

'PART'

1998

**EXECUTIVE DIRECTOR OF THE DEPARTMENT
OF CONSERVATION AND LAND MANAGEMENT
("Lessor")**

AND

**APACHE EAST SPAR PTY LTD
(ACN 008 674 413)**

APACHE OIL AUSTRALIA LIMITED (ACN 050 611 688)

**SANTOS (BOL) PTY LIMITED
(ACN 000 670 575)**

**HARDY PETROLEUM LIMITED
(ARBN 009 475 389)
("Lessees")**

LEASE

**DEPUTY CROWN SOLICITOR - COMMERCIAL
CROWN SOLICITOR'S OFFICE
PERTH**

TELEPHONE : (09) 264 1711

CSO : 856/97ST

(g:\irelandb\stuart\document\p\clm02p02.doc)

THIS DEED OF LEASE is made the _____ day of _____ 1998

B E T W E E N :

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT a body corporate constituted by the Conservation and Land Management Act, 1984 of 50 Hayman Road, Como (hereinafter called "the Lessor") of the one part

AND

APACHE EAST SPAR PTY LTD (ACN 008 674 413) of QV1, 250 St George's Terrace, Perth, Western Australia

APACHE OIL AUSTRALIA LIMITED (ACN 050 611 688) of Level 3, 256 St George's Terrace, Perth, Western Australia

SANTOS (BOL) PTY LIMITED (ACN 000 670 575) of 101 Grenfell Street, Adelaide, South Australia and

HARDY PETROLEUM LIMITED (ARBN 009 475 389) of 40 Kings Park Road, West Perth

(hereinafter collectively called "the Lessees" which expression shall mean and include the Lessees jointly and each of them severally and their successors and assigns) of the other part.

W H E R E A S :

- (A) By notification published in the Government Gazette on the 5th March 1976 Reserve 33902 known as Lowendal Islands Nature Reserve was vested in the Western Australian Wildlife Authority for the purpose of conservation of flora and fauna.

- (B) By virtue of the provisions of the Conservation and Land Management Act 1984 the Lessor is the successor in title of the said Authority.
- (C) By Section 17 of the Petroleum Pipelines Act 1969 (hereinafter called "the Act") the Lessor, being a public authority under the Act, is empowered to grant to the holder of a pipeline licence under the Act a lease, easement, licence or other authority necessary or expedient to enable that licensee to construct operate inspect maintain and repair the pipeline specified in that licensee's pipeline licence.
- (D) The Lessees are the holders of two pipeline licences under the Act dated 13 September 1995 and 29 February 1996 recorded as Pipeline Licences Nos. 29 and 30 respectively in the register of the Department of Minerals and Energy (hereinafter collectively called "the Pipeline Licence").
- (E) The Lessees applied for a lease of that portion of Reserve 33902 situate on Varanus Island ("the Island") coloured green on the plan annexed hereto (hereinafter called "the demised premises") together with an easement over the land coloured blue on the said plan ("the Easement") for the purpose of constructing operating inspecting maintaining and repairing the pipeline specified in the Pipeline Licence (hereinafter called "the Pipeline") and have been in occupation of the demised premises with the consent of the Lessor since 1 March 1996.

NOW THIS DEED WITNESSES THAT the Lessor in consideration of the premises, and also in consideration of the rents hereinafter reserved and on the part of the Lessees to be paid and in the exercise of the powers in that behalf given by the Act and to the extent of the Lessor's powers in that behalf HEREBY LEASES to the Lessees jointly and severally the demised premises with the appurtenances TO HAVE AND TO HOLD

the demised premises with all the rights powers and privileges conferred on the Lessees by the Act and this Deed BUT SUBJECT NEVERTHELESS to the covenants agreements obligations powers reservations and conditions contained herein and in the Pipeline Licence and to the provisions in the Act as are applicable hereto for a term of years commencing on the 1st March 1996 and expiring on the 28th February 2006 or on the day on which the term of the Pipeline Licence or any renewal thereof terminates or is determined (whichever occurs first) but determinable as hereinafter provided YIELDING AND PAYING therefor during the said term unto the Lessor a yearly rent of SEVENTEEN THOUSAND TWO HUNDRED AND EIGHTY DOLLARS (\$17,280.00) subject to reappraisal as hereinafter provided and payable by equal payments yearly in advance commencing on the date of commencement of the term hereof and thereafter on or before the anniversary of that date in every year PROVIDED NEVERTHELESS that the Lessor does hereby save and reserve to the Crown all mines of gold, silver, copper, tin or other metals, ore and minerals, or other substances containing metals and all gems and precious stones, coal and all phosphatic substances in and under the demised premises with full liberty at all times (subject to the Lessor reasonably determining that the operations of the Lessees on the demised premises will not be unduly prejudiced or interfered with assuming that the Lessees take all reasonable steps to avoid and mitigate the prejudice or interference) for the Crown or any person lawfully claiming under or through the Crown to search and dig for and carry away the same and for that purpose enter upon the demised premises or any part thereof PROVIDED FURTHER that all petroleum (but excluding petroleum brought onto the demised premises by the Lessees their licensees and invitees in the course of their operations on the demised premises) on or below the surface of the demised premises is

reserved to the Crown with the right for the Crown or any person claiming under the Crown or lawfully authorised in that behalf to have access to the demised premises for the purpose of searching for and for the operations of obtaining petroleum in and under any part of the demised premises under the provisions of the Petroleum Act, 1967.

