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95619208

Cook County, IL  
Property #709

## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

② of ②

7560724 - 1172-D1-1K

THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of September 8, 1995, by WILLIAM J. McENERY, as Trustee of the William J. McEnery Revocable Trust dated April 22, 1993 ("Assignor"), with a mailing address c/o Gas City, Ltd., 160 South LaGrange Road, Frankfort, Illinois 60423 to MARTIN OIL OF INDIANA, INC., a dissolved Indiana corporation ("Lender"), with a mailing address at 4501 West 127th Street, Alsip, Illinois 60658, Attention: Thomas A. Floyd, and pertains to the real estate described in Exhibit A attached hereto and made a part hereof ("Premises").

I

DEPT-01 RECORDING \$41.00  
140012 TRAN 6431 09/14/95 12:43:00  
47242 & CG \*\*95-619208  
COOK COUNTY RECORDER

### RECITALS

1.1 Note. Assignor has executed and delivered to Lender two Mortgage Notes ("Note") of even date herewith, wherein Assignor promises to pay to the order of Lender the principal amount of One Million Nine Hundred Fifty-three Thousand Four Hundred and 00/100 Dollars (\$1,953,400.00) in repayment of a loan from Lender in like amount or so much thereof as may now or hereafter be outstanding under the Note (the "Loan").

1.2 Other Loan Documents. As further security for the repayment of the Loan, Assignor has executed and delivered to Lender, among other things, a Mortgage and Security Agreement ("Mortgage") of even date herewith, granting to Lender a first lien on the Premises, and Assignor has executed and delivered or have caused to be executed and delivered certain other documents further evidencing, securing or guaranteeing the Loan (the Note, the Mortgage, this Assignment, and all such other loan and security documents, whether now or hereafter existing, and as amended, modified, extended or restated from time to time, are collectively referred to herein as the "Loan Documents").

1.3 This Assignment. As further security for the repayment of the Loan and for the payment and performance of all other liabilities owed to Lender, in addition to the other Loan Documents, Assignor is required to execute and deliver to Lender this Assignment.

This instrument was prepared by and after recording should be returned to:

Leslie M. Beck  
MARTIN OIL OF INDIANA, INC.  
4501 West 127th Street  
Alsip, Illinois 60658

4100

OCM01.12C

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BOX 333-CTI

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## II

### THE GRANT

Now, therefore, as additional security for the prompt payment when due of all principal of and interest on the Note; payment in full and performance of all obligations of Assignor under the Loan Documents; payment in full of all expenses and charges, legal or otherwise, including reasonable attorneys' fees and expenses paid or incurred by Lender in realizing or protecting this Assignment or the Loan; and any and all obligations, indebtedness, and liability of Assignor in connection with the Loan for whose indebtedness this Assignment to Lender, whether such obligations, indebtedness, or liability are now existing or hereafter created, direct or indirect, absolute or contingent, joint and several or joint or several, due or to become due, however created, evidenced, or arising and however acquired by Lender, and all renewals and extensions thereof (all collectively the "Liabilities") and in consideration of the matters recited above, Assignor hereby grants, sells, assigns, and transfers to Lender all of Assignor's right, title and interest in, to, and under the following (collectively, the "Assigned Security"):

- (a) That certain lease or those certain leases currently affecting the Premises, if any ("Existing Leases");
- (b) any and all leases, options, contracts for sale, or other agreements executed hereafter for the occupancy, sale or use (including concessions) of all or substantially all of the Premises (collectively "Future Leases");
- (c) any and all addenda, extensions, renewals, amendments, and modifications, to or of the Existing Leases and Future Leases, whether now or hereafter existing (being referred to herein collectively with the "Existing Leases" and Future Leases as the "Leases," and each of the Leases being referred to herein as a "Lease");
- (d) all rents, escrow deposits, income, revenues, issues, profits, condemnation awards, use and occupancy payments, damages, monies and security payable or receivable under or with respect to the Leases or pursuant to any of the provisions thereof, whether as rent or otherwise, and profits arising from the Leases or from the use and occupation of all or any portion of the Premises described in any of the Leases or in the Mortgage (collectively "Rents");
- (e) all proceeds payable under any policy of insurance, if any, covering loss of Rents for any cause ("Insurance Proceeds");
- (f) all rights, powers, privileges, options and other benefits of Assignor as lessor under such Leases (collectively "Assignor's Rights"), including, without limitation, (a) the immediate and continuing right to receive and collect all Rents,

