) must be encased at the Expense of the Mining Parties. The term "encased" shall mean that KPK's Lines(s) shall be enclosed in a second steel pipe with inspection vents on each end of the Lines(s). In addition to the encasement, the Mining Parties shall provide KPK with an easement for a work area of 30 feet by 75 feet at each end of the encasement (Work Area). No encasement shall exceed 400 feet without Mining Parties providing intermediate Work Areas. All Lines that must be encased shall be constructed straight and without curves from Work Area to Work Area.

10. The terms of this Agreement are subject to the Surface Use Agreement. The Surface Use Agreement will prevail in the event there is a conflict with this Agreement.

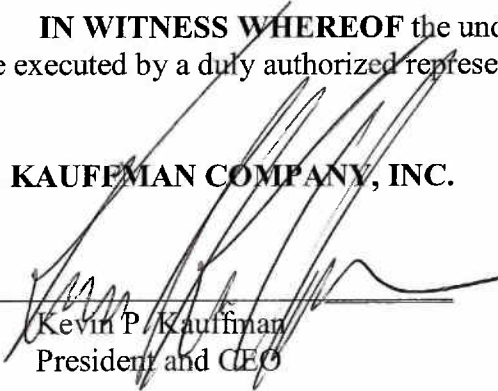
11. The parties agree that this Agreement and the benefits hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns.

12. This Agreement and all of its covenants in it shall be covenants running with the land and shall be binding on all parties who succeed to any interest which the Mining Parties have in the Property.

**IN WITNESS WHEREOF** the undersigned parties have caused this Agreement to be executed by a duly authorized representative on the day and year first above written.

**K.P. KAUFFMAN COMPANY, INC.**

By


  
Kevin P. Kauffman  
President and CEO

**RML PROPERTY INVESTORS, LLC**

By


  
Harvey E. Deutsch  
Manager

By

  
Reginald V. Golden  
Manager

**AGGREGATE INDUSTRIES WCR, INC.**

By

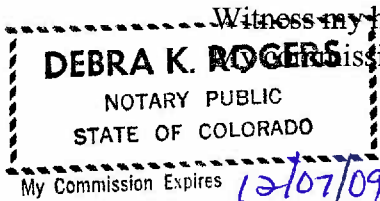
  
Printed Name: MICHAEL C. RORER  
Title: VICE PRESIDENT



# ACKNOWLEDGEMENTS

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF DENVER                    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of Feb, 2009, by Kevin P. Kauffman as President and CEO of K.P. Kauffman Company, Inc.



My Commission expires: 12/07/09

Debra K. Rogers  
Notary Public

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF Denver                    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of February, 2009, by Harvey E. Deutsch as Manager of RML Property Investors, LLC.

My Commission expires: 10-25-2011

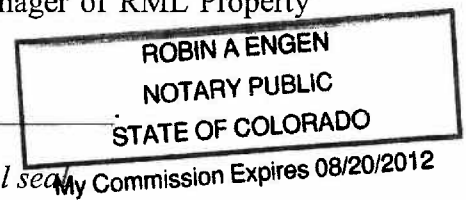
*Witness my hand and official seal.*

Cheryl Bradley  
Notary Public

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF Boulder                    )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2009, by Reginald V. Golden as Manager of RML Property Investors, LLC.

My Commission expires: \_\_\_\_\_



*Witness my hand and official seal.*

Robin A. Engen  
Notary Public

STATE OF COLORADO )

COUNTY OF Jefferson ) SS.

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of March, 2009, by Michael C. Reper, as Vice President of Aggregate Industries WCR, Inc.

