

T-41239

OIL AND GAS LEASE

THE STATE OF TEXAS

COUNTY OF POLK

AGREEMENT Made as of the 8th day of August, 1966,
between Kirby Lumber Corporation, a Delaware corporation, Lessor,
and Shell Oil Company, a Delaware corporation, Lessee:

For the sum of Ten and No/100 Dollars (\$10.00) and
other good and valuable considerations, Lessor hereby leases
exclusively unto Lessee, subject to the limitations hereinafter
imposed, the land covered hereby for the sole purpose of exploring,
drilling, operating for and producing oil and gas, and laying
pipelines, building tanks, power stations, roads, communication
lines and other structures, and maintaining such works, to save,
take care of and transport such products thereon and therefrom.
The land covered hereby, herein called "Leased Premises", is
located in Polk County, Texas, and is described as follows, to wit:

118.36 acres of land, more or less, being a part of
that certain 271-acre tract located in the Northwest
corner of the P. A. Sublett League, described as the
NINETEENTH TRACT in Deed dated October 1, 1928, from
West Lumber Company to Kirby Lumber Company, recorded
in Volume 88, Page 9, et seq., of the Records of Polk
County, Texas, said 118.36-acre tract being the North
half of the Main Body of the NINETEENTH TRACT as such
tract is defined under Tract 16 of Section 1 of
Article III, and as such Main Body is described under
Tract 14, of Article II, in that certain Partition
Agreement dated December 1, 1964, between Kirby Lumber
Corporation and Wesley W. West and Margene Lloyd West,
et al., recorded in Volume 207, Page 135, of the Deed
Records of Polk County, Texas.

This lease is made subject to all existing roads and
other easements, Lessor retaining the right to use the Leased

Premises for all purposes not inconsistent with the exercise of the rights herein conferred, and to the terms, covenants and conditions hereinafter set forth.

1. Subject to the other provisions herein contained, this Lease shall be for a term of one (1) year from the date hereof, herein called "Primary Term", and so long thereafter as oil or gas is produced hereunder or drilling or reworking operations are conducted on the Leased Premises as hereinafter specified; and if such operations result in the production of oil or gas from the Leased Premises, then as long thereafter as oil or gas continues to be produced in paying quantities from said premises under the terms hereof. Lessee's rights shall extend in depth only from the surface down to 8,000 feet below the surface, or to the equivalent of 200 feet below the top of the Wilcox "V" formation encountered at approximately 7,800 feet in the Shell Oil Company No. 2 Kirby-West Well located in the Northwest portion of the P. A. Sublett Survey, Abstract 71, Polk County, Texas, whichever is the greater depth. Lessor retains unto itself all of the oil and gas below such depth together with the full rights to explore for, develop, produce, store and remove same from the premises.

2.1 Lessee will deliver to, or pay for, to Lessor as royalties free of expense to Lessor, twenty-five percent (25%) (herein called "agreed percentage"):

- (a) of oil produced and saved from the Leased Premises, to be, at Lessor's option (1) delivered into the pipeline to which Lessee may connect Lessee's wells, (2) delivered at the well or wells in tanks or other receptacles provided by Lessor at its own expense, (3) purchased by Lessee at market price (as that term is hereafter defined) of such oil on the day it is produced, or (4) sold by Lessee

(for Lessor's account) to the purchaser of Lessee's oil if sold by Lessee at the well, for the price received by Lessee for Lessee's own oil, and

- (b) on gas, including casinghead gas or other vaporous or gaseous substances and distillate, produced and saved from the Leased Premises (i) when sold by Lessee to others at the well, the agreed percentage of the sale price or market value thereof, whichever is higher, (ii) when not sold at the well but used or sold off the Leased Premises, the agreed percentage of the market value at the wells of such substances so sold or used, (iii) should Lessee sell such substances to others for use in the manufacture of distillate, gasoline or other products or for the further use of such substances by the cycling or repressuring thereof, and should such sales be made for considerations other than a fixed price at the well, Lessor shall receive the agreed percentage of the net amount payable to Lessee under such contract for such substances produced from the Leased Premises, or the agreed percentage of the market value thereof at the wells, whichever is higher, and (iv) should Lessee use such substances produced from the Leased Premises in Lessee's own plant (including a separator) for the manufacture of distillate, gasoline or other products, Lessor shall receive the agreed percentage of the current market value at the plant of such distillate, gasoline or other products so manufactured and in addition thereto the agreed percentage of any amount received by Lessee for the sale at the plant of gas so used after the processing thereof. Wherever the term "market value" is used in this Paragraph (b), it shall mean the selling price of gas of similar characteristics in the field.

