

K-41155

TRUST DEED AND FIXTURES FILING

THIS TRUST DEED AND FIXTURES FILING, made this 16 day of March, 1989, between MID OIL COMPANY, an Oregon corporation KESEROB CORPORATION, an Oregon corporation, FRANKO OIL COMPANY, an Oregon corporation, and FRANKO INDUSTRIES, INC., an Oregon corporation, as their interests may appear, as Grantors, TICOR TITLE INSURANCE COMPANY, as Trustee, and CITIBANK, N.A., as Beneficiary,

W I T N E S S E T H:

Grantors irrevocably grant, bargain, sell and convey to Trustee in trust, with power of sale, the property described in Exhibit "A" attached hereto and incorporated herein by reference, together with all and singular the tenements, hereditaments and appurtenances and all other rights thereto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantors herein contained and payment of the sum of Six Million Two Hundred Thousand Dollars (\$6,200,000), with interest, pursuant to the terms of a promissory note (the "Term Note") executed by Grantors in connection with advances under a Credit Agreement, dated September 30, 1986 (the "Credit Agreement"), among Grantors and Beneficiary, to secure payment of any other sums which are or may become owing by virtue of the provisions of that note, or of any loan agreements or any other assignments or grants of rights with respect thereto, and also to secure payment of the sum of One Million Dollars (\$1,000,000) with interest, pursuant to the terms of a promissory note (the "Memorandum Note") executed by the Grantors in connection with advances under a Memorandum Agreement, of even date herewith (the "Memorandum Agreement"), among Grantors and Beneficiary, together with all costs as set forth therein. Grantors have provided the Beneficiary liens or other security interests in additional collateral to secure payment of the foregoing obligations.

In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the Grantors without first having obtained the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, shall become immediately due and payable.

To protect the security of this trust deed, Grantors agree:

1. To protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of said property.

2. To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the Beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the Beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all liens searches made by filing officers or searching agencies as may be reasonably requested by the Beneficiary.

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the Beneficiary may from time to time require, written by companies acceptable to the Beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the Beneficiary as soon as insured; if the Grantors shall fail for any reason to procure any such insurance and to deliver said policies to the Beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on said buildings, the Beneficiary may procure the same at Grantors' expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected, or any part thereof, may be released to Grantors. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to Beneficiary; should the Grantors fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantors, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the Memorandum Note secured

hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the Grantors, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the Beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation and Trustee's and attorneys' fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the Beneficiary's or Trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantors further agree to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorneys' fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Grantors in such proceedings, shall be paid to Beneficiary and applied by it first upon any reasonable costs and expenses and attorneys' fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and Grantors agree, at their own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request.

9. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of

this deed and the notes for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The Grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof, Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Each of the following shall constitute an Event of Default ("Default"): (i) one or more Events of Default (as defined in the Credit Agreement) shall occur pursuant to which Beneficiary may declare the Term Note, all interest thereon and all other amounts payable under the Credit Agreement due and payable (giving effect to Paragraph 12 of the Memorandum Agreement); (ii) the Grantors shall fail to pay any installment of principal of, or interest on, the Memorandum Note when due; (iii) any written representation or warranty made by Grantors (or any of its officers) under or in connection with the Memorandum Agreement, the Memorandum Note, this Deed of Trust or any other instrument or agreement entered into by Grantors pursuant thereto shall prove to have been incorrect in any material respect when made; (iv) Grantors shall fail to perform or observe any other term, covenant or agreement contained in the Memorandum Agreement, the Memorandum Note or this Deed of Trust on Grantors' part to be performed or observed and any such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to Grantors by Beneficiary; or (v) this Deed of Trust shall for any reason, except to the extent permitted by the terms hereof, cease to create a valid and perfected first priority security interest in any of the collateral purported to be covered hereby.

