

FIRST AMENDMENT TO SURFACE USE AGREEMENT

090

This **FIRST AMENDMENT TO SURFACE USE AGREEMENT** ("Amendment") is made and entered into this 16th day of April, 2009, by and between **K.P. KAUFFMAN COMPANY, INC.** and/or its assignee ("KPK"), with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202, and **SUNMARKE INVESTMENTS, LLC** and/or its assignee ("Surface Owner"), with an address of 5105 DTC Parkway, Suite 240, Greenwood Village, Colorado 80111. KPK and Surface Owner are collectively referred to as the "Parties".

RECITALS

A. Surface Owner is the owner of the surface estate in property located in Weld County, Colorado, more particularly described below and hereinafter called the "Property", and 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.

Township 4 North, Range 67 West, 6th P.M.
Section 21: SE/4
Section 22: SW/4

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

C. The Parties entered into that certain Surface Use Agreement dated October 30, 2007, and recorded March 14, 2008, at reception number 3541706 in the Office of the Clerk and Recorder of Weld County, Colorado ("SUA"), which provides for the compatible development of the surface estate and the oil and gas leasehold estate.

D. The Parties identified specific names and locations for existing and future oil and gas wells and production facilities, identified and referred to in the SUA as the "Oil and Gas Operations Areas" or "OGOAs".

E. Exhibit A to the SUA specifically depicts the locations for future oil and gas wells located within the OGOAs.

F. The purpose of this Amendment is to change the name and well classification for one of the new oil and gas wells located within an OGOA and depicted on Exhibit A, as described in this Amendment.

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

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

2. McCarty #14-22-14 Well. KPK and Surface Owner agree that the new oil and gas well identified in the SUA as the proposed McCarty #14-22, to be located in the SE/4SW/4 of Section 22, Township 4 North, Range 67 West, shall be changed from a vertical well, to a well with a different bottom-hole location, but such bottom-hole location shall be located in the SE/4SW/4 of Section 22, Township 4 North, Range 67 West, approximately 656 feet FSL and 1,977 feet FWL of said Section. The Parties further agree that the well name for the proposed McCarty #14-22 will be changed to the McCarty #14-22-14. The surface location for the McCarty #14-22-14 shall remain as depicted on Exhibit A to the SUA. The McCarty #14-22-14 shall not be considered a "Directional Well" for purposes of the SUA or the letter agreement referenced in paragraph 1(g) of the SUA.

3. Amendment to Exhibit A. With respect to the bottom-hole location of the McCarty #14-22-14 well, and for no other purpose, Exhibit A attached to the SUA is amended in the manner set forth in the attached Exhibit B, which is incorporated into this Amendment by this reference.

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

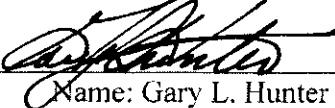
5. Binding on Successors and Assigns/Covenant that Runs with the Land. This Amendment and the SUA are binding upon the Parties and their successors and assigns and inure to their benefit. This Amendment and the SUA shall be covenants that run with the land.

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

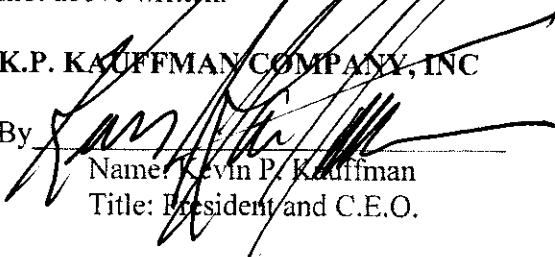
7. Recording. This Amendment shall be recorded with the Clerk and Recorder of Weld County.

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

SUNMARKE INVESTMENTS, LLC

By 
Name: Gary L. Hunter
Title: Manager

K.P. KAUFFMAN COMPANY, INC

By 
Name: Kevin P. Kauffman
Title: President and C.E.O.

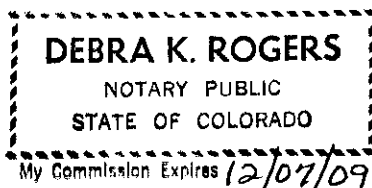
ACKNOWLEDGEMENTS

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 16th day of April, 2009, by Kevin P. Kauffman as President and CEO of K. P. Kauffman Company, Inc.

Witness my hand and official seal.

My commission expires: 12/07/09



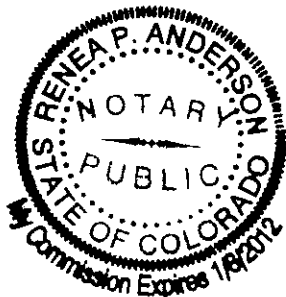
Debra K. Rogers
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 21st day of April, 2009, by Mary L. Denton as Manager of SunMarke Investments, LLC.

Witness my hand and official seal.

My commission expires: 1/8/2012



Renea P. Anderson
Notary Public

