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Lake County, IN
198, 252/1004, 256, 261

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of September 8, 1995, between WILLIAM J. McENERY, as Trustee of the William McEnery Revocable Trust dated April 22, 1993, whose address is 160 South LaGrange Road, Frankfort, Illinois 60423 ("Mortgagor"), and MARTIN OIL MARKETING, LTD., an Illinois limited partnership, whose address is 4501 West 127th Street, Alsip, Illinois 60658 ("Lender").

RECITALS

WHEREAS, Mortgagor is indebted to Lender in the principal sum of Two Million Nine Hundred Seventy-one Thousand Six Hundred Dollars (\$2,971,600), which indebtedness is evidenced by two mortgage notes dated of even date herewith and all modifications, substitutions, extensions and renewals thereof ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder on September 8, 1998.

Document is the property of
the Lake County Recorder!
THE GRANT

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest therein; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor to Lender whether now or hereafter existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also for other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, Mortgagor do hereby convey, grant, and mortgage to Lender the real estate ("Real Estate") located in the County of Lake, State of Indiana and described on Exhibit A, subject only to the covenants, conditions, easements and restrictions set forth on Exhibit B, if any ("Permitted Encumbrances");

For assg see doc # 9500 109

Chicago Title Insurance Company

95 SEP 11 11 16 9

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

95 SEP 22 11 1:40
LAKE COUNTY CLERK

This instrument prepared by:

Jeffrey P. Gray
Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229

After recording should be returned to:

Leslie M. Beck
Martin Oil Marketing, Ltd.
4501 West 127th Street
Alsip, Illinois 60658

Handwritten initials/signature

TOGETHER WITH the following described property, all of which other property is pledged primarily on a parity with the Real Estate and not secondarily:

(a) all buildings, structures, signs, billboards and other improvements of every kind and description now or hereafter erected, situated, or placed upon the Real Estate ("Improvements"), together with any and all Personal Property (as defined in Paragraph (j) below), attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements including all extensions, additions, betterments, renewals, substitutions and replacements to any of the foregoing;

(b) all estate, claim, demand, right, title and interest of Mortgagor now owned or hereafter acquired, including without limitation, any after-acquired title, franchise, license, remainder or reversion, in and to (i) any land or vaults lying within the right-of-way of any street, avenue, way, passage, highway, or alley, open or proposed, vacated or otherwise, adjoining the Real Estate; (ii) any and all alleys, sidewalks, streets, avenues, strips and gores of land belonging, adjacent or pertaining to the Real Estate and Improvements; (iii) storm and sanitary sewer, septic, water, gas, electric, railway and telephone services relating to the Real Estate and Improvements; (iv) all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Real Estate or any part thereof; and (v) each and all of the tenements, hereditaments, easements, appurtenances, other rights, liberties, reservations, allowances, and privileges relating to the Real Estate or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity;

(c) all leasehold estates, right, title and interest of Mortgagor in any and all leases, sub-leases, management agreements, arrangements, concessions or agreements, written or oral, relating to the use and occupancy of the Real Estate

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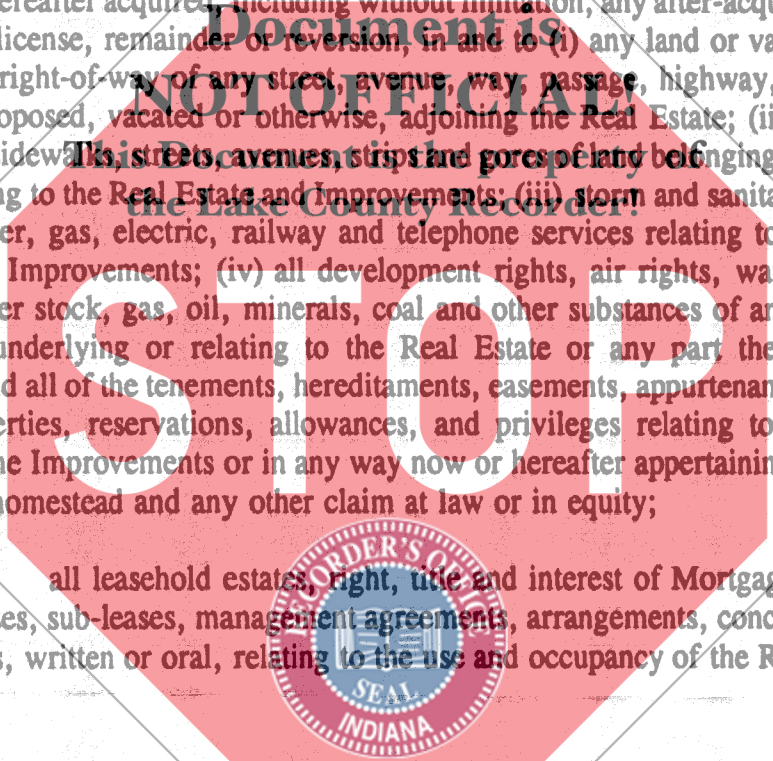
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and Improvements or any portion thereof, now or hereafter existing or entered into (collectively "Leases");

(d) all rents, issues, profits, royalties, revenue, advantages, income, avails, claims against guarantors, all cash or security deposits, advance rentals, deposits or payments given and other benefits now or hereafter derived directly or indirectly from the Real Estate and Improvements under the Leases or otherwise (collectively "Rents");

(e) all right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises (as defined below) now owned or hereafter acquired by Mortgagor;

(f) any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Mortgagor now has or may acquire in the Real Estate and Improvements or other rights in the properties comprising the Premises now owned or hereafter acquired;

(g) all rights of Mortgagor to any and all plans and specifications, designs, drawings and other matters prepared for any construction on the Real Estate or to the Improvements;

(h) all rights of Mortgagor under any contracts executed by Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Real Estate or Improvements;

(i) all rights of Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which Mortgagor has, with the prior written consent of the Lender, obtained the agreement of any person or entity to pay or disburse any money for Mortgagor's sale (or borrowing on the security) of the Premises or any part thereof;

(j) all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively, "Awards").

Except as otherwise required by law, all of the foregoing are declared to be a part of the Real Estate whether physically attached or not. Except as otherwise required by law, all similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate and the Improvements are hereinafter referred to as the "Premises." If this Mortgage creates a lien on more than one (1) parcel of real property which are not contiguous, the references to "Real Estate" and "Premises" herein shall be deemed to mean each separate parcel, except as the context otherwise requires.)

To have and to hold the Premises unto Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Premises is located, which rights and benefits Mortgagor does hereby expressly release and waive.

**Document is
NOT AN INSTRUMENT
NOT OFFICIAL!**

1. ~~Payment of Principal and Interest.~~ Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.

2. ~~Funds for Taxes and Insurance.~~

(a) Subject to applicable law, if requested by Lender upon an Event of a Default (as defined below), Mortgagor shall thereafter pay or cause to be paid to Lender on the first day of each month until the Note is paid in full, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments and ground rents on the Premises, if any (collectively "Impositions") next due on the Premises, all as estimated by Lender, divided by the whole number of months to elapse before the month prior to the date when the next Impositions will become due and payable; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Impositions next becoming due one month prior to the date when such Impositions are, in fact, due and payable, plus (ii) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 12, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of at sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed; if any, all as are reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

(b) The Funds shall be held by Lender or, at Lender's election, in escrow in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). Lender shall apply the Funds to pay the Impositions, except that in the Event of Default, Lender may apply the Funds to the Secured Indebtedness as Lender sees fit. Lender shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Lender may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. The Funds are pledged as additional security for the sums secured by this Mortgage. The Funds are for the benefit of Mortgagor and Lender only and no third party shall have any right to or interest in the Funds or the application thereof.

(c) If the amount of the Funds held by Lender shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

(d) Upon payment in full of all Secured Indebtedness, Lender shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds then held by Lender.

3. Application of Payments. Unless prohibited by applicable law all payments received by Lender under this Mortgage, the Note, any other mortgage and security agreements securing the Secured Indebtedness, and all other documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended, modified or extended, the "Loan Documents") shall be applied by Lender first to payments required from Mortgagor to Lender under Paragraph 2, then to any sums advanced by Lender pursuant to any of the Loan Documents to protect the security of this Mortgage or any of the other Loan Documents and any costs or expenses in connection therewith, then to interest payable on the Note and then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity).

Any applications to principal of Awards shall not extend or postpone the due date of any installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

4. Prior Encumbrances; Liens. Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Mortgage, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice or the passage of time would constitute a default or event of default under any Prior Encumbrance, shall be a default under this Mortgage. Mortgagor shall promptly deliver

to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance. Although this Paragraph requires Mortgagor to comply with Prior Encumbrances, it does not entitle Mortgagor to create or allow a Prior Encumbrance that would be otherwise prohibited by this Mortgage, such as Prohibited Transfers under Paragraph 16, or prohibited by the other Loan Documents.

Mortgagor shall keep the Premises free from mechanics' and all other encumbrances and liens (except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable); provided, however, that Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien and, pending such contest, Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall first deposit with Lender a bond or other security satisfactory to Lender in the amount of one hundred fifty percent (150%) of the amount of such lien. Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and, in any event, no less than thirty (30) days prior to any foreclosure sale of the Premises or the exercise of any other remedy by such claimant against the Premises.

5. Taxes and Assessments; Rents. Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges and attributable to the Premises. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by statute, any tax or assessment Mortgagor desires to contest.

6. Representations and Warranties. As of the date hereof and at all times until the Secured Indebtedness has been paid in full or otherwise satisfied, Mortgagor represents and warrants to Lender that the following are true, correct and complete:

(a) Organization; Standing. Mortgagor (i) is a trust duly organized, validly existing and in good standing under the laws of the State of Illinois, (ii) has all requisite power to own its properties and conduct its business as now conducted and as presently contemplated, and (iii) is in good standing as a trust and is duly authorized to do business in the jurisdiction where the Premises is located and in each other jurisdiction where such qualification is necessary except where a failure to be so qualified in such other jurisdiction would not have a materially adverse effect on the business, assets or financial condition of Mortgagor.

(b) Authorization. The execution, delivery and performance of this Mortgage and the other Loan Documents by Mortgagor and the transactions contemplated hereby and thereby (i) are within the authority of Mortgagor, (ii) have been duly authorized by all necessary proceedings on the part of Mortgagor, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which Mortgagor is subject or

any judgment, order, writ, injunction, license or permit applicable to Mortgagor, (iv) do not conflict with any provision of the declaration of trust, trust agreement or any agreement or other instrument binding upon, Mortgagor, and (v) do not and will not result in or require the imposition of any lien or other encumbrance on any of the properties, assets or rights of Mortgagor, other than the liens and encumbrances arising under or created by the Loan Documents.

