

ltm  
Anadarko Petroleum Corporation  
Attn: Shari Burns Room 16004  
P.O. Box 173779  
Denver, CO 80217-3779

## MEMORANDUM OF SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT is entered into effective May 6, 2011, by and between **Walnut Peacemaker, LLC** whose address is 3515 South Tamarac Drive, #300, Denver, Colorado 80237, ("Owner") and **Anadarko E&P Company LP** hereinafter referred to as "Operator", whose address is 1099 18<sup>th</sup> Street, Suite 1800, Denver, Colorado 80202.

WHEREAS, Operator owns all or a portion of the working interest in and to that certain Oil and Gas Lease dated effective May 6, 2011 (the "Lease") by and between Owner and Operator, covering the land described in Exhibit "A" attached hereto ("Land"); and

WHEREAS, Owner and Operator have agreed that this Agreement will apply to all of the Land described in Exhibit "A" hereto; and

WHEREAS, It is necessary that Operator use a portion of the Land covered by the Lease to drill, complete, rework, re-complete in the same or other formations, equip, operate, maintain, produce and plug and abandon any wells and restore the surface of that portion of the Land disturbed by its operations, any or all of which are referred to as "Operations"; and

WHEREAS, Owner intends to use and develop the Land for agricultural, industrial, commercial and residential purposes and Operator agrees to reasonably accommodate those uses.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the parties' herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, the parties hereto agree as follows:

1. Right-of-Way. For Operator to conduct Operations on the Land in accordance with the Lease and with this Agreement, it will be necessary that Operator enter upon, cross and use a portion of the surface of the Land. Owner hereby grants Operator the non-exclusive right for Operator, its agents, employees and contractors, and their agents and employees, to enter upon the Land to conduct its Operations. Operator's use of the Land, access roads, gathering pipelines and power lines across the Land in connection with the Operations shall be only as authorized by this Agreement. The rights of Operator to use the Land as set forth herein are non-exclusive, and Owner reserves the right to use the Land, including without limitation, all access roads, and all of the surface and sub-surface uses of the Land, and to grant successive easements on or across the Land on such terms and conditions as Owner deems necessary or advisable, provided that Owner's use and all other uses authorized by Owner do not unreasonably interfere with the operations of Operator.

2. Term. Except for any of Operator's obligations that have not been performed, and except as may otherwise be provided herein, this Agreement shall terminate as to the Land upon the termination of the Lease and all other uses permitted hereunder, except Operator may continue to access the Land in order to reclaim the same as required by this Agreement, the Lease and applicable regulations. Within thirty (30) days of the termination of this Agreement, Operator shall execute, acknowledge and record in the records of Arapahoe County, Colorado a release of this Agreement.

3. Operations Area. The Operator and Owner have agreed to a sum per permanently disturbed acre (meaning Land used in Operations that is not reclaimed within the times provided for in rule 1003 b of the rules of the Colorado Oil and Gas Conservation Commission ("COGCC") or any successor rule) for the drilling or location of any facility on the Land (whether there are single or multiple wells drilled at the drill site location) as consideration for all normal and ordinary damages associated with the construction, maintenance and use of such location for Operations, payable within thirty (30) days of the placement of all surface facilities.

The area where Operator's surface facilities and wells can be located is referred to herein as the "Operations Area." It is agreed that Operator shall be limited to one Operations Area on the Land which will be situated at a mutually agreed location on the Lands. The Operations Area shall be not more than ten (10) acres in size during drilling, completion, and reworking activities, and not more than four (4) acres in size at all other times, which shall include the area needed for wellhead(s), production facilities to include stock tanks and other surface equipment which in

Operator's judgment, reasonably exercised, may be necessary to maximize production of oil and gas from the Land.

