Exhibit 10.19  
  
 ABLE OIL COMPANY  
  
 FRANCHISE AGREEMENT  
  
  
  
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 EXHIBIT A  
  
 ABLE OIL COMPANY  
  
 FRANCHISE AGREEMENT  
  
  
 ABLE OIL COMPANY  
  
 FRANCHISE AGREEMENT  
  
 THIS AGREEMENT is made and entered into this 31 day of December, 1998, by  
and between Able Oil Company or its assignees, a corporation organized under the  
laws of the State of New Jersey, whose principal place of business is 000 Xxxxx  
00, Xxxxxxxx, Xxx Xxxxxx 00000 (hereinafter referred to as "Able Oil ") and  
Xxxxxx Xxxxxxx, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose principal place of business is  
0000 Xxxxxx Xxxx Xxxxxxx XX (hereinafter referred to as the "you").  
  
 WITNESSETH:  
  
 WHEREAS, Able Oil has developed and owns a proprietary system (the  
"System") for the operation of an Able Oil(R) business specializing in fuel oil  
sales and delivery and related services, under the service xxxx Able Oil(R) (the  
"Franchised Business");  
  
 WHEREAS, the System is identified by trade names, service marks,  
trademarks, logos, emblems and indicia of origin, including the service xxxx  
Able Oil(R) and the Able Oil logo, and any other trade names, service marks,  
logos and trademarks that are now, or may hereafter be designated by Able Oil  
for use in connection with the System (the "Proprietary Marks");  
  
 WHEREAS, you desire to operate a Franchised Business under the System,  
using the Proprietary Marks and to obtain a license from Able Oil for that  
purpose, as well as to receive the assistance provided by Able Oil in connection  
therewith;  
  
 NOW, THEREFORE, the parties, in consideration of the promises,  
undertakings and commitments of each party to the other set forth herein, hereby  
mutually agree as follows:  
  
X. XXXXX OF FRANCHISE  
  
 X. Xxxxx. Able Oil grants you, and you accept, upon the terms and  
conditions herein contained, the nonexclusive right and personal license to  
operate a Franchised Business in strict conformity with Able Oil's quality  
control standards and specifications which are a material part of the System.  
You accept this license and agree to perform all of obligations in connection  
therewith as set forth herein.  
  
 B. Site and Relocation. You must operate the Franchised Business from a  
site approved by Able Oil within the boundaries of the Territory assigned below.  
You may not change the location of the Franchised Business without Able Oil's  
prior written consent.  
  
 C. Territory. Subject to the terms of this Agreement, Able Oil grants you  
the exclusive right and license to operate one (1) Franchised Business within  
the boundaries described in Schedule 1 attached hereto (hereinafter referred to  
as the "Territory"). Able Oil agrees that, provided you remain in good standing  
under the terms of this Agreement, Able Oil will not itself operate, or grant to  
another franchisee the right to operate, within the Territory. If, in Able Oil's  
sole opinion, you are unwilling, unable or fail to meet the requisite sales  
performance targets within the Territory grounds for default under Section  
XIII.B. of this Agreement will exist and Able Oil may reduce the size of the  
Territory or revoke the terms of exclusivity herein.  
  
 D. Reservation of Certain Rights. Able Oil reserves the right to offer,  
grant and support franchises in similar and other lines of business. Able Oil  
makes no representation or warranty to you that there will be any right to  
participate in such franchises.  
  
  
  
II. TERM AND RENEWAL  
  
 A. Initial Term. Except as otherwise provided herein, the term of this  
Agreement shall be for ten (10) years commencing on the date of execution of  
this Agreement.  
  
 B. Renewal Term. You may, at your option, continue the operation and  
management of the Franchised Business for an additional ten (10) year term,  
subject to the conditions set forth in Section II.C.  
  
 C. Conditions of Renewal. The following conditions must be met (prior to  
each renewal period, unless and to the extent expressly waived in writing by  
Able Oil):  
  
 1. You must give Able Oil written notice of its election to renew  
this Agreement not less than nine (9) months prior to the end of the current  
term of this Agreement;  
  
 2. At least six (6) months prior to the expiration of the current  
term of this Agreement, Able Oil shall have the right to give notice of all  
required modifications to the nature and quality of the products and services  
offered in connection with the Franchised Business, as well as your advertising,  
marketing and promotional programs.  
  
 3. You must not be in default of any provision of this Agreement,  
any amendment hereof or successor hereto, or any other agreement between you and  
Able Oil or its subsidiaries, affiliates and suppliers. You must have  
substantially complied with all of the terms and conditions of such agreements  
during the terms thereof;  
  
 4. You must have satisfied all of your monetary obligations to Able  
Oil and its subsidiaries, affiliates and suppliers, and must have timely met  
those obligations throughout the term of this Agreement;  
  
 5. Unless waived by Able Oil, you must attend Able Oil's then  
current qualification and training programs at your sole expense;  
  
 6. You and, where applicable, your shareholders, members, directors  
and officers shall execute a general release, in a form prescribed by Able Oil,  
of any and all claims against Able Oil and its subsidiaries and affiliates, and  
their respective officers, directors, agents and employees. You will not be  
required, however, to release Able Oil from violations of, or failure to comply  
with, federal or state franchise registration and disclosure laws;  
  
 7. Your operation and management of the Franchised Business shall be  
in full compliance with the System;  
  
 8. You must maintain, and be in good standing with, all necessary  
and appropriate licenses and permits; and  
  
 9. You must pay to Able Oil a renewal fee equal to twenty-five  
percent (25%) of the then current initial franchise fee charged by Able Oil.  
  
 In the event that any of the foregoing conditions to renewal have not been  
met at least two (2) months prior to the expiration of the current term of this  
Agreement, then Able Oil shall have no obligation to renew this Agreement and  
shall give you at least thirty (30) days prior written notice of its intent not  
to renew this Agreement, which notice shall set forth the reasons for such  
refusal to renew.  
  