1. THE Lessees to the intent that the obligations may continue throughout the term hereby created, hereby jointly and severally COVENANT AND AGREE with the Lessor as follows:-

- (1) THAT the Lessees will pay the rent hereby reserved without abatement or deduction at the times and in the manner aforesaid.
- (2) THAT the Lessees will duly and punctually pay such rates and taxes as are lawfully assessed or payable in respect of the demised premises or the ownership or occupation thereof from time to time.
- (3) THAT the Lessees will subject to and in accordance with the provisions of the Pipeline Licence commence and diligently proceed with the construction provision and completion of the Pipeline on the demised premises and the Easement.
- (4) THAT the Lessees will permit the Lessor by his employees, agents and contractors with or without vehicles plant and equipment at all reasonable times and on reasonable notice (except in cases of emergency) to enter upon and inspect the demised premises for the purpose of ensuring that the Lessees are observing performing and complying with the covenants conditions and obligations contained herein and in the Pipeline Licence and on the part of the Lessees to be observed performed and complied with provided that should the Lessees nominate an officer to accompany the employees, agents or contractors of the Lessor then such inspection shall be carried out by the said employees,

agents or contractors accompanied by such officer and all security and safety regulations of the Lessees shall to the extent practicable be observed and complied with by such employees, agents and contractors. The Lessees shall also provide appropriate return transport for such employees, agents and contractors of the Lessor and their vehicles plant and equipment (if any) between Karratha and the demised premises as well as suitable accommodation and living quarters upon the Island.

- (5) THAT the Lessees will not without the written consent of the Lessor first had and obtained use or permit or suffer the demised premises or any part thereof to be used for any purpose other than the construction provision use operation inspection maintenance and repair thereon of the Pipeline in connection with the appraisal and development of the East Spar Field or any other petroleum field located now or hereafter within the area of Commonwealth Production Licence for Petroleum No. WA-13-L approved by the Environmental Protection Authority for servicing of the Pipeline Licence and the carrying out of the biological studies and monitoring programme referred to in clause 1(26) hereof.
- (6) THAT the Lessees will at their own cost in all things severally comply in all respects with the provisions of all Acts (State or Federal) now or hereafter in force and rules regulations and by-laws made thereunder in respect of or affecting the demised premises or the operations of the Lessees thereon (including but not limited to the Conservation and Land Management Act 1984 and the Wildlife Conservation Act 1950) and will perform discharge and execute all requisitions and works and do and perform all such acts and things upon and to the demised premises or any part thereof as are or may reasonably be required or directed to be executed or done by any competent local or public

authority pursuant to any Act (State or Federal) now or hereafter in force PROVIDED that compliance with provisions of paragraphs (a), (b), (c), (d), (g), (l) and (o) of Regulation 46 under the Wildlife Conservation Act 1950 and the prohibition on clearing by any means whatsoever of any tree shrub grass or other plant whether living or dead contained in paragraph (m) of that Regulation shall not be required in circumstances where the breach thereof is an unavoidable incident of the Lessees' operations on the demised premises.

- (7) THAT the Lessees will at all times during the currency of this Lease observe perform and comply with all the covenants agreements conditions provisions and obligations contained or implied in the Pipeline Licence which are on the part of the Lessees to be observed performed and complied with.
- (8) THAT the Lessees will not assign mortgage charge sublet or dispose of the demised premises or any part thereof or procure allow or suffer the demised premises or any part thereof to be assigned mortgaged charged sublet or disposed of for all or any part of the term hereby created without at the same time assigning mortgaging charging subletting or disposing of (as the case may be) the Pipeline Licence to the same assignee mortgagee chargee sublessee or disponee respectively.
- (9) THAT the Lessees will pay to the Lessor forthwith upon demand in writing all reasonable costs and expenses incurred by the Lessor in and about the carrying out of such surveys of the demised premises and the rookery protection areas and the preparation of such plans of survey in respect thereof as shall be required in connection with the preparation of and preliminary to this Lease.
- (10) THAT the Lessees will indemnify and keep indemnified the Lessor the Crown and its instrumentalities the Minister for Mines and their respective employees,

agents and contractors in respect of all actions suits proceedings claims demands losses expenses or costs arising out of or in connection with any work carried out by or on behalf of the Lessees pursuant to the Pipeline Licence or relating to their operations or arising out of or in connection with the construction provision use operation inspection maintenance or repair by the Lessees or their employees, agents contractors or assignees of the Pipeline or the Lessees' works or services on the demised premises or the plant apparatus or equipment installed in connection therewith or arising out of or resulting from any default by the Lessees in the due and punctual performance and observance of and compliance with the covenants conditions or obligations contained herein or in the Pipeline Licence and on the part of the Lessees to be performed observed or complied with PROVIDED THAT this indemnity shall not apply in circumstances where the Lessor its employees, agents or contractors are negligent in carrying out work for the Lessees.

