

3582270 10/03/2008 04:56P Weld County, CO
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SURFACE USE AGREEMENT

THIS AGREEMENT is made and entered into this 8th day of September, 2008, by and between K.P. KAUFFMAN COMPANY, INC. and/or its assignee ("KPK"), whose address is 1675 Broadway, Suite 2800, Denver, Colorado 80202 and SJK, LLC, a Colorado limited liability company, whose address is 18496 County Road 17, Johnstown, Colorado 80534, ("Surface Owner")

RECITALS

A. Surface Owner is the owner of the surface and mineral estates in property located in Weld County, Colorado, described as follows and hereinafter referred to as the "Property:":

TOWNSHIP 4 NORTH – RANGE 67 WEST, 6TH PM
SECTION 33: Lot B of Recorded Exemption No. 1059-33-2-RE1909
also known as part of the NW/4

B. Surface Owner has the right to use its surface estate to the fullest extent possible with due regard to the owners and lessees of the mineral estate.

C. KPK is the holder of certain oil and gas leasehold rights, acquired from Surface Owner, as Lessor, under a Lease of even date herewith, and as such, KPK has the right to explore for, develop, drill for and produce certain oil, gas and other hydrocarbons that underlie the Property, with due regard for the owner of the surface estate.

D. Surface Owner desires to farm, and may desire in the future desire to develop, the surface of the Property in a manner compatible with KPK's rights and obligations to produce oil and gas from beneath the surface. KPK desires to produce the oil and gas from beneath the surface of the Property in a manner compatible with Surface Owner's rights to farm and developing the surface of the property. The purpose of the parties to this Agreement is to resolve their competing uses in a manner that will allow each party to maximize use of their respective rights and at the same time provide maximum safety for uses of the Property.

E. This Agreement is limited to the compatible development of the surface estate and the oil and gas estate.

NOW THEREFORE, in consideration of the covenants and mutual promises set forth herein, including the information set forth in the recitals, the parties agree, to the extent of each of their respective interests in the Property only, as follows:

1. Oil and Gas Operations Area and Production Site Location.

a. Oil and Gas Operations Area. KPK shall utilize no more than two sites on the surface of the Property from which to drill oil and gas wells. The locations of the two sites on the surface of the Property are depicted on the annexed two-page **Exhibit "A."** Unless otherwise depicted on **Exhibit "A"**, the surface location of all wells within a single site shall not be greater than fifty (50) horizontal feet from one another, the intention of the parties being that such wells shall be grouped together as close as reasonably possible, so as to reduce the scope of building setbacks. The two sites, as shown on **Exhibit "A"**, shall be referred to as the Oil and Gas Operation Areas ("OGOASs"). The OGOAs are both located entirely outside the area which is irrigated by Surface Owner's circle pivot irrigation system which is depicted on **Exhibit A**, and nothing herein grants KPK the right to utilize the surface of the Property located within such irrigated area. Notwithstanding the above, KPK may also drill wells to bottom hole locations in said NW/4, so long as the surface location of such wells if off of, and is at least 200 feet away from the boundary of the Property.



b. Certain Activities in OGOA'S. The parties agree and understand that KPK requires a certain amount of surface area to safely drill, deepen, workover, operate, and maintain wells. The parties agree that without the prior approval of KPK, which shall not be unreasonably withheld, Surface Owner shall not place surface improvements including but not limited to property lines, fences and roadways, within an OGOA'S, all as shown on **Exhibit "A"**. Except as may be noted exceptions on **Exhibit "A"** and as otherwise provided herein, no other surface improvements will be permitted in the OGOA'S. Notwithstanding anything herein to the contrary, Surface Owner shall have the right to plant, cultivate and harvest crops, and install and maintain and replace a circle-pivot irrigation system around, on and over the OGOA'S. Other oil and gas operators with oil and gas lease rights to drill or operate on the Property, if any, may occupy portions of the OGOA'S. Nothing in this provision is intended to imply third party beneficiary status to other oil and gas operators. KPK shall be permitted to remove, but not bury, all or part of the abandoned culvert which exists along or adjacent to the NE boundary of the Property, and such actions shall not be considered damages to the Property or improvements.

c. Requirements for Battery and Other Facility Location. KPK may install three Battery Locations on the Property, also as shown on **Exhibit "A"**. Except for the noted exceptions on **Exhibit "A"**, if any, Surface Owner shall not place any other surface improvements within 150 feet of the Battery location. Surface Owner shall have the right to request relocation of the Battery Locations to another feasible site on the Property, and KPK agrees to so relocate the Battery Location, provided that Surface Owner advances the actual cost of any such relocation. KPK agrees to utilize low-profile tanks on the Property.

d. Reworking of Wells. KPK shall have the right to exercise its oil and gas leasehold rights to produce, deepen, recomplete, and re-drill wells on the OGOA'S, provided any such wells drilled on the OGOA'S shall be drilled in accordance with the provisions and limitations of this Agreement, the applicable rules and orders of the Colorado Oil and Gas Conservation Commission ("COGCC") and the legal requirements of any other governmental agency or local jurisdiction having jurisdiction.

e. Waiver of Setback Requirement. The parties understand and acknowledge that the COGCC and other jurisdictional agencies and local governments have rules and regulations governing the distance between drilling a well, a wellhead and production facilities, and public roads, building units and surface property lines, among other things. To the extent permitted by applicable law, the parties hereby waive (i) all setback requirements in COGCC Rule 603, (ii) any amendment to the COGCC setback rules, and (iii) any other state or local setback requirements that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KPK to explore for and produce oil and gas in accordance with this Agreement, or with the rights of Surface Owner to develop the surface, and place occupied and other structures thereon. The parties understand that either party may cite this Agreement as a waiver of any objections in order to obtain a location requirement exception or variance under COGCC rules, or from a local, state or federal jurisdiction. The parties also agree that they will not object in any forum, either directly or indirectly, to the use by the other party of the surface of the Property consistent with this Agreement.

