

SURFACE USE AGREEMENT

THIS AGREEMENT is made and entered into this 30th day of October, 2007, by and between **K. P. KAUFFMAN COMPANY, INC.** and/or its assignee ("KPK"), whose address is 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.

RECITALS

A. Surface Owner is the owner of the surface estate in property located in Weld County, Colorado, described as the SE/4 of Section 21, and the SW/4 of Section 22, Township 4 North, Range 67 West, 6th P.M., hereinafter referred to as 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.

B. KPK is the assignee of certain oil and gas leasehold rights 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.

C. KPK currently has producing oil and gas wells, and other oil and gas production equipment on the Property including, but not limited to pipelines, lease roads and batteries.

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 compatible with Surface Owner's rights 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:

1. **Oil and Gas Operations Area ("OGOA") and Production Site Locations.**

a. **OGOAs and Production Site Locations.**

i. KPK is now operating producing oil and gas wells at the following surface locations shown on **Exhibit A**:

McCarty #2 located in the SW/4SE/4 Section 21, Township 4 North, Range 67 West
McCarty #1 located in the C-SW/4 Section 22, Township 4 North, Range 67 West

ii. KPK intends to drill the following new oil and gas wells, as vertical wells, from the surface locations indicated on **Exhibit A**:

McCarty #10-21 located in the NW/4SE/4 Section 21, Township 4 North, Range 67 West
McCarty #20-21 located in the center spot SE/4 Section 21, Township 4 North, Range 67 West
McCarty #11-22 located in the NE/4 SW/4 Section 22, Township 4 North, Range 67 West
McCarty #14-22 located in the SE/4SW/4 Section 22, Township 4 North, Range 67 West

Sites surrounding the wells described in 1(a)(i) and (ii) above, together with the existing production sites in the SW/4 of Section 22, all as shown on Exhibit A, shall be referred to as the Oil and Gas Operation Areas ("OGOAs").

iii. KPK may also drill the following new oil and gas wells, as directional wells, from surface locations in the OGOAs and as near as reasonably practicable, but within 50 feet, of one of the wells described in (i) or (ii) above and as indicated on **Exhibit A** (the "Directional Wells"), but to bottom-hole locations described below:

McCarty #20-21-9 with a bottom hole location in the NE/4SE/4 Section 21, Township 4 North, Range 67 West

McCarty #20-21-16 with a bottom hole location in the SE/4SE/4 Section 21, Township 4 North, Range 67 West

McCarty #19-22-12 with a bottom hole location in the NW/4SW/4 Section 22, Township 4 North, Range 67 West

McCarty #19-22-13 with a bottom hole location in the SW/4SW/4 Section 22, Township 4 North, Range 67 West

iv. KPK may also drill the following new oil and gas wells ("Infill Wells"), as directional wells, from surface locations in the OGOAs and as near as reasonably practicable, but within 50-feet, of the wells described in (i), (ii) or (iii) above, as infill or boundary wells pursuant to COGCC Rule 318A(e), and to bottom-hole locations described below:

McCarty #15-21-37 located in the SW/4SE/4 Section 21, Township 4 North, Range 67 West

McCarty #10-21-24 located in the NW/4SE/4 Section 21, Township 4 North, Range 67 West

McCarty #10-21-23 located in the NW/4SE/4 Section 21, Township 4 North, Range 67 West

McCarty #11-22-22 located in the NE/4SW/4 Section 22, Township 4 North, Range 67 West

McCarty #14-22-23 located in the SE/4SW/4 Section 22, Township 4 North, Range 67 West

McCarty #14-22-35 located in the SE/4SW/4 Section 22, Township 4 North, Range 67 West

b. OGOAs. The parties agree and understand that KPK requires a certain amount of surface area to safely drill, deepen workover, operate, and maintain each well. The parties agree that without the prior approval of KPK, which shall not be unreasonably withheld, such area shall be without surface and subsurface improvements including but not limited to property lines, fences and roadways, which is defined by a circle with the existing and planned wellbores at the center and extending to a radius of 150 feet from the wellbores, all 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.