Operator may drill more than one well on the Operations Area. Operator agrees to fence the pits and other dangerous areas and at all times keep its Operations Area in good order and free of litter, debris, trash, spilled hydrocarbons, and other waste. In the event that Operator does not encounter commercial quantities of oil, gas, or other hydrocarbons at any well location and determines the location to be a "dry hole," Operator shall fill in, smooth over, and clean up the Operations Area and the access thereto and shall restore and, after replacing topsoil, reseed the area with a seed mix reasonably approved by Owner within the time and in the manner required by the applicable rules and regulations of the COGCC. All cleanup and restoration activities shall be completed by Operator as soon as they can be accomplished, but in no event more than six months after a disturbed area is no longer being used by Operator. In the event that any well drilled upon the Land is completed as a commercial producer of oil and/or gas, Operator shall clean up the Operations Area and use only so much of the area as is reasonably necessary for its operations, and Operator shall restore any portion of such well location that is not needed, reseeding the same with a seed mix reasonably approved by Owner. Operator shall keep the Operations Area neat, orderly, and clean at all times. The parties agree that Operator's right to use the Operations Area shall be limited to conducting those activities and Operations permitted by the Lease and this Agreement. The Operations may include and shall not be limited to the installation, operation and maintenance of oil and gas flow lines, and related surface equipment, such as tank batteries, separators, and meters. Operator shall not construct any compressor station(s) on the Land unless Owner has given its consent in a separate agreement, which consent may be withheld in the sole and absolute discretion of Owner.

To give full effect to Operator's use of the Operations Area, Owner hereby waives the setbacks provided for in Commission rules including the setback and other requirements of rules 603.a.2, 603.b, 603.c, 603.d and 603.e of the rules and regulations of the Commission relating to property lines and high density and designated outside activity areas, as they may be amended from time to time. Owner further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Operator, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement. Operator or its successors and assigns may cite the waiver in this Section in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction over the oil and gas operations contemplated hereby.

4. Facility Sites Outside the Operations Areas. Subject to obtaining Owner's consent to the use of the Land for a facility outside of an Operations Area, which consent may be withheld at the sole and absolute discretion of Owner, and further subject to the parties reaching a mutually acceptable agreement on the actual location and specific terms of use, Operator and Owner have agreed to a sum per permanently disturbed acre (meaning Land used in Operations that is not reclaimed within the times provided for in rule 1003 b of the rules of the COGCC or any successor rule) outside of the Operations Areas, as consideration for all normal and ordinary damages associated with the construction, maintenance and use of any injection, storage, transportation and/or marketing facility, that may be consented to by Owner and constructed on the Land. Marketing facilities could include without limitation, tank batteries, gas, water and oil flow lines, and any facilities necessary for the production, storage, disposal, transportation and marketing of gas, water and/or oil produced from the Land pursuant to the Lease.

If the configuration of any Operations Area is changed by the parties and includes Land outside of any original Operations Area, Operator will pay Owner the [REDACTED] for each additional net acre permanently disturbed after taking into account the Land reclaimed by Operator in the original Operations Area. If less acreage is permanently disturbed, Owner will be under no obligation to refund any portion of any payment made by Operator.

Nothing in either Paragraph 3 above or this Paragraph 4 shall ever be construed as providing Operator with the right to install compressor stations, gas processing facilities, or a central production facility which may have off-lease gas, water and/or oil delivered to such location as a central point for transmitting to a downstream point.

5. Access Roads.

a. Existing Roads. Whenever reasonably possible, Operator agrees to use existing roads for access to the Operations Area or surface or buried facility related to Operator's Operations and activities on the Land. Operator acknowledges that the existing roads may not be currently suitable for Operator's intended uses, which may include transport of heavy drilling rigs, trucks and equipment, and that Owner will continue to use the existing roads. Consequently, Operator agrees to maintain the condition of any road that it uses at its sole expense and shall indemnify and hold Owner harmless from any losses obtained by Owner, including, without limitation, costs and attorneys fees, incurred in connection with Operator's use of existing roads except to the extent any such loss or cost is the result of negligence on the part of Owner. Operator shall promptly repair at its sole expense any and all damage to the existing roads caused by its use of the same. With Owner's consent, which shall not be unreasonably withheld, Operator shall have the right to re-locate any existing road or to incorporate and use any existing road as part of Operator's use of the Land at Operator's sole expense.

b. New Roads.

