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1 of 7 R 36.00 D 0.00 GARFIELD COUNTY CO

SURFACE LEASE AGREEMENT

A. PARTIES

The parties to this Agreement are **BENZEL LIVESOCK COMPANY**, a Colorado partnership (lessor) and **ENCANA OIL AND GAS (USA) INC.** (Lessee).

B. RECITALS

1. Lessor is the owner of a tract of land located in the County of Garfield in the State of Colorado that Lessee believes, is suitable for its use as hereinafter set forth.
2. Lessee is in the business of the extraction and distribution of oil, gas and petroleum products. Lessee desires to construct upon the land of Lessor one or more evaporation pits and to use other portions of the Lessor's property for storage of incidental spare equipment and for the ongoing operations of Lessor.

C. AGREEMENT

The parties agree as follows:

1. **Recitals True and Correct:** The recitals forth herein are true and correct.
2. **Premises:** Lessor hereby leases to the Lessee the real property described as follows, and more particularly described in Exhibit "A: attached hereto and made a part hereof by reference.

TOWNSHIP 7 SOUTH, RANGE 93 WEST, 6TH P.M.

Section 1: A tract of land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1, Township 7 South, Range 93 West, 6th P.M.. BEGINNING AT A POINT on the East Line of the SE $\frac{1}{4}$ of Section 1, T7S, R 93W, 6th P.M. Which bears North 00°01'04" East 388.05 feet from the Southeast corner of said Section (being a 1947 brass cap), Thence South 87°28'05" West parallel to the South line of the Said SE $\frac{1}{4}$. 590.30 feet; Thence North 00°01'04" East parallel to the said East line of the SE $\frac{1}{4}$ 590.30 feet; Thence North 87°28'05" East parallel to the said South line of the SE $\frac{1}{4}$ 590.30 feet to the said East line of the SE $\frac{1}{4}$; Thence South 00°01'04" West along the said East line of the SE $\frac{1}{4}$ 590.30 feet to the POINT OF BEGINNING. Basis of bearing is the said East line of the SE $\frac{1}{4}$ which bears North 00°01'04" East. Contains 8.00 acres more or less.

3. **Roadway:** Included with the lease of the demised premises described in paragraph C-2 above, Lessee shall be entitled to the use of an existing access road Sixteen (16) feet in width extending from the county road (West Mamm Creek Road a/k/a County Road #319) now located westerly of the demised premises to the demised premises. The surface of said existing road will be maintained at the sole cost and expense of the Lessee.

RETURN TO: EnCana Oil & Gas (USA) Inc.
Attn: Dennis Hansen
792 Buckhorn Drive
Rifle, CO 81650

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4. **Use of Premises:** Lessee shall have the right to use the leased premises for one or more evaporation pits. Said pit(s) will be lined with impermeable plastic. Each pit will use non-intrusive mitigation, such as predator decoys, as a deterrent to keep fowl away from the pit. Lessee may also use the leased premises for storage of equipment, materials, and supplies, and for the storage of liquid hydrocarbons in storage tanks, together with piping lines and other facilities necessary for its operation. Lessee agrees to keep equipment and materials stored on the land of Lessor in neat and orderly condition.
5. **Term:** The term of this lease shall commence on the date of execution hereof and shall extend for a period of one (1) year and so long thereafter as Lessee continues to utilize the demised premises for the purposes herein stated and otherwise complies with all of the terms and conditions of this Lease.
6. **Rental:** Lessee shall pay to Lessor as rental for the demised premises the following:
 - a) For the first year of the lease, [REDACTED].
 - b) For each successive year of the lease, [REDACTED].Lessee shall pay to Lessor the first year rental in advance, the receipt of which is hereby confessed and acknowledged.
7. **Permits and Licenses.** Lessee shall obtain from all local and state governments having jurisdiction in the premises all permits and licenses necessary to operate the premises. The use of the leased premises shall not commence until such time as all such permits and licenses have been obtained. Lessee shall not use the demised premises or permit anything to be done in or about the premises which will in any way conflict with any law, state ordinance or government rule or regulation which may be hereinafter enacted or promulgated by any entity having jurisdiction.
8. **Compliance with Laws:** Lessee shall, at Lessee's sole cost and expense, promptly comply with all laws, statutes, ordinances or governmental rules, regulations or requirements now in force or which may hereafter be in force relating to or affecting the condition, use or occupancy of the premises. The judgement of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of the fact as between Lessor and Lessee. Lessee shall keep the premises free and clear from any liens arising from any work performed, materials furnished or obligations incurred by Lessee. If Lessee shall be in default in paying any charge for which a mechanic's lien claim or suit to foreclose a lien has been recorded or filed, Lessor may (but without being required to do so) pay said lien or claim and any cost. The amounts so paid, together with reasonable attorney's fees incurred in connection therewith, shall be immediately due and owing from Lessee to Lessor with interest at the rate of eighteen percent (18%) per annum from date of Lessor's payments. Should any claim or lien be filed or recorded against the leased property, or any action affecting title thereto be commenced Lessee shall give Lessor written notice thereof as soon as it has knowledge thereof. Lessor shall have the right to