f. Waiver of Other Surface Rights. Except for the OGOA'S, Battery Site, Access Road and Pipeline Easement as set forth in this Agreement and described on **Exhibit "A"** hereto, KPK shall not use the surface of the Property, except in cases of emergency, in which case such use shall be temporary, KPK shall repair and restore the surface and improvements which are damaged by such use, within sixty (60) days, and KPK shall give notice to Surface Owner of such use as soon as reasonably practical.

g. Drilling Costs. KPK shall be responsible for the cost of all drilling, reworking and operation of its wells and other facilities on the Property, including the cost of directional drilling, if any.

2. Access to OGOA'Ss and Battery Location.

a. Lease Road. KPK may construct an Access Road on the Property for access to the OGOA'S, as shown on the annexed **Exhibit "C"** (the "Access Road"). Upon development, Surface Owner may relocate a portion of or all of the Access Road in accordance with this Agreement. If, in the event of surface development of the Property, roads are built by Surface Owner which enable KPK to access the OGOA'S, the existing access roads will be deemed abandoned without further action by either party. In such event, to the extent not accessible by dedicated public right-of-way, Surface Owner shall grant and convey to KPK a separate easement and right of way for access to any surface and/or subsurface facilities located upon and under the Property, upon which event KPK will be deemed to have relinquished all of its right to use the replaced access routes.

b. Changes to Access to OGOA'S. Except as provided in paragraph 2 a above, Access Roads to the OGOA'S may be changed by mutual agreement of KPK and the Surface Owner, provided however, that all costs, and expenses of any such relocation shall be borne solely by the Surface Owner, if such relocation is at the request of the Surface Owner.

c. Improved Access Road. Surface Owner may request that KPK's access be, in part or in whole, over paved or improved roads or streets already built or to be built on the Property. If such Access Road are over such street or road(s), Surface Owner hereby grants KPK the permanent, non-exclusive right to the use of such street or road. Such paved or improved roads or streets shall be constructed to accommodate a weight of at least that required by local codes. The Surface Owner shall keep roads or streets jointly used by all parties including, but not limited to, subdivision occupants and KPK, in good condition and repair, until such time as a governmental entity assumes ownership and maintenance of such roads and streets. KPK shall use reasonable care in the use of said roads or streets. Neither party shall unreasonably interfere with the use by the other in using the streets providing OGOA's access.

d. Access for KPK. Regardless of the type of Access Road to be used or its stage of construction, the Surface Owner will always permit KPK reasonably unobstructed access to the OGOA'S.

3. Flow and Gathering Lines.

a. Flow and Gathering Line Easements. KPK may construct subsurface Lines ("Pipelines") on the Property, along the route depicted on **Exhibit "C"** that carry oil, gas and other hydrocarbons from the wellheads to the Battery Location and then on to other pipelines. Pipelines may be relocated or may be changed by mutual agreement of the parties, provided, however, if the relocation is requested by Surface Owner, all costs and expenses of the relocation shall be borne by the Surface Owner. KPK shall not unreasonably withhold its consent to such relocation; and further provided that the relocation will not be administered in such a way as to unreasonably interfere with KPK's ability to exercise its rights to drill for and produce oil, gas and other hydrocarbons in accordance with this Agreement. For any such relocation, Surface Owner shall grant a recorded non-exclusive easement, in the form annexed as **Exhibit "B,"** for KPK's use of an area of 50 feet in width during construction of the Line and 25 feet in width for all operations,

maintenance and transportation activities of the relocated Line(s). KPK agrees not to construct flow lines or gathering lines of fiberglass.

b. Vertical Requirements within KPK Easements. After written notice of at least fifteen (15) days, Surface Owner shall have the right to cross the Pipeline Easement with roadways and other utilities, provided such crossing is made at an angle of not less than 60° and not more than 120° from KPK's Lines, but in no event shall such utility run parallel above KPK's Lines, except as noted in c. below. Subsurface utilities shall be not less than 18 inches below or above KPK's Lines. Surface Owner may change the topography above the Lines, but overburden above KPK's Lines shall not exceed 72 inches or be less than 48 inches. If a roadway crosses above KPK's Lines, that portion of said Lines will be encased with protective pipe and provided with vents on each side of the roadway crossing. All expenses for the encased pipe and vents will be provided by the Surface Owner. Roadways shall not be constructed parallel to and directly above KPK's Lines.

b. Horizontal Requirements within and Crossing Above KPK Easements. Surface Owner, or its contractors, may request from KPK the right to place a utility within the Line Easement that would parallel KPK's Line(s) or a utility crossing above KPK's lines. KPK will not unreasonably withhold its consent to such use by Surface Owner, but in no event shall such utility be placed within 10 horizontal feet or less than 18 inches above or below KPK's flow or gathering line.

c. Ignition Sources. After the date of this Agreement, Surface Owner shall not place any permanent ignition source within 75 feet of any pipeline.

d. OGOA's and Easements. The provisions of subparagraphs b and c of this paragraph shall not be applicable to the area contained with the OGOA'S itself.