i. Operator may construct new roads on the Land to the extent necessary for its Operations and other activities conducted pursuant to the Lease and this Agreement subject to the conditions described below. The location of any new roads shall be subject to Owner's approval, which shall not be unreasonably withheld, and shall be located in a manner so as to cause the least interference with Owner's current or future uses of the Land. In connection with any such new road, Operator shall maintain and make any necessary repairs to such road at its sole cost and expense to the extent necessary for Operator to conduct its operations. Further, said roads shall not exceed forty feet (40') in width during the construction phase and shall be limited to twenty-four (24) feet in width for the actually traveled roadbed. Any portion of the Land that is disturbed during construction of a road which is not included in the road, shall be reclaimed within ninety (90) days of the end of said construction weather permitting. Owner shall have the right to request that Operator re-locate any new roads and Operator's consent shall not be unreasonably withheld. Owner shall also have the right to incorporate and use such roads as part of Owner's use of the Land so long as such use does not unreasonably interfere with Operator's use. Any such relocation or incorporation shall be at Owner's sole expense.

ii. The surface of all roadways shall be made of compacted gravel, shall not exceed 24 feet in width for traveled surface, and shall comply with all regulations or laws applicable to such roadways. Operator shall control dust from all roadways that it installs or uses through the application of an appropriate dust suppressant.

iii. If requested by Owner, access to the Land of Owner from any public road shall be controlled by a swinging metal gate in addition to a cattle guard, which gate and cattle guard Operator shall construct in accord with Owner's reasonable specifications.

iv. Culverts shall be placed in low areas for proper drainage.

v. No off-road travel is permitted.

vi. The use and construction of roads by Operator on the Land is a non-exclusive use, and Owner may allow other parties to use said roads and make a charge therefor. However, Operator shall have the right to assess other non-agricultural users of the roads for their share of maintenance work performed by Operator.

vii. Operator agrees, if requested by Owner, to place an appropriate sign or signs on any road designating them as "private roads" and to assist Owner in the control of the use of such roads by unauthorized users. The size and color of such signs shall be subject to Owner's approval.

viii. Owner may lock gates across its private roads, provided that Operator shall be given a set of keys for Owner's locks and shall have the right to place its own locks on such gates.

ix. Operator shall maintain at its expense existing and newly constructed roads used by Operator to the extent necessary for Operator's needs and to the reasonable satisfaction of Owner, which maintenance may include shaling, ditching, graveling, blading, mowing grass to avoid fire danger, installing and cleaning cattle guards, and spraying for noxious weeds. This work shall be done at such reasonable times as Owner shall request.

x. Except for roads located on the Land subject to the Lease and land pooled with the Land subject to the Lease, no roads on the Land shall be used by Operator for access to lands not subject to the Lease without a separately negotiated agreement.

xi. If Operator fails to use any roads for a period in excess of twenty-four (24) consecutive months, the roads shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to reclaim any portion of the roads that Owner asks Operator to reclaim. All such reclamation shall be performed in compliance with all applicable federal, state, and local laws and regulations and any reseeding shall be done with a seed mix reasonably approved by Owner.

6. Any pipelines constructed by Operator on the Land shall be constructed and maintained to the following specifications:

a. Owner shall approve all pipeline locations in advance so as to avoid interference with Owner's existing or planned operations. Whenever possible, Operator agrees that it will construct any pipeline adjacent to any existing or new road right-of-way, if one exists.

b. The top of each pipeline shall be buried at least 36 inches below the surface of the ground.

c. Operator shall be responsible for backfilling, repacking, reseeding, and recontouring the surface so as not to interfere with Owner's existing or planned operations. If pipeline trenches settle so as to interfere with Owner's existing and future uses of the Land, upon request by Owner, Operator shall fill in, repack, and level such trenches.

d. Operator shall provide Owner with a plat showing the "as built" length and location of all pipelines promptly after their installation.

e. Owner reserves the right to occupy, use, and cultivate the Land affected by such pipelines, and to grant such rights to others, so long as such use does not interfere with Operator's operations. No structures may be built by Owner within fifteen (15) feet of any pipeline.

f. The pipelines allowed by this Agreement are limited to those gathering system pipelines used in connection with wells drilled on the Land subject to the Lease or on lands pooled with the Land subject to the Lease. The installation and use of pipelines serving lands other than those owned by Owner shall be by separate agreement to be negotiated by Owner and Operator (or the appropriate party) unless such land is pooled with the Land subject to the Lease.

g. If Operator fails to use any pipeline for a period in excess of twenty-four (24) consecutive months, the pipeline shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to clean up and remove the pipeline, or render the pipeline environmentally safe and fit for abandonment in place. All such cleanup and mitigation shall be performed in compliance with all applicable federal, state, and local laws and regulations.