- (11) THAT the Lessees shall take at all times all necessary precautions and steps to avoid and prevent the uncontrolled escape of petroleum or any other inherently dangerous or inflammable liquid from the Pipeline tanks plant equipment or other works of the Lessees upon the demised premises AND in the event of escape of petroleum or other liquid as aforesaid (whether with or without fault or negligence on the part of the Lessees their servants or agents) the Lessees shall forthwith and at their own cost and expense stop the escape of petroleum or other liquid and rectify and repair any injury or damage whatsoever caused thereby and clean up and reinstate the demised premises to such condition and to such extent as shall be acceptable to the Lessor and the Director General of Mines AND the Lessees shall indemnify and keep indemnified the Lessor the

Minister for Mines the Crown and its instrumentalities and their respective employees, agents and contractors in respect of all loss injury or damage sustained by them or any of them and all suits proceedings claims demands losses costs or expenses of third parties arising out of or incurred as a result of the escape of petroleum or other liquid as aforesaid PROVIDED THAT this indemnity shall not apply where any such losses, injury damage, expenses or costs are caused or contributed to (to the extent of such contribution) by the negligence of the Lessor its employees, agents or contractors.

(12) THAT the Lessees will upon the expiration or sooner determination of the term of this Lease yield up the demised premises in such state of repair condition order and preservation as shall be in accordance with the Lessees' approved proposals referred to in paragraph (30) hereof and with the Lessees' covenants and obligations contained herein and in the Pipeline Licence.

(13) SUBJECT to any provision herein to the contrary the Lessees shall comply in all respects with the ~~Environmental Protection Authority recommendations of~~ ~~set forth in the Schedule hereto~~ and with the matters *Consultative Environmental Review* contained in their Notice of Intent dated the *MARCH 1995* with respect to the development of an offshore petroleum field at *EAST SPAC* near Barrow Island submitted by the Lessees to the Environmental Protection Authority pursuant to the provisions of the Environmental Protection Act, 1986 and also with the conditions imposed by the Minister for the Environment in his Statement that a Proposal may be Implemented published on 8 September 1995, a copy of which is annexed hereto and marked "A" (hereinafter collectively called "the Notice of Intent").

- (14) EXCEPT so far as they shall be inconsistent with anything herein contained the Lessees shall comply with all relevant Codes of Environmental Practice for the time being issued by the Australian Petroleum Exploration Association.
- (15) THAT the Lessees shall not at any time carry out any construction, operations or works or create any disturbance whatsoever closer than a distance of ten (10) metres from any existing Wedge-tailed Shearwater nesting burrow.
- (16) THAT the Lessees shall not bring or permit to be brought onto any part of Reserve 33902 any vehicle plant equipment or materials having on it or within it any soil vegetation flora or plant propagule AND that all vehicles and plant intended by the Lessees to be brought onto Reserve 33902 shall be thoroughly washed down with seawater from hoses at high pressure and all traces of soil and plant propagules shall be removed therefrom immediately prior to shipment at the point of embarkation on the mainland.
- (17) THAT the Lessees shall fumigate with methyl bromide or such other fumigant as may be approved for that purpose by the Lessor all accommodation containers utensils and equipment to be taken to Reserve 33902 immediately prior to embarkation on the mainland or in transit prior to arrival at the said Reserve AND that no animal shall be permitted at any time to be or remain in or upon any boat barge or other vessel used by the Lessees to transport goods or personnel to or from Reserve 33902.
- (18) (a) EXCEPT with the prior written consent of the Lessor no animal (whether beast bird or reptile) plant vegetation flora or plant propagule shall be taken to or removed from the Island.

- (b) THAT all topsoil stockpiled during the term hereof shall be satisfactorily stabilised to prevent erosion.
- (19) EXCEPT for the purpose of rectifying and clearing up a petroleum spill or fighting a fire no vehicle shall be used or operated on the Island outside the boundaries of the demised premises and the Easement.
- (20) THAT the Lessees shall not use any more artificial lighting nor create more artificial light (including reflected light) than shall be reasonably necessary to carry on their operations on the demised premises safely PROVIDED that the Lessees shall not cause or permit any artificial light to be directly visible from any beaches where turtles are nesting as described in the Notice of Intent or from the waters immediately adjacent to those beaches.
- (21) THAT all sewage from the demised premises shall be subjected to primary and secondary treatment by means of a packaged treatment plant specifically approved by the Lessor for the purpose AND that all sewage treated as aforesaid shall be discharged either into the ocean below low water mark or into a water disposal well.
- (22) THAT except in cases of emergency the Lessees shall not use or operate a helicopter to from or upon the Island during the hours between sunset on any day and the following sunrise.
- (23) THAT the Lessees shall ensure that no aggregate brought onto the Island shall contain plant propagules.
- (24) EXCEPT for the purpose of biological studies and the monitoring referred to in paragraph (26) hereof the Lessees shall not approach or enter any seabird nesting areas on the Island outside the demised premises.

