

## SURFACE USE AGREEMENT

**THIS SURFACE USE AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **K.P. KAUFFMAN COMPANY, INC.** and/or its assignee ("KPK"), a California corporation with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202, and **HERBERT B. BERNHARDT**, with an address of 21564 Weld County Road 25, Milliken, Colorado 80543 ("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 use and 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 66 West, 6<sup>th</sup> P.M.  
Section 18: SW/4SW/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 Property.

C. KPK is currently producing one (1) oil and gas well on the Property and has other oil and gas production equipment on the Property including, but not limited to pipelines, a tank battery, and lease roads.

D. KPK may have the right to drill additional wells on the Property in the future.

E. The Surface Owner desires to use and 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 and KPK's desire is to minimize any surface damage to the Property and to reach an agreement regarding such surface damage. 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. 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 Areas and Production Site Locations.

a. Well Locations. KPK is now operating and producing the following named oil and gas well on the Property, as further depicted on **Exhibit A** hereto:

**Montgomery #1-27: SW/4SW/4**

b. Tank Battery Locations. KPK owns and operates an oil and gas tank battery located on 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, as depicted on **Exhibit A** hereto.

c. Permanent Oil and Gas Operations Areas. The Parties agree and understand that KPK requires a certain amount of surface area to safely drill, deepen, workover, operate, and maintain each well or to drill a twinned vertical or directional well offsetting a plugged and abandoned well, referenced herein as the Oil and Gas Operations Area ("OGO"). The Parties agree that each OGO shall include an area without surface improvements including, but not limited to, surface property lines, fences and roadways, which is defined by a circle with the existing wellbore or a proposed well to be drilled at the center and extending to a radius of 150 feet from the wellbore, as shown on **Exhibit A** hereto. Other oil and gas operators with oil and gas lease rights to drill or operate on the Property may occupy portions of the OGAs. Nothing in this provision is intended to imply third party beneficiary status to other oil and gas operators.

d. Permanent Battery Location. The Parties agree that the Battery Location shall be an area with dimension of not less than 150 feet by 50 feet. 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 200 feet from the center of the Battery Location. KPK reserves the right to expand its facilities within the agreed upon confines of the OGAs and Battery Location as needed to accommodate future wells.

e. Future Horizontal Oil and Gas Operations Area. The Parties agree and acknowledge that, as of the date of this Agreement, KPK has the right to drill one or more future horizontal well(s) on the existing OGO as depicted herein. The Parties agree that the area defined as the "Temporary Horizontal OGO" on **Exhibit A** hereto shall be the location of operations relating to the preparation, drilling and completion of horizontal wells and for the temporary location of production facilities for horizontal wells. Except for portions of flowlines and pipeline easements, KPK may not locate wells or permanent production facilities within the Temporary Horizontal OGO without the permission and consent of Surface Owner, but may use the Temporary Horizontal OGO only for temporary uses related to the drilling, completion and maintenance (including refracturing operations) of horizontal wells and the temporary location of production facilities. Surface Owner may use the Temporary Horizontal OGO for grazing, agricultural and recreational uses ("Allowed Uses") during those times that the area is not being used by KPK for oil and gas operations and the location of temporary facilities; provided, however, KPK shall in all events and at all times have priority in the use of the

Temporary Horizontal OGOA, and Surface Owner shall discontinue all Allowed Uses upon five (5) days notice from KPK for the periods of time described in the notice. KPK shall in no event be liable for damages caused in whole or in part by its oil and gas operations with respect to the Allowed Uses. The Parties agree that the area defined as the "Permanent Horizontal OGOA" on **Exhibit A** hereto shall be the permanent oil and gas operations area for all future horizontal wells after drilling and completion operations are complete. The Permanent Horizontal OGOA shall be the location of the future horizontal well or wells and may also be used for the location of tanks, separators, dehydrators, compressors and all other associated oil and gas drilling and production equipment and facilities, flowlines and portions of pipeline easements and for all related oil and gas operations for the horizontal location(s). The Permanent Horizontal OGOA is for the exclusive use of KPK for its oil and gas operations and the location of horizontal wells and facilities.

