

SURFACE USE AGREEMENT

13 THIS SURFACE USE AGREEMENT ("Agreement") is made and entered into this day of February, 2012, by and between **K.P. KAUFFMAN COMPANY, INC.** and/or its assignee, a California corporation with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202 ("KPK") and **SUNMARKE INVESTMENTS, LLC** and/or its assignee, with an address of 5105 DTC Parkway, Suite 240, Greenwood Village, Colorado 80111 ("Surface Owner"). KPK and Surface Owner may collectively herein be referred to as the "Parties."

RECITALS

A. Surface Owner owns or has the right to develop the surface estate of the individual parcels of property (hereinafter called the "Property") described below and more particularly described on Exhibit "A" attached and made a part hereto:

Township 4 North, Range 67 West, 6th P.M.
Section 28: Part of the N/2 and Part of the SW/4
Weld County, Colorado

B. KPK is the assignee of certain oil and gas leasehold rights and as such, KPK has the right to explore for, develop, and produce certain oil, gas and other hydrocarbons that underlie the SW/4 of the Property.

C. As of the date of this Agreement, KPK is producing one (1) oil and gas well on the Property and has permitted four (4) wells on the Property which KPK has the right to drill in the future. In addition to the existing and permitted wells, KPK has other oil and gas production equipment on the Property including, but not limited to pipelines, tank batteries, and lease roads, all as shown on the annexed **Exhibit A**.

D. Surface Owner desires 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 that will allow the Surface Owner to develop 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:

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

a. Production Site Locations.

i. KPK is now operating and producing the following named oil and gas well as a vertical well at the following surface location on the Property, as further depicted on **Exhibit "A"** hereto (the "Existing Well"):

Sunmarke #15-28: surface location and bottomhole location in the Center of the SW/4, Section 28, T4N, R67W

ii. KPK intends to drill the following named new oil and gas wells as directional wells from a single pad site located near the Center of the SW/4, Section 28, T4N, R67W, with bottomhole locations listed below and surface locations further depicted on **Exhibit "A"** hereto (the "Future Wells"). The Future Wells shall be drilled approximately twenty feet (20') apart from each other, as depicted on **Exhibit A** hereto.

Sunmarke #19-28-11: bottomhole location in the NE/4SW/4 Section 28, T4N, R67W


Sunmarke #19-28-12: bottomhole location in the NW/4SW/4 Section 28, T4N, R67W

Sunmarke #19-28-13: bottomhole location in the SW/4SW/4 Section 28, T4N, R67W

Sunmarke #19-28-14: bottomhole location in the SE/4SW/4 Section 28, T4N, R67W

iii. KPK has an oil and gas tank battery located in the SW/4NW/4 of the Property ("Battery Location") and other related production equipment, lease roads, flow, and gathering lines leading to the Battery Location and to third party pipelines, at a location depicted on **Exhibit A**.

b. Oil and Gas Operations Area. KPK shall drill the Future Wells approximately twenty feet (20') apart, with the first Future Well located 20' from the Existing Well as shown on **Exhibit A**. The Parties agree and understand that KPK requires a certain amount of surface area to safely drill, deepen, workover, operate, and maintain the Existing Well and Future Wells, referenced herein as the Oil and Gas Operations Area (the "OGOA"). As such, the Parties agree that for drilling and workover purposes, the OGOA for the Existing Well and Future Wells shall include an area no greater than three hundred feet (300') by two hundred Fifty feet (250'), more or less, without surface improvements including, but not limited to, surface property lines, fences and roadways, as shown on **Exhibit A**. The Parties agree that for post-drilling operational and maintenance purposes, the Surface Owner shall not place surface improvements including, but not limited to, surface property lines, fences and roadways, in an area defined by a circle with each well described herein at the center and extending to a radius of one hundred fifty feet (150') from the wellbore, as shown on **Exhibit A**. Other oil and gas operators with oil and gas lease




rights to drill or operate on the Property may occupy portions of the OGOA. Nothing in this provision is intended to imply third party beneficiary status to other oil and gas operators. KPK shall continue to have the right to exercise its oil and gas leasehold rights to produce, deepen, recomplete, or drill on the OGOA and to drill a second, twinned well within approximately twenty feet (20') of a plugged and abandoned well in the OGOA, subject to the terms of this Agreement.

c. Requirements for the Battery Location. The Parties agree that the Battery Location shall be an area with dimensions of no greater than two hundred fifty feet (250') by one hundred fifty feet (150'), at the location depicted on **Exhibit A**, and shall be fenced with a standard chain link fence. The cost to install such chain link fence around the Battery Location shall be borne solely by KPK. The Parties further agree that the Surface Owner shall not locate any improvements, underground or on the surface, including, but not limited to, parks, walkways or similar such uses within the Battery Location. KPK reserves the right to expand its facilities constructed within the agreed upon confines of the OGOA and Battery Location as needed to accommodate future wells.

d. Waiver of Other Surface Rights. Except for the OGOA, Battery Location, Access Roads and Easements as set forth in this Agreement, KPK shall not use the surface of the Property except in cases of emergency, in which case such use shall be temporary and 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.

