

UNIT AGREEMENT  
FOR THE DEVELOPMENT AND OPERATION  
OF THE  
E-K PENROSE SAND UNIT  
LEA COUNTY, NM

THIS AGREEMENT entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the "parties hereto,"

WHEREAS, the parties hereto are the owners of working, royalty, or other oil and gas interests in the Unit Area subject to this Agreement; and

WHEREAS, the Mineral Leasing Act of February 25th, 1920, 41 stat. 437, as amended, 30 U.S.C. Secs. 181 et seq., authorized Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof for the purpose of more properly conserving the natural resources thereof whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

WHEREAS, the Oil Conservation Division of the State of New Mexico (hereinafter referred to as the "Division") is authorized by an Act of the Legislature (Chapter 72, Laws of 1935 as amended) (Chapter 70, Article 2, Section 2 et seq., New Mexico Statutes 1978 Annotated) to approve this Agreement and the conservation provisions hereof; and

WHEREAS, the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico is authorized by law (Chapter 65, Article 3 and Article 14, N.M.S. 1953 Annotated) to approve this Agreement and the conservation provisions hereof; and

WHEREAS, the parties hereto hold sufficient interest in the Unit Area covering the land hereinafter described to give reasonably effective control of operations therein; and

WHEREAS, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operation of the area subject to this Agreement under the terms, conditions, and limitations herein set forth;

NOW, THEREFORE, in consideration of the premises and the promises herein contained, the parties hereto commit to this Agreement their respective interest in the below-defined Unit Area, and agree severally among themselves as follows:

**Section 1. ENABLING ACT AND REGULATIONS.** The Mineral Leasing Act of February 25, 1920, as amended, *supra*, and all valid pertinent regulations, including operating and unit plan regulations, heretofore issued thereunder or valid, pertinent, and reasonable regulations hereafter issued thereunder are accepted and made a part of this Agreement as to Federal lands, provided such regulations are not inconsistent with the terms of this Agreement; and as to non-Federal lands, if any, the oil and gas operating regulations in effect as of the Effective Date hereof governing drilling and producing operations, not inconsistent with the terms hereof or the laws of the state in which such non-Federal land is located, are hereby accepted and made a part of this Agreement.

**Section 2. UNIT AREA DEFINITIONS.** For the purpose of this Agreement, the following terms and expressions as used herein shall mean:

(a) "Unit Area" is defined as those lands described in Exhibit "B" and depicted on Exhibit "A" hereof, and such land is hereby designated and recognized as constituting the Unit Area, containing 1,469.75 acres, more or less, in Lea County, New Mexico.

(b) "Division" is defined as the oil Conservation Division of the Department of Energy and Minerals of the State of New Mexico.

(c) "Authorized Officer" or "A.O." is an employee of the Bureau of Land Management who has been delegated the required authority to act on behalf of the BLM.

(d) "Secretary" is defined as the Secretary of the Interior of the United States of America, or his duly authorized delegate.

(e) "Department" is defined as the Department of the Interior of the United States of America.

(f) "Proper BLM Office" is defined as the Bureau of Land Management Office having jurisdiction over the Federal lands included in the Unit Area.

(g) "Unitized Formation" - The Penrose Queen Sand is defined as and shall mean those heretofore established underground reservoirs that exist in the interval from 4,640 feet on the Compensated Density Log in the C. W. Stumhoffer Federal "CS" No. 1 well located 660 feet FSL and 1,980 feet FEL of Section 19, Township 18 South, Range 34 East, N.M.P.M., Lea County, New Mexico, to 4,750 feet as shown in the aforescribed Log.

(h) "Unitized Substances" are all oil, gas, gaseous substances, sulphur contained in gas, condensate, distillate and all associated and constituent liquid or liquefiable hydrocarbons, other than outside substances, within and produced from the Unitized Formation.

(i) "Tract" is each parcel of land described as such and given a Tract number in Exhibit "B".

(j) "Tract Participation" is defined as the percentage of participation shown on Exhibit "B" for allocating Unitized Substances to a Tract under this Agreement.

(k) "Unit Participation" is the sum of the percentages obtained by multiplying the Working Interest of a Working Interest Owner in each Tract by the Tract Participation of such Tract.

(l) "Working Interest" is the right to search for, produce, and acquire Unitized Substances whether held as an incident of ownership of mineral fee simple title, under an oil and gas lease, operating agreement, or otherwise held, which interest is chargeable with and obligated to pay or bear, either in cash or out of production, or otherwise, all or a portion of the cost of drilling, developing and producing the Unitized Substances from the Unitized Formation and operations thereof hereunder. Provided that any royalty interest created out of a working interest subsequent to the execution of this Agreement by the owner of the working interest shall continue to be subject to such working interest burdens and obligations.

(m) "Working Interest Owner" is any party hereto owning a Working Interest, including a carried working interest owner, holding an interest in Unitized Substances by virtue of a lease, operating agreement, fee title or otherwise. The owner of oil and gas rights that are free of lease or other instrument creating a Working Interest in another shall be regarded as a Working Interest Owner to the extent of seven-eighths (7/8) of his interest in Unitized Substances, and as a Royalty Owner with respect to his remaining one-eighth (1/8) interest therein.

(n) "Royalty Interest" or "Royalty" is an interest other than a Working Interest in or right to receive a portion of the Unitized Substances or the proceeds thereof and includes the royalty interest reserved by the lessor or by an oil and gas lease and any overriding royalty interest, oil payment interest, net profit contracts, or any other payment or burden which does not carry with it the right to search for and produce unitized substances.

(o) "Royalty Owner" is the owner of a Royalty Interest.

(p) "Unit Operating Agreement" is the agreement entered into by and between the Unit Operator and the Working Interest Owners as provided in Section 9, infra, and shall be styled "Unit Operating Agreement, E-K Penrose Sand Unit, Lea County, NM."

(q) "Oil and Gas Rights" is the right to explore, develop and operate lands within the Unit Area for the production of Unitized Substances, or to share in the production so obtained or the proceeds thereof.

(r) "Outside Substances" is any substance obtained from any source other than the Unitized Formation and injected into the Unitized Formation.

(s) "Unit Manager" is any person or corporation appointed by Working Interest Owners to perform the duties of Unit Operator until the selection and qualification of a successor Unit Operator as provided for in Section 8 hereof.

(t) "Unit Operator" is the party designated by Working Interest Owners under the Unit Operating Agreement to conduct Unit Operations.

(u) "Unit Operations" is any operation conducted pursuant to this Agreement and the Unit Operating Agreement.

(v) "Unit Equipment" is all personal property, lease and well equipment, plants, and other facilities and equipment taken over or otherwise acquired for the joint account for use in Unit Operations.

(w) "Unit Expense" is all costs, expense, or indebtedness incurred by Working Interest Owners or Unit Operator pursuant to this Agreement and the Unit Operating Agreement for or on account of Unit Operations.

(x) "Effective Date" is the date determined in accordance with Section 24, or as redetermined in accordance with Section 39.

(y) "Formations" shall mean all vertical intervals underlying the Unit Area other than those included within the Unitized Formation.

**Section 3. EXHIBITS.** The following exhibits are incorporated herein by reference: Exhibit "A" attached hereto is a map showing the Unit Area and the boundaries and identity of tracts and leases in said Unit Area to the extent known to the Unit Operator. Exhibit "B" attached hereto is a schedule showing, to the extent known to the Unit Operator, the acreage comprising each Tract, percentages and kind of ownership of oil and gas interests in all land in the Unit Area, and Tract Participation of each Tract. However, nothing herein or in said schedule or map shall be construed as a representation by any party hereto as to the ownership of any interest other than such interest or interests as are shown in said map or schedule as owned by such party. The shapes and descriptions of the respective Tracts have been established by using the best information available. Each Working Interest Owner is responsible for supplying Unit Operator with accurate information relating to each Working Interest Owner's interest. If it subsequently appears that any Tract, because of diverse royalty or working interest ownership on the Effective Date hereof, should be divided into more than one Tract, or when any revision is requested by the A.O., or any correction of any error other than mechanical miscalculations or clerical is needed, then the Unit Operator, with the approval of the Working Interest owners, may correct the mistake by revising the exhibits to conform to the facts. The revision shall not include any reevaluation of engineering or geological interpretations used in determining Tract Participation. Each such revision of an exhibit made prior to thirty (30) days after the Effective Date shall be effective as of the Effective Date. Each other such revision of an exhibit shall be effective as of 8:00 am on the first day of the calendar month next following the filing for record of the revised exhibit or on such other date as may be determined by Working Interest owner's and set forth in the revised exhibit. Copies of such revision with not less than four copies shall be filed with the A.O. In any such revision, there shall be no retroactive allocation or adjustment of Unit Expenses or of interests in the Unitized Substances produced, or proceeds thereof.

**Section 4. EXPANSION.** The above described Unit Area may, with the approval of the A.O., when practicable be expanded to include therein any additional Tract, Tracts or Formations regarded as reasonably necessary or advisable for the purposes of the Agreement provided however, in such expansion there shall be no retroactive allocation or adjustment of Unit Expense or of interests in the Unitized Substances produces, or proceeds thereof. Pursuant to Subsection (b), the Working Interest Owners may agree upon an adjustment of investment by reason of the expansion. Such expansion shall be effected in the following manner:

(a) The Working Interest Owner or Owners of a Tract, Tracts or Formations desiring to bring such Tract, Tracts or Formations into this Unit, shall file an application therefor with Unit Operator requesting such admission.

(b) Unit Operator shall circulate a notice of the proposed expansion to each Working Interest Owner in the Unit Area and in the Tract or Formations proposed to be included in the unit, setting out the basis for admission, the Tract participation to be assigned to each Tract in the enlarged Unit Area and other pertinent data. After negotiation (at a Working Interest Owners meeting or otherwise), if at least three Working Interest Owners having in the aggregate seventy-five percent (75%) of the Unit Participation then in effect have agreed to inclusion of such Tract, Tracts or Formations in the Unit Area, then Unit Operator shall:

(1) After obtaining preliminary concurrence by the A.O., prepare a notice of proposed expansion describing the contemplated changes in the boundaries or Unitized Formation of the Unit Area, the reason therefore, the basis for admission of the additional Tract, Tracts or Formations the Tract Participation to be assigned thereto and the proposed effective date thereof; and

(2) Deliver copies of said notice to the A.O. at the Proper BLM Office, each Working Interest Owner and to the last known address of each lessee and lessor whose interests are affected, advising such parties that thirty (30) days will be allowed for submission to the Unit Operator of any objection to such proposed expansion; and

(3) File, upon the expiration of said thirty (30) day period as set out in (2) immediately above with the A.O. the following: (a) evidence of mailing or delivering copies of said notice of expansion; (b) an application for approval of such expansion; (c) an instrument containing the appropriate joinders in compliance with the participation requirements of Section 14, and Section 32, infra; and (d) a copy of all objections received along with the Unit Operator's response thereto.

The expansion shall, after due consideration of all pertinent information and approval by the A.O., become effective as of the date prescribed in the notice thereof, preferably the first day of the month subsequent to the date of notice. The revised Tract Participation of the respective Tracts included within the Unit Area prior to such enlargement shall remain the same ratio one to another.

**Section 5. UNITIZED LAND.** All land committed to this Agreement as to the Unitized Formation shall constitute land referred to herein as "unitized land" or "land subject to this agreement". Nothing herein shall be construed to unitize, pool, or in any way affect the oil, gas and other minerals contained in or that may be produced from any formation other than the Unitized Formation as defined in Section 2 (g) of this Agreement.

**Section 6. UNIT OPERATOR.** SEELY OIL COMPANY is hereby designated the Unit Operator, and by signing this instrument, as Unit Operator, agrees and consents to accept the duties and obligations of Unit Operator for the operation, development, and production of Unitized Substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interests in Unitized Substances, when such interests are owned by it and the term "Working Interest Owner" when used herein shall include or refer to the Unit Operator as the owner of a Working Interest when such an interest is owned by it.

Unit Operator shall have a lien upon the interests of Working Interest Owners in the Unit Area to the extent provided in the Unit Operating Agreement.

**Section 7. RESIGNATION OR REMOVAL OF UNIT OPERATOR.** Unit Operator shall have the right to resign at any time, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate Unit Operator's rights as such for a period of six (6) months after written notice of intention to resign has been given by Unit Operator to all Working Interest Owners, and the A.O., unless a new Unit Operator shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

The Unit Operator shall, upon default or failure in the performance of its duties and obligations hereunder, be subject to removal by Working Interest Owners having in the aggregate eighty percent (80%) or more of the Unit Participation then in effect, exclusive of the Working Interest Owner who is the Unit Operator. Such removal shall be effective upon notice thereof to the A.O.

In all such instances of effective resignation or removal, until a successor to Unit operator is selected and approved as hereinafter provided, the Working Interest Owners shall be jointly responsible for the performance of the duties of the Unit Operator and shall, no later than thirty (30) days before such resignation or removal becomes effective, appoint a Unit Manager to represent them in any action to be taken hereunder.

The resignation or removal of Unit Operator under this Agreement shall not terminate its right, title or interest as the owner of a Working Interest or other interest in Unitized Substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, books and records, materials, appurtenances and any other assets used in connection with the Unit Operations to the new duly qualified successor Unit Operator, or the unit Manager, if no such new Unit Operator is elected. Nothing herein shall be construed as authorizing the removal of any material, equipment or appurtenances needed for the preservation of any wells. Nothing herein contained shall be construed to relieve or discharge any Unit Operator or Unit Manager who resigns or is removed hereunder from any liability or duties accruing or performable by it prior to the effective date of such resignation or removal.

**Section 8. SUCCESSOR UNIT OPERATOR.** Whenever the Unit Operator shall tender its resignation as Unit Operator or shall be removed as hereinabove provided, the Working Interest Owners shall select a successor Unit Operator as herein provided. Such selection shall not become effective until (a) a Unit Operator so selected shall accept in writing the duties and responsibilities of Unit Operator, and (b) the selection shall have been approved by the A.O. If no successor Unit Operator or Unit Manager is selected and qualified as herein provided, the A.O., at their election, may declare this Agreement Terminated.

In selecting a successor Unit Operator, the affirmative vote of three or more Working Interest Owners having a total of sixty-five percent (65%) or more of the total Unit participation shall prevail; provided that if any one Working Interest Owner has a Unit Participation of more than thirty-five percent (35%), its negative vote or failure to vote shall not be regarded as sufficient unless supported by the vote of one or more other Working Interest Owners have a total Unit Participation of at least five percent (5%). If the Unit Operator who is removed, votes only to succeed itself or fails to vote, the successor Unit Operator may be selected by the affirmative vote of the owners of at least seventy-five percent (75%) of the Unit Participation remaining after excluding the Unit Participation of the Unit Operator so removed.

**Section 9. ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT.** Costs and expenses incurred by Unit Operator in conducting Unit Operations hereunder shall be paid, apportioned among and borne by the Working Interest Owners in accordance with the Unit Operating Agreement. Such Unit Operating Agreement shall also provide the manner in which the Working Interest Owners shall be entitled to receive their respective proportionate and allocated share of the benefits accruing hereto in conformity with their underlying operating agreements, leases or other contracts and such other rights and obligations as between Unit Operator and the Working Interest Owners as may be agreed upon by the Unit Operator and the Working Interest Owners; however, no such Unit Operating Agreement shall be deemed either to modify any of the terms and conditions of this Agreement or to relieve the Unit Operator of any right or obligation established under this Agreement, and in case of any inconsistency or conflict between this Agreement, and the Unit Operating Agreement, this Agreement shall prevail. Copies of any Unit Operating Agreement executed pursuant to this Section shall be filed with the A.O. at the Proper BLM Office as required prior to approval of this Agreement.

**Section 10. RIGHTS AND OBLIGATIONS OF UNIT OPERATOR.** Except as otherwise specifically provided herein, the exclusive right, privilege and duty of exercising any and all rights of the parties hereto including surface rights which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided. Upon request, acceptable evidence of title to said rights shall be deposited with said Unit Operator, and together with this Agreement, shall constitute and define the rights, privileges and obligations of Unit Operator. Nothing herein, however, shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that under this Agreement, the Unit Operator, in its capacity as Unit Operator, shall exercise the rights and possession and use vested in the parties hereto only for the purposes herein specified.

**Section 11. PLAN OF OPERATIONS.** It is recognized and agreed by the parties hereto that all of the land subject to this Agreement is reasonably proved to be productive of Unitized Substances and that the object and purpose of this Agreement is to formulate and to put into effect an improved recovery project in order to effect additional recovery of Unitized Substances, prevent waste and conserve natural resources. Unit Operator shall have the right to inject into the Unitized Formation any substances for secondary recovery or enhanced recovery purposes in accordance with a plan of operation approved by the Working Interest Owners, the A.O., and the Division, including the right to drill and maintain injection wells on the Unitized Land and completed in the Unitized Formation, and to use abandoned well or wells producing from the Unitized Formation for said purpose. Subject to like approval, the Plan of Operation may be revised as conditions may warrant.

The initial Plan of Operation shall be filed with the A.O. and the Division, with the filing of this Unit Agreement for final approval. Said initial plan of operations and all revisions thereof shall be as complete and adequate as the A.O. and the Division may determine to be necessary for timely operation consistent herewith. Upon approval of this Agreement and the initial plan by the A.O. and the Division, said plan, and all subsequently approved plans, shall constitute the operating obligations of the Unit Operator under this Agreement for the period specified therein. Thereafter, from time to time before the expiration of any existing plan, the Unit Operator shall submit for like approval a plan for an additional specified period of operations. After such operation are commenced, reasonable diligence shall be exercised by the Unit Operator in complying with the obligations of the approved Plan of Operation.

Notwithstanding anything to the contrary herein contained, should the Unit Operator fail to commence Unit Operations for the secondary recovery of Unitized substances from the Unit Area within eighteen (18) months after the effective date of this Agreement, or any extension thereof approved by the A.O., this Agreement shall terminate automatically as of the date of default.