My Commission expires: 2-26-2013

*Witness my hand and official seal.*

Connie N. Davis  
Notary Public

COPY

**FIRST AMENDMENT TO SURFACE USE AGREEMENT**

This **FIRST AMENDMENT TO SURFACE USE AGREEMENT** ("Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **K.P. KAUFFMAN COMPANY, INC.** and/or its assignee ("KPK"), with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202, **RML PROPERTY INVESTORS, LLC** and/or its assignee ("RML"), with an address of c/o Harvey Deutsch, 9145 East Kenyon Avenue, Suite 101, Denver, Colorado 80237, and **AGGREGATE INDUSTRIES WCR, INC.** and/or its assignee ("AI"), with an address of 1707 Cole Boulevard, Suite 100, Golden, Colorado 80401. RML and AI may collectively referred to as the "Mining Parties". KPK, RML and AI may collectively be referred to as the "Parties".

**RECITALS**

A. RML is the current landowner and lessor and AI is the current lessee under one or more sand, gravel and aggregate mining leases covering certain tracts of land located in Weld County, more particularly described below and on Exhibits A1, A2, and A3 (collectively "Exhibit A") attached and made a part hereto (hereinafter referred to as the "Property"). There is an agricultural lease affecting all or a portion of the Property.

Township 4 North, Range 66 West, 6<sup>th</sup> P.M.  
Section 8: a portion thereof  
Weld County, Colorado

B. AI has received a mining permit from the State of Colorado Division of Reclamation, Mining and Safety, formerly known as the Division of Minerals & Geology ("DMG") for the purpose of open pit sand and gravel mining operations, permit number M-2000-087 (Weld County Permit #1354). Portions of the mined out Property are to be reclaimed for use as water storage reservoirs and any lawful purpose after mining activities cease.

C. KPK is the assignee of certain oil and gas leasehold rights covering portions of the Property and as such, KPK has the right to explore for, develop, drill for and produce certain oil, gas and other hydrocarbons thereon, with due regard for the owner and use of the surface estate.

D. The Parties entered into that certain Surface Use Agreement dated February 5, 2009, and recorded April 1, 2009, at reception number 3613946 in the Office of the Clerk and Recorder of Weld County, Colorado ("SUA"), which provides for the compatible operation and development of the surface estate and the oil and gas leasehold estate.

E. The Parties identified specific names and locations for existing and future oil and gas wells and production facilities, identified and referred to in the SUA as the "Existing Wells" and the "Future Wells".

F. Exhibits A-1, A-2 and A-3 to the SUA (together, the "SUA Exhibit A") specifically depict the well names and locations for the Existing Wells and the Future Wells.

G. The purpose of this Amendment is to change the name of six of the Future Wells described in the SUA and depicted on the SUA Exhibit A, as described in this Amendment.

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

1. Term Used within the SUA. A term used in this Amendment shall have the same meaning as the term is used in the SUA.

2. Amendment of Future Well Names. The Parties agree that the Future Wells identified in the SUA and named in the SUA Exhibit A shall be amended as follows:

The **RML 8-12-5** shall hereinafter be referred to as the **RML 18-8**

The **RML 8-12-A1** shall hereinafter be referred to as the **RML 5-8-32**

The **RML 8-13-A5** shall hereinafter be referred to as the **RML 12-8**

The **RML 8-13-A1** shall hereinafter be referred to as the **RML 12-8-33**

The **RML 8-22-A2** shall hereinafter be referred to as the **RML 6-8-22**

The **RML 8-22-A3** shall hereinafter be referred to as the **RML 6-8-25**

3. Amendment of the SUA Exhibit A. The Parties agree that the SUA Exhibit A shall be amended to reflect the new well names described in Paragraph 2 above; as such, the Parties agree that Exhibit A attached and made a part hereto shall amend and replace the SUA Exhibit A.

4. The Agreement Continues in Effect/Conflicts. Except as specifically amended by this Amendment, the terms and conditions included in the SUA shall continue in full force and effect. In the event of a conflict between this Amendment and the SUA as to the matter covered herein, this Amendment shall control.

