

## **SURFACE DAMAGE AGREEMENT**

This Surface Damage Agreement (this "Agreement") is made and entered into this 8<sup>th</sup> day of November, 2007, by and between **Wetco Farms Inc.** ("Owner") with an address of 2055 1<sup>st</sup> Avenue, Greeley, Colorado 80631 and **K.P. Kauffman Company, Inc.** ("KPK") with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202.

Whereas, KPK or an affiliate has the right to drill an oil and gas well known as the Wetco Farms 10-41-A3 (the "Well") on the lands described below (the "Lands") and more fully depicted on Exhibit A, to wit:

Township 4 North, Range 66 West, 6<sup>th</sup> P.M.  
Section 10: SE/4NE/4  
Weld County, Colorado

Whereas, Owner and KPK wish to memorialize their agreement concerning location of oil and gas facilities, including but not limited to well sites, pipelines, batteries (Oil and Gas Facilities) and access and the payment for damages to the surface of the Lands in connection with the drilling, construction, completion, recompletion, reworking, re-entry, production, maintenance and operation of the Well and all pipelines, tank batteries and other facilities or property of KPK or its affiliates associated with the Well and located on the Lands.

Therefore, for and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and KPK agree as follows:

1. No later than thirty (30) days prior to the commencement of drilling operations for the Well, KPK shall pay Owner the sum of \$5,000.00 ("Damage Amount"). Such payment shall constitute payment in full by KPK and its affiliates for all normal damages, including, but not limited to, damages to growing crops, associated with the drilling, construction, completion, recompletion, reworking, re-entry, production, tank battery location, operation and maintenance of the Well. Normal damages include, but are not limited to, reasonable and customary ingress, egress, rights-of-way, construction of all access roads, preparation and use of the drillsite area, preparation and use of reserve pits, and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil and/or gas therefrom. Should KPK choose to move its rig across the Lands to access other KPK wells on the Lands, KPK shall consult with and obtain verbal consent from the tenant farmer of the Lands regarding the potential rig move, which consent shall not be unreasonably withheld. Upon such consent and agreement to move the KPK rig across the Lands, KPK shall pay Owner the sum of \$1,000 for each time it moves its rig across the Lands to another well location on the Lands, except if the drilling rig is skid to a new twin well on the same basic established padsite. Payment of such amount by KPK shall serve as settlement of any and all damages Owner may incur by KPK moving its rig across the Lands. Should KPK choose to use the present Access routes and County roads in moving its rig to other well locations, as depicted on Exhibit A, KPK shall not be required to pay Owner any damage amount.
2. If by reason of KPK's operations, there is damage to personal property located on the Lands or there is damage to the surface of the Lands caused by the negligence of KPK or an unreasonable use of the surface of the Lands by KPK that is not associated with reasonable and normal drilling,

completion, recompletion, reworking, re-entry, production, maintenance and operation of the Wells, such as damage to structures, fences, culverts and cement ditches, such damage shall be repaired or replaced by KPK or KPK shall promptly pay Owner for such damage.

3. Owner warrants that it is the owner of the entire surface subject to this Agreement and that no one who is not a party to this Agreement is entitled to object to this Agreement or entitled to payment for normal damage to the surface of the Lands for which payment has been made pursuant to paragraph numbered 1 above.
4. Except as provided in paragraph numbered 2 above for cases of unreasonable surface use and/or negligence by KPK, Owner, for itself and its successors and assigns, does hereby, in consideration of the Damage Amount, release, relinquish and discharge KPK, its affiliates, successors and assigns from all claims, demands, damages and causes of action that Owner may have by reason of the drilling of the Wells and all other damage or injury to the Lands caused by the drilling, completion, recompletion, reworking, re-entry, production, operation and maintenance of the Well, and Owner accepts the Damage Amount as full compensation therefore.
5. Owner hereby agrees that by its payment of the Damage Amount, KPK has fully complied with the applicable governmental regulations and statutes, if any, relating to the settlement of the damages contemplated herein and this Agreement shall be presented to the Colorado Oil and Gas Conservation Commission (COGCC) as proof of that fact.
6. In addition to the Damage Amount, KPK shall, at the same time the Damage Amount is paid, pay to the tenant farmer of the Lands the sum of \$500.00 for each wellsite to reclaim such wellsite as nearly as practicable to its original condition after the pits are reclaimed by KPK in accordance with COGCC regulations.
7. In conducting operations on the Lands, KPK shall:
  - A. Prior to drilling the Well, KPK shall meet with the tenant farmer to confirm that the location of the Well will not be in a center pivot wheel track. Prior to constructing the Tank Battery, KPK shall meet with the tenant farmer to confirm that the location of the Tank Battery will not interfere with center pivot wheel operations.
  - B. Limit the size of each wellsite to approximately 300 feet by 350 feet during any drilling, completion, recompletion or workover operations, and each wellsite shall be no more than an area of not greater than 150 foot radius from the wellbore in size during other periods. The area required for the tank battery location associated with the Well shall be limited to an area not less than 75 feet by 150 feet in size upon completion of construction. KPK shall construct, at its sole cost and expense, a temporary fence around the pad site during all drilling, completion, recompletion, or workover operations, which shall outline KPK's pad site and shall mark KPK's access. Any additional tanks or separators will be located as close to the existing tanks and separators as COGCC rules allow. Access roads shall be limited to approximately 30 feet in width during drilling, completion, recompletion and workover operations. The permanent access roads to the well head and tank battery location shall be limited to fifteen (15) feet in width.
  - C. Separate the top soil at the time of excavation of pits so that the top soil and subsurface soil may be placed back in proper order as nearly as possible. Pursuant to COGCC rules and regulations, KPK agrees to remove all mud from the pits before such pits are closed by KPK.