(c) **Enforceability.** The execution and delivery of this Mortgage and the other Loan Documents to which Mortgagor is a party will result in valid and legally binding obligations of the Mortgagor, enforceable against Mortgagor in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) **Governmental Approvals.** The execution, delivery and performance by Mortgagor of this Mortgage and the other Loan Documents and the transactions contemplated hereby and thereby do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained and the filing of this Mortgage and related financing statements in the appropriate records office with respect thereto.

(e) **Franchises, Patents, Copyrights, Etc.** Mortgagor possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted without known conflict with any rights of others.

(f) **Litigation.** There are no actions, suits, proceedings or investigations of any kind pending or, to the best of Mortgagor's knowledge, threatened against Mortgagor before any court, tribunal or administrative agency or board that, if adversely determined, might, either in any case or in the aggregate, materially adversely affect the properties, assets, financial condition or business of Mortgagor to carry on business substantially as now conducted by it, or result in any substantial liability not adequately covered by insurance, or for which adequate reserves are not maintained on the balance sheet of Mortgagor, or which question the validity of this Mortgage or any of the other Loan Documents, or any action taken or to be taken pursuant hereto or thereto, or which will adversely affect the ability of Mortgagor to pay and perform the Secured Indebtedness in the manner contemplated by this Mortgage and the other Loan Documents.

(g) **No Materially Adverse Contracts, Etc.** Mortgagor is not subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business, assets or financial condition of Mortgagor and is not a party to any contract or agreement that has or is expected to have any materially adverse effect on the business of Mortgagor.

(h) **Compliance with Other Instruments, Laws, Etc.** Mortgagor is not in violation of any provision of its certificate of incorporation, by-laws, or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, law, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of substantial penalties or materially and adversely affect the financial condition, properties or business of Mortgagor.

(i) **Tax Status.** Mortgagor has (i) made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) paid all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings, and (iii) set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and Mortgagor knows of no basis for any such claim.

(j) **Absence of UCC Financing Statements, Etc.** Except for those in favor of Lender there is no financing statement, security agreement, chattel mortgage, real estate mortgage or other document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest in, the Premises or rights thereunder.

(k) **ERISA.** Mortgagor is in full compliance with all employee benefit plans it sponsors and with the Employee Retirement Income Security Act of 1974, as amended, and in effect from time to time ("ERISA"), has no unfunded liabilities under any employee benefit plan, and is not a participant in or makes contributions to any multiemployer plan within the meaning of Section 3(37) of ERISA.

(l) **Financial Statements.** All financial statements of Mortgagor and William J. McEnery, individually ("McEnery") delivered to Lender are true and correct and fairly present the current financial condition of Mortgagor and such corporation and individual. Such financial statements state all contingent

liabilities, and as of the date of this Mortgage, there are no unrealized or anticipated losses from any commitments or obligations of Mortgagor or such corporation and individual.

7. **Covenants.** In addition to the other covenants contained herein, Mortgagor agrees to comply with the following:

(a) **Notice of Defaults.** Mortgagor will promptly notify Lender in writing of the occurrence of any Event of Default or the occurrence of any event which with the passage of time or upon notice or both may constitute an Event of Default. If any person or entity shall give any notice or take any other action in respect of a claimed default (whether or not constituting an Event of Default) under this Mortgage or under any note, evidence of indebtedness, indenture or other obligation to which or with respect to which Mortgagor is a party or obligor, whether as principal or surety, and such default would permit the holder of such note or obligation or other evidence of indebtedness to accelerate the maturity thereof, which acceleration would have a material adverse effect on Mortgagor, Mortgagor shall forthwith give written notice thereof to Lender, describing the notice or action and the nature of the claimed default.

(b) **Notification of Claims.** Mortgagor will, immediately upon becoming aware thereof, notify Lender in writing of any setoff, claims (including, with respect to the Premises, environmental claims), withholdings or other defenses to which any of the Premises, or Lender's rights with respect to the Premises, are subject.

(c) **Notice of Litigation and Judgments.** Mortgagor will give notice to Lender in writing within fifteen (15) days of becoming aware of any litigation or proceedings threatened in writing or any pending litigation and proceedings affecting Mortgagor or the Premises that could reasonably be expected to have a materially adverse effect on Mortgagor or the Premises, and stating the nature and status of such litigation or proceedings. Mortgagor will give notice to Lender, in writing, in form and detail satisfactory to Lender, within ten (10) days of any judgment not covered by insurance, final or otherwise, against Mortgagor in an amount in excess of Fifty Thousand Dollars (\$50,000.00).

(d) **Alterations.** Mortgagor may not make any alterations, additions, restorations, changes, replacements or installations ("Alterations") which in the aggregate exceed One Hundred Thousand Dollars (\$100,000.00) unless required by law or with prior written consent of Lender, which consent shall not be unreasonably withheld and shall be deemed granted unless, within twenty-one (21) days, Lender disapproves such request in writing. Mortgagor in making any permitted Alteration shall comply with all applicable laws, orders and regulations

of federal, state, county and municipal authorities having jurisdiction, with any direction pursuant to law of any public officer thereof and with all regulations of any board of fire underwriters having jurisdiction. Mortgagor shall obtain or cause to be obtained all building permits, licenses, temporary and permanent certificates of occupancy and other governmental approvals which may be required in connection with the making of the Alterations. At least thirty (30) days prior to commencing any permitted Alteration, Mortgagor shall give Lender notice of its intent to proceed, copies of any plans necessary to obtain a building permit and satisfactory evidence of Mortgagor's source of funds for the entire cost of such Alteration.

(e) ADA. The Premises and the use and operation thereof shall comply with all the Americans with Disability Act of 1990, 42 U.S.C. § 1201 et seq., any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated relating thereto (collectively, the "ADA"). All required governmental permits and licenses shall remain in effect, and Mortgagor shall comply therewith. Mortgagor will satisfy all requirements of the ADA. Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph. To investigate Mortgagor's compliance with the ADA and with this Paragraph, Lender shall have the right, but no obligation, at any time to enter upon the Premises, review the Premises, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

(f) Further Assurances. Mortgagor will cooperate with Lender and take such action and execute such further instruments and documents as Lender shall reasonably request to carry out to its satisfaction the transactions contemplated by this Mortgage and the other Loan Documents. Upon Mortgagor's failure to do any of the foregoing, Mortgagor hereby irrevocably appoints Lender the agent and attorney of Mortgagor to do so.

8. Hazardous Materials Covenants and Indemnification.

(a) Definitions. The following definitions shall apply for purposes of this Paragraph 8:

(i) "Environmental Laws" shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereafter enacted, promulgated or issued, with respect to any Hazardous Materials (as hereinafter defined), drinking water, groundwater, wetlands, flood plains, landfills, open dumps,

storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes and regulations promulgated thereunder as well as any amendments and successors to such statutes and regulations and new laws, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. § 9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); (iii) Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. § 2061 et seq.); (v) the Clean Water Act (33 U.S.C. § 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. § 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. § 349; 42 U.S.C. § 201 and § 300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. § 4321); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. § 1101 et seq.); (xi) the Indiana Hazardous Waste Law (Ind. Code § 13-7-8.5-1 et seq.); and (xii) the Indiana Underground Storage Tank Act (Ind. Code § 13-7-20.1-1 et seq.).

(ii) "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(A) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder;

(B) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(C) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;

(D) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and,

(E) "hazardous waste" as defined in the Indiana Hazardous Waste Law, as amended, and regulations promulgated thereunder, and "hazardous substance" as defined in the Indiana Hazardous Waste Law, as amended, and regulations promulgated thereunder;

(iii) "Indemnified Parties" shall mean Lender, Lender's parent, subsidiaries and affiliates, each of their respective shareholders, directors, officers, partners, employees and agents, and the successors and assigns of any of them; and "Indemnified Party" shall mean any one of the Indemnified Parties.

(iv) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(v) "Threat of Release" shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Environmental Covenants. Mortgagor covenants and agrees with Lender that Mortgagor shall:

(i) comply with all Environmental Laws;

(ii) not store (except in compliance with all Environmental Laws pertaining thereto), handle, process, dispose of, generate, Release or allow the Release of any Hazardous Materials from or onto the Premises or from or onto any adjacent property, and in the event of a Release will make the required emergency response notices;

(iii) cause or permit to be located on the Premises from and after the date hereof any underground tank or other storage receptacle for Hazardous Materials except in full compliance with Environmental Laws;

(iv) neither directly nor indirectly transport or arrange for the transport of any Hazardous Materials (except in compliance with all Environmental Laws pertaining thereto); and

(v) upon the request of Lender, take all such action (including, without limitation, the conducting of environmental assessments at the sole expense of Mortgagor in accordance with subparagraph (d) hereof) to confirm that no Hazardous Materials are stored, Released or disposed of on the Premises from and after the date hereof except in compliance with this Mortgage.

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(c) **Environmental Indemnity.** Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to identify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender) and hold each Indemnified Party harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys', consultants' and experts' fees and disbursements incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or the Premises and arising directly or indirectly from or out of: (i) the Release or Threat of Release from and after the date hereof of any Hazardous Materials on, in, under or affecting all or any portion of the Premises or any surrounding areas, regardless of whether or not caused by or within the control of Mortgagor; (ii) the violation arising from and after the date hereof of any Environmental Laws relating to or affecting the Premises or Mortgagor, whether or not caused by or within the control of Mortgagor; (iii) the failure of Mortgagor to comply fully with the terms and conditions of this Paragraph 8; (iv) the violation of any Environmental Laws in connection with other real property of Mortgagor which gives or may give rise to any rights whatsoever in any party with respect to the Premises by virtue of any Environmental Laws; (v) the enforcement of this Paragraph 8, including, without limitation (A) the costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or any surrounding areas, (B) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of the Premises or any surrounding areas to prevent or minimize such Release or Threat of Release so that it does not

migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (C) costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. Lender's rights under this Paragraph shall be in addition to all other rights of Lender under this Mortgage and the other Loan Documents and payments by Mortgagor under this Paragraph shall not reduce Mortgagor's obligations and liabilities under any of the Loan Documents.

(d) Notice to Lender. If Mortgagor receives any notice or obtains knowledge of (i) any potential or known Release or Threat of Release of any Hazardous Materials at or from the Premises, notification of which must be given to any governmental agency under any Environmental Law, or notification of which has, in fact, been given to any governmental agency, or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting Mortgagor or the Premises (an "Environmental Complaint") from any person or entity (including, without limitation, the Environmental Protection Agency), then Mortgagor shall immediately notify Lender orally and in writing of said Release or Threat of Release or Environmental Complaint. Upon such notification, in the event Mortgagor has not done so, Lender may, at its election without regard to whether an Event of Default has occurred, obtain one or more environmental assessments of the Premises prepared by a geohydrologist, an independent engineer or other qualified consultant or expert approved by Lender which evaluates or confirms (A) whether any Hazardous Materials are present in the soil or water at or adjacent to the Premises, and (B) whether the use and operation of the Premises comply with all Environmental Laws. Environmental assessments may include detailed visual inspections of the Premises, including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as are necessary or appropriate for a complete determination of the compliance of the Premises and the use and operation thereof with all applicable Environmental Laws. All such environmental assessments shall be at the cost and expense of Mortgagor.