7. Power Lines. Any buried or overhead power lines constructed on the Land shall be constructed and maintained to the following specifications:

a. Operator will consult with Owner and with the power company supplying power to Operator with respect to the location of overhead power lines prior to construction, and Operator shall obtain Owner's consent before any power lines are installed which consent shall not be unreasonably withheld. Overhead power lines will be constructed so as to cause the least possible interference reasonably possible with Owner's visual landscape and Owner's existing and future uses of the Land, and, to the maximum extent reasonably possible, overhead power

lines will be constructed along the access road right-of-way, if one exists, or along fence lines or property lines. No overhead power line will be located where it will interfere with Owner's existing irrigation systems or any future uses which are planned by Owner. Owner shall be entitled to receive payment from Operator's electricity provider for overhead power lines.

b. Subject to compliance with any guidelines and policies of the power provider, within two months after a well has been placed on production, all power lines constructed by or for Operator downstream of the power company's meters shall be buried, and all power line trenches shall be fully reclaimed and reseeded to the reasonable satisfaction of Owner. Buried power lines shall be installed at least 36 inches below the surface of the ground.

c. Operator agrees that it will not construct overhead power lines that will interfere with irrigation in those portions of the Land which are being irrigated or cultivated or which may, in the future, be irrigated or cultivated or which are fallow as part of a crop rotation or management program.

8. Fences and Reclamation. Operator shall install fences around its operations as required by the rules of the COGCC. Operator shall reclaim and restore all areas disturbed by Operator's Operations as near as reasonably practical to their original condition as required by the rules of the COGCC and in no event later than six (6) months after termination of activities at the site or right-of-way subject to weather conditions, the availability of equipment and obtaining the necessary permits. All of the Land that has been disturbed by Operator shall be fully reclaimed within six (6) months after this Agreement has terminated, if such reclamation has not already been completed. Operator agrees to accommodate Owner's reasonable requests for more rapid reclamation if it is needed by Owner. Operator agrees to notify and consult with Owner prior to cutting or damaging any fences, cattle guards, or other improvements of Owner. All areas disturbed by Operator's Operations and activities will be reseeded unless otherwise agreed by Owner.

9. Operations. Operator agrees to keep the roads, Operations Areas and facilities locations, and other areas utilized for its Operations and other activities conducted pursuant to the Lease and this Agreement, free from weeds, debris and litter and will properly maintain such areas in such a manner as to minimize interference with the Owner's normal use of contiguous lands. In addition:

a. All cattle guards and fences installed by Operator shall be kept clean and in good repair and will become the property of Owner when Operator ceases ownership of its oil and gas lease covering that portion of the Land.

b. Operator shall implement reasonable practices to avoid the spill, release or discharge of any pollutants, contaminants, chemicals, solid wastes, or industrial, toxic or hazardous substances or wastes on the Lands. Any such spill, release or discharge, including of oil, gas, grease or solvents that occurs on the Lands shall promptly be remediated in compliance with applicable laws.

c. Operator shall remove only the minimum amount of vegetation necessary for the construction of roads, well locations, and other facilities. Topsoil shall be conserved during excavation, stockpiled and reused as cover on disturbed areas to facilitate regrowth of vegetation.

d. Operator shall use reasonable efforts to minimize construction or routine maintenance activities during periods when the soil is too wet to adequately support construction equipment.

e. All surface facilities shall be as low profile as is reasonably possible and shall be painted to blend with the natural color of the landscape unless a different color is required to comply with applicable laws or regulations. In addition, Operator will permit Owner to screen the Operations Area from surface development as such surface development occurs provided that any such screening does not interfere with Operator's operations in Operator's reasonable judgment. Screening techniques to be employed will include and not be limited to berms, landscaping and fencing. Operator shall have no liability for damage to any screening material located in the Operations Area.

f. No living quarters shall be constructed upon the Land, except that drilling crews and geologists or service personnel may use temporary "dog houses" during drilling, completion, or reworking activities.

g. Operator shall not fence any access roads without the prior consent of Owner.

h. Operator and its employees, agents, and contractors shall leave all gates located on the Land as they found them; gates found closed are to be closed; gates found open are to be left open.