11. Upon occurrence of a Default, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

12. The entering upon and taking possession of said property, the collection of such rents, issues and profits, or

the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. Upon occurrence of a Default, the Beneficiary may declare all sums secured hereby immediately due and payable. In such an event the Beneficiary at his election may proceed to foreclose this trust deed in equity as a mortgage or direct the Trustee to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have, including the right to contemporaneously or thereafter judicially, or nonjudicially foreclose any other trust deeds, mortgages, security agreements or other consensual or nonconsensual security interests or liens covering any other real or personal security for the notes, bonds or other obligations secured by this trust deed. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded his written notice of default and his election to sell the said described real property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

14. After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the Trustee conducts the sale, the Grantors or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the Beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with Trustee's and attorneys' fees not exceeding the amounts provided by law.

15. Unless the default shall have been cured in accordance with Paragraph 14 hereof, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which said sale may be postponed as provided by law. The Trustee may sell said property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without

any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the Trustee, but including the Grantors and Beneficiary, may purchase at the sale.

16. When the Trustee sells pursuant to the powers provided herein, the Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the Grantors or their successor in interest entitled to such surplus.

17. Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor Trustee. Beneficiary shall provide Grantor notice of any such appointment.

18. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Grantors, Beneficiary or Trustee shall be a party unless such action or proceeding is brought by Trustee.

The Grantors covenant and agree to and with the Beneficiary and those claiming under it, that they are lawfully seized in fee simple of said described real property and have a valid title thereto, subject only to encumbrances previously disclosed to and approved by Beneficiary, and that they will warrant and forever defend the same against all persons whomsoever.

The Grantors warrant that the proceeds of the loan represented by the above described notes and this trust deed are for business or commercial purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether

or not named as a Beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

The interest rate, payment terms or balance due on the loan may be indexed, adjusted, renewed, or renegotiated without affecting the priority of any lien arising hereunder.

IN WITNESS WHEREOF, said Grantors has hereunto set their hands the day and year first above written.

MID OIL COMPANY, an Oregon corporation

By: W. C. Ch.
Its: _____

KESEROB CORPORATION, an Oregon corporation

By: W. C. Ch.
Its: _____

FRANKO OIL COMPANY, an Oregon corporation

By: W. C. Ch.
Its: _____

FRANKO INDUSTRIES, INC., an Oregon corporation

By: W. C. Ch.
Its: _____

GRANTORS:

Mid Oil Company
6600 SW 92nd, Suite 30
Portland, OR 97223

Franko Oil Company
6600 SW 92nd, Suite 30
Portland, OR 97223

Keserob Corporation
6600 SW 92nd, Suite 30
Portland, OR 97223

Franko Industries, Inc.
6600 SW 92nd, Suite 30
Portland, OR 97223

BENEFICIARY: Citibank, N.A.
 599 Lexington Avenue
 24th Floor
 Zone 21
 New York, NY 10043
 Attn: R. Bruce Hall, Vice President

STATE OF OREGON)
 County of Multnomah) ss.

On this 16th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared William R. Carlson, to me known to be the CEO of MID OIL COMPANY, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Sharon L. Krebs
 Notary Public for Oregon
 My Commission Expires: 7/27/90

STATE OF OREGON)
 County of Multnomah) ss.

On this 16th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared William R. Carlson, to me known to be the CEO of KESEROB CORPORATION, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Sharon L. Krebs
 Notary Public for Oregon
 My Commission Expires: 7/27/90

STATE OF OREGON

County of Multnomah) ss.

On this 16th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared William R. Corbin, to me known to be the CEO of FRANKO OIL COMPANY, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Sharon L. Krebs
Notary Public for Oregon
My Commission Expires: 7/27/90

STATE OF OREGON

County of Multnomah) ss.

