

UNOFFICIAL COPY



Doc#: 0912105041 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/01/2009 09:44 AM Pg: 1 of 18

MOTOR FUEL SUPPLY AGREEMENT

Property of Cook County Clerk's Office

Mail To:

Patrick A. Mitchell
3525 W. Peterson Suite 218
Chicago, IL 60659

File MPCO Niles

8465486cc / 09016937

18/8

BOX 334 CTR

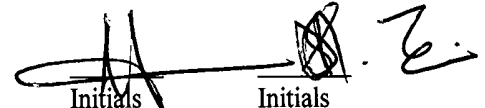
UNOFFICIAL COPY

MOTOR FUEL SUPPLY AGREEMENT MARATHON-BRANDED MOTOR FUELS

This Agreement is made on 4-22, 2007 (the "Effective Date") between COMBINED OIL COMPANY having its principal office at 100 Tri State International Drive, Suite 100, Lincolnshire, IL 60069, hereinafter called "Distributor", and YAM GAS, INC. DBA MARATHON and NIZAR Y. BHAYANI and SADRUDDIN BHAYANI, individually, having a motor fuels "Marketing Premises" located at 7145 W. Dempster Avenue, Niles, IL 60174, hereinafter called "Franchise Dealer."

RECITALS

1. Grant. By this Agreement, Distributor and Franchise Dealer establish a "Franchise" and "Franchise Relationship" as defined by the Petroleum Marketing Practices Act, 15 U.S.C. Sections 2801-2806 ("PMPA"). Distributor, under a Distributor PMPA Franchise Agreement with Marathon Ashland Petroleum LLC ("Marathon") has the right to grant to Franchise Dealer the use of certain Marathon owned proprietary marks. Subject to the terms and conditions of this Agreement, Distributor grants Franchise Dealer the right to use the "Marathon" mark and such other proprietary marks specified by Marathon, from time to time, for use in connection with the sale of Marathon-branded motor fuels ("Proprietary Marks") at the Marketing Premises. Franchise Dealer hereby agrees to comply with Marathon business standards and policies, including, without limitation Marathon's National Standards as amended and updated (including Minimum Acceptable Ratings, if any) and training requirements, as communicated by Distributor from time to time. FRANCHISE DEALER ACKNOWLEDGES THAT ITS FRANCHISE RELATIONSHIP IS EXCLUSIVELY WITH DISTRIBUTOR. NOTHING IN THIS AGREEMENT MAY BE CONSTRUED AS CREATING A FRANCHISE RELATIONSHIP BETWEEN FRANCHISE DEALER AND MARATHON.
2. Related Businesses. Distributor acknowledges that Franchise Dealer may wish to operate, during the term of this Agreement, additional businesses ("Related Businesses") at the Marketing Premises using either the Proprietary Marks specified by Marathon from time to time in connection with any such Related Businesses, Distributor's trademarks, Franchise Dealer's own trademarks or third party trademarks. Franchise Dealer acknowledges that the operation of the Related Businesses, whether branded with Proprietary Marks or other trademarks, impacts the customers' perception and acceptance of the Marathon-branded motor fuels and Proprietary Marks. Accordingly, Franchise Dealer may operate a Related Business at the Marketing Premises only in compliance with this Agreement and any and all requirements for that Related Business communicated by Distributor to Franchise Dealer from time to time. If Franchise Dealer fails to comply with this Agreement or any such requirements, and without limiting Distributor's other rights or remedies under applicable laws or under this Agreement or any related or supplemental agreement, including termination or non-renewal of this Agreement, Distributor may require Franchise Dealer to stop operating the Related Business and for Related Businesses bearing Proprietary Marks, or the Distributor's trademarks, may also withdraw its approval for the use of any such Proprietary Marks or trademarks. From the Effective Date, Franchise Dealer shall not operate any Related Businesses or other businesses or activities, or change, delete or add any Related Businesses or other businesses or activities at the Marketing Premises unless agreed in writing by the parties hereto.
3. Term. The term of this Agreement is for a fixed period of twenty (20) years, beginning on the date of execution of this agreement, unless terminated earlier in accordance with either this Agreement or the PMPA. This Agreement shall automatically renew upon expiration of the Initial Twenty-year Term for a successive twenty-year term (individually a "Renewal Term") unless no later than ninety (90) days prior to expiration of the Initial Term or any Renewal Term, either party provides written notice of non renewal to the other.
4. Products; Quantities.



 Initials Initials

UNOFFICIAL COPY

a. Distributor shall sell and Franchise Dealer shall purchase, and use good faith and best efforts to maximize the sale at the Marketing Premises, of the types and amounts of Marathon-branded motor fuels listed below, such quantities being subject always to any changes prescribed by government rules, regulations or orders or resulting from any plan of allocation by Marathon. The motor fuels purchased by Franchise Dealer from Distributor under this Agreement shall be for resale at the Marketing Premises only. Franchise Dealer agrees to purchase, receive and pay for the same on the terms and conditions herein stated. The quantity for each of the motor fuels listed below, or such other prescribed or allocated quantity, is the maximum volume Distributor is obligated to sell during any contract year ("contract year" meaning the twelve (12) months beginning on the Effective Date and each subsequent twelve (12) month period). The maximum volume of each type of Marathon-branded motor fuel that Distributor is obligated to offer to sell to Franchise Dealer in any contract year, or in any calendar month of such year, shall be referred to as the "Maximum Annual Volume" or the "Maximum Monthly Volume," respectively. The Maximum Monthly Volumes for the first contract year are set out below.