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

j. Operator shall conduct operations and activities on the Land in accordance with all existing local, state, and federal laws, rules, and regulations.

k. No open fires shall be permitted on the Land. Operator shall take all reasonable steps to prevent fire and to promptly extinguish fire, including, but not limited to, maintaining a fire extinguisher, shovel, and bucket in each service vehicle entering upon the Land. Operator shall fully and promptly compensate Owner for all damages caused by fire arising out of Operator's operations, including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

10. Water/Dry Hole. Without prior written approval of Owner, which approval shall be in the sole and absolute discretion of Owner, Operator shall not use any water from any water well or other source on or under the Land. Operator shall not disturb, interfere with, fill, or block any creek, reservoir, spring, or other source of water on the Land. In the event Operator wishes to drill a water well on the Land, it shall obtain Owner's prior written consent which consent may be withheld in the sole and absolute discretion of Owner. If such a water well is then drilled and completed, Owner shall have the option of retaining said well for personal use upon completion of all of Operator's Operations and other activities hereunder.

Operator shall comply with COGCC rule 317 A. Special Drilling Rules-D-J Basin Fox Hills Protection Area with respect to surface casing for aquifer protection. Specifically, Operator will set surface casing from the surface to depth that is not less than fifty feet (50') below the base of the Fox Hills transition zone. Operator will also comply with all other applicable rules and regulations with respect to protection of drinking water aquifers promulgated by any governmental agency with authority to protect drinking water aquifers.

11. Notice. Operator will give Owner all notices required by the rules of the COGCC and it will conduct all consultations required by those rules and by this Agreement the goal of which is to minimize interference with Owner's existing and planned use of the Land.

If technically feasible and mutually acceptable alternate locations are provided by Owner, Owner shall have the right to require Operator at Owner's cost to relocate any roads, pipelines, power lines, or other surface or underground facilities (excluding any well) as provided herein. If Owner elects Operator to relocate any of facilities described above, it will give Operator written notice of the facilities to be relocated if such relocation is necessary to Owner's use of the Land. If Owner provides such a written notice, Operator shall provide Owner with a bona fide third party estimate of the costs for the relocation of any of the facilities described in the notice. Owner shall have the right to withdraw the relocation request within ten days after receipt of the estimate. Unless Owner withdraws the relocation request, Operator will, within 90 day of Owner's acceptance of the estimate, commence and complete the relocation of the

facilities described in the notice to the alternate location(s). Notwithstanding the foregoing, however, Operator shall be under no obligation to commence any relocation activities until Owner has paid the estimate to Operator in immediately available funds. Upon completion of the relocation, Operator shall furnish Owner a full accounting of the costs and expenses of the relocation and, within ten days after receipt thereof: (i) Owner shall pay Operator any deficiency if the actual cost for the relocation activity was more than the estimate or (ii) Operator shall refund any overpayment to Owner, as applicable.

12. Release. The compensation provided herein shall release and discharge Operator, its agents, contractors and employees from all normal and ordinary claims, losses, demands and causes of action for damage to the Land, loss of and damage to crops, and use of the Land, hereafter arising as a result of Operator's Operations and other activities conducted pursuant to this Agreement including marketing operations on the Land. This compensation does not cover damages or losses which are caused by any breach of this Agreement, for Environmental Claims, Operator's unreasonable use of the Land, or the negligence of Operator, its agents, contractors and employees. This Agreement also does not relieve Operator from liability due to pollution, spills or discharge of any hydrocarbon or toxic substance or hazardous chemicals or wastes, fracing or from leaks or breaks in Operator's pipelines. Operator will compensate and hold Owner harmless for any losses or actual damages including attorney's fees and costs incurred by Owner as a result of any such loss or damage, breach of this Agreement, for Environmental Claims, unreasonable use of the Land or the negligence of Operator, its agents, contractors or employees.

13. Indemnity.

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 this Agreement.