- (25) THAT the Lessees shall not later than the _____ or a date eight (8) weeks from the date of this Lease (whichever shall occur first) prepare and furnish for the approval of the Lessor detailed written proposals for an environmental management programme describing the measures to be taken by the Lessees in respect of their activities upon the demised premises and the balance of the Island for the protection and management of the environment. The Lessor may as a condition of the approval by it of the said proposals require the Lessee to make such alterations or additions to or deletions from those proposals as the Lessor may consider reasonable and appropriate and the Lessee shall give effect forthwith to any such requirement of the Lessor. The Lessees shall carry out all such proposals approved by the Lessor strictly in accordance with the terms thereof.
- (26) THE Lessees shall in respect of the matters referred to in paragraph (25) of this clause and which are the subject of proposals approved as hereinbefore provided carry out by their employees, agents or independent consultants previously approved by the Lessor a continuous programme of investigation and research including monitoring studies of sample areas to ascertain the effectiveness of their environmental management programme and the measures taken by the Lessees pursuant to such approved proposals for rehabilitation protection and management of the environment. Data obtained from the monitoring studies shall be presented to the Lessor in a form suitable for statistical analysis by the Lessor.
- (27) THE monitoring to be carried out under paragraph (26) hereof shall include:-

- (a) annual colour vertical aerial photography at a scale of 1:25,000 or larger of the entire Island;
 - (b) periodical studies of plant quadrats in a variety of vegetation types located in those areas of the Island disturbed by the Lessees' operations on the Island and in complimentary vegetation types located in undisturbed areas;
 - (c) studies of the mangroves identifying the extent recruitment and mortality thereof;
 - (d) counts of sea birds in breeding colonies and of burrows in colonies of Wedge-tailed Shearwaters;
 - (e) checks for rodents and other animals in warehouses accommodation buildings and supply boats;
 - (f) counts and distribution of turtle nests and nesting turtles and reports of any disturbance thereof as a result of the Lessees' operations on the Island;
 - (g) the effects of unusual weather conditions including cyclones and droughts upon the fauna flora and environment of the Island;
 - (h) counts and details of any fauna mortality resulting from the Lessees' operations on the Island.
- (28) THAT the Lessees shall on each successive anniversary of the commencement date of this Lease during the term or currency of this Lease submit a written report to the Lessor and the Minister for Mines containing full particulars of the following:-

- (a) the Lessees' operations undertaken on the Island during the preceding twelve months;
- (b) any variations from established or previous procedures adopted by the Lessees;
- (c) any environmental problems encountered by the Lessees in the preceding twelve months;
- (d) investigations research and biological monitoring studies carried out by the Lessees as hereinbefore provided and any conclusions or findings thereon;
- (e) proposed operations for the ensuing twelve months;
- (f) any further new or additional procedures which the Lessees may wish to suggest as being relevant or necessary to improve the management of the environment of the Island and to mitigate damage caused to that environment.

Each such report shall also contain an undertaking by the Lessees to adopt and implement those further new or additional procedures referred to in item (f) above. The Lessor may within three (3) months of the receipt of the Lessees' annual report notify the Lessees that it requires additional particulars to be supplied by the Lessees in respect of all or any of the matters the subject of the annual report or that it requires additional material to be disclosed in the annual report or that it requires certain practical remedial measures to be carried out by the Lessees AND the Lessees shall within one month of the receipt of the Lessor's notice hereinbefore referred to supply to the Lessor the additional particulars or material required or otherwise implement the reasonable requirements of the Lessor as may be appropriate. The Lessor may make

available to the public copies of the said annual report additional particulars and material.

- (29) NOTHING in this Lease shall be construed to exempt the Lessees from compliance with any reasonable requirement in connection with the protection of the environment arising out of or incidental to their activities on the Island that may be made by the State or any State instrumentality or any local or other authority or statutory body of the State pursuant to any Act rule regulation or bylaw from time to time in force AND in particular the Lessees shall duly and punctually observe, perform and comply with all environmental requirements and conditions hereafter determined by the Lessor from time to time.
- (30) THAT the Lessees shall not later than twelve (12) months prior to the expiration of the term or the earlier determination of this Lease prepare and submit to the Lessor for approval their detailed written proposals for the removal of their equipment from the Island the restoration and rehabilitation of the Island and the delivery of possession of the demised premises and the Easement back to the Lessor. As a condition of granting approval of the Lessees' proposals the Lessor may require the Lessees to make such alterations or additions to or deletions from those proposals and provide such bond or other security for the complete removal from the Island of all the Lessees' equipment as the Lessor in its absolute discretion may consider appropriate in either case.
- (31) THE proposals referred to in paragraph (30) of this clause shall make proper provision for:-
- (a) the stabilisation of the land surface of the Island;

11/7
/18

- (b) the rehabilitation and restoration of the vegetation cover of the Island to such an extent that it can reasonably be expected, in the opinion of an independent qualified expert appointed by the Lessor, to revert in a reasonable course of time to its former condition in all material respects as at the date of commencement of this Lease;
 - (c) the restoration of the beaches and natural mobile land areas on the Island to a state and condition similar and compatible in all material respects to their former state and condition as at the date of commencement of this Lease;
 - (d) the removal of every item of the Lessees' equipment from the Island.
- (32) UPON approval by the Lessor of the Lessees' proposals referred to in paragraph (30) of this clause the Lessees shall duly and punctually carry out and comply with those approved proposals strictly in accordance with the terms thereof.
- (33) AS security for the due and punctual performance and observance by the Lessees of their obligations to rehabilitate and restore the Island as hereinbefore provided the Lessees shall at the time of submission of the proposals referred to in paragraph (30) of this Clause lodge with the Lessor a Bank Guarantee from a bank and in a form acceptable to the Lessor for a sum equal to the amount of the annual rental for the time being payable by the Lessees hereunder such sum to be payable by the bank to the Lessor for and in respect of each and every hectare (or part thereof) of land (including but not limited to landings, tracks, storage areas, accommodation, temporary pipeline assembly yards, storage tanks and bunds) upon the Island which has been disturbed or damaged by the Lessees and has not been wholly restored and rehabilitated to the satisfaction of

the Lessor in the manner hereinbefore provided SUBJECT HOWEVER to the following conditions:-

