

## FIRST AMENDMENT TO SURFACE DAMAGE AGREEMENT

This **FIRST AMENDMENT TO SURFACE DAMAGE AGREEMENT** (“Amendment”) is made and entered into this 26<sup>th</sup> day of July, 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, CO 80202, and **WARREN STROH** and/or its assignee (“Surface Owner”), with an address of 19463 WCR #19, Johnstown, CO 80534. KPK and Surface Owner are collectively referred to herein 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 28: SE/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 Damage Agreement dated August 15, 2007, and a Memorandum of the Surface Damage Agreement was recorded October 22, 2007, at reception number 3512663 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 and defines specific names, locations and setbacks for existing and future oil and gas wells and production facilities.

D. The purpose of this Amendment is to provide KPK with temporary horizontal oil and gas operations area and a permanent horizontal oil and gas operations area for future horizontal drilling operations in a manner compatible with the development of the surface estate.

NOW, THEREFORE, in consideration of the covenants and mutual promises set forth in this Amendment and the SUA, including 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. Future Horizontal Oil and Gas Operations Area. The Parties agree and acknowledge that, as of the date of this Amendment, KPK has the right to drill one or more future horizontal well(s), but only those drilled to develop oil and gas under the Property and lands pooled therewith, on the oil and gas operations areas (“OGOAs”) as depicted on Exhibit A hereto. The Parties agree that the area defined as the “Temporary Horizontal OGOA” 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 as shown on Exhibit A, KPK may not locate wells or permanent production facilities within the Temporary Horizontal OGOA without the permission and written consent of Surface Owner, but may use the Temporary Horizontal OGOA only for temporary uses related to the drilling, completion and maintenance (including refracturing operations) of horizontal wells and the temporary location of production facilities.

3. Surface Owner's Use of Temporary Horizontal OGOA. Surface Owner may use the Temporary Horizontal OGOA for grazing, agricultural, recreational uses, and the parking of vehicles and equipment ("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.

4. Permanent Horizontal OGOA. 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, directional, and vertical wells after drilling and completion operations are complete. The Permanent Horizontal OGOA shall be the location of the future horizontal, vertical or directional 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, vertical, and directional location(s). The approximate locations of wells and other surface equipment are shown on Exhibit A. The Permanent Horizontal OGOA is for the exclusive use of KPK for its oil and gas operations and the location of horizontal wells, future vertical or directional wells, and facilities.

5. Waiver of Setback Requirement.

a. Surface Owner understands and acknowledges that the Colorado Oil and Gas Conservation Commission ("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 Amendment, 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 so long as the locations are in accordance with this Amendment. For the operations contemplated by this Amendment, 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 Amendment or that would prohibit or interfere with the rights of KPK to explore for and produce the oil and gas in accordance with

this Amendment. KPK may cite the waiver in this Paragraph 5 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 in Exhibit A so long as the proposed use is consistent with this Amendment. Surface Owner will provide KPK with any and all written support it may reasonably require to obtain permits from the COGCC or any local jurisdiction.

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 and waives advance notice requirement under COGCC Rule 305.e.(1).

d. KPK shall not object to applications of Surface Owner to local government agencies regarding the construction of buildings or other structures on the Property so long as the buildings and other structures are located outside of the Temporary and Permanent Oil and Gas Operations Areas. In addition, KPK shall not object to Surface Owner's request for annexation, zoning, rezoning, or platting all or any portion of the Property. KPK shall provide Surface Owner with written waivers and approvals for submission to local government agencies which he may reasonably require.

6. Consultation. Prior to heavy equipment operations, KPK's representative will meet and consult with the Surface Owner. The approximate location of the wellsites, access roads, flowlines, tank batteries, and other associated production facilities are set forth on Exhibit A hereto.

7. Surface Operations Area. As partial consideration for Surface Owner providing the Operations Area to KPK, KPK shall locate all wellheads and surface equipment for all wells drilled after the date hereof within the Permanent Operations Area. There shall be no further surface disturbance to the Property, except for the Operations Area and easements shown on Exhibit A hereto. Additionally, when each of the existing producing wells on the Property are plugged and abandoned, the surface easements under the oil & gas lease pertaining to those wells shall be reconveyed by quitclaim deed to the owner of the surface estate of such land at the time of the plugging and abandonment.

8. Replacement of Exhibit A. The Parties agree that Exhibit A attached and made a part hereto replaces and supersedes Exhibit A to the SUA.