Except as provided in paragraph 12 above, and as to claims arising out of pollution or environmental damage (which claims are governed by paragraph 14 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 all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith, arising out of or connected with each such party's ownership or operations or activities on the Land, no matter when or by whom asserted, subject to applicable statutes of limitations (all of the aforesaid herein referred to collectively as "Claims"). Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, agents and contractors, 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.

Upon the assignment or conveyance of a party's entire interest in the Land, that party shall be released from its indemnification provided above, for all actions or occurrences happening after such assignment or conveyance but not for any actions or occurrences happening before such assignment or conveyance.

14. Environmental Indemnity. The provisions of paragraph 13 above, except for the first paragraph thereof, shall not apply to any environmental matters, which shall be governed exclusively by the following:

"Environmental Claims" shall mean all Claims asserted by governmental bodies, Owner or other third parties for pollution or environmental damage of any kind, arising from Operations on or ownership of the Land 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;



"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

Operator shall protect, indemnify, and hold harmless Owner from any Environmental Claims by whomever they may be asserted relating to the Land or the Lease that arise out of Operator's ownership or Operations on the Land and its ownership and Operations of any well, facility, road, pipeline easement, power line, or right-of-way on the Land. This indemnity specifically covers any claim which may be asserted by reason of or which may arise out of or which may be related to the completion, fracturing or refracturing of any well drilled by Operator on the Land or land pooled or unitized therewith. Owner shall fully protect, defend, indemnity and hold harmless Operator from any and all Environmental Claims relating to the Land that arise out of Owner's operations on the Land.

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

16. 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 paragraphs 13 or 14 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 fifteen (15) 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.

17. Limitation on Rights. The Land may not be used in connection with activities or operations on other premises not owned by Owner without Owner's written consent.

18. Produced Water. Unless otherwise required by law, with respect to any water produced from wells drilled on the Land in connection with the production of oil, gas, or other hydrocarbons, Operator agrees to reinject produced water or deposit same in containers or haul the same away from the Land and properly dispose of such produced water off the Land. Operator shall not construct evaporation pits for produced water.

19. Seismic Operations. Seismic operations are expressly authorized by the Lease and this Agreement. Operator will notify Owner prior to the commencement of such operations and will pay Owner an agreed upon amount for each acre disturbed by such operations on the Land.

20. Law. This agreement shall be governed and construed in accordance with the laws of the State of Colorado.

21. Assignment. This Agreement shall be binding upon and shall be for the benefit of the parties hereto, their respective heirs, successors and assigns. Any sale, encumbrance or other disposition by Owner of any interest in Said the Land shall be made subject to the terms and conditions of this Agreement.

22. Conflicts with Lease. In the event of any conflict between the terms and provisions of this Agreement and the Lease, the terms and provisions of this Agreement shall control.

23. Notification. Any notice required or permitted to be given hereunder shall be deemed to be delivered when deposited in the U.S. Mail, postage prepaid, certified with return



receipt requested, or registered mail, addressed to the party to which it is intended at the address set forth below for such party:

If to Owner:

Walnut Peacemaker, LLC  
Attn: Marc Cooper  
3515 South Tamarac Drive, #300  
Denver, Colorado 80237

If to Operator:

Anadarko Petroleum Corporation  
Attn: Surface Land Manager  
1099 18<sup>th</sup> Street, Suite 1800  
Denver, Colorado 80202

24. Recording. This Agreement or a memorandum thereof and any amendment hereto may be recorded by Operator. Operator shall provide the Owner with a copy showing the recording information as soon as practicable thereafter.

25. Subordination. Owner and Operator agree to cooperate in any reasonable way with each other, their successors and assigns, to secure subordinations of any encumbrances placed of record upon the Land prior to the execution of this Agreement.