2.2 In the event Lessee shuts in any gas well upon the Leased Premises for as long as sixty (60) days, for the purpose of seeking a market for the gas to be produced therefrom, Lessee may pay Lessor on or before the first day of the calendar month succeeding the expiration of said sixty (60) days (herein called "shut-in gas royalty payment date") the sum of \$1,600.00 as shut-in gas royalty for a period of not exceeding one year following the shut-in gas royalty payment date. If production of gas from such well is not commenced or resumed within said one-year period,

Lessee may on or before the expiration thereof pay to Lessor the sum of \$1,600.00 as shut-in gas royalty for an additional period of not exceeding one year. Such payment or payments, if made by Lessee, shall be made for each shut-in gas well on the Leased Premises and it shall be considered that gas has been produced in paying quantities from said well or wells within the meaning of Section 1 hereof from the date of the shut in immediately preceding and during such period or periods covered by said payment or payments. Lessee shall not be permitted to make more than two shut-in gas royalty payments in connection with the shutting in of any gas well prior to the commencement of commercial production. After gas has been commercially marketed the provisions of this Section 2.2 will be applicable as often as shut ins, such as are herein contemplated, occur, but regardless of the number of times this Section 2.2 is so applied, the aggregate days of all shut ins after gas has been commercially marketed, during which gas will be considered as being produced, shall never exceed the number of days in twenty-four (24) calendar months, excluding from the computation the time intervening between the date of the shut in and the shut-in gas royalty payment date. Nothing in this Section 2.2 shall in any way modify Lessee's obligations under Section 2.3 or relieve Lessee of its obligation of prudent and diligent operation.

2.3 Lessee shall exercise due diligence as fiduciary agent for Lessor in seeking favorable markets and in marketing the products which may be produced under the terms of this lease. Prices to be used in arriving at sums which may be due Lessor as royalty on oil shall be not less than the highest prevailing market

price posted by any purchaser of oil in the field in which the oil is produced for oil of like grade and quality obtaining on the date such oil is run into the pipelines or into storage tanks. If no price has been posted for or if no purchaser other than Lessee is purchasing oil of like grade and quality in the field embracing this lease, then, unless otherwise agreed to in writing by the parties hereto, the minimum price which shall obtain shall be the highest price posted by any purchaser in the nearest field where oil of like grade and quality is being purchased.

2.4 Lessee shall have free use of oil, gas and water, except water from Lessor's wells, in developing, producing and treating to make marketable the oil and gas on and produced from the Leased Premises, and any oil and gas so used shall be deducted before computing the royalties payable to Lessor. Settlement for all royalties except delivery in kind, being due and payable to Lessor, shall be made monthly on or before the 25th day of each calendar month for the amount accruing during the preceding month.

2.5 If Lessor owns less than the entire fee simple interest in and to the oil or gas produced from any tract of the Leased Premises, then the royalties herein provided to be paid or delivered to Lessor from such particular tract shall be paid or delivered to Lessor only in the proportion which its interest in the oil or gas under such particular tract bears to the entire fee simple interest in such oil or gas. This shall not apply to any royalty interest not owned by Lessor, but the royalty herein reserved shall be reduced by the amount which Lessee or other

purchaser of the oil or gas delivers or pays to the owner of such outstanding royalty interest, when chargeable against Lessor's interest.

3.1 Lessee agrees to commence on or before April 8, 1967, the actual drilling of a well upon the leased premises and to drill same with due diligence to a depth of 8,000 feet below the surface or to a depth of 200 feet below the top of the Wilcox "V" formation, whichever is the lesser depth, such depth herein-after called "Agreed Depth". Should Lessee be unable to complete such well because of encountering mechanical difficulties, dome formation, cavity, heaving shale, or other impenetrable formation at a lesser depth, Lessee shall within ninety (90) days after abandonment of such well commence the actual drilling of a substitute well at another location on the leased premises and thereafter drill said well with due diligence to the Agreed Depth and in the manner provided for herein. If said first well or the substitute well therefor is completed as a producer and classified as an oil well or is abandoned as a dry hole, Lessee, in order to continue this lease in force beyond the expiration of the primary term of this lease as to all of the lands covered by this lease, shall commence prior to the expiration of the primary term the actual drilling of a second well on the leased premises and drill said well with due diligence to the said Agreed Depth. If at the end of the primary term, or in the event drilling or reworking operations are being conducted at the end of the primary term then at the time of the termination of such drilling or reworking operations, all of the lands then covered by this lease are not

included in a gas unit containing a well capable of producing gas in paying quantities, Lessee will execute an instrument releasing from the terms hereof all lands covered by this lease save and except (1) lands then included in each such gas unit, and (2) 59.18 acres of land surrounding each oil well then producing, if any; provided, however, if at that time there is a gas well on the lands covered by this lease capable of producing gas in paying quantities, such well shall serve to continue this lease in force as to all of said land.