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and (b) the right to make all waivers, agreements and settlements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any of the Leases, including the commencement, conduct and consummation of such legal proceedings as may be permitted under any provision of any of the Leases or by law, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under any of the Leases; and

- (g) all guaranties of the lessees' performance of the Leases ("Guaranties").

This Assignment constitutes a present, perfected and absolute assignment. This Assignment confers upon Lender a power coupled with an interest and cannot be revoked by Assignor. Notwithstanding anything to the contrary contained herein, no Leases exist on the date of this Assignment, Assignor shall not have any right to enter into any Lease with respect to the Premises other than with Gas City, Ltd., an Illinois corporation ("Gas City").

### III

#### GENERAL AGREEMENTS

Assignor covenants:

- (a) not to enter into any Lease (other than with Gas City) without the prior written consent of Lender;
- (b) to observe and perform all of the obligations imposed upon the lessor under any Leases and not to do or permit to be done anything to impair the security thereof;
- (c) not to consent to or allow the assignment or subletting of the lessee's interest in any of the Leases without the prior written consent of Lender;
- (d) not to collect any of the Rents, other than security or other deposits provided for in the Leases, in advance of the time when the same becomes due;
- (e) not to hereafter assign, sell, pledge, or encumber any of the Assigned Security except as hereinafter set forth;
- (f) at Lender's request upon the event of a Default, to assign and transfer to Lender specifically in writing any and all Future Leases and to execute and deliver, at the request of Lender, all such further assurances and assignments pertaining to the Premises as Lender may from time to time require;
- (g) to warrant and defend the Assigned Security against all adverse claims, whether now or hereafter arising;

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- (h) to observe and comply with all provisions of law applicable to the operation, use, occupancy, maintenance and ownership of the Premises;
- (i) not to lease or otherwise permit the use of all or any portion of the Premises for rent that is below the fair market rent, as set in the ordinary course of business, for such property;
- (j) if any of the Leases provide for the abatement of rent during repair of the premises demised thereunder by reason of fire or other casualty, the Assignor shall retain in place its self-insurance described in the Mortgage;
- (k) not hereafter permit any of the Assigned Security to become subordinate to any lien other than the lien of the Mortgage and any liens to which the Mortgage is now or may pursuant to its terms become, subordinate; and
- (l) not terminate, modify or amend any of the Leases, Assignor's Rights or Guaranties or any of the terms thereof without the prior written consent of Lender, and any attempted termination, modification or amendment of any of the Leases, Assignor's Rights or Guaranties without such written consent shall be null and void.

## IV

### DEFAULTS AND REMEDIES

4.1 Exercise of Lender's Rights. Any time after the occurrence of a Default, Lender may, at its option, take the actions described below, without in any way waiving such Default, without notice and without regard to the adequacy of the security for the Liabilities. Lender may act either in person or by an agent or by a receiver appointed by a court.