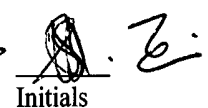
<u>Month</u>	<u>Gasoline</u> <u>Maximum Volume (gals)</u>	<u>Diesel</u> <u>Maximum Volume (gals)</u>
Month 1	60,000 75,000	
Month 2	60,000 "	
Month 3	60,000 "	
Month 4	60,000 "	
Month 5	60,000 "	
Month 6	60,000 "	
Month 7	60,000 "	
Month 8	60,000 "	
Month 9	60,000 "	
Month 10	60,000 "	
Month 11	60,000 "	
Month 12	60,000 "	

Maximum Annual Volume

b. For each month of the remaining contract years, the Maximum Monthly Volume for the current month shall be the greater of actual volume in the prior month or actual volume in the current month of the prior year purchased by Franchise Dealer from Distributor. The Maximum Annual Volume for the current contract year will be the sum of the Maximum Monthly Volumes in the current contract year.

c. In each contract year, Franchise Dealer must purchase from Distributor a minimum of eighty percent (80%) of the Maximum Annual Volume for Marathon-branded gasoline. Should Franchise Dealer fail, in any contract year, to purchase the aforementioned minimum volume of Marathon-branded gasoline, Distributor may terminate or non-renew this Agreement and the Franchise Relationship.

5. Price. Dealer shall pay supplier for each delivery of product hereunder at the price posted by Marathon for the source of supply for that day plus \$.015 per gallon, plus applicable taxes, freight and any additional delivery charges, if any, to Dealer's place of business. The one and one-half penny (\$.015) component of the purchase price may be adjusted at Combined's discretion but never decreased below one and one-half penny (\$.015) based upon changes in the Consumer's Price Index for All Urban Consumers, 1982-84 = 100, U.S. city average. All Items Component, non-seasonally adjusted, published by the Bureau of Labor Statistics of the U.S. Department of Labor, hereinafter referred to as the "Price Index." Unless otherwise

 Initials
 Initials

UNOFFICIAL COPY

specified, all prices are prior to taxes, and are subject to change by Distributor at any time and without notice. All prices are payable in cash in U.S. dollars at time of delivery, or other payment terms as Distributor may specify, except to the extent credit is extended on such terms and conditions as Distributor may determine in its sole discretion. At any time on notice to Franchise Dealer, Distributor may, without cause, suspend or withdraw any credit granted to Franchise Dealer. Cash discounts, if any, are not applicable to taxes, freight, or container charges.

6. Delivery.


- a. Tank Delivery. Unless otherwise agreed, delivery will be through tank truck into Franchise Dealer's storage tanks. Title and risk of loss shall pass as motor fuel is discharged from Distributor's tank truck and passes the truck flange.
- b. Rack Delivery. If parties agree that any delivery will be through loading rack into Franchise Dealer's transportation equipment at supply points designated by Distributor, title and risk shall pass as motor fuel passes the loading flange of the transportation equipment. Transportation from the supply points shall be paid by Franchise Dealer. Distributor reserves the right to change any supply point upon notice to Franchise Dealer.
- c. Terminal Access. If any delivery is at a storage terminal, Franchise Dealer shall comply with all operating and safety procedures of such terminal and shall execute and deliver to Distributor such agreements as may be required by Distributor or third party storage terminal owner from time to time in connection with Franchise Dealer's access to such terminal.

7. Payment and Security. Terms shall be not five (5) days with payment via electronic funds transfer after each load is delivered. All credit cards for Franchise Dealer must be processed through the Marathon credit card network. Credit cards received from Marathon will be applied against each invoice through the date of delivery of the product. If Dealer shall fail to make any payment when due, Distributor may suspend deliveries hereunder until such payment has been made but such suspension shall not be Distributor's sole remedy or otherwise limit Distributor's remedies and shall not relieve Dealer of its obligation to purchase Product hereunder. Dealer agrees to sign all financing statements and other security agreement of any kind required by Distributor (including renewals thereof) in order to secure payment of present and future indebtedness owed by Dealer to Distributor. Such indebtedness shall include but not be limited to, amounts owed for delivery of Product hereunder, credit card chargebacks, unpaid loan balances (including accrued interest thereon), and all other obligations due from Dealer to Distributor under the Agreement.

8. Personal Guaranty. The owner(s) of this Location shall execute personal guaranty in a form acceptable to Distributor covering all of Dealer's obligations under this Agreement, including, but not limited to, covering all damages, costs and liabilities of the dealer to the Distributor. This Personal Guaranty is attached hereto and incorporated herein as Schedule C.

9. Product Control.

- a. Franchise Dealer shall exercise the highest degree of care in handling, storing, selling and using the Marathon-branded motor fuel delivered to the Marketing Premises. Franchise Dealer shall not cause or allow any contamination, mixing, commingling, adulteration or otherwise change in the composition of any Marathon-branded motor fuel (including without limitation, the blending of such motor fuels with ethanol). Franchise Dealer shall not sell from the Marketing Premises Marathon-branded motor fuels that are contaminated or adulterated or fail to meet the fuel requirements under applicable law in effect at the time of delivery including, without limitation, requirements relating to octane, oxygen content, sulfur content, and all other regulated components or characteristics of a motor fuel or motor fuel additive, or unleaded gasoline requirements.