c. Requirements for Battery and Other Facility Locations. There are two existing Battery Locations on the Property and one to be built in accordance with this Agreement, as shown on **Exhibit A**. Except for the noted exceptions on **Exhibit A**, if any, and as otherwise provided herein, no residences or occupied buildings will be permitted within 200 feet of a Battery Location. Surface Owner shall have the right to request relocation of any Battery Location 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 and such relocation reasonably permits KPK to produce its wells.

d. Reworking of Wells. KPK shall continue to have the right to exercise its oil and gas leasehold rights to produce, deepen, recomplete, and re-drill on the OGOAs, provided any additional well drilled on the OGOA shall be drilled in accordance with the provisions and limitations of this Agreement, other jurisdictional agencies and local government rules and regulations, and the applicable rules of the Colorado Oil and Gas Conservation Commission.

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, Access Roads and Pipeline 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, 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. During periods of drilling, KPK shall have the right to use a reasonable amount of surface for drilling operations, not to exceed a total of three (3) acres per OGOA, at the location of the OGOA, provided Surface Owner has not begun surface development in the immediate area and that KPK repairs and restores the surface in accordance with this paragraph.

g. Directional Drilling Costs. KPK shall provide Surface Owner with at least thirty (30) days advance written notice of its intention to drill any and each of the Directional Wells identified in subparagraph 2(a)(iii) above. Each such notice given by KPK shall include a survey plat showing the Well's proposed surface and down-hole locations and a proposed spud date. Surface Owner has separately agreed to pay certain of KPK's costs associated with the directional drilling, in accordance with the provisions of an unrecorded letter agreement between the parties of even date with this Agreement (the "Letter Agreement"). To the extent of any conflict between this Agreement and the Letter Agreement, the terms of the Letter Agreement shall control.

2. Access to OGOAs and Batteries.

a. Present Lease Roads. The parties understand and agree that KPK now has Access Roads across the Property for access to the OGOAs ("Access Roads"). Upon development, Surface Owner may relocate a portion of or all of the Access Roads in accordance with this Agreement and in those locations shown on **Exhibit A**. At such time as roads are built by Surface Owner which enables KPK to access the OGOAs, the existing access roads will be deemed abandoned without further action by either party. 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 OGOAs. Except as provided in paragraph 2a above, Access Roads to the OGOAs 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 sole request of the Surface Owner.

c. Improved Access Roads. Surface Owner may grant KPK's reasonable alternative access which is, in part or in whole, over paved or improved roads or streets already built or to be built on the Property, which shall replace access routes shown on Exhibit A. If such Access Roads 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 104,000-pounds or 26,000 pound per axle. If access is from such paved or improved roads, then a curb cut at least 30 feet in length shall replace any curbing at the

place KPK is required to exit any such roads to the OGOA. 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 access.

d. Unimproved Access Roads. Subject to subsection (c) above, and the other provisions of this Agreement, the existing unimproved Access Roads shall be the routes by which KPK accesses its OGOA. Upon notice to KPK and mutual agreement, which shall not be unreasonably withheld, the Surface Owner may relocate the unimproved Access Roads; provided the expense of the relocation is paid by the Surface Owner, the road is not less wide and has the same base quality as the road to be replaced, and being straight enough and level enough that KPK is able to use said Access Roads to move its trucks and equipment over said road including, but not limited to, workover rigs or drilling rigs.

e. Access for KPK. Regardless of the type of Access Roads to be used or its stage of construction, the Surface Owner will always permit KPK reasonably unobstructed access to the OGOA. Such Access Roads shall always be at least 30 feet in width and shall meet the requirements set forth in paragraph 2d.

3. Flow and Gathering Lines.

a. Flow and Gathering Line Easements for Existing Wells. KPK now has subsurface Lines ("Pipeline Easements") on the Property that carry oil, gas and other hydrocarbons from the wellheads to the Battery Locations and then on to other pipelines, at the locations shown on **Exhibit A**. New pipelines constructed by KPK on the Property shall also be at the approximate locations shown on **Exhibit A**. Prior to constructing any such new pipelines, KPK and Surface Owner shall meet on the Property, at a mutually agreeable time and date, to determine the exact location of such new pipelines. Pipeline Easements may be relocated or may be changed by mutual agreement of the parties from those locations shown on **Exhibit A**, 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; 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. 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 a relocation of the Line and 25 feet in width for all operations, maintenance and transportation activities of the relocated Line(s).