2. Agreement to Directional Drill and Waiver of Surface Damages. The Parties hereby agree that KPK shall drill the Future Wells as directional wells from the OGOA described in Paragraph 1.a.ii and **Exhibit A** hereto. In drilling the Future Wells directionally, the Parties acknowledge that KPK is forfeiting its right to drill the Future Wells as vertical locations pursuant to Colorado Oil and Gas Conservation Commission (COGCC) rules and regulations. As consideration for the increased costs associated with KPK drilling the Future Wells as directional wells, KPK agrees to pay Surface Owner, prior to entry upon the surface with heavy equipment, a one-time sum of \$15,000 for the surface uses contemplated by this Agreement, and Surface Owner agrees to waive all other surface damage fees associated with KPK's reasonable and customary oil and gas operations on the Property as granted herein. The aforesaid consideration shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the Existing Well and Future Wells, Tank Battery Location, and associated facilities, in accordance with this Agreement. Notwithstanding the above, if KPK damages the personal property or improvements of the Surface Owner or its tenant, including but not limited to fences, roads, ditches and irrigation work, or damages to planted and/or growing crops (including any damages caused by interference with irrigation water flow), it shall either repair the same or pay Surface Owner (or, in the case of damage to planted and/or growing crops, the tenant of Surface Owner) the fair and reasonable amount for damages sustained within 30 days of said damage. By way of example




and not limitation, KPK agrees to promptly repair or replace any above or below ground irrigation works which are damaged by its activities, including but not limited to those existing along the east-west access road to the north of the Property, and along the east edge of the Property. KPK acknowledges that the Property is irrigated acreage and its OGOA has the potential to cut-off irrigation to areas which are downhill from the OGOA. Accordingly, KPK agrees to construct, in connection with commencement of drilling operations on the OGOA, a gated irrigation pipe running from the uphill irrigation canal to around the downhill side of its OGOA so that areas down gradient from the OGOA may continue to receive adequate irrigation water. KPK acknowledges that failure to timely construct such pipe may result in damages to Surface Owner, including those associated with loss of crops and/or loss of Surface Owner's farm lease.

3. Waiver of Setback Requirement. The Parties understand and acknowledge that the COGCC and other jurisdictional agencies have rules and regulations governing the distance between 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 Surface Owner hereby waives all setback requirements in COGCC Rule 603, or any amendment to the COGCC setback rules, and to any other state or local setback requirements that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KPK to explore for and produce oil and gas in accordance with this Agreement. To the extent permitted by applicable law, KPK hereby waives all setback requirements imposed by any state or local jurisdiction that would prohibit or interfere with the rights of Surface Owner to develop the surface of the Property consistent with this Agreement. Surface Owner and KPK understand that either 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. Surface Owner and KPK each also agree that they will not object in any form, either directly or indirectly, to the use by the other party of the surface of the Property consistent with this Agreement.

4. Access to OGOAs and Battery Location.

a. Present Lease Roads. The Parties understand and agree that KPK now has a lease road or roads across the Property, and certain adjacent property, which it will use for access to the OGOA and the Battery Location, as shown on **Exhibit A** ("Lease Roads"). KPK agrees to repair any damage it causes to such Lease Roads, and with the consent of Surface Owner, which shall not be unreasonably withheld, to improve such Lease Roads to the extent necessary to support KPK's operations thereon. KPK shall also maintain all Lease Roads which it constructs on the Property. At the request of the Surface Owner, KPK shall relocate a portion of or all Lease Roads in accordance with this Agreement, provided that the relocation of such Lease Roads will not interfere with KPK's use and enjoyment of its interest in the oil and gas rights. The Parties agree that KPK's Lease Roads shall be located as depicted on **Exhibit A** and designated as Access.



b. Changes to Access to OGOAs and/or Battery Location. Access to an OGOA and/or Battery Location may be changed by mutual agreement of KPK and the Surface Owner, provided however 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. Paved Improved Roads. Upon the surface development of the Property, Surface Owner may request that KPK's Access be, in part or in whole, over paved or improved roads or streets to be built on the Property. If such Access is over such streets or roads, Surface Owner shall grant KPK the permanent, non-exclusive right to the use of such street or road. Surface Owner shall enhance all such roads or streets necessary for KPK to have access from its OGOAs or its Battery Location to a county road in accordance with this paragraph. Such paved or improved roads or streets, whether on or off the Property, shall be constructed in such a manner as to accommodate all equipment used by KPK for the production of oil and gas, drilling and completion of a well, or reworking of a well, regardless of any lesser standard for roads or streets required by the governing entity zoning the Property. Such use by KPK shall include, but not be limited to, the use of 110,000 pounds or 28,000 pounds per axle oil and gas associated equipment and shall include a forty (40) foot curb cut for a twenty-two (22) foot turning radius. 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 Weld County or the applicable town or jurisdiction assumes ownership and maintenance of such roads and streets. KPK shall use reasonable care in the use of said roads or streets, and so long as such roads are constructed to the standards set forth herein, shall repair all damage caused to such roads by its operations. Neither party shall unreasonably interfere with the use by the other in using the streets providing OGOA or Battery Location access.

d. Unimproved Lease Roads. If the Property is developed and the Parties agree not to use paved or improved roads or streets for access to the OGOA and/or battery location, then the Surface Owner shall dedicate to KPK or other oil and gas lessees, for their use, a Lease Road of not less than 30 feet in width and being straight and level enough that KPK is able to use said road to move its trucks and equipment over said road including, but not limited to, workover rigs and drilling rigs. KPK acknowledges that the existing Lease Roads meet such "straight and level" standards. Such use by KPK shall include, but not be limited to, the use of 110,000 pounds or 28,000 pounds per axle oil and gas associated equipment and shall include a forty (40) foot curb cut for a twenty-two (22) foot turning radius. Whether a proposed Lease Road is acceptable for KPK's uses shall be in the sole but reasonable discretion of KPK.

e. Access for KPK. Regardless of the type of Access to be used or its stage of construction, then subject to the terms of this Agreement, the Surface Owner will always allow KPK unobstructed Access to KPK's OGOAs and Battery Location.