**Section 12. USE OF SURFACE AND USE OF WATER.** The parties to the extent of their rights and interests, hereby grant to Unit Operator the right to use as much of the surface, including the water thereunder, of the Unitized Land as may reasonably be necessary for Unit Operations.

Unit Operator's free use of water or brine or both for Unit Operations, shall not include any water from any well, lake, pond, or irrigation ditch of a surface owner, unless approval for such use is granted by the surface owner.

Unit Operator shall pay the surface owner(s) for damages to growing crops, fences, improvements and structures on the Unitized Land that result from Unit Operations, and such payments shall be considered as items of unit expense to be borne by all the Working Interest Owners of lands subject hereto.

**Section 13. TRACT PARTICIPATION.** In Exhibit "B" attached hereto, there are listed and numbered the various Tracts within the Unit Area, and set forth opposite each Tract are figures which represent the Tract Participation, during the Unit Operations if all Tracts in the Unit Area qualify as provided herein. The Tract Participation of each Tract as shown in Exhibit "B" was determined in accordance with the following formula:

$$\text{Tract Participation} = A/B \times .80 + C/D \times .20$$

A = Ultimate Primary Oil Recovery from the Unitized Formation for each Tract + 10,000 BO Credit for each usable wellbore located on a Tract

B = Ultimate Primary Oil Recovery from the Unitized Formation for all Unit Tracts + 10,000 BO Credit for all usable wellbores on all Unit Tracts

C = Surface acreage of each Unit Tract

D = Total of all surface acreage for all Unit Tracts

In the event less than all Tracts are qualified on the Effective Date hereof, the Tract Participation shall be calculated on the basis of all such qualified Tracts rather than all Tracts in the Unit Area.

**Section 14. TRACTS QUALIFIED FOR PARTICIPATION.** On and after the Effective Date hereof, the Tracts within the Unit Area which shall be entitled to participation in the production of Unitized Substances shall be those Tracts more particularly described in Exhibit "B" that corner or have common boundary (Tracts separated only by a public road or a railroad right-of-way shall be considered to have a common boundary), and that otherwise qualify as follows:

(a) Each Tract as to which Working Interest Owners owning one hundred percent (100%) of the Working Interest have become parties to this Agreement and as to which Royalty Owners owning seventy-five percent (75%) or more of the Royalty Interest have become parties to this Agreement.

(b) Each Tract as to which Working Interest Owners owning one hundred percent (100%) of the Working Interest have become parties to this Agreement, and as to which Royalty Owners owning less than seventy-five percent (75%) of the Royalty Interest have become parties to this Agreement, and as to which (1) the Working Interest Owner who Operates the Tract and Working Interest Owners owning at least seventy-five percent (75%) of the remaining Working Interest in such Tract have joined in a request for the inclusion of such Tract, and as to which (2) Working Interest Owners owning at least seventy-five percent (75%) of the combined Unit Participation in all Tracts that meet the requirements of Section 14 (a) above have voted in favor of the inclusion of such Tract.

(c) Each Tract as to which Working Interest Owners owning less than one hundred percent (100%) of the Working Interest have become parties to this Agreement regardless of the percentage of Royalty Interest therein that is committed hereto; and as to which (1) the Working Interest Owner who operates the Tract and Working Interest Owners owning at least seventy-five percent (75%) of the remaining Working Interest in such Tract who have become parties to this Agreement, have joined in a request for inclusion of such Tract, and have executed and delivered an indemnity agreement, indemnifying and agreeing to hold harmless the other owners of committed Working Interests, their successor and assigns, against all claims and demands that may be made by the owners of Working Interests in such Tract who are not parties to this Agreement, and which arise out of the inclusion of the Tract; and as to which (2) Working Interest Owners owning at least seventy-five percent (75%) of the Unit Participation in all Tracts that meet the requirements of Section 14 (a) and 14 (b) have voted in favor of the inclusion of such Tract and to accept the indemnity agreement. Upon the inclusion of such a Tract, the Tract Participations which would have been attributed to the nonsubscribing owners of Working Interest in such Tract, had they become parties to this Agreement and the Unit Operating Agreement, shall be attributed to the Working Interest Owners in such Tract who have become parties to such agreements, and joined in the indemnity agreement, in proportion to their respective Working Interests in the Tract.

If on the Effective Date of this Agreement there is any Tract or Tracts which have not been effectively committed to or made subject to this Agreement by qualifying as above provided, then such Tract or Tracts shall not be entitled to participate hereunder. Unit Operator shall, when submitting this Agreement for final approval by the A.O., file therewith a schedule of those tracts which have been committed and made subject to this Agreement and are entitled to participate in Unitized Substances. Said schedule shall set forth opposite each such committed Tract the lease number or assignment number, the owner of record of the lease, and the percentage participation of such tract which shall be computed according to the participation formula set forth in Section 13 (Tract Participation) above. This schedule of participation shall be revised as Exhibit "B" and upon approval thereof by the A.O., shall become a part of this Agreement and shall govern the allocation of production of Unitized Substances until a new schedule is approved by the A.O.

**Section 15.A. ALLOCATION OF UNITIZED SUBSTANCES.** All Unitized Substances produced and saved (less, save and except any part of such Unitized Substances used in conformity with good operating practices on unitized land for drilling, operating, camp and other production or development purposes and for injection or unavoidable loss in accordance with a Plan of Operation approved by the A.O.) shall be apportioned among and allocated to the qualified Tracts in accordance with the respective Tract Participations effective hereunder during the respective periods such Unitized Substances were produced, as set forth in the schedule of participation in Exhibit "B". The amount of Unitized Substances so allocated to each tract, and only that amount (regardless of whether it be more or less than the amount of the actual production of Unitized Substances from the well or wells, if any, on such Tract) shall, for all intents, uses and purposes, be deemed to have been produced from such Tract.

The Unitized Substances allocated to each Tract shall be distributed among, or accounted for, to the parties entitled to share in the production from such Tract in the same manner, in the same proportions, and upon the same conditions, as they would have participated and shared in the production from such Tracts, or in the proceeds thereof, had this Agreement not been entered into; with the same legal force and effect.

No Tract committed to this Agreement and qualified for participation as above provided shall be subsequently excluded from participation hereunder on account of depletion of Unitized Substances.

If the Working Interest and/or the Royalty Interest in any Tract are divided with respect to separate parcels or portions of such Tract and owned now or hereafter in severalty by different persons, the Tract Participation shall in the absence of a recordable instrument executed by all owner in such Tract and furnished to Unit Operator fixing the divisions of ownership, be divided among such parcels or portions in proportion to the number of surface acres in each.

**Section 15.B. TAKING UNITIZED SUBSTANCES IN KIND.** The Unitized Substances allocated to each Tract shall be delivered in kind to the respective parties entitled thereto by virtue of the oil and gas rights therein. Each such party shall have the right to construct, maintain and operate all necessary facilities for that purpose within the Unitized Area, provided the same are so constructed, maintained and operated as not to interfere with Unit Operations. Subject to Section 17 hereof, any extra expenditure incurred by Unit Operator by reason of the delivery in kind of any portion of the Unitized Substances shall be borne by the party taking delivery. In the event any Working Interest Owner shall fail to take or otherwise adequately dispose of its proportionate share of the production from the Unitized Formation, then so long as such condition continues, Unit Operator, for the account and at the expense of the Working Interest Owner of the Tract or Tracts concerned, and in order to avoid curtailing the Operation of the Unit Area, may, but shall not be required to, sell or otherwise dispose of such production to itself or others, provided that all contracts of sale by Unit Operator of any other party's share of Unitized Substances shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year, and at not less than the prevailing market price in the area for like production, and the account of such Working Interest Owner shall be charged therewith as having received such production. The net proceeds, if any, of the Unitized Substances so disposed of by Unit Operator shall be paid to the Working Interest Owner of the Tract or Tracts concerned. Notwithstanding the foregoing, Unit Operator shall not make a sale into interstate commerce of any Working Interest Owner's share of gas production without first giving such Working Interest Owner sixty (60) days' notice of such intended sale.

Any Working Interest Owner receiving in kind or separately disposing of all or any part of the Unitized Substances allocated to any Tract, or receiving the proceeds therefrom if the same is sold or purchased by Unit Operator, shall be responsible for the payment of all royalty, overriding royalty and production payments due thereon, and each such party shall hold each other Working

Interest Owner harmless against all claims, demands and causes of action by owners of such royalty, overriding royalty and production payments.

If, after the Effective Date of this Agreement, there is any Tract, Tracts or Formation that are subsequently committed hereto, as provided in Section 4 (Expansion) hereof, or any Tract or Tracts within the Unit Area not committed hereto as of the Effective Date hereof but which are subsequently committed hereto under the provisions of Section 14 (Tracts Qualified for Participation) and Section 32 (Nonjoinder and Subsequent Joinder); or if any Tract is excluded from this Agreement as provided for in Section 21 (Loss of Title), the schedule of participation as shown in Exhibit "B" shall be revised by the Unit Operator; and the revised Exhibit "B", upon approval by the A.O., shall govern the allocation of production on and after the effective date thereof until a revised schedule is approved as hereinabove provided.

**Section 16. OUTSIDE SUBSTANCES.** If gas obtained from formations not subject to this Agreement is introduced into the Unitized Formation for use in repressuring, stimulating of production or increasing ultimate recovery which shall be in conformity with a Plan of Operation first approved by the A.O., a like amount of gas with appropriate deduction for loss or depletion from any cause may be withdrawn from unit wells completed in the Unitized Formation royalty free as to dry gas, but not royalty free as to the products extracted therefrom; provided that such withdrawal shall be at such time as may be provided in the approved Plan of Operations or as otherwise may be consented to or prescribed by the A.O. as conforming to good petroleum engineering practices and provided further that such right of withdrawal shall terminate on the termination date of this Agreement.

**Section 17. ROYALTY SETTLEMENT.** The United States of America and all Royalty Owners who, under an existing contract, are entitled to take in kind a share of the substances produced from any Tract Unitized hereunder, shall continue to be entitled to such right to take in kind their share of the unitized Substances allocated to such Tract, and Unit Operator shall make deliveries of such royalty shares taken in kind in conformity with the applicable contracts, laws and regulations. Settlement for Royalty not taken in kind shall be made by Working Interest Owner responsible therefor under existing contracts, laws and regulations on or before the last day of each month for Unitized Substances produced during the preceding calendar month; provided, however, that nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any Royalty due under the leases, except that such Royalty shall be computed on the Unitized Substances as allocated to each Tract in accordance with the terms of this Agreement. With respect to Federal leases committed hereto on which the royalty rate depends upon the daily average production per well, such average production shall be determined in accordance with the operating regulations pertaining to Federal leases as though the committed Tracts were included in a single consolidated lease.

If the amount of production or the proceeds thereof accruing to any Royalty Owner (except the United States of America) in a Tract depends upon the average production per well or the average pipeline runs per well from such Tract during any period of time, then such production shall be determined from and after the Effective Date hereof by dividing the quantity of Unitized Substances allocated hereunder to such Tract during such period of time by the number of wells located thereon capable of producing Unitized Substances as of the Effective Date hereof, provided that any Tract not having any well so capable of producing Unitized Substances on the Effective Date hereof shall be considered as having one such well for the purpose of this provision.

All Royalty due the United States of America and the other Royalty Owners hereunder shall be computed and paid on the basis of all Unitized Substances allocated to the respective Tract or Tracts committed hereto, in lieu of actual production from such Tract or Tracts.

With the exception of Federal and State requirements to the contrary, Working Interest Owners may use or consume Unitized Substances for Unit Operations and no Royalty, overriding royalty, production or other payments shall be payable on account of Unitized Substances used, lost, or consumed in Unit Operations.

Each Royalty Owner (other than the United States of America) that executes this Agreement represents and warrants that it is the owner of a Royalty Interest in a Tract or Tracts within the Unit Area as its Interest appears in Exhibit "B" attached hereto. If any Royalty Interest in a Tract or Tracts should be lost by title failure or otherwise in whole or in part, during the term of this Agreement, then the Royalty Interest of the party representing himself to be the owner thereof shall be reduced proportionately and the interests of all parties shall be adjusted accordingly.

**Section 18. RENTAL SETTLEMENT.** Rentals or minimum Royalties due on the leases committed hereto shall be paid by Working Interest Owners responsible therefor under existing contracts, laws and regulations provided that nothing herein contained shall operate to relieve the lessees of any land from their prospective lease obligations for the payment of any rental or minimum Royalty in

thereof, due under their leases. Rental for lands of the State of New Mexico subject to this Agreement, if any, shall be paid at the rate specified in the respective leases from the State of New Mexico. Rental or minimum royalty for lands of the United States of America subject to this Agreement shall be paid at the rate specified in the respective leases from the United States of America, unless such rental or minimum Royalty is waived, suspended, or reduced by law or by approval of the Secretary of his duly authorized representative.

**Section 19. CONSERVATION.** Operations hereunder and production of Unitized Substances shall be conducted to provide for the most economical and efficient recovery of said substances without waste, as defined by or pursuant to Federal and State laws and regulations.

**Section 20. DRAINAGE.** The Unit Operator shall take all reasonable and prudent measures to prevent drainage of Unitized Substances from unitized land by wells on land not subject to this Agreement.

The Unit Operator, upon approval by the Working Interest Owners, and the A.O., is hereby empowered to enter into a borderline agreement or agreements with working interest owners of adjoining lands not subject to this Agreement with respect to operation in the border area for the maximum economic recovery, conservation purposes and proper protection of the parties and interest affected.

**Section 21. LOSS OF TITLE.** In the event title to any Tract of unitized land shall fail and the true owner cannot be induced to join in this Agreement, such Tract shall be automatically regarded as not committed hereto, and there shall be such readjustments of future costs and benefits as may be required on account of the loss of such title. In the event of a dispute as to title to any Royalty, Working Interest or other interest subject thereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled; provided, that, as to State or federal lands or leases, no payments or funds due the United States or the State of New Mexico will be withheld, but such funds shall be deposited as directed by the A.O. (as the case may be) to be held as unearned money pending final settlement of the title dispute and then applied as earned or returned in accordance with such final settlement.

If the title or right of any party claiming the right to receive in kind all or any portion of the Unitized Substances allocated to a Tract in dispute, Unit Operator at the direction of Working Interest Owners shall either:

(a) require that the party whom such Unitized Substances are delivered or to whom the proceeds thereof are paid furnish security for the proper accounting therefor to the rightful owner if the title or right of such party fails in whole or in part, or

(b) withhold and market the portion of Unitized Substances with respect to which title or right is in dispute, and impound the proceeds thereof until such time as the title or right thereto is established by a final judgement of a court of competent jurisdiction or otherwise to the satisfaction of Working Interest Owners, whereupon the proceeds so impounded shall be paid to the party rightfully entitled thereto.

Each Working Interest Owner shall indemnify, hold harmless, and defend all other Working Interest Owners against any and all claims by any party against the interest attributed to such Working Interest Owner on Exhibit "B".

Unit Operator a such is relieved from any responsibility for any defect or failure of any title hereunder.

**Section 22. LEASES AND CONTRACTS CONFORMED AND EXTENDED.** The terms, conditions and provisions of all leases, subleases and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this Agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof, but otherwise to remain in full force and effect, and the parties hereto hereby consent that the Secretary shall, and by his approval hereof, or by the approval hereof by a duly authorized representative, does hereby establish, alter, change or revoke the drilling, producing, rental, minimum Royalty and Royalty requirements of Federal leases committed hereto and the regulations in respect thereto to conform said requirements to the provisions of this Agreement.

Without limiting the generality of the foregoing, all leases, subleases and contracts are particularly modified in accordance with the following:

(a) The development and operation of lands subject to this Agreement under the terms hereof shall be deemed full performance of all obligations for development and operation with

respect to each Tract subject to this Agreement, regardless of whether there is any development of any Tract of the Unit Area, notwithstanding anything to the contrary in any lease, operating agreement or other contract by and between the parties hereto, or their respective predecessors in interest, or any of them.

(b) Drilling, producing or improved recovery operations performed hereunder shall be deemed to be performed upon and for the benefit of each Tract, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced.

(c) Suspension of drilling or producing operation within the Unit Area pursuant to direction or consent of the A.O., or their duly authorized representatives, shall be deemed to constitute such suspension pursuant to such direction or consent as to each Tract within the Unitized Area.

(d) Each lease, sublease, or contract relating to the exploration, drilling, development, or operation for oil and gas which by its terms might expire prior to the termination of this Agreement, is hereby extended beyond any such term so provide therein, so that it shall be continued in full force and effect for and during the term of this Agreement.

(e) The segregation of any Federal lease committed to this Agreement is governed by the following provision in the fourth paragraph of Section 17 (j) of the Mineral Leasing Act, as amended by the Act of September 2, 1960 (74 Stat. 781-784): "Any (Federal) lease hereto or hereafter committed to any such (unit) plan embracing lands that are in part within and in part outside of the area covered by any such land shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization; Provided, however, that any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities."

**Section 23. COVENANTS RUN WITH LAND.** The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee or other successor in interest. No assignment or transfer of any Working Interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, or acceptable photostatic or certified copy, of the recorded instrument or transfer; and no assignment or transfer of any Royalty Interest subject hereto shall be binding upon the Working Interest Owner responsible therefor until the first day of the calendar month after said Working Interest Owner is furnished with the original, or acceptable photostatic or certified copy, of the recorded instrument or transfer.

**Section 24. EFFECTIVE DATE AND TERM.** This Agreement shall become binding upon each party who executes or ratifies it as of the date of execution or ratification by such party and shall become effective on the first day of the calendar month next following the approval of this Agreement by the A.O.

If this Agreement does not become effective on or before May 1, 2003, it shall ipso facto expire on said date (hereinafter called "Expiration Date") and thereafter be of no further force or effect, unless prior thereto this Agreement has been executed or ratified by Working Interest Owners owning a combined Participation of at least seventy-five percent (75%) of such Working Interest Owners committed to this Agreement have decided to extend Expiration Date for a period not to exceed one (1) year (hereinafter called "Extended Expiration Date"). If Expiration Date is so extended and this Agreement does not become effective on or before Extended Expiration Date, it shall ipso facto expire on Extended Expiration Date and thereafter be of no further force and effect.