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, irrigation piping 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 cross above or run parallel above KPK's Lines, except as noted in c. below. Subsurface utilities shall be not less than 18 inches below 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 and directly above KPK's Lines.

c. Horizontal Requirements within KPK Easements. After written notice of at least fifteen (15) days, Surface Owner may place a utility within the Line Easement 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 lines.

d. Surface Owner agrees that it will not place any permanent ignition source within 75 feet of any pipeline.

e. OGOAs and Easements. The provisions of subparagraphs b and c of this paragraph shall not be applicable to the 150-foot area around a wellhead.

4. Easements.

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

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

c. Maintenance of Easements and OGOA. KPK agrees to keep all Pipeline Easements and the OGOAs 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 OGOAs and to irrigate, mow or harvest the same, provided, however, any irrigation system is not located within the OGOA. Should Surface Owner irrigate within the OGOA through a property placed irrigation system outside the Easements or OGOA, Surface Owner agrees that upon fifteen (15) days prior notice by KPK, Surface Owner will cease irrigation of the OGOA for a period of time designated by KPK, prior to and during which expects to conduct surface operations. Additionally, if Surface Owner elects to plant, mow and/or harvest said Easements and OGOAs, 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. 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. Shut In of KPK's Wells. KPK represents that the Lines now installed by KPK, or which may in the future be installed by KPK, are or will be made of fiberglass and/or metal and the running of Surface Owner's earth moving equipment over said pipelines tends to 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. KPK may, for safety purposes, shut in any Line(s) that has had heavy earth moving equipment run over it. If Surface Owner begins using heavy earth-grading equipment on the Property, Surface Owner shall also 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 twenty (20) days before Surface Owner begins any activities on the Property, which will utilize any heavy equipment or other equipment which may damage KPK's Line(s), but excluding the use of normal farming and irrigation equipment.

b. Payment. During the period of any shut in requested by surface owner, 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	\$150
30 days or more	\$200

c. Surface Owner will use all reasonable efforts to permit KPK to restore production at the earliest time after suspension of production under this paragraph.

6. **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.

7. **Non-Interference.** 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.

8. **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.

9. **Recording of Easements and Subdivision Plats.**

a. **Subdivision Plat.** All Pipeline Easements and OGOAs shall be identified on the subdivision plats and the plats shall include restrictions provided for in this Agreement. The subdivision plats shall be recorded in the Office of the Clerk and Recorder for Weld County. 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 any change to the subdivision plats that might effect KPK rights under this Agreement shall not be considered until such time as KPK has been given reasonable notice. KPK and Surface Owner agree not to request any zoning approval or exception that would conflict with the provisions of this Agreement, and each shall give the other prompt notice of any such request. Each party also agrees not to oppose any zoning change or approval which the other party may request which is not in direct conflict with this Agreement.

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.

10. **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.

11. **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. 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 a reasonable time, not to exceed thirty (30) days, commence the relocation, install and/or construct the same in a good and workmanlike manner, and diligently pursue such relocation work to completion. Upon completion of the relocation, or 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 thirty (30) 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.

12. **Completion of Changes.** KPK usually utilizes third party contractors to complete the work required by paragraph 11 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 sole discretion, and provided further that any third party contractor must be approved in advance by KPK. 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 thirty (30) days of submission of an invoice for the same. KPK shall ensure that it, and its third party contractors, shall have in effect, with companies authorized to do business in Colorado, general liability insurance covering their operations under this Agreement, in an amount of not less than \$2,000,000 single limit. KPK shall provide Surface Owner with certificates of such insurance prior to entry on Surface Owner's property. .

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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:

Sunmarke Investments, LLC
5105 DTC Parkway, Suite 240
Greenwood Village, CO 80111
(720) 482-7707
(720) 482-7717 (fax)

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.

19. **Compliance with Common Law and Statutory and Regulatory Requirements.** Each party expressly acknowledges that this Agreement satisfies the obligations and requirements of the parties pursuant to COGCC rules and regulations, and Colorado statutes and caselaw to consult in good faith with one another regarding existing and proposed oil and gas operations on the Property. Each party further expressly acknowledges that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligations of the each party to accommodate the use of the surface of the Property by such party, existing and future, and each party 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.

