

SURFACE USE AND RELEASE AGREEMENT

This Surface Use and Release Agreement ("**Agreement**") is made and entered into this 7th day of May 2008, by and between **John W. Bartmann and Sheryl L. Bartmann, husband and wife, ("Owner")**, and Petro-Canada Resources (USA) Inc. ("**Operator**"); sometimes referred to each as a "**Party**," or collectively as the "**Parties**."

WITNESSETH:

For and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **OWNERSHIP.** Owner is the surface owner of certain lands located in Weld County, Colorado, as more specifically described as follows ("**Lands**"):

Township 6 North, Range 67 West, 6th P. M.

Section 12: That portion of the SE/4 more particularly described in Book 1314,
Reception No. 2293727 and recorded on June 30, 1992

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator agrees that the area used for the drilling, and completing the Wells(s) will not exceed approximately 1.0 acres in area per wellsite "**Well Site(s)**". ~~In addition, in order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities associated therewith, it is necessary that Operator enter and utilize a portion of the surface of the Lands. A "Facility" (collectively, the "Facilities") shall include, but not be limited to, access roads, ("Access Roads"), pipelines, flow lines separators, tank batteries, electric lines and other property necessary for Operator to conduct operations on the Wells.~~ The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

3. **LOCATION.** The approximate location of the Wells, the Access Roads to the Well Site and certain other Facilities to be constructed on the Lands are depicted on Exhibit "A." Any material changes to such locations may be made by Operator with the consent of Owner, which will not be unreasonably withheld, but will not unduly interfere with Owner's existing use of the surface estate. Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations; provided, however, that each Well Site will not exceed approximately 2.0 acres in area, absent written consent from the Owner.

4. **CONDUCT OF OPERATIONS.** Operator's operations on the Lands will be conducted pursuant to the terms of the Leases, this Agreement, and the rules and regulations of the Colorado Oil & Gas Conservation Commission ("**COGCC**").

5. **COMPENSATION AMOUNT.** Operator will pay Owner the sum of \$2,500 per Well Site location located approximately thirteen feet to the south of the Bartmann land boundary line, prior to the commencement of actual drilling operations ("**Amount**"). The Amount is hereby acknowledged by Owner as full and final consideration for Operator's use of the Lands for the purposes enumerated in this Agreement and for any and 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 the Well Site(s) and Facilities. Such damages will include, without limitation, damage to growing crops, cropland, ~~the removal, transportation and care of livestock~~, re-seeding, ~~construction and use of Access Roads~~ and the preparation and use of the Well Site areas; provided, however, that if after the initial drilling, completing and equipping of the Wells and Facilities for production, Operator commences subsequent operations thereto, including, but not limited to, re-fracturing operations on the Wells, and such operations result in additional crop losses on the Lands affected thereby, Operator will timely reimburse Owner for the actual net value of such crop loss. **Operator will be responsible for construction of temporary sheep fences and removal thereof as it may be necessary to maintain future well production.** If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is unanticipated damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Well's construction and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence.

6. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES. With respect to its operations on the Lands, Operator will comply with the following provisions:

A. ~~Access Roads:~~

~~(i) Access Roads will not exceed 20 feet in width.~~

~~(ii) Operator will take reasonable steps to insure that all of its vehicles accessing the Lands on its behalf remain on the Access Roads.~~

~~(iii) Operator agrees to side-slope all Access Roads.~~

~~(iv) Operator will provide Owner with a minimum of 10 days prior written notice before restoring the surface of all Access Roads to be permanently abandoned by Operator. No later than 10 days following receipt of such notice, Owner may elect, in writing, not to have such Access Roads abandoned by Operator. In such event, Operator will have no liability under this Agreement, the Lease, or otherwise, to restore the surface of the Lands utilized as Access Roads. Failure to timely respond will be deemed as Owner's election that Operator proceed with the abandonment of the Access Roads and the restoration of the surface thereof.~~

~~(v) Operator will stockpile and save any topsoil removed while constructing Access Roads drill site for rehabilitation or re-seeding as reasonably directed by Owner.~~

~~(vi) Operator will maintain all Access Roads in good repair and condition.~~

~~(vii) Operator will provide livestock guards and crossings along all Access Roads as Owner may reasonably require. Such livestock guards will be kept clean and in good repair. Operator will keep Owner's gates closed at all times.~~

B. Fences:

~~(i) Owner may request that Operator install fences and livestock guards on the Lands. If installed, all such fences and livestock guards will be maintained in good condition by Operator, and upon termination of this Agreement, will become the property of Owner. Operator will construct fences to allow use of pasture and lanes used for the movement of livestock and equipment access to and from all pastures.~~

~~(ii) During drilling operations, Operator will install a sheep tight fence around the perimeter of the Well site.~~

C. Surface Restoration:

~~Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be restored by Operator to their original contour as nearly as is reasonably practicable, and re-seeded if so requested by Owner, provided however, that Operator's intent to abandon any Access Roads will be subject to the provisions of Paragraph 6(A)(iv) herein.~~

D. Other.

~~(i) Operator will install culverts on the Lands that may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.~~

~~(ii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands including bentonite dug up during pit excavation that are not necessary for~~

(iii) continued operations of the Wells will be removed and disposed away from the Lands no later than 30 days after the completion of the Wells. No such items will be burned or buried on the Lands.