4. Easements.

a. Recording of Easements. Surface Owner shall execute a separate easement in the form attached as **Exhibit "B"** for each relocated Pipeline or Access Road as required above. Said easement may be recorded by KPK with the County Clerk and Recorder.

b. Description of Easements. Such Pipeline Easements may be described by metes and bounds, or by specific notations on an amended **Exhibit "A"** noting direction and length from a surveyed and physically established location on the Property.

c. Maintenance of Easements and OGOA'S. KPK agrees to keep all Pipeline Easements, the Battery Location and the OGOA'S free and clear of trash in accordance with the rules and regulations of the Colorado Oil and Gas Conservation Commission and other governmental entities having jurisdiction. Surface Owner reserves the right, but not the obligation, to plant grasses, forbs and crops on all Easements and the OGOA'S and to irrigate, mow or harvest the same. Additionally, if Surface Owner elects to plant, irrigate, mow and/or harvest said Easements and OGOA's, it shall do so only in a manner which does not violate the terms of KPK's Pipeline Easements or do damage to KPK's Lines or equipment, or interfere with KPK's access or use. Other than provided to the contrary herein, KPK shall not be liable for any damages to any such grasses and/or crops caused by its reasonable and ordinary operations provided, that KPK shall attempt to minimize such damage when it is economically and technically practical.

5. Moving of Electrical Equipment. If as a result of any changes requested by Surface Owner under this Agreement, KPK's electrical provider should charge KPK for any work necessary to change the electrical equipment used by KPK, the Surface Owner shall pay all such costs. Surface Owner will cooperate with electrical provider to accomplish the intent of this Agreement.

6. Non-Interference.

- a. The parties agree that they will use reasonable efforts during the period of construction on the surface and afterwards to accommodate KPK's right to produce the oil and gas or complete, recomplete or work on its equipment. KPK agrees that it will use reasonable efforts to accommodate the Surface Owner in its construction of and use of the surface and not to interfere or delay Surface Owner's development or use of the Property.
- b. Lessee shall provide 7-days advance written notice before entering the Property to perform drilling, deepening, reworking or refracturing operations.
- c. Lessee shall install oil and gas wellheads and other equipment so as not to interfere with Lessor's existing circle-pivot irrigation sprinkler system (the "Sprinkler"). If during any irrigation season (May 15th through October 15th), there exists (a) an oil and gas equipment obstacle, (b) a failure to adequately replace and compact soil after pipeline construction in a location where Sprinkler wheel tracts cross such location, or (c) an interruption in power or water supply to the system, which Lessee or its contractors have created and which materially hinders the Sprinkler from moving and irrigating within its radius, then Lessor shall notify Lessee of said problem within 24-hours of its discovery, and Lessee will work diligently to resolve the issue. If Lessee fails to substantially correct such interference within 48-hours of said notification, and such interference prevents adequate irrigation of Lessor's crops, Lessee shall pay Lessor liquidated damages of [REDACTED] per day during each day in which such interference continues.
- d. If any action is brought by Lessor to collect any liquidated damages provided in this paragraph 6, if Lessor substantially prevails it shall be entitled to collect its reasonable costs of collection, including its reasonable attorney fees.

7. Governmental Proceedings. Each party agrees that it will support in any forum the use of the Property by the other party as long as such use remains consistent with the terms and conditions of this Agreement, and each party hereby waives any right to object to such consistent use. Each party further agrees that it will provide to the other party such other written approvals and waivers as are reasonably requested by the other party and are consistent with this Agreement, including, but not limited to, all approvals and waivers to drill a well or to conduct oil and gas operations on the Property required by any law or regulation, including any local ordinance and regulations of the COGCC, and including, for example, waivers to state and local setback requirements and to any setback requirements from a surface property line; as well as zoning and subdivision applications. Neither party shall be required to make more than a minimal time or financial commitment in connection with its support of the other party. Nothing herein shall grant or be construed to grant to KPK the right to conduct any wildlife study or evaluation of or on the Property.

8. Recording of Easements and Subdivision Plats.

- a. Subdivision Plat. All Pipeline Easements and OGOA's shall be identified on any subdivision plat which Surface Owner shall hereafter record, and such plat shall include restrictions provided for in this Agreement. Any subdivision plat shall be recorded in the Office of the Clerk and Recorder for Weld County. The parties agree that the subdivision plat shall not be in

conflict with the provisions of this Agreement, and any change to the subdivision plat that might effect KPK rights under this Agreement shall not be considered until such time as KPK has been given reasonable notice. KPK agrees not to request any zoning approval or exception that would conflict with the provisions of this Agreement, and KPK shall give Surface Owner prompt notice of any such request.

b. Recording of this Agreement. A copy of this Agreement shall be recorded in the books and records of the Office of the Clerk and Recorder for Weld County.

9. Waiver of Rights. Except to the extent provided herein, by entering into this Agreement KPK does not waive any rights it might have under its oil and gas lease, and Surface Owner does not waive any rights it has under its surface ownership.

10. Payment of Relocation Costs. Surface Owner shall give advance written notice to KPK at least ninety (90) days prior to the time that Surface Owner wishes KPK to relocate a Pipeline easement, tank battery, separator or other production facilities pursuant to this Agreement. KPK shall thereafter provide the Surface Owner with a good faith estimate of the costs for the relocation within 45 days thereafter. Surface Owner shall pay the full amount of the good faith estimate of relocation costs to KPK within thirty (30) days after the date it receives the estimate. Upon receipt and notification of acceptance of the estimated amount of relocation costs from Surface Owner, KPK will within 15 days commence the relocation, install and/or construct the same in a good and workmanlike manner, and diligently pursue such relocation work to completion. Within thirty (30) days after the completion of the relocation, KPK shall give the Surface Owner a full accounting of the actual costs of the relocation. If the amount of such actual costs exceeds the amount of the estimate, Surface Owner shall pay KPK the amount of the shortfall within ten (10) days from the receipt of the accounting. If the amounts of such actual costs are less than the amount of the good faith estimate, KPK shall reimburse the difference to Surface Owner at the time it provides its accounting to Surface Owner.