2. Payment to Owner. Prior to commencement of drilling operations on the Property, KPK shall pay Surface Owner an amount described further in a separate Letter Agreement between the Parties. Such payment shall constitute payment in full by KPK and its affiliates for all normal damages, including, but not limited to, damages to growing crops, associated with the drilling, construction, completion, recompletion, reworking, re-entry, equipping production, tank battery location, operation and maintenance of the Wells. Normal damages include, but are not limited to, reasonable and customary ingress, egress, rights-of-way, construction of all access roads, preparation and use of the drillsite area, preparation and use of reserve pits, and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil and/or gas therefrom. The foregoing may be related to directional, horizontal or lateral wellbores unless otherwise specifically provided herein.

- A. If by reason of KPK's operations, there is damage to personal property located on the Lands or there is damage to the surface of the Lands caused by the negligence of KPK or an unreasonable use of the surface of the Lands by KPK that is not associated with reasonable and normal drilling, completion, recompletion, reworking, re-entry, production, maintenance and operation of the Wells, such as damage to structures, fences, culverts and cement ditches, such damage shall be repaired or replaced by KPK or KPK shall promptly pay Surface Owner for such damage.
- B. Surface Owner warrants that it is the owner of the entire surface subject to this Agreement and that no one who is not a party to this Agreement is entitled to object to this Agreement or entitled to payment for normal damage to the surface of the Lands for which payment has been made pursuant to paragraph numbered 1 above. Surface Owner agrees to notify any surface tenant that may be affected by KPK's operations on the Property and Surface Owner may allocate the payments made hereunder



with such surface tenant as they mutually determine between themselves and KPK shall have no liability therefore.

3. Waiver of Setback Requirement.

a. Surface Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and building units, high occupancy building units, designated outside activity areas, public roads, production facilities, and surface property lines, among other things, as may be amended in the future. In order to give full effect to the purposes of this Agreement, Surface Owner hereby waives its right to object to the location of oil and gas wells and facilities on the basis of setback requirements in the rules and regulations of the COGCC, as those rules and regulations may be amended or superseded from time to time, or of any local jurisdiction. For the operations contemplated by this Agreement, Surface Owner hereby specifically waives the high density setback distances in the COGCC rules and regulations and any applicable local jurisdiction.

b. Surface Owner further and similarly waives its right to object to any other state or local setback requirements, notice and consultation requirements, or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of the KPK to explore for and produce the oil and gas in accordance with this Agreement. KPK may cite the waiver in this paragraph 2 in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction over oil and gas operations. Surface Owner agrees not to object to the use of the surface within the Oil and Gas Operations Areas, Production Facility Location and pipeline easements provided for herein so long as the proposed use is consistent with this Agreement. Surface Owner will provide KPK with any and all written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

c. Surface Owner grants consent to locate the horizontal wells greater than 50 feet from and existing well pursuant to COGCC Rule 318A.(c.). Surface Owner grants consent to locate the proposed horizontal wells outside of the GWA windows as defined in COGCC Rule 318A(a). Additionally, Surface Owner shall grant any necessary property line waivers required under COGCC rule 603.

4. Consultation. If requested by Surface Owner, prior to heavy equipment operations on each wellsite, KPK's representative will meet and consult with the Surface Owner or Surface Owner's representative as to the location of the wellsite, access roads, flowlines, tank batteries, and other associated production facilities.

5. Waiver of Thirty Day Notice. Surface Owner hereby waives the minimum thirty-day written notice requirement described in the notice Letter provided by KPK to the Surface Owner when it initially gave notice of its intent to drill on Surface Owner's property.

30-day Notice  
Waiver

6. 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 for access to each OGOA and Battery Location ("Lease Roads"). 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. All Access or Lease Roads off of city streets, or located within the OGOA or Battery Location, will prohibit use by the Public.

c. Unimproved Lease Roads. If the Parties agree not to use paved or improved roads or streets, then the Surface Owner shall dedicate to KPK or other oil and gas Lessees, for their exclusive 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. Whether a proposed Lease Road is acceptable for KPK's uses shall be in the sole discretion of KPK.

d. Access for KPK. Regardless of the type of Access to be used or its stage of construction, the Surface Owner will always provide KPK with unobstructed Access to KPK's OGOAs and Battery Location.