3.2 After fulfillment of its obligations set forth in Section 3.1, Lessee shall have the right at any time to release from the provisions hereof all or any part of the Leased Premises or the oil and gas rights with respect to any specified part of the Leased Premises by mailing to Lessor a written recordable instrument of release properly describing the lands or rights released.

3.3 Whenever in this lease it is provided that Lessee shall begin the drilling of a well, it is the intent of the parties that a derrick and the necessary operating machinery, capable of drilling such a well to the agreed depth, be fully set up and equipped and actual drilling with such machinery be commenced within the time specified.

4.1 Lessee shall develop the Leased Premises retained under this lease as provided in Section 3.1 by drilling to a density of not less than one well to 59.18 acres and as to wells drilled or to be drilled for the production of gas, gas condensate and other hydrocarbons excepting oil, by drilling one well upon the Leased Premises. Failure so to do shall terminate this lease,

save and except any and all wells producing oil or gas in paying quantities or being drilled or reworked on such lands and the area comprising the spacing unit herein specified, with the wells in the center thereof as nearly as practical, and further saving and excepting easements and rights-of-way necessary for Lessee's operations, provided that production from such excepted area shall be continuous and upon cessation thereof this lease shall terminate thereto unless production therefrom is restored within a reasonable time by drilling or reworking operations thereon.

4.2 Should more than one geological formation (e.g., Cockfield, Yegua, Sparta or Wilcox formation) be encountered in any well drilled on the Leased Premises indicating the probability that such formation or formations will produce oil or gas in paying quantities, each of such formations shall be developed upon discovery in accordance with the development program set forth in Section 4.1. Lessee is given the option of developing such formation by multiple completions.

5. Lessee shall promptly offset producing wells brought in on lands adjoining or near the Leased Premises subsequent to the date of this lease to the extent necessary to fully protect the Leased Premises from drainage, and as permitted under applicable spacing regulations. Lessee shall drill such additional wells as are necessary to develop the Leased Premises to the same well density of the adjacent lands. Without limitation on the obligations hereby created, Lessee agrees to offset promptly each producing well on lands adjacent to the Leased Premises which is within that distance from the Leased Premises arrived at by adding 100 feet to the calculated perpendicular distance from center to

side of a square drilling unit of the area established by proper regulatory authority for the field in which the well to be offset is completed or if no applicable regulations have been established, employing a unit of twenty (20) acres if the offset well produces oil, or 160 acres if it produces gas, gaseous substances and/or distillate and not oil. Each such well shall be commenced within sixty (60) days after completion of the well to be offset and prosecuted diligently to completion. Should Lessee fail to fulfill this obligation, Lessee shall release from the terms of this lease 40 acres to be designated by Lessor in as nearly a square form as possible adjacent to and directly offsetting the premises on which the well to be offset is located if the offset well produces oil, or all of this lease if the well to be offset produces gas, gaseous substances and/or distillate and not oil, or all of the nonproducing portions of this lease if the acreage then applicable to the lease is less than the acreage specified herein for release. It is understood and agreed that the foregoing provisions of this paragraph shall not apply to any wells completed on or producing from lands adjoining or near the Leased Premises at the time this lease is executed by Lessor.

6. Lessee shall deliver to Lessor, when requested by Lessor, location reports, daily drilling reports, copies of the logs including electrical surveys, core analyses, reports of drill stem tests, completion reports, potential test reports, rework reports, abandonment reports, and reports of production, covering all wells drilled by Lessee on the Leased Premises and upon adjacent lands within the field in which the Leased Premises

are situated, and Lessor shall have the right at any and all reasonable times to inspect any and all drilling operations on the Leased Premises, to inspect and gauge or measure any and all oil, gas or casinghead gas produced hereunder, and strappings of all run tanks wherein production may be stored, and to inspect such of Lessee's records of the production, use and sale of oil, gas or casinghead gas on or off the Leased Premises as are pertinent to the proper determination of Lessor's royalty interest therein or other payments due hereunder. All these rights may be exercised by Lessor through its representatives thereunto duly authorized by it in writing.