- D. To utilize the same drilling pits as the Wetco Farms 10-41-5 Well, and to not re-open such pits.
- E. Use reasonable efforts, consistent with COGCC regulations, to keep the well and battery sites free of weeds and debris, or by mutual consent, reimburse the tenant farmer for reasonable weed and debris elimination costs.
- F. Agree to a drilling period of October 1 to March 31 of any given year. KPK shall not commence any operations after March 15 of any given year. KPK shall receive written authorization from Owner should the drilling period change for any reason, which authorization shall not be unreasonably withheld. In accordance with such written authorization, should there be growing crops at the commencement of drilling operations, KPK will pay additional crop damages on a per acre basis for the total acres disturbed, at a value and per acre quantity as established by the County Extension Agent. If KPK is conducting operations on the Lands after March 31 of any given year, KPK shall pay Owner a fee based on the following fee schedule, which fee shall not exceed the value of the crops:

<u>Duration of Operations Past March 31</u>	<u>Fee Per Day</u>
1-10 days	\$100
11-20 days	\$150
21-30 days	\$200
31 days or more	\$250

#### 8. FORCE MAJEURE.

- A. Suspension of Certain Obligations. Except as otherwise provided in this Agreement, in the event that either Party to this Agreement is rendered unable, by reason of a Force Majeure Event, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, upon such Party giving notice and full particulars (including all supporting documentation) of such Force Majeure Event as soon as practicable after the occurrence of such Force Majeure Event, the obligations of both Parties shall be suspended to the extent and for a time period designated by Owner; provided, however, that the Party claiming a Force Majeure Event shall make all reasonable attempts to remedy the Force Majeure Event as quickly as reasonably practicable, and such time period of suspended activities may be extended by mutual agreement of both parties.
- B. Inapplicability. Neither Party shall be entitled to the benefit of the Force Majeure Event provisions of this paragraph under either or both of the following circumstances:
  - 1. To the extent that the failure of performance is caused by the Party claiming a Force Majeure Event having failed to remedy the condition by taking all reasonable acts, and having failed to resume performance of such commitments or obligations with reasonable dispatch; or
  - 2. To the extent that the Force Majeure Event is caused by failure to make payment of any amount or amounts then due and owing.