(e) Survival, Assignability and Transferability.

(i) The covenants and indemnity set forth in subparagraphs (b) and (c) of this Paragraph 8 shall survive the payment and performance of the Secured Indebtedness and any exercise by Lender of any remedies under this Mortgage, and shall not merge with any deed given by Mortgagor to Lender in lieu of foreclosure.

(ii) It is agreed and intended by Mortgagor and Lender that the covenants and indemnity set forth above in subparagraphs (b) and (c) of this Paragraph 8 may be assigned or otherwise transferred by Lender to its affiliates or to any holder of the Note, or to such holder's successors and assigns without notice to Mortgagor and without any further consent of Mortgagor. To the extent consent to any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Mortgagor in order to maximize the extent and effect of the covenants and indemnity given hereby.

9. Use, Preservation and Maintenance of Premises. Mortgagor shall keep the Premises in good condition and repair and shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear excepted. Other than motor vehicle fuel, oil, kerosene and propane, Mortgagor shall not allow, store, treat or dispose of and Hazardous Materials, nor permit the same to exist or be stored, treated or disposed of, from or upon the Premises except in accordance with all applicable laws. Subject to Paragraph 12 below, Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Premises, including all zoning, environmental, disability, health and safety laws and regulations. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Premises. Mortgagor shall: (a) suffer or permit no change in the zoning of the Premises or the general nature of the occupancy of the Premises; (b) pay when due all operating costs of the Premises; (c) not do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage; (d) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; and (e) cause the Premises to be managed in a competent and professional manner.

10. Protection of Lender's Security. Upon an Event of Default, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Premises, then Lender, at Lender's option, upon five (5) days' prior notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including (a) making repairs, (b) discharging Prior Encumbrances in full or part, (c) paying, settling, or discharging tax, mechanics' or other liens, to the extent that they are due and payable, (d) procuring insurance in accordance with Paragraph 12, and (e) renting, operating and managing the Premises and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for its intended purposes. Lender, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 10 shall be a part of the Secured Indebtedness and shall bear interest at the Default Interest Rate. Nothing contained in this Paragraph 10 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 10.

11. Inspection of Premises. Upon reasonable prior notice, Mortgagor shall permit Lender and its representatives and agents to inspect the Premises from time to time during normal business hours and as frequently as Lender requests.

12. Insurance. Mortgagor shall insure and keep insured the Premises and the Personal Property against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and, in any event, including:

(a) Insurance against loss to the Premises on a policy form covering insurance risks no less broad than those covered under a Standard Multi Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes of Loss - Special Form", and insurance against such other risks as the Lender may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement cost of the Premises, including the fixtures and equipment, and Mortgagor's interest in any leasehold improvements, plus the increased cost of reconstruction to conform with current code or ordinance requirements and the cost of debris removal. Such policies shall also contain an agreed amount endorsement and deductibles which are in amounts acceptable to Lender;

(b) Commercial general liability insurance against death, bodily injury and property damage arising in connection with the Premises. Such policy shall be written on a 1986 Standard ISO occurrence basis form or equivalent form, shall list Mortgagor as the named insured, shall designate thereon the location of the Premises and have limits of at least Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence for personal injury and death. Mortgagor shall also obtain excess umbrella liability insurance with limits of at least Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence for personal injury and death.

(c) Business interruption insurance in amounts sufficient to pay during any period of up to one (1) year in which the Premises may be damaged or destroyed, all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor;

(d) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (b) above

and (ii) worker's compensation insurance covering all persons engaged in such alterations or improvements;

(e) Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which an appropriate governmental authority designates as a flood or mud slide hazard area or the like, in amounts equal to the full replacement value of all above grade structures on the Premises;

(f) Such other insurance relating to the Premises and the use and operation thereof as Lender may, from time to time, reasonably require, including, but not limited to, ~~drainshop, products liability and garage keeper's~~ insurance.

All insurance shall: (i) be in form and content, and shall be carried by companies, approved by Lender; (ii) provide thirty (30) days' advance written notice to Lender before cancellation, material modification or notice of non-renewal; and (iii) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Lender.

Any notice pertaining to insurance and required pursuant to this Paragraph 12 shall be given in the manner provided in Paragraph 20 below. Originals of all policies and renewals (or certificates evidencing the same), marked "paid," shall be delivered to Lender at least thirty (30) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, upon two (2) business days prior notice to Mortgagor to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Paragraph 12 shall be a part of the Secured Indebtedness and shall bear interest at the Default Interest Rate. Nothing contained in this Paragraph 12 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 12.

Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached a standard non-contributing mortgagee clause and with loss payable to Lender, and shall meet all other requirements set forth herein. Mortgagor shall give immediate notice of any casualty loss to Lender.

All physical damage policies and renewals shall contain a standard mortgage clause naming the Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor in such policies shall not prejudice the rights of Lender under such insurance; and a loss payable clause in favor of Lender for personal property, contents, inventory, equipment, loss of rents and business interruption. All liability policies and

renewals shall name the Lender as an additional insured. No additional parties shall appear in the mortgage or loss payable clause. All deductibles shall be in amounts acceptable to Lender. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

At Lender's option and expense, but not more often than annually, Mortgagor shall provide Lender with a report from an independent insurance consultant of regional or national prominence, acceptable to Lender, certifying that Mortgagor's insurance is in compliance with this Paragraph 12.

In case of loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion all claims in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) thereunder (and any claims for less than that amount which Mortgagor does not diligently pursue) and in such case, Mortgagor covenants to sign upon demand, or Lender may sign or endorse on the Mortgagor's behalf, all necessary proofs of loss, receipts, releases, and other papers required by the insurance companies to be signed by the Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney in fact for the purposes set forth in the preceding sentence. Lender may deduct from such insurance proceeds any expenses, which are not otherwise recovered by Lender, incurred by Lender in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

13. Condemnation. If the Premises or any portion thereof shall be damaged or taken through condemnation (which term, when used in this Mortgage, shall include any damage or taking by any governmental authority, quasi-governmental authority, any party having the power of condemnation, or any transfer by private sale in lieu thereof), either temporarily or permanently, then Mortgagor authorizes Lender, at Lender's option, as attorney in fact for Mortgagor, to commence, appear in and prosecute, in Lender's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Premises and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, or other taking of the Premises, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned and shall be paid to Lender. Mortgagor authorizes Lender to apply such awards, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Premises or to payment of a portion of the Secured Indebtedness, whether or not then due, with the balance, if any, to Mortgagor. Mortgagor agrees to execute such further assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or injury that Lender may require.

14. INTENTIONALLY OMITTED.

15. Mortgagor Not Released: Forbearance by Lender Not a Waiver: Remedies Cumulative. Any extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner, Mortgagor's liability. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 10 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

16. Prohibitions on Transfer of the Premises or of an Interest in Mortgagor. Unless proceeds of a condemnation have been delivered to Lender as provided in Paragraph 13, it shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lease, license, lien (except liens being duly contested as permitted by this Mortgage), pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise (collectively a "Transfer"), of (a) the Premises or any part thereof or interest therein or (b) a change in the organizational documents of Mortgagor such that McEnergy is no longer trustee or has control over Mortgagor (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender, at its sole option, may declare the entire unpaid balance, including interest, immediately due and payable as provided in Paragraph 17.

17. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage.

(a) Mortgagor's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document or to maintain the insurance required by Paragraph 12;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, or other provision contained in the Note, this Mortgage (other than an Event of Default described elsewhere in this Paragraph 17) or any other Loan Document or any breach of any representation or warranty in any Loan Document and such failure or breach continues for a period of fifteen (15) days after the earlier of Mortgagor's becoming aware of such failure or breach or the effective date of notice thereof given by Lender to Mortgagor; provided however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 17;

(c) A Prohibited Transfer occurs;

(d) Mortgagor or McEnery shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Code or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Mortgagor or McEnery or for any part of the Premises or any substantial part of the Mortgagor's or McEnery's other property; (iii) make any assignment for the benefit of any of their creditors; (iv) fail generally to pay their respective debts as they become due; or (v) a court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor or McEnery in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law which decree or order is not dismissed within thirty (30) days;

(e) All or a substantial part of the assets of Mortgagor or McEnery are attached, seized, subjected to a writ or distress warrant, or levied upon;

(f) (i) The dissolution or termination of existence of Mortgagor; (ii) the amendment or modification in any respect of Mortgagor's declaration of trust or trust agreement that would materially and adversely affect Mortgagor's performance of its obligations under this Mortgage or the other Loan Documents; or (iii) McEnery's death or incapacity;

(g) This Mortgage shall not constitute a valid first lien on and security interest in the Premises (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

(h) An indictment or other charge is filed against Mortgagor or McEnery, in any jurisdiction, under any federal or state law, for which forfeiture of the Premises or of any other funds, property or other assets of Mortgagor or McEnery or Lender is a potential penalty;

(i) Mortgagor or McEnery shall fail to pay at maturity, or within any applicable period of grace, any obligation for borrowed money or credit received in an amount equal to or greater than Fifty Thousand Dollars (\$50,000.00) or fail to observe or perform any term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing borrowed money or credit received in an amount equal to or greater than Fifty Thousand Dollars (\$50,000.00) for such period of time as would permit (assuming the giving of appropriate notice is required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof;

(j) There shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) days, whether or not consecutive, any uninsured final judgment against Mortgagor or McEnery that, with other outstanding uninsured final judgments, undischarged, against Mortgagor or McEnery exceeds in the aggregate Fifty Thousand Dollars (\$50,000.00);

(k) Any suit or proceeding shall be filed against Mortgagor or the Premises or McEnery which in the good faith business judgment of Lender based on the information available to Lender, if adversely determined, would have a materially adverse affect on the ability of Mortgagor to perform each and every one of its obligations under and by virtue of this Mortgage and the other loan Documents;

(l) Any of the Loan Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or as permitted by this Mortgage or with the express prior written agreement, consent or approval of Lender, or any action at law, suit or in equity or other legal proceeding to cancel, terminate, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of Mortgagor, or any court of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof; or

(m) The occurrence of any "Event of Default" or "Default" under and as defined in any of the Loan Documents.