11. Completion of Changes.

a. KPK usually utilizes third party contractors to complete the work required by paragraph 10 of this Agreement. The parties acknowledge that such third party contractors are sometimes not available to complete the work, and because of other demands on resources either KPK or its third-party contractors, might not be able to complete such work in the time requested by the Surface Owner. KPK will use reasonable business efforts to complete the work in the time requested by Surface Owner. In the event that KPK is unable to complete such work in a timely fashion, the Surface Owner and/or its contractors may complete such work, provided that all work is undertaken and completed in conformance with specifications set by KPK in its reasonable discretion. In the event that Surface Owner and/or its contractors complete the work, KPK shall promptly pay Surface Owner the reasonable and actual costs incurred within ten (10) days of submission of an invoice for the same.

b. Should KPK's contractors provide work required by paragraph 10 of this Agreement, such contractors shall maintain broad form general liability insurance covering their work to be performed on the Property. Such insurance shall have liability limits of not less than \$1,000,000 for injury to a single person, and \$2,000,000 for injuries arising out of a single occurrence, and for property damage of not less than \$600,000. KPK's contractors shall provide Surface Owner with certificates of insurance, naming Surface Owner as an additional named insured prior to commencing any work on the Property.

12. Further Assurances. The Parties shall execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered, such instruments and take such other actions as may be necessary or advisable to carry out its obligations under this Agreement and under any exhibit, document, certificate, or other instrument delivered pursuant hereto.
13. Successor and Assigns. This Agreement and all of the covenants in it shall be binding upon the personal representatives, heirs, successors and assigns of the parties and the benefits of this Agreement shall inure to their personal representatives, heirs, successors and assigns.
14. Covenants Run with the Land. This Agreement constitutes covenants running with the land and shall be binding upon all parties who succeed to any interest, which Surface Owner or KPK has or will have in the Property.
15. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Colorado.
16. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with such laws; however, the remainder of this Agreement shall be in full force and effect.
17. Notices. Any notice or communication required or permitted by this Agreement shall be given in writing either by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, and registered or certified mail with return receipt requested; or (d) prepaid telecopy or fax, the receipt of which shall be acknowledged, addressed as follows:

Surface Owner:

SJK LLC
18496 County Road 17
Johnstown, CO 80534
(970) 587-2166

KPK:

K.P. Kauffman Company, Inc.
1675 Broadway, Suite 2800
Denver, CO 80202-4628
(303) 825-4822
(303) 825-4825 (fax)

The Parties hereto may, from time to time and at any time, change their respective addresses upon the giving of ten (10) days' written notice to the other party of such change of address in the manner as aforesaid.

18. Entire Agreement. This Agreement, together with the Oil and Gas Lease of even date, set forth the entire understanding among the parties and supersedes any previous communications, representations, or agreements, whether oral or written. No change of any of the terms or conditions herein shall be valid or binding on any party unless in writing and signed by an authorized representative of each party.
19. Term. This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KPK's leasehold estate expires or is terminated, and KPK has plugged and abandoned all wells owned all or in part by KPK 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. Upon such expiration or termination, KPK agrees to promptly take such actions, and the parties shall promptly execute any further releases reasonably necessary to evidence the fact that this Agreement shall no longer apply to the Property.

20. Surface Damages.

- a. Prior to entering the Property with heavy equipment to prepare well pads for any of the wells described in paragraph 1(a)(ii) above, KPK shall pay Surface Owner the sum of [REDACTED] as surface damages for each well site, and its related road and pipeline access. Such payment shall satisfy any damages growing out of, incident to, or in connection with the usual and customary exploration, drilling, completion, deepening, refracing, recompletion, reworking, equipping and production operations in connection with such wells.
- b. In addition to subparagraph a. above, if, by reasons resulting from the operations of KPK on the Property there is damage to planted or growing crops, or to real or personal property upon the Property, which damage is not associated with usual and customary operations, including, but not limited to, damage to livestock, structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural water ways, such damage will be repaired or replaced by KPK, or KPK shall pay reasonable compensation to Surface Owner, within thirty (30) days, based on the net market value of crops and reasonable and actual repair costs.

21. 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 and consistent with this Agreement;
- b. Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 23 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, and assumption of each interests by the assignee or grantee, that party shall be released from its indemnification in Section 22(b) above, for all actions or occurrences happening after the date of such assignment or conveyance.

22. **Environmental Indemnity.** The provisions of Section 22 above, except for Section 22(a), shall not apply to any environmental matters, which shall be governed exclusively by the following:

- a. "Environmental Claims" shall mean all Claims asserted by governmental bodies 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



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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 protect, indemnify, and hold harmless Surface Owner, homeowners associations, improvement districts and metropolitan districts, and any lot owner who purchases a lot from Surface Owner 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 OGOA'S and its ownership and operation of its pipeline easement or rights-of-way on the Property. Surface Owner shall fully protect, defend, indemnify and hold harmless KPK from any and all Environmental Claims relating to the Property that arise out of Surface Owner's development of the Property.

23. 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.

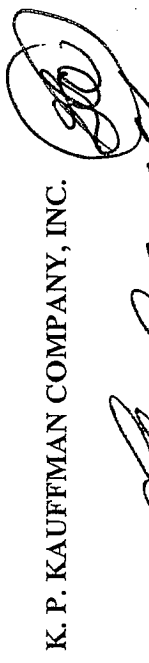
24. Notice Of Claim For Indemnification. If a Claim is asserted against a party for which the other party would be liable under the provisions of Section 21 or 22 above, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party 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 affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

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.

