RESOLUTION NO. 2010-11-18(R)

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, County of Collin, Texas, KDC Legacy North Investments One, LP, and Encana Oil and Gas (USA) Inc.; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS,** the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, County of Collin, Texas, KDC Legacy North Investments One, LP, a Texas limited partnership, and Encana Oil and Gas (USA) Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

**WHEREAS,** upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:**

**Section I.** The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

**Section II.** The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

**Section III.** This Resolution shall become effective from and after its passage.

**DULY PASSED AND APPROVED** this the 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Exhibit "A" to Resolution No. 2010-11-18(R)

THE STATE OF TEXAS )
)
COUNTY OF COLLIN )

**TAX ABATEMENT AGREEMENT**

This Tax Abatement Agreement (this "Agreement") is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City"; the County of Collin, Texas, duly acting herein by and through its County Judge and hereinafter referred to as "County," and together are hereinafter referred to as the "Taxing Units"; Encana Oil & Gas (USA) Inc., a Delaware corporation, duly acting by and through its authorized representative, hereinafter referred to as "Tenant"; and KDC Legacy North Investments One, LP, a Texas limited partnership, duly acting by and through its authorized representative, hereinafter referred to as "Owner."

**W I T N E S S E T H:**

**WHEREAS,** on the ____ day of _____, 2010, the City Council of the City of Plano, Texas, passed Ordinance No. 2010- - establishing Reinvestment Zone No. 124, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance," as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

**WHEREAS,** the City has adopted a revised policy statement for Tax Abatement by Resolution No. 2009-9-21(R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

**WHEREAS,** the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

**WHEREAS,** the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefit the City in accordance with the said Ordinance and Act; and

**WHEREAS,** the contemplated use of the Real Property, as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 124 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

**NOW THEREFORE,** the parties hereto do mutually agree as follows:

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof. At the time of this Agreement, KDC Legacy North Investments One, LP, is the Owner of the Real Property.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 124, which shall be hereinafter referred to as the "Personalty." The Personalty is to have an assessed taxable value as determined by the Collin County Appraisal District of not less than Eighteen Million Dollars ($18,000,000.00) on the Property by December 31, 2013, and is or will be owned by Tenant or its affiliates. Tenant shall timely render its personal property value each year to the Central Appraisal District

3. Tenant may not relocate, for purposes of maintaining taxable situs of the Personalty on the Real Property in other Reinvestment Zones in the City.

**JOBS**

4. Tenant estimates the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of 510 full time jobs ("Job Equivalents") at the Development in Plano by the Commencement Date (as defined below in Section 5). "Job Equivalent" shall mean one or more Tenant job positions located at the Development which individually or when combined total 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave).

**IMPROVEMENTS**

5. The Tenant shall lease not less than 300,000 gross square feet of office space on the Real Property by the Commencement Date. The "Commencement Date" means the date of occupancy of the Real Property by the Tenant but in no event shall be later than December 31, 2013. The Tenant and/or Owner shall make real property improvements to the Real Property with a taxable value of not less than Seventy Million Dollars ($70,000,000.00) by December 31, 2013 subject to an Event of Force Majeure. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Tenant's operations in Plano. The term shall not include a downturn in the economy.

**DEFAULT**

6. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Tenant allows its personal property taxes located on the Real Property or Owner allows its real property improvement taxes owed the City or County to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of

any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) Tenant fails to occupy the Improvements on or before the Commencement Date; or

(c) The value of Personalty placed on the Real Property on December 31, 2013 or the value of real property improvements on the Real Property on December 31, 2013 is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(d) The assessed value of the Improvements or Personalty falls below the minimum amounts set forth in paragraph 2 and 5 above as the result of the Tenant or Owner filing a protest or as a result of the removal of Personalty from the Real Property; or

(e) Tenant fails to employ at least 75% of the required Job Equivalents as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Tenant or Owner or Owner's duly authorized representative fails to provide annual certification as required in paragraph 9 below; or

(g) Tenant or Owner has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens at the Development.

7. In the event that the Tenant or Owner defaults under this Agreement then the City or County shall give the defaulting party written notice of such default and if the defaulting party has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the Taxing Units as to that defaulting party. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraphs 6(a) or 6(g) above and after the defaulting party fails to cure same within the cure period, this Agreement shall terminate upon delivery of written notice by the City to the defaulting party and all taxes due by the defaulting party after termination of this Agreement as to the defaulting party shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

8. Upon the occurrence of an event of default under Paragraph 6(a) above and after the defaulting party fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6(g), this Agreement shall terminate as to the defaulting party upon delivery of written notice by the City or County to the defaulting party with respect to the tax abatement attributable to the Personalty and Real Property improvements and all taxes, including previously abated taxes which would have been paid to the City and County without the benefit of this Agreement, shall become due and owing to the City and County, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

## ANNUAL CERTIFICATION

9. Beginning November 1, 2014 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenant and Owner, or their successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement. Owner, hereby grants to Tenant a power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of Owner and Tenant agrees to perform such duty.