- (a) the amount of the Bank Guarantee may in the absolute discretion of the Lessor be adjusted annually upon the Lessor being satisfied that the Lessees are carrying out the rehabilitation and restoration of the Island in accordance with the terms of their approved proposals;
 - (b) the Bank Guarantee shall be surrendered and returned by the Lessor to the Lessee upon the completion of all restoration and rehabilitation of the Island to the satisfaction of the Lessor;
 - (c) in the event of the failure by the Lessees to perform all or any of their obligations hereunder with respect to the restoration or rehabilitation of the Island the Lessor upon giving to the Lessees fourteen (14) days' notice in writing of the Lessor's intention so to do may invoke and enforce the Bank Guarantee and obtain payment of all or any of the moneys payable thereunder and the Easement;
 - (d) the Lessor may utilise all or any moneys paid to the Lessor pursuant to the Bank Guarantee in the performance by the Lessor of all or any of the obligations of the Lessees with respect to the restoration or rehabilitation of the Island or in the carrying out of such other works to that end as the Lessor may in its absolute discretion consider appropriate.
- (34) THE Lessees shall prepare and submit to the Lessor for approval within six (6) months after the date of this Lease written proposals for the management by the

Lessees of the outbreak of fire and the spillage of petroleum upon the demised premises and the Easement.

(35) THE Lessees shall upon the commencement of the term of this Lease at their own expense supply construct erect and install fences satisfactory to the Lessor for the purpose of delineating the rookery and mangrove protection areas upon the demised premises.

2.(1) THE Lessor hereby COVENANTS with and warrants to the Lessees

(a) THAT the Lessees paying the rent hereby reserved and duly and punctually performing observing and complying with the covenants agreements conditions and obligations contained either herein or in the Pipeline Licence and on their part to be performed observed or complied with and provided that the Pipeline Licence has not been determined the Lessees shall peaceably hold and enjoy the demised premises during the term of this Lease and any extension or renewal thereof without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

(b) THAT the Lessor will at the written request of the Lessees given to the Lessor not later than three calendar months after the expiration or sooner determination of the HJV Lease and if there shall not at the time of such request be any rent due and unpaid or any existing breach or non-observance of any of the covenants agreements conditions or provisions on the part of the Lessees contained herein of which the Lessees have been given notice grant to the Lessees a lease of the whole or such part of the land the subject of the HJV Lease as shall be agreed by the Lessor and the Lessees and, in default of agreement, as

the Lessor shall in his absolute discretion determine, for the unexpired term of this Lease commencing on the date of expiration or sooner determination of the HJV Lease but at such rental and containing such covenants agreements powers reservations and conditions as shall be agreed by and between the Lessor and the Lessees and, in default of agreement, as the Lessor shall determine in his absolute discretion.

- (2) THE Lessor HEREBY TRANSFERS AND GRANTS to the Lessees full right and liberty for the Lessees by their agents, employees, contractors, and all persons authorised by the Lessees from time to time and at all times hereafter during the term or continuance of this Lease to enter with or without vehicles and such plant and equipment as in the circumstances are reasonably necessary upon the Easement and to remain thereon for all or any of the purposes of the Pipeline Licence or any variation or renewal thereof and of laying constructing fixing taking up maintaining operating repairing relaying or examining the Pipeline but limited to a depth not exceeding six point zero nine six (6.096) metres from the natural surface thereof (except where the Pipeline traverses rivers or watercourses or other areas of scouring because of waterflow where in any such case the depth from the ground surface or the riverbed must be increased to maintain the integrity of the Pipeline but in no such case exceeding twelve point one nine (12.19) metres) and to use and operate the Pipeline for the conveyance of petroleum.
- (3) Without in any manner lessening limiting or prejudicing any of the rights remedies or powers of the Lessor or the Minister for Mines pursuant to the provisions of the Act the Lessees hereby jointly and severally covenant with the Lessor with the intent that this covenant may enure to the benefit of the Lessor

his successors transferees and assigns and others claiming under the Lessor to all or any part of the Island that:-

- (a) the Lessees shall -
 - (i) (other than in respect of work already commenced prior to the date of this Deed) at all times give to the Lessor and to the Harriet Joint Venturers a notice in writing at least 90 days prior to commencing any work on or about the Easement in respect of or incidental to the construction of the Pipeline;
 - (ii) subject to paragraph (iii) of this Clause where maintenance works to be conducted in respect of the Pipeline are other than of a routine or emergency nature give to the Lessor and to the Harriet Joint Venturers such notice of the nature and estimated duration of those works as is in the circumstances reasonable;
 - (iii) where maintenance works require or are likely to require any pavement of a road on the Easement or the drains adjoining that pavement to be interfered with give to the Lessor and the Harriet Joint Venturers.
 - (A) not less than ninety (90) days written notice prior to commencing any work unless of an emergency nature; or
 - (B) if of an emergency nature, notice as soon as reasonably practicable

and in either case that written notice shall give all details of the maintenance works which are to be or are being or have been carried out; and

