

LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

[Fixture Financing Statement]

[Some of the goods herein described are, or are to become, fixtures on the property described in Exhibit B hereto. The names of the Debtor (the "Mortgagor") herein and the Secured Party (the "Mortgagee") herein, the mailing address of the Secured Party from which information concerning the security interest may be obtained, the mailing address of the Debtor, and a statement indicating the types, or describing the items, of collateral are stated herein in compliance with Ill. Rev. Stat. Ch. 26, Sec. 9-402.]

THIS MORTGAGE is made as of August 15, 1988, by and between THORNTON OIL CORPORATION, a Delaware corporation, 10101 Linn Station Road, Louisville, Kentucky 40223 ("Mortgagor"), and CITIZENS FIDELITY BANK AND TRUST COMPANY, a Kentucky corporation, Citizens Plaza, 500 West Jefferson Street, Louisville, Jefferson County, Kentucky 40296 ("Mortgagee").

W I T N E S S E T H :

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Mortgagor hereby irrevocably grants, remises, aliens, releases, transfers, conveys and mortgages to Mortgagee and its successors and assigns, with covenant of General Warranty, under and subject to the terms and conditions hereinafter set forth, all of its leasehold interests and estates arising under the instrument(s) identified in Exhibit A attached hereto and by this reference incorporated herein (collectively, the "Lease") in and to real property located in the County of Cook, State of Illinois described in Exhibit B attached hereto and by this reference incorporated herein and all buildings and improvements (the "Improvements") now or hereafter erected thereon (such real property and the Improvements being hereinafter referred to together as the "Property");

Together with all rents, issues, profits, royalties, income and other benefits derived from the Property; and all interests, estates or other claims, both in law and in equity, that Mortgagor now has or may hereafter acquire in the Property; and all easements, rights-of-way and rights used in connection with the Property or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto;

Together with a continuing security interest in all right, title and interest of Mortgagor in and to all fixtures (the "Fixtures") now owned or hereafter acquired by Mortgagor and now or at anytime hereafter located on or at the Property or used or arising in connection therewith. The Term "Fixtures" shall include but not be limited to: all service station dispensers, lines, tanks, consoles, canopies, and approach lighting, and all convenience market furnishings, fixtures and equipment, together with accessions, additions, and substitutions thereto and therefor.

Together with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance with respect thereto, that Mortgagor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including without

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limitation any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property, and interest hereby conveyed to Mortgagee may hereinafter be referred to as the "Premises."

FOR THE PURPOSE OF SECURING PERFORMANCE OF, PAYMENT OF UP TO \$1,050,000 OF THE PRINCIPAL AMOUNT OF, AND PAYMENT OF ALL INTEREST ON:

A. All obligations of Mortgagor under the Term Loan Agreement (the "Loan Agreement") dated as of August 1, 1988 by and between Mortgagor and Mortgagee evidenced by two term loan notes in the aggregate principal amount of \$5,000,000 (the "Notes") having final maturity dates, if not sooner paid, not later than March 31, 1994, and any and all amendments, modifications, extensions and renewals thereof;

B. All other obligations of Mortgagor under the Loan Agreement providing, among other things, for the use of the loan proceeds evidenced by the Notes and each agreement of Mortgagor incorporated by reference therein or herein or contained therein or herein;

C. All sums advanced by Mortgagee to protect the Premises, with interest thereon at the rate set forth in the Notes, or at the maximum rate of interest permitted by law from time to time, whichever shall be less.

This Mortgage, the Loan Agreement, the Notes, any guaranty thereof, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby, and any and all amendments, modifications, extensions, and renewals thereof, may hereafter be referred to as the "Loan Instruments" and are incorporated herein by this reference.

To protect the security of this Mortgage, Mortgagor further covenants, warrants and agrees with Mortgagee as follows:

## 1. COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby covenants and agrees:

1.1 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Notes, charges, fees and all other sums as provided in the Loan Instruments, and the principal of, and interest on, any future advances secured by this Mortgage.