5. Binding on Successors and Assigns/Covenant that Runs with the Land. This Amendment and the SUA are binding upon the Parties and their successors and assigns and inure to their benefit. This Amendment and the SUA shall be covenants that run with the land.



6. Counterpart Execution. This Amendment may be executed in counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument.

7. Recording. This Amendment shall be recorded with the Clerk and Recorder of Weld County.

**IN WITNESS WHEREOF**, the undersigned parties have caused this Amendment to be executed by a duly authorized representative on the date set forth in the acknowledgment, to be effective on the date first above written.

**RML PROPERTY INVESTORS, LLC  
INC.**

**K.P. KAUFFMAN COMPANY,**

\_\_\_\_\_  
Harvey E. Deutsch, Manager

\_\_\_\_\_  
Kevin P. Kauffman  
President and CEO

\_\_\_\_\_  
Reginald V. Golden, Manager

**AGGREGATE INDUSTRIES WCR, INC.**

\_\_\_\_\_  
By:  
Title:

### ACKNOWLEDGMENTS

STATE OF COLORADO    )  
  )  
COUNTY OF DENVER    )

The foregoing instrument of writing was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010 by Kevin P. Kauffman as President and CEO for and on behalf of K.P. Kauffman Company, Inc., a California corporation, for the uses and purposes stated herein.

Witness my hand and seal:

\_\_\_\_\_  
Notary Public  
Print Name:

My Commission Expires: \_\_\_\_\_

Address: \_\_\_\_\_

STATE OF COLORADO    )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Reginald V. Golden as Manager for RML Property Investors, LLC, on behalf of such company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name:

My Commission Expires: \_\_\_\_\_

Address: \_\_\_\_\_

STATE OF COLORADO       )  
  )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Harvey E. Deutsch as Manager for RML Property Investors, LLC, on behalf of such company.

Witness my hand and official seal.

Notary Public  
Print Name:

My Commission Expires: \_\_\_\_\_

Address: \_\_\_\_\_

STATE OF COLORADO     )  
                                )  
COUNTY OF DENVER       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, as \_\_\_\_\_ for Aggregate Industries WCR, Inc., on behalf of such company.