5. Flow and Gathering Lines.

a. Flow and Gathering Line Easements for Existing and Future Wells. KPK now has subsurface pipelines, flowlines, and gathering lines ("Line" or "Lines") on the Property that carry oil, gas and other hydrocarbons from the wellhead of the Existing Well to the Battery Location and then on to other pipelines. Upon the drilling and completion of the Future Wells, KPK shall lay new Lines parallel to the existing Lines. The Parties agree that KPK's Lines, both existing and future, shall run parallel and as close to the existing irrigation canal on the Property as reasonably practicable, as shown on **Exhibit A**. Surface Owner shall grant a recorded easement for KPK's use of an area of 50 feet in width during construction of the future Lines and 25 feet in width for all operations, maintenance and transportation activities of the Lines (the "Line Easement").

b. Relocation of Lines. At Surface Owner's request, KPK will agree to relocate a Line or Lines to a mutually agreed upon location. Surface Owner agrees that said place of 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. Surface Owner shall then provide KPK with a Line Easement for any relocated Line or Lines. 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 such Line relocation is at the request of the Surface Owner. KPK shall not unreasonably withhold its consent to such relocation. Upon the relocation of such lines KPK shall vacate and have no further right to use the original Line locations or their associated easements.

c. Vertical Requirements within KPK Line Easements. After written notice of at least fifteen (15) days, Surface Owner shall have the right to cross any Line Easement with roadways and other utilities, provided such crossing is made at an angle of not less than 60° and not more than 90° from KPK's Lines. In no event shall such utility run parallel above KPK's Lines. KPK requires that all subsurface utilities be not less than 24 inches below KPK's Lines. Overburden above KPK's Lines shall not exceed 72 inches. If a roadway crosses above KPK's Lines, that portion of said Line 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 paid for by the Surface Owner. Roadways shall not be constructed parallel above KPK's subsurface Lines.

d. Horizontal Requirements within KPK Easements. Surface Owner may request from KPK the right to place a utility within the Line Easement that would parallel KPK's Lines. KPK will not unreasonably withhold its consent to such use by the Surface Owner, but in no event shall such utility be placed within 10 horizontal feet of KPK's Lines.

e. Requirements for Encasement of KPK's Lines. In the event that Surface Owner's proposed Line Easement would place KPK's Lines within 75 feet of an ignition source including, but not limited to, houses, buildings, structures or any other potential source of ignition, then the Lines shall be "encased" at the Surface Owner's expense. The term "encased" shall mean that KPK's Lines shall be enclosed in a second steel pipe with inspection vents on

each end of the Lines. In addition to the encasement, Surface Owner shall provide KPK with an easement for a work area of 30 feet by 75 feet at each end of the encasement (the "Work Area"). No encasement shall exceed 400 feet without Surface Owner providing intermediate Work Areas. All Lines that must be encased shall be constructed straight and without curves from Work Area to Work Area.

f. Encasement Under the Existing Irrigation Canal and Road. Notwithstanding the provisions contained in this Paragraph 5, KPK agrees to encase its flowlines as they pass under the existing irrigation canal and associated road at KPK's cost, as depicted on **Exhibit A** hereto.

g. OGOAs and Easements. The provisions of subparagraphs b and c of this paragraph shall not be applicable to the exclusive OGOA area around the wellheads, with the exception of oil and gas operators with rights to occupy portions of the OGOA. Nothing in this provision shall be construed to imply third party beneficiary status to other oil and gas operators.

6. 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 Lease Road or Line pursuant to this Agreement. KPK shall thereafter provide the Surface Owner with an estimate of the costs for the relocation. Surface Owner shall pay the full amount of the estimate of relocation costs to KPK within ten (10) days from the date it receives the estimate. Upon receipt of the estimate of costs by Surface Owner, KPK will within a reasonable time commence the relocation of the applicable Lease Road or Line, install the same in a good and workmanlike manner, and diligently pursue such relocation work to completion. Upon completion of the relocation, KPK shall give the Surface Owner a full accounting of the costs and expenses of the relocation. If the amount of such 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 costs are less than the amount of the estimate, KPK shall reimburse the difference to Surface Owner at the time it provides its accounting to Surface Owner.