7. During the life of this lease, Lessee shall pay all taxes of every kind lawfully levied or assessed upon or against all or any part of the oil and gas in or under said Leased Premises and/or the production thereof, including gross production, severance and transportation taxes, and all increases in taxes on the Leased Premises resulting from the prospecting for, discovery or production of oil and gas therefrom.

8.1 Lessee shall bury all pipelines below plow depth. No well shall be drilled nearer than 200 feet to any structure now on the Leased Premises without Lessor's written consent. Lessee shall notify Lessor five (5) or more days before Lessee shall fell or remove any standing trees or destroy any felled trees or debris on or from the Leased Premises, specifying the date, time and place of such felling or destruction. Lessor's representatives shall, upon receipt of such notice, tally all trees standing upon that portion of the Leased Premises which Lessee shall designate, in

writing or verbally by its representative, to be cleared for roadways, drilling sites or for other purposes authorized hereunder. Lessee shall thereafter, at its own cost and expense, fell and cut in such manner and in such lengths specified by Lessor's representative, all of the saw-log and pulpwood size trees situated upon the Leased Premises so designated for clearing, and yard such felled timber upon the Leased Premises as directed by Lessor's representative, and Lessor may, at its own cost and expense, pick up and remove the timber so felled, cut and yarded by Lessee. Lessee shall burn or remove from Lessor's premises, as directed by Lessor's representative, all trees cut or damaged by Lessee, including stumps, tops, and timber not picked up by Lessor (at Lessor's election and without notice from Lessee except as herein provided) prior to destruction or removal by Lessee, but in no event shall such debris be left upon the Leased Premises or deposited upon other lands owned by Lessor.

8.2 Lessee shall promptly pay to Lessor damages caused by Lessee's operations to surface and appurtenances of the Leased Premises and to any other lands and appurtenances of Lessor in the following measures:

(a) For saw-log size trees, being trees measuring eight inches or more in diameter, felled or damaged during the first year of this lease, Sixty Dollars (\$60.00) per 1,000 feet, log scale, Scribner Rule, for Pine, and Thirty Dollars (\$30.00) per 1,000 feet, log scale, Scribner Rule, for Hardwood. PROVIDED, however, if the average price reported by the United States Forest Service for sales of saw-log timber from Texas National Forests for the preceding fiscal year is greater than the sums hereinabove specified, the payment shall be at the average price so reported. For pulpwood size trees, being Pine or Hardwood trees four or more but less

than eight inches in diameter, Thirty-five Cents (35¢) per tree. For saplings, being Pine or Hardwood trees two or more but less than four inches in diameter, Ten Cents (10¢) per tree. Pine trees damaged or destroyed within an area upon which Pine trees have been planted shall be paid for in accordance with the age of the plantation at rates per tree beginning at the rate of Ten Cents (10¢) for trees in plantations one year or less in age and increasing Ten Cents (10¢) per year of plantation age to a maximum of Three Dollars (\$3.00) per tree for trees in plantations of thirty years of age, provided that trees damaged or destroyed in plantations thirty-one or more years in age shall be paid for as saw-log size trees in accordance with the first or second sentence of this Paragraph (a), Section 8.2, whichever is applicable. All measurements shall be taken outside the bark at the thickest point, breast high (four and one-half feet from the ground). The tally of trees damaged or destroyed, to be made by Lessor's representatives, shall be final and binding upon both parties, but Lessee, if it so elects, may have a representative present when the tally is made.

(b) For structures and other improvements and personal property, damaged or destroyed, the lower of replacement or repair costs.

(c) For injury to fertility of Lessor's land, wherever situated, caused by escape from Lessee of salt water, oil or any other injurious substances, Lessee shall, as to any area of Lessor's lands so injured, pay to Lessor, in addition to any damages due Lessor under the provisions of Paragraph (a) of this Section 8.2 the sum of Ten Dollars (\$10.00) per acre per estimated number of years of total or partial loss of fertility, not to exceed twenty years, as determined by Lessor's Forester, or at Lessee's option and expense, after receiving such Forester's report, as determined by an expert named, upon joint request of the parties, by The Chancellor, The Texas Agricultural and Mechanical University, College Station, Texas, and additionally, Lessee shall at Lessee's own cost and expense, proceed promptly to (i) fell, cut and yard upon the injured land as directed by Lessor's representative, such trees as may be designated by Lessor to be picked up and removed by Lessor from the injured land, (ii) repair any pits, tanks, pipelines or other works from which such injurious substances escaped, strengthening, enlarging and/or adding such works necessary to reasonably assure that

injurious substance shall be contained or disposed of in such manner as not to injure Lessor's lands, and (iii) perform such ditching and/or other remedial work as may reasonably be necessary to purge said injured lands of such injurious substances.