18. ACCELERATION; REMEDIES. AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING TITLE REPORTS AND APPRAISALS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PREMISES SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

19. Appointment of Receiver. Upon acceleration under Paragraph 18, and without further notice to Mortgagor, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Premises and to collect the Rents from the

Premises including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All Rents collected by the receiver shall be applied as the appointing court may direct and, in the absence of such direction, first to payment of the costs and expenses of the management of the Premises and collection of Rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then as provided in Paragraph 3. The receiver shall be liable to account only for those Rents actually received.

20. Indemnification. Mortgagor agrees to indemnify, defend and hold harmless Lender and each of its directors, officers, partners, affiliates, employees, agents and attorneys from and against any and all claims, actions and suits whether groundless or otherwise, and from and against any and all liabilities, losses, damages and expenses of every nature and character arising out of this Agreement or other Loan Documents or the transactions contemplated hereby including, without limitation, (a) any condition of the Premises arising from any event or happening occurring from and after the acquisition of the Premises by Mortgagor, (b) Mortgagor entering into or performing this Agreement or the other Loan Documents, or Mortgagor failing to perform any of its obligations under this Agreement or the other Loan Documents, or (c) any actual or alleged violation of any law, ordinance, code, order, rule, regulation, approval, consent, permit or license relating to the Premises, in each case including, without limitation, reasonable fees and disbursements of attorneys and allocated costs of internal counsel incurred in connection with any such investigation, litigation or other proceeding. In litigation, or the preparation therefor, Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, Mortgagor agrees to pay promptly the reasonable fees and expenses of such counsel. If, and to the extent that the obligations of Mortgagor under this Section 20 are unenforceable for any reason, Mortgagor hereby agrees to such obligations which are permissible under applicable law. The provisions of this Section 20 shall survive the repayment and performance of the Secured Indebtedness.

21. Successors and Assigns Bound: Joint and Several Liability: Co-signers. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Lender and Mortgagor.

22. Excess Loan Charges. If the Loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Mortgagor or Guarantor which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other

guarantor or obligor on the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

23. **Legislation Affecting Lenders' Rights.** If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Note, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Lender, at its option and upon fifteen (15) days prior written notice, may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by Paragraph 18.

24. **Notice.** Any notice that Lender or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient at its address set forth below or at such other address as such party may in writing designate to the other:

Lender:

Martin Oil Marketing, Ltd.
4501 West 127th Street
Alsip, Illinois 60658

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with a copy to:

Wildman, Harrold, Allen & Dixon
225 W. Wacker Drive, Suite 2800
Chicago, Illinois 60606-1229
Attention: Jeffrey P. Gray

Mortgagor:

William J. McEnery
c/o Gas City, Ltd.
160 South LaGrange Road
Frankfort, Illinois 60423

with a copy to:

Richard E. Burke
Wolfenson, Schoulen & Burke
Suite 201

11950 South Harlem Avenue
Palos Heights, Illinois 60463

Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be in writing and shall be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed in the United States mail, certified or registered, postage prepaid, return receipt requested, on the third business day after deposit in the mail, (iii) if telexed, telegraphed or telecopied, six (6) hours after being dispatched by telex, telegram or telecopy, if such sixth hour falls on a business day within the hours of 8:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 8:00 a.m. on the next business day thereafter if such sixth hour is later than 5:00 p.m., or

(iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier. Any party hereto may change the address to which notices are given by notice as provided herein.

25. **Governing Law: Severability.** The laws of the State of Indiana shall govern the interpretation and enforcement of this Mortgage. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. If any provision or clause of this Mortgage, or the application thereof, is adjudicated to be invalid or unenforceable, the validity or enforceability of the remainder of this Mortgage shall be construed without reference to the invalid or unenforceable provision or clause.

26. **Release.** Upon payment and performance of all Secured Indebtedness, Lender shall release this Mortgage. Notwithstanding anything to the contrary contained herein, Mortgagor may obtain a partial release of this Mortgage with respect to a portion or all of the Premises provided (a) Mortgagor shall give notice to Lender of the portion of the Premises to be released at least fifteen (15) days before the desired release date, and (b) on or before such release date Mortgagor shall have paid Lender in full the release price set forth on Exhibit C ("Parcel Release Payment") for the portion of the Premises to be released.

27. **Waivers.** Mortgagor agrees to the full extent permitted by law, that in case of an Event of Default hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat, and Mortgagor, for Mortgagor and all who may at any time claim through or under Mortgagor, hereby waives to the fullest extent that Mortgagor may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender to or of any Event of Default shall be deemed or construed to be a consent or waiver to or of any other Event of Default. Failure on the part of Lender to complain of any act or failure to act which constitutes an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of Lender's rights hereunder or impair any rights, powers or remedies consequent on any Event of Default. No act or omission of Lender shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default; nor, except as otherwise expressly provided in an instrument or instruments, executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is

hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings (including, without limitation, the restrictions upon transfer contained in Paragraph 16). Mortgagor covenants and agrees that, upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Mortgagor, Mortgagor shall not seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender with respect to the Secured Indebtedness.

28. Business Loan. Mortgagor hereby represents and warrants that: (a) the loan evidenced by the Notes constitutes a loan described in 815 ILCS 205/4(1)(a) and (l); (b) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. §1601, et seq.; and (c) the proceeds of the Indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

29. Interpretation. This Mortgage shall be construed pursuant to the laws of the State of Indiana. The headings of sections and paragraphs in this Mortgage are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

30. Compliance with Indiana Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the Indiana Mortgage Foreclosure Law (Ind. Code § 34-1-53.1 et seq.) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act.

If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

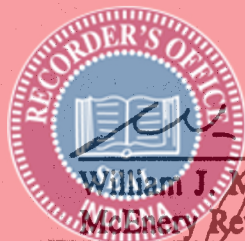
Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of

foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

31. Principal Amount of Mortgage. At no time shall the principal amount of the indebtedness secured by this Mortgage not including sums advanced for Impositions and insurance premiums, to protect the security of this Mortgage or under Paragraph 20 hereof, exceed the stated principal amount of the Note plus Ten Million Dollars (\$10,000,000.00).

32. Jurisdiction. LENDER MAY ENFORCE ANY CLAIM ARISING OUT OF THIS MORTGAGE, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THE LOAN DOCUMENTS, IN ANY STATE OR FEDERAL COURT HAVING SUBJECT MATTER JURISDICTION AND LOCATED IN CHICAGO, ILLINOIS. FOR THE PURPOSE OF ANY ACTION OR PROCEEDING INSTITUTED WITH RESPECT TO ANY SUCH CLAIM, MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS. MORTGAGOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT LOCATED IN CHICAGO, ILLINOIS, AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.



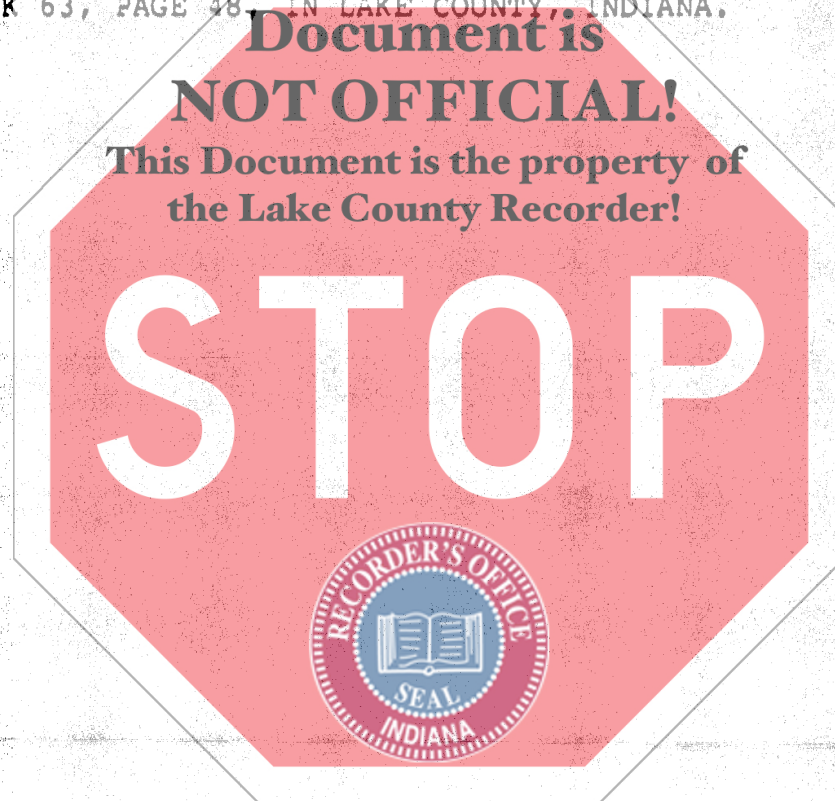
William J. McEnery, as Trustee of the William J. McEnery Revocable Trust Dated April 22, 1993

Property 198

EXHIBIT A

LEGAL DESCRIPTION

LOT 1 AND OUTLOT "A", MOBIL OIL CORPORATION SUBDIVISION, AS SHOWN IN
PLAT BOOK 63, PAGE 48, IN LAKE COUNTY, INDIANA.



KEY NO.: 35-420-1 and 3

ADDRESS: 4045 Calumet Avenue, Hammond, Indiana

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above named William J. McEnery, as Trustee of the William J. McEnery Revocable Trust dated April 22, 1993, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Trustee, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said trust for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8th day of September, 1995.