Unit Operator shall file for record within thirty (30) days after the Effective Date of this Agreement, in the office of the county Clerk of Lea County, New Mexico, where a counterpart of this Agreement has become effective according to its terms and stating further the effective date.

The terms of this Agreement shall be for and during the time that the Unitized substances are produced from the unitized land in paying quantities and so long thereafter as drilling, reworking or other operations (including improved recovery operations) are prosecuted thereon without cessation of more than ninety (90) consecutive days of the effective date of termination.

This Agreement may be terminated with the approval of the A.O. and by Working Interest Owners owning eighty percent (80%) of the Unit Participation then in effect whenever such Working Interest Owners determine that Unit Operations are no longer profitable, or in the interest of conservation. Upon approval, such termination shall be effective as of the first day of the first month after said Working Interest Owners' determination. Notice of any such termination shall be filed by Unit Operator in the office of the County Clerk of Lea County, New Mexico, within thirty (30) days of the effective date of the termination.

Upon termination of this Agreement, the parties hereto shall be governed by the terms and provisions of the lease and contracts affecting the separate Tracts just as if this Agreement had never been entered into.

Notwithstanding any other provision in the lease unitized under this Agreement, Royalty Owners hereby grant Working Interest Owners a period of six months after termination of this Agreement in which to salvage, sell, distribute or otherwise dispose of the personal property and facilities used in connection with Unit Operations.

**Section 25. RATE OF PROSPECTING, DEVELOPMENT AND PRODUCTION.** All production and the disposal thereof shall be in conformity with allocations and quotas made or fixed by any duly authorized person or regulatory body under any Federal or State statute. The A.O. is hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and within the limits made or fixed by the Division to alter or modify the quantity and rate of production under this Agreement, such authority being hereby limited to alteration or modification in the public interest, the purpose thereof and the public interest to be served thereby to be stated in the order of alteration or modification.

Powers in this Section vested in the A.O. shall only be exercised after notice to Unit Operator and opportunity for hearing to be held not less than fifteen (15) days from notice and thereafter subject to administrative appeal before becoming final.

**Section 26. NONDISCRIMINATION.** Unit Operator in connection with the performance of work under this Agreement relating to leases of the United States, agrees to comply with all of the provisions of Section 202 (1) to (7) inclusive of Executive Order 11246, (30 F.R. 12319), which are hereby incorporated by reference in this Agreement.

**Section 27. APPEARANCES.** Unit Operator shall have the right to appear for or on behalf of any interests affected hereby before the Department; and the Division, and to appeal from any order issued under the rules and regulations of the Department or the Division, or to apply for relief of any said rules and regulations or in any proceedings relative to operations before the Land Commissioner, the Department or the Division or any other legally constituted authority; provided, however, that any other interested party shall also have the right at his or its own expense to be heard in any such proceeding.

**Section 28. NOTICES.** All notices, demands, objections or statements required hereunder to be given or rendered to the parties hereto shall be deemed fully given if made in writing and personally delivered to the party or parties or sent by postpaid certified or registered mail, addressed to such party or parties at their last known address set forth in connection with the signatures hereto or to the ratification or consent hereof or to such other address as any such party or parties may have furnished in writing to the party sending the notice, demand or statement.

**Section 29. NO WAIVER OF CERTAIN RIGHTS.** Nothing in this Agreement contained shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense as to the validity or invalidity of any law of the State wherein said Unitized Lands are located, or regulations issued thereunder in any way affecting such party, or as a waiver by any such right beyond his or its authority to waive; provided, however, each party hereto covenants that it will not resort to any action to partition the Unitized Land or the Unit Equipment.

**Section 30. EQUIPMENT AND FACILITIES NOT FIXTURES ATTACHED TO REALTY.** Each Working Interest Owner has heretofore placed and used on its Tract or Tracts committed to this Agreement various well and lease equipment and other property, equipment and facilities. It is also recognized that additional equipment and facilities may hereafter be placed and used upon the Unitized Land as now or hereafter constituted. Therefore, for all purposes of this Agreement, any such equipment shall be considered to be personal property and not fixtures attached to realty. Accordingly, said well and lease equipment and personal property is hereby severed from the mineral estates affected by this Agreement, and it is agreed that any such equipment and personal property shall be and remain personal property of the Working Interest Owners for all purposes.

**Section 31. UNAVOIDABLE DELAY.** All obligations under this Agreement requiring the Unit Operator to commence or continue improved recovery operations or to operate on or produce Unitized Substances from any of the lands covered by this Agreement shall be suspended a while, but only so long as, the unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, acts of God, Federal, State, or municipal law or agency, unavoidable accident, uncontrollable delays in transportation, inability to obtain necessary materials or equipment in open market, or other matters beyond the reasonable control of the Unit Operator whether similar to matters herein enumerated or not.

**Section 32. NONJOINER AND SUBSEQUENT JOINER.** Joinder by any Royalty Owner, at any time, must be accompanied by appropriate joinder of the corresponding Working Interest Owner in order for the interest of such Royalty Owner to be regarded as effectively committed. Joinder to this Agreement by a Working Interest Owner, at any time, must be accompanied by appropriate joinder to the Unit Operating Agreement in order for such interest to be regarded as effectively committed to this Agreement.

Any oil and gas interest in the Unitized Formations not committed hereto prior to submission of this Agreement to the A.O. for final approval may thereafter be committed hereto upon compliance with the applicable provisions of this Section and Section 14 (Tracts Qualified for Participation) hereof, at any time up to the Effective Date hereof of the same basis of Tract Participation as provided in Section 13, by the owner or owners thereof subscribing, ratifying, or consenting in writing to this Agreement and, if the interest is a Working Interest, by the owner of such interest subscribing also to the Unit Operating Agreement.

It is understood and agreed, however, that from and after the Effective Date hereof the right of subsequent joinder as provided in this Section shall be subject to such requirements or approvals on such basis as may be agreed upon by Working Interest Owners owning not less than sixty-five percent (65%) of the Unit Participation then in effect, and approved by the A.O. Such subsequent joinder by a proposed Working Interest Owner must be evidenced by his execution or ratification of this Agreement and the Unit Operating Agreement and, where State or Federal land is involved, such joinder must be approved by the A.O. Such joinder by a proposed Royalty Owner must be evidenced by his execution, ratification, or consent of this Agreement and must be consented to in writing by the Working Interest Owner responsible for the payment of any benefits that may accrue hereunder on behalf of such proposed Royalty Owner. Except as may be otherwise herein provided, subsequent joinder to this Agreement shall be effective as of the first day of the month following the filing with the A.O. of duly executed counterparts of any and all documents necessary to establish effective commitment of any Tract or interest to this Agreement, unless objection to such joinder by the A.O., is duly made sixty (60) days after such filing.

**Section 33. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties and may be ratified or consented to by separate instrument in writing, specifically referring hereto, and shall be binding upon all those parties who have executed such a counterpart, ratification or consent hereto with the same force and effect as if all parties had signed the same document, and regardless of whether or not it is executed by all other parties owning or claiming an interest in the land within the described Unit Area. Furthermore, this Agreement shall extend to be binding on the parties hereto, their successors, heirs and assigns.

**Section 34. JOINER IN DUAL CAPACITY.** Execution as herein provided by any party as either a Working Interest Owner or a Royalty Owner shall commit all interests owned or controlled by such party; provided, that if the party is the owner of a Working Interest, he must also execute the Unit Operating Agreement.

**Section 35. TAXES.** Each party hereto shall, for its own account, render and pay its share of any taxes levied against or measured by the amount or value of the Unitized Substances produced from the Unitized land; provided, however, that if it is required or if it be determined that the Unit Operator or the several working Interest Owners must pay or advance said taxes for the account of the parties hereto, it is hereby expressly agreed that the parties so paying or advancing said taxes shall be reimbursed therefor by the parties hereto, including Royalty Owners, who may be responsible for the taxes on their respective allocated share of said Unitized Substances. No taxes shall be charged to the United States or to the State of New Mexico, nor to any lessor who has a contract with a lessee which requires his lessee to pay such taxes.

**Section 36. NO PARTNERSHIP.** The duties, obligations and liabilities of the parties hereto are intended to be several and not joint or collective. This Agreement is not intended to create, and shall not be construed to create, an association or trust, to impose a partnership duty, obligation or liability with regard to any one or more of the parties hereto. Each party hereto shall be individually responsible for its own obligations as herein provided.

**Section 37. PRODUCTIONS AS OF THE EFFECTIVE DATE.** Unit Operator shall make a proper and timely gauge of all leases and other tanks within the Unit Area in order to ascertain the amount of merchantable oil above the pipeline connection, in such tanks as of 7:00 a.m. on the Effective Date hereof. All such oil which has then been produced in accordance with established allowables shall be and remain the property of the Working Interest Owner entitled thereto, the same as if the unit had not been formed; and the responsible Interest Owner shall promptly remove said oil from the Unitized Land. Any such oil not so removed shall be sold by Unit Operator for the account of such Working Interest Owners, subject to the payment of all Royalty to Royalty Owners under the terms hereof. The oil that is in excess of the prior allowable of the wells from which it was produced shall be regarded as Unitized Substances produced after Effective Date hereof.

If, as of the Effective Date hereof, any Tract is overproduced with respect to the allowable of the wells on that Tract and the amount of over-production has been sold or otherwise disposed of, such over-production shall be regarded as a part of the Unitized Substances produced after the Effective Date hereof and shall be charged to such Tract as having been delivered to the parties entitled to such Unitized Substances allocated to such Tract.

**Section 38. NO SHARING OF MARKET.** This Agreement is not intended to provide and shall not be construed to provide, directly or indirectly, for any cooperative refining, joint sale or marketing of Unitized Substances.

**Section 39. STATUTORY UNITIZATION.** If and when Working Interest Owners owning at least seventy-five percent (75%) of Unit Participation and Royalty Owners owning at least seventy-five percent (75%) of the Royalty Interest have become parties to this Agreement or have approved this Agreement in writing and such Working Interest Owners have also become parties to the Unit Operating Agreement, Unit Operator may make application to the Division for statutory unitization of the uncommitted interests pursuant to the Statutory Unitization Act (Chapter 65, Article 14, N.M.S., 1953 Annotated). If such application is made and statutory unitization is approved by the Division, then effective as of the date of the Division's order approving statutory unitization, this Agreement and/or amended in accordance with the following:

(1) Section 14 of this Agreement shall be revised by substituting for the entire said section the following:

"Section 14. **TRACTS QUALIFIED FOR PARTICIPATION.** On and after the Effective Date hereof, all Tracts within the Unit Area shall be entitled to participation in the production of Unitized Substances."

(2) Section 24 of this Agreement shall be revised by substituting for the first three paragraphs of the said section the following:

"Section 24. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective on the first day of the calendar month next following the effective date of the Division's order approving statutory unitization upon the terms and conditions of this Agreement, as amended (if any amendment is necessary) to conform to the Division's order; approval of this Agreement, as so amended, by the A.O. and the filing by Unit Operator of this Agreement or notice thereof for record in the office of the County Clerk of Lea county, New Mexico. Unit Operator shall not file this Agreement or notice thereof for record, and hence this Agreement shall not become effective, unless within ninety (90) days after the date all other prerequisites for effectiveness of this Agreement have been satisfied, such filing is approved by Working Interest Owners owning a combined Unit Participation of at least sixty-five percent (65%) as to all Tracts within the Unit Area."

"Unit Operator shall, within thirty (30) days after the Effective Date of this Agreement, file for record in the office of the County Clerk of Lea County, New Mexico, a certificate to the effect that this Agreement has become effective in accordance with its terms, therein identifying the Division's order approving statutory unitization and stating the Effective Date."

(3) This Agreement and/or the Unit Operating Agreement shall be amended in any and all respects necessary to conform to the Division's order approving statutory unitization.

Any and all amendments of this Agreement and/or the Unit Operating Agreement that are necessary to conform said agreements to the Division's order approving statutory unitization shall be deemed to be hereby approved in writing by the parties hereto without any necessity for further approval by said parties, except as follows:

(a) If any amendment of this Agreement has the effect of reducing any Royalty Owner's participation in the production of Unitized Substances, such Royalty Owner shall not be



CERTIFICATION--DETERMINATION

Pursuant to the authority vested in the Secretary of the Interior, the Act approved February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C., Sec. 181, et seq., and delegated to the Authorized Officer of the Bureau of Land Management, under the authority of 43 CFR 3183, I do hereby:

- A. Approve the attached agreement for the development and operation of the E-K Penrose Sand Unit Area, State of New Mexico. This approval shall be invalid ab initio if the public interest requirement under § 3183.4(b) of this title is not met.
- B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.
- C. Certify and determine that the drilling, producing, rental, minimum royalty and royalty requirements of all federal leases committed to said Agreement are hereby established, altered, changed or revoked to conform with the terms and conditions of this agreement.

DATED: \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(Authorized Officer)  
Bureau of Land Management

Contract No: \_\_\_\_\_

**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER		ORI OWNER AMOUNT		WORKING INTEREST OWNER		WI OWNER AMOUNT	UNIT PARTICIPATION
					ROYALTY	OWNER			OWNER	OWNER		
1	<u>Federal Lands</u>											
	W/2 SE/4	274.69	USA	Seely Oil Co.								
	Section 24-T18S-R33E	11/11/1946	12.5%		Marc H. Lowrance Jr.	0.00825520	*	**	Boswell Interest, LTD	0.07814117		0.10656467
	Lots 3&4 (W/2 SW/4)				Scales Family Revocable Trust CW & Frieda T Stumhoffer	0.00165090 0.02000000	* *	**	Burnett Oil Co. Inc. CEB Oil Company	0.13863010 0.02926988		
E/2 SW/4 & NW/4 SE/4				Trigg Family Trust	0.01000000	*	*	Merlyn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company	0.01950389 0.02935388			
Section 19-T18S-R34E								**	Express Air Drilling, Inc.	0.07774952		
								*	James Robert Hill, Virginia Glenn Lattimore & John Styrsly, Trustees of the Houston and Emma Hill Estate Trust	0.09788483		
								*	John P. Oil Company	0.02926989		
								**	PVB Oil Company	0.02935387		
								*	CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP	0.11087581 0.24424665		
								*	Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel	0.06104535 0.00976587		
								*	David Lynn Henderson & Wife Dawn Henderson SSV & H Associates	0.01385929 0.03125000		

\* Subject to a 15% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

\*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest

**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER		ORI OWNER AMOUNT	WORKING INTEREST OWNER	WI OWNER AMOUNT	UNIT PARTICIPATION
					ROYALTY	OWNER				
2A	<u>Federal Lands Continued</u> NW/4 NE/4 & E/2NW/4 Section 30-T18S-R34E	120 NM-0245247 out of LC-069457 9/1/1949	USA 12.50%	Caryl M. Bradford Catherine M. Harvey David P. McElvain James E. McElvain Ralph C. McElvain Jr. Ruth P. McElvain T. H. McElvain Jr. R. M. Reagan Trust	Marc H. Lowrance Jr. Scales Family Revocable Trust CW & Frieda T Stumhoffer Higgins Trust Inc. Selma E. Andrews Trust Braille Institute of America Inc. Asa Grayson Ashworth Sabine Royalty Trust Lillie M Yates Estate Sharbro Oil LTD., Co. Selma E. Andrews Perpetual Charitable Trust McInnes Resources Mary Anne Berliner Estate	0.00923944 0.00184771 0.02000000 0.00187500 0.00089510 0.00231470 0.00083330 0.00187500 0.00041665 0.00041665 0.00179020 0.01000000 0.00083330	*	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Meryn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company EKPRESS Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Strysky, Trustees of the Houston and Emma Hill Estate Estate John P. Oil Company PVB Oil Company CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	0.07814117 0.13863010 0.02926988 0.01950389 0.02936388 0.07774852 0.09769483	0.20661177

\* Subject to a 15% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

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**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER		ORI OWNER AMOUNT	WORKING INTEREST OWNER	WI OWNER AMOUNT	UNIT PARTICIPATION
					ROYALTY	OWNER				
28	NW/4 NE/4 Section 25-118S-R33E <i>Federal Lands Continued</i>	NM-0245247 Out of LC-069457 9/1/1949	USA 12.50%	Caryl M. Bradford Catherine M. Harvey David P. McElvain James E. McElvain Ralph C. McElvain Jr. Ruth P. McElvain T. H. McElvain Jr. R. M. Reagan Trust	Marc H. Lowrance Scales Family Revocable Trust CW & Frieda T. Stumhoffer Higgins Trust Inc. Selma E. Andrews Trust Braille Institute of America Inc. Asa Grayson Ashworth Sabine Royalty Trust Lillie M Yates Estate Sharbro Oil LTD Co Selma E. Andrews Perpetual Charitable Trust McInnes Resources Mary Anne Berliner Estate	0.00923944 0.00184771 0.02000000 0.00187500 0.00089510 0.00231470 0.00083330 0.00187500 0.00041665 0.00041665 0.00179020 0.01000000 0.00083330	*	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Merlyn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	0.07814117 0.13863010 0.02926988 0.01950389 0.02935388 0.07774952 0.09768483	0.08730471
						0.00041665	*	John P. Oil Company	0.02926989	
						0.00179020	**	PVB Oil Company	0.02935387	
						0.01000000	**	CW Seely & Wife Ina B Seely	0.11087581	
						0.00083330	*	J. Cleo Thompson and James Cleo Thompson Jr., LP	0.24424665	
							*	Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel	0.06104535 0.00976587	
							*	David Lynn Henderson & wife Dawn Henderson SSV & H Associates	0.01385929 0.03125000	