20. **Entire Agreement.** This Agreement, together with the Letter Agreement described in paragraph 1(g) above, 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.

21. **Term.** 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 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.

22. **Surface Damages.**

a. Prior to entering the Property with heavy equipment to prepare well pads for the first wells to be drilled from surface locations within the NW/4SE/4 and the center of Section 21 above during a single drilling season, as defined in subsection c below, KPK shall pay Surface Owner the sum of \$5,000 as surface damages for each such well site drilled, and its related road and pipeline access. If KPK should elect not to drill all wells to be located in such well pads in any one drilling season and instead KPK should elect to drill a well or wells on such pads in a successive drilling seasons, then KPK shall pay Owner an additional \$5,000 for each successive drilling season in which it recreates the pad to drill another well. 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. 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 the owner(s) of such planted or growing crops, or such real or personal property, within thirty (30) days, based on the net market value of crops and reasonable and actual repair costs.

c. KPK shall not perform any drilling, deepening, fracing, refracing or laying of pipelines in irrigated areas of the Property between April 1 and October 1 of any calendar year, and such activities shall be completed and 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.

23. **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.

24. **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 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 (Indemnified Parties) 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 and it's 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. KPK shall have no obligation to Indemnified Parties for their own acts.

25. **Exclusion From Indemnities.** The indemnities of the parties herein shall not cover or include any amounts which the Indemnified Parties is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

26. **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 22 or 23 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

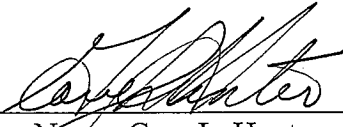
receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

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.

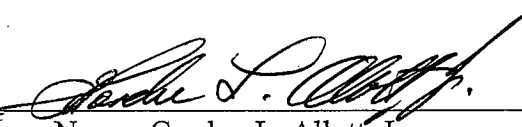
SUNMARKE INVESTMENTS, LLC

K. P. KAUFFMAN COMPANY, INC.

By


Name: Gary L. Hunter
Title: Manager

By


Name: Gordon L. Allott, Jr.
Title: Executive Vice President

ACKNOWLEDGMENTS

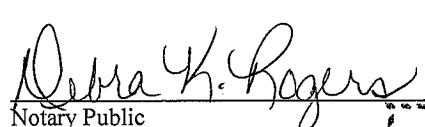
STATE OF COLORADO)

COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 30th day of October, 2007, by Gordon L. Allott, Jr., as Executive Vice President of K. P. Kauffman Company, Inc.

Witness my hand and official seal.

My commission expires: 12/07/09


Notary Public

DEBRA K. ROGERS
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 12/07/09

STATE OF COLORADO)

COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 27 day of ^{November} ~~October~~, 2007, by Gary L. Hunter, as Manager of SunMarke Investments, LLC.

Witness my hand and official seal.

