

## SURFACE USE AND EASEMENT AGREEMENT

This AGREEMENT, executed to be effective this 30<sup>th</sup> day of April, 2007, by and between Davis Real Estate Limited Partnership, LTD, ("Grantor") and Kinder Morgan CO2 Company, LP, ("Grantee")

WITNESSETH.

In consideration of the sum of Ten and More Dollars (\$10.00+), Grantor and Grantee agree as follows:

Grantor agrees to and hereby provides to Grantee the right, privilege, and easement to construct, use, create, relocate, or modify a road or roads not to exceed a width of fifteen (15) feet on each side of center, of the usual (graveled) or customary character, and includes the right, privilege, and easement to construct, operate, maintain, protect, inspect, test repair, alter, replace, move, remove, change the size of and abandon in place a pipeline or pipelines, and flow lines, and includes the right, privilege, and easement to drill, test, complete, re-complete, rework, re-enter, pump, operate, construct and maintain a well, well location, associated production facilities, and pipelines located within the following-described property situated in Dolores County, Colorado, to-wit

Township 40 North, Range 18 West, N.M P M  
Section 13: Lots I, M, N, O, and P  
(the "Property")

1 Grantor and Grantee agree that the premises are to be utilized by the Grantee for the purpose of constructing and utilizing an access road to two (2) CO2 well sites, one (1) located on Grantor's Property known as the Doe Canyon #8 Well, and one (1) located on that part of Lot D, Tract 77, lying in Section 13, Township 40 North, Range 18 West, N M P.M., associated with a well to be known as the Doe Canyon #7 Well

2. Grantor and Grantee further agree that the payment is for all damages to the Property, including, but not limited to, damages to growing crops, trees, sod, damage to croplands, Conservation Reserve Program reimbursements or losses, construction of access road and preparation and use of the well location area, preparation and use of reserve pits, and construction, installation, and maintenance of production equipment and production facilities, such as pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil, gas and other materials, and rights of ingress and egress to and from, and at all times over and along and upon the Property for the purposes herein expressed.

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3. This Agreement shall have a term co-extensive with the life of the well to which access is hereby authorized and so long thereafter as needed. Any abandoned well will be plugged and abandoned according to the procedures set by the Colorado Oil & Gas Commission.

4. Grantee shall maintain the road(s) in a condition comparable to other existing trails and roads, and install culverts, cattle guards, and/or gates where appropriate and mutually agreed upon, provided, however, that future changes in the use of the premises by Grantor which require the addition or modification of gates, cattle guards, culverts or similar facilities, shall be the sole responsibility of the Grantor. Grantee agrees to a yearly weed control to keep well pads and roads clear of all types of unwanted weeds

5. Grantor specifically agrees that it shall exercise its privileges hereunder at its own risk. Grantor further releases Grantee from and shall indemnify and hold Grantee harmless from all liability for damages, costs, losses, and expenses, including attorney's fees, resulting from, arising out of or in any way connected with (1) Grantor's use hereunder; (2) the existence of this Agreement and all rights and obligations arising hereunder, and (3) any claim by and any claim relating to acts or omissions of Grantor's agents, employees, guests, invitees, contractors or licensees while utilizing said Property, whether or not Grantee was or is claimed to be passively, concurrently or actively negligent, and regardless of whether liability without fault is imposed or sought to be imposed on Grantee, except where such loss, damage, injury, liability or claim is the result of the sole active negligence or willful misconduct of Grantee, and is not contributed to by any act of, or by any omission to perform some duty imposed by law of contract on, Grantor, its contractor, agents or employees

6. This agreement is subject to an unrecorded Letter Agreement of even date by and between the parties hereto relative to the above-described real estate. No variations, modifications or changes shall be binding upon either party unless set forth in a document duly executed by both parties. Further, this Agreement shall not be interpreted or construed to be an adaptation of any other agreement between the parties hereto, or their predecessors, and nothing contained herein shall in any way be construed to mean the adoption, ratification or waiver of any other agreement between the parties hereto.

7. This Agreement shall be construed, interpreted and governed by the laws of the state where the property is located. This Agreement is binding upon the heirs, successors and assigns of the parties hereto and the privilege of assigning in whole or in part is expressly allowed

8. Grantor agrees that the Grantee shall have the right at any time to redeem for Grantors, by payment, any mortgage, taxes or other liens on the above-described Property in the event of default of payment by the Grantor. The Grantee shall then be subrogated to the rights of the holder thereof and the Grantor agrees that any such payments made by the Grantee for the Grantor may, at Grantee's option, be deducted from any amount of money, which becomes due or payable to the Grantor pursuant to the terms of this Agreement