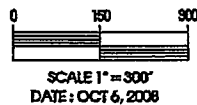
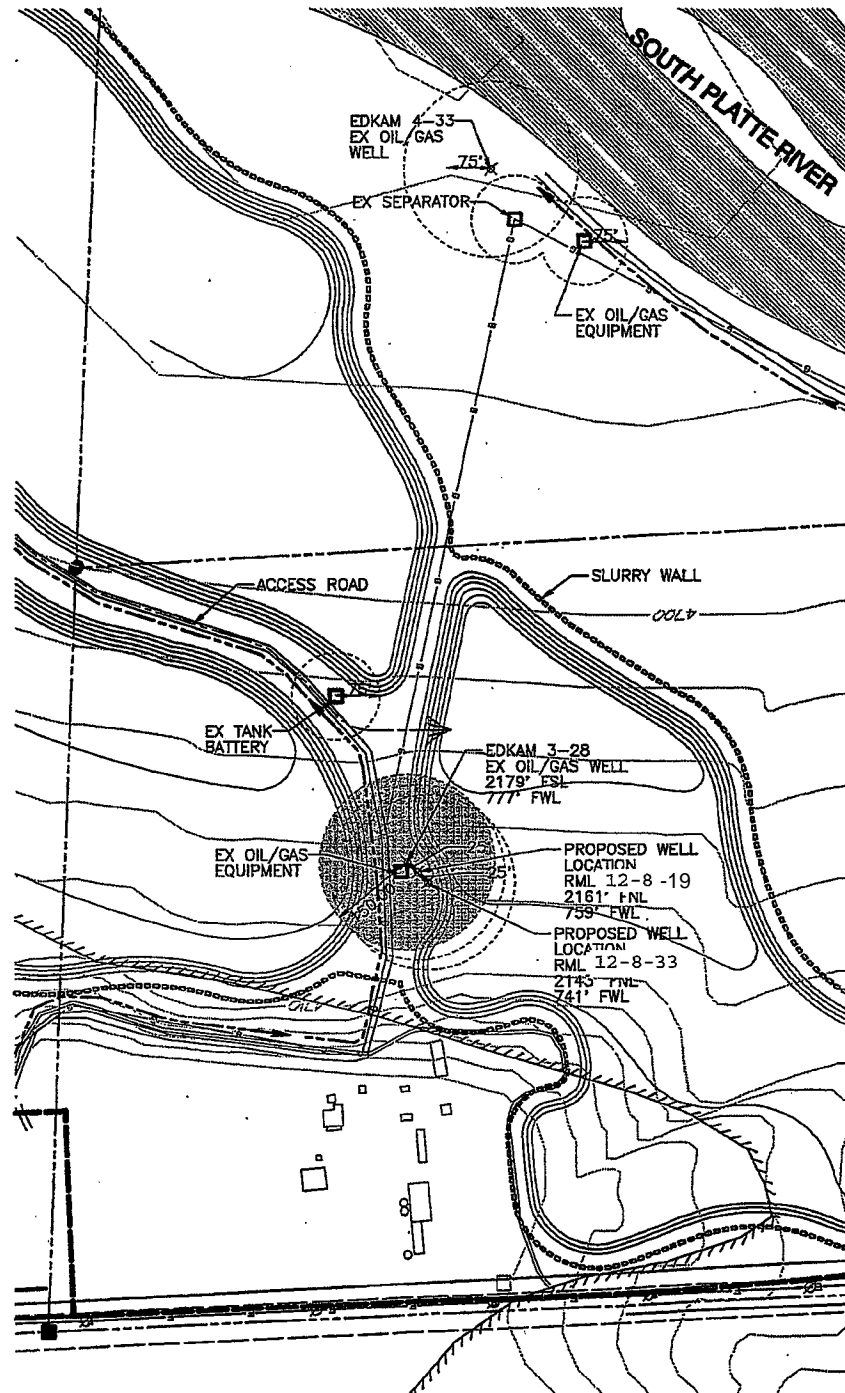
Witness my hand and official seal.

Notary Public  
Print Name:

My Commission Expires: \_\_\_\_\_

Address: \_\_\_\_\_

# **EXHIBIT A-3** **KP KAUFFMAN SURFACES** **AGREEMENT MILLIKEN RESOURCE**



## **LEGEND**

— OIL & GAS ACCESS ROAD



**TJB Consulting Group**

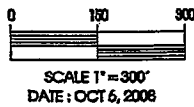
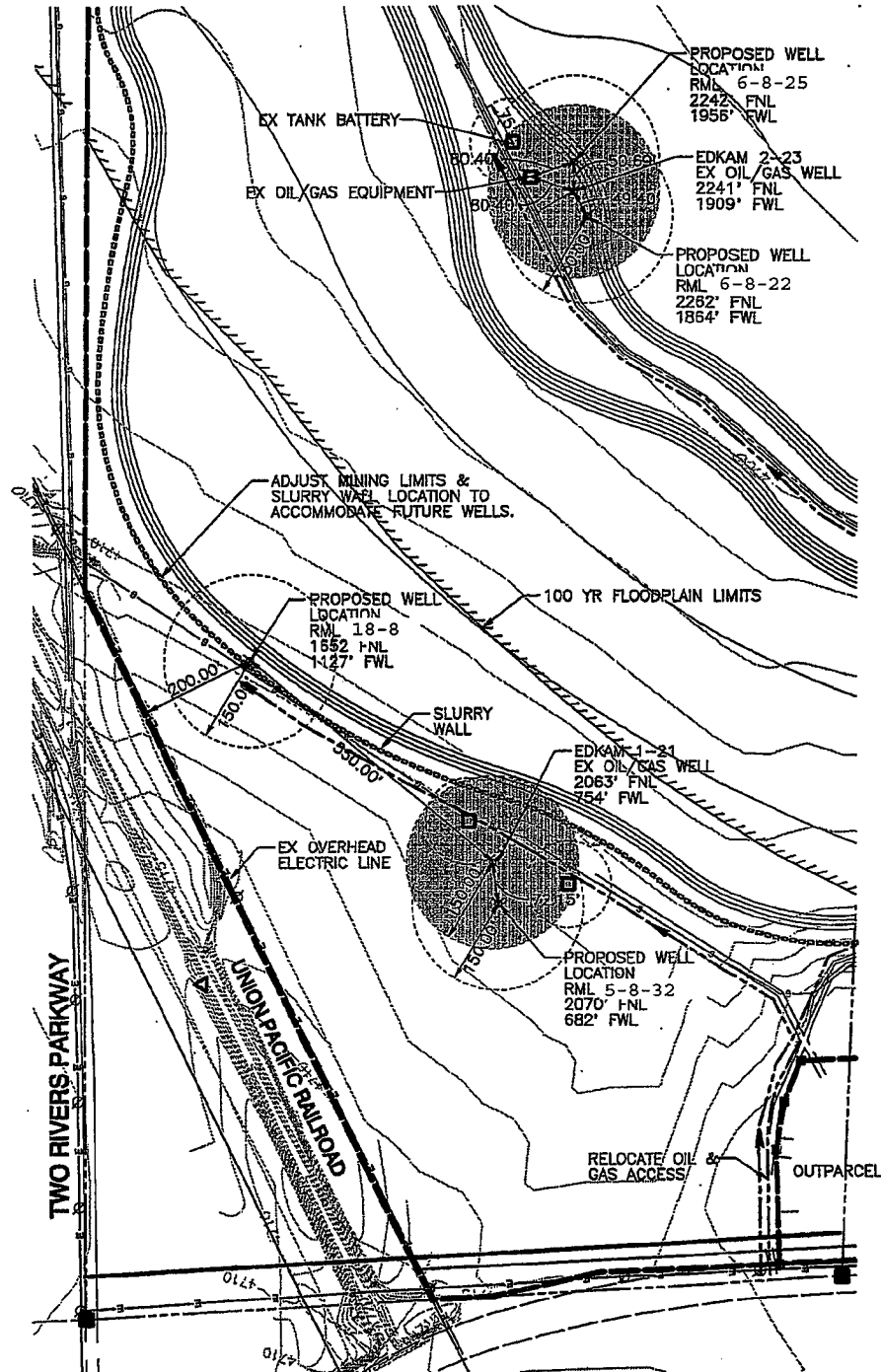
2002 Clover Basin Drive, Suite 200  
 P.O. Box 1348  
 Longmont, CO 80502