1.2 Compliance with Lease. To pay or cause to be paid all rents and additional sums payable under the Lease as and when the same shall become due and payable; at all times to keep, observe and perform or cause to be kept, observed and performed all of the terms, covenants and conditions of the Lease on the part of the lessee thereunder to be kept, observed and performed; to do all things necessary to keep unimpaired Mortgagor's rights in and to the Lease; not to commit or permit to be committed or to occur any event of default or default under the Lease; not to modify, amend, supplement or terminate the Lease without having first obtained the written consent of Mortgagee; not in any way to release the lessor under the Lease of or from the obligations, covenants, conditions and agreements by the lessor to be done and performed; to exercise any and all renewal rights that it has under the Lease, and, upon receiving any notice of default from the lessor under the Lease, or when any state of fact exists that, with the giving of notice, the lapse of time, or both, would constitute a default under the Lease,

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immediately to notify Mortgagee and forward to Mortgagee a copy of any written notice of the same.

1.3 Maintenance, Repair, Alterations. To keep the Premises in good condition and repair; not to remove, demolish or substantially alter any of the Improvements; to complete promptly and in good and workmanlike manner any building or other improvement that may be constructed on the Property and promptly restore in like manner any Improvement that may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Premises; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; and not to commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation.

1.4 Indemnification; Waiver of Offset.

A. That if Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Premises or any part thereof or therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, then to the extent allowed by law Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses actually incurred, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder; and in the event of such employment following any breach by Mortgagor and to the extent allowed by law, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses actually incurred by Mortgagee, whether or not an action is actually by law commenced against Mortgagor by reason of breach.

B. That all sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: [i] any damage to or destruction of or any condemnation or similar taking of the Premises or any part thereof; [ii] any restriction or prevention of or interference with any use of the Premises or any part thereof; [iii] any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; [iv] any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; [v] any claim that Mortgagor have or might have against Mortgagee; [vi] any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or [vii] any other occurrence whatsoever, whether similar or dissimilar to the foregoing; and whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement,

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suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

## 1.5 Taxes and Impositions.

A. That Mortgagor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation non-governmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, that are assessed or imposed upon the Premises, or become due and payable, and that create, may create or appear to create a lien upon the Premises, or any part thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions").

B. To deposit with Mortgagee, if it shall so request, each month, an amount equal to one-twelfth (1/12th) of the estimated annual Impositions and in that case to cause all bills, statements, or other documents relating to such Impositions to be sent or mailed directly to Mortgagee for payment, to the extent of such deposits, and to immediately deposit with Mortgagee the amount of any deficiency.

C. That should Mortgagor fail to pay or provide for payment of the Impositions, Mortgagee may pay the same and Mortgagor will reimburse all amounts paid hereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor, such amounts, together with interest thereon at that rate set forth in the Loan Agreement or at the maximum rate of interest permitted by law from time to time, whichever shall be less, shall be secured by this Mortgage.

1.6 Utilities. To pay when due all utility charges that are incurred for the benefit of the Premises or that may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.7 Actions Affecting Premises. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and to pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Mortgagee may appear.

## 1.8 Insurance Policies, Premiums, and Proceeds.

A. To provide, maintain and keep in force at all times the policies of insurance required by the Loan Agreement, to deliver certificates thereof to Mortgagee, and at least ten (10) days prior to the expiration of any thereof, to deliver certificates of reissuance thereof together with evidence of payment of premiums thereon acceptable to Mortgagee.

B. To deposit with Mortgagee, if it shall so request, each month, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual premiums on all policies of insurance required by the Loan Agreement and in that case to cause all bills, statements, or other documents relating to such premiums to be sent or mailed directly to Mortgagee for payment, to the extent of such deposits, of such premiums and to immediately deposit with Mortgagee the amount of any deficiency.

C. That should Mortgagor fail to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by the Loan Agreement, Mortgagee may procure such insurance or



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single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at that rate set forth in the Notes or at the maximum rate of interest permitted by law from time to time, whichever shall be less, shall be secured by this Mortgage.

D. That after the happening of any casualty to the Premises or any part thereof, Mortgagor shall give prompt written notice to Mortgagee. In the event of any damage or destruction of the Improvements, Mortgagee shall have the option, in its sole discretion, of applying all or part of the insurance proceeds [i] to any indebtedness secured hereby and in such order as Mortgagee may determine or [ii] to the restoration of the Improvements or [iii] to Mortgagor. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee; and Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

E. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Premises in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by or pursuant to the Loan Agreement shall inure to the benefit of and pass to the successor in interest of Mortgagor or the purchaser or grantee of the Premises.