  
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III. DUTIES OF ABLE OIL  
  
 A. Pre-Opening Obligations. Prior to the opening of the Franchised  
Business, Able Oil will:  
  
 1. provide you with guidelines and specifications for the operation  
and management of the Franchised Business which guidelines and specifications  
must be adopted by you, including fuel purchasing and distribution, heating  
system installation, repair and maintenance service procedures, advertising and  
promotional techniques, and staffing;  
  
 2. review and approve the site you select for the Franchised  
Business offices. Able Oil's review and approval of your site is not a guaranty  
or warranty as to the success of the Franchised Business;  
  
 3. provide an initial training program in the establishment and  
operation of the Franchised Business which must be successfully completed to  
Able Oil's satisfaction;  
  
 4. loan you a single copy of the Able Oil Operations Manual (the  
"Manual") as amended from time to time, which will include standards and  
specifications for procedures, management, and operation of the Franchised  
Business;  
  
 5. provide you a final evaluation of business systems, plans, etc.  
to ensure your Franchised Business is properly set up in accordance with Able  
Oil's specifications;  
  
 6. license to you the right to use the Proprietary Marks in  
connection with the Franchised Business and to identify the Franchise Business  
as an Able Oil distributor;  
  
 7. use its best efforts to obtain on your behalf favorable rates  
obtained for insurance coverage, vehicle financing, computers or other equipment  
items for the Franchised Business (subject to any eligibility requirements  
established by the vendors of such products and services) and assist you with  
purchasing your delivery vehicle(s);  
  
 8. establish a direct debit program with your bank (subject to  
applicable banking regulations) in order to facilitate the electronic transfer  
of funds from your account to Able Oil for monthly royalty and administrative  
processing fees;  
  
 9. set up accounts with fuel oil depots in your Territory to enable  
you to purchase fuel on Able Oil's account, for which your account will be  
debited later by Able Oil;  
  
 10. arrange for licensed subcontractors to provide heating systems  
maintenance, installation and repair services for your fuel delivery customers  
who purchase such services through the Franchised Business; and  
  
 11. conduct advertising, marketing, promotional and grand opening  
programs with the portion of the initial franchise fee allocated to the grand  
opening through the first sixty days of your operations.  
  
 B. Post-Opening Obligations. Following the opening of the Franchised  
Business Able Oil will:  
  
 1. provide as much general advisory assistance as it believes, in  
its sole discretion, will be helpful to you in the ongoing operation,  
advertising and promotion of the Franchised Business;  
  
 2. provide you with updates, revisions and amendments to the Manual;  
  
 3. provide you with a periodic newsletter to update you on current  
trends in the industry and   
  
  
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developments in the System;  
  
 4. continue its efforts to establish and maintain high standards of  
quality, customer satisfaction and service. To that end, Able Oil will on a  
periodic basis, conduct, as it deems advisable, inspections of the Franchised  
Business and its operations and will evaluate the methods and the staff employed  
therein;  
  
 5. coordinate and conduct periodic training programs for its network  
of franchisees as it deems necessary in its sole discretion; and  
  
 6. make available at your expense certain promotional items,  
including apparel, calendars, kitchen magnets, stickers and the like which bear  
the Proprietary Marks for use by you in promoting the Franchised Business.  
  
All of Able Oil's obligations under this Agreement are to you, and no other  
party is entitled to rely on, enforce or obtain relief for breach of such  
obligations either directly or by subrogation.  
  
IV. FEES  
  
 A. Payments to Able Oil. In consideration of the right and license to  
operate the Franchised Business granted herein, you shall pay to Able Oil the  
following fees, all in U.S. dollars:  
  
 1. Initial Franchise Fee. The total initial franchise fee payable to  
Able Oil by you shall be Twenty-Five Thousand Dollars ($25,000). The initial  
franchise fee is payable in full upon the execution of this Agreement. The  
entire initial franchise fee is deemed fully earned upon receipt by Able Oil and  
is not refundable in whole or in part.  
  
 2. Royalty Fees. You must pay Able Oil a continuing nonrefundable  
monthly royalty fee initially equal to one percent (1%) of monthly Gross Sales  
as that term is defined herein. After the first two years of operation of your  
Franchised Business, the royalty fee will increase to two percent (2%);  
provided, however, that in the event that the sales volume of fuel oil for the  
Franchised Business averages 1.5 million or more in the second full year of  
operation or any subsequent year during the term of this Agreement, the royalty  
fee shall not be increased for the next year following the achievement of that  
sales volume. Subject to applicable banking regulations, Able Oil will establish  
a direct debit program with your bank to allow for the electronic transfer of  
the monthly royalty payment on the second business day following the end of the  
month for which payment is due. If the electronic funds transfer does not occur,  
the royalty fee must be received within three days after notice to you that the  
automatic debit did not occur.  
  
 3. Administrative Processing Fee. In conjunction with the electronic  
transfer of funds to Able Oil to cover your purchase of fuel on Able Oil's  
account, Able Oil will at the same time collect a $.04 per gallon administrative  
processing fee.  
  
 4. Grand Opening Fee. You must pay Able Oil a grand opening fee of  
fifteen thousand dollars ($15,000) at least thirty (30) days prior to commencing  
operations of your Franchised Business. Able Oil will use this amount to  
coordinate a public relations campaign, purchase promotions, marketing,  
advertisements, direct mail, coupons and for initial marketing expenses related  
to the opening of your Franchised Business. You must participate in the Grand  
Opening and Promotion campaign arranged by Able Oil during the first sixty (60)  
days after opening. Any part of the grand opening fee that is not spent on  
advertising for the new unit during the sixty (60) day period will be returned  
to you.  
  
 5. Advertising Contribution. Able Oil may establish a national  
advertising and promotional fund to generate new business for the System. In the  
event that such a program is established, Able Oil may impose a   
  
  
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mandatory contribution on you and every other franchisee of up to 1% of your  
monthly Gross Sales.  
  
 B. Late Fees and Interest on Late Payments. Any fees not received by Able  
Oil through electronic funds transfer by the fifth day of the month following  
the month for which payment was due shall be considered late. Likewise, if Able  
Oil at any time attempts to debit your account for payment of the royalty fee or  
advertising contribution, and there are not sufficient funds in your account to  
pay the fee, the fee will also be considered late.  
  
 Able Oil shall assess a late fee of Two Hundred Fifty Dollars ($250) every  
month for which any payment is late, and for each subsequent month, that the  
payment is late. In addition, all overdue amounts will bear interest, until  
paid, at the rate of two (2) times the prime rate then being charged by the  
Chase Manhattan Bank, N.A. on the date payment was due, or the highest rate  
permitted by applicable state law, whichever is less (the "Default Rate").  
Interest shall be calculated on a daily basis. Interest charges are  
nonrefundable, and interest shall be in addition to any other remedies Able Oil  
may have.  
  
 C. Definition of Gross Sales. "Gross Sales" is defined as all sales  
generated through the Franchised Business including fees for any and all  
services you perform, whether for cash or credit (regardless of collectability),  
and xxxxxxxx of every kind or nature related to the Franchised Business;  
provided, however, that "Gross Sales" shall not include any sales tax or other  
taxes collected from your customers for transmittal to the appropriate taxing  
authority.  
  
 D. Audits. Able Oil has the right to audit the books and records of the  
Franchised Business. Audits will be conducted at Able Oil's expense, unless an  
audit discloses an understatement in any report of two percent (2%) or more, in  
which case you must pay the undisclosed or under-reported amount(s) and any and  
all costs and expenses incurred by Able Oil in connection with the audit  
(including, without limitation, reasonable accountants' and attorneys' fees),  
together with interest on undisclosed or under-reported amount(s) at the Default  
Rate. These amounts will be payable immediately upon your receipt of written  
notice from Able Oil. Audit fees, costs and expenses, as well as the interest  
thereon, are nonrefundable.  
  
 E. Reporting Procedures. You must maintain and preserve during the term of  
this Agreement, and must preserve for the time period specified in the Manual,  
full, complete and accurate books, records and accounts and all supporting  
materials in accordance with Able Oil's procedures and guidelines. You are  
required by this Agreement to periodically submit to Able Oil at your expense,  
certain reports, records, information and data as Able Oil may reasonably  
designate upon request or as specified in writing. You must also submit to Able  
Oil, upon request, a copy of any of its federal and state sales or income tax  
returns applicable to the Franchised Business.  
  
 F. Local Marketing Expenditure. You must spend at least three percent (3%)  
of your quarterly gross sales on local marketing and promotion, in accordance  
with the requirements set forth in Section X. All marketing materials must  
comply with the policies and procedures established by Able Oil.  
  
V. DUTIES OF FRANCHISEE  
  
 A. Compliance with System. You understand and acknowledge that every  
detail of the appearance and operation of the Franchised Business in compliance  
with the System is critical to Able Oil, you, and other franchisees operating  
under the System, in order to: (1) develop and maintain high and uniform  
operating standards; (2) increase the demand for the products and services sold  
by franchisees; and (3) protect the Proprietary Marks and the System, as well as  
Able Oil's trade secrets, reputation and goodwill.  
  
 B. Procurement of Business Licenses. You must obtain all business  
licenses, registrations, permits and certifications required for the opening and  
ongoing operation of the Franchised Business and shall provide to Able Oil  
copies of all required licenses.  
  
 C. Initial Training. In accordance with the terms and conditions set forth  
in Section III of this  
  
  
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Agreement, you must complete, to Able Oil's satisfaction, Able Oil's initial  
training program prior to the opening of the Franchised Business. Able Oil will  
provide and pay for instruction and training materials in connection with your  
attendance at the initial training program. You are responsible for any and all  
other expenses incurred by you and your employees during initial training,  
including the costs of entertainment, lodging, travel, meals and employee wages.  
The initial training program will be conducted at Able Oil's headquarters in  
Rockaway, New Jersey, your location and/or at a site to be determined by Able  
Oil.  
  
 D. Ongoing Training. You must attend and complete, to Able Oil's  
reasonable satisfaction, such special programs or periodic additional training  
as Able Oil may require in writing from time to time. Able Oil will only provide  
and pay for instruction and training materials in connection with this  
additional training. You will be responsible for any and all other expenses  
incurred in training, including, without limitation, the costs of meals,  
entertainment, lodging, travel, and employee wages.  
  
 E. Initial Inventory and Equipment. You must purchase or lease a fuel  
delivery vehicle in accordance with Able Oil guidelines (and have the Able Oil  
logo applied) and purchase a full load of fuel to commence operations. You must  
also purchase a set of trade tools specified in the Manual.  
  
 F. Best Efforts. The Franchised Business must be under your direct  
supervision and you are required to devote your full time and effort to the  
management and operation of the Franchised Business.  
  
 G. Compliance with Uniform Standards. You must operate the Franchised  
Business in conformity with such uniform methods, standards and specifications  
as Able Oil may from time to time prescribe to ensure that the highest degree of  
quality and service is uniformly maintained. You shall conduct your business in  
a manner that reflects favorably at all times on the System and the Proprietary  
Marks. You must not engage in deceptive, misleading or unethical practices or  
commit any other act which may have a negative impact on the reputation and  
goodwill of Able Oil or any other franchisee operating under the System.  
Pursuant to this ongoing responsibility, you agree:  
  
 1. To maintain in sufficient supply, as Able Oil may prescribe in  
the Manual or otherwise in writing, and use at all times, supplies that conform  
to Able Oil's standards and specifications, and to refrain from deviating  
therefrom without Able Oil's prior written consent; and  
  
 2. To sell or offer for sale only those products and services that  
meet Able Oil's uniform standards of quality and quantity which have been  
expressly approved for sale in writing by Able Oil in accordance with Able Oil's  
methods and techniques; and to sell or offer for sale all approved items; and  
  
 3. To refrain from any deviation from Able Oil's standards and  
specifications for serving or selling such products or services; and to  
discontinue selling and offering for sale any such products or services as Able  
Oil may, in its sole discretion, disapprove in writing at any time; and  
  
 4. To operate the Franchised Business at a standard of excellence  
consistent with the requirements set forth in the Manual, with special emphasis  
on customer service;  
  
 5. To maintain all required licenses, registrations and permits in  
good standing.  
  
 H. Sales Targets. In order for you to maintain your territorial  
exclusivity, you must meet certain minimum fuel sales volume targets at an  
average minimum margin of $.20 per gallon: 500,000 gallons within the first 12  
months of operation; 750,000 gallons within the first 18 months of operation;  
and 1 million gallons within the first 24 months of operation. You must maintain  
a sales level of at least 1 million gallons per year beginning with the third  
year in order to maintain your exclusivity to operate a Franchised Business in  
the Designated Territory. If you maintain a sales level of 1.5 million gallons  
in a given year or higher, your royalty fee shall not be increased for  
  
  
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the subsequent year. In the event that you do not meet the minimum sales targets  
described above, Able Oil may license other franchisees to operate a Franchised  
Business in the Territory.  
  
 I. Purchase of Products and Services. You must purchase fuel oil, certain  
equipment and certain proprietary products and services solely from approved  
suppliers who have proved, to the continuing reasonable satisfaction of Able  
Oil, the ability to meet Able Oil's reasonable standards and specifications for  
such products and related services. These approved suppliers must meet all of  
Able Oil's specifications and standards as to content, quality, appearance,  
warranty, performance and serviceability and must adequately demonstrate their  
capacity and facilities to supply your needs for an effective and efficient  
operation of the Franchised Business as well as all Franchised Businesses  
operating under Able Oil's System.  
  
 J. Proprietary Methods. Able Oil has developed certain products, services,  
operational systems and management techniques and may continue to develop  
additional proprietary methods and techniques for use in the operation of the  
Franchised Business which are all highly confidential and which are trade  
secrets of Able Oil. Because of the importance of quality control, uniformity of  
product and the significance of the proprietary items to the System, it is to  
the mutual benefit of the parties that Able Oil closely control the  
dissemination of this proprietary information. Accordingly, you must comply and  
strictly follow these techniques in the operation of the Franchised Business and  
must purchase from approved sources designated by Able Oil any supplies or  
materials necessary to protect and implement such techniques.  
  
 K. Development of the Market. You shall at all times use your best efforts  
to promote and increase the sales and consumer recognition of the services  
offered by the Franchised Business pursuant to the System and the Manual, to  
effect the widest and best possible distribution of services from the Franchised  
Business. You must also devote your best efforts in controlling the Franchised  
Business, its managers, assistants and employees.  
  
 L. Display of Proprietary Marks and Logos. You must, at your own cost,  
display Able Oil's Proprietary Marks and logos on the Franchised Business'  
vehicle(s), uniforms and otherwise in the manner prescribed by Able Oil. The  
color, design and location of these displays will be specified by Able Oil and  
may be changed from time to time in the sole discretion of Able Oil, and you  
must make these changes at your own cost.  
  
 M. Noncompetition And Nondisclosure Agreements. You and your employees,  
officers, directors, shareholders and independent contractors shall sign  
noncompetition or nondisclosure agreements that name Able Oil as a third-party  
beneficiary to such agreements.  
  
 N. Other Requirements. You must comply with all other requirements set  
forth in this Agreement, in the Manual or as Able Oil may designate from time to  
time.  
  
 O. Safety Standards. You shall maintain the highest safety standards and  
ratings applicable to the operation and management of the Franchised Business  
and its personnel as Able Oil may reasonably require.  
  
 P. Working Capital. You shall maintain sufficient levels of working  
capital for use in connection with the management and operation of the  
Franchised Business.  
  
 Q. Computer System. You must purchase one of the computer systems required  
by Able Oil for the operation of the Franchised Business, as specified in the  
Manual. Able Oil will poll via modem all of its franchisees' computer systems in  
order to compile sales data, consumer trends, costs, and other such financial  
and marketing information it deems appropriate. The Franchisor may distribute  
this data on a confidential basis to its franchisees. Data shall be maintained  
using a Standard Chart of Accounts as provided by Able Oil.  
  
 R. Answering System and Pager Service. You must arrange for a "live"  
answering service to monitor incoming calls during any time when you or your  
staff are not available to receive telephone calls. Your   
  
  
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answering service must be able to access you or your person on-call for  
responding to customer calls by pager. You are responsible for providing pagers  
and/or cellular phones for you and your employees.  
  
 S. Site Approval. You may operate from a separate home office or from a  
commercial space you rent or own. Your office must be at least 200 to 400 square  
feet and you must have a storage area for your fuel delivery vehicle. Able Oil  
will review your office site approve the site in its sole discretion. If the  
site is not approved, Able Oil will assist you in locating an acceptable  
alternative site. You shall permit Able Oil's agents or representatives to enter  
your office for the purpose of conducting inspections or audits, upon reasonable  
notice from Able Oil and during regular business hours.  
  
 T. Commencing and Continuing Operations. You shall commence operations as  
soon as possible after completion of all required training. The parties agree  
that time is of the essence in commencing operation of the Franchised Business  
and that if you fail to commence operations within six months after execution of  
this Agreement, Able Oil may terminate this Agreement immediately. You shall use  
the Franchised Business solely for the operation of the Franchised Business that  
is licensed hereunder in strict accordance with the Manual; shall keep the  
Franchised Business open and in normal operation for such minimum hours and days  
as Able Oil may from time to time prescribe; and shall refrain at all times from  
using or permitting the use of the premises of the Franchised Business for any  
other purpose or activity other than as contemplated by this Agreement.  
  
 U. Miscellaneous. You shall comply with all other requirements set forth  
herein or in the Manual.  
  
VI. PROPRIETARY MARKS  
  
 X. Xxxxx of License. Able Oil owns the exclusive world-wide right to use  
and to license others to use the Proprietary Marks. Able Oil hereby grants you  
the right and license to use the Proprietary Marks, including the Able Oil(R)  
service xxxx and logo, only in connection with the operation of the Franchised  
Business and the provision of services and products to your customers. Able Oil  
represents, with respect to the Proprietary Marks, that: (1) Able Oil has, to  
the best of the its knowledge, all right, title and interest in and to the  
Proprietary Marks; (2) Able Oil has taken all steps which it deems reasonably  
necessary to preserve and protect the ownership and validity of such Proprietary  
Marks; and (3) Able Oil will use and license you and other franchisees to use  
the Proprietary Marks only in accordance with the System and the operating  
standards and quality control specifications attendant thereto which underlie  
the goodwill associated with and symbolized by the Proprietary Marks.  
  
 B. Conditions for Use. With respect to your use of the Proprietary Marks  
pursuant to the license granted under this Agreement:  
  
 1. You shall use only the Proprietary Marks designated by Able Oil  
and shall use them only in the manner required or authorized and permitted by  
Able Oil.  
  
 2. You shall use the Proprietary Marks only in connection with the  
right and license to operate the Franchised Business granted hereunder.  
  
 3. During the term of this Agreement and any renewal hereof, you  
shall identify yourself as a licensee and not the owner of the Proprietary Marks  
and shall make any necessary filings under state law to reflect this status. In  
addition, you will identify yourself as a licensee of the Proprietary Marks on  
all invoices, order forms, receipts, business stationery and contracts, as well  
as the display of a notice in such form and content and in such places as Able  
Oil may designate in writing.  
  
 4. Your right to use the Proprietary Marks is limited to such uses  
as are authorized under this Agreement or in the Manual, and any unauthorized  
use shall constitute an infringement of Able Oil's rights and grounds for  
termination of this Agreement.  
  
  
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 5. You shall not use the Proprietary Marks to incur or secure any  
obligation or indebtedness.  
  
 6. You shall not use the Proprietary Marks, including Able Oil(R),  
as part of your corporate or other legal name; however, you must utilize Able  
Oil(R) as part of your trade name.  
  
 7. You will comply with Able Oil's instructions and all local  
regulations for filing and maintaining the requisite trade name or fictitious  
name registrations, and will execute any documents deemed necessary by Able Oil  
or its counsel to obtain protection for the Proprietary Marks or to maintain  
their continued validity and enforceability.  
  
 8. In the event that you become aware of any infringement of the  
Proprietary Marks or if your use of the Proprietary Marks is challenged by a  
third party, then you are obligated to immediately notify Able Oil and Able Oil  
will have sole discretion to take such action as it deems appropriate. If Able  
Oil fails to take action to protect the Proprietary Marks, then you must take  
any action necessary to protect your interest, at your own expense. If it  
becomes advisable at any time in the sole discretion of Able Oil to modify or  
discontinue the use of any name or xxxx and/or use one or more additional or  
substitute names or marks, you will be responsible for the tangible costs (such  
as replacing signs and materials) of complying with this obligation. In the  
event that litigation alleging that the Proprietary Marks infringe a third  
party's rights is instituted or threatened against you, you must promptly notify  
Able Oil and cooperate fully in defending or settling such litigation.  
  
 C. Acknowledgment. You expressly understand and acknowledge that:  
  
 1. Able Oil is the exclusive owner of all right, title and interest  
in and to the Proprietary Marks and the goodwill associated with and symbolized  
by them;  
  
 2. The Proprietary Marks are valid and serve to identify the System  
and those who are licensed to operate a Franchised Business in accordance with  
the System;  
  
 3. Your use of the Proprietary Marks pursuant to this Agreement does  
not give you any ownership interest or other interest in or to the Proprietary  
Marks, except the nonexclusive license granted herein;  
  
 4. Any and all goodwill arising from your use of the Proprietary  
Marks and/or the System shall inure solely and exclusively to Able Oil's  
benefit, and upon expiration or termination of this Agreement, no monetary  
amount shall be assigned as attributable to any goodwill associated with your  
use of the System or the Proprietary Marks;  
  
 5. The license and rights to use the Proprietary Marks granted to  
you in this Agreement are nonexclusive, and Able Oil thus may: (a) itself use,  
and grant franchises and licenses to others to use, the Proprietary Marks and  
the System; (b) establish, develop and franchise other systems, different from  
the System licensed to you herein, without offering or providing you any rights  
in, to or under such other systems; and (c) modify or change, in whole or in  
part, any aspect of the Proprietary Marks or the System, so long as your rights  
thereto are in no way materially harmed thereby;  
  
 6. Able Oil reserves the right to substitute different trade names,  
trademarks and service marks for use in identifying the System, the Franchised  
Business and other Franchised Businesses operating under the system, all of  
which shall become Proprietary Marks;  
  
 7. Able Oil will have no liability to you for any senior users that  
may claim rights to the Proprietary Marks;  
  
  
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 8. You will not register or attempt to register the Proprietary  
Marks in your name or that of any other person, firm, entity or corporation; and  
  
 9. Able Oil shall have the right to assign the Proprietary Marks,  
and all of its rights and goodwill thereunder, to any person, firm, corporation  
or other entity, at its sole discretion.  
  
VII. CONFIDENTIAL MANUAL  
  
 A. Compliance. In order to protect Able Oil's reputation and goodwill and  
to maintain uniform standards of operation in connection with the Proprietary  
Marks, you will conduct your business in strict compliance with the operational  
systems, procedures, policies, methods and requirements prescribed in the Manual  
and any supplemental bulletins, notices, revisions, modifications or amendments  
thereto, all of which shall be deemed a part of the Manual. One (1) copy of the  
Manual will be provided to you on loan from Able Oil during the initial training  
program, and you must sign a corresponding receipt therefor.  
  
 B. Use. You will immediately adopt and use the programs, services,  
methods, standards, materials, policies and procedures set forth in the Manual,  
as they may be modified by Able Oil from time to time. You acknowledge that Able  
Oil is the owner or licensee of all proprietary rights in and to the System, and  
the Manual, and any changes or supplements thereto.  
  
 C. Confidentiality. You must at all times treat the Manual, any other  
instructional materials created or approved for use in the operation of the  
Franchised Business and all of the information contained therein as proprietary  
and confidential, and you must use all reasonable efforts to maintain such  
information as confidential.  
  
 D. Trade Secrets. You acknowledge and agree that designated portions of  
the Manual are "trade secrets" owned and treated as such by Able Oil.  
  
 E. Access. Able Oil's trade secrets must be accorded maximum security  
consistent with your need to make frequent reference thereto. You must strictly  
limit access to the Manual to employees who have a demonstrable and valid need  
to know the information contained therein in order to perform their duties. You  
must strictly follow any provisions in the Manual regarding the care, storage  
and use of the Manual and all related proprietary information.  
  
 F. Duplication. You may not at any time, without Able Oil's prior written  
consent, copy, duplicate, record or otherwise reproduce in any manner any part  
of the Manual, updates, supplements or related materials, in whole or in part,  
or otherwise make the same available to any unauthorized person.  
  
 G. Able Oil's Property. The Manual shall at all times remain the sole  
property of Able Oil. Upon the expiration or termination of this Agreement for  
any reason, you must return the Manual, and all of its supplements to Able Oil.  
  
 H. Updates or Revisions. Able Oil retains the right to prescribe additions  
to, deletions from or revisions to the Manual, which you will be bound by as  
soon as they are mailed or otherwise delivered to you. The Manual, and any  
additions, deletions or revisions thereto, shall not alter your rights and  
obligations under this Agreement.  
  
 I. Master Set. You shall at all times insure that your set of the Manual  
is kept current and up-to-date, and in the event of any dispute as to the  
contents of the Manual, the terms contained in the master set of the Manual  
maintained by Able Oil at its headquarters shall be controlling.  
  
 J. Replacement Fee. If the Manual or any of its volumes are lost, stolen  
or destroyed, you must pay   
  
  
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Able Oil a nonrefundable replacement fee of Two Hundred Fifty Dollars ($250.00)  
for each volume of the replacement Manual.  
  
VIII. CONFIDENTIAL INFORMATION  
  
 A. Confidential Relationship. The relationship established between you and  
Able Oil by this Agreement is one of confidence and trust and, as a result, Able  
Oil will be disclosing and transmitting to you certain trade secrets and other  
confidential and proprietary information concerning various aspects of your  
operation of the Franchised Business, methods of operation, techniques and all  
proprietary systems, procedures and materials relevant thereto pursuant to the  
System and this Agreement.  
  
 B. Obligations of Franchisee. In order to preserve and protect the trade  
secrets and the confidential and proprietary information (the "Confidential  
Information") which are disclosed to you during the term of this Agreement, you  
agree that:  
  
 1. You will treat and maintain the Confidential Information as  
confidential both during the term of this Agreement and at all times thereafter;  
  
 2. You will use the Confidential Information only for your operation  
of the Franchised Business under this Agreement;  
  
 3. You will disclose the Confidential Information only as necessary  
to employees or agents who have a demonstrable and valid need to know the  
Confidential Information and not to anyone else;  
  
 4. You will restrict disclosure of the Confidential Information to  
only those employees or agents who are directly connected with the performance  
of work requiring knowledge thereof and will disclose only so much of the  
Confidential Information as is required to enable those employees or agents to  
carry out their assigned duties;  
  
 5. You will advise your employees or agents of the confidential  
nature of such information and the requirements of nondisclosure thereof; and  
  
 6. You and Able Oil will conduct a review to determine which  
employees will have access to the Confidential Information and to the Manual.  
You will not disclose any Confidential Information or provide access to the  
Manual to such employee or agent until that person executes a nondisclosure  
agreement in a form prescribed by Able Oil, acknowledging the confidential and  
proprietary nature of the Confidential Information and agreeing not to disclose  
the information during the course of employment or thereafter. Able Oil shall be  
designated a third-party beneficiary of such nondisclosure agreements with the  
right to enforce its provisions independently of from you.  
  
 C. Confidential Information Defined. Any and all information, knowledge,  
know-how, systems, programs and other methods and techniques that Able Oil  
designates as confidential shall be deemed Confidential Information for purposes  
of this Agreement, except information which you are able to demonstrate came to  
your attention prior to its disclosure by Able Oil or which, at the time of its  
disclosure by Able Oil to you, had become a part of the public domain through  
publication or communication by others or which, after disclosure to you by Able  
Oil, becomes a part of the public domain through publication or communication by  
others. It is understood and agreed that information, improvements to the System  
or techniques prepared, compiled or developed by you, your employees or agents  
during the term of this Agreement and relating to the Franchised Business,  
whether developed separately or in conjunction with Able Oil, shall be  
considered as part of the Confidential Information. You hereby grant to Able Oil  
an irrevocable, worldwide, exclusive, royalty-free license, with the right to  
sub-license such information, improvement or technique.  
  
  
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 D. Protection of Information. You acknowledge that you have knowledge of  
confidential matters, trade secrets, management and training techniques,  
operational, accounting, quality control procedures, pricing and marketing  
programs and other methods developed by Able Oil through and in its System  
which, for purposes of this Agreement, are owned by Able Oil and which are  
necessary and essential to the operation of the Franchised Business, without  
which information you could not efficiently, and effectively operate the same.  
You further acknowledge that such Confidential Information was unknown to you  
prior to negotiation for and execution of this Agreement and that the unique and  
novel combination of "know how" and methods developed by Able Oil and licensed  
to you for the operation of the Franchised Business are particular to Able Oil.  
You must take all steps necessary, at your own expense, to protect the  
Confidential Information and must not divulge the same either during or upon the  
termination of this Agreement without the prior written consent of Able Oil.  
  
 E. Remedies. You acknowledge that in addition to any remedies available to  
Able Oil under Section XIII of this Agreement, you agree to pay all court costs  
and reasonable attorneys' fees incurred by Able Oil in obtaining specific  
performance of a temporary restraining order and/or an injunction against  
violation of the requirements of this Section VIII.  
  
 F. Communication with Customers. In order to maintain the high standards  
of quality control throughout the System, Able Oil reserves the right to use  
test customers or to communicate with your customers from time to time, without  
prior notification to you, in order to determine whether the Franchised Business  
is maintaining high standards of quality, integrity, safety, appearance and  
customer service.  
  
IX. ACCOUNTING, INSPECTIONS AND RECORDS  
  
 A. Maintenance of Books and Records. You must maintain during the term of  
this Agreement and shall preserve for not less than seven (7) years from the  
date of preparation full, complete and accurate books, records and accounts in  
accordance with the System and in the form and manner prescribed by Able Oil in  
the Manual or otherwise in writing.  
  
 B. Monthly Reports. Able Oil may poll via modem your computer system to  
obtain any and all information deemed necessary to monitor your Franchised  
Business, including Gross Sales and any other information from which the royalty  
fee and required marketing expenditures are calculated. You may be required to  
submit to Able Oil other monthly reports and statements of income in a form  
prescribed by Able Oil in the Manual, together with such other data or  
information as Able Oil may require.  
  
 C. Financial and Related Reporting. You must submit to Able Oil an annual  
financial statement prepared at your own expense which shall include an income  
statement and balance sheet prepared in accordance with generally accepted  
accounting principles and copies of federal and state tax returns for the  
Franchised Business within ninety (90) days of the completion of the fiscal year  
of the Franchised Business. Each annual financial statement and tax return shall  
be compiled by an independent certified public accounting firm and signed by you  
or your President or Treasurer attesting that the statement is true and correct.  
Able Oil also reserves the right to require you to submit to Able Oil certified  
financial statements for any period or periods of any fiscal year, which shall  
be certified by your accounting firm and attested to by your treasurer or chief  
financial officer, where applicable. You shall also submit to Able Oil, upon  
request, a copy of any of your periodic federal and state sales or income tax  
returns applicable to the Franchised Business.  
  
 D. Other Submissions. You must also submit to Able Oil for review and  
auditing, such other forms, and other reports and any and all other information  
and data as Able Oil may reasonably designate, including quarterly accounting of  
local marketing expenditures, in the form and at the times and places reasonably  
required by Able Oil, upon request and as specified from time to time in the  
Manual or otherwise in writing, at any time during the term of this Agreement.  
  
  
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 E. Inspection. Able Oil or its designated agents shall have the right at  
all reasonable times to examine and copy, at its expense, the books, records,  
receipts and tax returns of the Franchised Business. Able Oil shall also have  
the right, at any time, to have an independent audit made of your books. If an  
inspection should reveal that any payments to Able Oil have been undisclosed or  
understated in any report to Able Oil then you must immediately pay to Able Oil,  
upon demand, the amount undisclosed or understated plus interest calculated at  
the Default Rate on a daily basis. If any inspection discloses an understatement  
in any report of two percent (2%) or more, you shall, in addition to the payment  
of late fees and interest thereon, reimburse Able Oil for any and all costs and  
expenses connected with the inspection (including, without limitation,  
reasonable accountants' and attorneys' fees). The foregoing remedies shall be in  
addition to any other remedies available to Able Oil.  
  
X. ADVERTISING  
  
 Recognizing the value of local and regional advertising, and the  
importance of the standardization of advertising programs to the furtherance and  
protection of the Proprietary Marks, goodwill and public image of the System,  
the parties agree as follows:  
  
 A. Submission and Approval of Promotional and Marketing Materials. All  
promotional and marketing materials to be used by you in any medium shall be  
presented in a dignified manner and shall conform to such standards and  
requirements as Able Oil may specify, from time to time, in the Manual or  
otherwise. You shall submit to Able Oil for its prior written approval, samples  
of all promotional and marketing materials in whatever form that you desire to  
use and that have not been approved within the last year by Able Oil. Able Oil  
shall notify you of Able Oil's approval or disapproval thereof within ten (10)  
days from the date of receipt by Able Oil of such materials. If Able Oil does  
not notify you within ten days, approval shall be deemed to have been given. You  
must comply with all revisions to promotional and marketing materials that Able  
Oil may require prior to approving them. You shall not use any advertising or  
promotional plans or materials that have not been approved in writing by Able  
Oil, and you must cease all use of any plans or materials promptly upon receipt  
of notice from Able Oil. Your failure to obtain Able Oil's prior written  
approval for all proposed advertising shall be deemed a default of this  
Agreement in accordance with Section XIII.A hereof.  
  
 B. Local Marketing and Promotion Expenditure. You must spend quarterly at  
least 3% of your Gross Sales on local marketing and promotion, in accordance  
with the policies and procedures established by Able Oil for the prior approval  
of all proposed marketing and promotional campaigns and materials, as specified  
in Paragraph X.A. or elsewhere in this Agreement, the Manual or otherwise. You  
must provide Able Oil with documentation as reasonably requested, substantiating  
the expenditures for local marketing.  
  
 C. Advertising Fund. Able Oil reserves the right to establish and  
administer the Able Oil Advertising Fund (the "Advertising Fund"). When the Fund  
is established, you will be required to contribute to the Advertising Fund in  
accordance with the provisions of Section IV of this Agreement.  
  
XI. INSURANCE  
  
 A. Procurement. You must procure, prior to the commencement of any  
operations under this Agreement, and thereafter maintain in full force and  
effect during the term of this Agreement, at your sole expense, an insurance  
policy or policies protecting you and Able Oil, and you and their respective  
officers, directors, partners and employees, against any loss, liability,  
personal injury, death, property damage or expense whatsoever from fire,  
lightning, theft, vandalism, malicious mischief and the perils included in the  
extended coverage endorsement, arising or occurring upon or in connection with  
the Franchised Business or by reason of the operation or occupancy of the  
Franchised Business, as well as such other insurance applicable to such other  
special risks, if any, as Able Oil may reasonably require for its own and your  
protection. You must procure such insurance and submit copies of such policies  
to Able Oil prior to the commencement of business operations.  
  
  
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 B. Minimum Coverage. All insurance policies shall be written by an  
insurance company satisfactory to Able Oil in accordance with the standards and  
specifications set forth from time to time in the Manual or otherwise in  
writing, and shall include, at a minimum (except as additional coverage and  
higher policy limits may reasonably be specified from time to time by Able Oil  
in the Manual or otherwise in writing), the following:  
  
 1. Comprehensive General Liability insurance, including vehicle,  
hazardous materials, cargo and collision insurance, covering the operation of  
the Franchised Business; and  
  
 2. Worker's compensation and employer's liability insurance as well  
as such other insurance as may be required by statute or rule of the state in  
which the Franchised Business is located and operated (or if your state does not  
require such coverage, than you must obtain additional liability coverage in an  
amount similar to coverage employer's liability insurance maintained by Able  
Oil).  
  
 3. Business interruption insurance in amounts equal to at least the  
average monthly royalties and administrative processing fees payable to Able  
Oil, but in no event less than One Hundred Thousand Dollars ($100,000) annual  
coverage.  
  
 The type of insurance, and the insurance amounts, are subject to change  
based on inflation or future experience with claims asserted against Franchised  
Business. Able Oil, in its sole discretion, may require you to obtain and pay  
for additional insurance coverage. You must furnish Able Oil with certificates  
of insurance, along with evidence that the premiums have been paid. You will be  
liable for any costs and expenses, including attorneys' fees, incurred by Able  
Oil in connection with any proceedings arising out of compliance with the  
provisions of the Franchise Agreement relating to insurance. Able Oil shall be  
named as an additional insured in each of your insurance policies as are  
designated by Able Oil.  
  
 C. Certificates. Initially and upon each periodic policy renewal, you must  
request, through your agent and/or carrier, for timely delivery to Able Oil of  
certificates of insurance of all coverage required by Able Oil. Each such  
certificate shall contain statements by the insurer that (i) the policy will not  
be canceled or initially altered without at least thirty (30) days' prior  
written notice to Able Oil and (ii) Able Oil is designated as an additional  
named insured.  
  
 D. No Relief Of Liability To Able Oil. The procurement and maintenance of  
such insurance shall not relieve you of any liability to Able Oil under any  
indemnity requirements of this Agreement.  
  
 E. Independence of Coverage Requirements. Your obligation to obtain and  
maintain the foregoing policy or policies in the amounts specified shall not be  
limited in any way by reason of any insurance which may be maintained by Able  
Oil, and your performance of that obligation shall not relieve you of liability  
under the indemnity provision set forth in Section XVIII of this Agreement.  
  
 F. Failure to Procure. If, for any reason, you should fail to procure or  
maintain the insurance required by this Agreement, as revised from time to time  
for all franchisees by the Manual or otherwise in writing, Able Oil shall have  
the right and authority (without, however, any obligation) to immediately  
procure such insurance and to charge you for the same, which charges, together  
with a reasonable fee for Able Oil's expenses in so acting, including all  
attorneys' fees, shall be payable by you immediately upon notice.  
  
 G. Third Parties. You must use your best efforts to ensure that all third  
parties with which you conduct business, are properly insured.  
  
XII. TRANSFER OF INTEREST; OPERATION BY ABLE OIL  
  
  
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 A. Transfer by Able Oil. Able Oil shall have the right to assign this  
Agreement, and all of its rights and privileges hereunder, to any person, firm,  
corporation or other entity, provided that, with respect to any assignment  
resulting in the subsequent performance by the assignee of the functions of Able  
Oil : (1) the assignee shall, at the time of such assignment, be capable of  
performing Able Oil's obligations under this Agreement, and (2) the assignee  
shall expressly assume and agree to perform such obligations.  
  
 Specifically, and without limitation to the foregoing, you expressly  
affirm and agree that Able Oil may sell its assets, its rights to the  
Proprietary Marks and the System outright to a third party; may go public; may  
engage in a private placement of some or all of its securities; may merge,  
acquire other corporations, or be acquired by another corporation; may undertake  
a refinancing, recapitalization, leveraged buy-out or other economic or  
financial restructuring; and, with regard to any or all of the above sales,  
assignments and dispositions, you expressly and specifically waive any claims,  
demands or damages arising from or related to the loss of said Proprietary Marks  
(or any variation thereof) and/or the loss of association with or identification  
of "Able Oil Company" as the franchisor hereunder.  
  
 Nothing contained in this Agreement shall require Able Oil to remain in  
the fuel oils distribution and services business or to offer similar services,  
whether or not bearing Able Oil's Proprietary Marks, in the event that Able Oil  
exercises its rights hereunder to assign its rights in this Agreement.  
  