Initials


Initials

UNOFFICIAL COPY

Distributor may refuse to make deliveries into tank until in Distributor's judgment, quality problems are corrected.

- b. Access to Premises. Franchise Dealer grants Distributor and Marathon (including their employees, agents and contractors) the right to enter the Marketing Premises, or other properties of Franchise Dealer during normal business hours to examine the contents of Franchise Dealer's tanks, containers, drums, pumps and tanks of any delivery vehicles in which said motor fuels purchased hereunder are handled or stored. Distributor and Marathon (including their employees, agents and contractors) may obtain samples from any of the aforementioned equipment or property and may otherwise review all documents and records relating either directly or indirectly to Franchise Dealer's obligations under this Agreement.
10. Contingencies. Any delays in or failure of performance by Distributor shall not constitute default hereunder or give rise to any claims for damages if and to the extent that such delay or failure is caused:
- Because of compliance with any order, request, or control of any governmental authority; or
 - When the supply of motor fuel at any facility or the production, manufacture, storage, transportation, distribution or delivery contemplated by Distributor is interrupted, unavailable or inadequate for any reason or cause which Distributor determines is beyond its reasonable control when acting in good faith in the ordinary course of business.
11. Proprietary Marks.
- Franchise Dealer shall only use the Proprietary Marks designated and permitted by Marathon for Franchise Dealer's use and shall only use such marks to designate the origin of the Marathon-branded motor fuels and otherwise in the manner authorized and instructed by Distributor from time to time. Franchise Dealer agrees that motor fuels and petroleum products of others will not be sold by Franchise Dealer under such Proprietary Marks. If, in the sole opinion of Distributor, any samples taken by Distributor or Marathon under this Agreement are not Marathon-branded motor fuels and/or are not in the condition in which delivered by Distributor, or any documents and records reviewed by Distributor or Marathon show Franchise Dealer has failed to comply with its obligations hereunder, Distributor may, at its sole option, debrand the Marketing Premises in question or cancel and terminate this Agreement and the Franchise Relationship.
 - By written notice to Franchise Dealer, Distributor may withdraw its approval to: (i) brand the Marketing ("debrand") or (ii) use or operate any motor fuels business and/or Related Businesses at the Marketing Premises, if, in Distributor's sole judgment: (i) the Marketing Premises (or the motor fuels business and/or Related Businesses) fails to portray the image and standards expected from Marathon-branded retail outlets; or (ii) Franchise Dealer is in default of any obligation, condition, representation, or warranty under this Agreement or any related or supplemental agreement.
 - Potential Future Rebranding. The parties acknowledge that Dealer may desire that the Location be changed to another brand during the term of this Agreement. Accordingly, if Dealer requests Distributor to pursue another brand approval, Distributor and Dealer will both make good faith efforts to accomplish such rebranding or mutually acceptable terms and conditions under a new replacement Agreement. Without Distributor's consent (which consent may be withheld by Distributor in its sole discretion), Dealer shall not change the branding and logo of the Retail Petroleum Business from its current status. Dealer acknowledges that title to the Premises is burdened by a covenant ("Branding Covenant") in favor of Distributor prohibiting the sale on Premises of any petroleum products other than those supplied by Distributor. This will be placed on the title of the property at the expense of the Dealer. Dealer further acknowledges that Distributor will be financially damaged in the event of a breach of this Branding Covenant. If


Initials


Initials




UNOFFICIAL COPY


Distributor agrees to rebranding, any and all fees, costs, penalties, expenses, including attorney's fees and costs, will be borne by the dealer. If Distributor debrands the Marketing Premises, withdraws its approval to use or operate the motor fuels business and/or Related Businesses at the Marketing Premises, upon termination of this Agreement, or prior thereto upon demand by Distributor, Franchise Dealer shall discontinue the posting, mounting, display or other use of the Proprietary Marks, and any sign, poster, placard, plate, device or form of advertising matter whether or not received from Distributor, consisting in whole or in part of the name Marathon or any of the Proprietary Marks except only to the extent they appear as labels or identification of products still in the containers or packages designed and furnished by Marathon Distributor.


- d. Franchise Dealer agrees to take no action that will diminish or dilute the value of the Proprietary Marks. Franchise Dealer shall not sell non-Marathon branded motor fuels under any of the Proprietary Marks, including without limitation, any Marathon-identified canopy or at any fueling island where Franchise Dealer is selling Marathon-branded motor fuels. As used in this section, "non-Marathon branded motor fuels" shall not be construed to apply to gasohol or other synthetic motor fuels of similar usability, to the extent provided for in the Gasohol Competition Act of 1980, Pub. L. 96-493.
- e. Without affecting Franchise Dealer's obligations under this Section, if Franchise Dealer offers non-Marathon branded motor fuels at the Marketing Premises, Franchise Dealer agrees to protect the identity of the Marathon-branded motor fuels and the Proprietary Marks by all reasonable methods, which would prevent customer confusion or misinformation. Franchise Dealer agrees to conform to Marathon's de-identification requirements, as same may be revised from time to time, including but not limited to posting of Marathon approved signs which clearly distinguish the Marathon-branded motor fuels sold hereunder from non-Marathon branded motor fuels, disclaiming any product liability of Marathon for damage resulting from use of non-Marathon branded motor fuels, and removing or covering any signs which may mislead, confuse, or misinform any customers or reduce their goodwill toward the Proprietary Marks. In addition, Franchise Dealer shall conform to any additional steps, beyond the Marathon de-identification requirements, required by any applicable law, ordinance or regulation regarding the labeling of petroleum products.
- f. Except as otherwise expressly permitted, Franchise Dealer shall not use the Proprietary Marks as part of Franchise Dealer's corporate or other name.