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**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
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TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING ROYALTY		ORI OWNER	WORKING INTEREST OWNER	WI OWNER	UNIT PARTICIPATION		
					OWNER	AMOUNT						
2C	<u>Federal Lands Continued</u> SW/4 NE/4 Section 25-118S-R33E	40 NM-0246247 out of LC-069457 9/11/949	USA 12.50%	Caryl M. Bradford Catherine M. Hearvey David P. McElvain James E. McElvain Ralph C. McElvain Jr. Ruth P McElvain T. H. McElvain Jr. R. M. Reagan Trust	Marc H. Lowrance Jr. Scales Family Revocable Trust CW & Frieda T Stumhofer Higgins Trust Inc. Selma E. Andrews Trust Braille Institute of America Inc. Asa Grayson Ashworth Sabine Royalty Trust Lillie M Yates Estate Sharbro Oil LTD Co		0.00868380 0.00173659 0.02000000 0.00187500 0.00089510 0.00231470 0.00083330 0.00187500 0.00041686 0.00041687	*	**	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Meryn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	0.07814117 0.13863010 0.02926988 0.01950399 0.02935398 0.07774952 0.09768483	0.02283980
				Seima E. Andrews Perpetual Charitable Trust McInnes Resources Mary Anne Bertlner Estate Ralph McElvain Jacqueline M Withers Roberta M Regan Trust McElvain Oil Company TH McElvain Oil & Gas LTD PRT		0.00179020 0.01000000 0.00083330 0.00710937 0.00710938 0.01421875 0.01421875 0.01421876	*	**	John P. Oil Company PVB Oil Company CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J Havel & Wife Kathleen A Havel David Lynn Henderson & Wife Dawn Henderson SSV&H Associates	0.02926989 0.02935387 0.11087581 0.24424665 0.06104535 0.00976587 0.01385929 0.03125000		

\* Subject to a 1.5% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

\*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest





**Exhibit "B" to Unit Agreement  
 EK Penrose Sand Unit  
 Lea County, New Mexico**

TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING		ORI OWNER AMOUNT	WORKING INTEREST		WI OWNER AMOUNT	UNIT PARTICIPATION		
					ROYALTY OWNER	AMOUNT		OWNER	AMOUNT				
3	Federal Lands Continued E/2 SE/4 Section 24 T18S-R33E & E/2 SE/4 Section 19 T18S-R34E	160 NM-04591 12/1/1953	USA 12.50%	Seely Oil Co.	Marc H Lowrance Jr. Scales Family Revocable Trust CW & Frieda T Sturnhoffer Trigg Family Trust	0.00825520 0.00165090 0.02000000 0.01000000	* ** * *	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Meryn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Synsky, Trustees of the Houston and Emma Hill Estate Trust	0.07814117 0.13863010 0.02828988 0.01950389 0.02835388 0.07774952 0.09768483	0.02177093			
											* **	John P. Oil Company PVB Oil Company CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	0.02926989 0.02835387 0.11087581 0.24424685 0.06104535 0.00976587 0.01385929 0.03125000
											* **		
4	E/2 SW/4 Section 30-T18S-R34E	80 NIM-15920 7/1/1972	USA 12.50%	Yates Petroleum Corp	Warren W Howe	0.03000000		Yates Petroleum Corp 100%	1.00000000	0.09634366			

\* Subject to a 15% Reversionary Interest at payout  
 \*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest  
 \*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest



**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

<u>TRACT NUMBER</u>	<u>DESCRIPTION</u>	<u>SERIAL NO AND DATE OF LEASE</u>	<u>BASIC ROYALTY</u>	<u>LESSEE OF RECORD</u>	<u>OVERRIDING ROYALTY OWNER</u>	<u>ORI OWNER AMOUNT</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>	<u>UNIT PARTICIPATION</u>
6	<u>Federal Lands Continued</u> E/2 NE/4 Section 25-T18S-R33E	80 NM-51841 9/1/1982	USA 12.50%	HNG Oil Co. Seely Oil Company	HNG Oil Co Marc H Lowrance Jr. Scales Family Revocable Trust CW & Frieda T Stumhofer	0.06250000 0.00825520 0.00165090 0.02200000	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company	0.07814117 0.13863010 0.02926988	0.03160889
					Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust John P. Oil Company			0.09768483 0.02926989	
					PV/B Oil Company			0.029365387	
					CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wea-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates			0.11087581 0.24424665 0.06104535 0.00976587 0.01386929 0.03125500	

\* Subject to a 15% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

\*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest

**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

<u>TRACT NUMBER</u>	<u>DESCRIPTION</u>	<u>SERIAL NO AND DATE OF LEASE</u>	<u>BASIC ROYALTY</u>	<u>LESSEE OF RECORD</u>	<u>OVERRIDING ROYALTY OWNER</u>	<u>ORI OWNER AMOUNT</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>	<u>UNIT PARTICIPATION</u>
7	Federal Lands Continued W/2 NW/4 Section 30-118S-R34E	75.16 NM-51848 4/1/1982	USA 12.50%	HNG Oil Co.	HNG Oil Co Marc H Lowrance Jr. Scales Family Revocable Trust CW & Frieda T Stunhofer	0.06250000 0.00825520 0.00165090 0.02000000	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company	0.07814117 0.13863010 0.02926988	0.04308628
					Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Stryrsky, Trustees of the Houston and Emma Hill Estate Trust John P. Oil Company	0.09768483 0.02926989			
					PVB Oil Company	0.02935387			
					CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	0.11087581 0.24424665 0.06104535 0.00976587 0.01386929 0.03125000			
	<b>Total Federal Lands</b>	<b>1349.85 acres</b>	<b>91.84% of unit area</b>						

\* Subject to a 15% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

\*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest

**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER	ORI OWNER AMOUNT	WORKING INTEREST OWNER	WI OWNER AMOUNT	UNIT PARTICIPATION
8	Fee Lands S/2 SW/4 Section 20-T18S-R34E	80 2/8/1973							
				Clarence Scharbauer, Jr. Seely Oil Co.	Marc H Lowrance Jr. Scales Family Revocable Trust	0.00737936	DM Royalties	0.02343750	0.12443092
			14.06250%		Scales Family Revocable Trust	0.00147573	Boswell Interest, LTD	0.07447830	
				John R Anderson Co. Personal Rep.	CW & Frieda T Stumhoffer	0.01906250	Burnett Oil Co. Inc.	0.13213181	
			0.93750%		Zihlman Family Trust	0.00147573	Patsy B Cair	0.02343750	
				Elizabeth Forest Berry		*	CEB Oil Company	0.02789785	
			0.23438%			*	Meryn W. Dahlin & Wife Ruth G. Dahlin	0.01858965	
				Becky B Lee Christmas		**	EAB Oil Company	0.02797792	
			0.23437%			*	Express Air Drilling, Inc.	0.07410501	
				Brookie Lee Green		***	James Robert Hill, Virginia Glenn Lattimore & John Styresky, Trustees of the Houston and Emma Hill Estate Trust	0.09310585	
			0.23438%			**			
				Mary Ann Lee Ham		**	John P. Oil Company	0.02789786	
			0.23437%			**	PVB Oil Company	0.02797791	
				Bill L Lee		*	CW Seely & Wife Ina B Seely	0.10567851	
			0.46875%			*	J. Cleo Thompson and James Cleo Thompson Jr., LP	0.23279759	
				Giles M Lee		*	Wes-Tex Drilling Co., LP	0.05818385	
			0.93750%			*	Michael J. Havel & Wife Kathleen A. Havel	0.00930810	
				Roy R Lee		*	David Lynn Henderson & wife Dawn Henderson	0.01320964	
			0.93750%			*	SSV & H Associates	0.02978515	
				Lee Family Trust		*			
			0.46875%			*			
				Bill L Lee, Trustee		*			

\* Subject to a 15% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

\*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest

**Exhibit "B" to Unit Agreement  
EK Penrose Sand Unit  
Lea County, New Mexico**

TRACT NUMBER	DESCRIPTION	SERIAL NO AND DATE OF LEASE	BASIC ROYALTY	LESSEE OF RECORD	OVERRIDING ROYALTY OWNER	ORI OWNER AMOUNT	WORKING INTEREST OWNER	WI OWNER AMOUNT	UNIT PARTICIPATION
9	<u>Fee Lands Continued</u> NW/4 SW/4 Section 20-T18S-34E	40							
				Clarence Scharbauer, Jr. 15.000000%	John R Collins, Trustee CW & Frieda T Stumhofer McInnes Resources	0.01500000 0.00750000 0.00750000	Larry Arnold John R Collins, Trustee C W & Frieda T. Stumhofer Boswell Interest, LTD	0.04000000 0.01500000 0.07500000 0.06798282	0.06741693
				Elizabeth Forest Berry 0.250000%			Burnett Oil Co. Inc. CEB Oil Company	0.12060819 0.02546480	
				Becky B Lee Christmas 0.250000%			Mertyn W. Dahlin & Wife Ruth G. Dahlin	0.01696838	
				Brookie Lee Green 0.250000%			EAB Oil Company	0.02553788	
				Mary Ann Lee Ham 0.250000%			Express Air Drilling, Inc. James Robert Hill, Virginia Glenn	0.06764208	
				Bill L Lee 0.500000%			Lattimore & John Snyrsky, Trustees of the Houston and Emma Hill Estate Trust	0.08498580	
				Giles M Lee 1.000000%			John P. Oil Company	0.02546480	
				Roy R Lee 1.000000%			PVB Oil Company	0.02553787	
				Lee Family Trust Bill L Lee, Trustee 0.500000%			CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	0.09646195 0.21249459 0.05310945 0.00849631 0.01205758 0.02718750	
	<b>Total Fee Lands</b>	<b>120 Acres</b>	<b>8.16 % of Unit Area</b>						
	<b>Grand Total</b>	<b>1469.85 Acres</b>	<b>100 % of Unit Area</b>						

\* Subject to a 15% Reversionary Interest at payout

\*\* Subject to prorata share of Marc H. Lowrance 5% Overriding Royalty Interest

\*\*\* Subject to Scales Family Revocable Trust 2% Overriding Royalty Interest

**EXHIBIT "C" TO  
UNIT AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>TRACT NUMBER</u>	<u>UNIT PARTICIPATION</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>
1	10.656467%	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Meryn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc.  James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust John P. Oil Company PVB Oil Company CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & Wife Dawn Henderson SSV & H Associates	7.814117% 13.863010% 2.926988% 1.950389% 2.935388% 7.774952%  9.768483%  2.926989% 2.935387% 11.087581% 24.424665%  6.104535% 0.976587%  1.385929%  3.125000%
2A	20.661177%	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Meryn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Estate John P. Oil Company PVB Oil Company CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	7.814117% 13.863010% 2.926988% 1.950389% 2.935388% 7.774952% 9.768483%  2.926989% 2.935387% 11.087581% 24.424665%  6.104535% 0.976587%  1.385929%  3.125000%

**EXHIBIT "C" TO  
UNIT AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>TRACT NUMBER</u>	<u>UNIT PARTICIPATION</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>		
2B	8.730471%	Boswell Interest, LTD	7.814117%		
		Burnett Oil Co. Inc.	13.863010%		
		CEB Oil Company	2.926988%		
		Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.950389%		
		EAB Oil Company	2.935388%		
		Express Air Drilling, Inc.	7.774952%		
		James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.768483%		
		John P. Oil Company	2.926989%		
		PVB Oil Company	2.935387%		
		CW Seely & Wife Ina B Seely	11.087581%		
		J. Cleo Thompson and James Cleo Thompson Jr., LP	24.424665%		
		Wes-Tex Drilling Co., LP	6.104535%		
		Michael J. Havel & Wife Kathleen A. Havel	0.976587%		
		David Lynn Henderson & wife Dawn Henderson	1.385929%		
		SSV & H Associates	3.125000%		
		2C	2.283980%	Boswell Interest, LTD	7.814117%
				Burnett Oil Co. Inc.	13.863010%
				CEB Oil Company	2.926988%
				Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.950389%
				EAB Oil Company	2.935388%
Express Air Drilling, Inc.	7.774952%				
James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.768483%				
John P. Oil Company	2.926989%				
PVB Oil Company	2.935387%				
CW Seely & Wife Ina B Seely	11.087581%				
J. Cleo Thompson and James Cleo Thompson Jr., LP	24.424665%				
Wes-Tex Drilling Co., LP	6.104535%				
Michael J. Havel & Wife Kathleen A. Havel	0.976587%				
David Lynn Henderson & Wife Dawn Henderson	1.385929%				
SSV&H Associates	3.125000%				

**EXHIBIT "C" TO  
UNIT AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>TRACT NUMBER</u>	<u>UNIT PARTICIPATION</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>		
2D	2.721366%	Boswell Interest, LTD	7.814117%		
		Burnett Oil Co. Inc.	13.863010%		
		CEB Oil Company	2.926988%		
		Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.950389%		
		EAB Oil Company	2.935388%		
		Express Air Drilling, Inc.	7.774952%		
		James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.768483%		
		John P. Oil Company	2.926989%		
		PVB Oil Company	2.935387%		
		CW Seely & Wife Ina B Seely	11.087581%		
		J. Cleo Thompson and James Cleo Thompson Jr., LP	24.424665%		
		Wes-Tex Drilling Co., LP	6.104535%		
		Michael J. Havel & Wife Kathleen A. Havel	0.976587%		
		David L. Henderson & wife Dawn Henderson	1.385929%		
		SSV & H Associates	3.125000%		
		2E	7.813383%	Boswell Interest, LTD	7.814117%
				Burnett Oil Co. Inc.	13.863010%
				CEB Oil Company	2.926988%
				Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.950389%
				EAB Oil Company	2.935388%
Express Air Drilling, Inc.	7.774952%				
James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.768483%				
John P. Oil Company	2.926989%				
PVB Oil Company	2.935387%				
CW Seely & Wife Ina B Seely	11.087581%				
J. Cleo Thompson and James Cleo Thompson Jr., LP	24.424665%				
Wes-Tex Drilling Co., LP	6.104535%				
Michael J. Havel & Wife Kathleen A. Havel	0.976587%				
David Lynn Henderson & wife Dawn Henderson	1.385929%				
SSV & H Associates	3.125000%				

**EXHIBIT "C" TO  
UNIT AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>TRACT NUMBER</u>	<u>UNIT PARTICIPATION</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>
3	2.177093%	Boswell Interest, LTD Burnett Oil Co. Inc. CEB Oil Company Merlyn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust John P. Oil Company PVB Oil Company CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	7.814117% 13.863010% 2.926988% 1.950389% 2.935388% 7.774952% 9.768483%     2.926989% 2.935387% 11.087581% 24.424665%  6.104535% 0.976587%  1.385929% 3.125000%
4	9.534355%	Yates Petroleum Corp	100.000000%
5	9.867406%	Larry Arnold Boswell Interest, LTD Burnett Oil Co. Inc. Patsy B Carr CEB Oil Company Merlyn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company Express Air Drilling, Inc. James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust John P. Oil Company Mcinnis Resource Company PVB Oil Company CW Seely & Wife Ina B Seely CW & Frieda T. Stumhoffer J. Cleo Thompson and James Cleo Thompson Jr., LP Wes-Tex Drilling Co., LP Michael J. Havel & Wife Kathleen A. Havel David Lynn Henderson & wife Dawn Henderson SSV & H Associates	2.000000% 5.059641% 8.976299% 6.250000% 1.895225% 1.262877% 1.900664% 5.034281% 6.325093%     1.895225% 2.000000% 1.900663% 7.179208% 25.000000% 15.814971%  3.952686% 0.632340%  0.897389% 2.023438%

**EXHIBIT "C" TO  
UNIT AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>TRACT NUMBER</u>	<u>UNIT PARTICIPATION</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>
6	3.160889%	Boswell Interest, LTD	7.814117%
		Burnett Oil Co. Inc.	13.863010%
		CEB Oil Company	2.926988%
		Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.950389%
		EAB Oil Company	2.935388%
		Express Air Drilling, Inc.	7.774952%
		James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.768483%
		John P. Oil Company	2.926989%
		PVB Oil Company	2.935387%
		CW Seely & Wife Ina B Seely	11.087581%
		J. Cleo Thompson and James Cleo Thompson Jr., LP	24.424665%
		Wes-Tex Drilling Co., LP	6.104535%
		Michael J. Havel & Wife Kathleen A. Havel	0.976587%
		David Lynn Henderson & wife Dawn Henderson	1.385929%
SSV & H Associates	3.125000%		
7	4.308620%	Boswell Interest, LTD	7.814117%
		Burnett Oil Co. Inc.	13.863010%
		CEB Oil Company	2.926988%
		Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.950389%
		EAB Oil Company	2.935388%
		Express Air Drilling, Inc.	7.774952%
		James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.768483%
		John P. Oil Company	2.926989%
		PVB Oil Company	2.935387%
		CW Seely & Wife Ina B Seely	11.087581%
		J. Cleo Thompson and James Cleo Thompson Jr., LP	24.424665%
		Wes-Tex Drilling Co., LP	6.104535%
		Michael J. Havel & Wife Kathleen A. Havel	0.976587%
		David Lynn Henderson & wife Dawn Henderson	1.385929%
SSV & H Associates	3.125000%		