## ASSIGNMENT

10. The terms and conditions of this Agreement are binding upon the successors and assigns of Tenant and Owner. This Agreement cannot be assigned by Tenant or Owner unless written permission is first granted by the Taxing Units, which permission shall be at the reasonable discretion of the Taxing Units, except under the following conditions:

(a) Assignment to an affiliate of Tenant or Owner is permissible;

(b) A transfer or assignment of this Agreement by Tenant or Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement.

Assignment under either (a) or (b) above may be made without consent of the Taxing Units; however, Tenant and Owner agrees to give written notice to the Taxing Units of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

If Tenant or Owner desire to assign this Agreement and the Taxing Units'c onsent is required to such assignment, and the Taxing Units do not consent to such assignment, then the Tenant or Owner may terminate this Agreement by delivering written notice to the Taxing Units, and upon such termination, the Tenant or Owner and the Taxing Units shall have no further rights, duties or obligations under this Agreement.

## ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City and County, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Tenant and Owner located on the Real Property otherwise owed to the Taxing Units shall be abated as follows:

(a) The tax abatements as to Personalty and Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2014, through December 31, 2023 (the "Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Personalty and Real Property improvements for each tax year from January 1, 2014, through December 31, 2023.

(c) The Tenant or Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements, respectively, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those in paragraph 2 and 5 as a result of a Tenant or Owner filed protest and/or contest or removal of property from the Real Property.

**NOTICE**

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For County by notice to:

County of Collin, Texas
Attention: The Honorable Keith Self
Collin County Commissioners' Court
Collin County Administration Building
2300 Bloomdale Road, Suite 4192
McKinney, Texas 75071

For Tenant by notice to:

Encana Oil & Gas (USA) Inc.
Attn: Cindie Ward
370 17th Street, Suite 1700
Denver, CO 80202

For Owner by notice to:

KDC Legacy North Investments One, LP
Attn: Scott Ozymy
EVP & CIO
KDC
8115 Preston Road, Suite 700
Dallas, TX 75225

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

**MISCELLANEOUS PROVISIONS**

13. The Tenant and Owner further agree that the Taxing Units, their agents and employees, shall have reasonable right (with no less than 5 business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and real property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement, Taxing Units shall have the continuing right (with no less than 5 business days prior written notice to Tenant and Owner) to inspect the Real Property and Personalty during regular business hours to insure that the Personalty and real property improvements are thereafter maintained in accordance with this Agreement.

14. It is understood and agreed between the parties that the Tenant and Owner, in performing their respective obligations hereunder, are acting independently, and the Taxing Units assume no responsibilities or liabilities in connection therewith to third parties and Tenant and Owner agree to indemnify and hold harmless Taxing Units from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of their respective defaults of their obligations hereunder.

15. The Taxing Units represent and warrant that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

16. (a) This Agreement was authorized by Resolution of the City Council at its Council meeting on the ___ day of _____, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

(b) This Agreement was authorized by the Minutes of the Collin County Commissioners' Court at its meeting on the ___ day of _____, 2010, authorizing the County Judge to execute the Agreement on behalf of Collin County.

17. This Agreement was entered into by Tenant and Owner pursuant to their duly authorized representatives.

18. This instrument shall constitute a valid and binding agreement between the City, County, and the Tenant and the Owner when executed in accordance herewith.

19. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this ____ day of _____, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule municipal corporation

_____
Diane Zucco, CITY SECRETARY

_____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

ATTEST:

COMMISSIONERS' COURT OF COLLIN COUNTY

_____

_____
Keith Self
COUNTY JUDGE

Encana Oil & Gas (USA) Inc., a Delaware corporation

By:_____
Name:_____
Title:_____

KDC Legacy North Investments One, LP,
a Texas limited partnership
By: KDC Legacy North Investments GPI, LLC, a Texas limited liability company
General Partner

By: _____
Name: _____
Title: _____

**EXHIBIT A**

**THE LAND**

**TRACT 1:**

**BEING** a tract of land out of the Maria C. Vela Survey, Abstract No. 935, and the Henry Cook Survey, Abstract No. 183, City of Plano, Collin County, Texas, being all of Lot 6, Block C, Legacy Town Center (North), an addition to the City of Plano recorded in Cabinet 2006, Page 440, Map Records of Collin County, Texas and being more particularly described as follows:

**BEGINNING** at a "X" cut in concrete set in the west right-of-way line of Bishop Road (a 109-foot wide right-of-way); said point being the northeast corner of Lot 1R, Block C, Legacy Town Center (North), an addition to the City of Plano, Texas according to the plat recorded in Cabinet 2007, Page 601, Map Records of Collin County, Texas;

**THENCE** departing said west right-of-way line of Bishop Road, with the north line of said Lot 1R, Block C and the north line of Legacy Circle (a 42-foot wide private street), the following courses and distances:

West, a distance of 32.44 feet to a "X" cut in concrete set at the beginning of a tangent curve to the right with a radius of 20.00 feet, a central angle of 20°00'00", and a chord bearing and distance of North 80°00'00" West, 6.95 feet;

In a northwesterly direction with said curve, an arc distance of 6.98 feet to a "X" cut in concrete set for corner;

North 70°00'00" West, a distance of 84.03 feet to a "X" cut in concrete set at the beginning of a tangent curve to the left with a radius of 44.00 feet, a central angle of 30°00'00", and a chord bearing and distance of North 85°00'00" West, 22.78 feet;

In a northwesterly direction with said curve, an arc distance of 23.04 feet to a 5/8" iron rod with "KHA" cap set for corner;

South 80°00'00" West, a distance of 295.05 feet to a "X" cut in concrete set at the beginning of a tangent curve to the right with a radius of 20.00 feet, a central angle of 72°15'22", and a chord bearing and distance of North 63°52'19" West, 23.58 feet;

In a northwesterly direction with said curve, an arc distance of 25.22 feet to a "X" cut in concrete set at the beginning of a curve to the left with a radius of 85.00 feet, a central angle of 98°28'31", and a chord bearing and distance of North 76°58'53" West, 128.76 feet;

In a northwesterly direction with said curve, an arc distance of 146.09 feet to a "X" cut in concrete set for corner; said point being the southeast corner of Lot 4, Block C, Legacy Town Center (North), an addition to the City of Plano, Texas according to the plat recorded in Cabinet 2006, Page 516, Map Records of Collin County, Texas;

**THENCE** departing said north line, with the east line of said Lot 4, Block C and said north line of Legacy Circle, North, a distance of 205.48 feet to a "X" cut in concrete set for corner in the south right-of-way line of Infinity Avenue (a 60-foot wide right-of-way); said point being the northeast corner of said Lot 4, Block C;

**THENCE** with said south right-of-way line of Infinity Avenue, East, a distance of 578.12 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being an angle point in the said west right-of-way line of Bishop Road;

**THENCE** with said west right-of-way line of Bishop Road, South, a distance of 225.56 feet to the **POINT OF BEGINNING** and containing 2.838 acres or 123,636 square feet of land.

TRACT 2:

**BEING** a tract of land out of the Henry Cook Survey, Abstract No. 183, City of Plano, Collin County, Texas, being all of Lot 2, Block C, Legacy Town Center (North), an addition to the City of Plano recorded in Cabinet 2006, Page 148 Map Records of Collin County, Texas and being more particularly described as follows:

**BEGINNING** at a 1/2" iron rod with cap found at the intersection of the west right-of-way line of Bishop Road (a 60-foot wide right-of-way) and the south right-of-way line of Ashmill Drive (a 60-foot wide right-of-way); said point also being the northeast corner of said Lot 2, Block C;

**THENCE** with said west right-of-way line of Bishop Road, South, a distance of 464.57 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said west right-of-way line and the north right-of-way line of Infinity Avenue (a 60-foot wide right-of-way);

**THENCE** with said north right-of-way line of Infinity Avenue, West, a distance of 375.00 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said north right-of-way line and the east right-of-way line of Elijah Drive (a 60-foot wide right-of-way);

**THENCE** with said east right-of-way line of Elijah Drive, North, a distance of 464.57 feet to a 1/2" iron rod with cap found for corner; said point being the intersection of said east right-of-way line and the said south right-of-way line of Ashmill Drive;

**THENCE** with said south right-of-way line of Ashmill Drive, East, a distance of 375.00 feet to the **POINT OF BEGINNING** and containing 3.999 acres or 174,213 square feet of land.