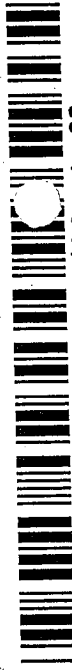
SJK, LLC

By: 
Elaine Koester, Manager

K. P. KAUFFMAN COMPANY, INC.

By: 
Gordon L. Allott, Jr., Executive V.P.

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]



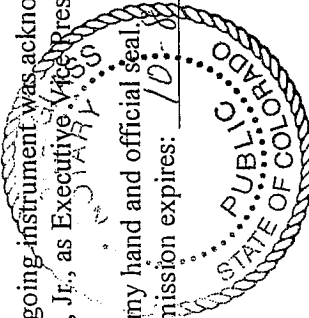
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ACKNOWLEDGMENTS

STATE OF COLORADO)
) ss.
 COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 8th day of September, 2008, by
 Gordon L. Allott, Jr., as Executive Vice President of K.P. Kauffman Company, Inc.

Witness my hand and official seal.
 My commission expires: 10-8-10



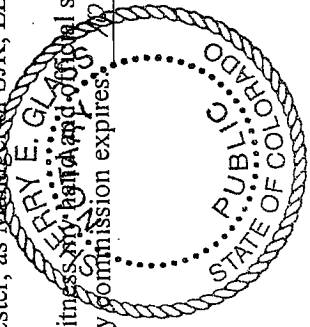
Cherry E. Glass
 Notary Public

My Commission Expires 10/08/2010

STATE OF COLORADO)
) ss.
 COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 8th day of September, 2008, by
 Elaine Koester, as Manager of SJK, LLC, for and on behalf of said company.

Witness my hand and official seal.
 My commission expires: 10-8-10



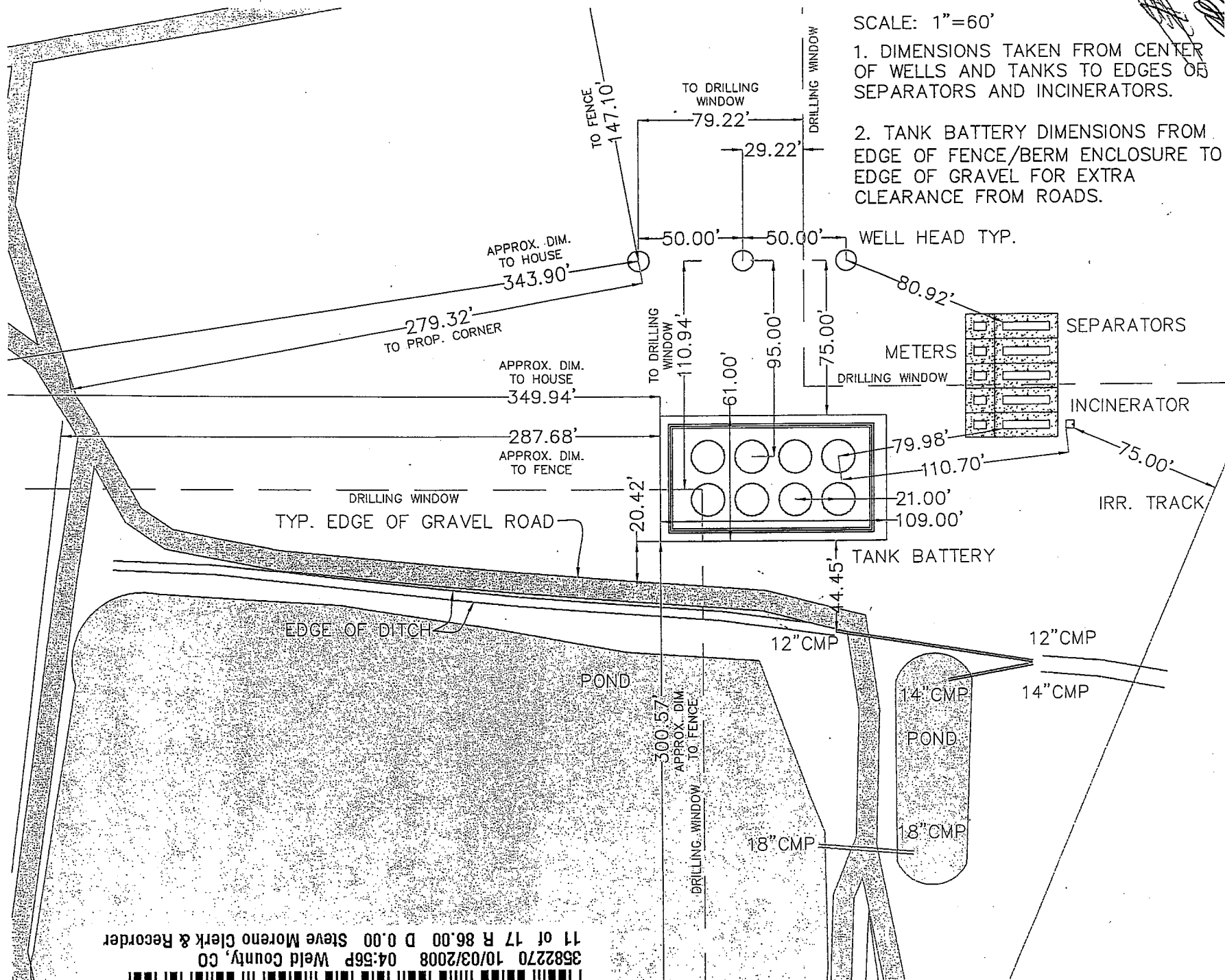
Cherry E. Glass
 Notary Public

My Commission Expires 10/08/2010

[Handwritten signature]

EXHIBIT A
To Surface Use Agreement dated September 8th, 2008, by and between
K. P. Kauffman, Inc., and SJK, LLC
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1. DIMENSIONS TAKEN FROM CENTER OF WELLS AND TANKS TO EDGES OF SEPARATORS AND INCINERATORS.