EXHIBIT C-110  
**UNIT AGREEMENT**  
**EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>TRACT NUMBER</u>	<u>UNIT PARTICIPATION</u>	<u>WORKING INTEREST OWNER</u>	<u>WI OWNER AMOUNT</u>		
8	12.443092%	DM Royalties	2.343750%		
		Boswell Interest, LTD	7.447830%		
		Burnett Oil Co. Inc.	13.213181%		
		Patsy B Carr	2.343750%		
		CEB Oil Company	2.789785%		
		Merlyn W. Dahlin & Wife Ruth G. Dahlin	1.858965%		
		EAB Oil Company	2.797792%		
		Express Air Drilling, Inc.	7.410501%		
		James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	9.310585%		
		John P. Oil Company	2.789786%		
		PVB Oil Company	2.797791%		
		CW Seely & Wife Ina B Seely	10.567851%		
		J. Cleo Thompson and James Cleo Thompson Jr., LP	23.279759%		
		Wes-Tex Drilling Co., LP	5.818385%		
		Michael J. Havel & Wife Kathleen A. Havel	0.930810%		
		David Lynn Henderson & wife Dawn Henderson	1.320964%		
		SSV & H Associates	2.978515%		
		9	5.741693%	Larry Arnold	4.000000%
				John R Collins, Trustee	1.500000%
				C W & Frieda T. Stumhoffer	7.500000%
Boswell Interest, LTD	6.798282%				
Burnett Oil Co. Inc.	12.060819%				
CEB Oil Company	2.546480%				
Merlyn W. Dahlin & Wife Ruth G. Dahlin EAB Oil Company	2.553788%				
Express Air Drilling, Inc.	6.764208%				
James Robert Hill, Virginia Glenn Lattimore & John Styrsky, Trustees of the Houston and Emma Hill Estate Trust	8.498580%				
John P. Oil Company	2.546480%				
PVB Oil Company	2.553787%				
CW Seely & Wife Ina B Seely J. Cleo Thompson and James Cleo Thompson Jr., LP	21.249459%				
Wes-Tex Drilling Co., LP	5.310945%				
Michael J. Havel & Wife Kathleen A. Havel	0.849631%				
David Lynn Henderson & wife Dawn Henderson	1.205758%				
SSV & H Associates	2.718750%				

UNIT OPERATING AGREEMENT FOR  
THE DEVELOPMENT AND OPERATION  
OF THE  
EK PENROSE SAND UNIT  
LEA COUNTY, NEW MEXICO

BEFORE THE OIL CONSERVATION DIVISION  
Santa Fe, New Mexico  
Case Nos. 12964/12983 Exhibit No. 3  
Submitted by:  
Seely Oil Company  
Hearing Date: January 9, 2003

UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT  
LEA COUNTY, NEW MEXICO

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UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT  
LEA COUNTY, NEW MEXICO

THIS AGREEMENT, entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2002, by and between the parties who execute or ratify this Agreement;

Witnesseth

THAT, WHEREAS, the parties hereto as Working Interest Owners have executed as of the date hereof, that certain Unit Agreement for the development and operation of the EK Penrose Sand Unit, Lea County, New Mexico, hereinafter referred to as "Unit Agreement", and which, among other things, provides for a separate agreement to be made and entered into by and between Working Interest Owners pertaining to the development and operation of the Unit Area therein defined;

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, it is agreed as follows:

Article 1

CONFIRMATION OF UNIT AGREEMENT

- 1.1 Confirmation of Unit Agreement. The Unit Agreement is hereby confirmed and incorporated herein by reference and made a part of this Agreement. The definitions in the Unit Agreement are adopted for all purposes of this Agreement. In the event that there is any conflict between the Unit Agreement and this Agreement, the Unit Agreement shall prevail.

Article 2

EXHIBITS

- 2.1 Exhibits. The following exhibits are incorporated herein by reference:
- 2.1.1 Exhibits "A", "B" and "C" of the Unit Agreement.
  - 2.1.2 Exhibit "D" attached Hereto, is a schedule showing total Unit Participation of each Working Interest Owner.
  - 2.1.3 Exhibit "E" attached hereto, is the Accounting Procedure applicable to development and operation of the Unit Area. In the event of conflict between this Agreement and Exhibit "E", this Agreement shall prevail.

2.1.4 Exhibit "F" attached hereto, contains insurance provisions applicable to the development and operation of the Unit Area.

2.2 Revision of Exhibits. Whenever Exhibits "A", "B" and "C" are revised, Exhibit "D" shall be revised accordingly, such revision to be effective as of the effective date of revised Exhibits "A", "B" and "C".

### ARTICLE 3

#### SUPERVISION OF OPERATIONS BY WORKING INTEREST OWNERS

3.1 Overall Supervision. Working Interest Owners shall exercise overall supervision and control of all matters pertaining to the development and operations of the Unit Area pursuant to this Agreement and the Unit Agreement. In the exercise of such power each Working Interest Owner shall act solely in its own behalf in the capacity of an individual owner and not on behalf of the owners as an entirety.

3.2 Particular Powers and Duties. The matters to be passed upon and decided by Working Interest Owners shall include, but not be limited to, the following:

3.2.1 Method of Operation. The kind, character and method of operation, including any type of pressure maintenance or secondary recovery program to be employed.

3.2.2 Drilling of Wells. The drilling of any wells within the Unit Area either for production of Unitized Substances, for use as an injection well, or for other purposes.

3.2.3 Well Workovers and Change of Status. The workover, recompletion, repair, abandonment, or change of status of any well in the Unit Area or use of any such well for injection or other purposes. The Unit Operator shall be responsible for performing such work and such work shall be done at Unit Expense.

3.2.4 Expenditures. Making of any expenditure in excess of Ten Thousand Dollars (\$10,000.00); provided that approval by Working Interest Owners of the drilling, reworking, drilling deeper, or plugging back of any well shall include approval of all necessary expenditures required therefor and for completing, testing, and equipping the same, including necessary flow lines, separators and lease

tankage; provided, however, that in case of blow-out, explosion, fire, flood or other sudden emergencies, Unit Operator may take steps and incur such expenses as in its opinion are required to deal with the emergency and to safeguard life or property, but that Unit Operator shall, as promptly as possible, report the emergency to the Working Interest Owners.

3.2.5 Disposition of Surplus Facilities. Selling or otherwise disposing of any major item of surplus material or equipment, the current list price of new equipment similiar thereto being Five Thousand Dollars (\$5,000.00) or more.

3.2.6 Appearance Before a Court or Regulatory Body. The designation of a representative to appear before any court or regulatory body in all matters pertaining to Unit operations; provided, however, such designation by Working Interest Owners shall not prevent any Working Interest Owner from appearing in person at its own expense or from designating another representative in its own behalf.

3.2.7 Audits. The making of proper audits of the accounts of Unit Operator pertaining to operations hereunder; provided that such audits shall:

(a) not be conducted more than once each year except upon the resignation or removal of Unit Operator;

(b) be made at the expense of all Working Interest Owners other than the Working Interest Owner designated as Unit Operator, unless such audit is conducted at the specific instance and request of Unit Operator, in which latter event the same shall be made at the expense of all Working Interest Owners including the Working Interest Owner designated as Unit Operator; and

(c) be upon not less than thirty (30) days written notice to Unit Operator.

3.2.8 Inventories. The taking of periodic inventories under the terms of Exhibit "E".

- 3.2.9 Technical Services. Any direct charges to the joint account for services by consultants or Unit Operator's technical personnel not covered by the overhead charges provided by Exhibit "E".
- 3.2.10 Appointment of Committees. The appointment of designation of committees or subcommittees necessary for the study of any problem in connection with Unit operations.
- 3.2.11 The removal of Unit Operator and the selection of a successor in accordance with Article 6.2 hereof.
- 3.2.12 The enlargement of the Unit Area.
- 3.2.13 The adjustment and readjustment of investments as required.
- 3.2.14 The termination of the Unit Agreement.

#### ARTICLE 4

##### MANNER OF EXERCISING SUPERVISION

4.1 Designation of Representatives. Each Working Interest Owner shall advise Unit Operator in writing the names and addresses of its representative and alternate representative authorized to represent and bind it in respect to any matter pertaining to the development and operation of the Unit Area. Such representative or alternate representative may be changed from time to time by written notice to Unit Operator.

4.2 Meetings. All meetings of Working Interest Owners for the purpose of considering and acting upon any matter pertaining to the development and operation of the Unit Area shall be called by the Unit Operator upon its own motion or at the request of two (2) or more Working Interest Owners. No meeting shall be called on less than fourteen (14) days' advance written notice, with agenda for the meeting attached. In the absence of protest by any qualified member of the meeting, the Working Interest Owners attending such meeting shall not be prevented from amending items included in the agenda or from deciding on such amended item or from deciding other items presented at such meeting. The representative of Unit Operator shall be chairman of each meeting.

4.3 Voting Procedure. Working Interest Owners shall act upon and determine all matters coming before them as follows:

- 4.3.1 Voting Interest. In voting on any matter each Working Interest Owner shall have a voting interest equal to its then percentage in Unit Participation, as shown in Exhibit "D", and such revisions thereof as may hereafter be made in accordance with the terms of this Agreement.

- 4.3.2 Vote Required. Unless otherwise provided herein or in the Unit Agreement, Working Interest Owners shall act upon and determine all matters coming before them by the affirmative vote of seventy-five percent (75%) or more voting interest; provided that, should any one Working Interest Owner own more than twenty-five percent (25%) voting interest, its vote must be supported by the vote of one or more Working Interest Owners having a combined voting interest of at least five percent (5%).
- 4.3.3 Vote at Meetings by Non-Attending Working Interest Owner. Any Working Interest Owner not represented at a meeting may vote on any item included in the agenda of the meeting by letter or telegram addressed to the chairman of the meeting, provided such vote is received prior to the submission of such item to vote.
- 4.3.4 Poll Votes. Working Interest Owners may vote on and decide, by letter or telegram, any matter submitted in writing to Working Interest Owners, if no meeting is requested, as provided in Section 4.2, within fourteen (14) days after the proposal is sent to Working Interest Owners. Unit Operator will give prompt notice of the results of such voting to all Working Interest Owners.

## ARTICLE 5

### INDIVIDUAL RIGHTS AND PRIVILEGES OF WORKING INTEREST OWNERS

5.1 Reservation of Rights. Working Interest Owners severally reserve to themselves all their rights, power, authority and privileges, except as provided expressly in this Agreement and the Unit Agreement.

5.2 Specific Rights. Each Working Interest Owner shall have among others, the following specific rights and privileges:

- 5.2.1 Access to Unit Area. Access to the Unit Area at all reasonable times to inspect the operation hereunder and all wells and records and data pertaining thereto.
- 5.2.2 Reports by Request. The right to receive from Unit Operator, upon written request, copies of all reports to any governmental agency, reports of crude oil runs and stocks, inventory reports and all other data not ordinarily furnished by Unit Operator to all Working Interest Owners; the cost of preparing copies of said

reports shall be charged solely to the Working Interest Owner requesting the same.

5.3 Undrilled Locations. Undrilled locations on tracts committed to the Unit Area shall be drilled by the Unit Operator at Unit expense.

#### ARTICLE 6

##### UNIT OPERATOR

6.1 Initial Unit Operator. Seely Oil Company, a Texas corporation, is hereby designated as initial Unit Operator.

6.2 Resignation or Removal and Selection of Successor. The resignation or removal of Unit Operator, and the selection of a successor shall be governed by the provisions of the Unit Agreement.

#### ARTICLE 7

##### POWERS AND DUTIES OF UNIT OPERATOR

7.1 Exclusive Right to Operate Unit. Subject to the provisions of this Agreement and the orders, directions and limitations rightfully given or imposed by Working Interest Owners, Unit Operator shall have the exclusive right and duty to develop and operate the Unit Area for the production of Unitized Substances.

7.2 Workmanlike Conduct. Unit Operator shall conduct all operations hereunder in a good and workmanlike manner, and, in the absence of specific instructions from Working Interest Owners, shall have the right and duty to conduct such operations in the same manner as would a prudent operator under the same or similar circumstances. Unit Operator shall freely consult with Working Interest Owners and keep them advised of all matters arising in connection with such operations which Unit Operator, in the exercise of its best judgement, considers important. Unit Operator shall not be liable for damages unless such damages result from the gross negligence or willful misconduct of Unit Operator.

7.3 Liens and Encumbrances. Unit Operator shall keep the lands and leases in the Unit Area free from all liens and encumbrances occasioned by its operations hereunder, except the lien of Unit Operator granted hereunder.

7.4 Employees. The number of employees used by Unit Operator in conducting operations hereunder, the selection of such employees, the hours of labor, and the compensation for services to be paid any and all such employees shall be determined by Unit Operator. Such employees shall be the employees of Unit Operator.

7.5 Records. Unit Operator shall keep true and correct books, accounts, and records of its operation hereunder.

7.6 Reports to Working Interest Owners. Unit Operator shall furnish to each Working Interest Owner monthly, injection and production reports for each well in the Unit, as well as periodic reports of the development and operation of the Unit Area.

7.7 Reports to Governmental Authorities. Unit Operator shall make all necessary reports to governmental authorities.

7.8 Engineering and Geological Information. Unit Operator shall furnish to each Working Interest Owner, upon written request, a copy of the log of, and copies of engineering and geological data pertaining to, wells drilled by Unit Operator.

7.9 Expenditures. Unit Operator is authorized to make single expenditures not in excess of Ten Thousand Dollars (\$10,000.00) without prior approval of Working Interest Owners; provided, however, that nothing in this Article (nor in Article 3.2.4) shall be deemed to prevent Unit Operator from making an expenditure in excess of said amount if such expenditure becomes necessary because of a sudden emergency which may otherwise cause loss of life, title or extensive damage to property. Unit Operator shall report to Working Interest Owners, as promptly as possible, the nature of the emergency and the action taken.

7.10 Settlements. Unit Operator may settle any single damage claim not involving an expenditure in excess of Five Thousand Dollars (\$5,000.00) provided such payment is a complete settlement of such claim. All claims in excess of \$5,000.00 must be approved by Working Interest Owners.

7.11 Nondiscrimination. In connection with the performance of work under this Agreement, the Unit Operator agrees to comply with all provisions of Section 202 (1) to (7) inclusive, of Executive Order 11246 (30 F.R. 12319), which are hereby incorporated by reference in this agreement.

7.12 Mathematical Errors. It is hereby agreed by all parties to this agreement that Unit Operator is empowered to correct any mathematical errors which might exist in the pertinent exhibits to this Agreement upon approval of the Commissioner.

## ARTICLE 8

### TAXES

8.1 Ad Valorem Taxes. Beginning with the first of the calendar year after the effective date hereof, Unit Operator after consulting

with Working Interest Owners, shall make and file for ad valorem purposes all necessary renditions and returns with the proper taxing authorities or governmental subdivisions covering all property of each Working Interest Owner within the Unit Area and used in connection with the development and operation of the Unit Area. Any Working Interest Owner dissatisfied with any proposed rendition or assessment of its interest in property shall have the right, at its own expense, to protest and resist the same. All such ad valorem taxes due and payable on account of real and personal property of each Working Interest Owner located within the Unit Area and used in connection with Unit operations shall be paid by the Unit Operator for the joint account in the same manner as other costs and expenses of Unit Operations; provided that, if the interest of a Working Interest Owner is subject to a separately assessed overriding royalty interest, production payment, or other interest in excess of a 1/8 royalty, such Working Interest Owner shall be given credit for the reduction in taxes paid resulting therefrom.

8.2 Other Taxes. Each Working Interest Owner shall pay or cause to be paid all production, severance, gathering and other direct taxes and assessments imposed upon or on account of the production or handling of its share of Unitized Substances.

#### ARTICLE 9

##### INSURANCE

9.1 Insurance. Unit Operator shall carry, with respect to Unit operations subject to this Agreement:

9.1.1 Insurance as set forth in Exhibit "F".

#### ARTICLE 10

##### ADJUSTMENT OF INVESTMENTS

10.1 Personal Property Taken Over. Upon the effective date hereof, Working Interest Owners shall deliver to Unit Operator possession of:

10.1.1 Wells and Casing. All wells drilled through the Unitized Formation and that are completed or that may be completed in the Unitized Formation, together with the casing therein.

10.1.2 Well and Lease Equipment. Unless previously agreed upon, the tubing and rods in each such well, together with the wellhead connection thereon, and all other lease and operating equipment used in the operation

of such wells which Working Interest Owners determine is necessary or desirable for conducting Unit operations, and

10.1.3 Records. A copy of all production and well records pertaining to such wells.

10.2 Inventory and Evaluation of Personal Property. Working Interest Owners shall (at the expense of the joint account, and as of the effective date) inventory all well and lease equipment delivered to the Unit Operator as provided in Article 10.1.1 and 10.1.2, except that casing shall be given no value. The inventory will include all tangible property classified as controllable equipment. For the purpose of inventory and adjustment of investment, sucker rods and tubing under 2 inches in the wells will also be considered as controllable but will not be considered controllable in future accounting. Non-controllable equipment except items listed above will not be included on the inventory but may nevertheless be taken over by the Unit if in use on the property. The distinction between controllable and non-controllable equipment will be based on the latest material classification manual published by the Council of Petroleum Accountants Society of North America. The condition of the equipment will be indicated on the inventory and priced in accordance with the basis prescribed in Section IV of Exhibit "E" attached. The inventory and evaluation will be presented to the Working Interest Owners within ninety (90) days after the taking of the inventory. Upon approval by the Working Interest Owners of the inventory and evaluation of the equipment and personal property, the Unit Operator will furnish each Working Interest Owner a copy thereof showing only those items which it has been decided to retain and the value of each item.

10.3 Investment Adjustment. Upon approval of such inventory and evaluation by Working Interest Owners, each Working Interest Owner shall be credited with the value of its interest in all personal property so taken over by Unit Operator under Article 10.1.2 and charged with an amount equal to that obtained by multiplying the total value of all such personal property so taken over by Unit Operator under Article 10.1.2 by such Working Interest Owner's Unit Participation as shown in Exhibit "D". If the charge against any Working Interest Owner is greater than the amount credited to such Working Interest Owner, the resulting net charge shall be paid and in all other respects be treated as any other item of Unit expense chargeable against such Working Interest Owner. If the credit to any Working Interest Owner is greater than the amount charged against such Working Interest Owner, the resulting net credit shall be paid to such Working Interest Owner by Unit Operator out of funds received by it in settlement of the net charges described above. Pricing of inventory will be in accordance with Section IV of Exhibit "E" hereof.

10.4. General Facilities. The acquisition of warehouse, warehouse stocks, lease houses, camps, facility systems, and office buildings necessary for operations hereunder shall be by negotiation by and between the owners thereof and Unit Operator, subject to the approval of Working Interest Owners.