- (iv) subject to the provisions of this clause not be required to give to the Lessor or the Harriet Joint Venturers any notice in respect of maintenance works which are of a routine or emergency nature;
- (b) the Lessees acknowledge and agree that the Easement is part of the land leased to the Harriet Joint Venturers by the Lessor under the HJV Lease and that the rights of the Harriet Joint Venturers under the HJV Lease are hereby reserved and preserved SUBJECT only to the rights hereby granted to the Lessees;
- (c) the Lessees shall at all times observe and conform to rights and entitlements of the Harriet Joint Venturers in respect of the land the subject of the HJV Lease in and about the conduct of the Lessees' operations for the purposes of this Deed;
- (d) the Lessee shall at all times do, carry out and perform or cause to be done carried out and performed the work of constructing maintaining and operating the Pipeline subject to the requirements of the Act and this Deed and subject thereto strictly in accordance with such plans specifications and conditions (including the cutting and removal of timber, trees and undergrowth on the Easement as the Lessor from time to time approves);
- (e) the Lessees shall at their own expense forthwith after the completion of the construction of the Pipeline on the Easement restore and regenerate

41
182

the vegetation on that land as near as reasonably practicable to its former state and condition at the date of commencement of this Lease or replant vegetation thereon of a like species to those thereon at that date, except for a cleared line of sight over the Pipeline between marker signs and consistent with the Lessees' requirement to obtain access to the Pipeline for the purpose specified in Clause 3(2);

- (f) the Lessees shall release and indemnify the Crown in right of the State of Western Australia and the Lessor and their respective officers, employees, agents, invitees and licensees from and against all actions suits proceedings claims demands losses costs and expenses (including the costs of defending or settling any action suit proceeding claim or demand) directly or indirectly arising out of or in connection with any one or any combination of two or more of the following:

the exercise use or enjoyment of the rights granted by or the performance or observance or any breach of the Lessees' obligations imposed by this Deed or any damage or injury to or fault or defect in the Pipeline howsoever arising or by whomsoever or by whatsoever caused

in respect of -

- (i) the death of or injury to any person or persons whether or not on the Easement or the demised premises or the Island and including amongst others -
- (A) the Crown's and the Lessor's respective officers, employees, agents, licensees and invitees;

110
157

- (B) the Lessees, their contractors and sub-contractors and their respective officers employees and agents;
 - (ii) the destruction loss of or damage to any property of any person or persons whether or not on the Easement, the demised premises or the Island and including the property of -
 - (A) the Crown and the Lessor and their respective officers, employees, agents, licensees and invitees;
 - (B) the Lessees, their contractors and sub-contractors and their respective officers employees and agents;
 - (g) when and as often as the Lessees in the exercise, use or enjoyment of any of their rights granted hereunder cause any damage or disturbance to or any interference with the whole or any part of the Easement or any property thereon (other than is consistent with the Lessees' rights granted pursuant to this Deed) or the Lessor's or the Harriet Joint Venturers' full use and enjoyment thereof (consistent with the Lessees' rights granted pursuant to this Deed), the Lessees shall forthwith upon written notice given to the Lessees make full compensation to the Lessor or to the Harriet Joint Venturers (as the case may be) in respect thereof.
- (4) IT IS HEREBY AGREED AND DECLARED by and between the parties hereto that this Deed is made subject to the provisions of the Act.
- (5) Subject to the HJV Lease, upon the discontinuance of the use of the Easement by the Lessees and of the exercise by the Lessees of the rights hereby granted to them, the Lessees shall and will restore the land comprising the Easement to the

same condition so far as it is practicable so to do as the same was in prior to the entry thereon and the use thereof by the Lessees.

- (6) For the purposes of section 20(2)(a) of the Act this Deed creates an easement in favour of the Lessees as Licensees under the Act and is entered into subject to the grant of a certificate pursuant to section 20(2)(b) of that Act.

3. IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the Lessor and the Lessees as follows:-

(1) THAT it shall be lawful at all times for the Lessor

- (i) to require the Lessees to consent to the granting of such easements (including easements without dominant tenements) or rights in or over the demised premises as may from time to time be reasonably necessary for the overall development of the demised premises or for the overall development or use of the surrounding lands or waters; and
- (ii) to use or permit the use of the demised premises as is reasonably necessary for the overall development or use of the demised premises or for the overall development or use of the surrounding lands or waters

PROVIDED ALWAYS that no such grant requirement use or permission to use shall be made if such grant requirement use or permission to use (as the case may be) would unduly prejudice the Lessees or unduly interfere with the operations of the Lessees (including without limitation, the Lessees' security and safety systems) on the demised premises.

