Heritage Bank
PO Box 185
Delhi, IA 52223

DELAWARE COUNTY IOWA
FILED
2004 OCT 11 PM 12:14
BOOK 2004
PAGE 3806
DEBORAH L PENTON
DELAWARE CO RECORDER
22.00

Preparer
Information: Lance R. Staker, Simmons Perrine Albright & Ellwood, PLC, 115 Third St., SE, Cedar Rapids, IA 52401, 319-366-7641

SPACE ABOVE THIS LINE FOR RECORDER

MORTGAGE

THIS MORTGAGE is made between Hoeger Realty, L.L.C. ("Mortgagor") and Molo Oil Co. ("Mortgagee").

1. **Grant of Mortgage and Security Interest.** Mortgagor hereby sells, conveys and mortgages unto Mortgagee, and grants a security interest to Mortgagee in the following described property: All of Mortgagor's right, title and interest in and to the following described real estate situated in Delaware County, Iowa (the "Land"):

SEE ATTACHED EXHIBIT A

1985-4002

and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditament, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land.

TO HAVE AND TO HOLD the Land and Buildings (collectively called the "Mortgaged Property"), together with all privileges, hereditament thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

This Mortgage is subject to and subordinate to the Mortgage dated October 7, 2004 from Mortgagor to Heritage Bank of Delhi, Iowa.

2. **Obligations.** This Mortgage secures the payment and performance by Mortgagor of the obligations set forth in that certain letter agreement between Mortgagor and Mortgagee dated October 7, 2004, which obligations shall not in any event exceed $46,000 in the aggregate (hereinafter collectively referred to as the "Obligations").

3. **Payment and Performance of the Obligations.** Mortgagor will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagor under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

4. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

a. Mortgagor shall default in the due observance or performance of or breach its agreement contained in paragraph 2 hereof or shall default in the due observance or performance of or

breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

b. Mortgagor shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Mortgagor under the United States Bankruptcy Code or Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

5. **Remedies.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, after such notice as may be required by law, exercise all of the rights and remedies accorded upon default to a secured party under the laws of the State of Iowa.

6. **Notices.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

a. If to Mortgagor, to:

Hoeger Realty, L.L.C.
Attn: Virginia M. Hoeger
504 Third Street, #A
Delhi, IA 52223

b. If to Mortgagee, to:

Molo Oil Company
Attn: Steve Gorius
P.O. Box 719
Dubuque, IA 52004

or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

7. **Severability**. In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

8. **Successors and Assigns bound; Number; Gender; Agents; Captions**. The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

9. **Governing Law**. This Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

10. **Acknowledgment of Receipt of Copies of Debt Instrument.** Mortgagor hereby acknowledges the receipt of a copy of this Mortgage together with a copy of the letter agreement referred to in paragraph 2 hereof.

Dated as of this 7th day of October, 2004.

HOEGER REALTY, L.L.C., as Mortgagor

By: Virginia M. Hoeger Member
Virginia M. Hoeger, Member

STATE OF IOWA

ss:

COUNTY OF DELAWARE

On this 7th day of October, before me, the undersigned, a Notary Public, personally appeared Virginia M. Hoeger, as the sole Member of Hoeger Realty, L.L.C., to me known to be the sole Member of the entity named in and the person who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public in and for the State of Iowa

NOTARIAL SEAL IOWA
THOMAS J. HANSON
Commission Number 115040
My Commission Expires
September 22, 2007

EXHIBIT A

LEGAL DESCRIPTION OF BUSINESS REAL ESTATE

Lots Five (5) and Six (6), except the North Thirty-Six (36) feet thereof, and also except the South Seven (7) feet of said Lot Six (6), all in Block Three (3), Delhi, Iowa, according to plat recorded in Book A L.D., Pages 128-129.

Including a permanent easement for unrestricted use by vehicles over and across the following described real estate:

The South Seven (7) feet of Lot Six (6), the South Sixteen (16) feet of the North Sixty (60) feet of Lot Seven (7), the South Sixteen (16) feet of the North Sixty (60) feet of the West one-third (W 1/3) of Lot Eight (8), the East Twelve (12) feet of the North Forty-Four (44) feet of the West one-third (W 1/3) of Lot Eight (8), the East Twenty-Two (22) feet of the West Eighty-Eight (88) feet of the alley lying between Lots Five (5) and Six (6) on the North and Lots Seven (7) and Eight (8) on the South, and the North Nine (9) feet of the West Sixty-Six (66) feet of the alley lying between Lots Five (5) and Six (6) on the North and Lots Seven (7) and Eight (8) on the South, all in Block Three (3), Delhi, Iowa, according to plat recorded in Book A L.D., Pages 128-129.

And further including an easement for a gas station sign or any replacement thereof as provided in the Warranty Deed recorded in Book 2002, Page 629 to a portion of the following described real estate:

The North Thirty-Six (36) feet of Lots Five (5) and Six (6) in Block Three (3), Delhi, Iowa, according to plat recorded in Book A L.D., Pages 128-129.