2. TANK BATTERY DIMENSIONS FROM
EDGE OF FENCE/BERM ENCLOSURE TO
EDGE OF GRAVEL FOR EXTRA
CLEARANCE FROM ROADS.

WELL HEAD TYP.

EXHIBIT A

To Surface Use Agreement dated September 8th, 2008, by and between
K. P. Kauffman, Inc., and SJK, LLC
(Page 2 of 2)

TYP. EDGE OF GRAVEL ROAD

EDGE OF DITCH

INCINERATOR

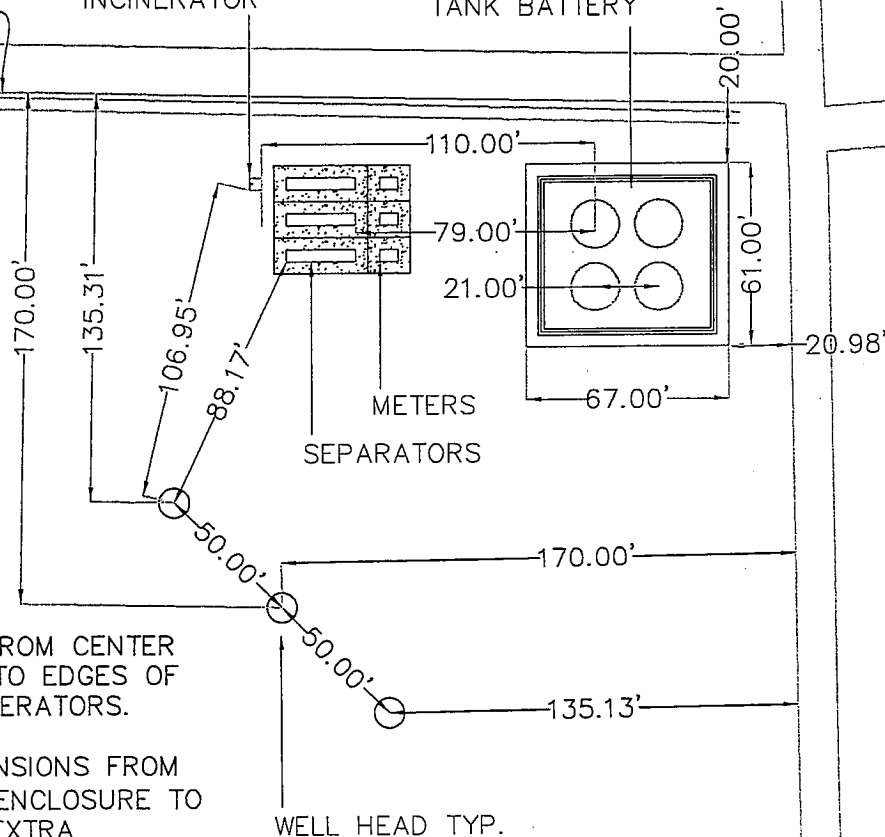
TANK BATTERY

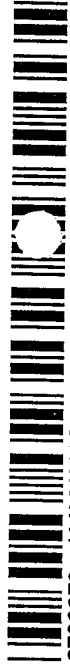
SCALE: 1"=60'

1. DIMENSIONS TAKEN FROM CENTER
OF WELLS AND TANKS TO EDGES OF
SEPARATORS AND INCINERATORS.

2. TANK BATTERY DIMENSIONS FROM
EDGE OF FENCE/BERM ENCLOSURE TO
EDGE OF GRAVEL FOR EXTRA
CLEARANCE FROM ROADS.

WELL HEAD TYP.





3582270 10/03/2008 04:56P Weld County, CO
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EXHIBIT B

To Surface Use Agreement dated September 8th, 2008, by and between
K. P. Kauffman, Inc., and SJK, LLC

LINE EASEMENT AGREEMENT

THIS LINE EASEMENT AGREEMENT ("Agreement") is entered into this ____ day of ____, 2008, between **K.P. KAUFFMAN COMPANY, INC.** ("KPK"), whose address is 1675 Broadway, Suite 2800, Denver, Colorado 80202, and **SJK, LLC** and/or its assignee ("Surface Owner"), whose address is 18496 Weld County Road 17, Johnstown, Colorado 80534.

WHEREAS, the parties have entered into a Surface Use Agreement dated September 8, 2008, and recorded ____ at Reception No. ____ in the records of the Weld County Clerk and Recorder (the "Surface Use Agreement") covering the following described lands:

Township 4 North, Range 67 West, 6th P.M.
Section 33: Lot B of Recorded Exemption No. 1059-
33-2-RE-1909T

WHEREAS, the initial location of subsurface pipelines are set forth on **Exhibit C** to the Surface Use Agreement, and the Surface Use Agreement provides that if subsurface pipelines are relocated pursuant to the terms of the Surface Use Agreement, the Surface Owner will provide KPK with a separate easement agreement for such relocated subsurface line(s) on the Property (the "Line Easement(s)" and "Line(s)" respectively).

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. Surface owner hereby grants a non-exclusive easement to install, construct, replace, repair, maintain and use subsurface Line(s) on the Property as shown on **Exhibit A** attached hereto and made a part hereof. The Line Easement(s) shall be 25 feet in width for all operations, maintenance and transportation activities of the Line(s), and during the period of construction or relocation of any Line(s), the easement shall be 50 feet in width.
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 Surface Owner if the Surface Owner requests such relocation. KPK shall not unreasonably withhold its consent; and, further provided, that the relocation will not be administered in such a way as to unreasonably interfere with KPK's ability to exercise its rights to drill for and produce oil, gas and other hydrocarbons.