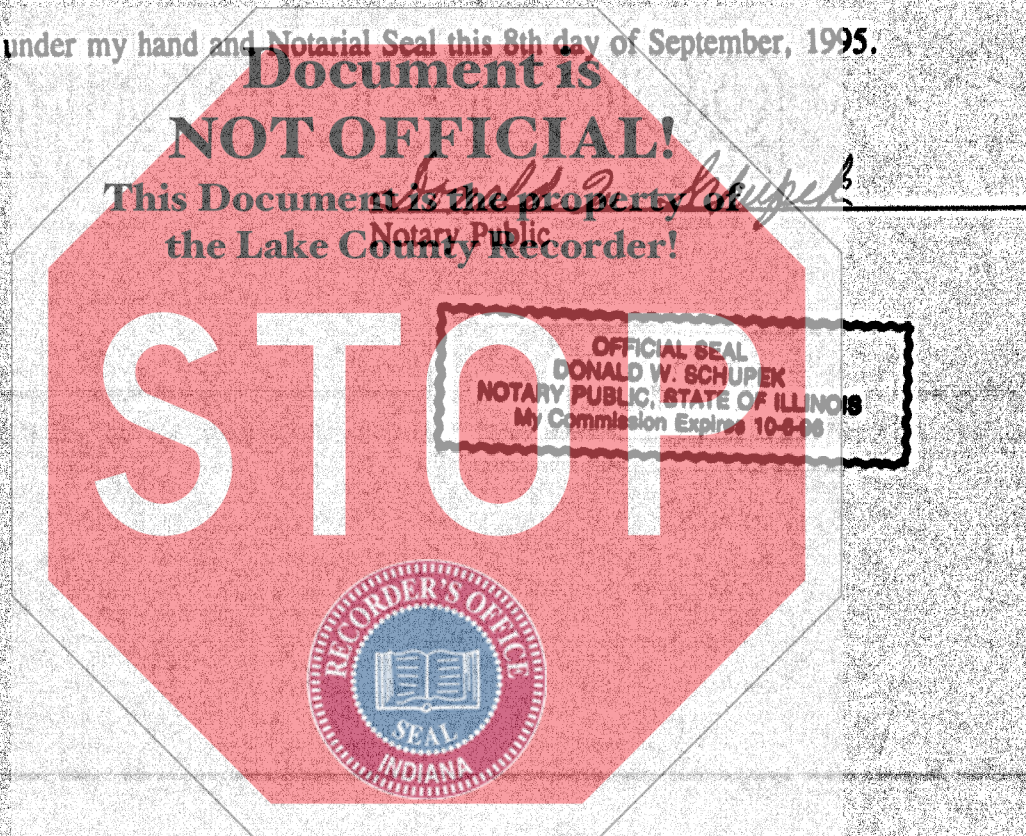


EXHIBIT A

LEGAL DESCRIPTION

PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 7 WEST OF THE 2ND P. M., IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF U. S. HIGHWAY #30 AND THE EAST LINE OF SAID SECTION 19; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 19, A DISTANCE OF 500 FEET; THENCE WEST PARALLEL TO THE SOUTH LINE OF U. S. HIGHWAY #30, A DISTANCE OF 1466.39 FEET, MORE OR LESS, TO THE EAST LINE OF THE WEST 15 ACRES OF THAT PART OF THE EAST HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 7 WEST OF THE 2ND P. M. LYING NORTH OF THE CENTER LINE OF 63RD AVENUE, THENCE NORTH 00 DEGREES 01 MINUTES 18 SECONDS EAST ALONG THE EAST LINE OF SAID WEST 15 ACRES, 500.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF U. S. HIGHWAY #30; THENCE EAST ALONG THE SOUTH LINE OF SAID HIGHWAY 1466.21 FEET TO THE POINT OF BEGINNING.



KEY NO: 53-5-74, 53-5-79

ADDRESS: Rt. 30 & Grand Avenue, Lake County, Indiana

EXHIBIT A**LEGAL DESCRIPTION**

PARCEL 1: PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P. M., IN LAKE COUNTY, INDIANA, DESCRIBED AS: BEGINNING AT A POINT 30 FEET EAST OF THE WEST LINE OF SAID SE 1/4 AND 30 FEET SOUTH OF THE NORTH LINE OF SAID SE 1/4; THENCE SOUTH ON A LINE PARALLEL TO AND 30 FEET EAST OF THE WEST LINE OF SAID SE 1/4 A DISTANCE OF 139 FEET; THENCE EAST ON A LINE PARALLEL TO AND 169 FEET SOUTH OF THE NORTH LINE OF SAID SE 1/4 A DISTANCE OF 330 FEET; THENCE NORTH ON A LINE PARALLEL TO AND 360 FEET EAST OF THE WEST LINE OF SAID SE 1/4 A DISTANCE OF 139 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF HIGHWAY #330 (ALSO KNOWN AS 73RD AVENUE AND OLD LINCOLN WAY); THENCE WEST ON SAID RIGHT-OF-WAY LINE WHICH IS PARALLEL TO AND 30 FEET SOUTH OF THE NORTH LINE OF SAID SE 1/4 A DISTANCE OF 330 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THAT PORTION OF THE LAND DESCRIBED IN WARRANTY DEED RECORDED MARCH 12, 1993, AS DOCUMENT NO. 93015997.

PARCEL 2: EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT FOR COMMERCIAL ENTRANCE DATED JULY 24, 1990 AND RECORDED AUGUST 23, 1990 AS DOCUMENT NO. 119393, IN THE RECORDER'S OFFICE OF LAKE COUNTY, INDIANA FOR THE PURPOSE OF INGRESS AND EGRESS OVER THE LAND DESCRIBED AS FOLLOWS: PART OF THE NW 1/4 OF THE SE 1/4 OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P. M., IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 30 FEET EAST OF THE WEST LINE AND 169 FEET SOUTH OF THE NORTH LINE OF THE SE 1/4; THENCE SOUTH ON A LINE PARALLEL TO AND 30 FEET EAST OF THE WEST LINE OF SAID SE 1/4 A DISTANCE OF 45.0 FEET; THENCE EAST ON A LINE PARALLEL TO AND 214 FEET SOUTH OF THE NORTH LINE OF SAID SE 1/4 A DISTANCE OF 65 FEET; THENCE NORTH ON A LINE PARALLEL TO THE WEST LINE OF SAID SE 1/4 A DISTANCE OF 45.0 FEET; THENCE WEST PARALLEL TO SAID NORTH LINE OF SAID SE 1/4 A DISTANCE OF 65 FEET TO THE POINT OF BEGINNING, SUBJECT TO THE TERMS, PROVISIONS AND CONDITIONS SET FORTH IN SAID INSTRUMENT.

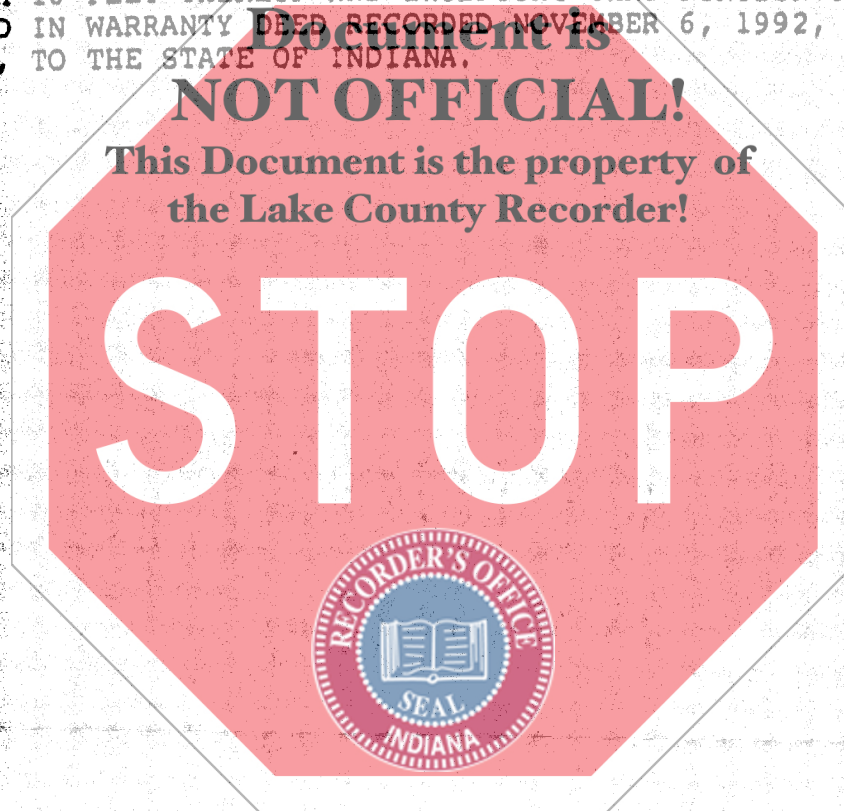
KEY NO.: 15-116-77

ADDRESS: 7305 Taft Street, Merrillville, Indiana

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 290 FEET OF THE WEST 260 FEET OF THE SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE
SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, EXCEPTING THEREFROM
THE SOUTH 10 FEET THEREOF AND EXCEPTING THAT PORTION OF THE LAND
DESCRIBED IN WARRANTY DEED RECORDED NOVEMBER 6, 1992, AS DOCUMENT NO.
92070501, TO THE STATE OF INDIANA.



KEY NO.: 15-0116-0065
ADDRESS: Northeast intersection of U.S. Highway 55 (Taft Street) and
Old Lincoln Highway (73d Avenue), Merrillville, Indiana

EXHIBIT B

PERMITTED EXCEPTIONS

1. General real estate taxes for the second half of 1994 and subsequent years.

TERMS AND PROVISIONS OF A PERMANENT RIGHT OF WAY EASEMENT RECORDED OCTOBER 13, 1955 IN MISCELLANEOUS RECORD 972, PAGE 309, AS DOCUMENT NO. 877777, MADE BY AND BETWEEN SOCONY MOBIL OIL COMPANY, INC., AND THE STATE OF INDIANA, GRANTING A PERMANENT RIGHT OF WAY EASEMENT AFFECTING THE SOUTH 40 FEET OF THE LAND HEREIN DESCRIBED AND FURTHER GRANTING THAT THE GRANTORS SHALL HAVE ACCESS TO THEIR PROPERTY ABUTTING ON 141ST STREET LYING BETWEEN THE WEST LINES OF SECTION 19 AND 30 AND A LINE 550 FEET EAST THEREOF. GRANTORS SHALL HAVE THE RIGHT AND PRIVILEGE OF CONSTRUCTING RAMPS AND DRIVE-WAYS FROM SAID 141ST STREET TO THEIR ABUTTING PROPERTY SUBJECT HOWEVER TO THE APPROVAL OF THE DESIGN AND PLANS OF SUCH RAMPS AND DRIVE-WAYS BY THE TRAFFIC DEPARTMENT OF THE STATE HIGHWAY COMMISSION, IF SUCH APPROVAL IS REQUIRED.

A 25 FOOT BUILDING LINE AFFECTING THE SOUTH 25 FEET OF THE LAND AS SHOWN ON THE PLAT OF SUBDIVISION.

A 25 FOOT BUILDING LINE AFFECTING THE WEST SIDE OF LOT 1 OF THE LAND AS SHOWN ON THE PLAT OF SUBDIVISION.

TERMS AND PROVISIONS OF AN EASEMENT AGREEMENT MADE BY MOBILE OIL CORPORATION, A NEW YORK CORPORATION, TO WOLVERINE PIPELINE COMPANY, A DELAWARE CORPORATION, RECORDED ON DECEMBER 10, 1969 AS DOCUMENT NO. 41566, GRANTING AN EASEMENT FOR PIPELINES, DESCRIBING THE FOLLOWING LAND:

THE SOUTH HALF OF SECTION 19, TOWNSHIP 37 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN IN THE CITY OF HAMMOND, COUNTY OF LAKE AND STATE OF INDIANA.