12. Customer Service.

- a. Franchise Dealer shall ensure that its Marketing Premises meet the following minimum image requirements (unless such compliance will result in the Franchise Dealer being in breach of any federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits), failing which Franchise Dealer shall lose the right to use or display Proprietary Marks at any such Marketing Premises:
- (1) Paved driveways with safe and good ingress and egress; and
 - (2) Permanent building which is structurally sound and complies with all fire, building and zoning codes and ordinances; and
 - (3) Clean premises free of debris, trash, and fire hazards; and
 - (4) Modern restrooms for men and women available to the general public; and
 - (5) Offer three (3) grades of Marathon-branded motor fuels; and

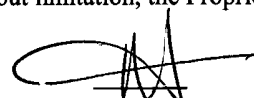

 Initials



 Initials



UNOFFICIAL COPY

- (6) Posting, at all times, of actual motor fuel prices, in numerals, in Marathon-approved price sign systems located on the Marketing Premises; and
- (7) Compliance with applicable standards as set forth by Marathon Ashland Petroleum LLC.
- b. While using any Proprietary Marks, Franchise Dealer agrees:
- (1) To render appropriate, prompt, efficient, and courteous service, at the Marketing Premises, to respond expeditiously to all customer complaints, making fair adjustment when appropriate, and otherwise conduct Franchise Dealer's business in a fair and ethical manner and maintain the Marketing Premises in a manner which will foster customer acceptance of and desire for the Marathon-branded motor fuels sold hereunder; and
- (2) To provide sufficiently qualified and neatly dressed personnel in uniform at the Marketing Premises as appropriate to render first class service to customers; and
- (3) To keep restrooms clean, orderly, sanitary and adequately furnished with restroom supplies; and
- (4) To assist in maintaining a high level of customer acceptance of Proprietary Marks by keeping the Marketing Premises open for dispensing of the Marathon-branded motor fuels during such hours, each day and days a week as are reasonable considering customer convenience, competitive conditions and economic consequences to Franchise Dealer.
- c. Franchise Dealer agrees that Distributor may revoke permission to display Proprietary Marks at the Marketing Premises which, after reasonable notice by Distributor to cure, continues to be in violation of this Section.
- d. Franchise Dealer shall not permit at the Marketing Premises:
- (1) Any consumption of intoxicating beverages in violation of applicable federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits; or
- (2) The sale or use of illegal drugs or drug paraphernalia; or
- (3) The sale of any pornographic material or other material that Distributor determines may be offensive to the general public.
- e. Franchise Dealer shall not permit at the Marketing Premises the illegal sale of any tobacco products, including without limitation, sales in violation of any federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits relating to youth access to tobacco products. Franchise Dealer shall promptly advise Distributor of any citations or notifications of violations received at the Marketing Premises from any regulatory authority resulting from any such tobacco sales and of the resolution of any such citations and notifications.
13. No Exclusive Marketing Rights.
This Agreement does not give Franchise Dealer an exclusive right in any market or geographic area to sell Marathon-branded motor fuel or conduct any of the Related Businesses. Franchise Dealer acknowledges that Distributor and Marathon may directly or indirectly compete with Franchise Dealer or the Marketing Premises by using, or authorizing the use of any trademark, tradenames and trade dress owned by Marathon (or any of its subsidiaries or affiliates) from time to time including, without limitation, the Proprietary

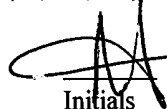

Initials



Initials

UNOFFICIAL COPY

Marks and Marathon trademark ("Trademarks"), including in close proximity to, and notwithstanding any commercial impact on the Marketing Premises. Specifically, Distributor reserves, and Marathon has reserved, the right to so compete by:

- a. Establishing or continuing at locations of their choice (including without limitation in close proximity to the Marketing Premises and notwithstanding commercial impact) other distributorships, businesses the same or similar in kind as the motor fuels business or Related Businesses, other retail outlets, franchises, enterprises and other businesses utilizing any of the Trademarks; or
 - b. Directly selling Marathon-branded motor fuels, other branded motor fuels or operating businesses the same or similar in kind as the motor fuels business or Related Businesses, other retail outlets, enterprises or other businesses at locations of their choice (including without limitation in close proximity to the Marketing Premises and notwithstanding commercial impact) utilizing any of the Trademarks.
14. **Equipment.** Franchise Dealer shall properly maintain in a safe condition all tanks, hoses and connections in or through which motor fuel is handled while under Franchise Dealer's control. Distributor may refuse to make delivery if it believes that any such tank, hose or connection is not safely maintained or does not comply with applicable safety standards.
15. **Compliance with Laws.** Franchise Dealer shall operate and maintain the Marketing Premises and all business conducted at the Marketing Premises, in compliance with all applicable federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits including those concerning the environment, hazardous substances or wastes, toxic substances, and occupational safety and health.
16. **Indemnity.** Franchise Dealer will defend, indemnify and hold Distributor, its successors and assigns, harmless against all losses, claims, causes of action, penalties, fines, liabilities, attorneys' fees and interest, arising out of Franchise Dealer's failure to comply with any provision of this agreement, and such failure by Franchise Dealer shall entitle Distributor to cancel this agreement immediately as it applies to the product(s) affected by such failure or other products which require the same standard of care.
17. **Insurance.**
- a. During the term of this Agreement, in addition to any other insurance or surety bonding required by applicable federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits, Franchise Dealer will carry and maintain in full force and effect, with companies satisfactory to Distributor, solely at Franchise Dealer's expense, and in a form satisfactory to Distributor and will name Distributor as an additional insured on all policies:
 - (1) Comprehensive/Commercial General Liability insurance including, but not limited to, coverage for the sale of motor fuel products and lubricants, operation of the business, retail motor fuel stores and the Marketing Premises, garage liability (if applicable), completed operations and contractual liabilities, with minimum policy limits of one million dollars (\$1,000,000) providing coverage for injury, death or property damage resulting from each occurrence. In the event Franchise Dealer has alcoholic beverages for sale at the Marketing Premises, the insurance policy will be endorsed to include coverage with minimum policy limits of one million dollars (\$1,000,000) for liabilities arising out of the dispensing or selling of alcoholic beverages including, without limitation, any liabilities imposed by a dram shop or alcoholic beverage control act.
 - (2) Business Auto Liability insurance coverage for operation of vehicles hired, owned or non-owned with minimum policy limits of one million dollars (\$1,000,000), including the