demand lien waivers from all contractors, sub-contractors and material-men working on the premises.

8. **Insurance:** Lessee shall comply with the Workmen's Compensation Law of the State of Colorado, and shall maintain in force at all times with respect to operations on the leased premises such other insurance, if any, as may be required by law. In addition, Lessee shall maintain such other insurance, if any, that it deems necessary. Lessee shall provide Lessor evidence of any insurance carried by it with respect to operations on the leased premises.
9. **Inspection:** Lessor reserves and shall at all times have the right to enter the premises to inspect the same.
10. **Indemnity of Lessee:** Except for any claims arising out of or due to acts or omissions of Lessor, Lessee shall indemnify and hold Lessor harmless against and from all claims arising from Lessee's use of the premises. It is specifically understood and agreed that the indemnity herein contained shall include any and all forms of hazardous waste that may be brought upon, allowed to escape from or emanate in any fashion from the premises.
11. **Termination of Lease:** Upon termination of this Lease, Lessee shall remove all compressors, structures, pipes, tanks and other equipment, materials and supplies placed upon the premises and shall restore the surface to a condition as nearly as possible as existed prior to the execution of this Lease, including re-vegetation. The restoration and reclamation of the premises shall be completed at the sole cost and expense of Lessee within three (3) months of the date of the termination of this Lease. As security therefore, Lessee shall maintain during the term of this Lease a bond issued by an entity or institution acceptable to Lessor and for the benefit of Lessor in the amount of [REDACTED]. Evidence of the bond acceptable to Lessor shall be delivered to Lessor prior to Lessee taking possession of the premises. Before Lessor releases Lessee of all obligation and releases bond, A third party environmental engineering firm must inspect the site. The third party environmental engineering firm must certify that the leased site is free of any contamination that may have been caused by the evaporation pit or Lessee's operation on site.
12. **Fencing:** Prior to Lessee commencing use of the evaporation pond or ponds, Lessee shall install fencing on the premises sufficient to prevent livestock from entering the premises. Lessee shall also maintain the premises in a neat, orderly and weed free condition.
13. **Default by Lessee:** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:
 - a) . The vacating or abandonment of the premises by Lessor.