(d) For expenses incurred by Lessor for wages, payroll taxes and expenses of Lessor's representatives while determining damages and directing the disposal of debris on or from the Leased Premises.

9. All of the terms and provisions hereof are subject to all laws and valid orders, rules and regulations of any governmental authority, State or Federal. Should Lessee be prevented from complying with any express or implied covenant of this lease in conducting drilling or reworking operations on the Leased Premises or from producing oil or gas therefrom in a normal manner by operation of force majeure, strikes, floods, high water, acts of God and any Federal or State law or any valid order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or producing oil or gas from the Leased Premises in normal manner. The time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

10. When this lease is for any cause terminated as to all or any part of the Leased Premises, Lessee shall promptly deliver to Lessor a good and sufficient release of such premises as to which the lease is terminated and properly plug, and satis-

factorily clean up around, any well abandoned by Lessee upon such premises. Lessee shall have ninety (90) days after the expiration, surrender or forfeiture of such premises within which to remove all property of whatsoever kind which Lessee may have placed upon such premises.

11. Any payments due Lessor under this agreement or any notice required or permitted to be given Lessor shall be addressed to Lessor at Post Office Box 53029, Houston, Texas 77052, and any notice to be given to Lessee shall be addressed to Lessee at Post Office Box 2099, Houston, Texas 77001. Change of address or substitution of address of any assignee of any party hereto shall be accompanied by notice one party to the other.

12. The estate of either party hereto may be assigned in whole or in part, but all of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their successors or assigns, but no change in the ownership of the Leased Premises or assignment of royalties or any part thereof, shall be binding upon Lessee until after Lessee has been furnished with a true copy of the assignment or transfer. Lessee agrees to promptly deliver to Lessor a true copy of any and all assignments of the leasehold rights hereunder.

13. Each obligation of Lessee expressly assumed by Lessee under the terms of this agreement, and each obligation of Lessee implied by law shall be deemed and construed to be a condition of this agreement as well as a covenant. Lessee shall not be deemed or held to have failed to comply with any obligation or condition, express or implied, until thirty (30) days after receipt by Lessee

of written notice from Lessor, except as hereinafter specified, setting out specifically the nature of such noncompliance, and during such thirty (30) day period Lessee may comply or commence to comply with such obligation or condition, if any there be, and if such obligation or condition is thereupon or thereafter diligently complied with then Lessee shall be deemed to have fully complied with such obligation or condition. Neither the service of written notice nor the doing of any acts by Lessee aimed at compliance with the alleged failure shall be deemed an admission or presumption that Lessee has failed to comply with any obligation or condition hereunder. Failure of Lessor to make service of notice of any breach of condition or covenant shall not constitute a waiver or be a bar to subsequent claim of breach of condition or covenant. This lease shall terminate immediately without notice, upon failure of Lessee to perform its obligation assumed in Section 3.1 hereof.

14. Lessor warrants the title to the Leased Premises against all claiming by, through or under it and no further. Lessee will not lease from any person claiming adversely to Lessor without its written consent, nor undertake title curative work without first consulting Lessor. Title curative work shall be such as to inure to the benefit of Lessor's title. Lessee may at any time redeem for Lessor by payment any mortgage, taxes or other liens upon the Leased Premises in event of default in the payment thereof by Lessor and be subrogated to the rights of the holder thereof.

EXECUTED As of the date hereinabove first written in duplicate originals, each of which shall be an original for all



R. MCC. WILEY

Ass't Secretary

KIRBY LUMBER CORPORATION, Lessor

By

Executive Vice President

SHELL OIL COMPANY, Lessee

By J. M. Roberts
Attorney in Fact

STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared _____, Executive Vice President of Kirby Lumber Corporation, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the _____ day of _____, 1966.

Notary Public in and for
Harris County, Texas

STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared J. M. Roberts, known to me to be the person who executed the foregoing instrument in behalf of Shell Oil Company, a corporation, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 21st October, 1966.

Vicki Saccar
Notary Public in and for
Harris County, Texas

VICKI SACCAR
Notary Public in and for Harris County, Texas