 Initials



 Initials

UNOFFICIAL COPY

MCS-90 endorsement or other acceptable evidence of financial responsibility as required by the Motor Carrier Act of 1980 and the Pollution Liability Broadened Coverage endorsement, providing coverage for injury, death or property damage resulting from each occurrence. Business Auto coverage with appropriate endorsements is required if any motor vehicles, including, without limitation, fuel delivery vehicles and tow vehicles, are used in the operation of any business at the Marketing Premises.

- (3) Garagekeepers Legal Liability insurance (if the Marketing Premises include service bays) including but not limited to, coverage for fire, theft, riot, vandalism and collision with limits of at least fifty thousand dollars (\$50,000) for each occurrence.
- (4) Workers Compensation and Employers Liability insurance for all Franchise Dealer's employees engaged in performing services or similar social insurance, where required by federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits which may be applicable to Franchise Dealer's employees with a waiver of subrogation and contribution against Distributor and/or Marathon where such waiver is permitted by such applicable federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits.
- (5) Environmental impairment insurance coverage with policy limits of at least one million dollars (\$1,000,000) on a continuous and uninterrupted basis insuring Franchise Dealer for environmental legal liabilities arising out of, but not limited to, the sale of motor fuel products and lubricants, ownership and operation of the business, retail motor fuel stores and the Marketing Premises.
- b. Franchise Dealer may meet its obligation for environmental impairment insurance coverage for underground storage tanks under Section 15(a)(5) by participation in an Environmental Protection Agency ("EPA") approved state financial assurance fund or other EPA-approved method to demonstrate financial responsibility or by satisfying any of the other financial assurance test requirements of the EPA's Financial Responsibility Regulations (40 CFR Part 280). Upon request by Distributor, Franchise Dealer shall promptly furnish Distributor with documentation satisfactory to Distributor evidencing:
- (1) Franchise Dealer's participation in a state approved financial assurance fund or other EPA approved method to demonstrate financial responsibility; or
- (2) Compliance with the EPA's financial assurance test requirements.
- If at any time Franchise Dealer ceases participating in an approved state financial assurance fund or other EPA approved method to demonstrate financial responsibility or stops meeting the EPA's financial assurance test requirements, Franchise Dealer promptly shall obtain the insurance required under Section 15(a)(5) and provide Distributor with evidence of insurance in accordance with Section 15(a)(5). The term "underground storage tank" includes all piping, lines and accessories connected to or made a part of a petroleum underground storage tank.
- c. Distributor may require Franchise Dealer to carry additional types and amounts of insurance coverage, including modifications to existing insurance under this Section, as Distributor considers reasonable in the circumstances.
- d. Each policy of insurance described in this Section shall name Distributor and Marathon Ashland Petroleum LLC as additional insured (except Workers Compensation and Employers Liability) and



Initials



Initials

UNOFFICIAL COPY

shall be primary as to all other policies that may provide coverage. Franchise Dealer shall pay all premiums and assessments charged for the insurance policy or policies when due. Each policy or policies shall provide that the liability coverage afforded applies separately to each insured against whom claim is brought as though a separate policy had been issued to each insured.