7. Flow and Gathering Lines.

a. Flow and Gathering Line Easements for Existing 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 to the Battery Location and then on to other pipelines. Surface Owner shall grant a recorded easement for KPK's use of an area of 50 feet in width during construction of the Lines and 25 feet in width for all operations, maintenance and transportation activities of the Lines (the "Line Easement").

b. 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.

c. 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 Surface Owner, but in no event shall such utility be placed within 10 feet of KPK's Lines.

d. 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.

e. OGOAs and Easements. The provisions of subparagraphs b and c of this paragraph shall not be applicable to the exclusive 150-foot area around a wellhead, with the exception of oil and gas operators with rights to occupy portions of the OGOA(s). Nothing in this provision shall be construed to imply third party beneficiary status to other oil and gas operators.

8. 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.

9. Easements.

a. Recording of Easement. Surface Owner shall deliver to KPK an easement in the form of **Exhibit B** for each Line Easement, Lease Road, Drilling Site, Undrilled Location, Work Area, and Battery Location, except for paved roads and streets. Said easement shall be recorded by Surface Owner with the County Clerk and Recorder (the "Easement").



b. Description of Easement. The Easement 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. The Easement description shall be recorded with the Clerk and Recorder of the County in which the Property is located.

c. Form of Easement. The Easement shall provide that no surface property line shall be platted within the Easement. The Easement shall further provide that the Surface Owner, or any other entity or person, shall not, except as provided herein, locate or allow anything to be constructed on the surface or underneath the surface of the Easement including, but not limited to, roads, fences, pipes, parks and walkways.

d. Maintenance of Easements and OGOAs. KPK agrees to keep all Easements and OGOAs free and clear of trash and weeds 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 OGOAs 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 OGOAs, 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.

10. Recording of Subdivision Plat and Agreement.

a. Recording of this Agreement. A copy or memorandum 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.

11. Shut in of KPK's Wells. The parties recognize that the Lines now installed by KPK may be made of fiberglass and/or metal and the running of Surface Owner's earth moving equipment over said Lines 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 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, KPK will shut in its 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 twenty (20) 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

Surface Owner shall also pay KPK any costs to replace Lines that are damaged by the surface construction activities of Surface Owner.

c. Changes in Price. Should the current market price for oil reach or exceed \$100.00 per barrel, the Parties agree to re-negotiate the payment provisions in subparagraph b above to reflect the current market price.

12. Completion of Changes. The Parties agree and understand that it has been KPK's experience that third party contractors can complete the work required by 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.

13. 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, recomple, 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.

14. Notice of Oil and Gas Operations.

a. Home Owner Notice. Surface Owner shall furnish all buyers of the Property from Surface Owner and current tenant farmers and other surface lessees with a plat or map showing the Oil and Gas Operations Areas, Tank Battery Location, Pipeline Easements and access routes. In addition, Surface Owner shall provide notice to all builders, homeowners, other buyers of the Property from Surface Owner, current tenant farmers and other lessees that:

- i. there will be ongoing oil and gas operations and production within the Oil and Gas Operations Areas, Tank Battery Location and Pipeline Easements on the surface of the Property;
- ii. there are likely to be additional Wells drilled within the Oil and Gas Operations Areas on the Property and further oil and gas operations and production from the



Oil and Gas Operations Areas and within the Tank Battery Location that affect the surface of the Property;

- iii. heavy equipment may be used by KPK from time to time for oil and gas operations, and such operations may be conducted on a 24-hour basis;
- iv. future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming obligations undertaken by Surface Owner pursuant to this Agreement; and
- v. buyers of individual lots or homes, as successors in interest to Surface Owner, will be subject to the waivers, consents and covenants contained this Agreement prohibiting the location of any building, structure or other improvement within the Oil and Gas Operations Areas, Tank Battery Location and Pipeline Easements and waiving objections to the setback rules of the COGCC and local jurisdictions, among other matters.

15. 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.

16. 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.

17. 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.

18. Covenants Run with the Land. This Agreement, and all of the covenants in it, shall be binding upon the personal representatives, heirs, successors and assigns of all parties hereto and benefits of this agreement shall inure to their personal representatives, heirs, successors, and assigns.

19. 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.

20. 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.

21. 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.

22. 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:

Herbert B. Bernhardt  
21564 Weld County Road 25  
Milliken, Colorado 80543  
(970)587-4259 (phone)

To KPK:

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

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. Counterpart Signatures. This Agreement may be executed in any number of counterparts, it being understood that all counterpart copies will constitute but one agreement.

