

**MEMORANDUM OF  
SURFACE DAMAGE AND RELEASE AGREEMENT**

WHEREAS on the 16th day of February 2005, BriAnn Properties-CO, LLC, ("Owner") entered into a Surface Damage and Release Agreement with EnCana Oil & Gas (USA) Inc., ("Operator"), covering the below described lands in Mesa County, Colorado.

TOWNSHIP 8 SOUTH, RANGE 91 WEST, 6th P.M.

Section 19: All

Section 20: West of County Road

Section 29: NW1/4 West of County Road, W1/2SW1/4

Section 30: All

Section 31: N1/2

WHEREAS said agreement provides for, among other things, the right to enter upon and use the Owner's property for the purpose of erecting and maintaining a well site location for one (1) or more wells, together with a right-of-way and easement on Owner's land to maintain the well site. Said agreement sets forth payment of specific amounts to cover damages resulting from the construction, use and maintenance of the well site and access road. Said agreement, with all of its terms, conditions, covenants and other provisions, is referred to and incorporated into this Memorandum for all purposes.

NOW THEREFORE this Memorandum is placed of record for the purpose of giving notice of the Surface Damage and Release Agreement.

Owner: BriAnn Properties-CO, LLC

Robert G. Noble  
Robert G. Noble, Manager

Douglas P. Hooker  
Douglas P. Hooker, Manager

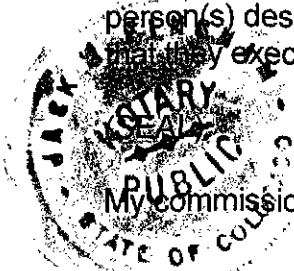
Operator:

EnCana Oil & Gas (USA) Inc.

Joel S. Fox  
By: Joel S. Fox, Attorney-In-Fact

State of COLORADO )  
County of GARFIELD ) §

On this 16th day of FEBRUARY 2005, before me personally appeared Robert G. Noble and Douglas P. Hooker, as Manager's of BriAnn Properties-CO, LLC, known to me to be the person(s) described in and who executed the foregoing instrument, and who acknowledged to me that they executed the same.



My commission expires: 4-10-2006

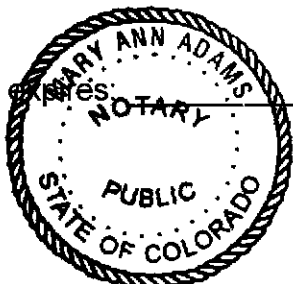
Jack B. Adams  
Notary Public

State of Colorado )  
City & County of Denver ) §

On this 5th day of April, 2005, before me personally appeared, Joel S. Fox, Attorney-In-Fact for EnCana Oil & Gas (USA) Inc., known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

(SEAL)

My commission expires: \_\_\_\_\_



My Commission Expires 7/19/2008

Mary Ann Adams  
Notary Public

EnCana Oil & Gas, Inc.  
Land Department  
2717 County Road 215, Suite 100  
Parachute, CO 81635  
JF

## SURFACE DAMAGE AND RELEASE AGREEMENT

This Surface Damage and Release Agreement (this "Agreement") is made and entered into this 16th day of February 2005, by and between BriAnn Properties-CO, LLC, 5500 County Road 331, Silt, Colorado 81652 ("Owner") and EnCana Oil & Gas (USA) Inc. ("EnCana").

Whereas, EnCana or an affiliate has the right to drill one or more oil and gas wells (the "Well") on the Lands described below:

TOWNSHIP 8 SOUTH, RANGE 91 WEST, 6th P.M.

Section 19: All

Section 20: West of County Road

Section 29: NW1/4 West of County Road, W1/2SW1/4

Section 30: All

Section 31: N1/2

Mesa County, State of Colorado

Whereas, Owner and EnCana wish to memorialize their agreement concerning the payment for damages to the surface of the Lands in connection with the drilling, construction, completion, recompletion, reworking, re-entry, production, maintenance and operation of the Well(s) and all pipelines, tank batteries and other facilities or property of EnCana or its affiliates associated with the Well(s) and located on the Lands.

Therefore, 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, Owner and EnCana agree as follows:

1. *Prior to the commencement of drilling operations for the Well, EnCana shall pay Owner the sum of \$1000 per net surface acre disturbed ("Damage Amount"). If EnCana elects to increase the size of the well pad to accommodate additional wells, EnCana shall pay Owner an additional \$1000 per net surface acre disturbance prior to conducting operations to extend the well pad. Such payment shall constitute payment in full by EnCana and its affiliates for all normal damages, including, but not limited to, damages to growing crops, associated with the drilling, construction, completion, recompletion, reworking, re-entry, production, operation and maintenance of the Well(s). Normal damages include, but are not limited to, reasonable and customary ingress, egress, rights-of-way, construction of all access roads, preparation and use of the drillsite area, preparation and use of reserve pits, and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil and/or gas therefrom.*

2. If by reason of EnCana's operations, there is damage to personal property located on the Lands or there is damage to the surface of the Lands caused by the negligence of EnCana or an unreasonable use of the surface of the Lands by EnCana that is not associated with reasonable and normal drilling, completion, recompletion, reworking, re-entry, production, maintenance and operation of the Well, such as damage to structures, fences, culverts and cement ditches, such damage shall be repaired or replaced by EnCana or EnCana shall promptly pay Owner for such damage.
3. Owner warrants that he is the owner of the entire surface subject to this Agreement and that no one who is not a party to this Agreement is entitled to payment for normal damage to the surface of the Lands for which payment has been made pursuant to paragraph numbered 1 above.
4. Except as provided in paragraph numbered 2 above for cases of unreasonable surface use and/or negligence by EnCana, Owner, for itself and its successors and assigns, does hereby, in consideration of the Damage Amount, release, relinquish and discharge EnCana, its affiliates, successors and assigns from all claims, demands, damages and causes of action that Owner may have be reason of the drilling of the Well(s) and all other damage or injury to the Lands caused by the drilling, completion, recompletion, reworking, re-entry, production, operation and maintenance of the Well(s), and Owner accepts the Damage Amount as full compensation therefor.
5. Owner hereby agrees that by its payment of the Damage Amount, EnCana has fully complied with the applicable governmental regulations and statutes, if any, relating to the settlement of the damages contemplated herein.
6. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, representatives, successors, agents, and assigns.