26. Dispute Resolution. In the event of any dispute, disagreement or controversy arising out of, relating to or connected with this Agreement or the Lease, including but not limited to the Claims, the Environmental Claims, claims for compensation or damages, the location of any well, surface sites or facilities, access roads, power lines and pipelines, the Parties shall use reasonable, good faith efforts to settle such dispute or claim through negotiations with each other. If such negotiations fail to produce a mutually acceptable resolution to the matter in dispute, the Parties will submit the same to non-binding mediation before a sole mediator. The mediation will be conducted by the Judicial Arbiter Group, Inc., 1601 Blake St, Suite 400, Denver, CO 80202 ("JAG"). The matter in dispute will be submitted to mediation within fifteen (15) days of a written demand for mediation from one Party to the other. If the mediation is not successful, the matter in dispute shall be submitted for final and binding arbitration by the same mediator to be held no later than thirty (30) days after the conclusion of the mediation, as signified by a written notice from the mediator that mediation has terminated. Within five (5) days of the date of the mediator's notice, any party desiring arbitration shall concisely state the matter(s) in dispute, the position of the Party with respect to such matter(s) and the Party's proposed resolution of the same.

a. During any negotiations conducted pursuant to this Agreement, the Parties will keep and maintain a record of all issues upon which agreement has been reached. To narrow and focus the issues that may need to be resolved in an arbitration proceeding, each of the submittals by the Parties shall include all points that have been agreed to by the Parties during their negotiations.

b. Any arbitration proceeding shall be conducted in accordance with the Uniform Arbitration Act found at C.R.S. §13-22-201 *et seq.* (or a successor statute). The purpose of the arbitrator's role is to produce a final decision of any matter submitted for arbitration to which the Parties' herein agree to be bound. The place of arbitration shall be at the offices of JAG in Denver, Colorado.

c. The JAG mediator/arbitrator shall, ideally, be possessed of demonstrated experience in matters pertaining to the law of oil and gas development, and, at a minimum, Colorado law of real property governing the use and enjoyment of surface and subsurface estates. If the Parties cannot reach agreement on the choice of JAG mediator/arbitrator within ten (10) days of the original demand for arbitration (or such other time as may be agreed to by the Parties), they shall abide by the assignment of JAG mediator/arbitrator made by the JAG Administrator.

d. Any award in arbitration will provide Anadarko with an Operations Area that is technically and economically feasible for the production of oil and gas from the Land taking into account the objections of Owner to the locations originally proposed by Anadarko.

e. For any matter requiring judicial resolution in connection with the arbitration, including the enforcement of any award, enforcement of this agreement to arbitrate, or injunctive relief to preserve the status quo pending arbitration, the Parties agree that the State District Court of the City and County of Denver, Colorado, shall have exclusive jurisdiction.

f. The Parties shall share equally in the cost of retaining the services of JAG for any mediation or arbitration conducted hereunder and each shall be solely responsible for its own costs, attorneys fees, and expenses of preparing for and pursuing any mediation or arbitration, and for converting any arbitration award into a judgment.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Surface Use Agreement on the date set forth above.

**OWNER**

**Walnut Peacemaker, LLC**

By: Marc Cooper, Manager  
Name: Marc Cooper  
Title: Manager

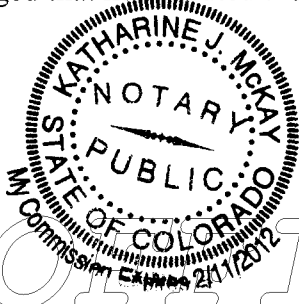
**OPERATOR**

**Anadarko E&P Company LP**

By: David H. Bell AV  
Name: David H. Bell  
Title: Land Manager

STATE OF COLORADO )  
:SS  
COUNTY OF DENVER )

On this 6<sup>th</sup> day of May, 2011, personally appeared before me Marc Cooper, who acknowledged that he executed the foregoing as Manager of Walnut Peacemaker LLC .



Katharine J McKay  
Notary Public  
Residing at: Denver, CO  
My commission expires: 2/11/2012

STATE OF COLORADO )  
:SS  
COUNTY OF Adams )

On this 6<sup>th</sup> day of May, 2011, personally appeared before me David H. Bell, who acknowledged that he executed the foregoing as Agent & Attorney-in-Fact of Anadarko E&P Company LP.



M. Henemann  
Notary Public  
Residing at: 9/27/2011  
My commission expires:

EXHIBIT A  
To  
Memorandum of Surface Use Agreement  
[Description of Land]

Township 4 South, Range 64 West, 6th P.M.  
Section 18: SE/4

in the County of Arapahoe, State of Colorado.

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