7. Easements.

a. Recording of Easement. Surface Owner shall deliver to KPK an easement in the form of **Exhibit B** for the Line Easement. Said easement shall be recorded by KPK with the Weld County Clerk and Recorder (the "Easement").

b. Description of Easement. The Line Easement may be described by metes and bounds or by specific notations on **Exhibit A**. The Line Easement description shall be recorded with the Clerk and Recorder of the County in which the Property is located.

c. Form of Easement. The Line Easement shall provide that no occupied structure or ignition source shall be placed within 75 feet of the pipeline as constructed within

the Easement. The Easement shall also contain provisions which are consistent with the provisions of this Agreement.

d. Maintenance of Easements and OGOA. KPK agrees to keep all Easements, the Tank Battery and OGOA free and clear of trash in accordance with the rules and regulations of the COGCC. Surface Owner reserves the right, but not the obligation, to plant dry land grasses on all Easements and the OGOA and to mow, provided however, before planting any grass in such areas, Surface Owner shall request KPK's consent, which consent shall not be unreasonably withheld. Additionally, if Surface Owner elects to mow said Easements and the OGOA, it shall do so only in a manner which does not violate the terms of KPK's Easement nor do damage to KPK's Lines or equipment, or interfere with KPK's Access or use. Surface Owner agrees to hold KPK harmless for any injury to persons or equipment during any performance under this paragraph. Except in calendar year 2012, from April 1 through October 1 in each year, Surface Owner may also plant crops on that area of the OGOA which is not being used by KPK for then-current oil and gas operations; provided, however, that (1) Surface Owner shall release, waive and discharge KPK from any and all crop loss and crop damage directly resulting from KPK's operations within KPK's OGOA, (2) Surface Owner shall permit KPK to construct a ditch around the well heads, but within the OGOA, to protect such well heads from irrigation and crop planting, and (3) Surface Owner shall reserve to KPK adequate and reasonable access in and out of the OGOA at all times, which access shall prohibit the planting of crops.

8. Recording.

a. Subdivision Plat. All Easements, and the facilities authorized by this Agreement, shall be identified on any subdivision plat prepared by Surface Owner with respect to the Property and such shall include restrictions provided for in this Agreement. Any such subdivision plat shall be recorded in the Office of the Clerk and Recorder for the County in which the Property is located. The Parties agree that no change in the subdivision plat shall be made that would be in conflict with the provisions of this Agreement, and that any change to the subdivision plats that might affect KPK rights under this Agreement shall not be considered until such time as KPK has been given reasonable notice.

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 the County in which the Property is located.

9. Shut in of KPK's Wells. The parties recognize that the Lines now installed by KPK are made of fiberglass and/or metal and the running of Surface Owner's earth moving equipment over said Lines may crack them, which can cause an oil and gas spill and environmental damage. KPK represents that in its opinion it is not safe to continue to use such Lines after heavy earth moving equipment is in use in the Easement area. KPK will, for safety purposes, shut in any Line or Lines that have had heavy earth moving equipment run over them. If Surface Owner begins using heavy equipment on the Property, and in the Easement Area, KPK will shut in its

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affected wells. Surface Owner shall have the right to request that KPK shut in one or more of its wells during construction activity on the surface. KPK shall not unreasonably refuse to shut in its wells.

a. Notification. Surface Owner agrees to notify KPK at least thirty (30) days before Surface Owner begins any activities on the Property that will utilize any heavy equipment or other equipment likely to damage KPK's Lines.

b. Payment. During the period of any shut in, Surface Owner 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	\$250
30 days or more	\$300

Following any period of shut in described herein, Surface Owner shall pay KPK any and all reasonable and ordinary costs incurred by KPK to replace any Lines that are damaged by the surface construction activities of Surface Owner.

c. Changes in Price. Should the market price for oil exceed \$100.00 per barrel or be below \$80 per barrel at the time a request by Surface Owner is received, the Parties will then re-negotiate the payment provisions in subparagraph b above to reflect the then current market price, taking into consideration the relative price of oil and gas, and the relative share of oil and gas being produced, at the time of execution of this Agreement.

10. Moving of Electrical Equipment. If KPK requires electric service to the OGOA and/or battery location, such service shall be along the route shown on **Exhibit A**. At the election of Surface Owner, this electrical service shall be placed underground. If, as a result of any changes under this Agreement which are requested by Surface Owner, 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 the electrical provider to accomplish the intent of this Agreement.

11. Completion of Changes. The Parties agree and understand that it has been KPK's experience that third party contractors can complete the work required to be completed by KPK under this Agreement. Any third party contractor must be approved by KPK. However, it has also been KPK's experience that third party contractors are often not available to complete the work. KPK agrees it will complete such work as required, but because of other demands on its resources, it 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 may complete such work, provided that all work is undertaken and completed in conformance with specifications set by KPK in its sole discretion.

12. Non-Interference. Surface Owner agrees that it will use reasonable efforts during the period of construction on the surface of the Property and afterwards not to interfere or delay KPK's right to produce oil and gas or complete, recomplete, or work on its equipment. KPK agrees that in its exploration for and production of oil and gas from the Property it will use reasonable efforts to accommodate the Surface Owner in its construction of and use of the surface.

13. Notice of Oil and Gas Operations.

a. Home Owner Notice. A Notice of Oil and Gas Operations in the form attached hereto as **Exhibit C** shall be recorded with the following information:

- i. Subsequent purchasers' rights are subject to this Agreement and the oil and gas lease; and
- ii. There are ongoing oil and gas operations on the Property; and
- iii. Subject to applicable regulatory restrictions, very heavy equipment and other oil and gas equipment with accompanying loud noise will be used, from time to time, by KPK for well development, maintenance, drilling new wells, and production activities, and that such activities may be conducted on a 24-hour basis; and
- iv. By purchasing an interest in the Property, subsequent purchasers have agreed that they are subject to this Agreement and the oil and gas lease; and
- v. Activities conducted on the Property by KPK shall be as set forth in the Agreement except in cases of emergency.