- e. Franchise Dealer shall comply with all policy terms and conditions and the directions of the insurance carrier, its ratings bureau and the National Fire Protection Association. Franchise Dealer shall bear all claims, losses or damages that are not recoverable from Franchise Dealer's insurers due to the application of a deductible clause or to Franchise Dealer's failure to observe the terms and conditions of the insurance coverage. Franchise Dealer shall indemnify and defend Distributor and Marathon for all these unrecoverable claims, losses or damages.
- f. Without limiting the general requirements of this Section, Distributor may reject any policies which contain deductibility clauses, conditions or exclusions, or that are underwritten by insurance companies, that are unacceptable in Distributor's sole determination. Upon rejection of a policy, Franchise Dealer promptly shall procure a policy with provisions and by an underwriter acceptable to Distributor. Distributor's receipt or acceptance of any policy or evidence of insurance is not a waiver by Distributor of any requirement under this Section or of its right to reject the policy as unacceptable and does not affect Franchise Dealer's liability for claims, losses or damages that are or would have been covered by Franchise Dealer's full compliance with this Section.
- g. During the term of this Agreement, each insurance policy and certificate of insurance of Franchise Dealer must specify the insurance will not be terminated, canceled or materially changed without ten (10) days' prior written notice to Distributor. If a policy or policies is/are terminated, canceled or materially changed, Franchise Dealer shall promptly, prior to the termination, cancellation or change of that policy, procure a new or substitute policy containing at least the same coverage as the previous policy. The new policy must begin coverage prior to the expiration of the previous policy or prior to the effective date of the material change as applicable.
- h. At any time upon request by Distributor, Franchise Dealer shall furnish certified copies of the required insurance policies, and/or certificates of insurance, specifying the types and amounts of coverage in effect, expiration dates, confirmation that each policy complies with the requirements of this Agreement.
- i. Without limiting any other remedy available to Distributor, including termination or non-renewal of this Agreement and the Franchise Relationship, Distributor may debrand the Marketing Premises that fails to comply with the provisions of this Section.
18. Technology and Communications. If required by Distributor in writing from time to time, Franchise Dealer shall comply with the following:
- a. Install and maintain in good operating condition and at Franchise Dealer's expense at the Marketing Premises:
- (1) A facsimile machine for sending and receiving written communications and distributor fax receipt showing fax was transmitted is evidence of proof of receipt by dealer.
 - (2) Equipment that allows access to the internet or other electronic-transmission or data communications systems designated by Distributor from time to time.
- b. Subscribe, at Franchise Dealer's expense, at the Marketing Premises to a voicemail system for transmitting and receiving telephonic communications.


 Initials


 Initials

UNOFFICIAL COPY

- c. Make other reasonable expenditures or investments to update equipment, technology and communications systems at the Marketing Premises, including without limitation, the addition, replacement or updating of point of purchase equipment, pump dispensing technology, credit and cash processing equipment and software.
19. Termination. Distributor may terminate or nonrenew this Agreement between Franchise Dealer and Distributor as follows:
- a. In accordance with the applicable provisions of the PMPA; or
 - b. Bankruptcy proceedings are instituted by or against Franchise Dealer; control of Franchise Dealer's business or assets pass by law or otherwise to any person or representative other than Franchise Dealer; or
 - c. Franchise Dealer is in breach of a provision under this Agreement; or
 - d. Franchise Dealer fails to timely pay obligations due Distributor under this Agreement; or
 - e. As otherwise set out in this Agreement.
20. Claims.
- a. Neither Distributor nor Marathon is liable to Franchise Dealer for shortages in quantity or quality unless Franchise Dealer notifies Distributor within 48 hours after delivery (or discovery in the case of latent defect for quality deficiencies). All other claims by Franchise Dealer against Distributor or Marathon including their affiliates and subsidiaries of any kind, whether or not arising out of this Agreement, are barred unless Franchise Dealer gives Distributor and/or Marathon, as the case may be, notice within ninety (90) days after the event, act or omission to which the claim relates. Whether or not Franchise Dealer provides timely notice of a claim, any claim by Franchise Dealer is barred unless asserted by the commencement of a lawsuit naming Distributor and/or Marathon as defendant in a court of competent jurisdiction within twelve (12) months after the event, act or omission to which the claim relates.
 - b. Franchise Dealer recognizes that, at any time during the term of this Agreement, any of the grades or brands of motor fuels sold hereunder or any of the Proprietary Marks may be changed, altered, amended or eliminated. Franchise Dealer also recognizes that, at any time during the term of this Agreement, the quality or specification of any of the motor fuels sold hereunder may be changed or altered. If any such change or alteration materially affects the performance of such motor fuels or the needs of Franchise Dealer therefor for the purposes intended by Franchise Dealer, Franchise Dealer may terminate this Agreement as to any such motor fuels so affected on thirty (30) days' prior written notice to Distributor. However, Franchise Dealer may not terminate this Agreement for any change in quality or specification of any said motor fuels resulting from compliance with federal, state, county or local laws, statutes, ordinances, codes, regulations, rules, orders, or permits. In the event that the manufacture of certain of the Marathon-branded motor fuels sold hereunder is discontinued, Distributor shall notify Franchise Dealer of such an event and this Agreement shall terminate as to such motor fuels when such notice is effective.
21. Contingencies. Distributor shall not be liable for loss, damage or demurrage due to any delay or failure in performance: a) because of compliance with any order, request or control of any governmental authority, or b) when the supply of Product at any facility or the production, manufacture, storage, transportation, distribution or delivery contemplated by Distributor is interrupted, unavailable or inadequate for any reason or cause which Distributor determines is beyond its reasonable control when acting in good faith in the ordinary course of business.

