

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

Red Giant Oil Company

- Individual(s)       Association  
 Partnership       Limited Partnership  
 Corporation- State: Nebraska  
 Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance/Execution Date(s) :

Execution Date(s) April 6, 2016

- Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: MidCap Business Credit LLC

Street Address: 1701 S. 3rd Street

City: Council Bluffs

State: Iowa

Country: US Zip: 51503-6873

- Individual(s) Citizenship \_\_\_\_\_  
 Association Citizenship \_\_\_\_\_  
 Partnership Citizenship \_\_\_\_\_  
 Limited Partnership Citizenship \_\_\_\_\_  
 Corporation Citizenship \_\_\_\_\_  
 Other LLC Citizenship Nebraska

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s) 86/687,071 Text ROUND II

B. Trademark Registration No.(s) 4592614  
0584561

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Marlo Schepper Grolnic

Internal Address: Burns & Levinson LLP

Street Address: 125 Summer Street

City: Boston

State: MA Zip: 02110

Phone Number: (617) 345-3000

Docket Number: 48974.5

Email Address: mschepper@burnslev.com

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$90.00

- Authorized to be charged to deposit account  
 Enclosed

8. Payment Information:

Deposit Account Number 03-2410

Authorized User Name Marlo Schepper Grolnic

9. Signature: 

April 7, 2016

Signature

Date

Marlo Schepper Grolnic

Total number of pages including cover sheet, attachments, and document: 11

Name of Person Signing

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK

REEL: 005767 FRAME: 0688

CH \$90.00 032410 86687071

## PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this "Agreement"), dated as of April 6, 2016, is made by and between Red Giant Oil Company, a Nebraska corporation (the "Debtor"), having an address at 1701 S. 3<sup>rd</sup> Street, Council Bluffs, IA, and MidCap Business Credit LLC (the "Secured Party"), having a business location at 433 South Main Street, West Hartford, Connecticut 06110.

### Recitals

The Debtor and the Secured Party are parties to a Demand Loan and Security Agreement (All Assets) of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Loan Agreement") setting forth the terms on which the Secured Party may now or hereafter extend credit to or for the account of the Debtor.

As a condition to extending credit to or for the account of the Debtor, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Loan Agreement) which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Loan Agreement).

"Patents" means all of the Debtor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of the Debtor's right, title and interest in and to:  
(i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each,  
(ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, (iv) and licenses thereunder, all

as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of the Debtor. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. The Debtor represents, warrants and agrees as follows:

(a) **Existence; Authority.** Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of formation. This Agreement has been duly and validly authorized by all necessary organizational action on the part of the Debtor.

(b) **Patents.** Exhibit A accurately lists all Patents owned or controlled by the Debtor as of the date hereof, or to which the Debtor has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, the Debtor owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then the Debtor shall within 60 days provide written notice to the Secured Party with a replacement Exhibit A, which upon acceptance by the Secured Party shall become part of this Agreement.

(c) **Trademarks.** Exhibit B accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to the business(es) of the Debtor or any affiliate (as such term is defined in the Loan Agreement and hereinafter referred to as "Affiliate"). If after the date hereof, the Debtor owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to the Debtor's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then the Debtor shall promptly provide written notice to the Secured Party with a replacement Exhibit B, which upon acceptance by the Secured Party shall become part of this Agreement.

(d) **Affiliates.** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor,

constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then the Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or (ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a patent and trademark security agreement substantially in the form of this Agreement.

(e) **Title.** The Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. The Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** Except as permitted in the Loan Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(g) **Defense.** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing the Secured Party: (i) sufficient written notice, of at least 30 days, to allow the Secured Party to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of 10 calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may

reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the Default Rate.

(k) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (i) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations.

4. Debtor's Use of the Patents and Trademarks. The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Loan Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Loan Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. This Agreement or any financing statement signed by the Debtor may be transmitted by facsimile machine or by electronic mail in portable document format ("pdf") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. Any party delivering an executed counterpart of this Agreement or any financing statement signed by the Debtor by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability or binding effect hereof. This Agreement shall be governed by the internal law of the State of Connecticut without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

[CONTINUED ON THE FOLLOWING PAGE]

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.


IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

WITNESS:

  
\_\_\_\_\_

DEBTOR:

RED GIANT OIL COMPANY

By:   
Name: Sherryl Bills-Taylor  
Title: President

SECURED PARTY:

MIDCAP BUSINESS CREDIT LLC

By: \_\_\_\_\_  
Name: Steven A. Samson  
Title: President

[Signature Page to Patent and Trademark Security Agreement]

TRADEMARK

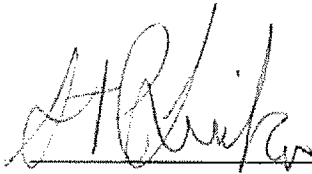
REEL: 005767 FRAME: 0694

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IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

WITNESS:

\_\_\_\_\_

  
\_\_\_\_\_

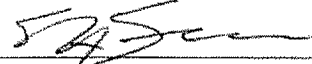
DEBTOR:

RED GIANT OIL COMPANY

By: \_\_\_\_\_  
Name: Sherryl Bills-Taylor  
Title: President

SECURED PARTY:

MIDCAP BUSINESS CREDIT LLC

By:   
Name: Steven A. Samson  
Title: President

[Signature Page to Patent and Trademark Security Agreement]

TRADEMARK

REEL: 005767 FRAME: 0695



EXHIBIT A

UNITED STATES ISSUED PATENTS

None.

UNITED STATES PATENT APPLICATIONS

None.

FOREIGN ISSUED PATENTS

None.

TRADEMARK

REEL: 005767 FRAME: 0696


## EXHIBIT B

## UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS

## AND COLLECTIVE MEMBERSHIP MARKS

## REGISTRATIONS

TM Record	TM/Disclaimer	Status/Key Dates	Brief Goods/Services	Owner	App. No./Reg. No.	Notes
US Federal Q1 uf 2	<u>RED GIANT</u>  <b>RED GIANT</b>	Registered August 26, 2014  Intl Class: 04 First Use: January, 1926  Filed: January 24, 2014 Application Published: June 10, 2014 Registered: August 26, 2014	(Intl Class: 04) Lubricating oils and greases	Red Giant Oil Company (Nebraska Corp.) P.O. Box 247 Council Bluffs Iowa 51502	RN: 4592614 SN: 86174090	A maintenance filing of an Affidavit of Use is due 8/26/20.
US Federal Q1 uf 3	<u>RED GIANT</u> and <u>Design</u>	Renewed January 12, 2014  Intl Class: 015 First Use: January, 1926  Filed: September 23, 1952	(Intl Class: 015) Lubricating oils and greases	Red Giant Oil Company (Nebraska Corp.) P.O. Box 247 Council Bluffs Iowa 51502	RN: 584561 SN: 71635662	The second renewal for this mark is due 1/12/24.

<b>TM Record</b>	<b>TM/Disclaimer</b>	<b>Status/Key Dates</b>	<b>Brief Goods/Services</b>	<b>Owner</b>	<b>App. No./Reg. No.</b>	<b>Notes</b>
		Application Published: October 13, 1953 Registered: January 12, 1954 Last Renewal: January 12, 2014				

## APPLICATIONS

<b>TM Record</b>	<b>TM/Disclaimer</b>	<b>Status/Key Dates</b>	<b>Brief Goods/Services</b>	<b>Owner</b>	<b>App. No./Reg. No.</b>	<b>Notes</b>
US Federal Q1 uf 1	<u>ROUND II</u>  <b>ROUND II</b>	Allowed - Intent to Use Notice of Allowance Issued March 29, 2016  Filed: July 8, 2015 Application Published: February 2, 2016	(Intl Class: 35) filling and gas station services, namely, retail gasoline and propane supply services; retail convenience store services	Red Giant Oil Company (Nebraska Corp.) 1701 South 3rd Street Council Bluffs Iowa 51503	SN: 86687071	A response to the Notice of Allowance must be filed by 9/29/16 or the mark will go abandoned.

COLLECTIVE MEMBERSHIP MARKS

None.

UNREGISTERED MARKS

None.