7. **DEFAULT AND RIGHT TO CURE.** In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owner will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have 30 business days from receipt of the written notification in which to dispute or otherwise respond to the notification before Owner may allege default.

Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach; however, in no event will Operator be liable for additional payment for reasonably anticipated damages to the Lands caused by Operator's oil and gas operations, and in no event will Operator be liable for consequential damages.

8. **INDEMNITY/RELEASE.** Operator agrees to indemnify and hold Owner harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the Lands at the request of Operator.

9. **OWNER WAIVERS.** Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other notice or consultation requirements of the COGCC. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owner after it has submitted a request for permit to drill from the COGCC.

Owner also grants any necessary property line waivers required under COGCC Rule 603 and grants waivers as to any other state or local setback requirements or regulations that are or become inconsistent with this Agreement. Additionally, Owner grants waivers or consents to any requirement or regulation that may prohibit or interfere with obtaining any necessary permits to drill the Well(s). Owner understands that Operator may provide a copy of this Agreement to the COGCC or local jurisdiction in order to obtain an exception location or variance. Owner also agrees that it will not object in any forum to the use by Operator of the surface of the Property consistent with this Agreement and that it will also provide Operator with written support reasonably required to obtain permits from the COGCC or local jurisdiction.

10. **NOTICE FOR ADDITIONAL OPERATIONS.** Operator will comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

11. **NOTICES.** Notice by either Party will be promptly given, orally if possible (with the exception of the default notice described in Paragraph 7), with subsequent written confirmation sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by notice to the other:

Owner

John W. Bartmann
34469 WCR 25
Greeley, Colorado 80631
970 686-1226

Operator

Petro-Canada Resources (USA) Inc.
Attention: Mari S. Gillman
999 18th Street, Suite 600
Denver, CO 80202-1904
Phone: (303) 297-2100
Fax: (303) 297-7708

12. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owner agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owner

13. **CONFIDENTIALITY.** The Parties agree to keep the terms and conditions of this Agreement confidential and will not disclose such matters to any third party without the advance written consent of the other, or if ordered to do so in a legal proceeding. While the specific terms hereof are to remain confidential between the Parties, **Operator may record a memorandum of this Agreement in Weld County, Colorado.**

14. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective successors or assigns.

15. **TERM.** This Agreement will remain in full force and effect for so long as Operator has the right to conduct oil and gas operations on the Lands pursuant to the Leases; provided, however, that the termination of this Agreement will not relieve the Parties from their respective obligations or liabilities arising herein prior to such termination.

16. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.

17. **GOVERNING LAW AND VENUE.** This Agreement will be governed by, construed and enforced in accordance with the laws of Colorado.

18. **AGREEMENT TO ARBITRATE ANY DISPUTE OVER THIS AGREEMENT OR OPERATOR'S OPERATIONS ON THE LANDS.** If any dispute arises between Owner and Operator with respect to this Agreement, the Lease, or from Operator's operations on the Lands, such dispute will be resolved through arbitration. Any such arbitration will be conducted by the Judicial Arbitrator Group ("**JAG**") in Denver, Colorado, by a single arbitrator employed by or associated with JAG. Such arbitrator will have at least 10 years experience in oil and gas, either by work directly in the industry or as a lawyer or a judge familiar with oil and gas issues. Either Party may serve upon the other a demand for such arbitration, which should be served by fax and mail, or by hand delivery. Owner and Operator agree that if either of them initiates a demand for such arbitration, Owner and Operator will thereafter attempt to mutually agree on the selection of one of the JAG arbitrators to be the arbitrator. Owner and Operator will confer on the selection of such arbitrator within 10 days after the demand for arbitration is served, and will agree upon the selection of a JAG arbitrator, if possible, within 20 days after the arbitration demand has been served. In the event that Owner and Operator are unable to agree on the selection of such arbitrator within this 20-day time period, then Owner and Operator will each submit to JAG, via fax, the names of three arbitrators (meeting the requisite experience specified above) who are employed by or associated with JAG, whom each would find acceptable to be the arbitrator. Such submission to JAG will be made on the fifth business day after the 20-day time period referenced above has expired. JAG will thereafter select from the names submitted by Owner and Operator a single arbitrator who will hear and decide the arbitration. The arbitrator will issue an arbitration decision within 30 days after the arbitration hearing is concluded. In the event that JAG no longer exists, the arbitration will be conducted by an American Arbitration Association arbitrator under the rules of the American Arbitration Association then existing. Any decision by the arbitrator relating to the dispute between Owner and Operator will be final and binding upon both Owner and Operator.


19. **SUCCESSORS.** This Agreement constitutes a covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, administrators, trustees, executors and assigns.

20. **AUTHORITY OF SIGNATORIES.** The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

21. **ATTORNEY'S FEES AND COSTS.** The Parties agree that the prevailing Party in any action resulting from a substantial breach of this Agreement will be entitled to its reasonable attorney's fees and costs incurred therein.

IN WITNESS WHEREOF, the Parties have set their hands, the day and year first written above.

PETRO-CANADA RESOURCES (USA) INC.

By: 

James W. Klassen, Landman
Agent for Petro-Canada Resources (USA) Inc.

OWNER:

By: 
Name: John W. Bartmann

By: 
Name: Sheryl L. Bartmann

Flockhart

Township 6 North, Range 67 West, 6th P. M.
Section 12: SE/4