NOTE: THE ABOVE EASEMENT HAS BEEN PARTLY RELEASED AS TO THE LAND EXCEPT THE SOUTH 40 FEET THEREOF, AS EVIDENCED IN PARTIAL RELEASE AGREEMENT RECORDED JULY 9, 1987, AS DOCUMENT NO. 927072, MADE BY WOLVERINE PIPE LINE COMPANY.

EXHIBIT B

PERMITTED EXCEPTIONS

1. General real estate taxes for second half of 1994 and subsequent years.

RIGHTS OF WAY FOR DRAINAGE TILES, DITCHES, FEEDERS AND LATERALS, IF ANY.

RIGHTS OF WAY FOR ANY ROADS, HIGHWAYS, STREETS OR ALLEYS.

RIGHTS OF THE PUBLIC AND THE GOVERNMENT AGENCIES HAVING JURISDICTION OVER ROADS IN AND TO THAT PART OF THE LAND LYING WITHIN GRAND AVENUE (STATE HIGHWAY NO. 51).

**NOTE FOR INFORMATION:
This Document is the property of
the Lake County Recorder!**

U. S. HIGHWAY NO. 30 ADJOINING THE NORTH SIDE OF THE LAND IS A LIMITED ACCESS HIGHWAY AND ACCESS THERETO IS NOT GUARANTEED.

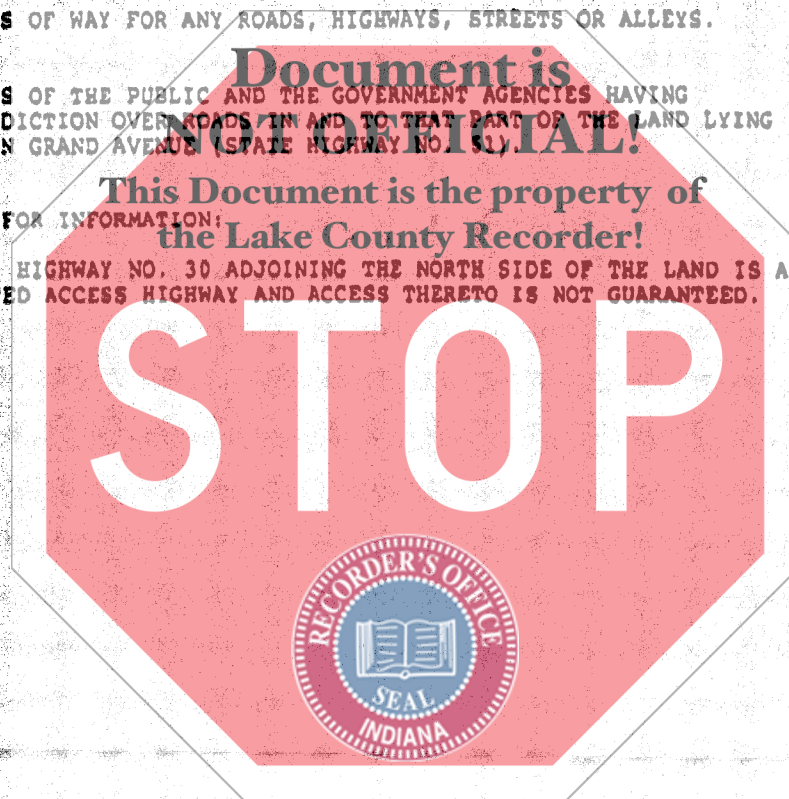


EXHIBIT B

PERMITTED EXCEPTIONS

Page 1 of 3

1. General real estate taxes for the second half of 1994 and subsequent years.

INDEPENDENCE HILL CONSERVANCY DISTRICT ASSESSMENT FOR 1994 PAYABLE IN 1995, MAY INSTALLMENT PAID IN THE AMOUNT OF \$9.65; NOVEMBER INSTALLMENT UNPAID IN THE AMOUNT OF \$9.65.

(AFFECTS PARCEL 1 OF THE LAND).

INDEPENDENCE HILL CONSERVANCY DISTRICT ASSESSMENT FOR 1995 PAYABLE IN 1996, NOT YET DUE AND PAYABLE.

NOTE; INDEPENDENCE HILL CONSERVANCY DISTRICT ASSESSMENT FOR 1994 PAYABLE IN 1995 WAS PAID IN THE AMOUNT OF \$196.14.

(AFFECTS PARCEL 2 OF THE LAND AND OTHER REAL ESTATE).

RIGHTS OF WAY FOR DRAINAGE TILES, DITCHES, FEEDERS AND LATERALS, IF ANY.

RIGHTS OF WAY FOR ANY ROADS, HIGHWAYS, STREETS OR ALLEYS.

RIGHTS OF THE PUBLIC AND THE GOVERNMENT AGENCIES HAVING JURISDICTION OVER ROADS IN AND TO THAT PART OF THE LAND LYING WITHIN STATE ROAD NO. 55, ALSO KNOWN AS TAFT STREET, IF ANY.

(AFFECTS PARCELS 1 AND 2 OF THE LAND).

~~EASEMENT IN PERPETUITY FOR HIGHWAY PURPOSES GRANTED IN QUIT CLAIM DEED DATED FEBRUARY 20, 1969 AND RECORDED MARCH 5, 1970, AS DOCUMENT NO. 51464, MADE BY EDWARD L. HANSEN AND MARY ANN HANSEN, HUSBAND AND WIFE, TO THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, INDIANA.~~

~~(AFFECTS THE NORTH 7 FEET OF PARCEL 1 OF THE LAND).~~

TERMS AND PROVISIONS OF AN EASEMENT FOR UNDERGROUND UTILITIES RECORDED AUGUST 23, 1990 AS DOCUMENT NO. 119392, TO EDWARD L. HANSEN AND MARY ANN HANSEN, HUSBAND AND WIFE, DESCRIBING THE FOLLOWING LAND: THE WESTERLY FIFTEEN FEET (15') OF PARCEL 1 OF

EXHIBIT B

PERMITTED EXCEPTIONS

Page 2 of 3

THE LAND, BEING ADJACENT TO AND PARALLEL WITH TAFT STREET.

NOTE: THE DRAWING ATTACHED TO SAID DOCUMENT INDICATES THE EASEMENT AFFECTS THE EAST 15 FEET OF THE WEST 35 FEET OF PARCEL 1 OF THE LAND.

(FOR FURTHER PARTICULARS, SEE RECORD).

~~POWER POLES AND OVERHEAD ELECTRICAL LINES AS INDICATED ON SURVEY PREPARED BY ROBERT A. KRULL, REGISTERED LAND SURVEYOR, DATED JANUARY 2, 1990.~~

~~(AFFECTS PARCEL 1 OF THE LAND).~~

~~RIGHTS OF THE PUBLIC AND ADJOINING LANDOWNERS IN AND TO THE FREE AND UNINTERRUPTED FLOW OF A DITCH AND ANY LIMITATION ON THE USE OF THE LAND CAUSED BY REASON OF THE EXISTENCE OF THE DITCH AS INDICATED ON SURVEY PREPARED BY ROBERT A. KRULL, REGISTERED LAND SURVEYOR, DATED JANUARY 2, 1990.~~

~~(AFFECTS THE EASTERLY SIDE OF PARCEL 1 OF THE LAND).~~

TERMS, PROVISIONS AND CONDITIONS RELATING TO THE EASEMENT HEREBY INSURED CONTAINED IN THE INSTRUMENTS CREATING SAID EASEMENT.

NOTE FOR INFORMATION:

WARRANTY DEED DATED AUGUST 7, 1992 AND RECORDED MARCH 12, 1993 AS DOCUMENT NO. 93015997, MADE BY MARTIN OIL MARKETING, LTD., AN ILLINOIS LIMITED PARTNERSHIP, TO STATE OF INDIANA, DESCRIBES:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 50.00 FEET ALONG THE NORTH LINE OF SAID QUARTER SECTION TO THE PROLONGED BOUNDARY OF S. R. 55; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 30.00 FEET ALONG THE PROLONGED BOUNDARY OF SAID S. R. 55 TO THE NORTH BOUNDARY OF 73RD AVE. AND THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 310.00 FEET ALONG THE BOUNDARY

EXHIBIT B

PERMITTED EXCEPTIONS

Page 3 of 3

OF SAID 73RD AVE. TO THE EAST LINE OF THE OWNER'S LAND; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 10.00 FEET ALONG THE EAST LINE OF THE OWNER'S LAND; THENCE SOUTH 89 DEGREES 57 MINUTES 57 SECONDS WEST 269.98 FEET; THENCE SOUTH 62 DEGREES 15 MINUTES 16 SECONDS WEST 45.72 FEET TO THE WEST LINE OF THE OWNER'S LAND; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 31.03 FEET ALONG THE WEST LINE OF THE OWNER'S LAND TO THE POINT OF BEGINNING AND CONTAINING 0.081 ACRES MORE OR LESS.

This Document is the property of the Lake County Recorder!

TERMS AND PROVISIONS OF A TEMPORARY EASEMENT FOR THE PURPOSE OF CONSTRUCTING A DRIVEWAY FOR SERVICE TO GRANTORS' PRIVATE PROPERTY (TO REVERT TO THE GRANTORS UPON COMPLETION OF PROJECT), MADE BY EDWARD L. HANSEN, MARY ANN HANSEN AND THOMAS TREVISOL TO STATE OF INDIANA, DATED JANUARY 29, 1992 AND RECORDED APRIL 22, 1992 AS DOCUMENT NO. 92024374, DESCRIBING THE FOLLOWING LAND:

A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST, LAKE COUNTY, INDIANA, THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 169.00 FEET ALONG THE WEST LINE OF SAID QUARTER SECTION; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 50.00 FEET TO THE NORTHWEST CORNER OF THE OWNER'S LAND, WHICH POINT IS ON THE EASTERN BOUNDARY OF S. R. 55; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 7.03 FEET ALONG THE BOUNDARY OF SAID S. R. 55 TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 10.00 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 100.00 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 10.00 FEET TO THE BOUNDARY OF SAID S. R. 55; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 100.00 FEET ALONG SAID BOUNDARY TO THE POINT OF BEGINNING AND CONTAINING 0.023 ACRES, MORE OR LESS.

(AFFECTS PARCEL 2 OF THE LAND).

EXHIBIT B

PERMITTED EXCEPTIONS

Page 1 of 4

1. General real estate taxes for the second half of 1994 and subsequent years.

RIGHTS OF WAY FOR DRAINAGE TILES, DITCHES, FEEDERS AND LATERALS, IF ANY.

RIGHTS OF WAY FOR ANY ROADS, HIGHWAYS, STREETS OR ALLEYS.

RIGHTS OF THE PUBLIC AND THE GOVERNMENT AGENCIES HAVING JURISDICTION OVER ROADS IN AND TO THAT PART OF THE LAND LYING WITHIN TAFT STREET, ALSO KNOWN AS STATE ROAD #55.