- (a) take possession of all or any part of the Premises or any other property described in any or all of the Leases, the Mortgage and the other Loan Documents, to have, hold, manage, lease, sell, and operate the same on such terms and for such periods of time as Lender may deem proper;
- (b) either with or without taking possession of such Premises, in Lender's own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs, or replacements to or of any part of the Premises as may seem proper to Lender and to apply such Rents, in payment of any or all of the following, in such order and manner as Lender may in its sole discretion determine, any statute, law, custom, or use to the contrary notwithstanding:

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- (i) all expenses of managing the Premises, including, without limitation, the salaries, fees, and wages of any managing agent and such other employees as Lender may deem necessary or desirable;
  - (ii) all expenses of operating and maintaining the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens, and premiums for all insurance that Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements;
  - (iii) all expenses incident to taking and retaining possession of the Premises; and
  - (iv) the Liabilities, including, without limitation, all costs and reasonable attorneys' fees;
- (c) at Lender's option, perform Assignor's obligations hereunder or pursuant to any of the Assigned Security, or cure Assignor's default, in such manner and to such extent as Lender deems appropriate;
  - (d) make, enforce, modify and accept surrender of the Leases, Assignor's Rights and Guaranties;
  - (e) perform any and all other acts necessary or proper to protect the security of this Assignment;
  - (f) apply for, and the Assignor hereby consents to, the appointment of a receiver of the Premises or any portion thereof, whether or not foreclosure proceedings have been commenced under the Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred; and
  - (g) avail itself of any rights, powers or remedies granted in the other Loan Documents, which remedies are cumulative to those granted herein.

The Assignor hereby appoints irrevocably the Lender its true and lawful attorney in its name and stead and authorizes Lender to take any or all of the actions described above. Powers of attorney conferred upon Lender pursuant to this Assignment are powers coupled with an interest and cannot be revoked, modified or altered without Lender's written consent. The exercise by Lender of the rights, powers and remedies granted it in this Paragraph 4.1, collection of the Rents and their application as provided herein, shall not be considered a waiver of any Default. Assignor's obligations hereunder shall survive foreclosure of the Mortgage, and Assignor covenants to observe and comply with all its obligations under this Assignment and the other Loan Documents throughout any period of redemption after foreclosure of the Mortgage.

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4.2 Non-Liability of Lender and Indemnity. Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Premises after at Default or from any other act or omission of Lender in managing, using, occupying or maintaining the Premises after a Default unless such loss is directly and solely caused by the gross negligence and bad faith of Lender. Lender shall, however, use reasonable efforts to mitigate losses suffered by Assignor as a result of Lender's operation of the Premises. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty, or liability of Assignor or any other party under any Assigned Security or under or by reason of this Assignment. This Assignment shall not operate to make Lender responsible for (i) the control, care, management, or repair of the Premises; (ii) the carrying out of any of the terms and conditions of any Lease; (iii) any waste committed on the property by the lessees or by any other parties or for any dangerous or defective conditions of the Premises; or (iv) any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee, or stranger. This Assignment shall not be construed as constituting the Lender a "mortgagee in possession" of the Premises. Lender has not received any security deposit with respect to any Lease, and assumes no responsibility for any such security deposit until such time such security deposit (specified as such with specific reference to the Lease pursuant to which deposited) may be transferred to Lender and accepted by Lender by notice to the tenant under such Lease.

Assignor shall, and does hereby agree to, protect, defend, indemnify, and hold Lender harmless from and against any and all claims, liability, loss, cost, damage or expense, including reasonable attorneys, fees, which Lender may or might incur by reason of (a) the Leases, Lessor's Rights or Guaranties; (b) this Assignment; (c) any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants, or agreements contained in the Leases, unless Lender or its agents engaged in willful misconduct or were grossly negligent; or (d) any action taken or omitted by Lender or its agents under this Assignment, unless constituting willful misconduct or gross negligence. Should Lender incur any such liability, loss or damage, the amount thereof, including costs, expenses, and reasonable attorneys, fees, shall be paid by Assignor upon demand of Lender and shall constitute a part of the Liabilities.