1.9 Actions by Mortgagee to Preserve Premises. That should Mortgagor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Mortgagee in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation, [i] to enter upon and take possession of the Premises; [ii] to make additions, alterations, repairs and improvements to the Premises that it may consider necessary or proper to keep the Premises in good condition and repair; [iii] to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; [iv] to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt that in the judgment of Mortgagee may affect or appear to affect the security of this Mortgage or be prior or superior hereto; and [v] in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorney's fees.

1.10 Performance of Obligations; Survival of Warranties. To satisfy and perform fully and faithfully the obligations of Mortgagor contained in each agreement of Mortgagor incorporated by reference herein, and any modification or amendment thereof. All representations, warranties and covenants of Mortgagor contained herein or incorporated by reference herein shall survive and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

1.11 Eminent Domain. That should the Premises, or any part thereof or interest therein, be taken or damaged by reason of any public

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improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee and:

A. Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, right of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee, and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

B. In the event any portion of the Premises is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Mortgagee may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Premises upon such conditions as Mortgagee may determine. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.12 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale is made hereunder.

1.13 Liens. To pay and discharge in accordance with their terms, at Mortgagor's cost and expense, all other liens, encumbrances and charges upon the Premises, or any part thereof or interest therein. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.14 Inspections. That Mortgagee, or its agents, representatives, or workmen, are authorized to enter at any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

1.15 Mortgagee's Powers. That without affecting the lien or charge of this Mortgage upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time and without notice, [i] extend the maturity or alter any of the terms of any such obligation; [ii] grant other indulgences; [iii] release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option, any parcel, portion or all of the Premises; [iv] take or release any other or additional security for any obligation herein mentioned; or [v] make compositions or other arrangements with debtors in relation thereto.

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## 2. SECURITY AGREEMENT

2.1 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Fixtures (as defined hereinabove) including without limitation any and all property of similar type or kind hereafter located on or at the Property or used or arising in connection therewith for the purpose of securing all obligations of Mortgagor contained in any of the Loan Instruments.

2.2 Warranties, Representations and Covenants. Mortgagor warrants, represents and covenants as follows:

A. Except for the security interest granted hereby, Mortgagor is, and as to portions of the Fixtures to be acquired after the date hereof will be, the sole owner of the Fixtures, free from any adverse lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Fixtures against, all claims and demands of all persons at any time claiming the same or any interest therein.

B. Mortgagor will not sell, convey or in any manner transfer the Fixtures except pursuant to the Lease without the prior written consent of Mortgagee, except such portions or items of Fixtures which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.

C. The Fixtures are not used or bought for personal, family or household purposes.

D. The Fixtures will be kept on or at the Property and Mortgagor will not remove the Fixtures from the Property without the prior written consent of Mortgagee, except such portions or items of Fixtures which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.

E. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Illinois Uniform Commercial Code in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

F. All covenants and obligations of Mortgagor contained herein relating to the Premises shall be deemed to apply to the Fixtures whether or not expressly referred to herein.

G. This Mortgage constitutes a Security Agreement as that term is used in the Illinois Uniform Commercial Code.

## 3. REMEDIES UPON DEFAULT

3.1 Events of Default. Any of the following events shall be deemed an event of default hereunder.

A. Default shall be made in the payment when due of any installment of principal or interest or any other sum secured hereby or in the payment when due of any installment of principal or interest payable under the Revolving Credit and Term Loan Agreement between Mortgagor and Mortgagee dated as of July 31, 1986; or

B. Mortgagor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or



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similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of itself or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

C. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or any trustee, receiver or liquidator of Mortgagor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without its consent or acquiescence; or

D. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving monetary damages shall be entered against Mortgagor that shall become a lien on the Premises or any portion thereof or interest therein; or

E. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments or any part thereof, not referred to in this Section 2.1.