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

**OWNER: BriAnn Properties-CO, LLC**




Robert G. Noble, Manager



Douglas P. Hooker, Manager

**EnCana Oil & Gas (USA) Inc.**

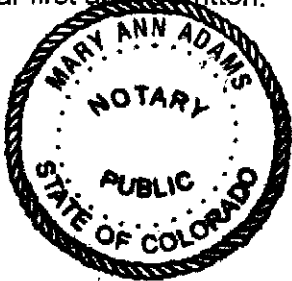
  
Joel S. Fox, Attorney-in-Fact *on*

## ACKNOWLEDGMENTS

STATE OF COLORADO §  
CITY AND COUNTY OF DENVER §

On this 5<sup>th</sup> day of April 2005, before me personally appeared Joel S. Fox, known to me to be the Attorney-in-Fact of ENCANA Oil & Gas (USA) Inc. and that he executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



My Commission Expires 7/18/2008

STATE OF COLORADO §  
COUNTY OF GARFIELD §

Mary Ann Adams  
Notary Public

My Commission Expires: \_\_\_\_\_

The foregoing instrument was acknowledged before me on this 16<sup>th</sup> day of FEBRUARY, 2005, before me personally appeared Robert G. Noble and Douglas P. Hooker, as Manager's of BriAnn Properties-CO, LLC, known to me to be the person(s) described in and who executed the foregoing instrument, and who acknowledged to me that they executed the same.

[Signature]  
Notary Public

My Commission Expires: 4-10-2006

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Mesa County, State of Colorado

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Therefore, 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, Owner and EnCana agree as follows:

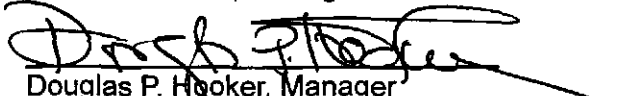
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2. If by reason of EnCana's operations, there is damage to personal property located on the Lands or there is damage to the surface of the Lands caused by the negligence of EnCana or an unreasonable use of the surface of the Lands by EnCana that is not associated with reasonable and normal drilling, completion, recompletion, reworking, re-entry, production, maintenance and operation of the Well, such as damage to structures, fences, culverts and cement ditches, such damage shall be repaired or replaced by EnCana or EnCana shall promptly pay Owner for such damage.
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4. Except as provided in paragraph numbered 2 above for cases of unreasonable surface use and/or negligence by EnCana, Owner, for itself and its successors and assigns, does hereby, in consideration of the Damage Amount, release, relinquish and discharge EnCana, its affiliates, successors and assigns from all claims, demands, damages and causes of action that Owner may have be reason of the drilling of the Well(s) and all other damage or injury to the Lands caused by the drilling, completion, recompletion, reworking, re-entry, production, operation and maintenance of the Well(s), and Owner accepts the Damage Amount as full compensation therefor.
5. Owner hereby agrees that by its payment of the Damage Amount, EnCana has fully complied with the applicable governmental regulations and statutes, if any, relating to the settlement of the damages contemplated herein.
6. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, representatives, successors, agents, and assigns.

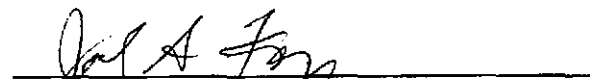

IN WITNESS WHEREOF, the parties have set their hands on the day and year first written above.

**OWNER: BriAnn Properties-CO, LLC**

  
Robert G. Noble, Manager

  
Douglas P. Hooker, Manager

**EnCana Oil & Gas (USA) Inc.**

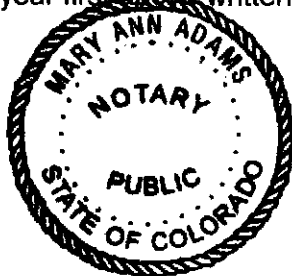
  
Joe S. Fox, Attorney-in-Fact 

## ACKNOWLEDGMENTS

STATE OF COLORADO §  
CITY AND COUNTY OF DENVER §

On this 5<sup>th</sup> day of April 2005, before me personally appeared Joel S. Fox, known to me to be the Attorney-in-Fact of ENCANA Oil & Gas (USA) Inc. and that he executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Mary Ann Adams  
Notary Public

My Commission Expires: \_\_\_\_\_

My Commission Expires 7/19/2008

STATE OF COLORADO §  
COUNTY OF GARFIELD §

The foregoing instrument was acknowledged before me on this 16<sup>th</sup> day of FEBRUARY, 2005, before me personally appeared Robert G. Noble and Douglas P. Hooker, as Manager's of BriAnn Properties-CO, LLC, known to me to be the person(s) described in and who executed the foregoing instrument, and who acknowledged to me that they executed the same.

[Signature]  
Notary Public

My Commission Expires: 4-10-2006