Initials
Initials

UNOFFICIAL COPY

22. Miscellaneous. Any assignment of this Agreement by Franchise Dealer without Distributor's written consent shall be void. Distributor's right to require strict performance shall not be affected by any previous waiver or course of dealing. Neither this Agreement nor any modification or waiver shall be binding on Distributor unless in writing signed by an authorized representative. Past performance shall not be deemed a waiver of this requirement. Notices shall be in writing and shall be delivered personally (to an officer or manager in the case of Distributor); sent by electronic facsimile or other electronic transmission; or, sent by certified or registered mail to the address specified above unless changed by notice. Notice by personal delivery, facsimile or other electronic transmission, or by certified or registered mail shall be deemed given when personally delivered, transmitted via facsimile or other electronic means with confirmation of completed and proper transmission, or when such notice is deposited in U. S. Mail. The date upon which the notice is deemed given hereunder shall be deemed the date of giving such notice, except of change of address, which must be received to be effective.
23. Quality Assurance. Franchise Dealer agrees to store, handle, sell and dispense unleaded gasoline in compliance with the procedures provided by Distributor from time to time.
24. Right of Entry. In addition to any other rights of Distributor under this Agreement, Franchise Dealer hereby permits Distributor, Marathon and their respective affiliates, employees, agents, vendors, contractors and representatives to enter, during normal operating hours, the Marketing Premises and other places where Franchise Dealer conducts any business covered by the terms of this Agreement, to audit, review, examine, inspect all records, books, documents, equipment, and property and to enforce any and all rights and remedies under this Agreement including taking action to preserve the integrity of the Proprietary Marks and determine Franchise Dealer's compliance with this Agreement. Neither Distributor nor Marathon is liable to Franchise Dealer for any interference with Franchise Dealer's business as a result of Distributor or Marathon entering the Marketing Premises and other places where Franchise Dealer conducts any business covered by the terms of this Agreement.
25. UCC Filings. Distributor is hereby granted the right to file a UCC financing statement in the office of the Secretary of State of Illinois and in the office of the Recorder of Deeds of the County where the Marketing Premises is located.
26. Bond. At any time during the term of this Agreement, Distributor may purchase a \$25,000 Fuel Distributor's bond as security against funds due to Distributor by Franchise Dealer. The cost of the bond shall be paid to Distributor by the Franchise Dealer within thirty (30) days of the receipt of a written request for payment. Franchise Dealer's failure to pay the amount requested within the thirty (30) day period shall be a default under the terms of this agreement.
27. Notice. Each payment, request or notice required or permitted to be given hereunder shall be deemed properly given and served upon the earlier to occur of actual receipt or three (3) days following deposit, postage prepaid, Registered or Certified, return receipt requested, in the United States mail or, in lieu of such mailing, any such demands, requests or notices may be personally served upon Dealer or Distributor, and if to Dealer, addressed to the Location, and if to Supplier, addressed to 100 Tri State International Drive, Suite 100, Lincolnshire, IL 60069.
28. Waiver. Time is of the essence hereof. The waiver of any breach shall not be deemed to be a waiver of any other or subsequent breach of any of the same or any other provision hereof.
29. Governmental Laws and Regulations. This Agreement may be modified or superseded by any and all governmental laws and regulations enacted subsequent hereto, pertaining to energy allocation and conservation. However, hardships and forfeitures shall not be enforced between the parties as a result.


 Initials


 Initials

UNOFFICIAL COPY

30. Remedies. The Distributor will be entitled to enforce its rights under this Agreement specifically, to recover damages by reason of breach of any provision of this Agreement by the dealer and to exercise all other rights existing in its favor. In any breach of this agreement by the dealer, the Distributor shall be entitled to reasonable attorney's fees and costs associated in any way in the enforcement. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that the Supplier may, in its sole discretion, apply to any court of law or equity of competent jurisdiction for specific performance or injunctive relief (without the necessity of posting bond) in order to enforce or prevent any violations of the provisions of this Agreement. Without limiting the generality of the foregoing, in the event of a default by the dealer, the Supplier, at its option, may (a) terminate this Agreement; (b) suspend deliveries of Product to the Location; (c) suspend payment of sums otherwise due to Dealer under the Agreement; and/or (d) enter the Location and remove all signage and image identification at the Location. In addition, the Distributor will be compensated by the dealer based on the damages as outlined on Schedule A attached hereto and incorporated fully.
31. Assignment. This Agreement shall not be assigned, sold, revised, or encumbered by Dealer or by operation of law (and any attempt to do so shall be void) without Supplier's prior written consent. Except as limited by the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, their representatives, successors and assigns.
32. Distributor must be notified in writing fifteen (15) days prior to any proposed change in ownership Any proposed new owner must submit a Personal Guaranty to distributor and agrees to assume all current liabilities and contractual obligations of current dealer, subject to approval by the Supplier.
33. Relationship. The relationship between Distributor and Dealer is that of independent contractors. Neither party hereto, its agents or employees, shall, under any circumstances, be deemed partners, employees, agents or representatives of the other. Neither party shall have the right to enter into any contract or commitment in the name of the other party, or to otherwise bind the other party.
34. Governing Law. Except to the extent governed by applicable federal law, this Agreement shall be interpreted, construed and governed by the laws of the State of Illinois without regard to any conflict of law provisions. Venue for all disputes is Cook County, Chicago, Illinois any dispute arising out of this agreement shall be litigated in Cook County, Illinois.
35. Complete Agreement. This Agreement: (a) contains all the understandings and representations between the parties relating to the matters referred to herein; (b) supersedes any and all arrangements previously entered into between them with respect thereto; and (c) may be amended or modified only by a written supplement, duly executed by each of the parties.

SCHEDULES A, B AND C ARE ATTACHED HERETO AND MADE A PART HEREOF.

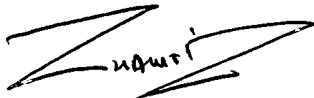

 Initials
 
 Initials
 

UNOFFICIAL COPY

EXECUTED as of the date first herein specified.