Exhibit "A" to Resolution No. 2010-11-18(R)

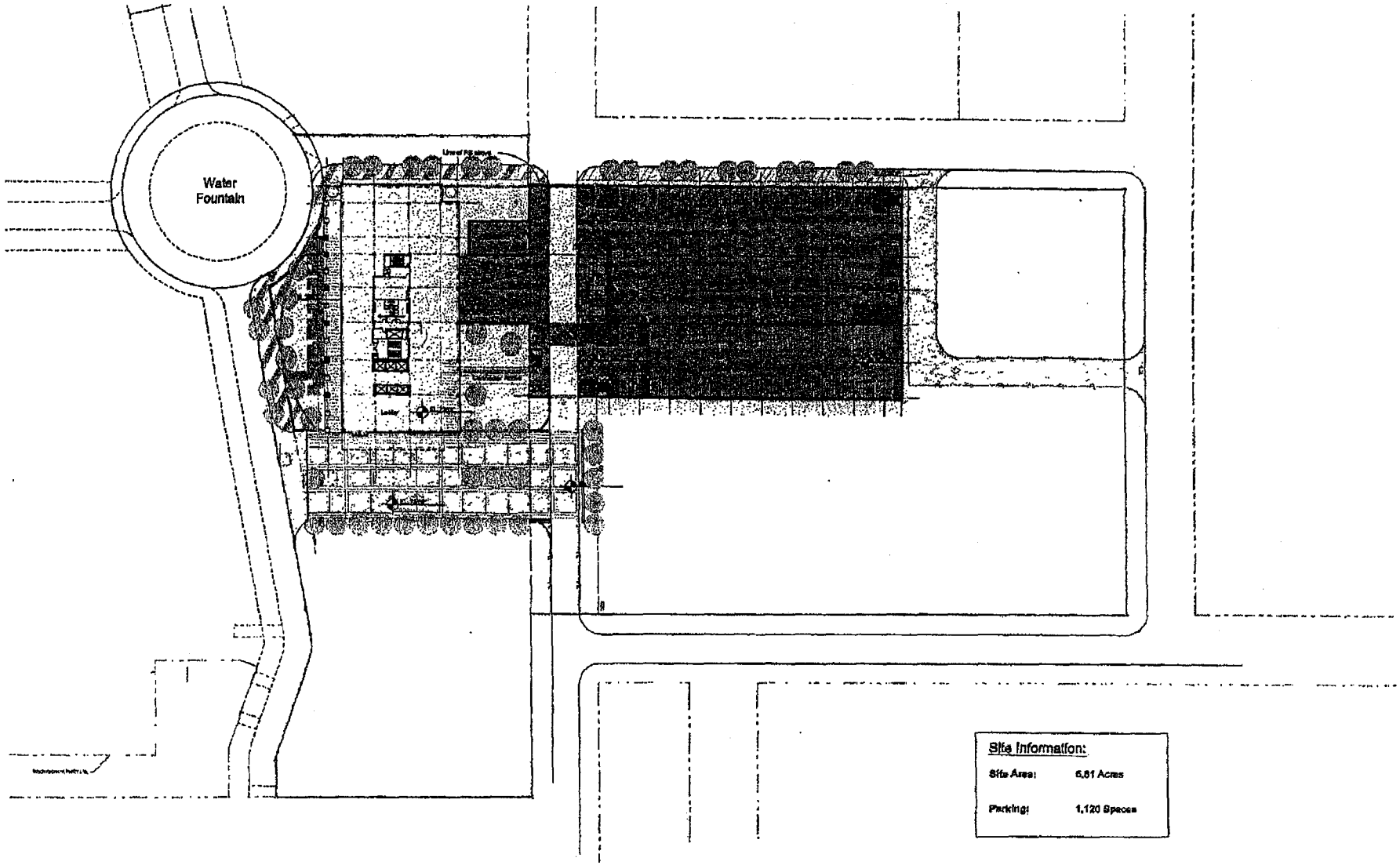


EXHIBIT B

SITE PLAN

Legacy In Plano, TX

SCALE: 1:30

14 OCTOBER 2010

N

KDC

**EXHIBIT "C"**
**CERTIFICATION FORM**
**REINVESTMENT ZONE NO. 124**

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 124
Tax Abatement Agreement (the "Agreement") between Encana Oil & Gas (USA) Inc., ("Tenant"); KDC Legacy North Investments One, LP ("Owner") and the City of Plano, dated as of _____

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2014, through December 31, 2023. This form is due on November 1 of each year the Agreement is in force. Tenant makes this certification on behalf of Owner pursuant to its power of attorney in Section 9 of the Agreement.

Encana Oil & Gas (USA) Inc.,
a Delaware Corporation, as Tenant and on behalf of KDC Legacy North Investments One, LP, a Texas limited partnership, as Owner

By: _____
Name: _____
Title: _____