On this 16th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared William R. Corbin, to me known to be the CEO of FRANKO INDUSTRIES, INC., that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Sharon L. Krebs
Notary Public for Oregon
My Commission Expires: 7/27/90

9 - TRUST DEED AND FIXTURES FILING
04/MSC/138

AFTER RECORDING, RETURN TO:
Carl R. Petersen
Bogle & Gates
The Bank of California Center
910 Fourth Avenue
Seattle, WA 98164

EXHIBIT "A"

PARCEL 1:

That portion of the SW1/4 of the NW1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, (being a part of Government Lots 1 and 5), lying East of the New Dalles-California Highway, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the iron pin which marks the Southeast corner of the SW1/4 of the NW1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, and running thence North along the 40 line a distance of 1320 feet to the Northeast corner of the SW1/4 of the NW1/4 of said Section 7; thence North 89° 59' West along the 40 line a distance of 709.8 feet to a point on the Easterly right of way line of the New Dalles-California Highway; thence South 11° 36' West along the Easterly right of way line of the New Dalles-California Highway to an iron pin which marks its intersection with the East-West quarter line of said Section 7; thence South 89° 49' East along the East-West quarter line a distance of 438.6 feet more or less, to the point of beginning.

EXCEPTING the following described tract:

Beginning at a point marked with a 1 inch iron pipe on the Easterly right of way boundary of the New Dalles-California Highway (U.S. 97) which point is 393.2 feet North and 519.0 feet West of the Southeast corner of said SW1/4 NW1/4 of said Section 7, said corner being marked with a 1/2 inch galvanized pipe; thence, North 11° 36' West along the said Easterly right of way boundary of said U.S. Highway 97 284.6 feet to a point on the same marked with a 1 inch pipe; thence North 78° 24' East 176.9 feet to a 1 inch pipe; thence South 8° 36' East 284.9 feet to a 1 inch pipe; thence South 78° 24' West 162.0 feet, more or less, to the point of beginning.

TOGETHER WITH that portion directly adjacent to the Easterly boundary line of the hereinabove described real estate, being a parcel of land 284.9 feet measured along the Westerly boundary of said tract and extending Easterly to the Easterly boundary of that portion of land owned by John P. Cavanagh and Alice Bailey Cavanagh described as a portion of SW1/4 NW1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, recorded in Volume 248 at page 325.

PARCEL 2:

A tract of land within that portion of the SW1/4 NW1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, described in Volume 248 at page 325 of Klamath County, Deed Records, in the County of Klamath, State of Oregon, said tract of land being more particularly described as follows:

Beginning at a point marked with a 1" iron pipe on the Easterly right of way boundary of the New Dalles-California Highway (U.S. 97) which point is 393.2 feet North and 519.0 feet West of the Southeast corner of said SW1/4 NW1/4 of said Section 7, said corner being marked with a 1/2" galvanized pipe; thence, North 11° 36' West along the said Easterly right of way boundary of said U.S. Highway 97 284.6 feet to a point on the same marked with a 1" pipe; thence North 78° 24' East 176.9 feet to a 1" pipe; thence South 8° 36' East 284.9 feet to a 1" pipe; thence South 78° 24' West 162.0 feet, more or less, to the point of beginning.

TOGETHER WITH that portion directly adjacent to the Easterly boundary line of the hereinabove described real estate, being a parcel of land 284.9 feet measured along the Westerly boundary of said tract and extending Easterly to the Easterly boundary of that portion of land owned by John P. Cavanagh and Alice Bailey Cavanagh described as a portion of the SW1/4 NW1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, recorded in Volume 248 at page 325 in the Deeds and Records of Klamath County, Oregon.

(Tax Account No. Code 190, Map 3809-7B0, Key No. 429049)

EXHIBIT "A"

All that portion of Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a point 16 feet West of a point 1317.36 feet West of the North quarter corner of Section 12, Township 41 South, Range 10 East of the Willamette Meridian; thence West 120 feet to the Northeast corner of property described in Book 176 at Page 513, Deed Records, recorded May 29, 1945; thence South to Lost River; thence Southeasterly following the North bank of Lost River to a point due South of the point of beginning; thence North to the point of beginning.

Tax Account No. Key No. 122959 Code 14, Map 4110-12BB

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 28th day
of March A.D., 19 89 at 11:36 o'clock AM., and duly recorded in Vol. M89,
of Mortgages on Page 5153.

FEE \$63.00

Evelyn Biehn County Clerk

By Pauline Mullendore