RIGHTS OF THE PUBLIC AND THE GOVERNMENT AGENCIES HAVING JURISDICTION OVER ROADS IN AND TO THAT PART OF THE LAND LYING WITHIN COUNTY ROAD 330, ALSO KNOWN AS OLD LINCOLN WAY, ALSO KNOWN AS 73RD AVENUE.

EASEMENT FOR TWO INCH GAS MAIN RUNNING ALONG THE WEST SIDE OF THE LAND AND LYING WITHIN THE RIGHT-OF-WAY OF STATE ROAD 55, AS SHOWN ON PLAT OF SURVEY BY W. T. MAMELSON, DATED JUNE 19, 1975.

NORTHERN INDIANA PUBLIC SERVICE COMPANY GAS MAINS AND VALVES LOCATED ON THE SOUTH AND WEST SIDES OF THE LAND AND LYING WITHIN OLD LINCOLN HIGHWAY AS INDICATED ON PLAT OF SURVEY DATED MARCH 20, 1973, MADE BY ROBERT A. NOWICKI.

TRAFFIC SIGNAL POLE LOCATED AT SOUTHWESTERN CORNER OF THE LAND AS INDICATED ON PLAT OF SURVEY DATED MARCH 20, 1973, MADE BY ROBERT A. NOWICKI.

TRAFFIC CONTROL BOX POST LOCATED NEAR SOUTHWESTERN BOUNDARY OF THE LAND, AS INDICATED ON PLAT OF SURVEY DATED MARCH 20, 1973, MADE BY ROBERT A. NOWICKI.

FOUR MANHOLES NEAR THE SOUTHWESTERN CORNER OF THE LAND AND LYING WITHIN OLD LINCOLN HIGHWAY AS INDICATED ON PLAT OF SURVEY DATED MARCH 20, 1973, MADE BY ROBERT A. NOWICKI.

EXHIBIT B

PERMITTED EXCEPTIONS

Page 2 of 4

MERRILLVILLE CONSERVANCY DISTRICT ASSESSMENT FOR 1994 PAYABLE IN 1995, MAY INSTALLMENT PAID IN THE AMOUNT OF \$881.73; NOVEMBER INSTALLMENT UNPAID IN THE AMOUNT OF \$881.73. (KEY NO. 15-116-64). (TAX UNIT NO. 8)

(AFFECTS THE LAND AND OTHER REAL ESTATE).

MERRILLVILLE CONSERVANCY DISTRICT ASSESSMENT FOR 1995 PAYABLE IN 1996, NOT YET DUE AND PAYABLE.

Document is NOT OFFICIAL!
This Document is the property of the Lake County Recorder.

EASEMENT DATED MARCH 18, 1976 AND RECORDED JUNE 1, 1976 AS DOCUMENT NO. 352709, MADE BY AND BETWEEN STRACK & VAN TIL SUPER MARKET, INC., AN INDIANA CORPORATION, AND INDEPENDENCE HILL CONSERVANCY DISTRICT, MERRILLVILLE, INDIANA, GRANTING A PERPETUAL RIGHT-OF-WAY AND EASEMENT, AND A TEMPORARY EASEMENT FOR CONSTRUCTION PURPOSES ONLY ON ONE SIDE OF THE PERPETUAL EASEMENT TO MAKE THE ORIGINAL INSTALLATION, WITH THE RIGHT, PRIVILEGE AND AUTHORITY IN GRANTEE TO ENTER UPON, DIG, LAY, ERECT, CONSTRUCT, INSTALL, RECONSTRUCT, OPERATE, MAINTAIN, PATROL, CONTINUE, REPAIR, REPLACE AND RENEW A SEWER LINE WITH METERING DEVICE OR STRUCTURE ENCLOSING SAME, AS A PART OF THE GRANTEE DISTRICT'S SYSTEM AND WORKS FOR THE COLLECTION, CARRIAGE, TREATMENT AND DISPOSAL OF THE WASTE, SEWAGE, GARBAGE, AND REFUSE OF THE DISTRICT, WITH ALL NECESSARY AND CONVENIENT EQUIPMENT, FACILITIES, SERVICE PIPES, LINES AND CONNECTIONS THEREFOR, AND TO OPERATE BY MEANS THEREOF A SYSTEM FOR SUCH COLLECTION, CARRIAGE, TREATMENT AND DISPOSAL, AS SHALL BE HEREAFTER LOCATED AND CONSTRUCTED IN, ON, UPON, ALONG, UNDER, OVER AND ACROSS THE FOLLOWING DESCRIBED REAL ESTATE OWNED BY GRANTOR AND SITUATED IN LAKE COUNTY, INDIANA, TO-WIT:

PROJECT EASEMENT NO. 4. PERMANENT EASEMENT. THE NORTH 20 FEET OF THE SOUTH 53 FEET OF THE WEST 585 FEET OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P. M.

PROJECT EASEMENT NO. 5. TEMPORARY EASEMENT. THE NORTH 35 FEET OF THE SOUTH 88 FEET OF THE WEST 600 FEET OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P. M.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS EASEMENT DOCUMENT THE GRANTOR HEREIN SHALL HAVE THE RIGHT TO CONSTRUCT AND MAINTAIN A ROADWAY OR OTHER PAVEMENT OR DRIVEWAY ENTRANCES OR EXITS, OR CULVERTS OR OTHER UTILITIES OVER SAID EASEMENTS, AND GRANTEE HEREIN BY ACCEPTING THIS GRANT OF EASEMENT RECOGNIZES THIS RIGHT TO BE BINDING ON ITSELF AND ITS SUCCESSORS AND ASSIGNS.

EXHIBIT B**PERMITTED EXCEPTIONS**

Page 3 of 4

NOTE FOR INFORMATION: WARRANTY DEED DATED AUGUST 7, 1992 AND RECORDED NOVEMBER 5, 1992, AS DOCUMENT NO. 92070501, MADE BY VAN TIL'S SUPERMARKET, INC., A/K/A TILLAND PARTNERSHIP, TO STATE OF INDIANA, TO-WIT:

A PART OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 50.00 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO THE PROLONGED BOUNDARY OF S. R. 55; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 30.00 FEET ALONG THE PROLONGED BOUNDARY OF SAID S. R. 55 TO THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT IS WHERE THE NORTH BOUNDARY OF 73RD AVENUE INTERSECTS THE EAST BOUNDARY OF SAID S. R. 55; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 33.97 FEET ALONG THE BOUNDARY OF SAID S. R. 55; THENCE SOUTH 60 DEGREES 48 MINUTES 01 SECOND EAST 28.61 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 285.00 FEET; THENCE SOUTH 81 DEGREES 54 MINUTES 15 SECONDS EAST 141.42 FEET TO THE NORTH BOUNDARY OF SAID 73RD AVENUE; THENCE SOUTH 89 DEGREES 57 MINUTES 57 SECONDS WEST 449.98 FEET ALONG SAID BOUNDARY TO THE POINT OF BEGINNING AND CONTAINING 0.178 ACRES MORE OR LESS.

EASEMENT CONTAINED IN WARRANTY DEED DATED AUGUST 7, 1992 AND RECORDED NOVEMBER 6, 1992, AS DOCUMENT NO. 92070501, MADE BY VAN TIL'S SUPERMARKET, INC., A/K/A TILLAND PARTNERSHIP, TO STATE OF INDIANA, AS FOLLOWS:

AN EASEMENT IN AND TO THE FOLLOWING DESCRIBED REAL ESTATE: A PART OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 50.00 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO THE PROLONGED EAST BOUNDARY OF S. R. 55; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 63.97 FEET ALONG THE PROLONGED BOUNDARY AND THE BOUNDARY OF SAID S. R. 55; THENCE SOUTH 60 DEGREES 48 MINUTES 01 SECOND EAST 28.61 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 180.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 0 DEGREES 02 MINUTES 03 SECONDS WEST 10.00 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 57 SECONDS EAST 50.00 FEET; THENCE SOUTH 0 DEGREES 02 MINUTES 03 SECONDS EAST 10.00 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 57 SECONDS WEST 50.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.011 ACRES, MORE OR LESS, FOR THE

EXHIBIT B

PERMITTED EXCEPTIONS

Page 4 of 4

PURPOSE OF CONSTRUCTING A DRIVEWAY FOR SERVICE TO THE OWNER'S PRIVATE PROPERTY, WHICH EASEMENT WILL REVERT TO THE OWNERS UPON COMPLETION OF THE ABOVE DESIGNATED PROJECT.

COVENANTS AND CONDITIONS CONTAINED IN CORPORATE WARRANTY DEED DATED MAY 26, 1994 AND RECORDED JUNE 2, 1994, AS DOCUMENT NO. 94041275, MADE BY AND BETWEEN VAN TIL'S SUPER MARKET, INC., AN INDIANA CORPORATION, AND MARTIN OIL MARKETING, LTD., AN ILLINOIS LIMITED PARTNERSHIP, PROVIDING:

THE FOLLOWING OPERATIONS AND USES SHALL NOT BE PERMITTED ON THE REAL ESTATE DESCRIBED HEREIN:

- (1) A FILM SALES AND PROCESSING BUSINESS BUT THIS PROVISION SHALL NOT PRECLUDE THE SELLING OF FILM IN THE MAIN BUILDING OCCUPIED BY THE OWNER;
- (2) A RETAIL DRUG STORE AND/OR A PHARMACY BUSINESS;
- (3) A SUPER-MARKET OR SELF-SERVE GROCERY STORE IN EXCESS OF THREE THOUSAND (3,000) SQUARE FEET.

THESE RESTRICTIVE COVENANTS SHALL BEGIN ON THE DATE OF THIS DEED AND SHALL BE APPURTENANT AND RUN WITH THE LAND FOR A PERIOD OF TWENTY-FIVE (25) CONSECUTIVE YEARS, UPON THE TWENTY-FIFTH (25TH) ANNIVERSARY OF THESE COVENANTS SAID RESTRICTIVE COVENANTS CONTAINED HEREIN SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

VAN TIL'S SUPER MARKET, INC., AND/OR ANY SUCCESSOR(S) IN TITLE OF THE ADJACENT REAL ESTATE OF WHICH THE WITHIN DESCRIBED REAL ESTATE IS PRESENTLY A PART, FOR WHOSE BENEFIT THESE PROTECTIVE COVENANTS INURE, SHALL HAVE THE RIGHT IN THE EVENT OF VIOLATION OR BREACH OF SAME TO PROSECUTE A PROCEEDING AT LAW OR IN EQUITY AGAINST THE PERSON, PERSONS, OR OTHER ENTITY WHO HAVE VIOLATED OR ARE ATTEMPTING TO VIOLATE SAME AND TO ENJOIN OR PREVENT THEM FROM DOING SO AND TO CAUSE SAID VIOLATION(S) TO BE REMEDIED OR TO RECOVER DAMAGES FOR SAID VIOLATION(S) IN ANY LEGAL OR EQUITABLE PROCEEDING TO ENFORCE OR RESTRAIN THE VIOLATION(S) OF THESE COVENANTS, THE LOSING PARTY OR PARTIES SHALL PAY THE REASONABLE ATTORNEY'S FEES AND COSTS OF THE PREVAILING PARTY OR PARTIES. NO DELAY OR FAILURE ON THE PART OF AN AGGRIEVED PARTY TO INVOKE ANY AVAILABLE REMEDY IN RESPECT FOR A VIOLATION OF ANY OF THE COVENANTS SHALL BE HELD TO BE A WAIVER BY THE PARTY (OR AN ESTOPPEL OF THAT PARTY TO ASSERT) ANY RIGHT AVAILABLE TO HIM/IT UPON THE RECURRENCE OR CONTINUANCE OF SAID VIOLATION(S) OR THE OCCURRENCE OF A DIFFERENT VIOLATION.