My commission expires: 9/27/2011


Notary Public

SCOTT SCHUBERT
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 09/27/2011

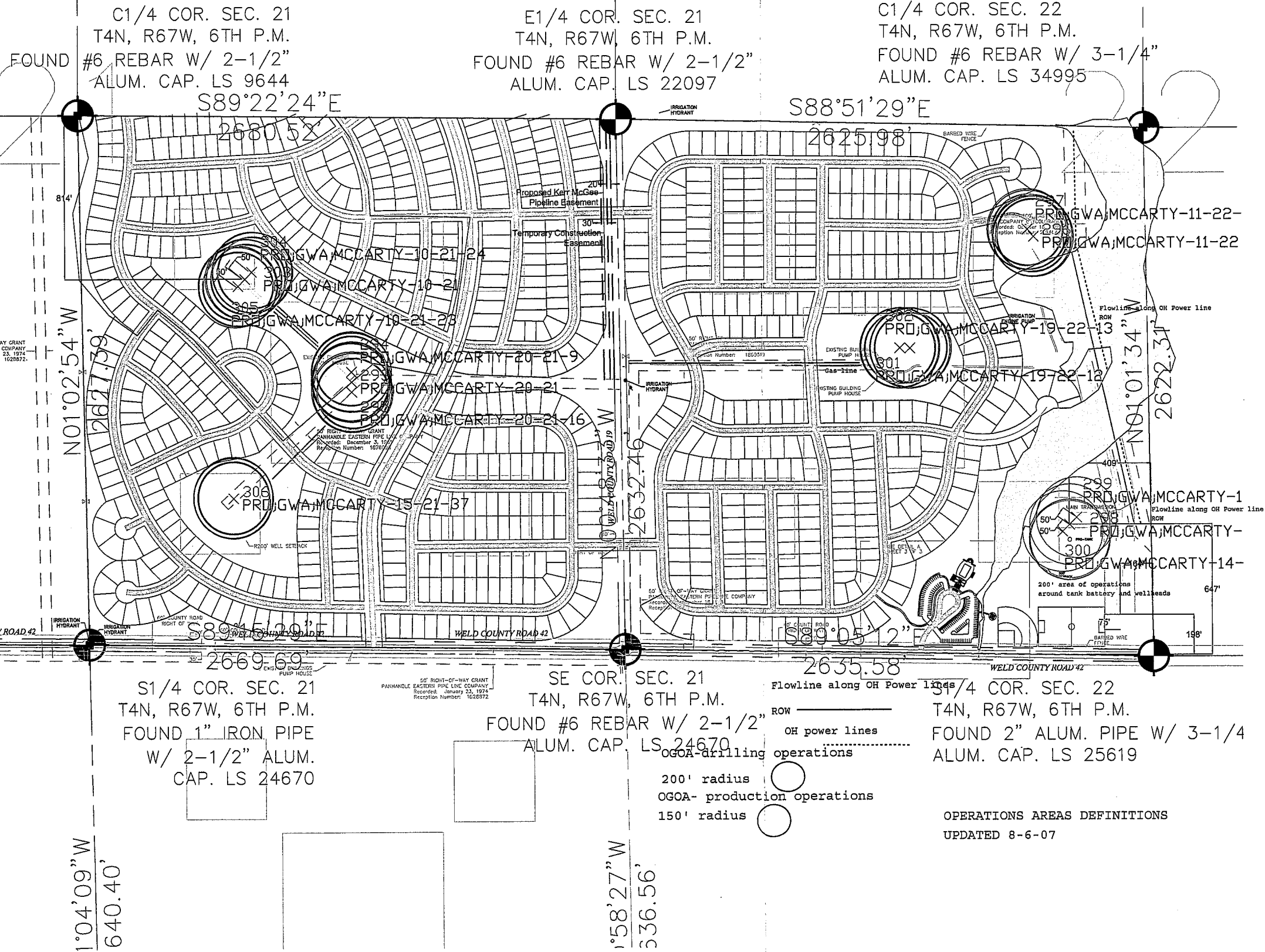
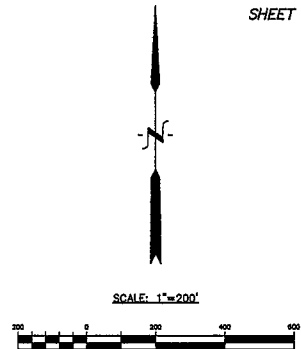


EXHIBIT A

PROPOSED
MCCARTY
WELL
LOCATIONS

LOCATED IN THE
SE1/4 OF SECTION
21 AND THE SW1/4
OF SECTION 22,
T4N, R67W OF THE
6TH P.M., COUNTY
OF WELD, STATE OF
COLORADO.
FOR: KP KAUFFMAN

OPERATIONS AREAS DEFINITIONS
UPDATED 8-6-07

		ENGINEERING
Civil Arts drexel group, Inc. • 1180 Lathrop Circle, Suite A • Longmont, CO 80501 • (303) 662-1111		PLANNING
		SURVEYING
DATE: JULY 16, 2007	DRAWN BY: PLB	JOB NO: 597-1
SCALE: 1"=200'	CHECKED BY:	DRAWING NO: 597-0-STK.DWG
REVISIONS - DATE/BY:	REVISIONS - DATE/BY:	REVISIONS - DATE/BY: