



**EXHIBIT A
TO THE FRANCHISE OFFERING CIRCULAR**

**FRANCHISE AGREEMENT WITH INDEX AND OWNER'S GUARANTY
AND ASSUMPTION OF CORPORATE OBLIGATIONS**

1ST PROPANE® FRANCHISING, INC.

FRANCHISE AGREEMENT

Franchisee

Location

Date of Agreement

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. INTRODUCTION, DEFINITIONS, AND PRELIMINARY AGREEMENTS	1
1.1 Introduction	1
1.2 Definitions	1
2. GRANT OF FRANCHISE	2
2.1 Grant of Franchise; Term, Your Basic Commitment	2
2.2 Territory	3
3. DEVELOPMENT AND OPENING OF YOUR 1ST PROPANE® FRANCHISE	3
3.1 Site Selection	3
3.2 Lease of Office/Yard	4
3.3 1st Propane® Design Specifications	5
3.4 Development Schedule of Your 1st Propane® Franchise	5
3.5 Equipment, Fixtures, Vehicles, Signs	5
3.6 1st Propane® Franchise Opening	6
3.7 Grand Opening Program	6
3.8 Relocation of 1st Propane® Franchise Office/Yard	6
3.9 Assistance in Financing	6
3.10 Assistance with Obtaining Liability Insurance	6
4. COMPUTER HARDWARE AND SOFTWARE SYSTEMS	6
5. TRAINING, GUIDANCE AND MANUALS	7
5.1 Initial Training Program	7
5.2 Guidance and Assistance	8
5.3 Manuals	9
5.4 Marketing Assistance	9
5.5 Accounting Services	9
6. MARKS	9
6.1 Goodwill and Ownership of Marks	9
6.2 Limitations and Use of Marks	10
6.3 Notification of Infringements and Claims	10
6.4 Discontinuance of Use of Marks	10
7. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION	10
7.1 Independent Contractor	10
7.2 No Liability for Acts of Other Party	11
7.3 Taxes	11
7.4 Responsibility, Indemnity	11

Section

Page

8.	CONFIDENTIAL INFORMATION; EXCLUSIVE RELATIONSHIP	11
8.1	Confidential Information - Non-Disclosure and Non-Use.....	11
8.2	Exclusive Relationship, Restrictions on Similar Businesses During Franchise Term and After Termination, Expiration, Repurchase, etc.....	12
9.	FEES	14
9.1	Initial Franchise Fee	14
9.2	Royalty - Percentage and Minimum, Payment Dates.....	14
9.3	Definition of "Gross Volume"	14
9.4	Electronic Funds Transfer	14
9.5	Late Payments and/or Reports	15
9.6	Application of Payments, Set-Offs, etc.	15
9.7	Inflation Adjustments	15
9.8	U.S. Dollars	15
10.	1ST PROPANE® FRANCHISE — IMAGE AND OPERATION	15
10.1	Condition and Appearance of Your 1st Propane® Franchise, Periodic Upgrading	15
10.2	Designated Equipment, Products Services and/or Suppliers	16
10.3	Specifications, Standards and Operating Procedures	16
10.4	Compliance with Laws and Ethical Business Practices	17
10.5	Management and Personnel of Your 1st Propane® Franchise, Training.....	17
10.6	Insurance	18
10.7	Franchisee Advisory Council(s)	18
10.8	Program Participation.....	18
10.9	Continued Payment of Royalties and Other Obligations During Closure	18
11.	MARKETING	19
11.1	Marketing Fund.....	19
11.2	Local Store Marketing.....	21
11.3	By Franchisee Association(s)	21
12.	REPORTS AND FINANCIAL STATEMENTS	22
13.	ANNUAL IN-PERSON REVIEW, INSPECTIONS AND AUDITS	22
13.1	In-Person Review.....	22
13.2	Our Inspections	22
13.3	Financial Audit.....	23
13.4	Other Audits	23
14.	TRANSFER	23
14.1	Transfers by Us	23
14.2	Transfers by You	24
14.3	Conditions for Approval of ANY Transfer by Franchisee.....	24
14.4	Additional Conditions for Transfer to a Wholly-Owned Corporation	26
14.5	Death or Disability of Franchisee	28
14.6	Effect of Consent to Transfer.....	28
14.7	Our Right-of-First-Refusal.....	28

Section

Page

15.	SUCCESSOR FRANCHISE	29
15.1	Your Rights.....	29
15.2	Your Obligations.....	29
16.	TERMINATION OF THE FRANCHISE	31
16.1	Defaults with No Right to Cure.....	31
16.2	Defaults with Right to Cure.....	32
16.3	Repeated Defaults.....	34
16.4	Cross-Defaults, Non-Exclusive Remedies.....	34
16.5	No Equity on Termination.....	35
16.6	Extended Cure Period.....	35
16.7	System Compliance Review.....	35
16.8	Management of the 1st Propane® Franchise After Issuance of Notice of Default.....	35
16.9	Our Right to Discontinue Supplying Materials/Services/Programs Upon Default.....	37
16.10	Prompt Notice of Claims by You.....	
16.11	Our Option to Purchase Assets.....	
17.	RIGHTS AND OBLIGATIONS ON REPURCHASE, TERMINATION AND/OR EXPIRATION OF THE FRANCHISE OR OTHERWISE	35
17.1	Termination of Rights and Obligations, Payments of Amounts Owed.....	35
17.2	Marks and Trade Dress, Customer Lists and Accounts, Telephone and Other Directory Listings, Internet Sites.....	36
17.3	Confidential Information.....	37
17.4	Covenant Not to Compete.....	37
17.5	Continuing Obligations.....	37
17.6	Execution of Release on Default.....	37
18.	GRANT OF SECURITY INTEREST	38
19.	DISPUTE AVOIDANCE AND RESOLUTION	38
19.1	MEDIATION AND MANDATORY BINDING ARBITRATION, WAIVER OF RIGHT TO TRIAL BY JURY	38
19.2	Exclusive Jurisdiction and Venue.....	40
19.3	Terms Applicable to All Proceedings, Waiver of Trial By Jury, Class Action Rights.....	41
19.4	Limitations on Damages and/or Remedies, Waiver of Punitive Damages, etc.....	41
19.5	Periods in Which to Make Claims.....	41
19.6	Survival of Obligations.....	41
19.7	Costs and Attorneys' Fees.....	42
19.8	Binding Effect, Modification.....	42
19.9	Our Exercise of "Business Judgment" and/or Meaning of "Sole Discretion"; Express Agreement.....	42
19.10	Construction.....	42
19.11	Non-Retention of Funds.....	43
19.12	Severability; Substitution of Valid Provisions.....	43
19.13	Waivers; Cumulative Rights.....	43
19.14	Choice of Laws.....	43
19.15	Application of Agreement to Parties and Others; Joint and Several Liability.....	43
19.16	Fundamental Business Intention to Mediate and/or Arbitrate, Severability of Dispute.....	

	Resolution Provisions, Federal Arbitration Act Governs, etc.....	44
20.	NOTICES AND PAYMENTS	44

<u>Section</u>		<u>Page</u>
21.	ACKNOWLEDGMENTS AND REPRESENTATIONS, ENTIRE AGREEMENT, NO FIDUCIARY RELATIONSHIP.	44
	OWNER'S GUARANTY AND ASSUMPTION OF CORPORATE FRANCHISEE'S OBLIGATIONS.....	47
	EXHIBIT 2.2 — TERRITORY.....	49
	EXHIBIT 17.2 — POWER OF ATTORNEY.....	
	EXHIBIT 3.2 — COLLATERAL ASSIGNMENT OF LEASE.....	51

**1st Propane Franchising, Inc.
Franchise Agreement**

This Franchise Agreement (the agreement) is made between 1st Propane Franchising Inc., a California corporation, and

1. INTRODUCTION, DEFINITIONS, AND PRELIMINARY AGREEMENTS.

1.1 Introduction. We've developed, and plan to continue to develop, methods of operating businesses which provide retail distribution of propane gas in bulk, and certain related and other products and services, including installation of distribution and other facilities. These businesses, referred to in this Agreement as "1st Propane® Franchise," operate at locations that feature a distinctive format and method of doing business, including color scheme, signs, equipment, layouts, systems, methods, procedures, designs and marketing and advertising standards and formats (the "1st Propane® System" or "System"), any element of which we can modify from time-to-time in our sole and absolute discretion and with which you'll promptly comply. We may own and operate, and selectively award franchises for others to own and operate, 1st Propane® outlets using the 1st Propane® System and the Marks (as defined below). You've applied for a franchise to own and operate a 1st Propane® Franchise at the Office/Yard (as defined below) and your application has been approved by us in reliance on all of the representations made in your application.

1.2 Definitions. For purposes of this Franchise Agreement, the following terms have the meanings listed below. Other terms used in this Agreement are defined and construed in the context in which they occur.

"1st Propane® Franchise" - The 1st Propane® Franchise, providing retail distribution of propane gas in bulk, and certain related and other products and services, including installation and service, in the Territory only, of storage, distribution and other facilities, which you're franchised to operate pursuant to this Agreement.

"Affiliate" - Any person, company or other entity which controls, is controlled by or is under common control with another person, company or other entity.

"Agreement" - This Franchise Agreement.

"Designated Equipment" - Equipment that meets our requirements and is to be obtained and used by you in the operation of your 1st Propane® Franchise, including all tanks, vehicles, storage and other equipment used by you in connection with your 1st Propane® Franchise.

"Franchise" - The right to operate a single 1st Propane® Franchise at the Office/Yard pursuant to the terms and conditions of this Agreement.

"Franchisor" - 1st Propane Franchising, Inc.

"Franchisor-Related Persons/Entities" - 1st Propane Franchising, Inc., its shareholders, officers, directors, agents, attorneys, accountants, and/or employees and/or any Affiliate and/or otherwise affiliated companies and/or persons, and each of their respective partners, shareholders, officers, directors, agents, attorneys, accountants, and/or employees, as well as any company(ies)/person(s) acting by, through, under or in concert or affiliated or associated in any way with any of the foregoing.

"General Release" - A general release, in form prescribed by us, of any and all claims, liabilities and/or obligations, of any nature whatsoever, including (but not limited to) all those arising prior to the date of any such release, however arising, known or unknown, whether against us and/or any or all of the Franchisor-Related Persons/Entities.

“Manuals” - One or more handbooks, manuals, bulletins and/or volumes, other written materials (including materials distributed electronically or otherwise), and video, audio and/or software media, regardless of title, containing (among other things) specifications, standards, policies and procedures prescribed from time-to-time by us and to be followed by you in connection with your operation of a 1st Propane® Franchise and your performance under this Agreement. The Manuals include all changes and supplements issued by us in the future, each of which you'll promptly comply with.

“Marks” - The trademarks, service marks and other commercial symbols now and/or in the future owned by us and which we designate, from time-to-time, to be used to identify the services and/or products offered by 1st Propane® Franchises, including (but not limited to) the marks “1st Propane®”, “1st Propane First in Service®,” the Trade Dress and certain associated logos.

“Office/Yard” - The location at which you will operate your 1st Propane® Franchise and as accepted by us pursuant to this Agreement, including (but not limited to) any storage and/or distribution facilities used by you.

“Products” and “Services” - Products and services designated by us from time-to-time for use, sale, lease, rental or to be otherwise used and/or provided at or from your 1st Propane® Franchise, and/or in association with the Marks.

“Proprietary Software” - Software owned and/or developed by us (or which is otherwise not generally available to the public and which we have the right to distribute to 1st Propane® Franchisees), and which is specified by us from time-to-time for mandatory or optional use in a 1st Propane® Franchise, including (but not limited to) “PLATO.”

“Repurchase” - Repurchase includes (but is not limited to) any acquisition by us (and/or any of the Franchisor-Related Persons/Entities), whether by exercise of right-of-first-refusal or otherwise, of any of your rights in and/or to any of the following: (1) this Agreement; (2) the Franchise; (3) the ownership of the Franchisee; (4) your 1st Propane® Franchise; or (5) any assets associated with any of the foregoing.

“Similar Business” - Any business offering or involved with, whether at wholesale, retail or otherwise, retail or wholesale distribution of propane gas in bulk, and/or related products and services, including installation of storage, distribution and other facilities, or similar products or services, whether by sales, rental or other distribution means, including any business awarding franchises or licenses to others to operate or be involved with such products, as well as any business that offers, sells, distributes, provides or is otherwise involved or deals with goods and/or services which may be authorized by us in the future to be offered by 1st Propane® Franchises.

“Territory” - The geographical area described in Exhibit 2.2.

“Trade Dress” - The 1st Propane® Franchise design and image developed and owned by us and used by 1st Propane® Franchises, as it currently exists and as it may be further developed and revised by us from time-to-time in our sole and absolute discretion.

“Us,” “We,” “Our,” “the Company” or “Franchisor” - 1st Propane Franchising, Inc., a California corporation.

“You,” “Your” or “Franchisee” - The individual(s) signing this Agreement as Franchisee. (If there's more than one Franchisee, each is jointly and severally obligated under this Agreement and all other agreements with us.)

2. GRANT OF FRANCHISE.

2.1 Grant of Franchise; Term, Your Basic Commitment. We're pleased to award you a franchise to operate a retail 1st Propane® Franchise to be operated in the Territory only, and to use the Marks and the 1st Propane® System in the operation thereof, for a term of ten (10) years, commencing on the date of this Agreement. All facilities involved with your 1st Propane® Franchise must be located in the Territory, you're only allowed to service sites located in the Territory and you won't use the Marks or System outside the Territory or for any purpose other than the operation of a franchised 1st Propane®

outlet in good standing and full compliance with the System and the Manuals as we may change them from time-to-time. You will only provide and distribute Products and Services at retail and will not engage in any wholesale business activities.

This grant of franchise is for the operation of only one office/yard within the territory.

You will at all times faithfully, honestly and diligently perform your obligations hereunder, and you will continuously exert your best efforts to promote, enhance and maximize the business of your 1st Propane® Franchise and the goodwill of the Marks.

2.2 Territory. During the term of this Agreement, we will not enter into a Franchise Agreement licensing a 1st Propane® Franchise, or open a 1st Propane® outlet owned by us, to service sites located inside the area (the "Territory") described on Exhibit "2.2," provided that you (and each affiliate of yours) are not and have not been in default under any of your covenants, obligations and/or agreements under this Agreement and/or other agreement with us or any affiliate of ours and, in any event, subject to our rights as set forth in this Agreement, including the provisions of this Section.

Other than as expressly provided above, you do not have any "exclusive territory" or any "exclusive," "protected" or "reserved" territorial or other rights or expectations, no such rights are granted or will be inferred and there is, and will be, no limitation of any type on our rights to locate and/or consent to the location of other 1st Propane® Franchises or other distribution facilities of any type at any location, regardless of the distance from, impact on, or vicinity of, your 1st Propane® Franchise or the number of 1st Propane® Franchises or other outlets in an area or market. In any event, and notwithstanding anything else in this Franchise Agreement or otherwise, we (and/or those we appoint) can own and/or operate ourselves or authorize others to own and/or operate (1) 1st Propane® outlets servicing sites located outside the Territory using the Marks and/or System and (2) any business located anywhere, whether using the Marks and/or 1st Propane® System or not, which is not substantially similar to and/or competitive with the business franchised to you under this Agreement.

In any event, we can acquire or be acquired, or engage in any other transaction with other businesses, with units located anywhere (including in the Territory), under any other format. We or any affiliate may be acquired and/or our company-owned or other businesses may be converted to another format, maintained as a new concept, or maintained as a separate concept. Units in the Territory may not be converted by us to the 1st Propane® format (and using the Marks and/or 1st Propane® System). Any company acquiring us may exercise any of our rights under this agreement.

If you are subject to termination, or have failed to meet the performance standards set forth in Section 16.2, we may, in our sole and absolute discretion, reduce, eliminate or otherwise modify your territorial rights. You will not use the Marks and/or System, or operate your 1st Propane® Franchise outside the Territory without our prior written consent, which we may withhold or condition in our sole and absolute discretion.

3. DEVELOPMENT AND OPENING OF YOUR 1st PROPANE® FRANCHISE

3.1 Site Selection. The Franchisee will not operate a 1st Propane® Franchise and/or use any of the Marks, from or at any location (nor will the Franchisee relocate a 1st Propane® Franchise) until and unless we have received, reviewed and accepted the Franchisee's completed application, checklist and engineered plans for such location and all related facilities.

We may, as a courtesy, assist the Franchisee in evaluating or negotiating any lease (or other documents or arrangements) or otherwise assist the Franchisee to select and obtain a site and/or related facilities by providing consultation, evaluation and/or otherwise (including providing references to potential contractors, real estate agents, site selection specialists and other professionals, some of whom may be affiliated and/or associated with the Franchisor), we strongly recommend that the Franchisee have all matters related to the site and related facilities reviewed by the Franchisee's own attorney, real estate broker, architect, civil engineer, contractor and other independent professionals. Acceptance by us of any site is no assurance that such site will be successful.

We will make available to the Franchisee standard propane facility plans and specifications to be utilized in the construction or otherwise of a 1st Propane® Franchise and/or any related facilities. The Franchisee will obtain, at his sole expense, for our review and acceptance, all further qualified architectural and engineering services to provide plans and specifications and/or adapt any plans and specifications to the Franchisee's location. The Franchisee is responsible for providing all direct and indirect related reports, studies, applications, permits and fees and for compliance with all applicable federal, state and local laws, regulations, codes and ordinances and the authorities having jurisdiction.

We may (but are not obligated to) agree to provide the Franchisee with customized site specific designs and/or other services but any such agreement (1) will be the subject of a separate written contract between the Franchisee and us (or our affiliate), (2) will be under separate terms and conditions, including the payment of additional fees, and (3) our (and any affiliates') liabilities under such contract and for such services will be limited to the total amount to be paid by the Franchisee for such services.

3.2 Lease of Office/Yard. Any lease or sublease for the Office/Yard must be reasonably satisfactory to us and must, in any event, contain the following provisions, each of which you agree is reasonable:

- (1) Providing us with the right, at our sole option at any time and without further consideration, to receive an assignment of your leasehold interest, whether on termination, cancellation or rescission of your rights under any lease/sublease or under this Agreement or otherwise, in each case without the lessor's or sublessor's consent and specifying that the lessor/sublessor will accept us as a substitute tenant on notice from us that we are exercising our rights (if we exercise this option and you aren't in default, or under notice of default, we'll sublease the Office/Yard to you on substantially the same terms as we lease it). You agree to do all acts necessary or appropriate to accomplish such assignment, on our request and will, at the same time you sign this Agreement, sign the Collateral Assignment of Lease attached as Exhibit 3.2;
- (2) Obliging the lessor/sublessor to provide us with all sales and other information it may have, whether provided by you or otherwise, related to the operation of your 1st Propane® Franchise;
- (3) Evidencing your right to operate your 1st Propane® Franchise in accordance with this Agreement and the Manuals, subject only to the provisions of applicable law;
- (4) Prohibiting you from subleasing or assigning all or any part of your rights, extending the term or renewing or modifying the lease without our prior written consent, which may be withheld in our sole and absolute discretion;
- (5) Requiring the lessor/sublessor to concurrently provide us with a copy of any written notice of default under the lease sent to you and granting us the right (but without any obligation on our part) to cure any default under the lease, if you fail to do so, within fifteen (15) days after the expiration of the period in which you can cure the default and then, at our further option, to receive an assignment of your leasehold interest but without any liability for past defaults;
- (6) Providing that the Office/Yard will be used only for the operation of a 1st Propane® Franchise pursuant to a Franchise Agreement with us in good standing;
- (7) Providing that any default by the Franchisee under this Agreement or any other agreement with us (or any of our affiliates) may, at our option, constitute a default under the lease (you agreeing that any default by you under the lease may, at our option, constitute a default under this Agreement); and
- (8) Providing that no sale, assignment or transfer of your leasehold interest will be approved or otherwise consented to, or any change, addition, or other modification to the lease or other instruments be made, without obtaining our prior written consent.

You won't execute a lease or sublease, or any modification or amendment, without our prior written consent, which we can withhold in our sole and absolute discretion. You'll deliver a copy of the signed lease or sublease to us within five (5) days after it's signed. If you own the Office/Yard and we request, you'll enter into a lease with us for a term equal to the term of the Franchise (with matching renewal options) on commercially reasonable terms, and will sublease the Office/Yard from us on the same terms as the prime lease.

If such provisions are not included in the lease or other instruments, we may, without liability and at our sole option at any time (a) require that you immediately cause such provisions to be inserted or (b) terminate your rights and our obligations under this Agreement. If you own (or acquire) the Office/Yard, you will enter into arrangements with us granting us benefits substantially identical to those set out above.

3.3 1st Propane® Design Specifications. We'll furnish you with (and may update from time-to-time) our standard specifications and other requirements for design, decoration, layout, equipment, tanks, vehicles, fixtures, signs and other items for 1st Propane® Franchises (the "1st Propane® Standard Design Specifications"), including vehicles and the Office/Yard, with which you'll promptly comply. You agree that the 1st Propane® Franchise Standard Design Specifications are an integral part of the 1st Propane® System and that your 1st Propane® Franchise will be developed, constructed, designed and operated in full compliance with the latest 1st Propane® Standard Design Specifications at all times.

3.4 Development Schedule for Your 1st Propane® Franchise. Within twelve (12) months from the date of this Agreement, you must: (1) secure all financing required to fully develop your 1st Propane® Franchise; (2) submit to us for consent any proposed modifications to the 1st Propane® Franchise Standard Design Specifications to comply with applicable local ordinances, building codes, permit requirements, lease requirements and restrictions (any modifications will be at your expense); (3) obtain all required planning & zoning changes, fire department, hazardous materials, building & safety, public works, utility, sign, environmental health, sanitation and business permits and licenses and any other required permits and licenses; (4) construct all required improvements in compliance with construction plans and specifications supplied or consented to by us; (5) establish your 1st Propane® Franchise in compliance with plans and specifications consented to by us; (6) purchase and install, as applicable, all required equipment, tanks, vehicles, fixtures and signs (including the Designated Equipment and computer hardware and software); (7) obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services; and (8) open your 1st Propane® Franchise for business with the general public, subject only to our final inspection and consent or your franchise may be terminated by us in our sole and absolute discretion, and no refund of franchise fee will be given.

Within that time period you'll also select and employ a licensed contractor (as necessary) reasonably consented to by us and you'll commence construction and/or development as soon as possible and will expeditiously attend to its completion, purchase and pay for all supplies; purchase, pay for and attend to the installation of all fixtures and equipment, train all employees, obtain all required insurance, permits and licenses and do everything necessary for your 1st Propane® Franchise to open for business. We do not warrant or guaranty to you in any way that any contractor or other professional is suitable, competent, reliable or otherwise able to perform adequately the tasks for which they are hired and you're the only person/company with any responsibility for the work of any contractor selected and/or employed by you.

3.5 Equipment, Fixtures, Vehicles, Signs. You'll use in the development and operation of your 1st Propane® Franchise only those brands, types and/or models of equipment fixtures, tanks, vehicles, signs, Products, Services as are consented to and required by us. You'll purchase or otherwise obtain approved brands, types and/or models of equipment, fixtures, tanks, vehicles and signs only from suppliers designated by us, which may include ourselves and/or our affiliates. We can require you to purchase, lease, and finance or otherwise acquire all items through us and/or an affiliate.

3.6 1st Propane® Franchise Opening. You won't open your 1st Propane® Franchise for business until: (1) we notify you that all of your pre-opening obligations have been fulfilled; (2) pre-opening training of all of your personnel has been completed; (3) all amounts then due us (or any affiliate) have been paid; and (4) we've been furnished with copies of all insurance policies as required under Section 10.6 (or such other evidence of insurance coverage and payment of premiums as

we request) and leases/subleases as required by this Agreement. You will open your 1st Propane® Franchise for business and commence business pursuant to this Agreement within five (5) days after we give notice to you stating that your 1st Propane® Franchise is ready for opening.

3.7 Grand Opening Program. You will, on signing this Agreement, deposit Four Thousand Dollars (\$4,000) with us, which we will disburse, in our sole and absolute discretion with respect to media, content and otherwise, for a grand opening advertising and promotional program covering your 1st Propane® Franchise, beginning approximately fourteen (14) days before and continuing for approximately twenty eight (28) days after, the opening of your 1st Propane® Franchise. ~~You'll conduct a grand opening advertising and promotional program for your 1st Propane® Franchise beginning two weeks (14) days before, and continuing four weeks (28) days after, the opening of your 1st Propane® Franchise~~ In connection therewith, ~~and to spend no less than Four Thousand Dollars (\$4,000) on such advertising and promotion during that time.~~ Such such advertising and promotional program will utilize marketing and public relations programs and media and advertising materials ~~consented as selected to~~ by us in our sole and absolute discretion. We'll furnish additional advice and guidance to you with respect to your grand opening advertising and promotional program.

3.8 Relocation of 1st Propane® Franchise Office/Yard. If your lease or sublease for your 1st Propane® Franchise Office/Yard expires or terminates without your fault, if the Office/Yard are damaged, condemned or otherwise rendered unusable, or if, in your and our judgment, there is a change in the character of the location of the Office/Yard sufficiently detrimental to its business potential to warrant its relocation, we'll grant permission for relocation of your 1st Propane® Office/Yard to a location reasonably acceptable to us and without charging you an additional initial franchise fee, but any such relocation will be at your sole expense and you (and each affiliate of yours) will sign a general release, in form prescribed by us, of any and all claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against us and/or any or all of the Franchisor-Related Persons/Entities.

3.9 Assistance in Financing. We will refer you to companies experienced in the field of financing operations similar to a 1st Propane® Franchise and may assist you in the application process, but, due to possible changes in credit markets, evaluation of your credit worthiness and other factors (many of which are beyond our control), we can't give you any guarantees or make any representations as to the continuing availability, terms, conditions or otherwise of any possible financing, guarantees or financial or other support.

3.10 Assistance with obtaining Liability Insurance. We may refer you to companies and/or brokers experienced in the field of providing liability insurance and may assist you in the application process, but due to possible changes in insurance markets, evaluation of your driving and claims history and other factors (many of which are beyond our control), we can't give you any guarantees or make any representations as to the continuing availability, terms, conditions or otherwise of any liability insurance.

4. COMPUTER HARDWARE AND SOFTWARE SYSTEMS.

4.1 Since the effective and efficient operation of a 1st Propane® Franchise is intimately connected with the use and maintenance of appropriate computer hardware and software systems, with direct interconnection to (and access by) our computer hardware and software systems, you must purchase, use, maintain and update computer and other systems (including point-of-sale systems) and software programs which meet our specifications as they evolve over time and which, in some cases, may only be available through us and/or our affiliates. You must maintain your systems on-line to provide us with full access and you must promptly update and otherwise change your computer hardware and software systems as we require from time-to-time, at your expense. You'll pay all amounts charged by any supplier or licensor of the systems and programs used by you, including charges for use, maintenance, support and/or update of these systems or programs, other than proprietary 1st Propane program software.

4.2 We'll provide the software necessary to operate the 1st Propane® System and may provide periodic updates, improvements and revisions to such software (as we deem appropriate in our sole and absolute discretion) at no cost to you.

each of which you'll promptly implement. You understand that the software may contain features allowing us to remotely disable it, to disable it if certain codes (supplied by us) are not supplied at the appropriate time and to protect against theft or in the breach of any of your obligations to us and/or any affiliate. We're not required to make any updates, improvements, revisions or otherwise and all such matters are in our sole and absolute discretion. Software other than that provided or approved by us will not be permitted to be installed on or used with the computer that is designated by you as your primary computer. We require you to purchase your computer hardware per our specifications.

4.3 "Electronic Information" shall mean any information stored in your computer system(s) or exchanged between the Franchisor's Website and your computer system(s) relating to the operation of your 1st Propane Franchise, including, but not limited to, financial transactions, products sold, and any and all information collected and stored in the Plato Database.

4.4 We shall be deemed to be the exclusive owner of the Electronic Information and will allow you to access and use the Electronic Information during the Term and during the term of any Successor Franchise. Subject to the provisions of this Agreement, all laws relating to privacy and the rights of third parties, we may use the Electronic Information in any way we think fit in our Business Judgment.

4.5 Upon a transfer of the whole of the assets or a change of control of the equity of the Franchised Business, which transfer has been approved by us in accordance with the Franchise Agreement, we shall grant the new franchisee all rights necessary to use the Electronic Information on the terms of our then current franchise agreement. If you are required by law to provide any of the Electronic Information to any third party, then we shall provide you with a copy of the Electronic Information solely for the purposes of compliance with the applicable law. We can disclose, in offering circulars and other places we designate, and/or as required by law, any information relating to your 1st Propane Franchise, including your name, any address and/or phone number(s), revenues, expenses, results of operations and/or other information, provided that financial information will be in statistical form.

5. TRAINING, GUIDANCE AND MANUALS.

5.1 **Initial Training Program.** We will furnish the Franchisee (or a managing partner or majority shareholder designated by you and consented to by us), and the Franchisee's initial 1st Propane® Franchise manager appointed by the Franchisee, an initial training program covering the operation of a 1st Propane® Franchise. We will furnish the initial training program at a time and place, and for such a period, as we designate (in our sole and absolute discretion). If the Franchisee, managing partner, majority shareholder or Franchise manager has been previously trained by us, or has received ~~Company-approved~~ equivalent certified training, as determined and approved by us, as an employee or owner of another propane business, we may substitute a revised/shortened training program.

Before any personnel of the Franchisee are allowed to handle propane, they must successfully complete the Company's prescribed course of training in addition to training required by federal, state and/or local codes and regulations. It is the responsibility of the Franchisee to provide and document training for all of their personnel. The Company may provide and/or require the Franchisee to purchase or rent training manuals; computer based training programs, exams and/or other materials and may impose a reasonable charge for such materials. Training may be provided at the Company's regular scheduled training classes on a "space available" basis and at reasonable charges as determined in our sole and absolute discretion. In all cases, ~~the~~ Franchisee is responsible for travel, meals, lodging and other related living and travel expenses.

For Franchisee's personnel, other than the initial individual Franchisee or the initial managing partner, majority shareholder and/or Franchise manager, the Company may impose an additional reasonable charge; ~~the Company may~~ to provide a certified instructor and/or proctor to administer the classroom training programs and exams and ~~a certified instructor~~ to verify ~~the employee~~ the performance-based skills assessments ~~skill level assessments~~ at times and places ~~to be~~ designated by the Company.

The Franchisee will appoint a key system operator (the "Key System Operator") ~~that~~ who will be responsible for operating the computer-based PLATO system software and any other Proprietary programs, Software or systems. This Key System Operator will be trained by us. We will be available to provide ongoing and refresher training ~~continue to~~ ~~train~~ and/or to upgrade the skills of the initial Key System Operator ~~this operator~~ by telephone and e-mail, at such times

and/or to upgrade the skills of the initial Key System Operator ~~this operator~~ by telephone and e-mail, at such times and in such manner as we determine. Training for each additional or replacement ~~key operators~~ Key System Operator will be furnished at a reasonable charge at times and places designated by the Company. The Franchisee (or a managing partner or majority shareholder consented to by us), and ~~the each of Franchisee's Key System Operators~~ ~~key operating person~~ will be required to participate in the initial training session for the key system ~~software~~ operator in order to be familiar with the operation of the systems and the features that apply to everyday management information, marketing and operations.

We will not train the Franchisee, managing partner, majority shareholder, ~~or the Franchisee's manager or employees~~ for obtaining licenses such as commercial driver licenses, ~~contractor's licenses or any other licenses that may be required or useful in the operation of a 1st Propane® Franchise.~~ The Franchisee is advised to contact their state driver's license issuing agency to obtain the current requirements to apply for a commercial driver's license, ~~for including hazardous materials, tank truck and air brake endorsements.~~ ~~carriers.~~ We will advise the Franchisee regarding obtaining state required licenses related directly to the operation of a propane business, but we are not responsible for and can make no assurances that such licenses will be issued.

If we, in our sole and absolute discretion, determine that the Franchisee (or a managing partner or shareholder consented to by us) or the Franchisee's manager has not successfully completed (or is not making satisfactory progress in) the Franchisee's initial training, we may cancel all of the Franchisee's rights (and all of our obligations) under this Agreement and/or any other agreements with the Franchisee. The Franchisee will return all manuals and other materials provided by the Company, and the Franchisee (and each affiliate of the Franchisee) will sign a General Release and we will provide the Franchisee with a similar release, except that the Franchisee's indemnity, non-competition, confidentiality obligations, and the dispute avoidance and resolution provisions of this Agreement, including those of Article 19, together with the provisions of Article 21, will be preserved.

Since the possibility of such termination exists, the Franchisee understands that if the Franchisee makes any investments or signs any documents prior to completion of training, the Franchisee is at risk. Alternatively, we can (in our sole and absolute discretion) require the Franchisee to hire a substitute manager and arrange for him/her to complete the initial training program to our satisfaction.

If, whether as a result of observations, audits, test results or otherwise during initial training or thereafter (including during operation of a 1st Propane® Franchise) we determine, in our sole and absolute discretion, that it's appropriate, we can require that (1) a manager or other person designated by us be placed in the Franchisee's 1st Propane® Franchise to supervise its day-to-day operations for the purpose of assuring compliance with our standards and the Franchisee will pay all costs in connection therewith, including salary, normal corporate benefits, travel, meals, lodging and incidental expenses and/or (2) the Franchisee (or a managing partner or shareholder consented to by us) and/or a manager appointed by the Franchisee, at the Franchisee's sole cost, re-attend and successfully complete the Company's initial training program - at a time and place designated by us, in our sole and absolute discretion.

i) Additional and/or Refresher Training: The Franchisee (or a managing partner or shareholder consented to by us) and the Franchisee's manager and other employees must attend additional and/or refresher training programs (if we designate them as mandatory) conducted at location(s) specified by us. The Franchisee and the Franchisee's managers and employees may attend any additional and/or refresher training programs offered by us from time-to-time, which we designate as optional. We won't charge a fee for any additional mandatory training programs but we may charge a fee for any optional training programs. In all cases, ~~t~~The Franchisee will be responsible for all training fees, travel, living, incidental and other expenses and compensation of the Franchisee and the Franchisee's personnel attending any training program.

Franchisee will cause himself and each employee to undertake a minimum of 1 day (8 hours) of safety, technical, operations, management, marketing or other related refresher training between the months of May and September each year. Prior to September 30 each year of this Agreement, Franchisee will provide Franchisor with a signed statement certifying ~~each~~

~~persons-Franchisee's and/or each employee's-the~~ completion of this training. This statement will list the trainer's name, the trainee's name, a legal identification number and the courses of training completed.

ii) **Safety Meetings:** All Franchisee managers, supervisors and employees are required to participate in monthly safety meetings that are held at the Franchisee's location and administered by the Franchisee. We may provide the materials for this meeting and the Franchisee agrees to document the holding of the meeting, as well as attendance by the required personnel on forms provided by us. Periodically, at a time of our choosing, we may hold a safety and/or training meeting at the Franchisee's location. All personnel that handle propane will be required to attend safety and/or operations related meetings. All personnel involved in marketing will be required to attend sales and/or training meetings that we may hold at the Franchisee's location, at a time of our choosing. We can charge a reasonable fee for materials used and/or distributed at such meetings.

5.2 Guidance and Assistance. We'll furnish guidance to you with respect to: (1) specifications, standards, policies and operating procedures utilized by 1st Propane® Franchises, including any modifications; (2) purchasing approved equipment, tanks, vehicles, fixtures, signs, inventory, operating materials and supplies; (3) developing and implementing local advertising and promotional programs; (4) administrative, bookkeeping, accounting, inventory control and general operating and management procedures; (5) establishing and conducting employee training programs at your 1st Propane® Franchise; (6) marketing strategy; and (7) help identify and negotiate with sources for wholesale propane supplies and identify liability insurers. This guidance can, in our sole and absolute discretion, be furnished in the Manuals, bulletins, written reports and recommendations, other written materials, refresher training programs and/or telephonic consultations or consultations at our offices or at your 1st Propane® Franchise. You agree to ~~H~~ follow and utilize this guidance.

It is your sole responsibility to establish, with respect to your employees, appropriate personnel and security-related policies and procedures (provided that we always have the right to terminate your rights by declaring a breach under this Agreement for conduct by you which threatens the goodwill associated with the Marks.) You and we acknowledge and agree that we neither dictate nor control labor or employment matters for you and your employees, including (but not limited to) hiring, firing and/or discipline of employees, nor control the manner and means by which they carry out their duties. You and we agree that neither of us are, or shall be deemed to be, a joint employer with the other and you will indemnify us with respect to any such or similar claims against us.

We will provide, at no additional charge to you, one on-site visit to your facility to assist you in starting your 1st Propane® business. Any additional visits will be subject to our mutual agreement and convenience and we may charge you (and require a deposit) for costs of travel, meals and lodging, along with a reasonable *per diem* charge. We will also provide you with a limited supply of promotional and business identity items.

5.3 Manuals. We'll ~~loan or~~ make our Manuals available to you, on our PLATO software system or in such other manner as we select, and will authorize you to use the Manuals only during the term and subject to the provisions of this Agreement. ~~our Manuals.~~ We can, in our sole and absolute discretion, modify any aspect of the 1st Propane® System and/or specifications, standards, policies and procedures of 1st Propane® Franchises. You'll promptly and continuously comply, at your sole expense, with all provisions of, and changes to, the Manuals and the 1st Propane® System. ~~In the event of a dispute about the contents of the Manuals, the master copies maintained by us will be controlling.~~ You won't copy or permit others to copy any part of the Manuals and the Manuals are always our property. ~~We may, at our option, provide you electronic copies of our manuals.~~

5.4 Marketing Assistance. We will assist you with marketing by compiling a mailing of up to 100 names from your prospect list each month. We will pay the cost of the materials mailed, postage and our time to assemble the mailing and we may be reimbursed from the Marketing Fund for our direct and other costs in connection therewith. You agree to compile and maintain the list necessary for us to do this mailing with a suggested target of 100 names. We will assist you, to the extent necessary in our sole and absolute discretion, with developing marketing materials specific to individual locations. We may, through mutual agreement, group the monthly mailing obligation into larger groups.

5.5 Accounting Services. Provided that you're in full compliance with all of your operational, payment and other obligations to us (and/or any affiliate), including but not limited to appropriate use of our Proprietary Software, use of designated hardware and other software and providing us with all required reports, we will provide, through our software, various reports that will assist you with the operation of your 1st Propane® Franchise. As soon as is practical after the end of each month, we will provide you with an (unaudited) financial statement presenting the results of your operations for the previous month and year to date. This statement will include an income statement and a balance sheet, and other reports which we feel may be useful in the operation of your 1st Propane® Franchise. We will print your customer statements each month, on a date designated by us, and will forward those statements to you for postage and mailing. We will process your payroll every two weeks, providing you with an itemized payroll statement for you to present to your employees with their payroll check, but all actual payroll (and other) payments are your sole responsibility.

We will keep track of your payroll tax withholding and prepare monthly and quarterly payroll tax reports, forwarding the reports to you for your signature and payment. We will keep track of your sales tax and fuel tax collections and payment obligations, forwarding the reports to you for your signature and payment. We will process certain other tax reports and forms for you, including, but not limited to, property tax reports and end of year payroll tax reports and employee W-2's, but we will not prepare or otherwise be involved with tax reports concerning or related to income taxes, VAT, GST or similar taxes. All obligations (including payment) and liabilities related in any way to your taxes are solely yours and our services are limited to preparing such statements based on information received from you.

6. MARKS.

6.1 Goodwill and Ownership of Marks. Your right to use the Marks is derived solely from this Agreement and is limited to the operation of your 1st Propane® Franchise by you, solely within the Territory, in compliance with this Agreement and all applicable standards, specifications and procedures prescribed by us. You'll use the Marks only as expressly authorized by us, and you will use and display the Marks only in such manner, and using such equipment and other systems, as we authorize from time to time, in each case promptly complying with any changes we may require, all at your sole cost and expense. You won't oppose, or engage in any acts or omissions inconsistent with, our rights in and to the Marks. Any unauthorized use of the Marks by you is a breach of this Agreement and an infringement of our rights in and to the Marks. This Agreement, and your operation of your 1st Propane® Franchise, does not confer any goodwill or other interests in the Marks on you (other than the right to operate your 1st Propane® Franchise in compliance with this Agreement), all goodwill (whether relating to the Marks, your use thereof or otherwise) and such interests belonging exclusively to us and all use of the Marks to inure to our benefit. All provisions of this Agreement applicable to the Marks will apply to any other trademarks, service marks and/or commercial symbols whenever authorized for use by, and licensed to, you by us. Any marks or other forms of identification developed by us in the future will remain our property and you will have no rights in or to them but we may require you to use them as we direct. You agree that if you breach any obligation regarding the Marks, we would have no adequate remedy at law and that we will be entitled to equitable relief with respect to any such breach. Your rights to the Marks are non-exclusive, are only as set forth in this Agreement, and we retain the sole right to grant other licenses for the Marks (in addition to those already granted) and to establish and/or become involved with other, similar and/or related businesses and to grant them rights with respect to the Marks without providing you with any rights.

6.2 Limitations and use of Marks. Unless we direct or consent (in writing) otherwise, you will use the Marks as the sole identification in connection with your 1st Propane® Franchise, provided that you'll identify yourself as the independent owner of your 1st Propane® Franchise as prescribed by us. You'll not use any Mark as part of any corporate name or with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form, except as expressly permitted by us in our sole and absolute discretion. You won't use any Mark in connection with the performance or sale of any unauthorized services or products or at any location or in any other manner not expressly authorized in writing by us. The use of any geographic or other designation in connection with the Marks will only be as permitted by us, you will have no exclusive or other rights with regard to any geographic or other designation and you will not take any action inhibiting or otherwise affecting the use of the Marks by any 1st Propane® Franchise Franchisee or anyone else, unless expressly authorized by us in writing. You'll display the Marks prominently as we require at your 1st Propane® Franchise and in connection with advertis-

ing and marketing materials and you won't use any of the Marks so as negatively affect the goodwill associated with the Marks. You won't provide any goods or services from your 1st Propane® Franchise or otherwise under any identification or tradename, other than the Marks. You'll give such trademark and other notices as we direct and will, at your expense, obtain fictitious or assumed name registrations as may be required under law. You'll sign such documents and do such acts as required by us from time-to-time to protect our interests in the Marks and you won't take any action, or omit to take an action, so as to jeopardize our interests or their validity or enforceability of the Marks.

6.3 Notification of Infringements and Claims. You'll immediately notify us of any apparent or actual infringement of, or challenge to, your use of any Mark, or any claim by any person of any rights in any Mark, and you won't communicate with anyone other than us and our counsel in connection with any such matter. We'll have sole and absolute discretion to take such action as we deem appropriate in connection with such (or any related) matters, and the right to control exclusively any settlement, litigation or Patent and Trademark Office or other proceeding arising out of or related to any such matters or otherwise relating to any Mark. You'll execute any and all instruments and documents, render such assistance, and do such acts and things as may, in our opinion, be advisable to protect and maintain our interests in any litigation or other proceeding or to otherwise protect and maintain our interests in the Marks.

6.4 Discontinuance of Use of Marks. If it becomes advisable at any time, in our sole and absolute discretion, for you to modify or discontinue the use of any of the Marks or use one or more additional or substitute trademarks or service marks, you will promptly comply (at your sole expense) with our directions to modify or otherwise discontinue the use of such Marks, or use one or more additional or substitute trademarks or service marks. We won't have any liability or obligation (whether of indemnity, expense reimbursement or otherwise) to you, and you agree to make no claim, for, or in connection with, any modification, discontinuance or otherwise, and/or any dispute regarding the Marks and/or your and/or our rights in or to them.

7. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION.

7.1 Independent Contractor. You and we understand and agree that neither this Agreement nor anything else creates a fiduciary or agency relationship between you and us, that you and we are and will be independent businesses, and that nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner, employee or fiduciary of or for the other for any purpose. You'll conspicuously and clearly identify yourself (through prominently placed signage and otherwise as we direct) in all dealings with customers, suppliers, public officials, employees and others as an independent owner of your 1st Propane® Franchise under a franchise granted by us and make it clear that the operation of your 1st Propane® Franchise is separate and distinct from the operation of our business. In particular, you'll place notices of independent ownership on such vehicles signage, other signage, forms, invoices, business cards, stationery, advertising, and other materials as we require from time-to-time. Subject to the requirements of this Agreement and the Manuals, you'll have complete operational control of your business, including the right to hire and fire each employee. It is your sole responsibility to establish, with respect to your employees, appropriate personnel and security-related policies and procedures (provided that we always have the right to terminate your rights by declaring a breach under this Agreement for conduct by you which threatens the goodwill associated with the Marks.) You and we acknowledge and agree that we neither dictate nor control labor or employment matters for you and your employees, including (but not limited to) hiring, firing and/or discipline of employees, nor control the manner and means by which they carry out their duties. You and we agree that neither of us are, or shall be deemed to be, a joint employer with the other and you will indemnify us with respect to any such or similar claims against us.

7.2 No Liability for Acts of Other Party. You won't use any of the Marks or the System in a manner that may result in our liability for any indebtedness or obligations of yours, nor use the Marks or System in any way not expressly authorized in this Agreement. Neither we nor you will make any express or implied agreements, warranties, guarantees or representations, or incur any debt in the name, or on behalf, of the other, or represent that your and our relationship is other than that of independent Franchisor and Franchisee. Neither you nor we will be obligated by or have any liability under any acts, omissions, agreements or representations made by the other that are not expressly authorized in writing, nor will we be obligated for any damages to any person or property directly or indirectly arising out of the operation of your 1st Propane®

Franchise or otherwise, all such obligations and liabilities being solely yours and you indemnifying us, and each of our affiliates, with respect thereto.

7.3 Taxes. We'll have no liability for any sales, VAT, GST, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied on you, your 1st Propane® Franchise or your property, or on us, in connection with the sales made and/or business conducted by you (except for any taxes we are required by law to collect from you with respect to purchases from us.) Payment of all taxes will be your sole responsibility.

7.4 Responsibility, Indemnity. You're the only one responsible for any damage, loss or other claims arising out of, or related in any way to, any of your acts, errors or omissions, whether related to you, your employees, agents or representatives, your operations or ownership of your 1st Propane® Franchise or otherwise arising. You will indemnify and hold harmless us, all of Franchisor-Related Persons/Entities, all 1st Propane® Franchisees or other operators and/or any of the foregoing, from all fines, suits, proceedings, claims, demands, actions, loss, damages, costs, fees (including attorney's fees and related expenses) and/or any other expense, obligation and/or liability of any kind or nature, however arising, growing out of or otherwise connected with and/or related to any act, error and/or omission of yours (including, but not limited to, your ownership and/or operation of your 1st Propane® Franchise, any act or omission of your employees and/or agents, and/or any transfer of any interest in this Agreement, your 1st Propane® Franchise, the Franchise, the Franchisee or otherwise.) We'll have the right to control all litigation, and defend and/or settle any claim, against and/or including us and/or the Franchisor-Related Persons/Entities or affecting our and/or their interests, in such manner as we deem appropriate in our sole and absolute discretion, in each case without affecting our rights under such indemnity.

With respect to anything (goods, services or otherwise) provided, approved or otherwise by us, the Franchisor-Related Persons/Entities and/or any person/company affiliated in any way with and/or referred by us or them, other than specific written warranties expressly provided by us in connection with such items, such items are provided without any warranties, express or implied, **THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE BEING EXPRESSLY DISCLAIMED**, nor do there exist any express or implied warranties on the part of us, the Franchisor-Related Persons/Entities or any affiliate as to the design, condition, capacity, performance or any other aspect of such items or their material or workmanship. Any warranty or other responsibility with respect to any Designated Equipment, Products and/or Services or otherwise will be those of the manufacturers or service providers only.

8. CONFIDENTIAL INFORMATION; EXCLUSIVE RELATIONSHIP.

8.1 Confidential Information - Non-Disclosure and Non-use. We have, and plan to develop and acquire from time-to-time, certain confidential and proprietary information and trade secrets, including but not necessarily limited to, the following categories (the "Confidential Information"): (1) methods, techniques, specifications, standards, policies, procedures, information, concepts, systems, and knowledge of and experience in the development, operation and franchising of 1st Propane® Franchises; (2) marketing programs for 1st Propane® Franchises; (3) specifications for, and suppliers of, certain materials, equipment, vehicles and fixtures for 1st Propane® Franchises; (4) methods, procedures and techniques for preparing, marketing and presenting the Products and Services; and (5) information regarding the Products and Services authorized to be offered from 1st Propane® Franchises from time-to-time. In any dispute between you and us involving any question as to whether or not certain information is, in fact, confidential and/or proprietary to us, or any related issues, the burden of proof and the burden of going forward will be on you.

We'll disclose, to you, during training, in the Manuals and in guidance and assistance furnished to you during the term of the Franchise, parts of the Confidential Information needed for the operation of a 1st Propane® Franchise, and you may learn additional Confidential Information of ours during the term of the Franchise. You will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of a franchised 1st Propane® Franchise at the Office/Yard and pursuant to this Agreement.

You acknowledge and agree that the Confidential Information is a valuable asset of ours, includes trade secrets of ours, and will be disclosed to you solely on the condition that you will forever: (1) not use the Confidential Information in any way other than the operation of your 1st Propane® Franchise under a Franchise Agreement in good standing with us; (2) maintain the absolute secrecy and confidentiality of the Confidential Information during and after the term of this Agreement; (3) not make unauthorized copies of any portion of the Confidential Information; and (4) adopt and implement all reasonable procedures prescribed by us from time-to-time to prevent unauthorized use or disclosure of, or access to, the Confidential Information. You agree that any unauthorized use or duplication of any part of the Confidential Information, including in any other business, would be an unfair method of competition with us and other 1st Propane® Franchisees.

So as to assist in the development of the 1st Propane® System and for the mutual benefit of all 1st Propane® operators, we'll have the perpetual right to use and to authorize other 1st Propane® Franchises to use, and you'll fully and promptly disclose to us, and allow us and all other 1st Propane® operators to use, all ideas, concepts, methods, techniques and otherwise relating to the development, marketing and/or operation of a 1st Propane® Franchise, or which would be usable therein, which are conceived or developed by you and/or your employees during the term of this Agreement, in each case without compensation or other obligation.

You'll cause each of your employees, agents, principals and affiliates to execute and deliver to you an agreement containing substantially the same provisions as set forth in this Section, in a form or forms consented to by us. An original of each executed Confidentiality Agreement will be available for our inspection during business hours. You will, on our request, deliver to us copies of any Confidentiality Agreement.

8.2 Exclusive Relationship, Restrictions on Similar Businesses During Franchise Term and After Termination, Expiration, Repurchase. You and we share a mutual interest in avoiding situations where persons or companies who are, or have been, 1st Propane® Franchisees operate, or otherwise become involved with, a Similar Business, anywhere, either during the term of, or after the termination or expiration, of your rights under, this Agreement.

In addition, and as independent bases for the provisions of this section, you acknowledge and agree that (1) you will receive valuable training and confidential information throughout the term of the Franchise, including, without limitation, information regarding our promotional, operation, sales, and marketing methods and techniques and the System which was not known to you before becoming a 1st Propane® Franchisee, (2) we would be unable to protect such confidential information and other information and techniques against unauthorized use or disclosure, would be unable to encourage a free exchange of ideas and information among 1st Propane® franchisees and the goodwill and other assets of our business and those of other 1st Propane® Franchisees would be at risk if franchise owners and members of their immediate families were permitted to hold interests in or perform services for a Similar Business during or after the term of the Franchise Agreement and (3) your ownership and/or operation of, or any other relationship with, a Similar Business would necessarily benefit from, and be inconsistent with, your status and obligations as a 1st Propane® franchisee.

We've entered into this Agreement with you on the express condition that with respect to the operation of any Similar Business, you and your owners (in the event you are a corporation or partnership) and members of your and their respective immediate families will deal exclusively with us during the term of this Agreement (and any other Franchise Agreement with us) and will not be involved with any Similar Business for a specified period of time thereafter.

Therefore, to protect your and our investment and that of all 1st Propane® Franchisees, you and we agree as follows: (1) during the term of this Agreement (and any other Franchise Agreement with us) and any extension thereof, and (2) for three (3) years after any, the termination (for cause) of your rights, or any assignment and/or the date on which you cease to operate your last 1st Propane® Franchise, whichever is later, neither you, any affiliate of yours, nor any shareholder or partner of yours (in the event you are or become a corporation or partnership), nor any member of your immediate family nor any member of the immediate family of any affiliate, shareholder or partner of yours will (except for 1st Propane® Franchises operated in good standing under franchise agreements with us): (a) have any direct or indirect interest as a disclosed or beneficial owner in any Similar Business located, or operating units located, anywhere; (b) have any direct or indirect interest (through a

member of the immediate family of yours or any owner of you, or otherwise) as a disclosed or beneficial owner in any entity which is granting franchises or licenses or establishing joint ventures or other business enterprises for the operation of Similar Businesses located, or operating units located, anywhere; (c) perform services as a director, officer, manager, employee, consultant, representative, agent, or otherwise for any Similar Business or any entity which is granting franchises or licenses or establishing joint ventures to operate Similar Businesses anywhere; or (d) directly or indirectly employ, or seek to employ, any person who is employed by us or any affiliate or by any other 1st Propane® franchisee, nor induce nor attempt to induce any person to leave said employment without the prior written consent of us and that person's employer; provided that if the foregoing restriction regarding our and the employer's consent is unenforceable, you will first notify us and that employer before taking any action with respect to any such employment or any offer of employment. You confirm that prior to entering into your 1st Propane® Franchise you possessed (and still possess) valuable skills unrelated to your 1st Propane® Franchise, have the ability to be gainfully employed in other fields entirely acceptable to you and that the strict enforcement of the restrictions of this Agreement will not work any undue or significant hardship on you or your family.

If any of the restrictions of this Section are determined to be unenforceable due to excessive duration, geographic scope, business coverage or otherwise, you and we agree that they will be reduced to the level that provides the greatest restriction but which is still enforceable, notwithstanding any choice-of-law or other provisions in this Agreement to the contrary. The time period of the competitive restrictions described in this Agreement will be extended by the length of time in which you or any other person or entity are in breach of any provision of this Agreement (including the limitations of this Section.) The provisions of this Section will continue in full force and effect through the extended time period.

The restrictions of this Section don't apply to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent less than three percent (3%) of the number of shares of that class issued and outstanding.

If you violate any obligations under this Agreement (or otherwise) with respect to a Similar Business, our remedies will include (but are not limited to) the right to obtain a temporary restraining order, preliminary and/or permanent injunction (or other equitable relief), notwithstanding any provisions to the contrary.

On our request, you will obtain written non-competition commitments from the persons subject to the non-competition provisions of this Agreement, in such form as we direct and naming you and us as beneficiaries of such agreements.

If the restrictions of this Section are unenforceable or are reduced to a level which we, in our sole and absolute discretion, find unacceptable, we may, in addition to any other remedies available to us, require you to pay a fee (either paid immediately on a present value basis or over time, as we select) of one-half (1/2) of the royalties and advertising contributions which would be payable if the business in question was a franchised 1st Propane® unit, for three (3) years after termination, expiration or repurchase, such amount having been jointly selected by you and us as fair and appropriate damages and in consideration of (1) the difficulty of accurately predicting actual damages, (2) the fact you will inevitably benefit in the operation of such business from your training and experience as a 1st Propane® Franchisee, (3) the possible impact on the expansion and operation of our system, including the expense and difficulty of a sale of a franchise in your area and (4) you not having any rights, nor we having any obligations, under this Agreement or otherwise during such period.

9. FEES.

9.1 Initial Franchise Fee. You'll pay us, on signing this Agreement, an initial franchise fee of Thirty Thousand Dollars (\$30,000). The initial franchise fee is fully earned by us on signing of this Agreement and is entirely nonrefundable (as are all amounts paid to us). You understand that the initial franchise fee may not be same for all franchisees and may take into account factors such as size of territory, previous business relationship with us or otherwise.

9.2 Royalty - Percentage and Minimum, Payment Dates.

Percentage. Every week (or other period as designated by us in our sole and absolute discretion), you'll pay us, via electronic funds transfer (ACH), six percent (6%) of the "Gross Volume" (as defined in Section 9.3) received or earned during the preceding week (or other fiscal period.) for the first \$500,000 of Gross Volume. For any calendar year, for any Gross Volume over \$500,000 but less than \$750,000 per year, you will pay us, via electronic funds transfer, (ACH) five percent (5%) of that Gross Volume. For any calendar year, for any Gross Volume over \$750,000 per year, you will pay us, via electronic funds transfer, (ACH) four percent (4%) of that Gross Volume.

Minimum. In any event, you agree to pay a minimum continuing royalty of no less than One Hundred Forty Dollars (\$140.00) per week (or other fiscal period, with such amount proportionately adjusted), subject to inflation adjustment as set forth in this Agreement.

Minimum and percentage royalties are to be paid weekly as specified in section 9.4 of this agreement.

Minimum and percentage royalties are due for the earlier of the first month in which your 1st Propane® Franchise (a) begins operations or (b) is required to begin operations under the terms of this Agreement, and continue thereafter for the full term of this Agreement. Minimum royalties for your first month of operation (or other fiscal period) will be prorated if you've not been in operation (or required to have been in operation) for the full month (or other fiscal period), provided that, in the event of any closure of your 1st Propane business, minimum royalties will be required to be paid in full.

9.3 **Definition of "Gross Volume".** Gross Volume includes all revenues (except sales tax and fuel tax collected and paid when due to the appropriate taxing authority and actual customer refunds, adjustments and credits) which are, or could be, received or earned (1) by or with respect to your 1st Propane® Franchise (2) by you (or on/for your behalf or benefit) and which relate to the type of products, services or any other items which are or could be provided, sold, rented or otherwise distributed at, through or in association with a 1st Propane® Franchise and/or (3) by you (or on your behalf or for your benefit) with respect to products and services which are, or could be, provided, sold, or otherwise distributed in association with any use of the Marks, the 1st Propane® System, or any related techniques, systems, procedures, or know-how or the operation of any Similar Business. You'll not divert any business or take any other actions (or fail to take any actions) which would have the effect of reducing the Gross Volume with respect to which royalties are payable and you will use your best efforts to maximize Gross Volume. All sales and/or billings, whether collected or not, will be included in Gross Volume, with no deduction for credit card or other charge.

9.4 **Electronic Funds Transfer.** You will participate in our electronic funds transfer program authorizing us to utilize a pre-authorized bank draft system on an every week basis or otherwise as we specify from time-to-time in our sole and absolute discretion. All royalties, Marketing Contributions and other amounts due us for each period must be received by us or credited to our account by pre-authorized bank debit before 5:00 p.m. on Wednesday. We will specify periodic amounts for regular transfer to our account, based on past reports of sales by you and reasonable expectations of royalties, Marketing Contributions and other amounts to become due from you and, in any event, covering minimum royalties and Marketing Contributions. You will participate in our electronic reporting system covering sales and other items. These amounts will be adjusted monthly to reflect seasonal differences in sales and to reflect increased sales due to the growth of the business.

9.5 **Late Payments and/or Reports.** All amounts owed or to be owed us and/or our affiliates will bear interest at the highest applicable legal rate for open account business credit, but not to exceed one and one-half percent (1.5%) per month. This doesn't constitute our agreement to accept payments after they're due or any commitment to extend credit to, or otherwise finance your operation of, your 1st Propane® Franchise. If you fail to pay any amounts when due, that failure can constitute grounds for termination of this Agreement, in spite of the provisions of this Section. Also, to cover additional costs sustained by us in handling delinquent reports and payments, you'll pay a late fee of Fifty Dollars (\$50.00), plus a late fee of Twenty Dollars (\$20.00) per day, for each report and/or each payment received by us more than ten (10) days after its due date, or for each day after any electronic transfer that is refused by your bank. The \$50.00 late fee and the \$20.00 per day

charge apply to each late report form and each late payment. To cover the additional expenses incurred by us in handling dishonored checks, you agree to pay a dishonored check fee of Fifty Dollars (\$50.00), for each dishonored check tendered by you. If you tender two (2) or more dishonored checks within a one (1) year period or become two (2) or more months delinquent in any of your accounts with us, we may require payments on any or all amounts owed to us to be made by cashier's check. Notwithstanding any provision in this Agreement to the contrary, in no event will any amounts be charged as late fees or otherwise which exceed any applicable legal limits. Any failure to charge you for these fees on a timely basis does not eliminate your liability for these fees or our right or ability to collect them at our convenience. Each of the foregoing amounts will be subject to adjustment for inflation, as set forth in this Agreement.

9.6 Application of Payments, Set-Offs. Notwithstanding any designation by you, we (and/or any affiliate) can apply any payments received from you, whether designated as payable to us, the Marketing Fund or otherwise, to any past due or other indebtedness of yours (or any affiliate of yours) for royalties, marketing contributions, purchases, interest or otherwise as we choose in our sole and absolute discretion.

We (and/or any affiliate) can set off, from any amounts that may be owed to you (or any affiliate of yours), any amount that you owe to us (and/or any affiliate) or with respect to any marketing contribution. We can retain any amounts we have received for your account (whether rebates or other funds and whether paid by or due from suppliers or otherwise), as a credit and payment against any amounts that you (or any affiliate of yours) owe or will owe to us (or any affiliate) or with respect to any marketing contribution, without notice and at any time.

9.7 Inflation Adjustments. Where so designated in this Agreement with respect to certain amounts, such amounts will be adjusted on April 1 of each year, the first adjustment to be made on the April 1 after the date of this Agreement, (the first "adjustment date") in proportion to the changes in the Consumer Price Index (U.S. Average, all items) maintained by the U.S. Department of Labor (or such equivalent index as may be adopted in the future) between the date of this Agreement (or the date of the prior adjustment) and a date three months prior to the adjustment date.

9.8 U.S. Dollars. All fees are to be paid in U.S. Dollars.

10. 1ST PROPANE® FRANCHISE — IMAGE AND OPERATION.

10.1 Condition and Appearance of Your 1st Propane® Franchise, Periodic Upgrading. You agree that: (1) neither your 1st Propane® Franchise nor the Office/Yard will be used for any purposes other than the operation of a 1st Propane® Franchise in full compliance with this Agreement and the Manuals, without prior written consent; (2) you'll maintain the condition and appearance of your 1st Propane® Franchise, its equipment, tanks, vehicles, fixtures, signs, and the Office/Yard in accordance with our specifications and standards, and consistent with the approved image of a 1st Propane® Franchise and as provided under the Manuals, as revised by us from time-to-time; (3) you will perform such ongoing repair, maintenance and upgrading, with respect to the decor, equipment, tanks, vehicles, fixtures, signs and otherwise, of your 1st Propane® Franchise and the Office/Yard, as may be required by us from time-to-time to maintain its condition, appearance, and efficient operation, including, without limitation: (a) thorough cleaning, repainting and redecorating of the interior and exterior; (b) interior and exterior repair; (c) repair or replacement of damaged, worn out or obsolete equipment, tanks, vehicles, fixtures, signs and otherwise; (4) you will not make any material alterations to the Office/Yard, tanks, vehicles or other items, or to the appearance of your 1st Propane® Franchise, tanks or vehicles as originally approved by us, without our prior written approval; (5) you will place or display at the Office/Yard (interior and exterior), on all tanks and vehicles and on all other items only such signs, emblems, lettering, logos and display and advertising materials that are from time-to-time designated by us; and (6) you and your employees' appearance will be as we direct, including will comply with any requirements we establish regarding use of uniforms, and other career apparel, and/or other appearance standards; (7) as required by us, you will include a statement regarding the availability of 1st Propane® Franchises and the contact details for requesting additional information in advertising and promotional materials and on equipment and other items used by you in the Franchise.

Among other things, we can specify vehicle and tank signage, condition, specifications and appearance, specifications and appearance for uniforms, invoices, business cards, letterhead and other materials, and all other items and materials.

We may, at intervals and to the extent determined by us in our sole and absolute discretion, require you to upgrade your 1st Propane® Franchise, tanks, vehicles and the Office/Yard (including, but not limited to, remodeling, expansion, redecoration, re-equipping, refurbishment and refurnishing and changing any products and services offered) to meet our then-current standards and requirements, which may require additional investment by you, and, subject to approval by us of plans, layouts, designs and otherwise, you will promptly and fully comply with all such requirements.

10.2 Designated Equipment, Products, Services and/or Suppliers. The reputation and goodwill of each 1st Propane® Franchise is based on, and can be maintained only by, the satisfaction of all customers who rely on the availability of a wide variety of quality Designated Equipment, Products and Services, compliance with the 1st Propane® System and courteous and efficient service provided by all employees of 1st Propane® Franchises. We've already specified, and plan to specify in the future, various suppliers of Designated Equipment, Products and/or Services to be used or provided by 1st Propane® Franchises and that meet our standards and requirements, in each case in our sole and absolute discretion. Your 1st Propane® Franchise will purchase, use and offer each of, and only, such types, brands and/or quality of Designated Equipment, Products and Services as we designate and, where we so require, use only suppliers as designated by us. Designated suppliers may include, and may be limited to, us and/or companies affiliated with us. We may designate a single supplier or limited number of suppliers, may designate a supplier only as to certain items and may concentrate purchases with one or more suppliers to obtain lower prices, advertising support and/or other benefits in our sole and absolute discretion. Specification of a supplier may be conditioned on requirements relating to frequency of delivery, standards of service, including prompt attention to complaints, or other criteria, and may be temporary, pending a further evaluation of such supplier by us, in each case in our sole and absolute discretion.

You'll notify us in writing (and submit to us such information, specifications, and samples as we request) if you propose to purchase, use or offer any type, brand and/or quality of items that have not been previously specified by us, or if you propose to use any supplier who has not been previously specified by us for the proposed item. We'll notify you within a reasonable time whether or not you're authorized to purchase or use the proposed type, brand and/or model of such items or to deal with the proposed supplier. We may, from time-to-time, withhold and/or revoke our approval of particular items or suppliers in our sole and absolute discretion. On receipt of written notice of revocation, you must immediately cease to sell or use any disapproved items and cease to deal with or use items from any such suppliers.

10.3 Specifications, Standards and Operating Procedures. You agree that the operation of your 1st Propane® Franchise, continuously in compliance with our high standards, is vitally important to us and other 1st Propane® Franchisees and is a vital element in the possible success of your 1st Propane® Franchise, other 1st Propane® Franchises and of us and that a lack of uniform high standards can place all 1st Propane® operators at a competitive disadvantage and in a position of business risk. Accordingly, you'll operate your 1st Propane® Franchise, and use the Marks, in prompt, continuous and full compliance with the 1st Propane® System and the Manuals, as each is modified by us from time-to-time in our sole and absolute discretion and without limitation, you promptly complying with each such modification.

In particular, you'll promptly comply with all of our ongoing requirements, standards and operating procedures, including (but not limited to) those relating to operation, appearance, function, cleanliness, products, days and hours of operation, all legal requirements, safety and environmental standards and practices, and otherwise of a 1st Propane® Franchise (including, without limitation, use of specified equipment, products, services, programs and computer hardware and software), and with our other requirements for a 1st Propane® Franchise, as they may be developed or changed by us from time-to-time in our sole and absolute discretion. You'll purchase, use and offer each of, and only, the systems, services, equipment and products designated by us and, where we so require, use only suppliers specified by us and will not use or offer any systems, services, equipment, products or suppliers not specified by us. Mandatory specifications, standards and operating procedures prescribed from time-to-time by us in the Manuals, or otherwise communicated to you in writing, will constitute provisions of this Agreement as if fully set forth herein. All references to this Agreement include all such mandatory specifications, standards and operating procedures. You will not commingle the assets, accounts, records or otherwise of your 1st Propane® Franchise with any other business or entity and all reports to us will clearly identify such items as being exclusively related to your 1st

Propane® Franchise. You will keep accurate tank location and other customer records in the computer (accessible by us), and will obtain a separate lease agreement signed with every customer that receives a tank.

Without our prior written consent (which we may withhold or condition in our sole and absolute discretion), you will not engage in over-the-road trucking of propane or related products. "Over-the-road trucking" is defined as hauling privately or for hire, propane or related products in trucks capable of transporting in excess of 5,000 gallons.

10.4 Compliance with Laws and Ethical Business Practices. You'll secure and maintain in force, in your name, all required licenses, permits and certificates relating to the operation of your 1st Propane® Franchise. You'll operate your 1st Propane® Franchise in full compliance with all applicable laws, ordinances and regulations, including, without limitation, laws relating to safety, environmental matters, health regulations, worker's compensation insurance, unemployment insurance, and withholding and payment of income taxes, social security taxes and sales taxes. All advertising by you will be completely factual, in good taste in our sole and absolute discretion, and will conform to high standards of ethical advertising. You will, in all dealings with your customers, suppliers and public officials, adhere to high standards of honesty, integrity, fair dealing and ethical conduct, in each case above and beyond merely legal requirements. You'll refrain from any business or advertising practice which may be injurious to our business and the goodwill associated with the Marks and other 1st Propane® Franchises. You'll notify us in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which relates to, or which may affect or relate to the operation or financial condition of, you and/or your 1st Propane® Franchise.

10.5 Safety. You will at all times comply with 1st Propane® Safety Policies and Procedures and/or Federal, and/or State and/or Local laws, codes and regulations and/or the local authority having jurisdiction related to the operation of your 1st Propane® Franchise. We will conduct periodic safety and operational audits of your franchise and if we determine in our sole and absolute discretion that your franchise is not in compliance with our Safety Policies and Procedures and/or those federal, and/or state and/or local laws, and/or codes and regulations and/or the authority having jurisdiction in effect at the time, then upon notice of default we may recruit and hire a manager or other person of our choice and designated by us be placed in your 1st Propane® franchise to manage and supervise its day-to-day operations for the purpose of assuring compliance with our Safety Policies and Procedures and/or those Federal, State and Local laws, codes and regulations. You will pay all related costs, including salary, benefits, travel, meals, lodging and incidental expenses in accordance with section 16.8.

10.6 Management and Personnel of Your 1st Propane® Franchise, Training. Your 1st Propane® Franchise must be personally managed on a full-time basis by a person who has successfully completed all training required by us. Although we don't require it, we strongly recommend that you personally manage your 1st Propane® Franchise. Absentee ownership is not recommended by us and exposes you to a greater risk of failure than if you are personally involved, on a full time basis, in the on-site daily management of your 1st Propane® Franchise.

~~We require, and you agree, that in the case of absentee ownership of your franchise, that the manager that you hire has at least a twenty percent (20%) equity ownership in the franchise business.~~ Training for one (1) 1st Propane® Franchise manager is included in the initial franchise fee but you'll be responsible for all travel, meals, lodging and similar costs for all persons attending training and we may charge a reasonable training fee for subsequent 1st Propane® Franchise managers. You'll keep us advised of the identities of the manager and other supervisors of your 1st Propane® Franchise, and we'll have the right to deal with the manager on matters pertaining to day-to-day operations of, and reporting requirements for, your 1st Propane® Franchise. We reserve the right to review any agreements between you and your manager and to require the manager to sign confidentiality and other agreements acceptable to us. You'll hire all employees of your 1st Propane® Franchise and will be solely responsible for their supervision and possible termination, the terms of their employment and compensation and for the proper training of such employees in the operation of your 1st Propane® Franchise. You'll establish and maintain at your 1st Propane® Franchise an ongoing training program, meeting our standards, for new and continuing employees.

10.7 Insurance. You'll maintain in force policies of insurance issued by carriers approved by us covering various risks, as specified by us, including (but not limited to) the following: (1) comprehensive general liability insurance against

claims for bodily and personal injury, death and property damage caused by, or occurring in conjunction with, your 1st Propane® Franchise, under one or more policies of insurance containing minimum liability coverage prescribed by us from time-to-time; (2) all risk property and casualty insurance for the replacement value of your 1st Propane® Franchise and all associated items (including, but not limited to, leasehold improvements, tanks, vehicles, fixtures, equipment, signs, inventory, supplies, and materials) and (3) business interruption insurance providing for continued payment of all amounts due (or to become due) us and/or any affiliate of ours under this Agreement or otherwise. All insurance amounts are set forth in the Confidential Operating Manual.

We may periodically specify the types and amounts of coverage required under any insurance policies and require different and/or additional kinds of insurance at any time, including excess liability insurance. Each insurance policy must name us, our affiliates and the Franchisor-Related Persons/Entities as additional named insureds, will contain a waiver of all subrogation rights against us, our affiliates, the Franchisor-Related Persons/Entities and any successors and assigns, and will provide for thirty (30) days' prior written notice to us of any material modifications, cancellation, or expiration of such policies.

Prior to the expiration of the term of each insurance policy, you'll furnish us with (1) a copy of each renewal or replacement insurance policy to be maintained by you for the immediately following term and (2) evidence of pre-payment of the premium. If you fail to maintain required insurance coverage, or to furnish satisfactory evidence thereof and the payment of the premiums, we, in addition to our other rights and remedies hereunder, may (but aren't required to) obtain such insurance coverage on your behalf and you'll fully cooperate with us in our efforts to obtain the insurance policies, promptly execute all forms or instruments required, allow any required inspections of your 1st Propane® Franchise, and pay to us, on demand, any costs and premiums incurred by us.

Your obligations to maintain insurance coverage will not be affected by reason of any separate insurance maintained by us, nor will the maintenance of any insurance by us relieve you of any obligations under this Agreement or otherwise.

10.8 Franchisee Advisory Council(s). We may form and periodically meet with, and you agree to cooperatively participate in if requested, one or more council(s) of 1st Propane® Franchise Owners to consult with and advise us regarding the operation and development of the 1st Propane® System, the management of the Marketing Fund and other matters, including such subjects as strategic marketing plans, advertising programs, public relations, safety and environmental standards and practices, selection of advertising agencies and other consultants, operating policies and practices, program development. We'll give appropriate consideration to all input from such council(s) but retain the ultimate authority and responsibility for all such decisions.

10.9 Program Participation. We may condition your participation in any program, whether with suppliers, referral sources or otherwise (including, but not limited to, any program involving payments from third party suppliers), as we determine in our sole and absolute discretion, including, but not limited to, our requiring you to be in compliance with such standards and qualifications as we designate (in our sole and absolute discretion) and/or you (and each affiliate of yours) being a 1st Propane® Franchisee in good standing and not in default under this, or any other, agreement with us and/or any affiliate of ours.

10.10 Continued Payment of Royalties and Other Obligations During Closure. You and we recognize that closure of your 1st Propane® Franchise may become necessary from time-to-time for remodeling, due to fire, other casualty, or governmental action. If your 1st Propane® Franchise, the Office/Yard or any significant assets used in the operation of the franchise are damaged or become inoperable, or if your 1st Propane® Franchise is closed for any reason, you will promptly undertake all steps necessary to remedy such conditions and return your 1st Propane® Franchise to full operation as soon as possible. If any closure of your unit takes place for any reason, you will immediately notify us, submit a plan for re-opening (with discussion of budget, deadlines, possible relocation and subject to our reasonable approval) and diligently take (at your expense) all steps necessary to fully re-open your 1st Propane® Franchise for business as soon as possible. In any event, all financial obligations of yours to us or any affiliate, whether under this Agreement or otherwise, will remain in full force and effect during such closure and any amounts due or to become due us or any affiliate calculated based on Gross Volume of

similar amounts (such as percentage royalties, percentage Marketing Fund Contributions, etc.) will continue to be paid during such closure.

11. MARKETING.

Our experience and business judgment is that a unified marketing program, on both a local and broader level, is an essential factor in the potential success of all 1st Propane® Franchises, to achieve top-of-mind awareness in potential customers; to build and retain goodwill associated with the Marks and benefiting all 1st Propane® operators, to create improved brand loyalty among new and future customers, to acquire customers who may be currently serviced by other suppliers and to achieve a preferred retail position for all 1st Propane® Franchises. To maximize the possibility of obtaining these goals, you and we have agreed to a coordinated marketing program as follows:

11.1 Marketing Fund. We've instituted an advertising, publicity and marketing fund (the "Marketing Fund") for the creation and distribution to our Franchisees of such advertising, advertising-related, marketing and/or public relations programs, services and/or materials as we, in our sole and absolute discretion, may deem necessary or appropriate to promote 1st Propane® Franchises. The Marketing Fund may be combined with any marketing fund otherwise established for 1st Propane® Franchises and the funds merged for use in accordance with this Agreement. You'll contribute to the Marketing Fund one percent (1%) of Gross Volume each week via electronic funds transfer. In any event, you agree to pay a minimum Marketing Fund Contribution of no less than Forty Seven Dollars (\$47.00) per week, subject to inflation adjustment as set forth in this Agreement. Such percentage and minimum marketing contributions will be calculated and payable at the same time and in the same manner as percentage and minimum royalties. Minimum marketing contributions for your first month of operation will be prorated.

We'll have sole and absolute discretion over all matters relating to the Marketing Fund in any way, including (but not limited to) its management, all financial matters, expenditures, receipts and/or investments by the Marketing Fund, timing of expenditures, creative concepts, content, materials and endorsements for any marketing programs, together with the geographic, market, and media placement and allocation thereof. Subject only to the restrictions of the first paragraph of this Section with regard to majority approval for purchase of media, the Marketing Fund may be used, in our sole and absolute discretion, to (among other things) pay costs of preparing, producing, distributing and using marketing, advertising and other materials and programs; administering national, regional and other marketing programs, purchasing media, employing advertising, public relations and other agencies and firms; and supporting public relations, market research and other advertising and marketing activities, as well as any expenses associated with any Franchisee Advisory Council(s), if those Councils, and such expenses, are approved by us in our sole and absolute discretion. A brief statement regarding the availability of information regarding the purchase of 1st Propane® franchises may be included in advertising and other items produced and distributed using the Marketing Fund.

We can, in our sole and absolute discretion, arrange for services, goods and otherwise, including (but not limited to) creative concepts, production, placement, purchase of media, legal, accounting and other services, to be provided to the Marketing Fund by ourselves, any affiliated persons/companies and our and/or their employees or agents, including persons/entities who may be owned, operated, controlled by, and/or affiliated with, us (such as an "in-house advertising agency") or may be independent. We may use the Marketing Fund to compensate and reimburse any of such persons/entities (including ourselves) as we deem appropriate in our sole and absolute discretion (including payment of commissions) and to compensate ourselves or others for administrative and other services, materials, etc. rendered to the Marketing Fund, provided that any compensation to us or any persons/entities owned, controlled and/or operated by us will be reasonable in amount. While we are not required to submit any proposed or other expenditures by (or any other matters relating to) the Marketing Fund for approval by any Franchisee Advisory Council, if we do submit any matters for approval and approval is granted by a majority of such Franchisee Advisory Council, such approval will be final and binding on you.

You'll participate in all advertising and public relations programs instituted by the Marketing Fund but will retain full freedom to set your own prices. The Marketing Fund will, as available, furnish you with marketing, advertising and promo-

tional formats and sample materials and may charge the direct cost of producing them plus shipping and handling or may charge such costs against contributions to the Marketing Fund.

The Marketing Fund will be accounted for separately from our other funds (but may be commingled with our other funds) and will not be used to defray any of our general operating expenses, except for such salaries, administrative costs, overhead and other expenses as we may reasonably incur in activities related to the Marketing Fund and its programs (including, without limitation, conducting market research, preparing advertising and marketing materials, insurance, legal costs and collecting and accounting for the Marketing Fund.) In any event, we may charge the Marketing Fund for attorney's fees and other costs related in any way to our defense of any claims against us and/or the Franchisor-Related Persons/Entities regarding our management of the Marketing Fund or otherwise or with respect to collecting amounts due and/or expenditures by or from the Marketing Fund. We may, in our sole and absolute discretion, spend in any fiscal year an amount greater or less than the aggregate contributions to the Marketing Fund in that year and the Marketing Fund may borrow from us or other lenders to cover deficits of the Marketing Fund or cause the Marketing Fund to invest any surplus for future use by the Marketing Fund. You authorize us to collect for remission to the Marketing Fund any advertising or promotional monies or credits offered by any supplier based upon purchases by you or otherwise. In any event, and notwithstanding any designation by you, any provisions of this Agreement to the contrary or otherwise, your Marketing Fund contributions may be applied, in our sole and absolute discretion, to any obligations of yours to us or any affiliate, including (but not limited to) royalties, marketing contributions, purchases, interest or otherwise. All interest earned on monies contributed to the Marketing Fund will be contributed to the Marketing Fund. A statement of monies collected and costs incurred by the Marketing Fund will be prepared annually by us and be furnished to you upon written request. We may (but are not required to) have financial statements of the Marketing Fund audited and any costs in connection therewith will be paid by the Marketing Fund. We'll have the right to cause the Marketing Fund to be incorporated or operated through an entity separate from us as we deem appropriate, and such successor entity will have all rights and duties of ours relating to the Marketing Fund.

We may (but are not required to) remit a portion of Marketing Fund contributions back to a Franchisee on such terms and conditions as we determine in our sole and absolute discretion, including (but not limited to) reimbursement of local advertising expenditures made by a Franchisee and we may waive and/or compromise claims for contributions to, and/or claims against or with respect to, the Marketing Fund in our sole and absolute discretion, using the Marketing Fund to pay any such claims. We'll have sole and absolute discretion as to whether or not we take legal or other action against any Franchisee who is in default of his or her obligations with respect to the Marketing Fund (including obligations to make contributions) or otherwise and whether a Franchisee may be allowed to make direct advertising expenditures in place of contributions to the Marketing Fund.

You acknowledge and agree that the Marketing Fund is generally intended to maximize general recognition of the Marks and patronage of 1st Propane® Franchises. Although we will generally endeavor to utilize the Marketing Fund to develop advertising and marketing materials and programs, and to place advertising, that will benefit all 1st Propane® Franchises, we will have no obligation to ensure that expenditures by the Marketing Fund in or affecting any geographic area are or will be proportionate or equivalent to the contributions to the Marketing Fund by 1st Propane® Franchises operating in that geographic area or that any 1st Propane® Franchise will benefit directly or in proportion to its contribution to the Marketing Fund or from the development of advertising and marketing materials and/or programs, the placement of advertising or otherwise. We have no obligation to cause other 1st Propane® Franchises, licensees or outlets (some of which may be under different arrangements) to contribute to the Marketing Fund, any cooperative or engage in local marketing. You agree that we (and each of the Franchisor-Related Persons/Entities) will not have any direct or indirect liability or obligation to you, the Marketing Fund or otherwise with respect to the management, maintenance, direction, administration or otherwise of the Marketing Fund. You agree that we won't be liable for any act or omission, whether with respect to the Marketing Fund or otherwise which is consistent with this Agreement or other information provided to you, or which is done in subjective good faith. You and we, each having a mutual interest in, and agreeing on the critical practical business importance of, your and our relationship being governed solely by written instruments signed by the parties to be bound (and not having either you or us subject to the uncertainty and ambiguity inherent in the application of legal or other concepts not expressly agreed to in writing by you and us), agree that your and our rights and obligations with respect to the Marketing Fund and all related matters are gov-

erned solely by this Agreement and that this Agreement (and all rights and obligations with respect to the Marketing Fund) is not in the nature of a "trust," "fiduciary relationship" or similar special arrangement and is only an ordinary commercial relationship between independent businesspersons for their independent economic benefit. We may maintain Marketing Fund assets in one or more accounts designated as "trust accounts" (or similarly designated), for purposes of protecting such assets from claims of third-party creditors or otherwise, but such designation and/or treatment will not operate to create any "trust," "fiduciary relationship" or similar special arrangement. You agree that absent the provisions of this Section, we would not be willing to institute or manage the Marketing Fund.

11.2 Local Store Marketing. Beginning during the month in which your first payment of royalties is due and continuing during each month thereafter for the full term of this Agreement, you will spend for local advertising and promotion of your 1st Propane® Franchise (including classified telephone directory listings and advertising, but excluding discounts, coupon redemptions and the cost of products or services given without charge) not less than Eight Hundred Dollars (\$800), subject to inflation adjustment as set forth in this Agreement. You'll submit, in form and at times prescribed by us in our sole and absolute discretion, verification of your expenditures for advertising and promotion for the immediately preceding period. These expenditures are in addition to your obligation to make contributions to the Marketing Fund.

Prior to their use by you, samples of all advertising and promotional materials and programs (including any use of the Internet, World Wide Web or other electronic media) not prepared or previously approved by us must be submitted to us, in the form and manner prescribed by us from time-to-time, for our review and consent, which we may grant, withhold or condition as we see fit in our sole and absolute discretion. If written disapproval is not received by you within seven (7) days from the date of receipt by us of such materials, we will be deemed to have given the required consent but we can later retract any consent (whether express or as a result of such failure to respond) by notice to you. You won't use any advertising or promotional materials or programs that we have disapproved or that does not include the copyright, trademark and other notices required by us. We can require that a brief statement regarding the availability of information regarding the purchase of 1st Propane® franchises may be included in all advertising used by you and that a brochure regarding purchase of 1st Propane® franchises be placed in a prominent location in your 1st Propane® office, or on your equipment, including trucks and tanks.

All use of the Internet, World Wide Web or other electronic media by you in connection with your 1st Propane® Franchise will be as specified by us from time-to-time, whether in the Manuals or otherwise (and we may prohibit and/or condition any use by you of the Internet, World Wide Web or other electronic media), in our sole and absolute discretion. Among other things, we may require that all use of the Internet, World Wide Web or other electronic media be through us, using an Internet/Intranet Service Provider selected by us (or which can be us or an affiliate) and that all pages be accessed only through our "home" or other page and meet our design and other specifications. We own and control all URLs, whether used in connection with your 1st Propane® Franchise or otherwise.

11.3 By Franchisee Association(s). We may, in our sole and absolute discretion, establish one or more associations and/or sub-associations of 1st Propane® franchisees covering territories that include your 1st Propane® Franchise, to be known collectively as the 1st Propane® Franchise Owners Association ("1st Propane® FOA"). You must join and actively participate in 1st Propane® FOA and must contribute to 1st Propane® FOA such amounts as are determined from time-to-time by the 1st Propane® FOA. 1st Propane® FOA may adopt its own rules, regulations and procedures, which you must follow but the rules, regulations and procedures of 1st Propane® FOA are subject to consent by us in our sole and absolute discretion. Your failure to timely contribute the amounts required by, or comply with the rules, regulations and procedures of, 1st Propane® FOA constitutes a material breach of the provisions of this Agreement. We may offset against amounts we owe to you the amount of your unpaid 1st Propane® FOA contributions.

12. REPORTS AND FINANCIAL STATEMENTS.

We will supply you with a bookkeeping, accounting, record keeping and records retention system conforming to the requirements prescribed by us from time-to-time (including, without limitation, requirements for timely entering of information into a computer program designated by us and periodic printouts of reports generated by such computer program, as well as

providing us with full on-line access through your computer or otherwise to all information specified by us). Each transaction related to your 1st Propane® Franchise will be processed on such computer program in the manner prescribed by us. Unless we specifically require otherwise, reports made to us in electronic form need not also be made in written form. We reserve the right to require on line access to your 1st Propane® Franchise data and records.

You will provide to us such information regarding the operation of your business as we specify from time-to-time, either through the computer software that we provide, or faxed copies of reports or documents, or mailed copies of reports or documents. Each report and financial statement submitted by you to us will be verified as correct and signed by you in the manner prescribed by us. You will notify us of any discrepancies within 30 days after receiving any reports from us and if you fail to notify us within 30 days of any corrections, we will have no further obligation or responsibilities with respect to such reports and we may assume they are complete and accurate.

You'll maintain and furnish to us, on request, for five (5) years, complete copies of all business records and all federal, state and local income, sales and other tax returns filed by you reflecting activities of your 1st Propane® Franchise, you hereby waiving any privileges with regard to any tax returns.

13. ANNUAL IN-PERSON REVIEW, INSPECTIONS AND AUDITS.

13.1 In-Person Review. Periodically, (in our sole and absolute discretion) when we tell you, you and your director of operations/manager will, at your expense, meet with our representatives at our headquarters or other location designated by us, for the purpose of discussing and reviewing your 1st Propane® Franchise's operations, status, financial performance and other matters.

13.2 Our Inspections. We and/or our agents will have the right, at any time during business hours, and without prior notice to you, to: (1) inspect the Office/Yard, the Designated Equipment and other equipment, tanks, vehicles, fixtures, signs, operating materials and supplies; (2) observe and inspect all equipment and operations for compliance with legal requirements and all applicable safety and environmental standards and practices; (3) observe, photograph and video tape (or otherwise record) the operations of your 1st Propane® Franchise for such periods as we deem necessary in our sole and absolute discretion; (4) remove samples of any items for testing and analysis; (5) interview personnel and/or customers of your 1st Propane® Franchise; and (6) inspect and copy any books, records, documents or otherwise relating to your 1st Propane® Franchise. You'll cooperate fully with us in connection with such matters. You'll present to your customers such evaluation forms as are periodically prescribed by us and will participate, and/or request your customers to participate, in any surveys performed by us or on our behalf.

You must record all sales at the time of sale using such other sales recordation and reporting systems (including on-line electronic reporting systems provided by ~~fully accessible to us~~) as designated by us. You must retain all charge account records, sales slips, merchandise orders, return vouchers, tax returns, sales tax reports, and all of your other business records and related back-up material for at least five (5) years following the termination, assignment and/or expiration of this Agreement.

You'll install and maintain such equipment and programs as we specify to permit your access by telephone or internet connection to each computer program designated by us, thereby permitting us to inspect and monitor, electronically, information concerning your inventory, sale transactions, Gross Volume, and such other information as may be contained or stored in such equipment and computer programs.

We have the right to have confidential and undisclosed "shoppers" and/or other individuals patronize and/or inspect your 1st Propane® Franchise, you will reimburse us for the reasonable fees and costs incurred in connection with those activities (or we may pay such fees and costs from the Marketing Fund) and we will share their reports with you.

One of the primary purposes of our being able to perform inspections and other activities is to assist you in improving the operation of your 1st Propane® Franchise by generating suggestions, recommendations, and additional training from the information we receive, and promote better business practices for the entire 1st Propane® system.

13.3 Financial Audit. We (and/or our agents) will have the right at any time during business hours, and without prior notice to you, to inspect and/or audit the business records, bank statements, sales and income tax records and returns, your 1st Propane® Franchise and properties and the books and records of any person(s), corporation or partnership which holds, or does business with, the Franchise. You'll fully cooperate with our representatives in connection with any such inspection or audit. Our right to audit includes the right to access equipment by electronic means as provided herein. If any inspection or audit discloses an understatement of Gross Volume, you will pay to us, within five (5) days after receipt of the inspection or audit report, the royalties and marketing contributions due on the amount of such understatement, plus interest (at the rate and on the terms provided herein) from the date originally due until the date of payment. If any inspection or audit is made necessary by your failure to furnish reports, supporting records, other information or financial statements, or to furnish reports, records, information or financial statements on a timely basis, or if an understatement of Gross Volume for any period is determined by any audit or inspection to be greater than two percent (2%), you will reimburse us for the cost of the inspection or audit, including, without limitation, the charges of any independent accountants, and the travel expenses, room and board and applicable per diem charges for our and their employees. Should any audit reveal an intentional understatement of Gross Volume for any period in any amount, or an understatement (whether intentional or not) of Gross Volume for any period to be greater than five percent (5%), or any other violation of this Agreement, we may terminate all of your rights, and our obligations, hereunder, in addition to exercising any other remedies we may have. These remedies are in addition to all other remedies and rights of ours hereunder or under applicable law, including termination.

If you are audited by the Internal Revenue Service or State income tax authority, or any other governmental authority and it is determined that you underreported your revenue from the operation of your 1st Propane® franchise, it is presumed that you underreported your revenues to us for royalty purposes, and you will immediately notify us and pay the difference in royalties owed.

We may require you, at your own expense, to have audited financial statements [including balance sheet(s), income statement(s) and statement(s) of changes in financial position and reflecting all appropriate adjustments], covering any period(s) we select, prepared by a certified public accountant and presented to us with such account's report.

13.4 Other Audits. From time-to-time, we may perform safety audits, operational audits, and marketing audits on site, or remotely via electronic transmission (in our sole and absolute discretion), at no cost to you and you will promptly make all changes required by us in any areas we identify from such audits as needing correction.

14. TRANSFER.

14.1 Transfers by Us. This Agreement, and any and/or all of our rights and/or obligations under it, are fully transferable by us in our sole and absolute discretion and will inure to the benefit of any person or entity to whom we transfer it, or to any other legal successor to our interest in this Agreement. If we transfer this Agreement, or any and/or all of our rights and/or obligations under it, all past, current and/or future obligations of ours (and/or of any of our affiliates) to you will cease and be forever extinguished. In view of the efficiencies, economies and other advantages which may be obtained through local servicing of Franchisees' needs, we may, on a permanent, temporary or other basis, delegate any or all of our duties to another company (the "Area Representative") and, in such event, you will look only to such Area Representative for the performance of such duties and not make any claims against us or any of the Franchisor-Related Persons/Entities in connection with any alleged acts or omissions of ours and/or such Area Representative. The benefits and protections of this Agreement which apply to us and/or any of the Franchisor-Related Persons/Entities shall also apply to any current and/or future Area Representative.

14.2 Transfers by You. The rights and duties created by this Agreement are personal to you (or your owners if the Franchisee is a partnership or corporation) and we've granted the Franchise to you relying on the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of you or such owners. Accordingly, neither this Agreement nor the Franchise (nor any interest therein), nor any part or all of the ownership of the Franchisee or your 1st Propane® Franchise (or any interest in it or assets associated with any of the foregoing), may be transferred without our prior written approval. Any such transfer (or attempted transfer) without such approval will constitute a breach of this Agreement and convey no rights to, or interests in, this Agreement, the Franchise, the Franchisee, your 1st Propane® Franchise, such assets or otherwise.

The term "transfer" includes (but is not limited to); any voluntary, involuntary, direct or indirect assignment, sale, gift, pledge, mortgage; any granting of any security or other interest (whether or not controlling) in: (1) this Agreement; (2) the Franchise; (3) the ownership of the Franchisee; (4) your 1st Propane® Franchise; or (5) any assets associated with any of the foregoing, including, but not limited to the customer accounts, customer list, tanks, trucks, accounts receivable and other assets of the franchise. A transfer also includes (but is not limited to) the following events: (a) any transfer of ownership of capital stock or any partnership or similar interest; (b) any merger or consolidation or issuance of additional securities representing an ownership interest in the Franchisee; (c) any sale of voting stock of the Franchisee or any security convertible to voting stock of the Franchisee; (d) any transfer in a divorce, insolvency, corporate or partnership dissolution proceeding or otherwise by operation of law; or (e) any transfer of any interest in the revenues, profits, rights or assets of your 1st Propane® Franchise. Any transfer by the Franchisee (or any of your owners) to a corporation and/or of any interest in the event of your death or the death of an owner of the Franchisee, by will, declaration of or transfer in trust, under the laws of intestate succession, or otherwise will be governed by all of the provisions on assignment of this Agreement.

You will give us a minimum of sixty (60) days prior written notice if you are considering or intending a transfer, or the possibility of a transfer, whether in general or specifically, under this Agreement, including any situation in which you are soliciting, or are planning to solicit, a possible transfer through a business brokerage listing or otherwise.

You acknowledge and agree that any financial information records or reports which we prepare and present to you (including, but not limited to, any financial records/reports related to your 1st Propane Franchise and related business/assets, is Confidential Information, as defined under and subject to the restrictions contained in this Agreement. You are not permitted to disclose or use any such Confidential Information with respect to any person/entity we do not authorize. You specifically agree not to deliver financial records or reports we prepare and deliver to you or any other Confidential Information to which you present to any prospective or actual transferee. You further agree to indemnify and hold harmless us, all Franchisor-Related Persons/Entities, all 1st Propane® Franchisees or other operators and/or any of the foregoing, from all fines, suits, proceedings, claims, demands, actions, loss, damages, costs, fees (including attorney's fees and related expenses) and/or any other expense, obligation and/or liability of any kind or nature, however arising, growing out of or otherwise connected with and/or related to your providing any such financial records/reports or other Confidential Information to any prospective or actual transferee or otherwise. It is your sole choice and responsibility independently to prepare, maintain and deliver distinct financial records, reports and accounts for your 1st Propane Franchise for purposes of facilitating a transfer of your Franchise or otherwise.

14.3 Conditions for Approval of ANY Transfer by Franchisee. Any transfer by or on behalf of you and/or any entity affiliated with and/or controlled by you will be subject to all of the conditions specified below and anywhere else in this Agreement (each of which you and we agree are reasonable), together with such other terms and conditions as are reasonable in the specific circumstances of the proposed transfer but, in any event, we may refuse consent to any transfer if, in our sole and absolute discretion, the proposed transferee has been, is and/or will be associated with a Similar Business or if the proposed transferee does not meet our then-current financial, experience and other standards for issuance of an 1st Propane® Franchise directly by us. You must be in full compliance with this Agreement and all other agreements between you (and any affiliate) and us (and any affiliate.) A transfer of ownership in your 1st Propane® Franchise or any of its assets may only be made in conjunction with a transfer of the Franchise.

All of the following conditions must be met prior to, or concurrently with, the effective date of any transfer unless we require you to meet them earlier. We may waive any condition in our sole and absolute discretion:

- (1) the transferee and its owners must be individuals of good moral character, must have sufficient business experience, aptitude and financial resources to operate your 1st Propane® Franchise and must meet all financial and other standards then applied by us in evaluating prospects to whom we might award a 1st Propane® Franchise;
- (2) all of your obligations (including all obligations of any affiliate of yours) to us (including any affiliate of ours) must be expressly assumed by the transferee;
- (3) you must pay all royalties, marketing contributions, and other amounts owed by you (and/or any affiliate of yours) to us (and/or any affiliate of ours) which are then unpaid (the balances of all promissory notes and other unpaid amounts owed to us and/or any affiliates of ours shall be accelerated and paid in full), all obligations to third parties arising out of the operation of your 1st Propane® Franchise must be satisfied or assumed by the transferee and your 1st Propane® Franchise and its operations must have been brought into full compliance with all specifications and standards then applicable for new and/or renewing 1st Propane® Franchises, including compliance with all then-current standards for facility design, tanks, vehicles, equipment, software, signage, provision of goods and services, methods of operation and other 1st Propane® System Standards, plus such renovation and modernization of the 1st Propane® Franchise as we may require to reflect the then-current standards and image of the System;
- (4) you must submit all required reports, financial statements and other documents due us up to the effective date of the transfer;
- (5) you must have complied with all of the provisions of this Agreement, any amendment or successor hereto, and all other agreements between you and us, our subsidiaries, affiliates or divisions, and, at the time of transfer, shall not be in default thereof;
- (6) the transferee and its personnel must (at our option) complete or agree to complete our training program to our satisfaction;
- (7) the transferee must obtain, within the time limits set by us, and maintain thereafter, all permits and licenses required for the operation of the franchised business;
- (8) you and the transferor(s) must remain liable for all obligations to us, our subsidiaries, affiliates, and divisions, in connection with your 1st Propane® Franchise prior to, through and after the effective date of the transfer and shall execute any and all instruments reasonably required by us to evidence such liability;
- (9) to the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer;
- (10) the transferee must assume all of your duties and obligations to us (and any affiliate of ours) and, at our option, (a) agree to be bound by all terms and conditions of this Agreement for the remainder of its term or (b) execute our then-current form of franchise agreement and ancillary documents (including guarantees) as are then customarily used by us in the grant of franchises for 1st Propane® operations (which may, among other things, provide for higher royalties, marketing contributions and materially different rights and obligations than are provided in this Agreement) provided, however, that the term thereof will not be greater than the remaining term of this Agreement and no initial franchise fee will be required;
- (11) you must pay us a non-refundable transfer fee of Eighty Percent (80%) of the then current Franchise Fee, pro-rated for the remaining term of this Agreement, subject to a minimum transfer fee of \$1,000 in any case. For example, if as of the ef-

fective date of such transfer 3 years remained on the term of this Agreement, you would pay us a transfer fee of three-tenths (3/10) of Eighty Percent (80%) of the then current Franchise Fee, subject to a minimum transfer fee of One Thousand Dollars (\$1,000) in any case. Such fee must be deposited with us on a non-refundable basis on your notification to us of the proposed transfer and prior to our undertaking any review, drafting of documents or other activities;

(12) you and each of your affiliates [and the transferee (and each owner of the transferee) if the transferee or such owner is or has been a franchisee of, or had any other relationship with, us or any of the Franchisor-Related Persons/Entities] must sign a General Release;

(13) if you or your owners finance any part of the sale price of the transferred interest or obtains any security interest in the Franchise, your 1st Propane® Franchise (or any of its assets) or otherwise, you and your owners (and the transferee) must agree that all obligations of the transferee under or pursuant to any promissory notes, agreements, security interests reserved and/or held by you or your owners, or otherwise will be subordinate to the obligations of the transferee to pay royalties, marketing contributions, and other amounts due and/or to become due to us and/or any affiliate of ours and otherwise to comply with this Agreement, the franchise agreement and all other agreements executed or to be executed by the transferee; provided that, in our sole and absolute discretion, we may refuse to allow you or anyone else to grant or receive a pledge, mortgage, lien or any security or similar interest in and/or to the Franchise, your 1st Propane® Franchise (or any of its assets) or otherwise;

(14) notwithstanding any transfer, your non-competition, indemnity and confidentiality obligations, and the provisions relating to dispute resolution (which include, but are not limited to, those of Article 19), as well as those of Article 21, of this Agreement will survive any transfer;

(15) the transferee must obtain from you an agreement that, to the maximum extent permitted by law, you will not, for a period of at least three (3) years following the transfer, either directly or indirectly, or as owner, partner, director, officer, employee, consultant, agent, manager or stockholder, disclosed or undisclosed principal, officer, agent, employee or in any other capacity whatsoever, participate or engage, actively or inactively, in any Similar Business or any other business substantially similar to any business then engaged in by us or any of our Franchisees, and we shall be named as a third-party beneficiary of such agreement.

(16) the transfer must be made in compliance with any laws that apply to the transfer, including state and federal laws governing the offer and sale of franchises; and

(17) in any event, we may withhold or condition our consent to any transfer as we deem appropriate based on the circumstances of the transfer or otherwise.

If we believe, in our sole and absolute discretion, that the terms and/or conditions of any transfer (including, but not limited to, the price and/or terms of payment) or any surrounding circumstances would make the transfer not in the best interests of us, the proposed transferee or the 1st Propane® family of Franchisees (for example, if the price to be charged and/or the terms of payment would be so burdensome as to, in our sole and absolute discretion, possibly adversely affect the future operations of a 1st Propane® Franchise by the proposed transferee) we may (but are not required to) refuse to consent to such transfer. If we refuse to grant consent for any reason, your (and the proposed transferee's) sole remedy will be to have such matter resolved through arbitration and for the arbitrator, if appropriate, to order consent to be granted, with no damages or other relief to be awarded. We may (but are not required to) candidly discuss all matters related to any transfer and/or proposed transfer (including our views of the price to be charged and/or the terms of payment) with you, any proposed transferee and/or otherwise and will have no liability to you or anyone else regarding such views, discussions or otherwise. In no case will you or any transferee rely on us to review or evaluate any proposed transaction (our examination and possible consent not being an approval or recommendation) and neither we nor anyone else will have any liability to you, any proposed or actual transferee or otherwise in connection with our examination and/or possible consent or withholding of consent, with respect to any transfer and/or proposed transfer or our exercise of any right of ours (including the right to discuss our views with the pro-

posed transferee and/or withhold consent), you agreeing to indemnify and hold us harmless from any liability to you, the proposed transferee or otherwise.

14.4 Additional Conditions for Transfer to a Wholly-Owned Corporation. Subject to compliance with all other requirements of this Agreement [including execution of a General Release and satisfying all payment and transfer fee requirements; [provided that if such transfer is made within ninety (90) days of the date of this Agreement, all but Five Hundred Dollars (\$500) of the transfer fee will be waived], if you're in full compliance with this Agreement, we won't withhold our consent to a transfer of this Agreement, the Franchise and your 1st Propane® Franchise to a corporation which conducts no business other than your 1st Propane® Franchise. Such a transfer will not relieve you of your obligations hereunder, and you'll remain jointly and severally liable to us for all of your, and such corporation's, past, current and/or future obligations, under any agreement(s) (whether past, current and/or future) with us or any affiliate of ours and/or any franchise and/or other agreement(s) to be executed by such corporation.

In addition, any such transfer will be subject to reasonable restrictions, including but not limited to the following (each of which are agreed to be reasonable):

- (1) The transferee corporation must be newly organized, the articles of incorporation, bylaws and other organizational documents of such corporation must recite that the issuance and assignment of any ownership interest in the corporation are restricted by the terms of this Agreement and must provide that its activities are confined solely to acting as a 1st Propane® Franchisee as franchised and in good standing under this Agreement;
- (2) You must maintain (and continue to maintain) management control of the corporation and ownership of at least fifty-one percent (51%) of the equity and voting power of all issued and outstanding capital stock in the transferee corporation and to personally manage the affairs of such corporation;
- (3) The individual Franchisee (or, if the Franchisee is a partnership, at least one of the partners) must be and remain the chief executive officer of the corporation;
- (4) The transferee corporation must enter into a written assignment (in form satisfactory to us) in which such corporation assumes all of your past, current and/or future obligations under this Agreement and any other past, current and/or future agreement(s) with us and/or any affiliate of ours. At our option we may, in addition to requiring such assumptions, require such corporation to execute our then-current form of franchise agreement and ancillary documents (including guarantees by the owners of such corporation) as are then customarily used by us in the grant of franchises for 1st Propane® operations;
- (5) All current and future shareholders of the transferee corporation must enter into a written agreement (in a form provided or approved by us) agreeing to comply with this Agreement and any other past, current and/or future agreement(s) with us and/or any affiliate of ours and jointly and severally guaranteeing all of the transferee corporation's past, current and/or future obligations under this Agreement and any other past, current and/or future agreement(s) with us and/or any affiliate of ours;
- (6) Each stock certificate of the transferee corporation must bear a legend reciting or referring to the restrictions of this Agreement, including those on the issuance and transfer of stock in the transferee corporation;
- (7) No shares of securities of any type in the transferee corporation may be issued without obtaining our prior written consent, which may be subject to the restrictions on transfer herein and other reasonable conditions as we deem appropriate;
- (8) All obligations of the Franchisee under this Agreement and/or any other agreement(s) with us and/or any affiliate of ours (including all financial and operational compliance matters) must be satisfied prior to the transfer;
- (9) No more than twenty percent (20%), in the aggregate, of the voting rights of the transferee corporation may ever be owned beneficially or of record by institutions or publicly held companies;

- (10) There shall never be more than twelve (12) owners ("Owners") with ownership interests in the transferee corporation; or any Area, Operating or other Franchisee of ours (married couples and family trusts to be considered together as one for these purposes);
- (11) There will be no public offerings of debt or equity ownership in or by the transferee corporation;
- (12) None of the Owners will, directly or indirectly, engage in, or have any interest in, any Similar Business, except that all Owner accumulated together may own up to three percent (3%) of the stock of a publicly-traded Similar Business; and
- (13) In any event, we may withhold or condition our consent to any transfer as we deem appropriate based on the circumstances of the transfer or otherwise.

Throughout the term of this Agreement, the transferee corporation will maintain its net worth at a level reasonably acceptable to us and no transfer will take place unless the Franchisee is current in all payments to us, the Marketing Fund and each of the Franchisor-Related Persons/Entities.

14.5 Death or Disability of Franchisee. On your death or permanent disability or, if the Franchisee is a corporation or partnership, on the death or permanent disability of the owner of a controlling interest in the Franchisee, the executor, administrator, conservator, guardian or other personal representative of such person will transfer his or her interest in this Agreement and the Franchise, or such interest in the Franchisee, to a third party subject to our consent (as provided and conditioned herein) and possible exercise of our right-of-first-refusal. Such disposition of this Agreement and the Franchise, or such interest in the Franchisee (including, without limitation, transfer by bequest or inheritance), will be completed within a reasonable time, not to exceed six (6) months from the date of death or permanent disability and will be subject to all the terms and conditions applicable to transfers contained in this Agreement. Failure to so transfer the interest in this Agreement and the Franchise, or such interest in the Franchisee, within said period of time will constitute a breach of this Agreement.

In the event of your death, disability, absence or otherwise, we can (but are not required to) operate your 1st Propane® Franchise on your behalf and at your expense for such period of time (and under such terms and conditions) as we determine, including paying out of the assets and/or revenues of your 1st Propane® Franchise any or all past, current and/or future obligations of your 1st Propane® Franchise (including any amounts owed to us and/or any affiliate) in such priorities as we determine from time-to-time in our sole and absolute discretion. We can pay ourselves a reasonable amount to reimburse us for our management services and other costs. We can obtain approval of a court or arbitrator for any such arrangements, the attorney's fees and other costs incurred in connection with obtaining such approval to be charged against the assets and/or revenues of your 1st Propane® Franchise. We'll be indemnified by you (and/or your estate) against any costs and/or liabilities incurred by us in connection with, or related in any way to, the operation (or otherwise) of your 1st Propane® Franchise.

14.6 Effect of Consent to Transfer. Our consent to a transfer, or failure to exercise any right-of-first-refusal, will not constitute a waiver of any claims we may have against you (or your owners), nor will it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions of this Agreement or any other agreement by any transferor or transferee. Unless we expressly release you from your obligations under this Agreement (which we have no obligation to do), you will remain and be liable for each of your obligations under this Agreement (and any other agreement with us and/or any affiliate) and any Franchise Agreement and/or other agreement executed by any transferee. Any dispute regarding any proposed or completed transfer (including our failure to consent to a proposed transfer) will be resolved under the mediation/arbitration provisions of this Agreement and your sole remedy will be an order that we grant consent.

14.7 Our Right-of-First-Refusal. If you or any of the Franchisee's owners wish to engage in any transfer subject to this Agreement, (a) you or your owners will obtain a bona fide, executed written offer and earnest money deposit [in the amount of at least Ten Thousand Dollars (\$10,000), subject to inflation adjustment as set forth in this Agreement] and (b) a true and complete copy of the offer (and any proposed ancillary agreements) will immediately be submitted to us, together

with a non-refundable deposit of the transfer fee. The offer must apply only to an interest in this Agreement, the Franchise, your 1st Propane® Franchise or the Franchisee and must not include the purchase of any other property or rights of yours (or the Franchisee's owners); but if the offeror proposes to buy any other property or rights from you (or the Franchisee's owners) under a related offer, the price and terms of purchase offered to you (or the Franchisee's owners) for the interest in this Agreement, the Franchise, your 1st Propane® Franchise, or the Franchisee will reflect the bona fide price offered therefore and will not reflect any value for any other property or rights. We may exclude from the assets purchased hereunder any items that are not approved as meeting quality standards for 1st Propane® Franchises. If any of the assets to be purchased do not meet the standards we then apply to new 1st Propane® Franchises and/or if you are in default, we can require that such assets be replaced and/or brought into compliance with our requirements, and/or such defaults be cured, before the sale is completed and the time for us to give notice of intent to exercise our right-of-first-refusal will not begin to run until after all such assets have been brought up to such standard and such defaults cured.

We'll have the right, exercisable by written notice delivered to you or the Franchisee's owners within thirty (30) days from the date of delivery of an exact copy of such offer to us, together with your deposit of any transfer fee and satisfaction of all other requirements for our consent to such assignment, to notify you that we have elected to purchase such interest for the price and on the terms and conditions contained in such offer; provided that we may substitute cash, a cash equivalent, or securities of equal value for any form of payment proposed in such offer, our credit will be deemed equal to the credit of any proposed purchaser, and we will have not less than sixty (60) days from the date you receive our notice of intention to exercise such right-of-first-refusal to prepare for closing. We'll be entitled to purchase any interest subject to all customary representations, warranties and agreements given by the seller of the assets of a business or voting stock of an incorporated business, as applicable, including, without limitation, representations and warranties as to ownership, condition and title to stock and/or assets, liens and encumbrances relating to the stock and/or assets, validity of contracts, and liabilities, contingent or otherwise, of the corporation whose stock is purchased and including typical non-competition covenants by the seller and each owner of the Franchisee. In connection with such purchase, you will sign a General Release. If, for any reason, such transaction is not consummated within one hundred and twenty (120) days after the date of delivery of an exact copy of such offer to us, together with your deposit of any transfer fee and satisfaction of all other requirements for our consent to such assignment, or if you seek to effect a transaction on terms and conditions, or to any person or entity, other than as set forth in the offer disclosed to us by you, then the proposed transaction shall be deemed withdrawn, and all of the provisions of this Section shall again become fully applicable, as if such transaction had not been proposed.

If we do not exercise our right-of-first-refusal, you or your owner may complete the sale to such purchaser pursuant to and on the exact terms of such offer, subject to the conditions provided in this Agreement, provided that if there is a material change in the terms of the sale, we will have an additional right-of-first-refusal for thirty (30) days on the same terms and conditions as are applicable to the initial right-of-first-refusal. Our rights under this or any other Section may be assigned by us, in our sole and absolute discretion, to any person or entity we choose.

15. SUCCESSOR FRANCHISE.

15.1 Your Rights. Your rights and our obligations under this Agreement terminate at the expiration of the initial term, but at that time, subject to the conditions below, you will be eligible to be awarded a successor franchise (which may be materially different from this Franchise Agreement) for your 1st Propane® Franchise for a single ten (10) year period, without any further term, successor franchise or right of renewal.

15.2 Your Obligations. Any award of the successor franchise must meet all of the following conditions:

(1) You (and each affiliate of yours) have fully and continuously complied with this Agreement and all other agreements with us (and/or any affiliate of ours), in each case without any defaults, cured or uncured, during the term of this Agreement (including all of the conditions set out below);

(2) You maintain possession of your Office/Yard and by the expiration date of this Agreement have brought it and its operations [including the inventory and condition of all equipment (including vehicles), appearance and all other items] into full compliance with our then-current specifications and standards for new and/or renewing 1st Propane® Franchises and present evidence satisfactory to us that you have the right to remain in possession of your 1st Propane® Franchise for the duration of the successor franchise; or, in the event you are unable to maintain possession of the Office/Yard, or in our judgment your 1st Propane® Franchise should be relocated, you secure a substitute Office/Yard consented to by us and have furnished, stocked and equipped such Office/Yard to bring your 1st Propane® Franchise and inventory into full compliance with our then-current requirements by the expiration date of this Agreement;

(3) You have given us written notice of election to obtain the successor franchise not less than six (6) months, but not more than twelve (12) months, prior to the expiration of the term of this Agreement. Within ninety (90) days after our receipt of such timely notice, we will furnish you with written notice of: (a) any reasons which could cause us not to grant the successor franchise, including any deficiencies which require correction and a schedule for correction thereof by you, and (b) our then-current requirements relating to the image, appearance, decoration, furnishing, equipping, stocking and programs of a 1st Propane® Franchise, and a schedule for effecting such upgrading, modifications or otherwise, as a condition of receiving the successor franchise. You understand and agree that we may refuse to grant a successor franchise if, in our reasonable judgment, you (or any affiliate of yours) have failed to render satisfactory performance as a Franchisee in any operational or other areas (including, but not limited to, safety, compliance with all Manuals, adverse impact on the Marks and associated goodwill.) whether or not such failure constitutes or constituted a default. The grant of the successor franchise will be conditioned on your (and your affiliates') continued compliance with all the terms and conditions of this Agreement (and all other agreements with us and/or any affiliate) up to the date of expiration and correction of any deficiencies within the periods specified by us.

(4) You (and each affiliate of yours) have satisfied all monetary obligations owed to us and any company affiliated with us and have timely and fully met such and all other obligations throughout the term of this Agreement;

(5) You've executed our then-current form of Franchise Agreement and related documents (with appropriate modifications to reflect the fact that the successor Franchise Agreement relates to the grant of a successor franchise without the right to further successor franchises or renewals), including guarantees, as are then customarily used by us in the grant of franchises for 1st Propane® operations, and the economic and other terms of which may materially differ from the terms of this Agreement, including, without limitation, higher royalty fees and/or marketing contributions; provided, however, you will not be required to pay the then-current initial franchise fee. In our sole and absolute discretion, and to further your and our mutual interests in having consistent documents to cover all of your units, and to update documents to reflect changed competitive and other conditions, we can require you to sign our then-current form of Franchise Agreement to cover all 1st Propane® Franchises in which you then have an interest;

(6) You've complied with our then-current qualification and training requirements. We may require your personnel to attend and successfully complete any retraining program(s), and at such times and location(s), as we then specify. There will be no charge for any retraining program(s), but you'll be responsible for all travel, meals, lodging and other expenses of your personnel.;

(7) You (and each affiliate of yours) have executed a General Release. If you fail to execute such a release, the granting of a successor franchise will be the equivalent of the granting of such release, since you and we agree that it would be inappropriate and improper for you to continue in a franchise (or other) relationship with us, and have the right to use the Marks and System, if you had any claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against us (or other persons/entities covered by such a release) or otherwise failed to execute such a release, particularly in view of the fact that you are not being charged a full initial franchise fee in connection with the successor franchise; and

(8) You've paid us a non-refundable successor franchise fee of One Thousand Dollars (\$1,000), subject to adjustment for inflation as described in this Agreement. We must receive the fee from you at the time of your election.

Failure by you and/or your owners to timely complete such requirements will be deemed an election by you not to obtain the successor franchise.

If, at any time, you or any affiliated entity are to receive one or more successor, additional, other and/or further franchise(s) from us [we having no obligation to grant you any such additional, other and/or further franchise(s)], whether or not a successor franchise, you, each of your affiliates, each owner of the Franchisee, the new franchisee and each owner thereof will at each such time sign a General Release, except (where so required by applicable law) for any claims exclusively related to the offer and sale of the additional, other and/or further franchise(s).

16. TERMINATION OF THE FRANCHISE.

16.1 Defaults with No Right to Cure. Your rights and our obligations under this Agreement will automatically terminate on delivery [or, in any event, on three (3) calendar days after mailing] of notice of termination to you (without further action by us and without opportunity to cure) if:

- (1) you or any of your owners fail, in the time provided in, or otherwise in accordance with, this Agreement to: (a) locate an Office/Yard site accepted by us; (b) obtain lawful possession of the Office/Yard; or (c) develop and open your 1st Propane® Franchise;
- (2) you or any of your owners abandons or otherwise fails to fully operate your 1st Propane® Franchise for more than seven (7) calendar days, or surrenders or transfers control without our prior written approval;
- (3) you or any of your owners has made any material misrepresentation or omission in your application for the Franchise, including (but not limited to) failure to disclose any prior litigation or criminal convictions (other than minor traffic offenses);
- (4) you or any of your owners is judged bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay his or her debts as they become due, or a petition under any bankruptcy law is filed against you or any of your owners or a receiver or other custodian is appointed for a substantial part of the assets of your 1st Propane® Franchise;
- (5) you or any of your owners is convicted by a trial court of or pleads no contest to a felony, or to any crime or offense that may adversely affect the reputation of the Franchisee or any owner or your 1st Propane® Franchise or the goodwill associated with the Marks or engages in any misconduct which unfavorably affects the reputation of the Franchisee or any owner or your 1st Propane® Franchise, us or the goodwill associated with the Marks (including, but not limited to, child abuse or other mistreatment, health or safety hazards, drug or alcohol problems, or allowing unlawful activities or unauthorized or illegal items to be used or distributed at the Office/Yard or in connection with the Franchise);
- (6) you or any of the Franchisee's owners makes an unauthorized transfer of this Agreement, the Franchise, your 1st Propane® Franchise, or an ownership interest in the Franchisee;
- (7) you or any of the Franchisee's owners makes any unauthorized use or disclosure of or duplicates any copy of any Confidential Information, makes any unauthorized use of the Marks, or uses, duplicates, or discloses any portion of the Manuals;
- (8) you or any of the Franchisee's owners make any misrepresentation to us, including any misrepresentation of Gross Volume or any amounts due us or any affiliate and/or commit any other act or omission constituting fraud, misrepresentation or similar act or omission, whether with respect to us, any of the Franchisor-Related Persons/Entities and/or any third party (you agree that any fraud, misrepresentation or similar act or omission by you, is by its nature incurable, since it would adversely affect the goodwill associated with the Marks and/or irrevocably damage the relationship between you and us);

(9) you (and/or any owner and/or affiliate of yours) engage in any legal action (including arbitration, but not including mediation) against us and/or any of the Franchisor-Related Persons/Entities and do not receive a final judgment or award substantially in your favor on the merits;

(10) there are five or more customer complaints with respect to your 1st Propane® franchise in any 12-month period, whether or not resolved, and/or

(11) you have failed to retain (or otherwise fail to produce on request) any records required to be maintained by our record retention policies, federal, state or local regulation, or otherwise as they are required for us to confirm your compliance with the provisions of this (or any other) agreement.

16.2 Defaults with Right to Cure. Your rights and our obligations under this Agreement will automatically terminate on our mailing of notice of termination to you (without further action by us and without further opportunity to cure beyond that set forth in this section), if you, any affiliate or any of the Franchisee's owners:

10 Day Cure

(1) fail to report accurately the Gross Volume of your 1st Propane® Franchise or fail to make payments of any amounts due us and/or any affiliate and do not correct such failure within ten (10) calendar days after written notice is mailed to you;

(2) demonstrate a continuing disregard for employee, and/or customer, and/or public safety by violating 1st Propane® safety policies and/or procedures and/or any federal, state or local laws, codes and regulations and/or the local authority having jurisdiction related to the safe operation of your 1st Propane® franchise and the safety of your employees, and/or the public and/or your customers; and you fail to correct any violation of the above policies, procedures, laws and/or regulations within ten (10) calendar days after written notice of default under this section is mailed to you;

(3) fail to correct any violation of any safety or environmental standards (or any other legal requirements) within ten (10) calendar days after written notice is mailed to you;

(4) fail to provide insurance coverage as required by this Agreement and/or the Manuals, and/or your 1st Propane® Franchise becomes uninsurable within ten (10) calendar days after written notice is mailed to you.

[With respect to items (2) through (4) above only, if such failure cannot reasonably be corrected within such ten (10) day period, termination will not take place if you undertake within ten (10) calendar days after such written notice is mailed to you, and diligently continue until completion, efforts to bring your 1st Propane® Franchise into full compliance and furnish, at our request, proof acceptable to us of such efforts and the date full compliance will be achieved; provided that, in any event, such defaults must be fully cured within thirty (30) calendar days after such written notice is mailed to you; provided further that, with respect to items (2) through (4) above, we may require you to immediately cease all operations until such defaults are fully cured.]

30 Day Cure

(1) cause or permit to exist any default under the lease or sublease for the Office/Yard and fail to cure such default within the applicable cure period set forth in the lease or sublease; fail to remain current in your obligations to taxing authorities, landlords, equipment lessors, suppliers or others; or fail to comply with any other provision of this Agreement (or any other agreement with us and/or any affiliate of ours) or any specification, standard or operating procedure or rule prescribed by us (including reporting requirements), whether covered by the Manuals, any System Standards or otherwise; and, in any such case, do not: (a) correct such failure within thirty (30) calendar days after written notice of such failure to comply is mailed to you; or (b) if such failure cannot reasonably be corrected within such thirty (30) day period, undertake within thirty (30) calendar days after such written notice is mailed to you, and diligently continue until completion, efforts to bring your 1st Pro-

pane® Franchise into full compliance and furnish, at our request, proof acceptable to us of such efforts and the date full compliance will be achieved; provided that, in any event, such defaults must be fully cured within ninety (90) calendar days after such written notice is mailed to you; provided further that, with respect to any of the above matters, we may require you to immediately cease all operations until such defaults are fully cured.

(2) you or any of the Franchisee's owners loses the right to possession of the Office/Yard and does not relocate your 1st Propane® Franchise to other Office/Yard in accordance with this Agreement.

Performance Standards

You and we have entered into this Agreement based on our expectation, and your promise, that you will continuously and diligently follow all 1st Propane® System Standards and use your best efforts to fully develop all available business and you understand that the success of the 1st Propane® concept, as well as your and our success, and the success of your fellow 1st Propane® Franchisees, depends in large part on your following the 1st Propane® System in each and every respect, vigorous, pro-active marketing efforts and your maximization of all available business and you and we have, therefore, a shared interest in you not failing to comply with 1st Propane® System Standards or falling to an excessively low level of gallons of propane sold, as well as all 1st Propane® Franchisees maintaining a leading position in the industry. In particular, you acknowledge that we would never have awarded you this franchise if we had anticipated that your compliance with 1st Propane® System Standards or level of gallons of propane sold would be significantly below our requirements. Performance standards include both 1st Propane® System Standards and such volume requirements.

Consistent with this mutual understanding, you and we agree as follows:

1st Propane® System Standards

From time-to-time, in our sole and absolute discretion, your 1st Propane® Franchise may be inspected and otherwise evaluated (including, but not limited to, field service visits, customer comment cards and secret shopper reports) for compliance with 1st Propane® System Standards. You agree that the 1st Propane® Safety Standards set out in section 10.5 above are included within the 1st Propane® System Standards.

In addition we may implement a scoring system that we may use for our franchisees and for 1st Propane® operations owned and/or operated by us and/or our affiliates. If we implement such a scoring system, your 1st Propane® Franchise will be assigned a System Standards Score in each major category (categories to be the same as used in evaluating 1st Propane® operations owned and/or operated by us and/or our affiliates) and compared with the average scores in each such category as achieved by 1st Propane® operations owned and/or operated by us and/or our affiliates. (If, at any time, neither we nor any of our affiliates own and/or operate any 1st Propane® outlets, we may substitute average System Standards Scores of all 1st Propane® Franchises.)

Review Process

Initial Review. The initial review will be made as of twelve (12) months after the date of this Agreement. At that time, we will review your gallons of propane sold, as reported on a regular, on-going basis by you, during the preceding twelve (12) months. [For example, if the date of this Agreement was March 1, 2005, this initial review would be made as of March 1, 2006 (covering the 12 months ended February 28, 2006).] If, as of the initial review, you have not sold at least 100,000 gallons of propane during such twelve (12) months, you will be deemed to have not met the "Applicable Standard" and the Procedures described below will come into effect.

At that time, we may also review your Systems Standards score in each major category, as well as gallons of propane sold, as reported on a regular, on-going basis by you, during the preceding twelve (12) months. If, as of the initial review, (a) your System Standards Score in any major category is lower than the average System Standards Score and/or (b) you have not sold at least 100,000 gallons of propane during such twelve (12) months, you will be deemed to have not met the "Applicable Standard" and the Procedures described below will come into effect.

Continuing Reviews. In addition, every twelve (12) months, beginning twenty four (24) months after the date of this Agreement, we will review your gallons of propane sold, as reported on a regular, on-going basis by you, during each preceding twelve (12) months. [For example, if the date of this Agreement was March 1, 2005, the first continuing review would be made as of March 1, 2007 (covering the 12 months ended February 28, 2007), the next continuing review would be made as of March 1, 2008 (covering the 12 months ended February 28, 2008), etc.] If, at any continuing review, you have not sold at least 200,000 gallons of propane during the preceding twelve (12) months, you will be deemed to have not met the "Applicable Standard" and the Procedures described below will come into effect.

At that time we may also review your Systems Standards score in each major category, as well as your gallons of propane sold, as reported on a regular, on-going basis by you, during each preceding twelve (12) months. If, at any continuing review, (a) your System Standards Score in any major category is lower than the average System Standards Score and/or (b) you have not sold at least 200,000 gallons of propane during the preceding twelve (12) months, you will be deemed to have not met the "Applicable Standard" and the Procedures described below will come into effect.

Procedures:

First, we will notify you of your failure to meet the Applicable Standard and you will have six (6) months after the date of mailing of such notice ["the Six (6) Month Correction Period"] to achieve the Applicable Standard.

Second, during the Six (6) Month Correction Period, we will actively work with you to (a) identify the reasons for failure to meet the Applicable Standard and (b) suggest means and methods for you to meet the Applicable Standard.

Third, at one or more times during the Six (6) Month Correction Period, we may require you to meet with us at our headquarters to analyze the reasons for such substandard performance, to discuss possible means of correction and/or re-attend training at our headquarters, in each case at your expense for costs of travel, meals, lodging and otherwise, but we will not charge any fee for such re-training.

Fourth, at the end of the Six (6) Month Correction Period, we may require you to again meet with us at our headquarters to analyze the situation. In any case, within five (5) days after the end of the Six (6) Month Correction Period, you will provide a written report of Gross Volume (and such other reports as we may require) and, if, the Applicable Standard has not been met by the end of the Six (6) Month Correction Period, you will indicate at such time in writing whether or not you wish to sell your franchise and the associated business to a third party. If you indicate that you wish to sell your Franchise and the associated business, you will have ninety (90) days after the end of the Six (6) Month Correction Period to complete such sale, subject to all requirements of this Agreement and we may (but aren't required to) assist you in such sale. You (and each affiliate) will, at the time of advising us of your wish to sell the franchise (as well as again at the time of actual sale), sign a General Release.

Fifth, if you do not, within such five (5) days, so advise us of your wish to sell the franchise to a third party, or if no sale meeting the requirements of this Agreement takes place within such ninety (90) days, your rights, and our obligations, under this Agreement will terminate immediately on mailing of written notice of termination from us to you. Alternatively, we can reduce or otherwise adjust your Territory and/or related rights under this Agreement and/or modify (on a retrospective, prospective, temporary, permanent or other basis) the Applicable Standard. In connection with such termination or territory adjustment, you will return in good condition all manuals, equipment and other items received by you from us and you (and each affiliate) will sign a general release, in form prescribed by us, of any and all claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against us and/or any or all of the Franchisor-Related Persons/Entities.

[Note that neither the foregoing standards for gallons of propane sold, nor anything else, are a representation or guarantee that you will or may sell that number (or any other number) of gallons of propane. We have no idea of, and no way of reliably predicting, how many gallons of propane you may sell or any levels of possible profit, cash flow, costs or otherwise you may or may not achieve.]

16.3 Repeated Defaults. Your rights and our obligations under this Agreement will terminate without further action by us, or notice to you, if you or any affiliate fails two (2) or more separate occasions within any period of twelve (12)

consecutive months, or on three (3) or more separate occasions within any period of twenty-four (24) consecutive months, to comply with any provisions (whether the same or different) of this Agreement and/or the Confidential Operations Manual, whether or not such failures to comply are timely corrected .

16.4 Cross-Defaults, Non-Exclusive Remedies. Any default by you (or any person/company affiliated with you) under this Agreement may be regarded as a default under any other agreement between us (or any affiliate of ours) and you (or any affiliate of yours) and any default by you (or any person/company affiliated with you) under any other agreement between us (or any affiliate of ours) and you (or any person/company affiliated with you) may be regarded as a default under this Agreement, in each case with us (and any affiliate of ours) to have all remedies allowed at law, including termination of your rights (and/or those of any person/company affiliated with you) and our (and/or our affiliates') obligations. No right or remedy which we may have (including termination) is exclusive of any other right or remedy provided under law or equity and we may pursue any rights and/or remedies available.

16.5 No Equity on Termination. Your ownership of the Franchise is controlled by the provisions of this Agreement and you will have no equity or other continuing interest in the Franchise, any goodwill associated with it or otherwise, or any right to compensation, return of amounts paid or otherwise, at the expiration and/or termination of the term of the Franchise. As provided in Section 17.2, below, your Franchise business phone numbers, internet addresses and listings, yellow pages ads, the customer list, customer goodwill, customer related accounting records and customer contracts are our property, without any compensation to you.

16.6 Extended Cure Period. Notwithstanding anything contained herein to the contrary, in those circumstances under which we shall have the right to terminate this Agreement, we shall have the right, to be exercised in our sole discretion, to grant to you, in lieu of immediate termination of this Agreement, an extended period of time to cure the breach which gave rise to our right to terminate, but in no event shall such extended cure period exceed six (6) months from the last day of the cure period otherwise applicable to such breach. You acknowledge that our election to grant such an extended cure period to you shall not operate as a waiver of any of our rights hereunder and that, in consideration for such an extension, you will execute a General Release and, if you fail to execute such a release, the grant of such an extension will, in itself, constitute such a release.

16.7 System Compliance Review. You and we understand that there might develop situations in which you and we have a legitimate difference of opinion as to whether or not you are in compliance with various non-financial, operational obligations of yours relating to your compliance with the 1st Propane® System. You and we also agree that the input of other 1st Propane® Franchisees in such matters might be helpful to, but should not be binding on, each of us. Therefore, if we believe that you are not in compliance with your obligations to follow the 1st Propane® System in any non-financial, operational areas, we may submit such issue to a committee of the 1st Propane® Franchisee Advisory Council for their review and evaluation and you and we will cooperate with such committee in their deliberations. Any decision of such committee will be purely advisory and not legally binding.

16.8 Management of the 1st Propane® Franchise After Issuance of Notice of Default.

A. If we issue a notice of default, we will have the right (but not the obligation) to manage your 1st Propane Franchise until you have cured all defaults. We may provide written notice to you with the Notice of Default indicating the date we intend to begin operations management of your 1st Propane Franchise. All revenues received by the 1st Propane Franchise while we (or our designee) are managing it will be kept in a separate fund. All 1st Propane Franchise expenses, including compensation, travel and living expenses for our appointed manager may be paid out of such fund. We shall be paid Five Hundred Dollars (\$500.00)/day as a management fee (subject to adjustment as provided in Section 9.7). If such fund is insufficient to pay 1st Propane Franchise expenses, we shall notify you. You shall, within five (5) business days, deposit such amounts as shall be required by us to attain a reasonable fund balance.

B. Operation of the 1st Propane Franchise by us during any such period shall be on your behalf; provided that we shall only have a duty to use reasonable efforts and shall not be liable to any creditor of yours or for any debts, losses or obligations.

tions incurred by the 1st Propane Franchise. In addition, you and we acknowledge and agree that operation of the 1st Propane Franchise by us during any such period shall not deem the Franchisor in any way responsible for the control of labor or employment matters for you and your employees, including (but not limited to) hiring, firing and/or discipline of employees; nor control the manner and means by which they carry out their duties. You and we agree that neither of us are, or shall be deemed to be, a joint employer with the other, and you will indemnify us with respect to any such or similar claims against us. This Section 16.8 shall not limit our right to Terminate this Agreement as herein provided or affect any of our indemnity or other rights under this Agreement.

16.9 Our Right To Discontinue Supplying Materials/Services/Programs Upon Default. If we deliver a notice of default to you for any reason, we and/or each Franchisor-Related Person/Entity have the right to (a) require that you pay C.O.D. (i.e., cash on delivery) or by certified check for goods/services and/or (b) suspend selling and/or providing any goods/services to you and/or (c) discontinue your participation in any program or benefit otherwise available to a 1st Propane Franchisee, including any internet or other listing of 1st Propane Franchises or other outlets, or any referral or similar marketing functions, and can direct customers, potential customers and others elsewhere until you have cured all defaults. No such action by us and/or any Franchisor-Related Persons/Entity shall be a constructive termination of this Agreement or a change in competitive circumstances or similarly characterized, and you agree that you will not be relieved of any obligations under this Agreement because of any such action.

16.10 Prompt Notice of Claims by You. You understand that you are not permitted to terminate this Agreement for any alleged default by us, except as permitted by applicable law. If you claim that such a default exists (or that you have any other basis for terminating your obligations and our rights under this Agreement or making any other claim against us), you must give us written notice and 30 days to cure; any action by you to terminate will not proceed until we have had such notice and an opportunity to cure. If we cannot reasonably cure within such 30 day period, and we are diligently continuing efforts to cure, then we will have 90 days to cure.

16.11 Our Option to Purchase Assets. On expiration or termination, subject to our request delivered within 90 days before or after the date of such expiration or termination, you will sell all or part of the fixed assets of the business to us at your original cost, minus any depreciation caused by age, obsolescence or otherwise and less the cost of bringing any assets in compliance with then-current 1st Propane standards. If there is a disagreement regarding the value of the fixed assets, we will each hire an experienced appraiser of propane related equipment to perform an appraisal of the value as described in this paragraph. The average of the two appraisers' opinions shall be used to determine our purchase value. In the case of a dispute between the appraisers as to the value of the fixed assets, the transfer of the ownership of these assets will take place at the lowest value calculated by the appraisers, with the balance submitted to the dispute resolution process described in this Agreement. For purposes of this Agreement, the fixed assets shall include all propane tanks, trucks used in the business, tools used in the business, bulk storage tanks and (at our option) your interest in the land on which the bulk storage tanks are installed.

17. RIGHTS AND OBLIGATIONS ON REPURCHASE, TERMINATION AND/OR EXPIRATION OF THE FRANCHISE OR OTHERWISE.

17.1 Termination of Rights and Obligations, Payments of Amounts Owed. Repurchase or termination for cause of this Agreement will constitute a termination or expiration of all of your rights and our obligations. You'll pay to us within fifteen (15) days after the effective date of any repurchase, termination or expiration of the Franchise, or such later date that the amounts due to us are determined, such royalties, marketing contributions, amounts owed for purchases by you (or any affiliate) from us and/or any affiliate, interest due on any of the foregoing, and all other amounts owed to us (or any affiliate) which are then unpaid. We own your past, current and potential customer/prospect list and, on any repurchase or termination for cause of the Franchise, you will, at our request, assign all such contracts and accounts to us (or our designee) and we will have the right to solicit and/or deal with any or all such past, current and/or potential customers.

17.2 Marks and Trade Dress, Customer Lists and Accounts, Telephone and Other Directory Listings, Internet Sites. After any repurchase, termination or expiration of the Franchise, you will: (1) not directly or indirectly at any time or in any manner identify yourself or any business as a current or former 1st Propane® Franchise, or as a current or former franchisee of or as otherwise associated with us, or use any Mark or any colorable imitation thereof in any manner or for any

purpose, or utilize for any purpose any trade name, trademark or service mark or other commercial symbol that suggests or indicates a connection or association with us; (2) remove all signs containing any Mark and return to us or (at our option) destroy all forms and materials containing any Mark or otherwise identifying or relating to a 1st Propane® Franchise; (3) take such actions as may be required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark; (4) if you retain possession of the Office/Yard, you will, at your expense, make such modifications and alterations, including removal of all distinctive signage, appearance, physical and structural features associated with the Trade Dress of 1st Propane® Franchises, as may be necessary or appropriate to distinguish the Office/Yard clearly from its former appearance and from other 1st Propane® Franchises as to prevent any possibility that the public will associate the Office/Yard with 1st Propane® Franchises and any confusion created by such association, and (5) take all actions necessary or appropriate to transfer any telephone number(s), and any telephone directory listings, associated with the Marks and/or your 1st Propane® Franchise to us.

You understand and agree that we own exclusively all customer lists, customer goodwill, customer-related accounting records and customer contracts in connection with your 1st Propane® Franchise. On any repurchase or termination for cause of the Franchise, you will, at our request, assign all such contracts and accounts to us (or our designee) and we will have the right to solicit and/or deal with any or all such past, current and/or potential customers. You further acknowledge and agree that (1) we have the sole rights to, and complete ownership of 1st Propane® Franchise yellow pages ads, all telephone or other service (including home page, cellular and fax), numbers, directory listings, Internet or similar connections (including all rights to any "home page" used by you) and/or advertising with respect to, and/or used in connection with, your 1st Propane® Franchise business and/or associated with the Marks, (2) any direction by us is conclusive evidence of 1st Propane's rights in and to any such service, numbers, directory listings and/or advertising and (3) we have the sole and exclusive right and authority to direct their amendments, transfers, call-forwarding, terminations or any matters with respect thereto. You'll execute such documents, and do all other acts, as may be required by us and/or any service provider to facilitate a transfer of customer accounts and/or effect a transfer of, call-forwarding or otherwise to us [or such person(s) as we designate] of all such telephone or other communications service (including home page, cellular and fax), numbers, directory listings and/or advertising; provided that we shall hold such documents until the earlier of the time (a) we notify you that you (or any affiliate of yours) are in default under this Agreement or any other agreement with us (or any affiliate of ours), (b) this Agreement is terminated for cause, or (c) any repurchase. You'll pay all amounts, whether due and payable or not, that any service provider may require in connection with such transfer or otherwise and will sign all releases and other documents (including those providing that you indemnify and hold harmless any service provider and us) required by any service provider and/or us in connection therewith. You authorize us, and hereby appoint us and any officer of ours, as your attorney in fact, to deal with the customer accounts/contracts and/or to direct the telephone company, other service providers (including internet service providers) and all listing agencies to transfer the same to us or as we direct, should you fail or refuse to do so, and such companies may accept this Agreement as conclusive evidence of our exclusive rights in such telephone numbers, directory listings, home pages and otherwise and its authority to direct their transfer.

At our option, we may at any time require that any accounts covering any telephone or other service, numbers, directory listings and/or advertising (including URLs, websites, etc.) be in our name rather than yours, with all billings to be sent to us [or such person(s) as we designate] but to be paid by you within ten (10) days of submission to you. We may require that you maintain a deposit with us [or such person(s) as we designate] sufficient to cover three (3) months of reasonably anticipated service, numbers, directory listings and/or advertising, but in any event no less than One Thousand Five Hundred Dollars (\$1,500), subject to annual adjustment for inflation as set forth in this Agreement.

You'll furnish to us, within thirty (30) days after the effective date of termination or expiration, satisfactory evidence of your compliance with the foregoing obligations.

17.3 Confidential Information. You agree that on any repurchase, termination, expiration or otherwise of the Franchise (without award of a successor franchise): (1) you will immediately cease to use any Confidential Information of ours disclosed to or otherwise learned or acquired by you in any business or otherwise; (2) you will return to us all copies of the Manuals and any other confidential materials which have been loaned or made available to you by us; and (3) forever

maintain the strict confidentiality of the Confidential Information. You will not use software owned or licensed by us after any repurchase, termination or expiration of the Franchise and will return all copies thereof, together with all manuals and other related material, to us.

17.4 Covenant Not to Compete. Notwithstanding any termination or repurchase, you'll continue to observe the non-competition and other restrictions of this Agreement, including those of Sections 8.1 and 8.2; provided that if such non-competition restrictions are unenforceable or are reduced to a level which we, in our sole and absolute discretion, find unacceptable, we may, in the alternative, require you to pay a fee (either on a present value basis or over time, as we select) of one-half (1/2) of the royalties which would be payable if the business in question was a franchised 1st Propane® Franchise, for the three (3) years after termination or repurchase, such amount having been jointly selected by you and us as fair and appropriate damages and in consideration of (1) the difficulty of accurately predicting actual damages, (2) the fact you will inevitably benefit in the operation of such business from your training and experience as a 1st Propane® Franchise Franchisee, (3) the possible impact on the expansion and operation of our system, including the expense and difficulty of a sale of a franchise in the area of operation of such a business and (4) you not having any rights, nor we having any obligations, under this Agreement or otherwise during such period.

17.5 Continuing Obligations. All obligations of yours and rights of ours, including your obligation to pay royalties, advertising contributions and other amounts, to permit our repurchase of fixed assets as provided in Section 16.11, above, and the provisions of this Agreement with respect to dispute avoidance and resolution (including, but not limited to, those of Article 19), together with the provisions of Article 21, and all other obligations of yours and rights of ours, which expressly or by their nature survive this Agreement or the Franchise (including, but not limited to, your indemnity, confidentiality and non-competition obligations), will continue in full force and effect subsequent to and notwithstanding its repurchase, termination, expiration or otherwise and until they are satisfied in full or by their nature expire. All these obligations will apply notwithstanding any rejection of this Agreement in a bankruptcy proceeding or otherwise. In any event, our exercise of any rights of termination will not be our sole remedy and where we have terminated our obligations and/or your rights under this Agreement by reason of a default of yours, you will not be released or discharged from, and will be obligated to pay, your obligations hereunder, including your obligations to pay royalties, advertising contributions and other amounts which would have become due if you had continued in operation as a 1st Propane® Franchisee and our remedies will include (but are not limited to) the right to collect the present value of such amounts as of the date of such termination and to otherwise receive the benefit of our bargain with you, as well as acceleration of the balances of all promissory notes and other unpaid amounts owed to us or any affiliates of ours. If you continue to operate your business, after termination or expiration, using any of the Marks or any aspect of the System, our remedies will include (but will not be limited to) recovery of the greater of (a) all profits or earned by you in the operation of your business after such termination or expiration or (b) all royalties, advertising contributions and other amounts which would have been due if such termination or expiration had not occurred. At any time from the date of this Agreement through and including 120 days after any termination, cancellation, rescission, repurchase or expiration, for any reason, of your and/or our rights under this Agreement, we may, at our option and without further consideration, receive an assignment of your leasehold interest under any lease/sublease of the Office/Yard (and/or any other facilities from which you operate your 1st Propane® Franchise), in each case without the lessor's or sublessor's consent, terminating your rights to the Office/Yard and assuming the balance of any lease or sublease

17.6 Execution of Release on Default. At our option, in any case where you have committed a default under this Agreement which would allow us to terminate your rights, we may (but are not required to) waive our rights to collect any royalties, advertising contributions and other amounts which would have become due if you had continued in operation as a 1st Propane® Franchisee and you will, in consideration for such waiver, execute a General Release. This option may be exercised by us at any time, including before, at the same time as or after termination and whether or not you or we have made any claims, or begun any proceedings, against the other or anyone else. In such a case, you will perform thereafter each of your obligations under Sections 8.1 and 8.2, as well as Sections 17.1, 17.2, 17.3, 17.4, 17.5 and all other post-term obligations of yours wherever contained in this Agreement, including but not limited to de-identification of your 1st Propane® Franchise and promptly deliver to us all manuals and other material as provided in this Agreement or in the Manuals.

18. GRANT OF SECURITY INTEREST.

For valuable consideration, as security for the payment of all amounts from time-to-time owing or to be owed by you (and/or any affiliate of yours) to us (and/or any affiliate of ours), whether under this Agreement, any other agreements or otherwise, and the performance of all the obligations to be performed by you, you hereby grant to us a security interest in all of the assets, including, but not limited to customers (and all relationships with them), prospects, accounts receivable, customer/prospect lists and records, telephone numbers, URLs, websites, homepages, etc., goodwill, equipment, tanks, vehicles, fixtures and signs, used by, at or in connection with, your 1st Propane® Franchise and its related business and all proceeds of your 1st Propane® Franchise (the "Collateral"). You represent and warrant that the security interest granted is prior to all other security interests in the Collateral except for (a) bona fide purchase money security interests; (b) other security interests approved by us in our sole and absolute discretion. You'll not remove the Collateral or any portion thereof without our prior written consent. On the occurrence of any event entitling us to terminate your rights and/or our obligations under this Agreement or any other agreement between the parties, or if we otherwise reasonably determine that we are not assured that all of your (and/or any affiliates') obligations will be timely and fully paid and/or performed, we will have all the rights and remedies of a secured party under the Uniform Commercial Code of the State in which your 1st Propane® Franchise is located, including, without limitation, the right to take possession of the Collateral. You'll execute and deliver to us financing statements or such other documents as we reasonably deem necessary to perfect our interest in the Collateral within ten (10) days of receipt by you of such documents from us.

19. DISPUTE AVOIDANCE AND RESOLUTION.

~~For the purposes of this Article 19, "you" shall be deemed to include your owners, Affiliates and their respective employees, and "we" shall be deemed to include "Franchisor Related Persons/Entities."~~

19.1 MEDIATION AND MANDATORY BINDING ARBITRATION, WAIVER OF RIGHT TO TRIAL IN COURT, etc. You and we believe that it is important to resolve any disputes amicably, quickly, cost effectively and professionally and to return to business as soon as possible. You and we have agreed that the provisions of this Article 19 support these mutual practical business objectives and, therefore, agree as follows:

A. ~~Claim-Dispute Resolution Process:~~ **Any** litigation, claim, dispute, suit, action, controversy, or proceeding of **any type whatsoever** including any claim for equitable relief and/or where you are acting as a "private attorney general," suing pursuant to a statutory claim or otherwise, between or involving you and us (and/or any Affiliate of either), on whatever theory and/or facts based, and whether or not arising out of this Agreement, ("Claim") will be processed in the following manner, you and we (and each Affiliate, assignee and/or agent of either) each expressly waiving all rights to any court proceeding, except as expressly provided below at Section 19.1 (H).

1) **First**, discussed in a face-to-face meeting held within ~~thirty~~ (30) days after either you or we give written notice to the other proposing such a meeting.

2) **Second**, if not resolved, submitted to non-binding mediation for a minimum of ~~four~~ (4) hours before ~~ia~~ Franchise Arbitration and Mediation, Inc. ("FAM") or its successor (or an organization designated by FAM or its successor), or ~~ib~~ any other mediation organization approved by all parties, or ~~ic~~ by Judicial Arbitration and Mediation Service ("JAMS") or its successor (or an organization designated by JAMS or its successor), if FAM cannot conduct such mediation and the parties cannot agree on a mediation organization. We will pay the costs of the first ~~four~~ (4) hours of any mediation, and no mediation is required to extend beyond such ~~four~~ (4) hour period. Any mediation/arbitration (and any appeal of arbitration) will be conducted by a mediator/arbitrator experienced in franchising. Any party may be represented by counsel and may, with permission of the mediator, bring persons appropriate to the proceeding. If neither FAM nor JAMS can conduct the mediation, and the parties cannot agree on a mediation organization, then a court shall, on application by either of us, appoint a mediator. In any event, the mediator shall be a neutral person experienced in franchising.

3) Third, submitted to and finally resolved by binding arbitration before and in accordance with the arbitration rules of FAM or its successor (or an organization designated by FAM or its successor); provided that if such arbitration is unable to cannot be heard by any such organizations, then the arbitration will be conducted before and in accordance with the arbitration rules of JAMS or its successor (or an organization designated by JAMS or its successor); provided that, in any case, arbitration may be filed prior to a face-to-face meeting and/or mediation, with such face-to-face meeting and/or mediation to follow as quickly thereafter as possible. All arbitrators shall must be experienced in franchising. On election by any party, arbitration and/or any other remedy allowed by this Agreement may proceed forward at the same time as mediation. Judgment on any preliminary or final arbitration award will be final and binding, and may be entered in any court having jurisdiction (subject to the opportunity for appeal as contemplated below). The arbitrator's award shall will be in writing. On request by either party, the arbitrator shall will provide to all disputants a reasoned opinion with findings of fact and conclusions of law and the party so requesting shall will pay the arbitrator's fees and costs connected therewith.

If all of the organizations specified by this Agreement to conduct any mediation and/or arbitration are unable or unwilling to conduct such proceeding(s), and the parties to the dispute cannot agree on an appropriate organization or person to conduct such proceedings(s), then a court of competent jurisdiction shall designate an appropriate organization or person to conduct such proceeding(s).

4) Fourth, a final award by an arbitrator (there will be no appeal of interim awards or other interim relief), may be appealed within ~~thirty~~ (30) days of such final award. Appeals will be conducted before a ~~three~~ (3) arbitrator panel appointed by the same organization as conducted the arbitration, each member of which shall must be experienced in franchising. The arbitration panel will not conduct any trial de novo or other fact-finding function. Such panel's decision shall will be in writing, may be entered in any court having jurisdiction and will be binding, final and non-appealable. On request by either party, the arbitration panel shall will provide to all disputants a reasoned opinion with findings of fact and conclusions of law and the party so requesting shall will pay the arbitration panel's fees and costs connected therewith.

B. Confidentiality: The parties to any meeting/mediation/arbitration will sign confidentiality agreements, excepting only public disclosures and filings as are required by law.

C. Location and Attendees: Any meeting/mediation/arbitration (and any appeal) will be conducted exclusively at a neutral location in the county in which our then-current headquarters is located, which may change from time to time, and be attended by you and us, and/or designees authorized to make binding commitments on each of our respective behalfs; provided that if any court determines that this provision is unenforceable for any reason, mediation/arbitration (and any appeal) will be conducted at a location near your unit.

D. Arbitration Authority: Arbitrators in any proceeding under this Article 19 shall will apply all applicable law and a failure to apply the applicable law in accord with Section 19.14 shall will be deemed an act in excess of authority. The arbitrator shall will decide any questions relating in any way to the parties' agreement (or claimed agreement) to arbitrate, including but not limited to applicability, subject matter, timeliness, scope, remedies, claimed unconscionability and any alleged fraud in the inducement. The arbitrator may issue summary orders disposing of all or part of a claim and provide for temporary restraining orders, preliminary injunctions, injunctions, attachments, claim and delivery proceedings, temporary protective orders, receiverships and other equitable and/or interim/final relief. Each party consents to the enforcement of such orders, injunctions, etc. by any court having jurisdiction. The subpoena powers of the arbitrator with respect to witnesses to appear at the arbitration proceeding shall will not be subject to any geographical limitation.

E. Discovery: The disputants shall will have the same discovery rights as are available in civil actions under the state law selected in Section 19.14, provided that neither you nor we will have the right to discovery with respect to franchisees who are not parties to the arbitration, excepting only franchisees which are your Affiliates.

F. Compulsory Counter-claims: Each participant must submit or file any claim which would constitute a compulsory counter-claim (as defined by the applicable rule under the Federal Rules of Civil Procedure) within the same proceed-

ing as the claim to which it relates. Any such Claim which is not submitted or filed in such proceeding will be forever barred. In no event may offers and/or other communications made in connection with, or related in any way to, mediation, possible settlement or other resolution of a dispute be admitted into evidence or otherwise used in any arbitration or other proceeding, and any arbitration award in violation of this provision shall will be vacated by the arbitration appeal panel (described above) and/or any court having jurisdiction.

G. Fees and Costs: Subject to the provisions of Section 19.7, the parties will bear their own fees and costs, including attorneys' fees; provided that for matters not settled through agreement of the parties, the arbitrator may assess all, or any portion, of the fees and costs incurred in connection with any arbitration and/or appeal (but not any attorneys' fees) against the party who does not prevail.

H. Disputes Not Subject to the Mediation/Arbitration Process: Claims or disputes (or portions thereof) relating primarily to the validity of the Marks and/or any Intellectual Property licensed to you may be subjected to court proceedings or to the Process outlined in 19.1 (A), above, at our sole election; provided that only the portion of any claim or dispute relating primarily to the validity of the Marks and/or any Intellectual Property licensed to you and requesting equitable relief shall will be subject to court action, and any portion of such claim seeking monetary damages will be subject to the Process outlined in 19.1 (A). Any action to compel a party's compliance with Section 19.1 must be consistent with Section 19.2, below.

I. Your and Our Intentions: You and we mutually agree (and have expressly had a meeting of the minds) and expressly intend that, notwithstanding any contrary provisions of state, provincial or other law, and/or any statements in our Offering Circular required by a state/province as a condition to registration or for some other purpose,:

1) all disputes relating to arbitrability of Claims or issues relating to arbitration and (including whether or not any particular Claim, issue or otherwise is to be submitted to face-to-face meeting/mediation/arbitration), arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, shortened periods in which to bring Claims, jurisdiction, choice-of-laws and/or the interpretation/enforcement of any of the dispute resolution-arbitration-related provisions of this Agreement will be decided by the arbitrator (including all Claims together with any claims that this, or any other, agreement, and/or their any terms, were procured by fraud or uneven bargaining power, are or were unconscionable, were not subject to negotiation, are not enforceable for any reason or similar means/claims) and governed only by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the federal common law of arbitration and exclusive of state statutes and/or common law;

2) all provisions of this Agreement (including, but not limited to, Articles 19 and/or 21) shall will be fully enforced, including (but not limited to) those relating to arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, shortened periods in which to bring Claims;

3) you and we intend to rely on federal preemption under the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and, as a result, the provisions of this Agreement will be enforced only according to its terms;

4) you and we each knowingly waive all rights to a court trial and select arbitration as the sole means to resolve disputes (except as expressly provided in this Agreement), understanding that arbitration may be less formal than a court or jury trial, may use different rules of procedure and evidence and that appeal is generally less available, but still strongly preferring mediation and/or arbitration as provided in this Agreement; and that the fees and costs associated with mediation and/or arbitration may be substantially greater than in civil litigation.

5) the terms of this Agreement (including but not limited to this Article 19) shall will control with respect to any matters of choice of law; and;

6) notwithstanding the fact that a party to this Agreement is or may become a party to a court action or special proceeding with a third party or otherwise, and whether or not such pending court action or special

proceeding (1) may include issues of law, fact or otherwise arising out of the same transaction or series of related transactions as any arbitration between or involving the parties to this Agreement, (2) involves a possibility of conflicting rulings on common issues of law, fact or otherwise, and (3) may involve a third party who cannot be compelled to arbitrate, your and our Agreement shall be enforced according to its terms and any party to this Agreement may bring an action to compel a face-to-face meeting, mediation and/or arbitration, you and we strongly preferring arbitration to court actions and wishing to have a single entity (the arbitrator) determine all issues of fact and law between or involving us, except as expressly provided otherwise in this Agreement.

J. **Referee:** In the event that the jury trial waiver provisions of this Agreement are unenforceable for any reason, you and we agree that the controversy or dispute shall be referred to, and heard and decided by, a referee to be appointed by the appropriate court as determined under Section 19.2. Such referee (a) shall, if at all possible, be a lawyer experienced in franchising, (b) shall hear and determine all of the issues in such action or proceeding, whether of fact or of law, (subject to the provisions of Section 19.1 H.) and report a statement of decision, and (c) ascertain any fact necessary to enable the court to determine such action or proceeding.

19.2 **Exclusive Jurisdiction and Venue.** Without in any way limiting or otherwise affecting your and our obligations under Section 19.1, above, you and we agree that any litigation will be exclusively held in the United States District Court encompassing our then-current headquarters (the "Proper Federal Court"), which may change from time-to-time. Proceedings will be held only in the Proper Federal Court, subject to the following exceptions:

~~19.2 **Venue.** Without in any way limiting or otherwise affecting your and our obligations under Section 19.1 above, you and we agree that any litigation will be held in the United States District Court encompassing our then-current headquarters (the "Proper Federal Court"). Proceedings will be held only in the Proper Federal Court, subject to the following exceptions:~~

A. if a basis for federal jurisdiction does not exist, then any such proceeding shall will be brought exclusively before a court in the most immediate state judicial district encompassing our then-current headquarters and having subject matter jurisdiction (the "Proper State Court");

B. proceedings to remove or transfer a matter to the Proper Federal Court and/or to compel arbitration as contemplated by this Agreement may be brought in the court where the applicable action is pending and/or the Proper State or Federal Court; and

C. any action primarily with respect to any real and/or personal property (including any action in unlawful detainer, ejectment or otherwise) may be brought in any court of competent jurisdiction and/or the Proper State or Federal Court. You and we independently consent to jurisdiction of the courts as specified above.

These provisions are agreed on in order to address practical business realities, such as (1) the fact that relevant business records, and many of our personnel (who may be critical as witnesses or otherwise to assist in resolution of the dispute), will generally be located at our then-current headquarters and (2) you and we have a shared interest in avoiding inconsistent legal resolutions in multiple jurisdictions, which could adversely affect the 1st Propane franchise system and its day-to-day management. You understand and agree that the effect of the above (and other) provisions of this Agreement may be, among other things, that your costs of mediation, arbitration, litigation or otherwise may be greater, and it may be more difficult for you to proceed, than if those proceedings took place in a location nearer your residence or business.

19.3 **Terms Applicable to All Proceedings, Waiver of Trial by Jury, Class Action Rights.** With respect to any arbitration, litigation or other proceeding of any kind, you and we:

A. Knowingly waive all rights to trial by jury;

B. Will pursue any proceeding (whether mediation, arbitration, trial to a court or jury, appeal or otherwise) on an individual basis only, and not on a class-wide or multiple plaintiff basis (whether as a result of attempted consolidation, joinder efforts, or otherwise); provided that if this provision is not enforceable for any reason, then you and

we agree that with respect to any multiple plaintiff or class action, a court will supervise the procedural aspects directly related to the multiple plaintiff/class nature of the proceeding (e.g. certification of the class, appropriateness of class representation, approval of attorneys' fees incurred on behalf of the class, approval of any settlement, etc.) and the arbitrator will decide all substantive matters related to the actual claims, including liability and damages.

19.4 Limitations on Damages and/or Remedies, Waiver of Punitive Damages, etc. Your maximum liability, (and that of any Affiliate of yours) together with that of any and all Affiliates of yours, to us and/or to any Affiliate of ours, any of the Franchisor-Related Persons/Entities, any marketing fund and/or and franchisee advisory council, for any and all claims, whenever brought, will be limited to a maximum total amount, in the aggregate, equal to will be limited to a maximum total amount, in the aggregate of Three Hundred Thousand Dollars (\$300,000) for any and all claims, whenever brought (liability for the present value of all payments which normally would have been owed by you if the franchise had continued in existence for its full term, together with any past due payments owed to us and/or any Affiliate, are subject to and part of such total limit); provided that there shall will be no limitation on indemnity obligations arising under the express provisions of this Agreement. Our maximum liability, together with that of any Affiliate of ours or anyany and all of the Franchisor-Related Persons/Entities, any marketing fund and/or and franchisee advisory council, to you and/or any Affiliate of yours, will also be limited to a-the same maximum total amount of Three Hundred Thousand Dollars (\$300,000) for any and all claims, whenever brought.

In any event, and to the fullest extent permitted by law, you and we (and your and our Affiliates and the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC) each knowingly waive any right to or claim for punitive, exemplary, multiple or similar damages against the other party and agree that, in the event of any dispute, you and we (and your and our Affiliates and the Franchisor-Related Persons/Entities, the Marketing Fund and/or the FAC) shall be limited to recovery of any actual damages sustained by the injured party, unless otherwise expressly stated in this Agreement; provided that no such waiver or limitation shall apply to amounts owed under any indemnification obligation provided in this Agreement and provided further that, to the extent required by applicable law, if you or we have any express rights to punitive, exemplary, multiple or similar damages under any statute, such rights will remain in effect.

If you and we were not able to limit our potential monetary exposures as provided in this Agreement, the business relationship contemplated by this Agreement would not make economic sense for either of us (since potential damages might substantially exceed the potential economic return which either of us reasonably expects to receive from the relationship) and the possibility of unlimited damages, or damages difficult to fix with any specificity, would make business planning and dealings between you and us particularly difficult, and you and we would not have entered into this Agreement. In any event, any constitutional and/or statutory limitations on punitive, exemplary, multiple or similar damages will apply, and any award by an arbitrator or court in excess of such limitations will be in excess of legal authority and void.

19.5 Periods In Which to Make Claims. No arbitration, action or suit (whether by way of claim, counter-claim, cross-complaint, raised as an affirmative defense, offset or otherwise) by either you or us will be permitted against the other, whether for damages, rescission, injunctive or any other legal and/or equitable relief, in respect of any alleged breach of this Agreement, or any other Claim of any type, unless such party commences such arbitration proceeding, action or suit before the expiration of the earlier of:

1A.) ~~One (1) year~~ after the date on which the state of facts giving rise to the cause of action comes to the attention of, or should reasonably have come to the attention of, such party; or

2B.) ~~Eighteen (18) months~~ 2 years after the initial occurrence of any act or omission giving rise to the cause of action, whenever discovered.

You and we have agreed on the provisions of this section based on our mutual interests in and benefits from commercial certainty, since either of us might have claims against the other which may be barred as a result of such pro-

visions and might otherwise be exposed to potential claims after an excessive period of time, from a practical business standpoint.

The above periods may begin to run, and will not be tolled, even though the claiming party was not aware of the legal theories, statutes, regulations, case law or otherwise on which a claim might be based. If any federal, state or provincial law provides for a shorter limitation period than is described in this Section, then such shorter period will govern. The time period for actions for indemnity shall will not begin to run until the indemnified party(ies) have been found liable and any time for appeals has run in the underlying action.

19.6 Survival of Obligations.

A. Each provision of this Article 19, together with the provisions of Article 21, will be deemed to be self-executing and continue in full force and effect subsequent to and notwithstanding the expiration, Termination, rescission, or finding of unenforceability of this Agreement (or any part of it) for any reason; will survive and will govern any Claim for rescission or otherwise; and will apply to and govern any Claim against, or with respect to, the Marketing Fund and/or any of the Franchisor-Related Persons/Entities. Notwithstanding any bankruptcy or other proceeding, you and we wish to have the dispute avoidance and resolution provisions of this Agreement strictly enforced according to their terms.

B. Non-competition, confidentiality, protection of the Marks and indemnity/hold harmless obligations, and all other Post-Termination Provisions, provided in this Agreement shall will survive the expiration and/or Termination of this Agreement according to their terms.

19.7 Costs and Attorneys' Fees. Except as expressly provided regarding recovery of attorneys' fees as part of indemnification rights hereunder, or in this Section, or as otherwise expressly provided in this Agreement, the parties will each bear their own costs of enforcement and/or defense (including but not limited to attorneys' fees), including those matters resolved pursuant to a settlement agreement between the parties. However, if any case is summarily disposed of in an arbitration or litigation proceeding for lack of merit (such as by summary judgment or award, judgment on the pleadings, judgment n.o.v., non-suit, motion to dismiss, directed verdict or similar disposition in arbitration or court), the party bringing such case shall will pay for the other party's costs of enforcement and/or defense (including, but not limited to, attorneys' fees-).