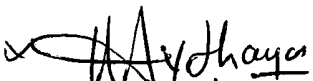
WITNESS:

COMBINED OIL COMPANY
DISTRIBUTOR

By: 
Title: ZAHED HAWSA. (SECRETARY)


WITNESS:

NIZAR BHAYANI
Name of Franchise Dealer (printed)



By: 
Title: President

WITNESS:

SADRUDDIN BHAYANI
Name of Franchise Dealer (printed)

By: 
Title: Vice-President

Property of Cook County Clerk's Office

 Initials  Initials

UNOFFICIAL COPY

SCHEDULE A

DAMAGES




Franchise Dealer agrees to purchase its fuel requirements from Distributor for a period commencing at the effective date and continuing for twenty (20) years. In the event Franchise Dealer fails to purchase its fuel requirements from Distributor, as provided in paragraph 4. Products: Quantities, Franchise Dealer agrees to pay to Distributor as damages the amount calculated as follows:

Average monthly Motor Fuel Petroleum Sales (in gallons) by Dealer over the proceeding twelve (12) months X \$.02 (two cents) per gallon X remaining number of months in the Term of this Agreement.

Plus

All damages incurred by, including attorney's fees and costs, or reimbursements due by, Distributor to any Manufacturer/Supplier as a result of the failure to comply with the sales volume or other terms or requirements of any then applicable Manufacturer/Supplier Brand Imaging Program.

Property of Cook County Clerk's Office


Initials 
Initials 

UNOFFICIAL COPY


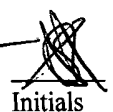

SCHEDULE B

SHORTFALL PENALTY AND REBATE

Dealer has agreed to purchase 60,000 gallons per month from Distributor. Should volume drop below an annualized volume of 50,000 gallons per month, Distributor will assess a volume shortfall penalty of \$.02/gallon on the difference between actual gallons purchased and the minimum annual volume commitment of 600,000 gallons. Shortfall calculations will be made annually in January for the preceding year.

Dealer will receive a Volume Incentive Payment, paid quarterly, for gasoline purchased from Distributor based upon Marathon's standard rebate program chosen by Dealer. Dealer is aware that Marathon has a 50,000 gallon per month minimum volume requirement to qualify for the Volume Incentive Payment. Dealer understands that a minimum score of 80% on the Mystery Shop inspection is required to qualify for rebate funds. Should Dealer consistently fail the Mystery Shop inspections, Dealer agrees that Combined Oil may cure the problem and invoice the dealer for all expenses incurred by Combined Oil on behalf of Liberty Gas, Inc.

Dealer further understands that the station must remain branded for twenty (20) years from the time Volume Incentive payments begin in order to amortize the payments received. Should dealer debrand the site prior to the end of the twenty (20) year amortization period, dealer is required to reimburse Distributor for all unamortized funds received from Marathon.


 Initials
 
 Initials
 

UNOFFICIAL COPY

**COMBINED OIL
COMPANY INC.**

SCHEDULE C**PERSONAL GUARANTY**


I, NIZAR Y. BHAYANI and SADRUDDIN BHAYANI, for and in consideration of Combined Oil Company extending credit to YAM GAS, INC. DBA MARATHON, (the "Company") personally guarantee prompt payment of any and all obligations, including but not limited to any and all contractual or obligations of the company to Combined Oil Company whether now existing or hereinafter incurred, and I further agree to bind myself to pay on demand any sum which is due by the Company to Combined Oil Company. It is understood that this guaranty shall be an absolute, continuing and irrevocable guaranty for such indebtedness of the Company.


I expressly waive presentment, demand, protest, dishonor, diligence, notice of default or nonpayment, notice of acceptance of this guaranty, notice of the extending of any guaranteed indebtedness already or hereafter contracted for by the Company, notice of any modification or renewal of any credit agreement evidencing the indebtedness hereby guaranteed, notice of any renewal or extension of such indebtedness, and I expressly consent to any modification or renewal of any credit agreement evidencing the indebtedness hereby guaranteed and to all renewals or extensions of such indebtedness. I further waive any right to require Seller to proceed against, or make any effort at collection of the guaranteed indebtedness from, the Company or any other party liable for such indebtedness.

If the guaranteed indebtedness is not paid by me when due, and this guaranty is placed in the hands of an attorney for collection, or suit is brought hereon, or it is enforced through any judicial proceeding whatsoever, I shall pay all reasonable attorney's fees and costs, including but not limited to court costs incurred by Combined Oil Company in any way related to the enforcement of this Guaranty.

In the event that more than one party executes this Guaranty as a guarantor, then each guarantor agrees to be jointly and severally liable for the guaranteed indebtedness, and, in all instances herein, the singular shall be construed to include the plural.

<p><input checked="" type="checkbox"/> _____ Witness</p> <p>_____</p> <p>Date</p>	<p><input checked="" type="checkbox"/> _____ Guarantor</p> <p>7145 W. Dempster Street</p> <p>Niles, IL 60714 City, State & Zip</p> <p>04-22-09 Date</p>
<p><input checked="" type="checkbox"/> _____ Witness</p> <p>_____</p> <p>Date</p>	<p><input checked="" type="checkbox"/> _____ Guarantor</p> <p>7145 Dempster Street</p> <p>Niles IL 60714 City, State & Zip</p> <p>04/22/09 Date</p>


Initials


Initials