18
146

- (2) THAT subject to the Pipeline Licence all rights in the demised premises (other than those expressly or impliedly granted under this Lease) are reserved to the Lessor and the Crown.
- (3) THAT any notice or other writing authorised or required by this Lease to be given or sent shall be deemed to have been duly given or sent by the Lessor if signed as the case requires by the Executive Director or other the Permanent Head of the Department of Conservation and Land Management or other the officer for the time being discharging the duties of either of those offices and forwarded by prepaid post to the Lessees at their respective addresses for the time being in the State of Western Australia and by a Lessee if signed on its behalf by a director manager or secretary of the Lessee or by any person or persons authorised by the Lessee in that behalf or by its solicitors as notified to the Lessor from time to time and forwarded by prepaid post to the Lessor at its office for the time being in Perth.

Any notice or writing sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

- (4) THAT upon the determination of this Lease or upon the expiration or sooner determination of the Pipeline Licence or any renewal or extension thereof it shall be lawful for the Lessor (without prejudice to any right of action of any one or more of the parties hereto in respect of any breach non-performance or non-observance or non-compliance with any of the covenants conditions and obligations contained herein or in the Pipeline Licence and on the part of the Lessees to be performed observed or complied with) to re-enter into and upon the demised premises and the Easement or any part thereof in the name of the

whole and the same to have again repossess and enjoy as if this Lease had never been executed.

- (5) NOTWITHSTANDING the provisions of Section 27 and 28 of the Act upon the expiration or sooner determination of this Lease or any extension or renewal thereof the Lessees shall remove from the demised premises and the Easement all buildings erections fixtures fittings plant equipment apparatus and improvements erected or brought onto the demised premises and the Easement by the Lessees EXCEPT such items as the Lessor has purchased or agreed to purchase from the Lessee in situ AND all holes and excavations resulting from the removal by the Lessees of their property from the demised premises and the Easement as aforesaid shall be filled in and consolidated by the Lessees and all rubbish shall be removed from the demised premises and the Easement which shall be left in a state and condition consistent with the provisions of Clauses 1(30) and 1(31) hereof.
- (6) THAT all property of the Lessees not purchased or agreed to be purchased by the Lessor and not removed from the demised premises and the Easement by the Lessees in accordance with the last preceding subclause hereof shall upon the determination of this Lease be and become the absolute property of the Lessor without payment of any compensation or consideration whatever and freed and discharged from all mortgages charges and other encumbrances and it shall be lawful for the Lessor to cause the same to be removed at the cost of the Lessees and such cost shall be a debt due and owing to the Lessor and shall be recoverable from the Lessees in a court of competent jurisdiction.
- (7) AT the expiration of twelve (12) months after the commencement of the term hereof and at the expiration of each successive period of twelve (12) months

thereafter (each such date called herein a "review date") the rent shall be reviewed and the rent payable by the Lessees during the twelve (12) months next following the relevant review date shall be that agreed between the parties hereto and failing agreement within SEVEN (7) DAYS prior to the relevant review date then as determined by applying the following formula namely:-

$$\frac{A \times C}{B}$$

WHERE:-

"A" is the index number (as hereinafter defined) with respect to the relevant review date;

"B" is the index number with respect to the date of commencement of the initial term of this Lease;

"C" is the rent at the commencement of the initial term of this Lease.

the words "index number" shall mean the Consumer Price Index (all groups) for Perth published from time to time by the Australian Bureau of Statistics and the index number will be deemed to be with respect to any date if it is the index number as published with respect to the latest quarter prior to that date irrespective of whether the index number is published before or after that date. In the event that there is any suspension or discontinuance of the Consumer Price Index and also in the event that there is any change in the basis of assessment of the Consumer Price Index there shall be substituted therefor an index which in the opinion of the Dean for the time being at the Faculty of Economics at the University of Western Australia or of an expert

appointed by him most closely reflects changes in the cost of living in Perth between the date of commencement of this Lease and the relevant review date PROVIDED THAT the rent so determined shall not be less than the rental payable immediately prior to such determination.

- (8) IF the Lessees shall with the consent of the Lessor remain in possession of the demised premises after the expiration of the said term the Lessees shall so remain as monthly tenants at a monthly rental equal to one twelfth of the annual rental payable for the last year of the said term.
- (9) THIS Lease shall be deemed to be made subject to any delays in the performance of obligations hereunder and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure earthquakes floods storms tempests washaways fire (unless caused by the actual fault or privity of the Lessees or any of them) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages or insufficient supply of labour or water or essential materials failure to secure contractors delays of contractors or delays due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party

of the event or events and shall so far as reasonably practicable minimise the effect of the said causes as soon as possible after their occurrence.

- (10) EXCEPT where otherwise specifically provided in this Lease any dispute or difference between the parties arising out of or in connection with this Lease or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Lease or any such amendment variation or addition or as to the rights duties or liabilities hereunder of any one or more of the parties hereto or as to any matter to be agreed between the Parties hereto shall in default of agreement between the parties and in the absence of any provision in this Lease or the Pipeline Licence to the contrary be referred to a single arbitrator nominated by the Attorney-General for the time being of the State and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 and the determination of the arbitrator shall be final and binding on the parties.
- (11) THE Lessees and their employees and agents shall be at liberty to enter and remain upon those parts of Reserve 33902 outside the demised premises for conducting biological studies, biological monitoring and for recreation purposes only.
- (12) THE Lessees shall ensure that all employees agents and contractors of the Lessees who travel to the Island have been properly trained in all environmental matters relevant to their presence upon the Island. Whenever the Lessor considers that it is warranted or necessary so to do the Lessor may supply an officer of the Lessor from time to time to participate and assist in the training of the Lessees' employees agents and contractors in those environmental matters

and the Lessees shall carry out and comply with all and singular the directions and requirements of that officer of the Lessor in relation to that training.