10.5 Ownership of Personal Property and Facilities. Each Working Interest Owner, individually, shall by virtue hereof own an undivided interest in all personal property and facilities taken over or otherwise acquired by Unit Operator pursuant to this Agreement in an amount equal to its Unit Participation shown on Exhibit "D".

## ARTICLE 11

### DEVELOPMENT AND OPERATING COSTS

11.1 Basis of Charge to Working Interest Owners. Unit Operator initially shall pay and discharge all costs and expenses incurred in the development and operation of the Unit Area. Working Interest Owners shall reimburse Unit Operator for all such costs and expenses, in proportion to their respective Unit Participation, shown on Exhibit "D". All charges, credits and accounting for costs and expenses shall be in accordance with Exhibit "E".

11.2 Budgets. Before or as soon as practical after the effective date hereof, Unit Operator shall prepare a budget of estimated costs and expenses for the remainder of the calendar year, and on or before the first day of each November thereafter shall prepare a budget of estimated costs and expenses for the ensuing calendar year. Such budgets shall set forth the estimated costs and expenses by quarterly periods. Unless otherwise specified in the budget, it shall be presumed for the purpose of advance billings that the estimated costs and expenses for each month of a quarterly period shall be one-third (1/3) of the estimate for the quarterly period. Budgets so prepared shall be estimates only and shall be subject to adjustment and correction by Working Interest Owners and Unit Operator from time to time wherever it shall appear that an adjustment or correction is proper. A copy of each such budget and adjusted budget shall be promptly furnished each Working Interest Owner.

11.3 Advance Billing. Unit Operator shall have the right at its option to require Working Interest Owners to advance their respective proportion of such costs and expenses by submitting to Working Interest Owners, on or before the 15th day of any month, an itemized estimate of such costs and expenses for the succeeding month with a request for payment in advance. Within fifteen (15) days thereafter, each Working Interest Owner shall pay to Unit Operator its proportionate part of such estimate. Adjustment between estimates and the actual costs shall

be made by Unit Operator at the close of each calendar month, and the accounts of the Working Interest Owner shall be adjusted accordingly.

11.4 Commingling of Funds. No funds received by Unit Operator under this Agreement need be segregated by Unit Operator or maintained by it as a joint fund, but may be commingled with its own funds.

11.5 Lien of Unit Operator. Each Working Interest Owner grants to Unit Operator a lien upon its Oil and Gas Rights in each Tract, its share of Unitized Substances when produced, and its interest in all Unit equipment, as security for payment of its share of Unit expense, together with interest thereon at the rate of ten percent (10%) per annum. Unit Operator shall have the right to bring suit to enforce collection of such indebtedness with or without seeking foreclosure of the lien. In addition, upon default by any Working Interest Owner in payment of its share of Unit expense, Unit Operator shall have the right to collect from the purchaser the proceeds from the sale of such Working Interest Owner's share of Unitized Substances until the amount owed by such Working Interest Owner, plus interest as aforesaid, has been paid. Each purchaser shall be entitled to rely upon Unit Operator's written statement concerning the amount of any default. Oil and Gas Rights, as used herein, means the right to explore, develop and operate lands within the Unit Area for the production of Unitized Substances or to share in the production so obtained or the proceeds hereof.

11.6 Unpaid Unit Expense. If any Working Interest Owner fails to pay its share of Unit expense within sixty (60) days after rendition of a statement therefor by Unit Operator, each Working Interest Owner agrees, upon request by Unit Operator, to pay its proportionate part of the unpaid share of Unit expense of the defaulting Working Interest Owner. The Working Interest Owners that pay the share of Unit expense of a defaulting Working Interest Owner shall be reimbursed by the Unit Operator for the amount so paid, plus any interest collected thereon, upon receipt by Unit Operator of any past due amount collected from the defaulting Working Interest Owner. Any Working Interest Owner so paying a defaulting Working Interest Owner's share of Unit expenses shall be subrogated to the lien and rights herein granted Unit Operator.

11.7 Wells Drilled by Unit Operator. All wells drilled by Unit Operator shall be drilled on a competitive basis at the usual rates prevailing in the area. Unit Operator may employ its own tools and equipment in the drilling of wells, but in such event, the charge therefor shall not exceed the prevailing rate in the area, and such work shall be performed by Unit Operator under the same terms and conditions as customary and usual in the area in contracts of independent contractors doing work of a similar nature.

11.8 Uncommitted Royalty. Should an owner of a Royalty Interest in any Tract fail to become a party to the Unit Agreement, and, as a result thereof, the actual Royalty Interest payments with respect to such Tract are more or less than the Royalty Interest payments computed on the basis of the Unitized Substances that are allocated to such Tract under the Unit Agreement to the extent provided below, the difference shall be borne by or inure to the benefit of Working Interest Owners, in proportion to their respective Unit Participation.

11.8.1 Burden of 1/8th Royalty. The difference to be borne by or inure to the benefit of Working Interest Owners shall not exceed an amount computed on the basis of one-eighth (1/8) of the difference between the Unitized Substances allocated to the Tract and the Unitized Substances produced from the Tract. Such adjustments shall be made by charges and credits to the joint account.

11.8.2 Burden of Excess Royalty and Other Interests. Any uncommitted Royalty Interest in excess of one-eighth (1/8) shall be borne solely by the Working Interest Owner contributing such interest.

#### ARTICLE 12

##### OIL IN LEASE TANKAGE ON EFFECTIVE DATE

12.1 Gauge of Merchantable Oil. Unit Operator shall make a proper and timely gauge of all lease and other tanks within the Unit Area in order to ascertain the amount of merchantable oil above the pipe line connection in such tanks as of 7:00 a.m. on the effective date hereof. All such oil which has then been produced legally shall be and remain the property of the Working Interest Owner entitled thereto the same as if the Unit had not been formed; and such Working Interest Owner shall promptly remove said oil from the Unit Area. Any such oil not removed shall be sold by Unit Operator for the account of such Working Interest Owner, subject to the payment of all Royalty to Royalty Owners under the terms and provisions of the Unit Agreement and any applicable lease or leases and other contracts.

#### ARTICLE 13

##### OPERATION OF NON-UNITIZED FORMATION

13.1 Right to Operate in Non-Unitized Formations. Any Working Interest Owner now having, or hereafter acquiring, the right to drill for and produce oil, gas or other minerals, other than Unitized Substances, within the Unit Area shall have the full right to do so notwithstanding this Agreement. In exercising said right, however, such Working Interest Owner shall exercise every reasonable precaution to

prevent unreasonable interference with operations hereunder. No Working Interest Owner, other than Unit Operator, shall produce Unitized Substances through any well drilled or operated by it. If any such other Working Interest Owner drills any well into or through the Unitized Formation, the Unitized Formation shall be cased or otherwise protected in such a manner that the Unitized Formation and the production of Unitized Substances will not be adversely affected. No dual completions in the Unitized Formation and some other formation shall be permitted.

#### ARTICLE 14

##### TITLES

14.1 Warranty and Indemnity. Each Working Interest Owner represents and warrants that it is the owner of the respective Working Interest set forth opposite its name in Exhibit "B" of the Unit Agreement and hereby agrees to indemnify and hold harmless the other Working Interest Owners from any loss and liability for damages due to failure (in whole or in part) of its title to any such interests, except failure of title arising out of operations hereunder; provided that such warranty and indemnity shall be limited to an amount equal to the net value that has been received from the sale of Unitized Substances attributed to the interest as to which title failed. In the event of such failure, the interest of the parties hereto shall be revised to reflect the true Unit participation. Each failure of title shall be effective, insofar as this Agreement is concerned, as of 7:00 a.m. on the first day after such title failure is determined and there shall be no retroactive adjustment of development and operating expenses, Unitized Substances or the proceeds therefrom, as a result of title failure.

14.2 Failure Because of Unit Operations. The failure of title to any Working Interest in any Tract by reason of Unit operations, including non-production from such Tract, shall not change the Unit Participation of the Working Interest Owner whose title failed, in relation to the Unit Participation of the other Working Interest Owners at the time of the title failure.

#### ARTICLE 15

##### LIABILITY, CLAIMS AND SUITS

15.1 Individual Liability. The duties, obligations, and liabilities of Working Interest Owners shall be several and not joint or collective; and nothing contained herein shall ever be construed as creating a partnership of any kind, joint venture, or an association or trust between or among Working Interest Owners.

15.2 Settlements. In the event claim is made against a Working Interest Owner, or any Working Interest Owner is sued on account of any matter or thing arising from the development and operation of the Unit Area, and over which such Working Interest Owner individually has no control because of the rights, powers and duties granted by this Agreement and the Unit Agreement, said Working Interest Owner shall immediately notify the Unit Operator of such claim or suit. Unit Operator shall assume and take over the further handling of such claim or suit and all costs and expenses of handling, settling or otherwise discharging such claim or suit shall be borne by Working Interest Owners as any other cost or expense of operating the Unit Area. Unit Operator may settle any single damage claim or suit involving Unit operations but not involving an expenditure of more than Five Thousand Dollars (\$5,000.00), provided the payment is in complete settlement of such claim or suit.

#### ARTICLE 16

##### INTERNAL REVENUE PROVISION

16.1 Internal Revenue Provision. Each party hereto hereby irrevocably elects that it and the operations covered by this Agreement be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code of 1954 as permitted and authorized by Section 761 of said Code and the regulations promulgated thereunder. Unit Operator is hereby irrevocably authorized and directed to execute on behalf of each party hereto such additional or further evidence of said election as may be required by the Secretary of the Treasury of the United States or the Federal Internal Revenue Service and regulations issued under said Subchapter K, including all of the returns, statements and data required, and Unit Operator shall furnish each party hereto a copy thereof. Should said regulations require each party to execute such further evidence, each party hereto irrevocably agrees to execute or join in the execution thereof. Each party hereto irrevocably agrees not to give any notices or take any action inconsistent with the elections hereby made and each hereby states that the income derived by it from the operations under this Agreement can be adequately determined without the computation of partnership taxable income.

#### ARTICLE 17

##### NOTICES

17.1 Notices. All notices required hereunder shall be in writing and shall be deemed to have been properly served when sent by mail or telegram to the address of the representative of each Working Interest Owner as furnished to Unit Operator in accordance with Article 4 hereof.

ARTICLE 18

WITHDRAWAL OF WORKING INTEREST OWNER AND CREATION OF NEW INTEREST

18.1 Withdrawal. If any Working Interest Owner so desires, it may withdraw from this Agreement by conveying, assigning and transferring, without warranty of title (either expressed or implied) to the other Working Interest Owners who do not desire to withdraw herefrom, all of the former's rights, title and interest in and to its lease or leases, or other operating rights in the Unit Area, insofar as said lease, leases or rights pertain to the Unitized Formation, together with the withdrawing Working Interest Owner's interest in all wells, pipe lines, casing, injection equipment facilities and other personal property used in conjunction with the development and operation of the Unit Area; provided, that such transfer, assignment or conveyance shall not relieve said Working Interest Owner from any obligation or liability incurred prior to the date of the execution and delivery thereof. The interest so transferred, assigned and conveyed shall be taken and owned by the other Working Interest Owners in proportion to their respective Unit Participations, and the Unit Operator shall recompute the percentage of participation to include this change and furnish the remaining Working Interest Owners with a corrected interest sheet. After the execution and delivery of such transfer, assignment or conveyance, the withdrawing Working Interest Owner shall be relieved from all further obligations and liability hereunder and under said Unit Agreement; and the right of such Working Interest Owner to any benefits subsequently accruing hereunder and under said Unit Agreement shall cease; provided, that upon delivery of said transfer, assignment or conveyance, the assignees, in the ratio of the respective interests so acquired, shall pay to the assignor for its interest in all jointly-owned equipment, casing and other personal property, the fair salvage value thereof, as estimated and fixed by the remaining Working Interest Owners.

18.2 Creation of a New Interest. If any Working Interest Owner shall, after executing this Agreement, create any overriding royalty, production payment or other similar interest, hereafter referred to as "New Interest", out of its interest subject to this Agreement, such new interest shall be subject to all the terms and provisions of this Agreement and the Unit Agreement.

ARTICLE 19

ABANDONMENT OF WELLS

19.1 Rights of Former Owners. If Working Interest Owners decide to permanently abandon any well within the Unit Area prior to termination of the Unit Agreement, Unit Operator shall give written notice of such fact to the former Working Interest Owner of the Tract on which such well is located, together with the amount (as estimated and fixed

by the Working Interest Owners) to be the net salvage value of the equipment in and on said well contributed by Working Interest Owners under Article 10.1.1. Said former Working Interest Owner shall have the right and option for a period of ninety (90) days after receipt of such notice to notify Unit Operator of its election to take over and own said well and to deepen or plug back said well to a formation other than the Unitized Formation. Within ten (10) days after said former Working Interest Owner of the Tract has so notified Unit Operator of its desire to take over such well, it shall pay to Unit Operator, for credit to the joint account of the Working Interest Owners, the amount of the net salvage value above described. At the same time the former Working Interest Owner taking over the well shall agree, by letter addressed to Unit Operator, to effectively seal off and protect the Unitized Formation and (at such time as well is ready for abandonment) to plug and abandon well in a workmanlike manner in accordance with applicable laws and regulations.

19.2 Plugging. In the event the former Working Interest Owner of a Tract does not elect to take over a well located thereon which is proposed for abandonment, Unit Operator shall plug and abandon the well in accordance with applicable laws and regulations.

## ARTICLE 20

### EFFECTIVE DATE AND TERM

20.1 Effective Date. This Agreement shall become effective on the date and at the time the Unit Agreement becomes effective.

20.2 Term. This Agreement shall continue in full force and effect so long as the Unit Agreement remains in force and effect and thereafter until all Unit wells have been plugged and abandoned or turned over to Working Interest Owners in accordance with Article 21 hereof, and all personal and real property acquired for the joint account of Working Interest Owners has been disposed of by Unit Operator in accordance with instructions of Working Interest Owners and there shall have been a final accounting.

## ARTICLE 21

### TERMINATION OF UNIT AGREEMENT

21.1 Termination. Upon termination of the Unit Agreement the following shall occur:

21.1.1 Oil and Gas Rights. Possession of all oil and gas rights in and to the several separate tracts shall revert to the Working Interest owners thereof.

- 21.1.2 Right to Operate. Working Interest Owners of any such Tract desiring to take over and continue to operate a well or wells located thereon may do so by paying Unit Operator, for the credit of the joint account, the net salvage value of the equipment in and on the well, contributed by such Working Interest Owners under Article 10.1.1 and agreeing in writing to properly plug the well at such time as it is abandoned.
- 21.1.3 Salvaging Wells. With respect to all wells not taken over by the Working Interest Owners, Unit Operator shall, at the joint expense of Working Interest Owners, salvage as much of the casing and equipment in or on such wells as can economically and reasonably be salvaged, and shall cause such wells to be properly plugged and abandoned.
- 21.1.4 Cost of Salvaging. Working Interest Owners shall share the cost of salvaging, liquidation or other distribution of assets and properties used in the development and operation of the Unit Area in proportion to their respective Unit Participation, as shown on Exhibit "D".

## ARTICLE 22

### COUNTERPART EXECUTION

22.1 Execution by Separate Counterparts or Ratifications. This agreement may be executed in any number of counterparts and each counterpart so executed shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same instrument; or may be ratified by a separate instrument in writing referring to this Agreement. Each such ratification shall have the force and effect of an executed counterpart and of adopting by reference all of the provisions hereof.

## ARTICLE 23

### SUCCESSORS AND ASSIGNS

23.1 Successors and Assigns. The terms and provisions hereof shall be covenants running with the lands and unitized leases covered hereby and shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

No party hereto shall assign or convey less than his entire interest in any Tract committed hereto unless such leased interest,

if any, is an undivided interest in such entire tract; and should any interest committed hereto be or become owned by three (3) or more parties, then all of such parties shall be obligated to appoint a single agent to represent such interest for the purpose of accepting billings and receiving payments, if any, arising hereunder, or under the Unit Agreement, and for voting upon any matter which is the subject of determination by the Working Interest Owners.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement upon the respective dates indicated opposite their respective signatures.

SEELY OIL COMPANY

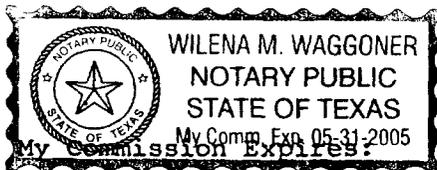
By *C. W. Seely*  
C. W. Seely

Its President

UNIT OPERATOR AND WORKING  
INTEREST OWNER

STATE OF TEXAS )  
COUNTY OF TARRANT )

This instrument was acknowledged before me on this 5th day of ~~December, 1992~~ November, 2002, by C. W. Seely, President of SEELY OIL COMPANY, a Texas corporation, on behalf of said corporation.