14. Waiver of Rights. KPK does not by entering into this Agreement waive any rights it might have under its oil and gas lease, except as specifically set forth herein including, but not limited to, the drilling for and production of oil and gas from the Property.

15. Further Assurances. Surface Owner shall execute, acknowledge, and deliver or cause to be executed, acknowledge, and deliver 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.

16. Successor and Assigns. This Agreement, and all of the covenants in it, shall be binding upon the personal representatives, heirs, successors and assigns of all parties and

benefits of this Agreement shall inure to their personal representatives, heirs, successors, and assigns.

17. 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.

18. 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.

19. Compliance with Common Law and Statutory and Regulatory Requirements. Surface Owner expressly acknowledges that this Agreement satisfies the obligations and requirements of KPK pursuant to COGCC rules and regulations and Colorado statutes to consult in good faith with Surface Owner regarding existing and proposed oil and gas operations on the Property. Surface Owner further expressly acknowledges that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligations of KPK to accommodate the use of the surface of the Property by Surface Owner, existing and future, and Surface Owner waives any statutory and common law claims to the contrary, including, but not limited to, any claims pursuant to C.R.S. 34-60-127. KPK acknowledges that this Agreement satisfies the obligations and requirements of Surface Owner to accommodate KPK and provide KPK, its successors and assigns, with access to the surface for purposes of oil and gas exploration and development on the Property.

20. 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.

21. 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:

To Surface Owner:

SunMarke Investments, LLC
Attn: Gary Hunter, Manager
5105 DTC Parkway, Suite 240
Greenwood Village, Colorado 80111
720-482-7707 (phone)
720-482-7717 (Fax)

To KPK:

K.P. Kauffman Company, Inc.
Attn: Kelsey Wasylenky, Corporate Counsel
1675 Broadway, Suite 2800

Denver, CO 80202-4628

(303) 825-4822

(303) 825-4825 (FX)

22. Counterpart Execution. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one instrument.

23. Entire Agreement. This Agreement sets 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.

24. Indemnification. No party to this Agreement shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to the other party for activities undertaken within the scope of this Agreement.

Except as to claims arising out of pollution or environmental damage (which claims are governed by paragraph 25 below) or except as otherwise provided specifically elsewhere herein, each party shall be and remain responsible 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 or activities 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, agents and contractors, 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. In addition to the foregoing, KPK shall compensate Owner for any damage, loss, or claim which Surface Owner sustains because KPK did not act as a reasonable and prudent operator.

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

25 Environmental Indemnity. The provisions of paragraph 24 above, shall not apply to any environmental matters, which shall be governed exclusively by the following:

"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 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;

"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

KPK shall protect, indemnify, and hold harmless Surface Owner from any Environmental Claims relating to the Property or KPK's lease that arise out of KPK's ownership and operation on the Property and its ownership and operation of any pipeline easement or right-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 land that arise out of Surface Owner's operations on the Property. This indemnity specifically covers the completion or fracturing or refracturing of any well drilled by KPK on the Property or lands pooled or unitized therewith.

26. 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.

27. Mutual Release. To the maximum extent permitted by law, KPK releases and waives and discharges Surface Owner and, if applicable, Surface Owner's officers, directors, employees, agents, successors, and assigns from any and all liability for personal injury, death, property damage, or otherwise arising out of KPK's or its agents' operations under this Agreement or KPK's use of the Property, unless such injury, death, or property damage is the result of Surface Owner's negligent acts or omissions or those of its members, officers, directors, employees, agents, successors, and assigns. To the maximum extent permitted by law, Surface Owner releases and waives and discharges KPK and, if applicable, KPK's officers, directors, employees, agents, successors, and assigns from any and all liability for personal injury, death, property damage, or otherwise arising out of Surface Owner's or its agents' operations under this Agreement or Surface Owner's use of the Property, unless such injury, death, or property



damage is the result of KPK's negligent acts or omissions or those of its members, officers, directors, employees, agents, successors, and assigns.

28 Operations on the Property. No living quarters shall be constructed upon the Property, except that drilling crews and geologists or service personnel may use temporary "dog houses" during drilling, completion, or reworking activities. KPK shall not fence any access roads without the prior consent of Surface Owner. KPK and its employees, agents, and contractors shall leave all gates located on the Property as they found them; gates found closed are to be closed; gates found open are to be left open. At all times, Surface Owner shall provide KPK with unobstructed access to the Property and if KPK's access is through one or more locked gates, Surface Owner shall provide KPK with the key to said gates. KPK shall conduct operations and activities on the Property in accordance with, and shall strictly comply with all existing local, state, and federal laws, rules, and regulations. KPK shall also obtain any permit, consent, license, or other authorization required by law or by any governmental authority having jurisdiction.

29. 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, and the Easements granted hereunder, shall no longer apply to the Property.