- C. Force Majeure Event "Force Majeure Event" means any event beyond the reasonable control of the Party to this Agreement affected which materially impairs the ability of such Party to perform its obligations under this Agreement, such as any act of God; civil disturbance; arrest and restraint of rulers or people; interruption by government or court order; necessity for compliance with any present and future valid court order, or any Legal Requirement; act of the public enemy; war; riot; blockade; embargo; insurrection; civil disturbance; work stoppage or other labor interruption; inability or delay in securing materials and supplies at reasonable cost after exercise of reasonable diligence, including inability to secure materials and supplies by reason of allocations promulgated by any authorized Governmental Body; epidemic; landslide; lightning; earthquakes; fire; storm; flood; washout; drought; inclement weather which necessitates extraordinary measures and expense to construct facilities and/or maintain operations; explosion; breakage or accident to machinery that could not be prevented by normal maintenance; and inability to obtain or delay in obtaining, permits or licenses at reasonable cost after exercise of reasonable diligence.
9. Attached hereto and made a part of this Agreement as "Exhibit A" is a map of the approximate locations of the Oil and Gas Facilities agreed to by the parties hereto and described in 7.B. Owner and KPK agree that all Flowlines, Easements, Access routes, Well locations and Battery locations will be located in the approximate locations depicted on Exhibit A. Owner and KPK acknowledge that Exhibit A and the locations depicted therein are not drawn to scale.
10. Owner waives the minimum 30 days written notice requirement described in the Notice Letter provided by KPK to Owner.
11. When the word "KPK" is used in this Agreement, it shall also mean the successors and assigns of K.P. Kauffman Company, Inc. and it shall include KPK's employees, agents, affiliates, contractors, subcontractors and/or purchasers.
12. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties, and may be executed in counterparts. This Agreement shall be a covenant running with the land.

IN WITNESS WHEREOF, the parties have executed this Agreement to be made effective as of the day and year first written above.

WETCO FARMS INC.

K.P. KAUFFMAN COMPANY, INC.

By

Title

Kevin P. Kauffman, Chairman and CEO

ACKNOWLEDGEMENTS

STATE OF COLORADO )  
COUNTY OF Weld ) ss.

On this 8<sup>th</sup> day of November 2007, before me personally appeared CRAIG SPARROW, and that he/she executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Commission Expires: My Commission Expires 09/25/2011  
1615 California, Suite 702  
Denver, Colorado 80202

SEAL



Michael L. Tucker  
Notary Public

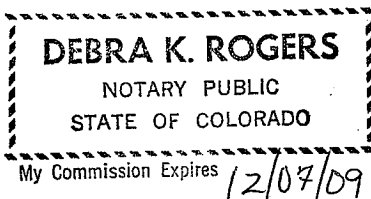
STATE OF COLORADO )  
COUNTY OF Denver ) ss.

On this 12<sup>th</sup> day of November 2007, before me personally appeared Kevin P. Kauffman, known to me to be the President and CEO of KP Kauffman Company. Inc., and that he executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Commission Expires: 12/07/09