4.3 Collection of Rent. Assignor hereby and irrevocably authorizes and directs the lessee named in any Lease, whether now or hereafter existing, the occupant of all or any part of the Premises, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and that a Default exists, to pay over to Lender all Rents, arising or accruing under such Lease or from all or any part of the premises described therein and to continue so to do until otherwise notified by Lender. Assignor agrees that lessees shall have the right to rely upon such demand and notice from Lender and shall pay such Rents to Lender without any obligation or right to determine the actual existence of any such Default or the Lender's right to receive such Rents, notwithstanding any notice from or claim of Assignor to the contrary, and without the need for a judicial determination that a Default has occurred. Assignor shall have no right or claim against such lessees for any such Rents so paid by tenants to Lender. Assignor agrees that it will at Lender's request take such action as Lender may from time to time request



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to assist Lender in exercising any rights hereunder, including joining in a written direction to lessees to pay Rents to Lender.

4.4 Other Security. Lender may take or release other security for the Liabilities, release any party primarily or secondarily liable therefor, apply any other security held by it to the satisfaction thereof; all without prejudice to any of its rights under this Assignment.

4.5 Waivers. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the rights, powers and remedies granted it shall be deemed to be a waiver by Lender of its rights, powers and remedies under the other Loan Documents. This Assignment is made and accepted without prejudice to any of the rights, powers and remedies possessed by Lender under any of the other Loan Documents. The right of Lender to collect the Liabilities and to enforce any other security held by it may be exercised by Lender either prior to simultaneously with, or subsequent to any action taken by it hereunder.

4.6 Amounts Held in Trust for Lender. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification or amendment of any of the Leases prohibited by the terms of this Assignment, and any amounts received by Assignor as Rents, from and after the date of any Default, shall be held by Assignor as trustee for Lender and all such amounts shall be accounted for to Lender and shall not be commingled with other funds of the Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith. By way of example, such notice may be given by an instrument recorded with the Recorder of Deeds of the county in which the Premises are located stating that Assignor has received or will receive such amounts in trust for Lender.

v

## MISCELLANEOUS

5.1 Notices. Any notice that Lender or Assignor 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 of Indiana, Inc. 4501 West 127th Street Alsip, Illinois 60658 Attention: Thomas A. Floyd
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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, Schouten & 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 Assignment 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.

5.2 Governing Law. The location of the Premises being the State of Illinois, this Assignment shall be construed and enforced according to the laws of the State of Illinois.

5.3 Severability. If any provision of this Assignment, or any, paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Assignment shall be construed as if such invalid part were never included.

5.4 Headings. The headings of sections and paragraphs in this Assignment are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions of this Assignment.

5.5 Grammar. As used in this Assignment, singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable where the context so requires.

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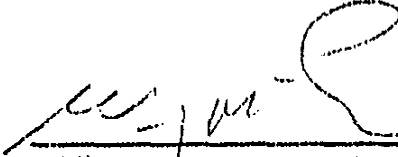


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5.6 Successors and Assigns. This Assignment shall be binding upon Assignor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Assignor. The word "Lender," when used herein, shall include Lender's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

5.7 Conflicts. In case of any conflict between the terms of this Assignment and those of the Mortgage, the terms of the Mortgage shall prevail.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the date stated above.

  
\_\_\_\_\_  
William J. McEnery, as Trustee of the  
William J. McEnery Revocable Trust  
dated April 22, 1993

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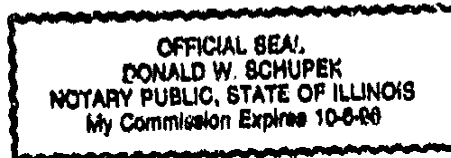
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STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that 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 his 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.

*Donald W. Schupek*  
Notary Public



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COUNTY CLERK'S OFFICE  
COOK COUNTY, ILLINOIS  
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Property 709

## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 1 AND 2, (EXCEPT THAT PART OF SAID LOTS LYING EAST OF A LINE 67 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 31 CONVEYED TO CITY OF CHICAGO SEPTEMBER 24, 1930 FOR WIDENING OF ASHLAND AVENUE) IN BLOCK 1 IN T. M. JORDAN'S SUBDIVISION OF BLOCK 21 OF CANAL TRUSTEES SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

KEY NO.: 17-31 407-039-0000  
ADDRESS: 3516 South Ashland Avenue, Chicago, Illinois

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