19.8 Binding Effect, Modification. This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns, and successors in interest, and will not be modified or supplemented except by means of a written agreement signed by both you and our President or one of our Vice Presidents. However, you and we understand and agree that changes to the Manuals made in accordance with this Agreement are binding and do not require any acceptance by you, written or otherwise, to be effective and enforceable. No other officer, field representative, salesperson or other person has the right or authority modify this Agreement, or to make any representations or agreements on our behalf, and any such modifications, representations and/or agreements shall will not be binding.

19.9 Our Exercise of "Business Judgment" and/or Meaning of "Sole Discretion"; Express Agreement.

A. When we use the phrases "sole and absolute discretion", or "sole discretion" and/or "Business Judgment", whether in this Agreement or another context elsewhere, and whenever we have or exercise a right, prescribe or forbid an act or thing, or otherwise make a choice or use our discretion, you and we agree that we have the wholly unrestricted right to make decisions and/or take (or refrain from taking) actions as we decide in. We shall use our judgment in exercising such discretion based on our assessment of the interests we consider appropriate sole and absolute discretion, except that we will not act arbitrarily. and We will not be required to consider defer to your individual interests or the interests of any other Franchisee(s). You, we and all other Franchisees have a collective interest in working within a franchise system with the flexibility to adjust to business conditions, including but not limited to the competitive environment, new regulatory developments and emerging business opportunities. Therefore, you and we agree that the ultimate decision-making responsibility for

~~the 1st Propane® System must be vested in us.~~ We have these rights even if a particular decision/action may have negative consequences for you, a particular franchisee or group of franchisees. So long as we act in compliance with the requirements of this Agreement, we will have no liability for the exercise of ~~our discretion~~ any right in accordance with the provisions of this Agreement

B. You and we shall execute this Agreement in the belief that it is the basis for a long-term business relationship and should be enforced according to its express provisions. Neither you nor we have any expectation that the rights and obligations described herein will be defined or determined to be other than as expressly written, or that additional obligations will be imposed on you or us which you or we have not expressly assumed in writing. It would be contrary to your and our intentions and expectations to impose any doctrine, rule of interpretation or "covenant" such as an "implied covenant of good faith and fair dealing."

19.10 Construction, etc.

- A. Section and Article headings are for convenience only and do not define, limit, or construe such provisions.
- B. References to a "controlling interest" are to a shareholder, membership or partnership interest, as applicable, which enables the holder(s) of such interest to determine the outcome of a decision making process for the applicable entity.
- C. This Agreement will be executed in multiple copies, each of which will be deemed an original.
- D. Each of us have carefully reviewed and thought about each provision of this Agreement. Therefore, you and we agree that it should be deemed to have been drafted equally and that no presumptions or inferences concerning terms or interpretation will result because we initially prepared this Agreement.
- E. Except where expressly provided otherwise in this Agreement, any Claim by or against, or relating in any way to, any Affiliate, assignee or agent of either you or us (whether a signatory to this Agreement or not) will be subject to the provisions of Articles 19 and 21 of this Agreement (including, but not limited to, mandatory arbitration) and each person/entity (whether claimant, defendant or otherwise and whether a signatory to this Agreement or not) involved in any Claim will be subject to the provisions of such Articles.

19.11 Non-Retention of Funds. Neither party has the right to offset or withhold payments of any kind owed or to be owed to the other against amounts purportedly due as a result of any dispute of any nature or otherwise, except as authorized by an arbitration award.

19.12 Severability; Substitution of Valid Provisions. Each provision of this Agreement, and any portion of any provision, is severable (including, but not limited to, any provision related to dispute resolution). Each party reserves the right to challenge any law, rule or judicial or other construction which would have the effect of varying or rendering ineffective any provision of this Agreement.

To the extent that any provision of this Agreement, or any specification, standard or operating procedure prescribed by us, is invalid or unenforceable, you and we agree that such provisions will be modified or so as to be enforced to the fullest extent permissible under, and to be compliant with, governing law, or (if any provision cannot be modified to meet all applicable legal requirements) severed, you and we sharing a joint interest in this Agreement being enforced to the maximum degree possible, including resolving any disputes in accordance with the provisions of the Agreement, and particularly through mediation and/or arbitration.

This Agreement will be deemed automatically modified to comply with governing law if such law requires: i) a greater time period for notice of the Termination of, or refusal to renew, this Agreement; or ii) the taking of some other action not described in this Agreement. Such modifications to this Agreement shall will be effective only in such jurisdiction. You and we agree that the unenforceability of any provision of this Agreement will not affect the remainder of this Agreement. If any

limitation on your and/or our rights (including, but not limited to, any limitation on damages, waiver of jury trial, shortened period in which to make any claim or otherwise) is held unenforceable with respect to one party, then such limitation will not apply to the other party.

19.13 Waivers; Cumulative Rights. Subject to the provisions of Section 19.5, no waiver by either party of any breach, default or unfulfilled condition under this or any other agreement between the parties shall will be deemed a waiver of any subsequent or other breach, default or unfulfilled condition. No waiver shall be effective unless in writing and signed by an authorized representative of the signing party. The rights and remedies provided in this Agreement are cumulative. Except as expressly provided in this Agreement, no party will be prohibited from exercising any rights or remedies provided under this Agreement or permitted under law or equity.

19.14 Choice of Laws. You and we agree on the practical business importance of certainty as to the law applicable to your and our relationship and its possible effect on the development and competitive position of the System. Therefore, you and we also agree that, except with respect to the applicability of the Federal Arbitration Act, 9 U.S.C. § 1 et seq. and the effect of federal pre-emption of state law by such Act, and except to the extent governed by the United States Trademark Act and other federal laws and as otherwise expressly provided in this Agreement, this Agreement and all other matters, including, but not limited to respective rights and obligations, concerning you and us, will be governed by, and construed and enforced in accordance with, the laws of the state where your 1st Propane® Franchise is, or will be, located.

You and we agree that this provision shall will be enforced without regard to the laws of such state relating to conflicts of laws or choice of law; except that the provisions of any law of that state regarding franchises (including, without limitation, registration, disclosure, and/or relationship laws) shall not apply unless such state's jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section.

19.15 Application of Agreement to Parties and Others; Joint and Several Liability.

A. The rights and obligations of this Agreement run directly between you and us and are not intended to create any third-party beneficiary or similar rights or obligations unless specifically expressed in this Agreement; except that the protections which apply to us relating to indemnification and/or releases shall also apply to any past, current and/or future Franchisor-Related Persons/Entities as if they were expressly named beneficiaries thereof.

B. We have the right to elect in our Business Judgment to not enforce (or to selectively enforce) any provision of this or any Agreement, standard or policy, whether with respect to you and/or any other franchisee or other person, in a lawful manner without liability.

C. If two (2) or more persons are at any time the Franchisee or the Franchisee owners, all of their obligations and liabilities under this or any other agreement with us and/or any Franchisor-Related Persons/Entities will be joint and several.

D. The provisions of this Article 19 will apply to any dispute (1) between you (and/or any person/entity making a claim on your behalf) and any past, current and/or future Franchisor-Related Persons/Entities, any marketing fund and/or any franchisee advisory council and (2) involving any Affiliate of yours and/or ours.

19.16 Fundamental Business Intention to Mediate and/or Arbitrate, Severability of Dispute Resolution Provisions, Federal Arbitration Act Governs, etc. Irrespective of any statute, regulation, decisional law or otherwise, it is your and our fundamental agreement and intention that you and we do not wish to engage in any court proceedings (except as expressly provided for in the rare instances specified in this Agreement), viewing the dispute resolution mechanism established by this Agreement (including, particularly, mediation and binding arbitration) to be superior from a business standpoint, less expensive, faster, more confidential, more likely to generate creative business-oriented solutions and compromise, and more accommodating to our business relationship and the needs of an evolving and diverse franchise system. Therefore, if any provisions of this Article 19 are deemed by a court to be unenforceable for any reason, you and we agree and intend that

such provisions will be i) modified so as to be enforceable or ii), if that cannot be done, severed **and, in any event, any remaining portions of this Article 19 shall remain in full force and effect.** You and we agree that such remaining portions will still form an appropriate and complete dispute resolution mechanism. You and we acknowledge that your and our activities relating to the franchise relationship are in interstate commerce and that this Agreement is governed by the Federal Arbitration Act.

20. NOTICES AND PAYMENTS.

All written notices and reports permitted or required to be delivered by the provisions of this Agreement or of the Manuals will be deemed so delivered at the time delivered by hand, one (1) business day after transmission by facsimile transmission or other electronic system, one (1) business day after being placed in the hands of a commercial courier service for overnight delivery, or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to us at 1st Propane®, 14670 Cantova Way, Suite 208, Rancho Murieta, California 95683 to the attention of the President, or at our most current principal business address of which you have been notified in writing, and to you at the address appearing below your signature to this Agreement. Until your 1st Propane® Franchise has opened for business, we may send you notices at any address appearing in your application for a franchise or in our records. All payments and reports required by this Agreement will be directed to us at our address as specified above. Any required payment or report not actually received by us during regular business hours on the date due (or postmarked by postal authorities at least two (2) days prior thereto) will be deemed delinquent. Notice to any one owner of the Franchisee shall be deemed effective as to all owners of the Franchisee.

21. ACKNOWLEDGMENTS AND REPRESENTATIONS, ENTIRE AGREEMENT, NO FIDUCIARY RELATIONSHIP.

You and we agree that there does not exist any fiduciary, trust or similar special relationship between you and us, that the relationship between you and us is an ordinary commercial relationship between independent businesspeople intended for mutual but independent economic benefit and is not in any sense, nor is intended to be, a fiduciary, trust or similar special relationship, that each party has dealt with each other at arm's length and as businesspersons with equivalent bargaining power, notwithstanding the relationship of Franchisor and Franchisee, and that you have alternative business opportunities (some of which are franchised) which you have investigated and in which you can invest.

You and we, each agreeing on the critical practical business importance of our relationship being governed solely by written documents signed by you and us (including any concurrently executed written personal guarantees, Statement of Prospective Franchisee and/or exhibits - schedules - addenda - promissory note(s) - security agreement(s) or other written documents signed by the party to be bound thereby, all of which will be deemed to be part of this Agreement for the purposes of this Article 21) and not wishing to create misunderstandings, confusion and possible conflict through reference to any alleged prior and/or contemporaneous oral and/or written representations, understandings, agreements or otherwise or any legal doctrines such as: "good faith and fair dealing" or otherwise which might introduce an element of uncertainty in our relationship, jointly intend, represent, warrant and agree that (1) this Agreement contains the final, complete and exclusive expression of the terms of your and our agreement and the final expression of your and our intent and entirely supersedes and replaces any and all prior and/or concurrent understandings, agreements, inducements, prior course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) between you and us, (2) there are no prior and/or concurrent understandings, agreements, inducements, course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) which are not fully expressed in this Agreement and (3) no prior and/or concurrent understandings, agreements, inducements, course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise (whether oral or written) of any kind or nature whatsoever have been made by us or anyone else, nor have been relied on by you nor will have any force or effect. You and we each expressly disclaim any understandings, agreements, inducements, course(s) of dealing, representations (financial or otherwise), promises, options, rights-of-first refusal, guarantees, warranties (express or implied) or otherwise

(whether oral or written) which are not fully expressed in writing in this Agreement. This is equally important to you, as well as us, since, just as we do not wish to deal with allegations that we may have made or entered into understandings, representations, not fully expressed in writing in this Agreement (such as alleged earnings claims), you do not wish to deal with allegations that you did made or entered into understandings, representations (such as promises to achieve particular sales or royalty payment levels, would open a particular number of units) which are not fully expressed in writing in this Agreement.

Specifically, you have not received or relied on (nor have we or anyone else provided) any oral or written: sales, income or other historical results, projections or otherwise, of any kind or nature or any statements, representations, data, charts, tables, spreadsheets or mathematical calculations or otherwise which stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise and neither we nor anyone else has made, nor have you relied on, any promises, representations or warranties as to any profits or otherwise you may realize in the operation of a 1st Propane® Franchise, nor have you received or relied on any representations regarding any working capital or other funds necessary to reach any "break-even" or any other financial level. We can't reliably predict, forecast or project future performance, revenues, profits or otherwise of any 1st Propane® outlet, even one owned and/or operated by us, due to the large number of factors outside our control, and we certainly can't reliably predict what your results might be. You understand that results will vary from unit to unit. If any such information, promises, representations and/or warranties has been provided to you, they haven't been authorized, they should not be relied on, we will not be bound by them, and, if you do rely on such information, promises, representations and/or warranties, you do so at your own risk.

You acknowledge and agree that the success of the business venture to be undertaken by you is speculative, is and will be dependent on your personal efforts, that while we can provide you with systems, methods, procedures, techniques and other "tools," including the 1st Propane® System and otherwise, your success ultimately depends on your efforts, including your proactive, diligent and thorough knowledge and application of the 1st Propane® System, that entry into any business enterprise is always associated with risk and that no assurance of success has been or can be given to you.

You acknowledge and agree that in all of your dealings with the Franchisor, the officers, directors, employees, and agents of the Franchisor act only in a representative capacity and not in an individual capacity. You further acknowledge that this Agreement, and all business dealings between you and such Individuals as a result of this Agreement, are solely between you and the Franchisor. You further represent to the Franchisor, as an Inducement to the Franchisor's entry into this Agreement, that you have made no misrepresentations in obtaining the Franchise.

You understand that we are relying on you to bring forward in writing at this time any matters inconsistent with any of the matters set forth in this Article 21 or otherwise so that we can correct any misunderstandings or inappropriate expectations and you agree that if any of the statements or matters set forth in this Article 21 or otherwise are not true, correct and complete you will make a written statement regarding such next to your signature below so that we may address and resolve any such issue(s) at this time and before either you or we go forward.

(signatures on next page)

IN WITNESS WHEREOF, you and we have executed and delivered this Agreement in _____ counterparts. The parties have executed this agreement on _____, 20 _____.

FRANCHISOR:

FRANCHISEE:

1st Propane Franchising, Inc.
A California Corporation

Signature

By: _____

Printed Name

Title: _____

Signature _____

Date _____

Printed Name

Franchisee's Address

THIS AGREEMENT IS NOT EFFECTIVE UNTIL SIGNED BY A CORPORATE OFFICER OF 1st PROPANE FRANCHISING INC. NO FIELD REPRESENTATIVE OR SALESMAN IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF 1st PROPANE FRANCHISING INC. FRANCHISEE IS ADVISED NOT TO INCUR ANY EXPENSE OR OBLIGATION WITH RESPECT TO THE FRANCHISED BUSINESS UNTIL FRANCHISEE HAS RECEIVED A FULLY EXECUTED COPY OF THIS AGREEMENT.

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**OWNER'S GUARANTY AND ASSUMPTION OF
CORPORATE FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution by 1st Propane Franchising, Inc., a California corporation, ("Franchisor") of the franchise agreement of even date herewith (the "Agreement") between Franchisor and _____, a(n) _____ corporation (the "Corporate Franchisee"), each of the undersigned hereby personally and unconditionally, jointly and severally: (1) guarantees to Franchisor, its affiliates, the Franchisor-Related Persons/Entities (as defined in the Agreement) and each of their successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that the undersigned will be bound by, and punctually pay and perform, each and every undertaking, agreement and covenant set forth in the Agreement; (2) agrees to be personally bound by, and personally liable for, the breach of, each and every provision in the Agreement; and (3) agrees to be personally bound by, and personally liable for, each obligation of the Corporate Franchisee to Franchisor and/or any company affiliated or related in any way with or to Franchisor, including all past, current and/or future obligations of the Corporate Franchisee, the undersigned intending that this guarantee be unqualifiedly general and without limitation in scope, nature and/or effect. Franchisor (and/or its affiliates) need not bring suit first against the undersigned in order to enforce this guarantee and may enforce this guarantee against any or all of the undersigned as it chooses in its sole and absolute discretion.

Each of the undersigned waives:

- (1) acceptance and notice of acceptance by Franchisor, of the foregoing undertakings;
- (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;
- (4) any right the undersigned may have to require that an action be brought against Franchisor, Corporate Franchisee or any other person as a condition of liability; and
- (5) any and all other notices and legal or equitable defenses to which he or she may be entitled.

Each of the undersigned consents and agrees that:

- (1) his or her direct and immediate liability under this guaranty will be joint and several;
- (2) he and/or she will render any payment or performance required under the Agreement on demand if the Corporate Franchisee fails or refuses to do so punctually;
- (3) such liability will not be contingent or conditioned on pursuit by Franchisor of any remedies against the Corporate Franchisee or any other person;
- (4) such liability will not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which we may from time-to-time grant to the Corporate Franchisee or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which will in any way modify or amend this guaranty, which will be continuing and irrevocable during the term of the Agreement;
- (5) the liabilities and obligations of the undersigned, whether under this document or otherwise, will not be diminished or otherwise affected by the termination, recession, expiration or otherwise of the Agreement; and

(6) the dispute avoidance and resolution provisions of the Agreement (including, but not limited to, BINDING ARBITRATION AND WAIVER OF JURY TRIAL plus all acknowledgments and representations and merger and integration clauses) are incorporated in and will apply to this document and apply to any dispute involving the Franchisor and any of the undersigned.

In connection with such guarantee and the Franchisor not requiring the payment of a full transfer fee in connection with any related assignment from the undersigned to the Corporate Franchisee, each of the undersigned hereby grants a general release, in form prescribed by us, of any and all claims, liabilities and/or obligations, of any nature whatsoever, however arising, known or unknown, against us and/or any or all of the Franchisor-Related Persons/Entities.

IN WITNESS WHEREOF, each of the undersigned has here unto affixed his or her signature on the same day and year as the Agreement was executed.

GUARANTOR(S)	PERCENTAGE OF OWNERSHIP OF CORPORATE FRANCHISEE
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Corporate Franchisee:

_____, a _____ corporation.

By _____

Its _____

1st Propane Franchising, Inc.

Exhibit 2.2

Territory

The "Territory" is as follows:

Note: Boundary lines include only the area within the boundary line and extend only to the middle of the boundary demarcation (for example, only to the middle of a street or highway.) You have no rights under this Agreement or otherwise with respect to a facility on the other side of the boundary line, street or highway or otherwise, and no matter how close to such boundary a facility may be, regardless of the distance from, impact on, or vicinity of, your 1st Propane® Franchise or the number of 1st Propane® Franchises, other outlets or otherwise in any area or market. Your rights are limited as set forth in the Franchise Agreement.

FRANCHISOR:

FRANCHISEE:

1st Propane Franchising, Inc.

A California Corporation

By: _____

Signature

Title: President

Printed Name

Signature

Printed Name

1st Propane Franchising, Inc.

Exhibit 17.2

Power of Attorney

The undersigned Franchisee(s), jointly and severally, hereby appoint 1st Propane Franchising Inc., a California corporation, (or its designee) as attorney-in-fact to, on behalf of the Franchisee(s), to do all acts, and execute all documents, necessary or appropriate to transfer any telephone number(s), and any telephone directory listings, held by the Franchisee(s) and associated with the Franchisee(s)' 1st Propane® Franchise, to 1st Propane Franchising Inc. (or its designee), including, but not limited to, the power to (on behalf of the Franchisee) execute such documents, and do all other acts, as may be then required by 1st Propane Franchising Inc. and/or any service provider to effect a transfer, call-forwarding or otherwise to 1st Propane Franchising Inc. (or its designee) of all such service (including internet, cellular and fax), numbers, directory listings and/or advertising. This Power of Attorney is coupled with an interest and is non-revocable.

The Franchise(s) hereby agree to forever indemnify and hold harmless 1st Propane Franchising Inc., any designee to which phone listings, etc. are to be transferred, all 1st Propane® Franchisees or other operators and/or any of the foregoing, together with any and all service providers, from all fines, suits, proceedings, claims, demands, actions, loss, damages, costs, fees (including attorney's fees and related expenses) and/or any other expense, obligation and/or liability of any kind or nature, however arising, growing out of or otherwise connected with and/or related to any act, error and/or omission related in any way to any transfer or otherwise in connection with this Power of Attorney, the Franchise Agreement between the Franchisee(s) and 1st Propane Franchising Inc. or otherwise.

FRANCHISEE:

Signature

Printed Name

Date: _____

Signature

Printed Name

Date: _____

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1st PROPANE FRANCHISING, INC.
COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE (this "Assignment") is entered into as of _____, 20__ , between _____ ("Franchisee") and 1st Propane Franchising, Inc., a _____ corporation ("Franchisor.")

Subject to the provisions hereof, the Franchisee, to secure its obligations to the Franchisor, to effect various provisions of the Franchise Agreement between the Franchisor and the Franchisee and for other reasons, hereby assigns, transfers and sets over unto Franchisor [and/or such person(s)/entity(ies) as Franchisor may from time-to-time designate] all of Franchisee's right, title and interest, whether as tenant or otherwise, in, to and under that certain lease (the "Lease"), a copy is attached to this Assignment, dated _____, 20__ , between Franchisee and _____ ("Landlord"), respecting that property commonly known as _____ (the "Yard/Office.") The Franchisor shall have no liabilities or obligations of any kind arising from, or in connection with, this Assignment, the Lease or otherwise (including, but not limited to, any obligation to pay rent and/or other amounts) until and unless the Franchisor, in its sole and absolute discretion, takes possession of the Yard/Office pursuant to the terms hereof and expressly (and in writing) assumes the rights and obligations of Franchisee under the Lease, the Franchisor only being responsible for those obligations accruing after the date of such assumption.

The Franchisor will not take possession of the Yard/Office until and unless the Franchisee defaults (and/or until there is a termination, cancellation or rescission of the Franchisee's rights) under the Lease, any sublease, the Franchise Agreement between the Franchisee and the Franchisor (or any affiliate), any other document or instrument, or otherwise. In such event, the Franchisor (or its designee) shall have the right, and is hereby empowered, (but has no obligation) to take possession of the Yard/Office, expel Franchisee therefrom, and, in such event, Franchisee shall have no further right, title or interest in or under the Lease or to the Yard/Office, all such rights thereby passing to the Franchisor or its designee, in each case without the Landlord's further consent. The Franchisee agrees to do all acts necessary or appropriate to accomplish such assignment on the Franchisor's request.

Franchisee agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Franchisor. Throughout the term of the Franchise Agreement, Franchisee agrees that it shall elect and exercise all options to extend the term of or renew or assume in bankruptcy the Lease not less than thirty (30) days prior to the last day that said option must be exercised, unless Franchisor otherwise agrees in writing. Upon failure of Franchisee to so elect to extend or renew or assume the Lease, Franchisee hereby appoints Franchisor as its true and lawful attorney-in-fact to exercise such options in the name, place and stead of Franchisee for the sole purpose of effecting any extension, renewal or assumption, in each case for the account of the Franchisee and without any liability or obligation of the Franchisor.

Failure of the Franchisor to exercise any remedy hereunder shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Franchisor under this Assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Franchisor shall have under or by virtue of the Franchise Agreement or otherwise. The terms, covenants, and conditions contained herein shall bind the Franchisee, and inure to the benefit of the Franchisor, and their respective successors and assigns. In the event of any dispute between the parties regarding this Assignment, or any matter related in any way to it, the dispute resolution provisions (including, but not limited to, mediation, binding arbitration, waiver of jury trial and limitation of damages) of the Franchise Agreement between the Franchisor and the Franchisee shall apply. If there is more than one Franchisee, their obligations hereunder will be joint and several.

This document may be recorded by, and at the expense of, the Franchisor.

FRANCHISEE:

Signature

Signature

Printed Name

Printed Name

APPROVED:

LANDLORD

by _____

its _____