3.2 Acceleration upon Default; Additional Remedies. Upon the occurrence of any event of default referred to in Section 2.1 hereof, Mortgagee may, subject to its compliance with the notice requirements, and the rights of Mortgagor to cure such event of default, as provided in the Loan Agreement, declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Mortgagee may commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.

3.3 Foreclosure; Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Notes, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree to the extent allowed by law 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, 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, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or 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. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Notes or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate provided in the Notes or at the maximum rate of interest permitted

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by law from time to time, whichever shall be less, and shall be secured by this Mortgage.

3.4 Application of Proceeds of Foreclosure Sale. 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 allowable items as are mentioned in the preceding paragraph hereof; second, on account of all interest, and up to \$1,050,000 on account of all principal, remaining unpaid on the Notes and all other items of secured indebtedness under the Loan Instruments; and third, any overplus to Mortgagee, its successors or assigns, as their rights may appear.

3.5 Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or adequacy of the security, and Mortgagee hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have all 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: [a] 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; [b] any and all rents due or which may become due under underlying leases; and [c] the deficiency in case of a sale and deficiency.

3.6 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the Loan Instruments or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee, shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies.

## 4. MISCELLANEOUS

4.1 Governing Law. This Mortgage shall be governed by the laws of the state in which the Property is located. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments that can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing

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signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

4.2 Giving of Notice. Any notice that either party hereto may desire or be required to give to the other party shall be in writing and the delivery thereof by hand, or the mailing thereof by certified mail addressed, to such party at its address stated in the preamble hereto or at such other place as either party hereto may by notice in writing designate as a place for service of notice shall constitute service of notice hereunder.

4.3 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Mortgage.

4.4 Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt that is not secured or fully secured by the lien of this Mortgage.

4.5 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Notes, whether or not named as Mortgagee herein.

IN TESTIMONY WHEREOF, WITNESS the signature of Mortgagor acting by and through its officer hereunto duly authorized, the date first above written.

THORNTON OIL CORPORATION,  
a Delaware corporation

By J. Stanley Clark  
J. Stanley Clark, Treasurer

STATE OF KENTUCKY     )  
                                      :SS  
COUNTY OF JEFFERSON )

I, John R. Price, a Notary Public in and for the State and County aforesaid, do hereby certify that J. Stanley Clark, personally known to me to be the Treasurer of Thornton Oil Corporation, a Delaware corporation, and personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Treasurer, he signed and delivered the said instrument as Treasurer of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

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Given under my hand and seal this 15 day of August, 1988.

My commission expires: My commission expires May 19, 1991.  
Notary Public, State of Lark, KY


  
Notary Public

## EXHIBITS

A -- Lessehold Instruments

B -- Legal Description of the Property

This Instrument Prepared By:

  
H. Alexander Campbell  
WYATT, TARRANT & COMBS  
2800 Citizens Plaza  
Louisville, Kentucky 40202  
(502) 589-5235

HAC63/601

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Given under my hand and seal this 15 day of August, 1988.  
Notary Public, State at Large, KY.  
My commission expires: ~~My commission expires May 19, 1991.~~

  
Notary Public

EXHIBITS

- A -- Leasehold Instruments
- B -- Legal Description of the Property

This Instrument Prepared By:

  
H. Alexander Campbell  
WYATT, TARRANT & COMBS  
2800 Citizens Plaza  
Louisville, Kentucky 40202  
(502) 589-5235

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## EXHIBIT A

### Leasehold Instruments

Ground Lease Agreement dated April 12, 1987 between Dunran Corporation as lessor and Thornton Oil Corporation as lessee as amended by Rider and Amendment to Lease dated April 12, 1987, a memorandum of which was recorded November 5, 1987 in the Recorder's Office of Cook County, Illinois as Document No. 87597401.

## EXHIBIT B

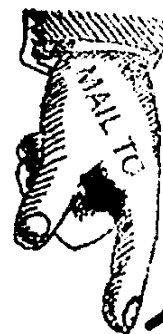
### Legal Description of the Property

The West 250 feet of the East 810 feet of the South 280.10 feet of the following described parcel: The West half of the Southwest quarter and the West 30 acres of the East half of the Southwest quarter, all in Section 1, Township 42 North, Range 10, East of the Third Principal Meridian, except the South 70 feet thereof, in Cook County, Illinois.

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