

## SECOND AMENDMENT TO SURFACE USE AGREEMENT

This **SECOND AMENDMENT TO SURFACE USE AGREEMENT** ("Second Amendment") is made and entered into this 30<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 **SUNMARKE INVESTMENTS, LLC** and/or its assignee ("Surface Owner"), with an address of 5105 DTC Parkway, Suite 240, Greenwood Village, CO 80111. 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 21: SE/4

Section 22: SW/4

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

C. The Parties entered into that certain Surface Use Agreement dated October 30, 2007, and recorded March 14, 2008, at reception number 3541706 in the Office of the Clerk and Recorder of Weld County, Colorado ("SUA"), which provides for the compatible development of the surface estate and the oil and gas leasehold estate and defines specific names and locations for existing and future oil and gas wells and production facilities, identified and referred to in the SUA as the "Oil and Gas Operations Areas" or "OGOAs". The locations of the OGOAs were shown on **Exhibit A** to the SUA.

D. The Parties entered into that First Amendment to Surface Use Agreement dated April 16, 2009, and recorded April 28, 2009, at reception number 3619090 in the Office of the Clerk and Recorder of Weld County, Colorado ("First Amendment"), which amends the name and well classification for one of the new oil and gas wells located within an OGOA and depicted on **Exhibit A** thereto.

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E. As of the date of this Second Amendment, three wells have been drilled and are operating on the Property: the McCarty #2 well located in the SW/4SE/4 of Section 21, at a location 685 FSL and 2010 FEL; the McCarty #1 well located in the NE/4SW/4 of Section 22, at a location 1449 FSL and 1520 FWL; and the McCarty #10-21 well located in the NW/4SE/4 of Section 21, at a location 1821 FSL and 1860 FEL.

F. The purpose of this Second Amendment is to provide KPK with an increased temporary horizontal OGOA for horizontal drilling operations and a permanent horizontal OGOA for well and production facilities, in a manner compatible with the development of the surface estate, for KPK to abandon rights under the SUA to drill future wells from surface locations other than the temporary and permanent horizontal OGOA described herein, to attach a **Substitute Exhibit A** describing the OGOAs which continue to exist, and for related purposes. Unless the context demands a contrary interpretation, as used herein the term "SUA" shall refer to the SUA, as amended by the First and Second Amendments.

NOW, THEREFORE, in consideration of the covenants and mutual promises set forth in this Second Amendment, the First Amendment, and the SUA, including the above 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 that the area defined as the "Temporary Horizontal OGOA" on **Substitute Exhibit A** hereto shall be the sole 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 for roads, flowlines and pipeline easements, as shown on **Substitute Exhibit A**, KPK may not locate wells or permanent production facilities within the Temporary Horizontal OGOA without the permission and 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 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 be entitled to use the Temporary Horizontal OGOA for oil and gas drilling and completion operations, and Surface Owner shall discontinue all active Allowed Uses in the Temporary Horizontal OGOA upon thirty (30) days notice from KPK for the periods of time described in the notice. KPK agrees that in using the Temporary Horizontal OGOA for subsequent operations, it shall attempt to use the minimum amount of such area as is necessary for the operations being

undertaken, but 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 Use. Upon completion of drilling and completion operations from time to time, if no such operations are planned within the following 90 days, KPK shall promptly return the Temporary Horizontal OGOA to the same condition, in all material respects, it was prior to being used by KPK. Except for the OGOAs, tank battery locations, 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 any such emergency use, within thirty (30) days, and KPK shall give notice to Surface Owner of such use as soon as reasonably practical.

4. Permanent Horizontal OGOA. The Parties agree that the area defined as the "Permanent Horizontal OGOA" on **Substitute Exhibit A** hereto shall be the permanent oil and gas operations area for 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. Immediately prior to the commencement of drilling operations on the Property, or upon commencement of surface development on the Property, whichever occurs first, KPK will move the current tanks, separator, dehydrators, compressors and all other associated oil and gas drilling and production equipment and facilities (other than the wellhead itself), which are used in connection with the McCarty #1 well located in the NE/4 SW/4 of Section 22, to this Permanent Horizontal OGOA, with the new flowline being located as depicted on the annexed **Substitute Exhibit A**.

5. Waiver of Setback Requirement. Paragraph 1(e) of the SUA is deleted and replaced with this Paragraph 5. The following subsections (a) through (c) of this Paragraph 5 shall apply so long as KPK's wells and production facilities are drilled and located in accordance with the terms of the SUA, as amended:

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. 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 herein and depicted in **Substitute Exhibit A** so long as the proposed use is consistent with this Second 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 location of the horizontal wells authorized by this Second Amendment greater than 50 feet from and existing well pursuant to COGCC Rule 318A.(c.); grants consent to locate the proposed horizontal wells authorized by this Second Amendment outside of the GWA windows as defined in COGCC Rule 318A(a); and shall grant any necessary property line waivers required under COGCC rule 603 with respect to such additional horizontal wells. Notwithstanding the forgoing, the surface location of all wells located in the Permanent Horizontal OGOA shall be not greater than 30 feet from one another.