9. Pipeline Easement. Pipeline easements shall be 50 feet in width during construction and 30 feet in width thereafter. No compressors or above ground equipment which is appurtenant to the pipeline shall be located outside of the Permanent Operations Area. Surface Owner shall have the right to cross pipeline easements with roadways and other utilities; provided that, such crossing is made at an angle of not less than 60 degrees and not more than 90 degrees. Surface Owner shall also have the right to install and maintain easements that are both adjacent to and/or within the pipeline easements for utility lines, including, but not limited to those for water, gas, sewer, electric, telephone, cable, television, and fiber optic and other pipelines; provided, however: i) any new underground facilities that travel along a pipeline easement shall be located a distance horizontally of at least ten (10) feet from parallel existing

pipelines; ii) any new underground facilities shall have at least twenty-four (24) inches of vertical clearance between such new facility and a pipeline; and iii) any overhead power lines shall be at least twenty (20) feet above the ground. Surface Owner agrees that it will notify each utility company that, except in cases of emergency, KPK must be contacted at least ten (10) business days prior to commencement of any trenching or digging activities within ten (10) feet of their easement areas. Surface Owner may plant shallow root vegetation in the right-of-way and may maintain irrigation systems thereon. Surface Owner may also build and maintain unpaved trails along the pipeline easements. KPK shall not be liable for damage to the vegetation, irrigation system, or trails as a result of maintenance operations in the pipeline easements.

10. Fencing. The Temporary Operations Area shall be enclosed with a chain link fence with a gate which shall remain locked when Company is not using the Temporary Operations Area. Once the Wells have been drilled and completed, the chain link fence surrounding the Temporary Operations Area shall be removed and the Permanent Operations Area shall be fenced. Gates into the Operations Areas shall remain closed and locked except when KPK is conducting drilling, fracing, completion or re-working operations or when necessary for vehicles to enter or leave said areas.

11. Cattle Guards. Cattle guards shall be installed at mutually agreeable locations at Surface Owner's request.

12. Produced Water. With respect to any water produced from wells drilled on the Property in connection with the production of oil, gas, or other hydrocarbons, KPK shall haul the same away from the Property and properly dispose of such produced water off the Property. KPK shall not construct evaporation pits for produced water.

13. Employees. No living quarters for KPK's personnel shall be constructed on the Property, except that drilling crews and geologists or service personnel may use a temporary, mobile facility during drilling, completion, or reworking activities. KPK's personnel, agents, guests, and invitees shall not park on the Property except in the Permanent Operations Area and only while they are conducting operations on the wells.

14. No Hunting/Fishing, Drugs/Alcohol. None of KPK's employees, agents, or contractors, or any other person under the direction or control of KPK shall be permitted to carry firearms or any other weapon on the Property and such persons shall not hunt, fish, or engage in recreational activities on the Property. No dogs will be permitted on the Property at any time. KPK will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing, or recreational activities will be allowed on the Property. None of KPK's employees, agents or contractors, or any other persons under the direction or control of KPK, shall possess or be under the influence of alcohol or illegal drugs while on the Property.

15. Pits. All pits shall be lined and shall be reclaimed by removing all fluids, solids, and pit liners when pits are no longer needed for drilling and completion operations.

16. Spills. KPK shall use reasonable operational controls to prevent the release or discharge of any toxic or hazardous chemicals or wastes on the Property. Any spill of oil,

grease, solvents, chemicals, or hazardous substances on the Property which are reportable to regulatory authorities under applicable law or regulations shall be reported to Surface Owner by telephone, fax, or e-mail, within 24 hours of being reported to the applicable regulatory agency which report will be accompanied by copies of written notices which KPK has filed with regulatory authorities.

17. Fire Mitigation. KPK shall take all reasonable steps to prevent fire and to promptly extinguish fire caused by its operations. KPK shall fully and promptly compensate Surface Owner for all damages caused by fire arising out of KPK's operations, including without limitation, any charges incurred by Surface Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

18. 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 matters covered herein, this Amendment shall control.

19. Binding on Successors and Assigns/Covenant that Runs with the Land. This Amendment and 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.

20. 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.

21. Recording. This Amendment shall be recorded with the Clerk and Recorder of Weld County, Colorado.

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.

**SURFACE OWNER**

**K.P. KAUFFMAN COMPANY, INC**

By Warren R. Stroh

Name: Warren Stroh

By Kevin P. Kauffman

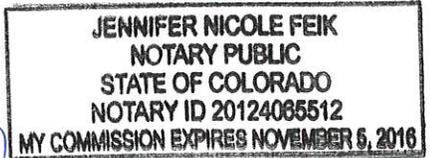
Name: Kevin P. Kauffman  
Title: Chairman and C.E.O.

ACKNOWLEDGMENTS

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of July, 2013, by Kevin P. Kauffman as Chairman and CEO of K. P. Kauffman Company, Inc., a California corporation.

Witness my hand and official seal.  
My commission expires: November 5, 2016

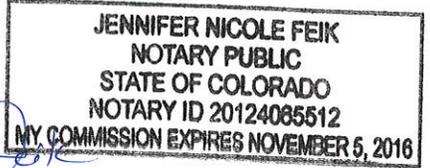


Jennifer Nicole Feik  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July, 2013, by Warren Stroh.

Witness my hand and official seal.  
My commission expires: November 5, 2016



Jennifer Nicole Feik  
Notary Public

# Stroh Pad Layout

S/2 Sec. 28-4N-67W

# EXHIBIT "A"