25. Prior Agreements. This Agreement replaces and supersedes all prior surface use and/or surface damage agreements covering the Property described herein.

**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

**HERBERT B. BERNHARDT**

By

  
\_\_\_\_\_  
Herbert B. Bernhardt

## ACKNOWLEDGEMENTS

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF DENVER                    )

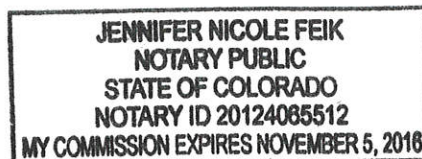
The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of June, 2013, by Kevin P. Kauffman as Chairman and CEO of K. P. Kauffman Company, Inc.

Witness my hand and official seal.

My commission expires: November 5, 2016

Jennifer Nicole Feik  
Notary Public

STATE OF Colorado                    )  
  ) ss.  
COUNTY OF Weld                    )

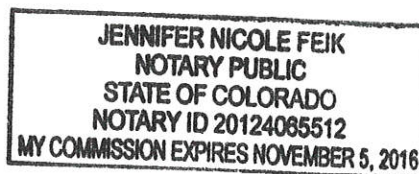


The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of June, 2013, by Herbert B. Bernhardt.

Witness my hand and official seal.

My commission expires: November 5, 2016

Jennifer Nicole Feik  
Notary Public





## EXHIBIT B

To Surface Use Agreement dated \_\_\_\_\_, 2013, by and between  
K. P. Kauffman Company, Inc., and Herbert B. Bernhardt.

### LINE EASEMENT AGREEMENT

THIS LINE EASEMENT AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **K.P. KAUFFMAN COMPANY, INC.** ("KPK"), with an address of 1675 Broadway, Suite 2800, Denver, Colorado 80202 and **HERBERT B. BERNHARDT**, with an address of 21564 Weld County Road 25, Milliken, Colorado 80543 ("Surface Owner"). KPK and Surface Owner may collectively herein be referred to as the "Parties".

WHEREAS, the Parties have entered into a Surface Use Agreement dated \_\_\_\_\_, 2013, and recorded \_\_\_\_\_ at Reception No. \_\_\_\_\_ among the records of the Weld County Clerk and Recorder (the "Surface Use Agreement") covering the following described lands:

Township 4 North, Range 66 West, 6<sup>th</sup> P.M.  
Section 18: SW/4SW/4  
Weld County, Colorado

WHEREAS, the Surface Use Agreement provides that upon request the 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. Surface Owner hereby grants a perpetual, non-exclusive easement 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 25 feet in width for all operations, maintenance and transportation activities of the line(s), and during the period of construction or relocation of any lines, the easement shall be 50 feet in width.
2. Line locations may be changed by mutual agreement of the Parties, provided, however, all costs and expenses of the relocation shall be borne by the Surface Owner if such relocation is at the request of the Surface Owner. KPK shall not unreasonably withhold its consent. 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.
3. 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 an angle of not less than 60° and not more than 90° from KPK's lines, except as noted in paragraph 5 below. KPK requires 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 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 above KPK's lines.

4. 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 feet of KPK's flow or gathering line.

5. In the event that Surface Owner's proposed development would place KPK's line(s) within 75 feet of an ignition source including, but not limited to, houses, buildings, or structures capable of being an ignition source, then said line(s) shall be encased at the 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 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.

6. KPK agrees to keep all easements and the OGOA free and clear of trash in accordance with the rules and regulations of the Colorado Oil and Gas Conservation Commission (COGCC). Surface Owner reserves the right, but not the obligation, to plant dry land grasses on all easements and OGOAs 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 and OGOAs, it shall do so only in a manner which does not violate the terms of KPK's easement or 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 Surface Owner's performance under this paragraph.

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

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

9. This Agreement and all of its covenants in it shall be covenants running with the land and shall be binding on all parties who succeed to any interest which Surface Owner has in the Property.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

**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

**HERBERT B. BERNHARDT**

By

  
\_\_\_\_\_  
Herbert B. Bernhardt

**ACKNOWLEDGEMENTS**

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF DENVER            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Kevin P. Kauffman, as Chairman 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 \_\_\_\_\_, 2013 by Herbert B. Bernhardt.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public