d. KPK understands and acknowledges that other jurisdictional agencies have rules and regulations governing the location of occupied structures, roads and other improvements from existing oil and gas wells and other facilities. To the extent permitted by applicable law, KPK hereby waives all setback requirements imposed by any state or local jurisdiction that would prohibit or interfere with the rights of Surface Owner to develop the surface of the Property consistent with this SUA. KPK understands that Surface Owner may cite this SUA as a waiver of any objections in order to obtain a location requirement exception or variance from a local, state or federal jurisdiction. KPK also agrees that it will not object in any forum, either directly or indirectly, to the use by the Surface Owner of the surface of the Property consistent with this SUA.

6. Time for Drilling. KPK shall have a period of five (5) years from the date of this Second Amendment to drill new vertical well segments from the Permanent Horizontal OGOA. Thereafter, unless permission of the Surface Owner is granted, no new vertical well segment shall be drilled on the Property. KPK shall nonetheless retain the right to thereafter drill any number of horizontal laterals to the Property from any existing vertical wellbores which then exist on the Permanent Horizontal OGOA.

7. Surface Damages. Paragraph 22(a) of the SUA is hereby deleted and replaced with the following: "KPK will pay the Surface Owner the sum of \$5,000 for each well drilled on the Permanent Horizontal OGOA, prior to the spudding therefore. Such payment shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with such well and its associated production facilities. Such damages will include, without limitation, damage to growing crops and crop land; the removal, transportation and care of any livestock; the re-seeding, construction and use of access roads; and the preparation and use of the wellsite area."

8. Consultation. If requested by Surface Owner, prior to heavy equipment operations on the horizontal wellsit, 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, provided, however, that nothing in this paragraph shall authorize KPK to place the same in locations other than those depicted on the annexed **Substitute Exhibit A**.

9. 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.

10. Surface Operations Area.

10.1 **As partial consideration for Surface Owner providing the Temporary and Permanent Horizontal OGOAs to KPK, KPK shall locate all wellheads and surface equipment for all wells drilled on the Property after the date hereof within the Permanent Horizontal OGOA. KPK shall drill no new wells from any other OGOA on the Property. KPK shall not further disturb the surface of the Property, except for the Temporary and Permanent Horizontal OGOAs and easements shown on Substitute Exhibit A hereto.**

10.2 KPK hereby abandons and shall have no right to use in the future the OGOAs for (a) the McCarty #11-22 well located in the NE/4SW/4 of Section 22 (and other wells originally authorized to be co-located there), (b) the McCarty #14-22 well located in the SE/4SW/4 of Section 22 (and other wells originally authorized to be co-located there), and (c) the McCarty #20-21 well located in the center spot of the SE/4 of Section 21 (and other wells originally authorized to be co-located there). The annexed **Substitute Exhibit A** depicts all areas of the surface of the Property which KPK may utilize for oil and gas operations after the date of this Second Amendment.

10.3 When any producing well on the Property, which is described in Recital E above, is plugged and abandoned in accordance with COGCC rules, the right of KPK to utilize the respective OGOA shall be terminated, and the surface easements under the oil & gas lease pertaining to those wells and their related tank, separator and production facilities if not then



being used by another of 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. The plugged and abandoned wells will have cement caps and cut off of casing / piping which will be at a minimum depth of fifteen (15) feet below the surface and all pipelines and flow lines will be removed by KPK.

10.4 The parties agree that paragraph 1 (g) of the SUA shall be deleted, and the Letter Agreement referenced in that paragraph shall be deemed cancelled.

10.5 If and when KPK drills more than seven horizontal wells from the Permanent Horizontal OGOA, it shall plug and abandon one of the existing wells described in Recital E above for each horizontal well in excess of seven horizontal wells, until each well described in Recital E above has been plugged and abandoned. Any such plugging and abandonment shall in accordance with the provisions of paragraph 8.3 above.

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

12. 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 Second Amendment and the SUA as to the matters covered herein, this Second Amendment shall control.

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

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

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

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

**SUNMARKE INVESTMENTS, LLC**

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

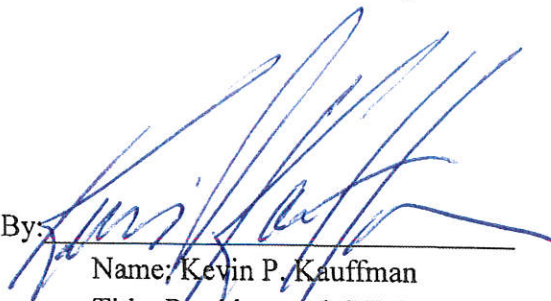
By: \_\_\_\_\_



Name: Gary L. Hunter

Title: Manager

By: \_\_\_\_\_



Name: Kevin P. Kauffman

Title: President and C.E.O.