*Wilena M. Waggoner*  
Notary Public in and for the  
State of Texas

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
<b>Boswell Interest, LTD</b>			
	1	0.07814117	0.00832709
	2 A	0.07814117	0.01606674
	2 B	0.07814117	0.00682209
	2 C	0.07814117	0.00178473
	2 D	0.07814117	0.00212651
	2 E	0.07814117	0.00610547
	3	0.07814117	0.00170121
	5	0.05059641	0.00499255
	6	0.07814117	0.00246996
	7	0.07814117	0.00336681
	8	0.07447830	0.00926740
	9	0.06798282	0.00390336
	<b>Total</b>		<b>0.06693392</b>
 <b>Burnett Oil Co. Inc.</b>			
	1	0.13863010	0.01477307
	2 A	0.13863010	0.02850398
	2 B	0.13863010	0.01210306
	2 C	0.13863010	0.00316628
	2 D	0.13863010	0.00377263
	2 E	0.13863010	0.01083170
	3	0.13863010	0.00301811
	5	0.08976299	0.00885728
	6	0.13863010	0.00438194
	7	0.13863010	0.00597305
	8	0.13213181	0.01644128
	9	0.12060819	0.00692495
	<b>Total</b>		<b>0.11874733</b>
 <b>C W &amp; Frieda T. Stumhoffer</b>			
	5	0.25000000	0.02466851
	9	0.07500000	0.00430627
	<b>Total</b>		<b>0.02897478</b>

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
CEB Oil Company	1	0.02926988	0.00311914
	2 A	0.02926988	0.00601823
	2 B	0.02926988	0.00255540
	2 C	0.02926988	0.00066852
	2 D	0.02926988	0.00079654
	2 E	0.02926988	0.00228697
	3	0.02926988	0.00063724
	5	0.01895225	0.00187010
	6	0.02926988	0.00092519
	7	0.02926988	0.00126113
	8	0.02789785	0.00347136
	9	0.02546480	0.00146211
	<b>Total</b>		<b>0.02507193</b>
CW Seely & Wife Ina B Seely	1	0.11087581	0.01181544
	2 A	0.11087581	0.02279737
	2 B	0.11087581	0.00967998
	2 C	0.11087581	0.00253238
	2 D	0.11087581	0.00301734
	2 E	0.11087581	0.00866315
	3	0.11087581	0.00241387
	5	0.07179208	0.00708402
	6	0.11087581	0.00350466
	7	0.11087581	0.00477723
	8	0.10567851	0.01314967
	9	0.09646195	0.00553855
	<b>Total</b>		<b>0.09497366</b>

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
<b>David Lynn Henderson &amp; Wife Dawn Henderson</b>	1	0.01385929	0.00147691
	2 A	0.01385929	0.00284963
	2 B	0.01385929	0.00120998
	2 C	0.01385929	0.00031654
	2 D	0.01385929	0.00037716
	2 E	0.01385929	0.00108288
	3	0.01385929	0.00030172
	5	0.00897389	0.00088549
	6	0.01385929	0.00043808
	7	0.01385929	0.00059714
	8	0.01320964	0.00164369
9	0.01205758	0.00069231	
<b>Total</b>			<b>0.01187153</b>
<b>DM Royalties</b>	8	0.02343750	0.00291634
	<b>Total</b>		<b>0.00291634</b>
<b>EAB Oil Company</b>	1	0.02935388	0.00312809
	2 A	0.02935388	0.00603550
	2 B	0.02935388	0.00256273
	2 C	0.02935388	0.00067044
	2 D	0.02935388	0.00079883
	2 E	0.02935388	0.00229353
	3	0.02935388	0.00063906
	5	0.01900664	0.00187546
	6	0.02935388	0.00092784
	7	0.02935388	0.00126475
	8	0.02797792	0.00348132
9	0.02553788	0.00146631	
<b>Total</b>			<b>0.02514386</b>

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
Express Air Drilling, Inc.	1	0.07774952	0.00828535
	2 A	0.07774952	0.01598622
	2 B	0.07774952	0.00678790
	2 C	0.07774952	0.00177578
	2 D	0.07774952	0.00211585
	2 E	0.07774952	0.00607487
	3	0.07774952	0.00169268
	5	0.05034281	0.00496753
	6	0.07774952	0.00245758
	7	0.07774952	0.00334994
	8	0.07410501	0.00922096
	9	0.06764208	0.00388380
	<b>Total</b>		
John R Collins, Trustee	9	0.01500000	0.00086125
	<b>Total</b>		<b>0.00086125</b>
J. Cleo Thompson and James Cleo Thompson Jr., LP	1	0.24424665	0.02602806
	2 A	0.24424665	0.05021999
	2 B	0.24424665	0.02132388
	2 C	0.24424665	0.00557855
	2 D	0.24424665	0.00664685
	2 E	0.24424665	0.01908393
	3	0.24424665	0.00531748
	5	0.15814971	0.01560527
	6	0.24424665	0.00772036
	7	0.24424665	0.01052368
	8	0.23279759	0.02896722
	9	0.21249459	0.01220080
	<b>Total</b>		

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
<b>McInnis Resource Company</b>	5	0.02000000	0.00197348
<b>Total</b>			<b>0.00197348</b>
 <b>Merlyn W. Dahlin &amp; Wife Ruth G. Dahlin</b>			
	1	0.01950389	0.00207843
	2 A	0.01950389	0.00401023
	2 B	0.01950389	0.00170278
	2 C	0.01950389	0.00044547
	2 D	0.01950389	0.00053077
	2 E	0.01950389	0.00152391
	3	0.01950389	0.00042462
	5	0.01262877	0.00124613
	6	0.01950389	0.00061650
	7	0.01950389	0.00084035
	8	0.01858965	0.00231313
	9	0.01696838	0.00097427
<b>Total</b>			<b>0.01670659</b>
 <b>Michael J. Havel &amp; Wife Kathleen A. Havel</b>			
	1	0.00976587	0.00104070
	2 A	0.00976587	0.00200798
	2 B	0.00976587	0.00085261
	2 C	0.00976587	0.00022305
	2 D	0.00976587	0.00026577
	2 E	0.00976587	0.00076305
	3	0.00976587	0.00021261
	5	0.00632340	0.00062396
	6	0.00976587	0.00030869
	7	0.00976587	0.00042077
	8	0.00930810	0.00115822
	9	0.00849631	0.00048783
<b>Total</b>			<b>0.00836524</b>

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
<b>James Robert Hill, Virginia Glenn Lattimore &amp; John Styrsky, Trustees of the Houston and Emma Hill Estate Trust</b>	1	0.09768483	0.01040975
	2 A	0.09768483	0.02008515
	2 B	0.09768483	0.00852835
	2 C	0.09768483	0.00223110
	2 D	0.09768483	0.00265836
	2 E	0.09768483	0.00763248
	3	0.09768483	0.00212668
	5	0.06325093	0.00624123
	6	0.09768483	0.00308771
	7	0.09768483	0.00420888
	8	0.09310585	0.01158525
9	0.08498580	0.00487962	
<b>Total</b>			<b>0.08367456</b>
<b>John P. Oil Company</b>	1	0.02926989	0.00311914
	2 A	0.02926989	0.00601824
	2 B	0.02926989	0.00255540
	2 C	0.02926989	0.00066852
	2 D	0.02926989	0.00079654
	2 E	0.02926989	0.00228697
	3	0.02926989	0.00063723
	5	0.01895225	0.00187009
	6	0.02926989	0.00092519
	7	0.02926989	0.00126113
	8	0.02789786	0.00347136
9	0.02546480	0.00146211	
<b>Total</b>			<b>0.02507192</b>
<b>Larry Arnold</b>	5	0.02000000	0.00197348
	9	0.04000000	0.00229668
<b>Total</b>			<b>0.00427016</b>

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
<b>Patsy B Carr</b>	5	0.06250000	0.00616713
	8	0.02343750	0.00291634
	<b>Total</b>		<b>0.00908347</b>
<b>PVB Oil Company</b>	1	0.02935387	0.00312808
	2 A	0.02935387	0.00603550
	2 B	0.02935387	0.00256273
	2 C	0.02935387	0.00067044
	2 D	0.02935387	0.00079882
	2 E	0.02935387	0.00229353
	3	0.02935387	0.00063906
	5	0.01900663	0.00187546
	6	0.02935387	0.00092784
	7	0.02935387	0.00126475
	8	0.02797791	0.00348132
	9	0.02553787	0.00146631
		<b>Total</b>	
<b>SSV &amp; H Associates</b>	1	0.03125000	0.00333014
	2 A	0.03125000	0.00642537
	2 B	0.03125000	0.00272827
	2 C	0.03125000	0.00071374
	2 D	0.03125000	0.00085042
	2 E	0.03125000	0.00244168
	3	0.03125000	0.00068034
	5	0.02023438	0.00199661
	6	0.03125000	0.00098777
	7	0.03125000	0.00134645
	8	0.02978515	0.00370620
9	0.02718750	0.00156102	
	<b>Total</b>		<b>0.02676801</b>

**EXHIBIT "D" TO  
UNIT OPERATING AGREEMENT  
EK PENROSE SAND UNIT**

**SUMMARY OF OWNERSHIP BY WORKING INTEREST OWNERS**

<u>Working Interest Owner</u>	<u>Tract</u>	<u>Working Interest</u>	<u>Tract Participation</u>
Wes-Tex Drilling Co., LP	1	0.06104535	0.00650528
	2 A	0.06104535	0.01255164
	2 B	0.06104535	0.00532955
	2 C	0.06104535	0.00139426
	2 D	0.06104535	0.00166127
	2 E	0.06104535	0.00476971
	3	0.06104535	0.00132902
	5	0.03952686	0.00390028
	6	0.06104535	0.00192958
	7	0.06104535	0.00263022
	8	0.05818385	0.00723986
	9	0.05310945	0.00304938
	<b>Total</b>		<b>0.05229005</b>
Yates Petroleum Corp	4	1.00000000	0.09534355
	<b>Total</b>		<b>0.09534355</b>

COPY

EXHIBIT " E "

Attached to and made a part of Unit Operating Agreement dated  
covering the EK Penrose Sand Unit, Lea County, New Mexico

ACCOUNTING PROCEDURE  
JOINT OPERATIONS

I. GENERAL PROVISIONS

1. Definitions

"Joint Property" shall mean the real and personal property subject to the agreement to which this Accounting Procedure is attached.

"Joint Operations" shall mean all operations necessary or proper for the development, operation, protection and maintenance of the Joint Property.

"Joint Account" shall mean the account showing the charges paid and credits received in the conduct of the Joint Operations and which are to be shared by the Parties.

"Operator" shall mean the party designated to conduct the Joint Operations.

"Non-Operators" shall mean the Parties to this agreement other than the Operator.

"Parties" shall mean Operator and Non-Operators.

"First Level Supervisors" shall mean those employees whose primary function in Joint Operations is the direct supervision of other employees and/or contract labor directly employed on the Joint Property in a field operating capacity.

"Technical Employees" shall mean those employees having special and specific engineering, geological or other professional skills, and whose primary function in Joint Operations is the handling of specific operating conditions and problems for the benefit of the Joint Property.

"Personal Expenses" shall mean travel and other reasonable reimbursable expenses of Operator's employees.

"Material" shall mean personal property, equipment or supplies acquired or held for use on the Joint Property.

"Controllable Material" shall mean Material which at the time is so classified in the Material Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies.

2. Statement and Billings

Operator shall bill Non-Operators on or before the last day of each month for their proportionate share of the Joint Account for the preceding month. Such bills will be accompanied by statements which identify the authority for expenditure, lease or facility, and all charges and credits summarized by appropriate classifications of investment and expense except that items of Controllable Material and unusual charges and credits shall be separately identified and fully described in detail.

3. Advances and Payments by Non-Operators

A. Unless otherwise provided for in the agreement, the Operator may require the Non-Operators to advance their share of estimated cash outlay for the succeeding month's operation within fifteen (15) days after receipt of the billing or by the first day of the month for which the advance is required, whichever is later. Operator shall adjust each monthly billing to reflect advances received from the Non-Operators.

B. Each Non-Operator shall pay its proportion of all bills within fifteen (15) days after receipt. If payment is not made within such time the unpaid balance shall bear interest monthly at the prime rate in effect at Frost Bank Fort Worth, Texas on the first day of the month in which delinquency occurs plus 1% or the maximum contract rate permitted by the applicable usury laws in the state in which the Joint Property is located, whichever is the lesser, plus attorney's fees, court costs, and other costs in connection with the collection of unpaid amounts.

4. Adjustments

Payment of any such bills shall not prejudice the right of any Non-Operator to protest or question the correctness thereof; provided, however, all bills and statements rendered to Non-Operators by Operator during any calendar year shall conclusively be presumed to be true and correct after twenty-four (24) months following the end of any such calendar year, unless within the said twenty-four (24) month period a Non-Operator takes written exception thereto and makes claim on Operator for adjustment. No adjustment favorable to Operator shall be made unless it is made within the same prescribed period. The provisions of this paragraph shall not prevent adjustments resulting from a physical inventory of Controllable Material as provided for in Section V.

5. Audits

A. A Non-Operator, upon notice in writing to Operator and all other Non-Operators, shall have the right to audit Operator's accounts and records relating to the Joint Account for any calendar year within the twenty-four (24) month period following the end of such calendar year; provided, however, the making of an audit shall not extend the time for the taking of written exception to and the adjustments of accounts as provided for in Paragraph 4 of this Section I. Where there are two or more Non-Operators, the Non-Operators shall make every reasonable effort to conduct a joint audit in a manner which will result in a minimum of inconvenience to the Operator. Operator shall bear no portion of the Non-Operators' audit cost incurred under this paragraph unless agreed to by the Operator. The audits shall not be conducted more than once each year without prior approval of Operator, except upon the resignation or removal of the Operator, and shall be made at the expense of those Non-Operators approving such audit.

B. The Operator shall reply in writing to an audit report within 180 days after receipt of such report.

6. Approval By Non-Operators

Where an approval or other agreement of the Parties or Non-Operators is expressly required under other sections of this Accounting Procedure and if the agreement to which this Accounting Procedure is attached contains no contrary provisions in regard thereto, Operator shall notify all Non-Operators of the Operator's proposal, and the agreement or approval of a majority in interest of the Non-Operators shall be controlling on all Non-Operators.

H. DIRECT CHARGES

Operator shall charge the Joint Account with the following items:

1. Ecological and Environmental

Costs incurred for the benefit of the Joint Property as a result of governmental or regulatory requirements to satisfy environmental considerations applicable to the Joint Operations. Such costs may include surveys of an ecological or archaeological nature and pollution control procedures as required by applicable laws and regulations.

2. Rentals and Royalties

Lease rentals and royalties paid by Operator for the Joint Operations.

3. Labor

A. (1) Salaries and wages of Operator's field employees directly employed on the Joint Property in the conduct of Joint Operations.

(2) Salaries of First Level Supervisors in the field.

(3) Salaries and wages of Technical Employees directly employed on the Joint Property if such charges are excluded from the overhead rates.

(4) Salaries and wages of Technical Employees either temporarily or permanently assigned to and directly employed in the operation of the Joint Property if such charges are excluded from the overhead rates.

B. Operator's cost of holiday, vacation, sickness and disability benefits and other customary allowances paid to employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II. Such costs under this Paragraph 3B may be charged on a "when and as paid basis" or by "percentage assessment" on the amount of salaries and wages chargeable to the Joint Account under Paragraph 3A of this Section II. If percentage assessment is used, the rate shall be based on the Operator's cost experience.

C. Expenditures or contributions made pursuant to assessments imposed by governmental authority which are applicable to Operator's costs chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II.

D. Personal Expenses of those employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II.

4. Employee Benefits

Operator's current costs of established plans for employees' group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonus, and other benefit plans of a like nature, applicable to Operator's labor cost chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II shall be Operator's actual cost not to exceed the percent most recently recommended by the Council of Petroleum Accountants Societies.

5. Material

Material purchased or furnished by Operator for use on the Joint Property as provided under Section IV. Only such Material shall be purchased for or transferred to the Joint Property as may be required for immediate use and is reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be avoided.

6. Transportation

Transportation of employees and Material necessary for the Joint Operations but subject to the following limitations:

A. If Material is moved to the Joint Property from the Operator's warehouse or other properties, no charge shall be made to the Joint Account for a distance greater than the distance from the nearest reliable supply store where like material is normally available or railway receiving point nearest the Joint Property unless agreed to by the Parties.

- B. If surplus Material is moved to Operator's warehouse or other storage point, no charge shall be made to the Joint Account for a distance greater than the distance to the nearest reliable supply store where like material is normally available, or railway receiving point nearest the Joint Property unless agreed to by the Parties. No charge shall be made to the Joint Account for moving Material to other properties belonging to Operator, unless agreed to by the Parties.
- C. In the application of subparagraphs A and B above, the option to equalize or charge actual trucking cost is available when the actual charge is \$400 or less excluding accessorical charges. The \$400 will be adjusted to the amount most recently recommended by the Council of Petroleum Accountants Societies.

#### 7. Services

The cost of contract services, equipment and utilities provided by outside sources, except services excluded by Paragraph 10 of Section II and Paragraph i, ii, and iii, of Section III. The cost of professional consultant services and contract services of technical personnel directly engaged on the Joint Property if such charges are excluded from the overhead rates. The cost of professional consultant services or contract services of technical personnel not directly engaged on the Joint Property shall not be charged to the Joint Account unless previously agreed to by the Parties.

#### 8. Equipment and Facilities Furnished By Operator

- A. Operator shall charge the Joint Account for use of Operator owned equipment and facilities at rates commensurate with costs of ownership and operation. Such rates shall include costs of maintenance, repairs, other operating expense, insurance, taxes, depreciation, and interest on gross investment less accumulated depreciation not to exceed \_\_\_\_\_ percent (\_\_\_\_%) per annum. Such rates shall not exceed average commercial rates currently prevailing in the immediate area of the Joint Property.
- B. In lieu of charges in paragraph 8A above, Operator may elect to use average commercial rates prevailing in the immediate area of the Joint Property less 20%. For automotive equipment, Operator may elect to use rates published by the Petroleum Motor Transport Association.

#### 9. Damages and Losses to Joint Property

All costs or expenses necessary for the repair or replacement of Joint Property made necessary because of damages or losses incurred by fire, flood, storm, theft, accident, or other cause, except those resulting from Operator's gross negligence or willful misconduct. Operator shall furnish Non-Operator written notice of damages or losses incurred as soon as practicable after a report thereof has been received by Operator.

#### 10. Legal Expense

Expense of handling, investigating and settling litigation or claims, discharging of liens, payment of judgements and amounts paid for settlement of claims incurred in or resulting from operations under the agreement or necessary to protect or recover the Joint Property, except that no charge for services of Operator's legal staff or fees or expense of outside attorneys shall be made unless previously agreed to by the Parties. All other legal expense is considered to be covered by the overhead provisions of Section III unless otherwise agreed to by the Parties, except as provided in Section I, Paragraph 3.

#### 11. Taxes

All taxes of every kind and nature assessed or levied upon or in connection with the Joint Property, the operation thereof, or the production therefrom, and which taxes have been paid by the Operator for the benefit of the Parties. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding anything to the contrary herein, charges to the Joint Account shall be made and paid by the Parties hereto in accordance with the tax value generated by each party's working interest.