3. After written notice of at least fifteen (15) days, Surface Owner shall have the right to cross the Line Easement(s) with roadways and other utilities, provided such crossing is made at an angle of not less than 60° and not more than 120° from KPK's Line(s), except as noted in 4 below. KPK requires all subsurface utilities be not less than 18 inches below KPK's Line(s). Overburden above KPK's Line(s) shall not exceed 72 inches, unless such utilities are found below parallel streets or roads and above such Easement. If a roadway crosses above KPK's Line(s), that portion of said Line(s) will be encased with protective pipe and provided with vents on each side of the roadway crossing. All expenses for the encased pipe and vents will be provided by the Surface Owner. Roadways shall not be constructed parallel directly above KPK's Line(s).
4. After written notice of at least fifteen (15) days, Surface Owner may place a utility within the Line Easement(s) that would parallel KPK's Line(s). In no event shall such utility be placed within 10 feet of KPK's flow or gathering line, or otherwise unreasonably interfere with KPK's flow or gathering line.
5. Surface Owner agrees that it will not place any permanent ignition source within 75 feet of any of KPK's Line(s).
6. KPK agrees to keep all Line Easement(s) free and clear of trash in accordance with the rules and regulations of the Colorado Oil and Gas Conservation Commission and other governmental entities having jurisdiction. Surface Owner reserves the right, but not the obligation, to plant grasses, forbs and crops on all Line Easement(s) and to irrigate, mow or harvest the same. If Surface Owner elects to plant, mow and/or harvest in said Line Easement(s) it shall do so only in a manner which does not violate the terms of this Agreement or do damage to KPK's Line(s) or equipment, or interfere with KPK's access or use. KPK shall not be liable for any damages to any such grasses and/or crops caused by its reasonable and ordinary operations provided, that KPK shall attempt to minimize such damage when it is economically and technically practical.
7. This Agreement pertains only to the Line(s), as defined above. To that extent, 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.
8. 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.
9. 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 Surface Owner has in the Property.
10. This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KPK's oil and gas lease expires or is terminated, and KPK has plugged and abandoned all wells owned all or in part by KPK on the above described property; or until KPK sooner abandoned the pipeline contained in the easement; or until released by mutual agreement of the parties. Upon such expiration or termination, KPK agrees to (1) promptly take such actions, and the parties shall promptly execute any



further releases reasonably necessary to evidence the fact that this Agreement shall no longer apply to the Property, and (2) remove all pipelines and related facilities at its own cost, and in accordance with applicable rules, if any, unless abandonment in place is authorized by the Surface Owner.

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 _____
Printed Name: _____
Title: _____

SJK, LLC

By _____
Printed Name: _____
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by _____, as _____ of K. P. Kauffman Company, Inc.

Witness my hand and official seal.
My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by _____, as Manager of SJK, LLC.