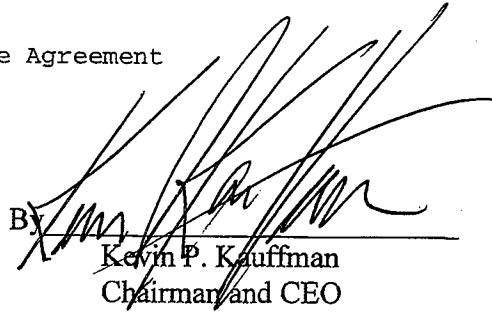
30. Seasonal Limitations. Except for the 2012 calendar year, KPK shall not perform any drilling, deepening, fracing, refracing or laying of pipelines on the Property between April 1 and October 1 of any year, and such activities shall be completed, ground leveled and restored as required by COGCC rules, prior to April 1st in each year, unless prior written consent is given by Surface Owner. Except for the 2012 calendar year, between October 1 and April 1 in any year, KPK shall provide ten (10) days advance written or verbal notice before entering the Property to perform drilling, deepening, reworking or refracing operations. Except for the 2012 calendar year, between April 1 and October 1 in any year KPK shall not enter the Property with a drilling rig or workover rig, except in the event of emergency or in the event of cessation of production resulting from a mechanical failure in one or more wellbores, at which point KPK shall consult in advance with Surface Owner before entering, to extent possible under the circumstances, and pay for damages to growing or planted crops as set forth herein above.

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.



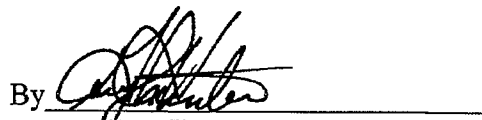
By



Kevin P. Kauffman
Chairman and CEO

SUNMARKE INVESTMENTS, LLC

By

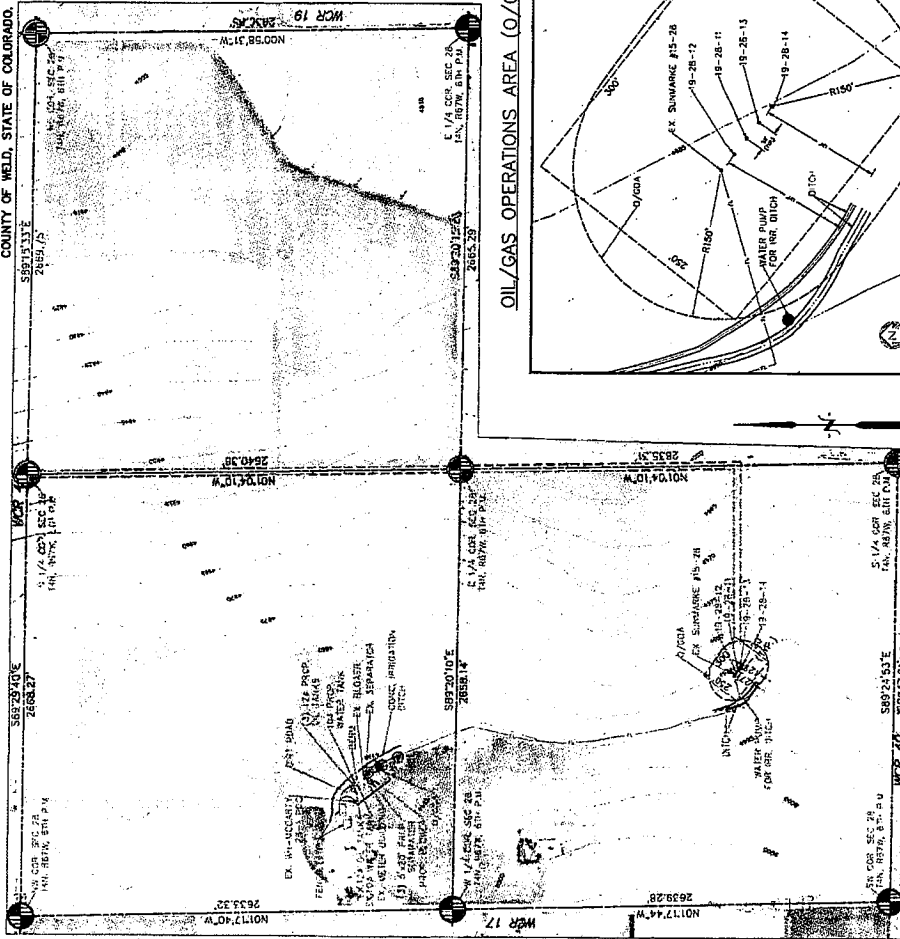


Gary Hunter
Manager

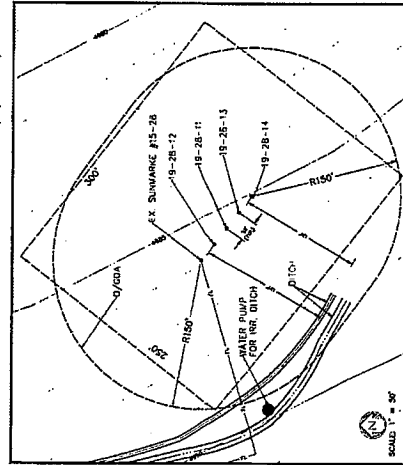
EXHIBIT A - SURFACE USE AGREEMENT MAP

AN EXHIBIT TO THAT SURFACE USE AGREEMENT DATED _____
 BY AND BETWEEN K.P. KAUFFMAN COMPANY, INC. AND
 A REDUCED COPY OF THIS MAP IS ATTACHED TO THE AGREEMENT THAT IS RECORDED
 IN WELD COUNTY ON _____ AT RECEPTION NO. _____