EXHIBIT C

**Parcel Release Payment
(Property 198)**

Provided at the time of a requested partial release before payment in full of the Note there is no Event of Default, the Parcel Release Payment shall be as follows:

- (a) On or before April 8, 1996, \$ 460,000.00;
- (b) After April 8, 1996, but on or before October 8, 1996, \$ 413,296.84;
- (c) After October 8, 1996 but on or before April 8, 1997,
\$ 366,593.68;
- (d) After April 8, 1997, but on or before October 8, 1997,
\$ 319,890.52;
- (e) After October 8, 1997, but on or before April 8, 1998,
\$ 273,187.36; and
- (f) After April 8, 1998 but on or before October 8, 1998,
\$ 226,484.20.

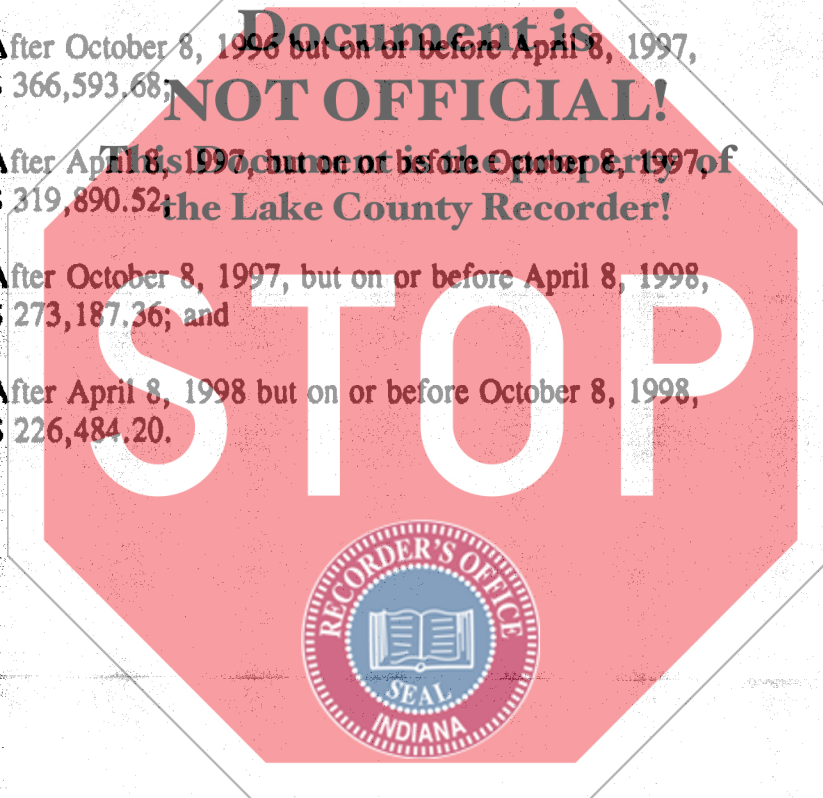


EXHIBIT C

**Parcel Release Payment
(Property 252/1004)**

Provided at the time of a requested partial release before payment in full of the Note there is no Event of Default, the Parcel Release Payment shall be as follows:

- (a) On or before April 8, 1996, \$ 1,045,000.00;
- (b) After April 8, 1996, but on or before October 8, 1996, \$ 939,284.32;
- (c) After October 8, 1996, but on or before April 8, 1997, \$ 833,568.64;
- (d) After April 8, 1997, but on or before October 8, 1997, \$ 727,852.96;
- (e) After October 8, 1997, but on or before April 8, 1998, \$ 622,137.28; and
- (f) After April 8, 1998 but on or before October 8, 1998, \$ 516,421.60.

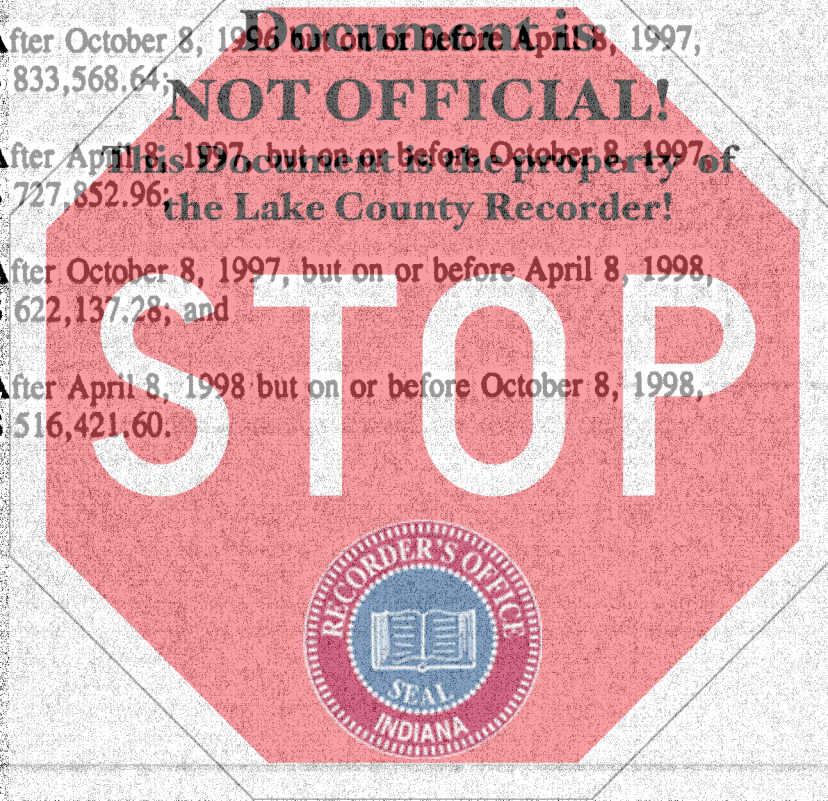


EXHIBIT C

**Parcel Release Payment
(Property 256)**

Provided at the time of a requested partial release before payment in full of the Note there is no Event of Default, the Parcel Release Payment shall be as follows:

- (a) On or before April 8, 1996, \$ 750,000.00;
- (b) After April 8, 1996, but on or before October 8, 1996, \$ 673,971.60;
- (c) After October 8, 1996 but on or before April 8, 1997,
\$ 597,943.20;
- (d) After April 8, 1997, but on or before October 8, 1997,
\$ 521,914.80;
- (e) After October 8, 1997, but on or before April 8, 1998,
\$ 445,886.40; and
- (f) After April 8, 1998 but on or before October 8, 1998,
\$ 369,858.00.

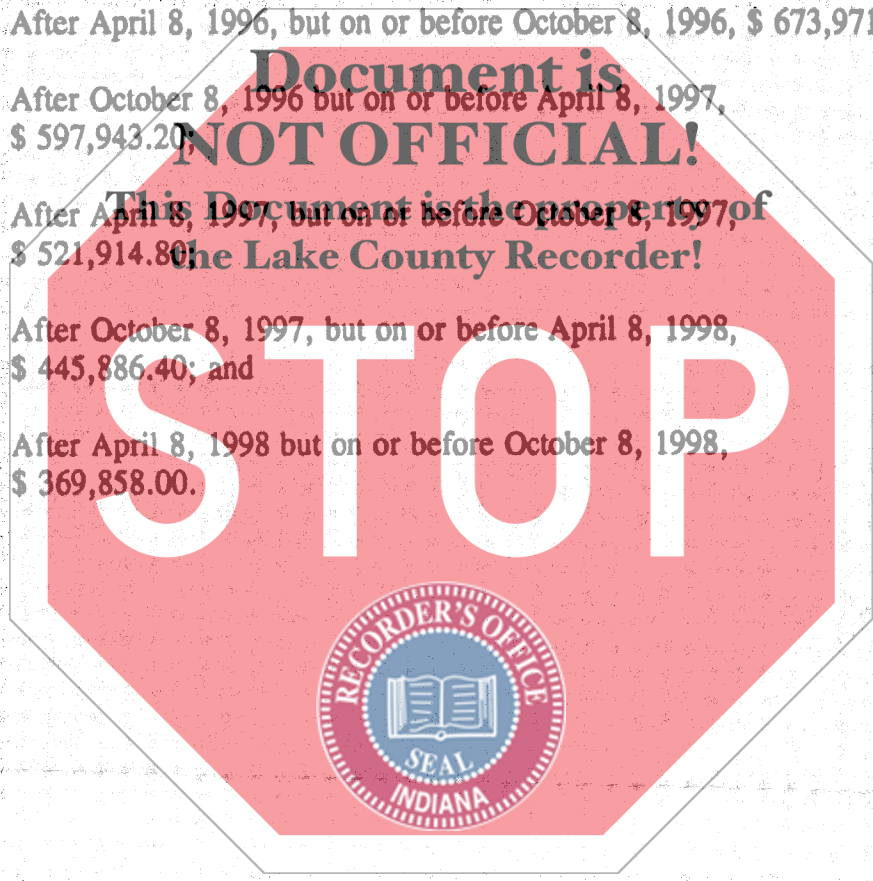


EXHIBIT C

**Parcel Release Payment
(Property 261)**

Provided at the time of a requested partial release before payment in full of the Note there is no Event of Default, the Parcel Release Payment shall be as follows:

- (a) On or before April 8, 1996, \$ 890,000.00;
- (b) After April 8, 1996, but on or before October 8, 1996, \$ 799,852.04;
- (c) After October 8, 1996 but on or before April 8, 1997,
\$ 709,704.08;
- (d) After April 8, 1997, but on or before October 8, 1997,
\$ 619,556.12;
- (e) After October 8, 1997, but on or before April 8, 1998,
\$ 529,408.16; and
- (f) After April 8, 1998 but on or before October 8, 1998,
\$ 439,260.20.