#### 12. Insurance

Net premiums paid for insurance required to be carried for the Joint Operations for the protection of the Parties. In the event Joint Operations are conducted in a state in which Operator may act as self-insurer for Worker's Compensation and/or Employers Liability under the respective state's laws, Operator may, at its election, include the risk under its self-insurance program and in that event, Operator shall include a charge at Operator's cost not to exceed manual rates.

#### 13. Abandonment and Reclamation

Costs incurred for abandonment of the Joint Property, including costs required by governmental or other regulatory authority.

#### 14. Communications

Cost of acquiring, leasing, installing, operating, repairing and maintaining communication systems, including radio and microwave facilities directly serving the Joint Property. In the event communication facilities/systems serving the Joint Property are Operator owned, charges to the Joint Account shall be made as provided in Paragraph 8 of this Section II.

#### 15. Other Expenditures

Any other expenditure not covered or dealt with in the foregoing provisions of this Section II, or in Section III and which is of direct benefit to the Joint Property and is incurred by the Operator in the necessary and proper conduct of the Joint Operations.

III. OVERHEAD

1. Overhead - Drilling and Producing Operations

i. As compensation for administrative, supervision, office services and warehousing costs, Operator shall charge drilling and producing operations on either:

- (X) Fixed Rate Basis, Paragraph 1A, or
- ( ) Percentage Basis, Paragraph 1B

Unless otherwise agreed to by the Parties, such charge shall be in lieu of costs and expenses of all offices and salaries or wages plus applicable burdens and expenses of all personnel, except those directly chargeable under Paragraph 2A, Section II. The cost and expense of services from outside sources in connection with matters of taxation, traffic, accounting or matters before or involving governmental agencies shall be considered as included in the overhead rates provided for in the above selected Paragraph of this Section III unless such cost and expense are agreed to by the Parties as a direct charge to the Joint Account.

ii. The salaries, wages and Personal Expenses of Technical Employees and/or the cost of professional consultant services and contract services of technical personnel directly employed on the Joint Property:

- ( ) shall be covered by the overhead rates, or
- (X) shall not be covered by the overhead rates.

iii. The salaries, wages and Personal Expenses of Technical Employees and/or costs of professional consultant services and contract services of technical personnel either temporarily or permanently assigned to and directly employed in the operation of the Joint Property:

- ( ) shall be covered by the overhead rates, or
- (X) shall not be covered by the overhead rates. An operator fee of \$350.00 per day shall apply adjusted annually per paragraph 3 below

A. Overhead - Fixed Rate Basis

(1) Operator shall charge the Joint Account at the following rates per well per month:

Drilling Well Rate \$ 4000.00 (one month minimum)  
(Pro-rated for less than a full month)

Producing Well Rate \$ 350.00 (for producing and water injection wells)

(2) Application of Overhead - Fixed Rate Basis shall be as follows:

(a) Drilling Well Rate

- (1) Charges for drilling wells shall begin on the date the well is spudded and terminate on the date the drilling rig, completion rig, or other units used in completion of the well is released, whichever is later, except that no charge shall be made during suspension of drilling or completion operations for fifteen (15) or more consecutive calendar days.
- (2) Charges for wells undergoing any type of workover or recompletion for a period of five (5) consecutive work days or more shall be made at the drilling well rate. Such charges shall be applied for the period from date workover operations, with rig or other units used in workover, commence through date of rig or other unit release, except that no charge shall be made during suspension of operations for fifteen (15) or more consecutive calendar days.

(b) Producing Well Rates

- (1) An active well either produced or injected into for any portion of the month shall be considered as a one-well charge for the entire month.
- (2) Each active completion in a multi-completed well in which production is not commingled down hole shall be considered as a one-well charge providing each completion is considered a separate well by the governing regulatory authority.
- (3) An inactive gas well shut in because of overproduction or failure of purchaser to take the production shall be considered as a one-well charge providing the gas well is directly connected to a permanent sales outlet.
- (4) A one-well charge shall be made for the month in which plugging and abandonment operations are completed on any well. This one-well charge shall be made whether or not the well has produced except when drilling well rate applies.
- (5) All other inactive wells (including but not limited to inactive wells covered by unit allowable, lease allowable, transferred allowable, etc.) shall not qualify for an overhead charge.

(3) The well rates shall be adjusted as of the first day of April each year following the effective date of the agreement to which this Accounting Procedure is attached. The adjustment shall be computed by multiplying the rate currently in use by the percentage increase or decrease in the average weekly earnings of Crude Petroleum and Gas Production Workers for the last calendar year compared to the calendar year preceding as shown by the index of average weekly earnings of Crude Petroleum and Gas Production Workers as published by the United States Department of Labor, Bureau of Labor Statistics, or the equivalent Canadian index as published by Statistics Canada, as applicable. The adjusted rates shall be the rates currently in use, plus or minus the computed adjustment.

B. Overhead - Percentage Basis

(1) Operator shall charge the Joint Account at the following rates:

(a) Development

\_\_\_\_\_ Percent ( \_\_\_\_\_ %) of the cost of development of the Joint Property exclusive of costs provided under Paragraph 10 of Section II and all salvage credits.

(b) Operating

\_\_\_\_\_ Percent ( \_\_\_\_\_ %) of the cost of operating the Joint Property exclusive of costs provided under Paragraphs 2 and 10 of Section II, all salvage credits, the value of injected substances purchased for secondary recovery and all taxes and assessments which are levied, assessed and paid upon the mineral interest in and to the Joint Property.

(2) Application of Overhead - Percentage Basis shall be as follows:

For the purpose of determining charges on a percentage basis under Paragraph 1B of this Section III, development shall include all costs in connection with drilling, redrilling, deepening, or any remedial operations on any or all wells involving the use of drilling rig and crew capable of drilling to the producing interval on the Joint Property; also, preliminary expenditures necessary in preparation for drilling and expenditures incurred in abandoning when the well is not completed as a producer, and original cost of construction or installation of fixed assets, the expansion of fixed assets and any other project clearly discernible as a fixed asset, except Major Construction as defined in Paragraph 2 of this Section III. All other costs shall be considered as operating.

2. Overhead - Major Construction TO BE NEGOTIATED

To compensate Operator for overhead costs incurred in the construction and installation of fixed assets, the expansion of fixed assets, and any other project clearly discernible as a fixed asset required for the development and operation of the Joint Property, Operator shall either negotiate a rate prior to the beginning of construction, or shall charge the Joint Account for overhead based on the following rates for any Major Construction project in excess of \$ \_\_\_\_\_ :

- A. \_\_\_\_\_ % of first \$100,000 or total cost if less, plus
- B. \_\_\_\_\_ % of costs in excess of \$100,000 but less than \$1,000,000, plus
- C. \_\_\_\_\_ % of costs in excess of \$1,000,000.

Total cost shall mean the gross cost of any one project. For the purpose of this paragraph, the component parts of a single project shall not be treated separately and the cost of drilling and workover wells and artificial lift equipment shall be excluded.

3. Catastrophe Overhead

To compensate Operator for overhead costs incurred in the event of expenditures resulting from a single occurrence due to oil spill, blowout, explosion, fire, storm, hurricane, or other catastrophes as agreed to by the Parties, which are necessary to restore the Joint Property to the equivalent condition that existed prior to the event causing the expenditures, Operator shall either negotiate a rate prior to charging the Joint Account or shall charge the Joint Account for overhead based on the following rates:

- A. \_\_\_\_\_ % of total costs through \$100,000; plus
- B. \_\_\_\_\_ % of total costs in excess of \$100,000 but less than \$1,000,000; plus
- C. \_\_\_\_\_ % of total costs in excess of \$1,000,000.

Expenditures subject to the overheads above will not be reduced by insurance recoveries, and no other overhead provisions of this Section III shall apply.

4. Amendment of Rates

The overhead rates provided for in this Section III may be amended from time to time only by mutual agreement between the Parties hereto if, in practice, the rates are found to be insufficient or excessive.

IV. PRICING OF JOINT ACCOUNT MATERIAL PURCHASES, TRANSFERS AND DISPOSITIONS

Operator is responsible for Joint Account Material and shall make proper and timely charges and credits for all Material movements affecting the Joint Property. Operator shall provide all Material for use on the Joint Property; however, at Operator's option, such Material may be supplied by the Non-Operator. Operator shall make timely disposition of idle and/or surplus Material, such disposal being made either through sale to Operator or Non-Operator, division in kind, or sale to outsiders. Operator may purchase, but shall be under no obligation to purchase, interest of Non-Operators in surplus condition A or B Material. The disposal of surplus Controllable Material not purchased by the Operator shall be agreed to by the Parties.

1. Purchases

Material purchased shall be charged at the price paid by Operator after deduction of all discounts received. In case of Material found to be defective or returned to vendor for any other reasons, credit shall be passed to the Joint Account when adjustment has been received by the Operator.

2. Transfers and Dispositions

Material furnished to the Joint Property and Material transferred from the Joint Property or disposed of by the Operator, unless otherwise agreed to by the Parties, shall be priced on the following basis exclusive of cash discounts:

A. New Material (Condition A)

(1) Tubular Goods Other than Line Pipe

- (a) Tubular goods, sized 2 3/4 inches OD and larger, except line pipe, shall be priced at Eastern mill published carload base prices effective as of date of movement plus transportation cost using the 80,000 pound carload weight basis to the railway receiving point nearest the Joint Property for which published rail rates for tubular goods exist. If the 80,000 pound rail rate is not offered, the 70,000 pound or 90,000 pound rail rate may be used. Freight charges for tubing will be calculated from Lorain, Ohio and casing from Youngstown, Ohio.
- (b) For grades which are special to one mill only, prices shall be computed at the mill base of that mill plus transportation cost from that mill to the railway receiving point nearest the Joint Property as provided above in Paragraph 2.A.(1)(a). For transportation cost from points other than Eastern mills, the 30,000 pound Oil Field Haulers Association interstate truck rate shall be used.
- (c) Special end finish tubular goods shall be priced at the lowest published out-of-stock price, f.o.b. Houston, Texas, plus transportation cost, using Oil Field Haulers Association interstate 30,000 pound truck rate, to the railway receiving point nearest the Joint Property.
- (d) Macaroni tubing (size less than 2 3/4 inch OD) shall be priced at the lowest published out-of-stock prices f.o.b. the supplier plus transportation costs, using the Oil Field Haulers Association interstate truck rate per weight of tubing transferred, to the railway receiving point nearest the Joint Property.

(2) Line Pipe

- (a) Line pipe movements (except size 24 inch OD and larger with walls 3/4 inch and over) 30,000 pounds or more shall be priced under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain, Ohio.
- (b) Line pipe movements (except size 24 inch OD and larger with walls 3/4 inch and over) less than 30,000 pounds shall be priced at Eastern mill published carload base prices effective as of date of shipment, plus 20 percent, plus transportation costs based on freight rates as set forth under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain, Ohio.
- (c) Line pipe 24 inch OD and over and 3/4 inch wall and larger shall be priced f.o.b. the point of manufacture at current new published prices plus transportation cost to the railway receiving point nearest the Joint Property.
- (d) Line pipe, including fabricated line pipe, drive pipe and conduit not listed on published price lists shall be priced at quoted prices plus freight to the railway receiving point nearest the Joint Property or at prices agreed to by the Parties.
- (3) Other Material shall be priced at the current new price, in effect at date of movement, as listed by a reliable supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint Property.
- (4) Unused new Material, except tubular goods, moved from the Joint Property shall be priced at the current new price, in effect on date of movement, as listed by a reliable supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint Property. Unused new tubulars will be priced as provided above in Paragraph 2 A (1) and (2).

B. Good Used Material (Condition B)

Material in sound and serviceable condition and suitable for reuse without reconditioning:

(1) Material moved to the Joint Property

At seventy-five percent (75%) of current new price, as determined by Paragraph A.

(2) Material used on and moved from the Joint Property

- (a) At seventy-five percent (75%) of current new price, as determined by Paragraph A, if Material was originally charged to the Joint Account as new Material or
- (b) At sixty-five percent (65%) of current new price, as determined by Paragraph A, if Material was originally charged to the Joint Account as used Material.

(3) Material not used on and moved from the Joint Property

At seventy-five percent (75%) of current new price as determined by Paragraph A.

The cost of reconditioning, if any, shall be absorbed by the transferring property.

C. Other Used Material

(1) Condition C

Material which is not in sound and serviceable condition and not suitable for its original function until after reconditioning shall be priced at fifty percent (50%) of current new price as determined by Paragraph A. The cost of reconditioning shall be charged to the receiving property, provided Condition C value plus cost of reconditioning does not exceed Condition B value.

(2) Condition D

Material, excluding junk, no longer suitable for its original purpose, but usable for some other purpose shall be priced on a basis commensurate with its use. Operator may dispose of Condition D Material under procedures normally used by Operator without prior approval of Non-Operators.

- (a) Casing, tubing, or drill pipe used as line pipe shall be priced as Grade A and B seamless line pipe of comparable size and weight. Used casing, tubing or drill pipe utilized as line pipe shall be priced at used line pipe prices.
- (b) Casing, tubing or drill pipe used as higher pressure service lines than standard line pipe, e.g. power oil lines, shall be priced under normal pricing procedures for casing, tubing, or drill pipe. Upset tubular goods shall be priced on a non upset basis.

(3) Condition E

Junk shall be priced at prevailing prices. Operator may dispose of Condition E Material under procedures normally utilized by Operator without prior approval of Non-Operators.

D. Obsolete Material

Material which is serviceable and usable for its original function but condition and/or value of such Material is not equivalent to that which would justify a price as provided above may be specially priced as agreed to by the Parties. Such price should result in the Joint Account being charged with the value of the service rendered by such Material.

E. Pricing Conditions

- (1) Loading or unloading costs may be charged to the Joint Account at the rate of twenty-five cents (25¢) per hundred weight on all tubular goods movements, in lieu of actual loading or unloading costs sustained at the stocking point. The above rate shall be adjusted as of the first day of April each year following January 1, 1965 by the same percentage increase or decrease used to adjust overhead rates in Section III, Paragraph I.A(3). Each year, the rate calculated shall be rounded to the nearest cent and shall be the rate in effect until the first day of April next year. Such rate shall be published each year by the Council of Petroleum Accountants Societies.
- (2) Material involving erection costs shall be charged at applicable percentage of the current knocked-down price of new Material.

3. Premium Prices

Whenever Material is not readily obtainable at published or listed prices because of national emergencies, strikes or other unusual causes over which the Operator has no control, the Operator may charge the Joint Account for the required Material at the Operator's actual cost incurred in providing such Material, in making it suitable for use, and in moving it to the Joint Property; provided notice in writing is furnished to Non-Operators of the proposed charge prior to billing Non-Operators for such Material. Each Non-Operator shall have the right, by so electing and notifying Operator within ten days after receiving notice from Operator, to furnish in kind all or part of his share of such Material suitable for use and acceptable to Operator.

4. Warranty of Material Furnished By Operator

Operator does not warrant the Material furnished. In case of defective Material, credit shall not be passed to the Joint Account until adjustment has been received by Operator from the manufacturers or their agents.

V. INVENTORIES

The Operator shall maintain detailed records of Controllable Material.

1. Periodic Inventories, Notice and Representation

At reasonable intervals, inventories shall be taken by Operator of the Joint Account Controllable Material. Written notice of intention to take inventory shall be given by Operator at least thirty (30) days before any inventory is to begin so that Non-Operators may be represented when any inventory is taken. Failure of Non-Operators to be represented at an inventory shall bind Non-Operators to accept the inventory taken by Operator.

2. Reconciliation and Adjustment of Inventories

Adjustments to the Joint Account resulting from the reconciliation of a physical inventory shall be made within six months following the taking of the inventory. Inventory adjustments shall be made by Operator to the Joint Account for overages and shortages, but, Operator shall be held accountable only for shortages due to lack of reasonable diligence.

3. Special Inventories

Special inventories may be taken whenever there is any sale, change of interest, or change of Operator in the Joint Property. It shall be the duty of the party selling to notify all other Parties as quickly as possible after the transfer of interest takes place. In such cases, both the seller and the purchaser shall be governed by such inventory. In cases involving a change of Operator, all Parties shall be governed by such inventory.

4. Expense of Conducting Inventories

- A. The expense of conducting periodic inventories shall not be charged to the Joint Account unless agreed to by the Parties.
- B. The expense of conducting special inventories shall be charged to the Parties requesting such inventories, except inventories required due to change of Operator shall be charged to the Joint Account.

Exhibit "F"

ATTACHED TO AND MADE A PART OF UNIT OPERATING AGREEMENT dated \_\_\_\_\_, 2002 covering the EK Penrose Sand Unit, Lea County, New Mexico

INSURANCE

Operator shall at all times during the term of this Agreement carry insurance to protect the parties hereto as follows:

1. Workmen's compensation and occupational disease insurance, as required by the laws of the state or states in which operations will be conducted, and employers liability insurance with a limit of not less than \$100,000.00.
2. Comprehensive general public liability insurance, with contractual coverage, and amount of \$500,000.00 for each occurrence for personal injuries and death.
3. Automobile public liability insurance covering all automotive equipment used in performance of work under this Agreement in the amount of \$500,000.00 for each person and \$500,000.00 for each accident for personal injuries and death, and \$500,000.00 for each accident for loss or damage to property.

All premiums paid on such insurance shall be charged to the joint account. Except by mutual consent of the parties, no other insurance shall be maintained for the joint account, and all losses not covered by such insurance shall be charged to the joint account.

Operator shall not be liable to Non-Operators for loss suffered on account of the insufficiency of insurance carried, nor shall Operator be liable to Non-Operator for any loss accruing by reason of Operator's inability to provide or maintain the insurance abovementioned; provided, however, that if at any time during the life of this agreement Operator is unable to obtain or maintain such insurance, Operator shall promptly notify Non-Operators in writing of such fact.