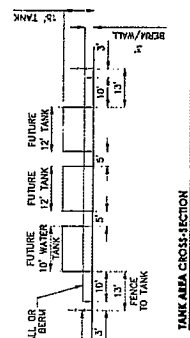
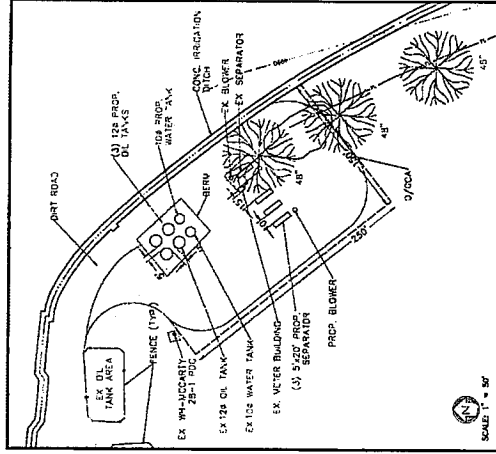
SUNMARKE - SECTION 28 PROPERTY LOCATED IN A PART OF THE NORTH HALF AND A PART OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 36N, RANGE 67W, COUNTY OF WELD, STATE OF COLORADO.



OIL/GAS OPERATIONS AREA (O/GOA)



TANK BATTERY AREA



LEGEND

- OIL/GAS OPERATIONS AREA (O/GOA)
- OIL/GAS WELL
- WATER TANK
- SEPARATOR
- EMISSION CONTROL DEVICE
- APPROPRIATE FLOWLINE ROUTE
- EXISTING FLOWLINE ROUTE
- EXISTING MINOR CONTIGUOUS TREE
- 30' OIL/GAS ACCESS ROAD
- DECOMMISSIONED TREE

- NOTES
- INFORMATION SHOWN HEREON REGARDING CORNERS WAS RECOVERED BY CIVILANTS ON DECEMBER 16, 2011.
 - THIS MAP IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT ACCORDING TO COLORADO STATUTES.
 - ALL TANKS, TANKS, AND TOPOGRAPHIC MAPPING WAS TAKEN FROM GOOGLE EARTH AND DIGITAL DEVICE.

DATE: 10-16-11	BY: K.P. KAUFFMAN COMPANY, INC.	PROJECT NO.:
CHECKED BY: K.P. KAUFFMAN COMPANY, INC.	DATE: 10-16-11	PROJECT NO.:
DATE: 10-16-11	BY: K.P. KAUFFMAN COMPANY, INC.	PROJECT NO.:
CHECKED BY: K.P. KAUFFMAN COMPANY, INC.	DATE: 10-16-11	PROJECT NO.:
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DATE: 10-16-11	BY: K.P. KAUFFMAN COMPANY, INC.	PROJECT NO.:
CHECKED BY: K.P. KAUFFMAN COMPANY, INC.	DATE: 10-16-11	PROJECT NO.:

SUNMARKE
 SECTION 28 PROPERTY
 WELD COUNTY, COLORADO
 SURFACE USE AGREEMENT MAP

CIVILANTS
 SURVEYING
 1100 14TH AVE. S. #100
 BOULDER, CO 80502
 (303) 440-1100
 WWW.CIVILANTS.COM

KPK
 K.P. KAUFFMAN COMPANY, INC.
 1100 14TH AVE. S. #100
 BOULDER, CO 80502
 (303) 440-1100
 WWW.KPK.COM

AKK

EXHIBIT B

To Surface Use Agreement dated _____, 2012, by and between K.P. Kauffman Company, Inc. and SunMarke Investments, LLC.

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is entered into this _____ day of _____, 2012, by and between **K.P. KAUFFMAN COMPANY, INC. ("KPK")**, with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202 and **SUNMARKE INVESTMENTS, LLC** and/or its assignee, with an address of 5105 DTC Parkway, Suite 240, Greenwood Village, Colorado 80111 ("Surface Owner"). KPK and Surface Owner may collectively herein be referred to as the "Parties."

WHEREAS, the Parties entered into that certain Surface Use Agreement dated _____, 2012, a Memorandum of which was recorded _____ at Reception No. _____ among the records of the Weld County Clerk and Recorder (the "Surface Use Agreement") covering the following described lands and more particularly described on Exhibit "A" hereto:

Township 4 North, Range 67 West, 6th P.M.
Section 28: Part of the N/2 and Part of the SW/4
Weld County, Colorado

WHEREAS, the Surface Use Agreement provides that upon request Surface Owner will provide KPK with a separate easement agreement 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. Subsurface Line Easement. Surface Owner hereby grants a non-exclusive easement to KPK 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 easement shall be twenty five feet (25') in width for all operations, maintenance and transportation activities of the line(s), and during the period of construction or relocation of any lines, the easement shall be fifty feet (50') in width.

a. 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 such relocation is at the request of Surface Owner. KPK shall not unreasonably withhold its consent to such relocation. The relocation shall 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 in accordance with the Surface Use Agreement.