- b) The failure by Lessee to make any payment of rent as to when due where such failure shall continue for a period of fifteen (15) days after Lessor provides written notice to Lessee of its failure to pay the rent. Such notices shall be sent to Lessee in the manner provided in paragraph C.18 hereafter. In the event rental is not paid within a period of five (5) days after the due date, Lessee shall pay a penalty of five percent (5%) of the annual rental in addition to all other rental due and payable hereunder.
 - c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee.
14. **Lessor's Remedies:** In the event of any default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:
- a) Terminate Lessee's right to possession of the premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default, including but not limited to the cost of recovering possession of the premises, including necessary renovation and alteration to the premises, reasonable attorney fees, and recourse to the benefit of the bond posted pursuant to paragraph C.11 above.
15. **Eminent Domain:** If the premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, this Lease shall terminate and Lessor shall be entitled to any and all income, rent, award or any interest therein whatsoever which may be paid or made in connection with such public or quasi-public use or purpose for such taking. Lessee shall have no claim against Lessor for the value of any un-expired term of this Lease. If any part of the premises may be so taken or appropriated, Lessor shall have the right, at its option, to terminate this Lease and shall be entitled to the entire award resulting from such taking.
17. **Notices:** All notices and demands, which may or are to be required or permitted to be given by either party to the other hereunder, shall be in writing. All notices and demands shall be sent by United States mail, certified, return receipt requested, postage prepaid, address as follows:

Lessor: Mr. John Benzel
Benzel Livestock Company
980 East Saddlehorn Road
Sedona, AZ 86351

Lessee: EnCana Oil and Gas (USA) Inc.

950 17th Street
Suite 2600
Denver, CO 80202

All notices and demands given hereunder shall be considered to be given and delivered upon deposit in the United States mail as herein provided.

18. **Binding Effect:** The terms and conditions hereof shall extend to and be binding upon the parties hereto, their successors and assigns.
19. **Memo of Lease Recorded:** A Memorandum of this Lease may be recorded by the parties and, if recorded, Lessee covenants and agrees to record a release and quit claim deed to the premises within thirty (30) days following the termination of the Lease.
20. **Quiet Possession:** Lessee shall have the quiet possession of the leased premises for the entire term hereof subject to all of the provisions of this Lease.
21. **Entire Agreement:** This Lease contains all the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease. No prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties or the respective successors in interest.
22. **Attorney Fees:** In the event any action or proceeding is brought by either party against the other under this Lease, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorneys in such amount as the court may adjudge reasonable as attorney's fees.
23. **Sale of Premises:** In the event of any sale of the premises, Lessor shall be, and is hereby, freed and relieved of liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after consummation of such sale. Upon any such sales or portion thereof containing the premises, Lessee shall attorn to the purchaser in all respects under the terms and provisions of this Lease.
24. **Remedies Not Exclusive:** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all the remedies at law or in equity.
25. **Governing Law:** This Lease shall be governed by the laws of the State of Colorado.
26. **Signage:** Lessee shall not place any sign upon the premises without Lessor's prior written consent, with the exception of one identifying the facility as operated by Lessee and any other such signs as may be required by governmental entities having jurisdiction.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year set opposite the name of each.

BENZEL LIVESTOCK COMPANY,
A Colorado Partnership

Date: 11-19-02

John Benzel
BY: John Benzel
Manager and General Partner

ENCANA OIL AND GAS (USA) INC.

Date: 12-11-02

Eric D. Marsh
BY: Eric D. Marsh
Vice President

ACKNOWLEDGEMENTS

State of Arizona)
County of Yavapai) §

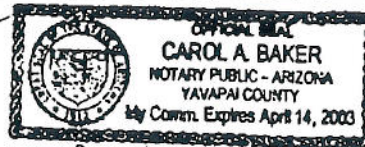
The foregoing instrument was acknowledged before me this 19th day of November, 2002, by JOHN BENZEL, MANAGER AND GENERAL PARTNER of Benzel Livestock Company, a Colorado partnership, known to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

WITNESS my hand and official seal.

(SEAL)

My Commission Expires: 4-14-03

Carol A. Baker
Notary Public



State of Colorado)
County of Denver) §

The foregoing instrument was acknowledged before me this 11 day of December, 2002, by ERIC D. MARSH, as VICE PRESIDENT of EnCana Oil and Gas (USA) Inc., known to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

WITNESS my hand and official seal.

(SEAL)

My Commission Expires: 9-9-06

Miracle F. Pfister
Notary Public





Attached hereto and made a part hereof that Surface Lease Agreement from BENZEL LIVESTOCK COMPANY, GRANTOR and ENCANA OIL AND GAS (USA) INC., GRANTEES.

