

UNOFFICIAL COPY

86468382

COOK COUNTY CLERK'S OFFICE
FILED

1986 OCT -9 PM 3:28

86468382

1702

MORTGAGE AND ASSIGNMENT OF RENTS

THIS INDENTURE, made September 17, 1986, between OIL STOP REALTY PARTNERSHIP, an Indiana General Partnership, herein referred to as "Mortgagor", and QUAKER STATE OIL REFINING CORPORATION, a Delaware corporation with its principal place of business at 255 Elm Street, Oil City, Pennsylvania, herein referred to as "Mortgagee".

W I T N E S S E T H:

WHEREAS, the Mortgagor is justly indebted to the Mortgagee upon an installment note of even date herewith in the principal sum of One Hundred Twenty Thousand Dollars (\$120,000.00), herein referred to as "Note", payable to the order of and delivered to the Mortgagee, in and by which Note the Mortgagor promises to pay the principal sum and interest at the rate and in installments as provided in said Note, with a final payment of the balance due on the 15th day of September, 1991, and all of said principal and interest are made payable at such place as the holders of the Note may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of the Mortgagee at 255 Elm Street, Oil City, Pennsylvania.

NOW, THEREFORE, the Mortgagor to secure the payment of the said principal sum of money and said interest in accordance with the terms, provisions and limitations of this mortgage, and the performance of covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents convey and warrant unto the Mortgagee, and the Mortgagee's successors and assigns, the Real Estate described in Exhibit "A" hereto, and all of its estate, right, title and interest therein, situate, lying and being in the City of Chicago, County of Cook, and State of Illinois,

1063765 D

86468382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

which, with the property hereinafter described is referred to herein as the "premises".

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed on the premises by Mortgagor or its successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor does hereby expressly release and waive.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. This is a junior mortgage and the parties to this mortgage agree that it is to be subordinate to a mortgage to be recorded hereafter with Merchants National Bank & Trust Company of Indianapolis as mortgagee and Oil Stop Realty Partnership as mortgagor, in an amount not to exceed Three Hundred Eighty-Eight Thousand Dollars (\$388,000.00).

2. Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (2) keep said premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien hereof; (3) pay

86468382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (5) comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof; (6) make no material alterations in said premises except as required by law or municipal ordinance.

3. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

4. In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this mortgage or the debt secured hereby or the holder thereof, then and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

86A68382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 6 4 6 3 3 2

5. If, by the laws of the United States of America or of any state having jurisdiction in the premises, any tax is due or becomes due in respect of the issuance of the Note hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, and Mortgagee's successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance and the Note secured hereby.

6. At such time as the Mortgagor is not in default either under the terms of the Note secured hereby or under the terms of this mortgage, the Mortgagor shall have such privilege of making prepayments on the principal of said Note (in addition to the required payments) as may be provided in said Note.

7. Mortgagor shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of money sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby and by the First Mortgage, all in companies satisfactory to the Mortgagee, under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to the Mortgagee, and in case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

8. In case of default herein, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or

86468382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the highest rate permitted by Illinois law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.

9. The Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

10. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms hereof. At the option of the Mortgagee and without notice to Mortgagor, all unpaid indebtedness secured by this mortgage shall, notwithstanding anything in the Note or in this mortgage to the contrary, become due and payable (a) immediately in the case of default in making payment of any installment of principal or interest on the Note; (b) when default shall occur and continue for three (3) days in the performance of any other agreement of the Mortgagor herein contained; or (c) when, pursuant to the terms of said Note, Mortgagee exercises its right to accelerate the indebtedness evidenced thereby.

11. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, or in connection with any other action taken by Mortgagee to enforce the terms of this mortgage, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence,

86168382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either (a) to prosecute such suit; (b) to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises; or (c) to complete any other such enforcement action. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the highest rate now permitted by Illinois law, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant, or defendant by reason of this mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the premises or the security hereof.

12. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness in addition to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Mortgagor, its heirs, legal representatives, or assigns, as their rights may appear.

13. Upon or at any time after the filing of the complaint to foreclose this mortgage the court in which such complaint is filed may appoint a receiver of said premises. Such appointment may be made either

86468382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor or any of its partners at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and the Mortgagee may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during the further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of (1) the indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; or (2) the deficiency in case of a sale and deficiency.

14. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

15. The Mortgagee shall have the right to inspect the premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. Mortgagor does hereby waive any and all rights of redemption from sale under any order or decree foreclosing this mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the property.

17. The Mortgagor shall periodically deposit with the Mortgagee such sums as the Mortgagee may reasonably require for payment of taxes

86468382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and assessments on the premises. No such deposit shall bear any interest.

18. If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

19. Mortgagee shall release this mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the execution of such release.

20. This mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the Note secured hereby.

21. All unpaid indebtedness secured by this mortgage shall become at once due and payable at the election of the Mortgagee, in the event that Mortgagor conveys, sells, transfers or assigns, or permits to be conveyed, sold, transferred or assigned, in any manner, the premises or any interest of Mortgagor therein, whether by deed or assignment of beneficial interest in Mortgagor.

WITNESS:

Kathy E. G. [Signature]

OIL STOP REALTY PARTNERSHIP,
an Indiana General Partnership

By: [Signature]

Glenn N. Lubernik

Its: General Partner

86468382

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

PARCEL 1 :

THE EAST 331.75 FEET OF THE WEST 995.25 FEET (BOTH MEASURED ALONG THE SOUTH LINE OF SECTION) OF THE SOUTH 1/2 OF THE SOUTH WEST 1/4 OF THE NORTH EAST 1/4 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2 :

THE EAST 331.75 FEET (EXCEPT THE EAST 165.875 FEET THEREOF) OF THE SOUTH 1/2 OF THE SOUTH WEST 1/4 OF THE NORTH EAST 1/4 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. - 07352 00 007-0000 *for*

Property of Cook County Office