b. After written notice of at least fifteen (15) days, Surface Owner shall have the right to cross the line easement with roadways and other utilities, provided such crossing is made

at a perpendicular angle of not less than 60° and not more than 90° from KPK's lines. KPK requires that all subsurface utilities be not less than twenty-four inches (24") below KPK's lines. Overburden above KPK's lines shall not exceed seventy-two inches (72"). If a roadway is hereafter constructed by Surface Owner which crosses perpendicular 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 Surface Owner. Roadways and other utilities shall not be constructed parallel above KPK's lines.

c. Surface Owner may request from KPK the right to place a utility within the line easement that would parallel KPK's line(s). KPK will not unreasonably withhold its consent to such use by Surface Owner, provided that in no event shall such utility be placed within 10 horizontal feet of KPK's flow or gathering line.

d. In the event that Surface Owner's proposed development would place KPK's line(s) within seventy-five feet (75') of a stationary ignition source including, but not limited to, equipment, buildings, or structures capable of being an ignition source, then said line(s) shall be encased at Surface Owner's expense. The term "encased" shall mean that KPK's line(s) shall be enclosed in a second steel pipe with inspection vents on each end of the line(s). In addition to the encasement, Surface Owner shall provide KPK with an easement for a work area of thirty feet (30') by seventy-five feet (75') at each end of the encasement (the "Work Area"). No encasement shall exceed four hundred feet (400') without Surface Owner providing intermediate Work Areas. All lines that must be encased shall be constructed straight and without curves from Work Area to Work Area.

2. KPK agrees to keep this line easement free and clear of trash in accordance with the rules and regulations of the COGCC. Surface Owner reserves the right, but not the obligation, to plant dry land grasses on the line easement and to mow, provided however, before planting any grass in such areas, Surface Owner shall request KPK's consent, which consent shall not be unreasonably withheld. Additionally, if Surface Owner elects to mow said easement it shall do so only in a manner which does not violate the terms of KPK's Easement nor do damage to KPK's Lines or equipment, or interfere with KPK's Access or use. Surface Owner agrees to hold KPK harmless for any injury to persons or equipment during any performance under this paragraph.

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

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

5. This Easement 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.

6. This Easement Agreement shall become effective when it is fully executed and shall remain in full force and effect until KPK's leasehold estate in the Property 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, this Easement Agreement shall terminate and KPK agrees to promptly take such actions, and the parties shall promptly execute any further releases reasonably necessary to evidence the fact that this Easement Agreement shall no longer apply to 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.

SUNMARKE INVESTMENTS, LLC

By _____
Kevin P. Kauffman
President and CEO

By _____
Gary Hunter
Manager

ACKNOWLEDGEMENTS

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Kevin P. Kauffman, as President and CEO 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 _____, 2012, by Gary Hunter as Manager of SunMarke Investments, LLC.

Witness my hand and official seal.

My Commission expires: _____

Notary Public



EXHIBIT C

**To Surface Use Agreement dated _____, 2012, by and between K.P.
Kauffman Company, Inc., and SunMarke Investments, LLC.**

NOTICE OF OIL AND GAS OPERATIONS

PLEASE TAKE NOTICE THAT K.P. Kauffman Company, Inc., a California corporation and/or its assignee with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202, ("KPK") and SunMarke Investments, LLC and/or its assignee, with an address of 5105 DTC Parkway, Suite 240, Greenwood Village, Colorado 80111 ("Surface Owner"), have entered into a Surface Use Agreement (the "Agreement") dated _____, 2012, covering the following described lands (the "Property"):

Township 4 North, Range 67 West, 6th P.M.
Section 28: Part of the N/2 and Part of the SW/4
Weld County, Colorado

NOTICE IS HEREBY PROVIDED to all interested parties, including but not limited to surface owners, developers, their heirs, assignees and successors in interest, that pursuant to the Agreement, KPK, its agents, employees, designees, co-owners, successors and assigns, have the right to use and access the surface of the OGOA, Lines Easements and Lease Roads as defined in the Agreement for the purpose of oil and gas operations and Surface Owner has the right to use the Property in a manner which is not inconsistent with the Agreement, and as such:

- i. Subsequent purchasers' and assignees' rights are subject to the Agreement; and
- ii. That by purchasing an interest in the Property, subsequent purchasers and assignees have agreed that they are subject to the Agreement; and
- iii. There are ongoing oil and gas operations on the Property and may be surface development of the Property in the future; and
- iv. Subject to applicable regulatory restrictions, very heavy equipment and other oil and gas equipment with accompanying loud noise will be used, from time to time, by KPK for well development, maintenance, drilling new wells and production activities, and that such activities may be conducted on a 24-hour basis; and
- v. Activities conducted on the Property by KPK shall be as set forth in the Agreement except in cases of emergency.

A Memorandum of Surface Use Agreement has been recorded in the real property records of Weld County, Colorado on _____, 2012, at Reception No. _____.

This notice may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.



[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

K.P. KAUFFMAN COMPANY, INC.

By _____
Kevin P. Kauffman
President and CEO

SUNMARKE INVESTMENTS, LLC

By _____
Gary Hunter
Manager

ACKNOWLEDGEMENTS

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Kevin P. Kauffman as President and CEO of K. P. Kauffman Company, Inc.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Gary Hunter as Manager of SunMarke Investments, LLC.

Witness my hand and official seal.

My commission expires: _____

Notary Public