(13) IN this Lease unless the contrary intention appears -

"Crown" means the Crown in right of the State of Western Australia;

"demised premises" means the land demised by this Lease and the buildings erections and other improvements for the time being thereon;

"East Spar Field" means any petroleum field located now or hereafter within the area of Commonwealth Production Licence for Petroleum No. WA-13-L;

"Harriet Joint Venturers" means -

AMPOLEX (WESTERN AUSTRALIA) INC. (ARBN 009 473 241) of 250 St George's Terrace Perth

AMPOLEX VARANUS PTY LTD (ACN 009 708 089) of 250 St George's Terrace Perth

KUFPEC AUSTRALIA PTY LTD (ACN 001 800 924) of 14 Richardson Street West Perth

MONUMENT OIL (AUSTRALIA) LIMITED (ARBN 053 447 786) of 80 Petty France, London, England

MARUBENI OIL AUSTRALIA PTY LTD (ACN 009 396 954) of Level 20, Allendale Square, 77 St George's Terrace Perth

HARDY PETROLEUM LTD (ARBN 009 475 389) of Level 3, 44 Kings Park Road West Perth

NEW WORLD OIL & DEVELOPMENTS PTY LTD (ACN 009 989 422) of Level 14, 201 Kent Street, Sydney New South Wales

and

APACHE NORTHWEST PTY LTD (ACN 009 140 854) of Level 3, 256 St George's Terrace Perth

and includes their respective successors and assigns from time to time;

"HJV Lease" means the Deed of Lease made the 5th June 1986 between the Lessor and Bond Corporation Pty Ltd and others being the antecedents of the Harriet Joint Venturers in respect of portion of Reserve 33902 including the demised premises and includes the HJV Lease as varied, extended or renewed from time to time.

"Lessees" means the Lessees jointly and each of them severally and their respective successors and assigns, also jointly and severally;

"Lessor" means the Lessor and successors and assigns of the Lessor;

"petroleum" means -

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide,

and includes any petroleum as defined by paragraphs (a), (b) or (c) of this definition that has been returned to a natural reservoir:

"pipeline" means a pipe or system of pipes used or intended to be used for the conveyance of petroleum; and includes all structures for protecting or supporting a pipeline and all loading terminals, works and buildings and all

fittings, pumps, tanks, appurtenances and appliances used in connection with a pipeline, but does not include -

- (a) a pipeline as defined in the Petroleum (Submerged Lands) Act, 1967;
- (b) a pipeline that is used -
 - (i) for the conveyance of petroleum from the well head to a tank or separator or for the collection of petroleum within the area in which it is produced or recovered;
 - (ii) for returning petroleum to a natural reservoir;
 - (iii) for the conveyance of petroleum for use for the purpose of petroleum exploration operations or operations for the recovery of petroleum;
 - (iv) for the conveyance of petroleum that is to be flared or vented;
- (c) a pipeline constructed or to be constructed under the authority of any Act, other than the Act or constructed before the coming into operation of the Act on special lease No. 31163628 granted under the Land Act, 1933;
- (d) a pipeline constructed or to be constructed by a public authority;
- (e) a pipeline constructed or to be constructed on land used for a residential, business, agricultural, commercial or industrial purposes, designed for use solely for the residential, business, agricultural, commercial or industrial purposes carried on on that land and situated wholly within the boundaries of that land;

141

(f) a pipeline or a pipeline of a class declared in an Order in Council made under section 5 of the Act not to be a pipeline for the purposes of the Act.

"State" means the State of Western Australia;

Reference in this lease to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

IN WITNESS whereof this Lease has been executed as a Deed by or on behalf of the parties hereto the day first hereinbefore written.

THE COMMON SEAL of THE)
EXECUTIVE DIRECTOR OF)
THE DEPARTMENT OF)
CONSERVATION AND LAND)
MANAGEMENT was hereunto)
affixed by:)
)
in the presence of:)

THE COMMON SEAL of)
HARDY PETROLEUM)
LIMITED (ARBN 009 475 389))
was hereunto affixed)
by authority of the Directors)
in the presence of :)

_____ Director

_____ Director/Secretary

24

THE COMMON SEAL of)
APACHE EAST SPAR PTY LTD)
(ACN 008 674 413) was hereunto affixed)
by authority of the Directors in the)
presence of :

_____ Director

_____ Director/Secretary

THE COMMON SEAL of)
APACHE OIL AUSTRALIA LIMITED)
(ACN 050 611 688) was hereunto affixed)
by authority of the Directors in the)
presence of :

_____ Director

_____ Director/Secretary

THE COMMON SEAL of)
SANTOS (BOL) PTY LIMITED)
(ACN 000 670 575) was hereunto affixed)
by authority of the Directors in the)
presence of :

_____ Director

_____ Director/Secretary

I certify that the foregoing instrument creates an easement in favour of a licensee under the Petroleum Pipelines Act 1969.

DATED the _____ day of _____ 1998

MINISTER FOR MINES