SEAL



Debra K. Rogers  
Notary Public

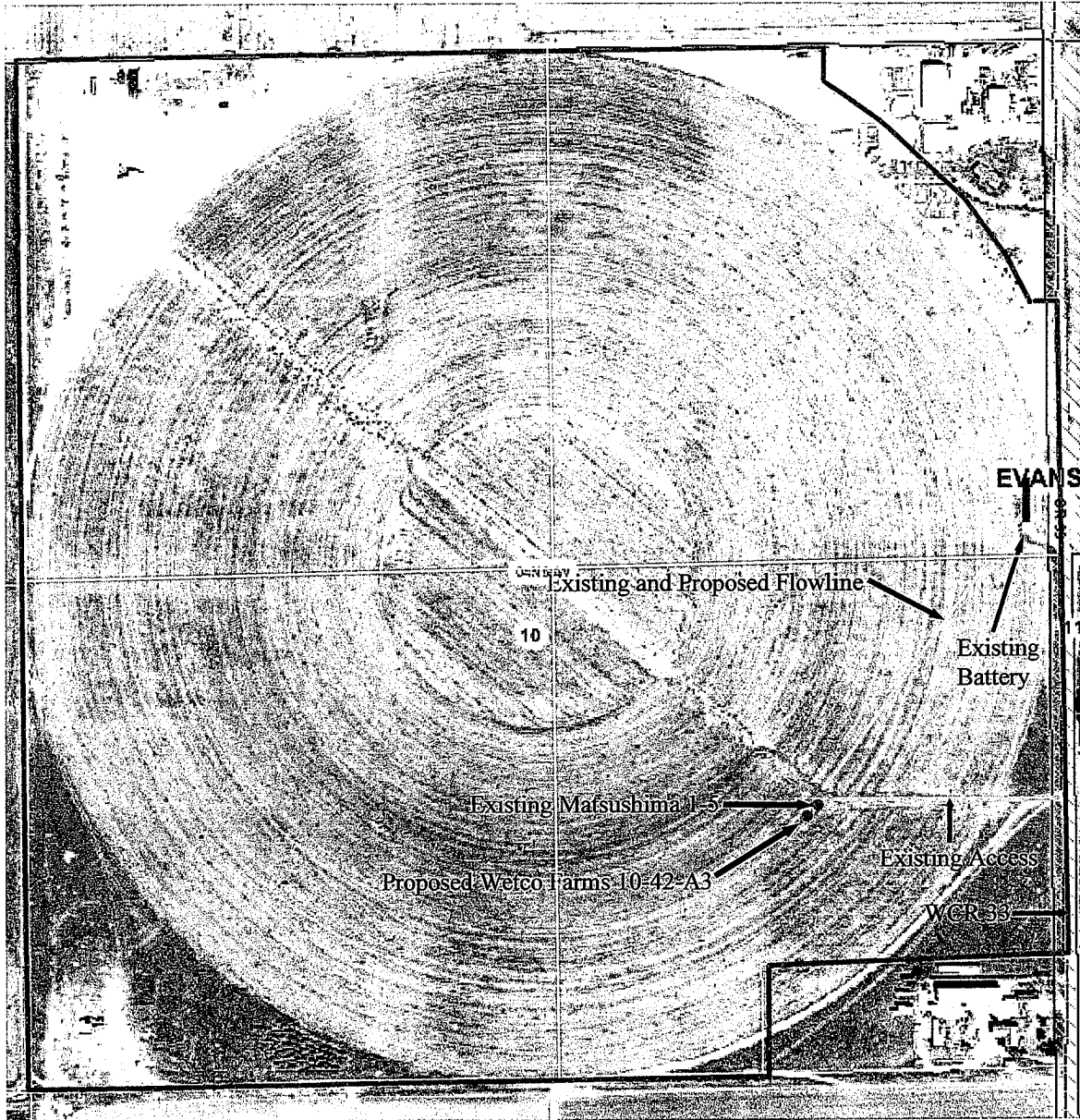
# Exhibit A

Township 4 North, Range 66 West, 6th P.M.

Section 10: SE/4NE/4

Weld County, Colorado

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- Property
- Existing Access
- Existing Well
- Proposed Well
- Existing Flowline and Proposed Flowline
- Existing Battery

## MEMORANDUM OF SURFACE DAMAGE AGREEMENT

This Memorandum is made and entered into this 8<sup>th</sup> day of November, 2007, by and between **Wetco Farms Inc.**, ("Owner") with an address at 2055 1<sup>st</sup> Avenue, Greeley, Colorado 80631, and **K.P. Kauffman Company, Inc.** ("KPK") with an address at 1675 Broadway, Suite 2800, Denver, Colorado 80202-4628.

As of the date above, Owner and KPK entered into a Surface Use Agreement ("Agreement") providing for the use of the surface of the land described below by KPK in connection with certain oil and gas operations and the compensation to Owner for all damages (except as provided for in the Agreement) to the surface of the land associated with the drilling, testing completion, reworking, pumping, operation and maintenance of the well site to be located in:

**SE/4NE/4 Section 10, Township 4 North, Range 66 West, 6<sup>th</sup> P.M., Weld County, Colorado.**

This Memorandum of Surface Use Agreement is executed by Owner and KPK and placed of record in Weld County, Colorado for the purpose of placing all persons on notice of the existence of the Agreement. A true and complete copy of the Agreement is available from KPK to any person with an interest in the above described land.

**OWNER:**

By: 

Title: PPG

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

By:  Chairman and  
Chief Executive Officer

ACKNOWLEDGEMENTS

STATE OF COLORADO )

COUNTY OF Weld )

The foregoing instrument of writing was acknowledged before me on this 8<sup>th</sup> day of November, 2007 by Craig Sparrow, for and on behalf of Wetco Farms Inc., for the uses and purposes stated herein.

Witness my hand and seal:



Michael L. Tucker  
Notary Public:  
Print Name: Michael L. Tucker

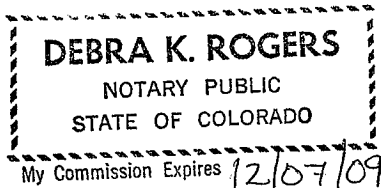
My Commission Expires: 09/25/2011  
Address: 1615 California, Suite 702  
Denver, Colorado 80202

STATE OF COLORADO )

COUNTY OF DENVER )

The foregoing instrument of writing was acknowledged before me on this 12<sup>th</sup> day of November, 2007 by Kevin P. Kauffman, 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

My Commission Expires: 12/07/09  
Address: 1675 Broadway, Suite 2800  
Denver, CO 80202