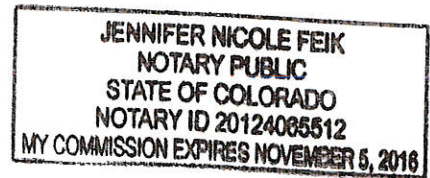
ACKNOWLEDGEMENTS

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of July, 2013, by Kevin P. Kauffman as President 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

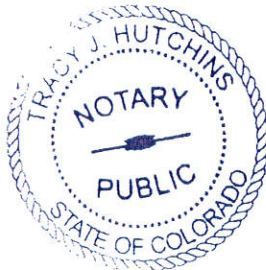
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of July, 2013, by Gary Hunter as Manager of SunMarke Investments, LLC.

Witness my hand and official seal.

My commission expires: 6-1-16

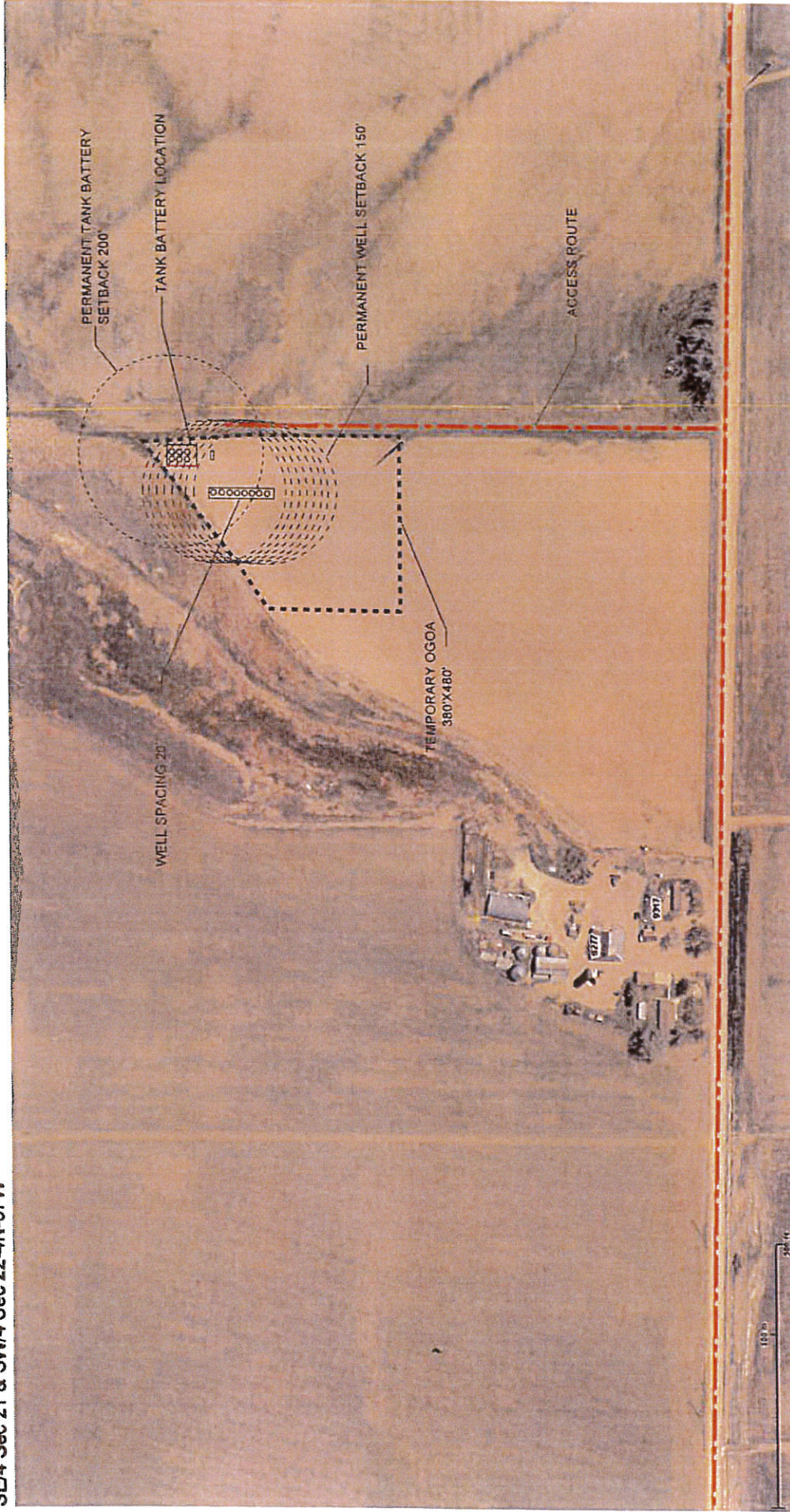
Tracy J. Hutchins  
Notary Public





# Sunmarke Pad Layout

SE/4 Sec 21 & SW/4 Sec 22-4N-67W







Substitute Exhibit A  
2 of 2

*[Handwritten signature]*