303.532.2288  
 fax: 303.702.0585

Civil Engineering - Site Design - Project Coordination



# EXHIBIT A-2 KP KAUFFMAN SURFACES AGREEMENT MILLIKEN RESOURCE



## LEGEND

— OIL & GAS ACCESS ROAD

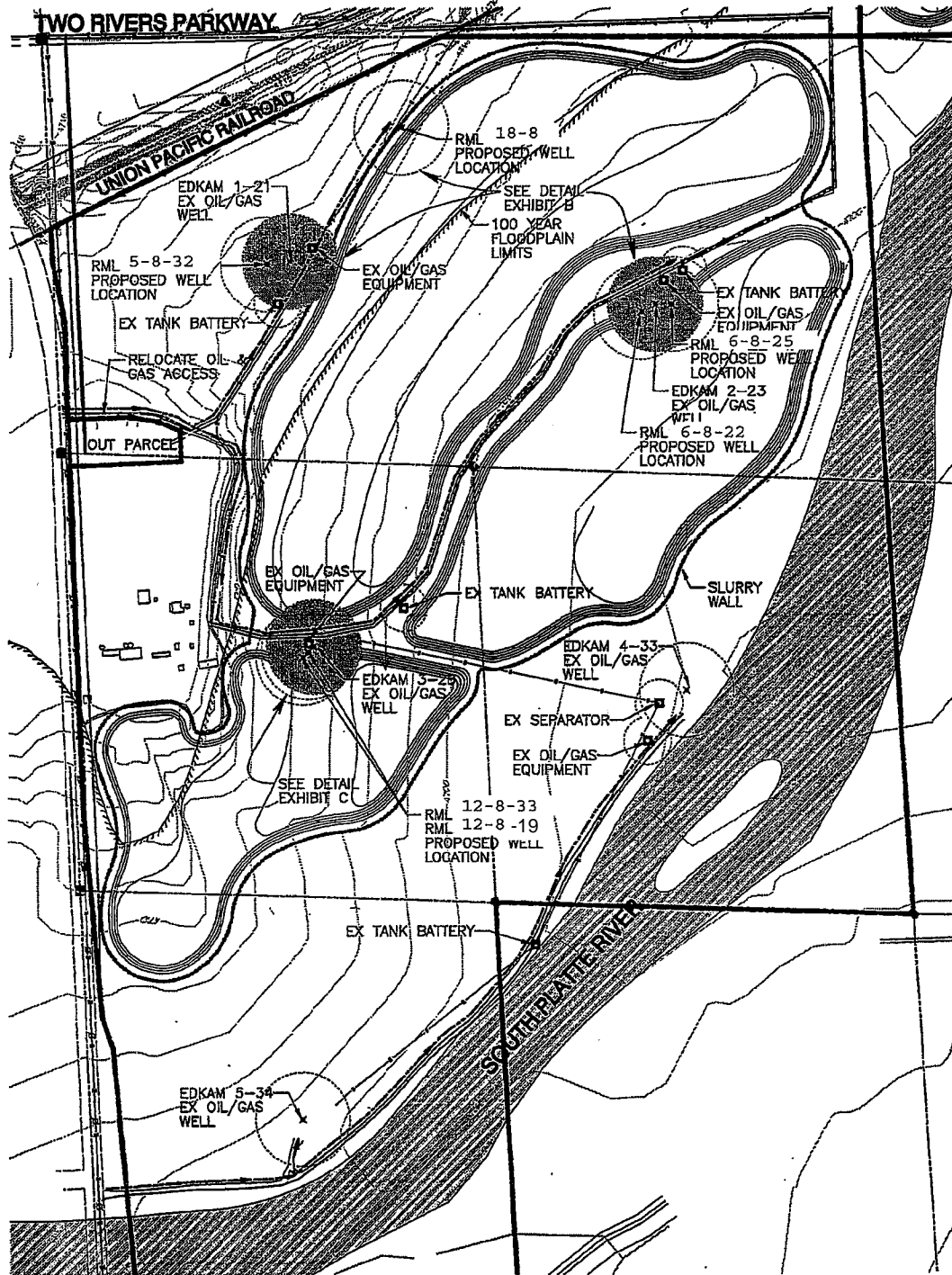


**TJB Consulting Group**

2002 Clover Creek Drive, Suite 205  
P.O. Box 1848  
Longmont, CO 80502  
903.632.2288  
fax 903.702.0585

Civil Engineering - Site Design - Project Coordination

# EXHIBIT A-1 KP KAUFFMAN SURFACES AGREEMENT MILLIKEN RESOURCE



0 250 500  
SCALE 1" = 500'  
DATE: OCT 6, 2008

## LEGEND

— OIL & GAS ACCESS ROAD



**TJB Consulting Group**

2002 Clover Basin Drive, Suite 200  
P.O. Box 1348 Longmont, CO 80502  
303.532.2288 fax: 303.702.0595

Civil Engineering - Site Design - Project Coordination