Witness my hand and official seal.
My Commission expires: _____

Notary Public

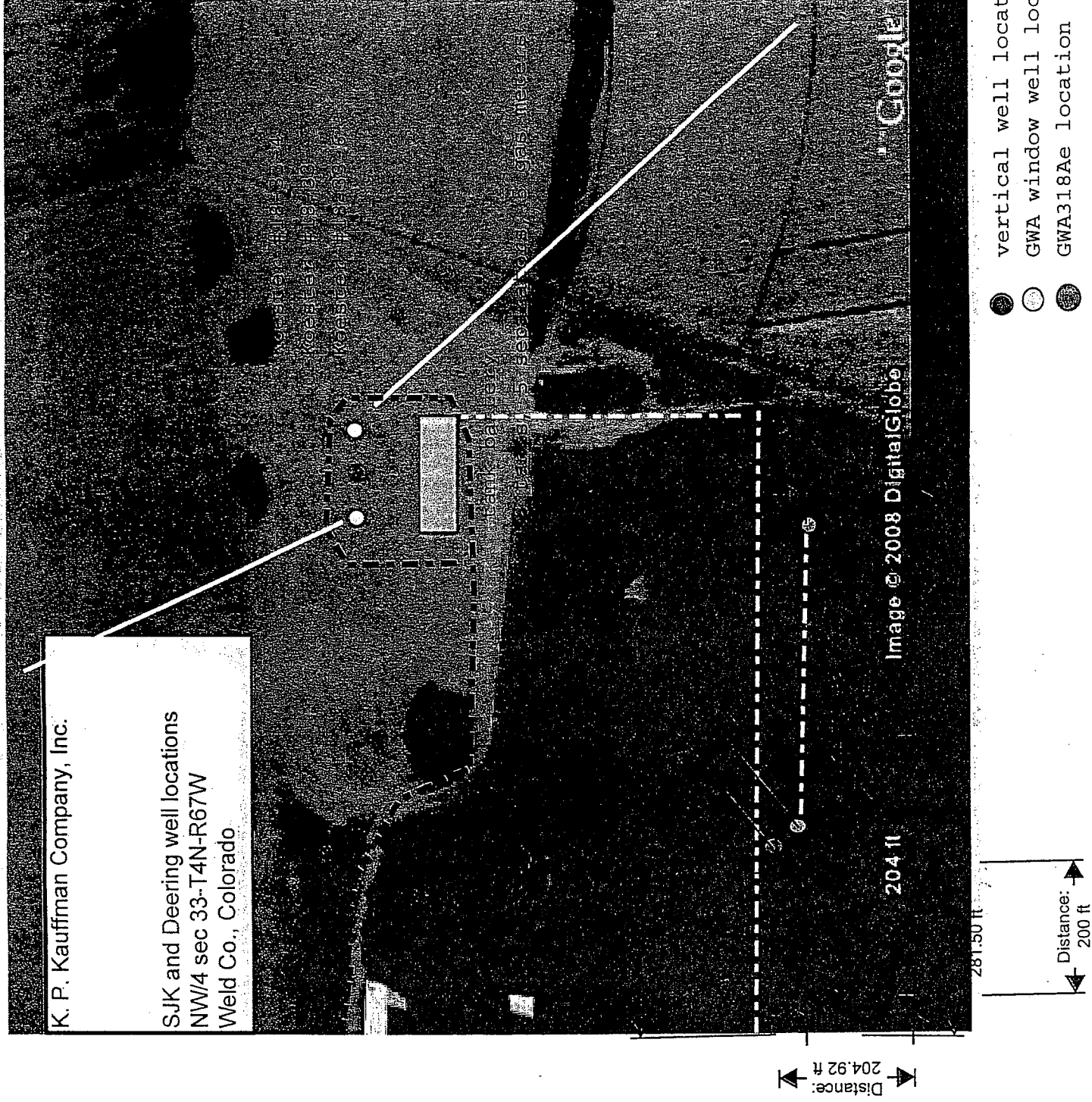


EXHIBIT C

To Surface Use Agreement dated September, 2008, by and between

K. P. Kauffman, Inc., and SJK, LLC

(Page 1 of 2)

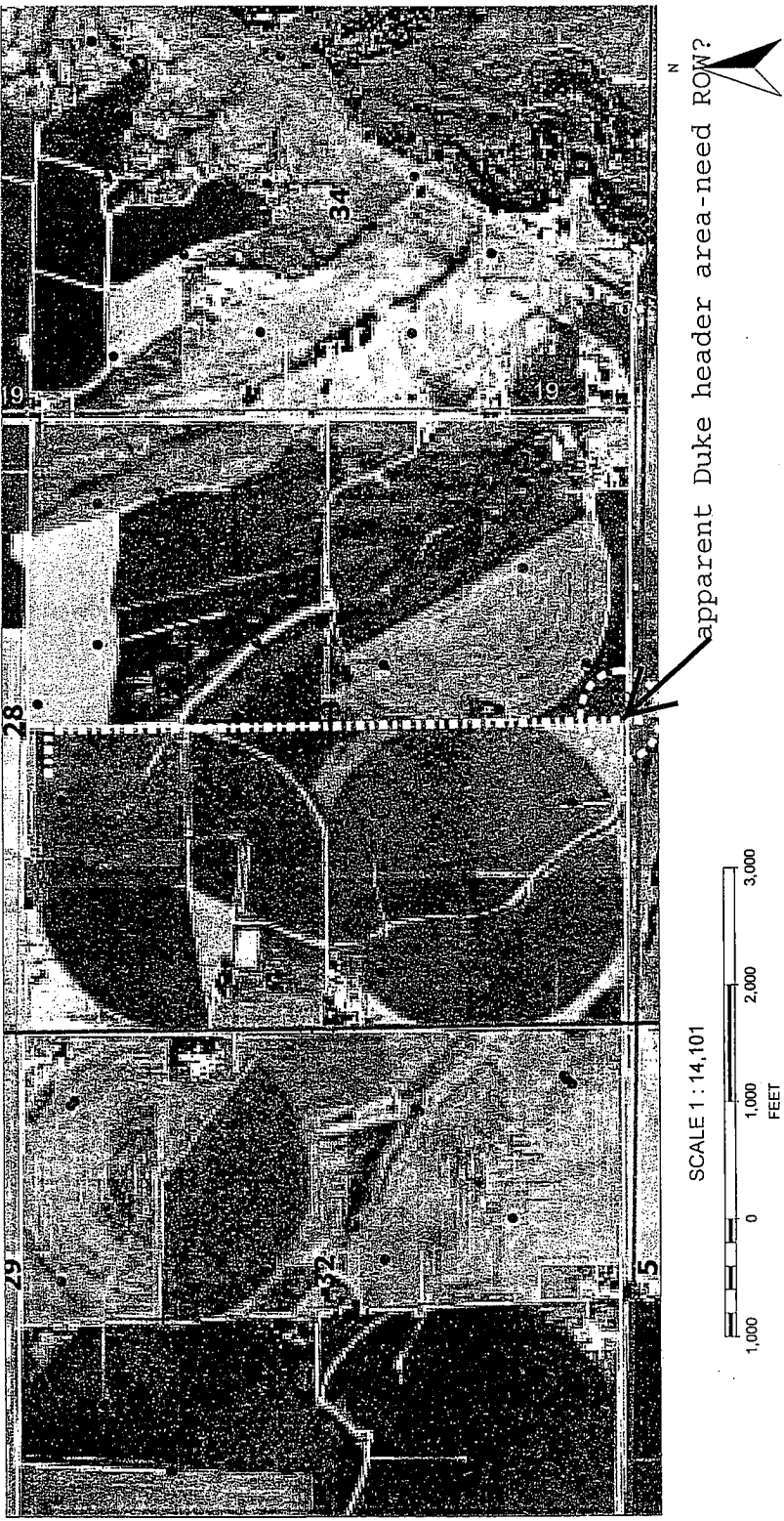


3582270 10/03/2008 04:56P Weld County, CO
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EXHIBIT C

To Surface Use Agreement dated September 8, 2008, by and between
K. P. Kauffman, Inc., and SJK, LLC
(Page 2 of 2)

Proposed road access by S. Koester 8-26-08



building a road from WCR 38 north along the half-section line
for daily pumper access/drilling rig access

created S. Glass 8-26-08



3582270 10/03/2008 04:56P Weld County, CO
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