 B. Transfer by You.  
  
 1. The rights and duties set forth in this Agreement are personal to  
you, and Able Oil has entered into this Agreement and granted the license  
hereunder in reliance on your business skill and financial capacity.  
Accordingly, neither you, any immediate or remote successor to any part of your  
interest in the Franchised Business, any individual, partnership, corporation or  
other legal entity which directly or indirectly controls you, if you are a  
corporation, nor any general partner or any limited partner (including any  
corporation which controls, directly or indirectly, any general or limited  
partner) if you are a partnership, shall sell, assign, transfer, convey, give  
away, pledge, mortgage or otherwise encumber any direct or indirect interest in  
you or in the Franchised Business without the prior written consent of Able Oil.  
This right of approval shall not create any special liability or duty on the  
part of Able Oil to any proposed transferee. Any purported assignment or  
transfer, by operation of law or otherwise, not having the written consent of  
Able Oil shall be null and void and shall constitute a material breach of this  
Agreement, for which Able Oil may then terminate without opportunity to cure  
pursuant to Section XIII of this Agreement.  
  
 2. If a proposed transfer, alone or together with other previous,  
simultaneous or proposed transfers, would have the effect of transferring a  
controlling interest in the Franchised Business, Able Oil may, in its sole  
discretion, require any or all of the following as conditions of its approval:  
  
 (a) All of your accrued monetary obligations and all other  
outstanding obligations to Able Oil (its subsidiaries, affiliates and suppliers)  
shall be up to date, fully paid and satisfied;  
  
 (b) You shall not be in default of any provision of this  
Agreement, any amendment hereof or successor hereto, any other franchise  
agreement or other agreement between Able Oil and you, or its subsidiaries,  
affiliates or suppliers;  
  
 (c) You and, where applicable, each of your shareholders,  
partners, officers and directors shall have executed a general release under  
seal, in a form satisfactory to Able Oil, of any and all claims against Able Oil  
and its officers, directors, shareholders and employees in their corporate and  
individual capacities, including, without limitation, claims arising under  
federal, state and local laws, rules and ordinances, provided, however, that you  
shall not be required to release Able Oil for violations of federal and state  
franchise registration and disclosure laws;  
  
  
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 (d) The transferee shall enter into a written assignment,  
under seal and in a form satisfactory to Able Oil, assuming and agreeing to  
discharge all of your obligations under this Agreement; and, if your obligations  
were guaranteed by the transferor, the transferee shall guarantee the  
performance of all such obligations in writing in a form satisfactory to Able  
Oil;  
  
 (e) The transferee shall demonstrate to Able Oil's  
satisfaction that the transferee meets Able Oil's educational, managerial and  
business standards; possesses a good moral character, business reputation and  
credit rating; has the aptitude and ability to operate the Franchised Business  
herein (as may be evidenced by prior related experience or otherwise); has at  
least the same managerial and financial criteria required of new franchisees and  
shall have sufficient equity capital to operate the Franchised Business;  
  
 (f) At Able Oil's option, the transferee shall execute  
(and/or, upon Able Oil's request, shall cause all interested parties to execute)  
for a term ending on the expiration date of this Agreement and with such renewal  
term as may be provided by this Agreement, the standard form of Franchise  
Agreement then being offered to new franchisees and such other ancillary  
agreements as Able Oil may require for the Franchised Business, which agreements  
shall supersede this Agreement in all respects and the terms of which agreements  
may differ from the terms of this Agreement, including, without limitation, a  
higher percentage royalty fee or Advertising Fund contribution, and the  
implementation of additional fees;  
  
 (g) The transferee shall upgrade, at the transferee's expense,  
the Franchised Business to conform to the then-current specifications then being  
used in new Franchised Businesses, and shall complete the upgrading and other  
requirements within the time specified by Able Oil;  
  
 (h) You will remain liable for all direct and indirect  
obligations to Able Oil in connection with the Franchised Business prior to the  
effective date of the transfer and shall continue to remain responsible for its  
obligations of nondisclosure, noncompetition and indemnification as provided  
elsewhere in this Agreement and shall execute any and all instruments reasonably  
requested by Able Oil to further evidence such liability;  
  
 (i) At the transferee's expense, the transferee and its  
employees shall complete any training programs then being offered to current or  
new franchisees upon such terms and conditions as Able Oil may reasonably  
require;  
  
 (j) The transferee shall have signed an Acknowledgment of  
Receipt of all required legal documents, such as the Franchise Offering Circular  
and the then current Franchise Agreement and ancillary agreements;  
  
 (k) The transferor shall pay to Able Oil a Transfer Fee equal  
to twenty-five percent (25%) of the then-current initial franchise fee to cover  
Able Oil's administrative expenses and other costs in connection with the  
transfer, which shall be fully payable to Able Oil thirty (30) days prior to any  
such transfer and nonrefundable; and  
  
 (l) The transferor must provide Able Oil with a copy of the  
agreements of purchase and sale between the transferor and the transferee.  
  
 3. You may not grant a security interest in the Franchised Business  
or in any of its assets unless the secured party agrees that in the event of any  
default by you under any documents related to the security interest, the secured  
party shall notify Able Oil of the default and Able Oil shall have the right and  
option to be substituted as obligor to the secured party and to cure any default  
by you. Notwithstanding the foregoing, Able Oil shall not be construed as a  
guarantor or surety for you.  
  
  
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 4. Each of the foregoing conditions of transfer which must be met by  
you and the transferee are necessary and reasonable to assure such transferee's  
full performance of the obligations hereunder.  
  
 C. Additional Requirements - Corporate Franchisees. The following  
requirements shall apply to you if you are a corporation, or any legal entity  
other than an individual, in addition to those requirements set forth elsewhere  
in this Agreement, the Manual or otherwise:  
  
 1. If you are a newly organized corporation or other legal entity,  
your charter must provide that your activities are limited exclusively to  
operating the Franchised Business herein. If you are an existing legal entity,  
you must amend your charter document to reflect your exclusive activity as a  
Franchised Business.  
  
 2. Copies of your Articles of Incorporation, Bylaws and other  
governing documents, and any amendments thereto, including the resolutions of  
any Board of Directors (or similar body with authority to bind you) authorizing  
entry into this Agreement, shall be promptly furnished to Able Oil.  
  
 3. Each stock certificate or other certificate evidencing ownership  
of the Franchised Business issued to your owners shall have conspicuously  
endorsed upon its face a statement in a form satisfactory to Able Oil, such as:  
  
 "THE TRANSFER, PLEDGE OR ALIENATION OF THIS STOCK IS SUBJECT TO THE  
 TERMS AND RESTRICTIONS CONTAINED WITHIN THE FRANCHISE AGREEMENT  
 BETWEEN ABLE OIL COMPANY AND \_\_\_\_\_\_\_\_\_\_\_\_\_\_."  
  
 4. You must maintain a current list of all owners of record and all  
beneficial owners of any class of equity securities and shall furnish the list  
to Able Oil upon request, together with the addresses and phone numbers of each  
owner.  
  
 5. All of your shareholders, members or partners, whichever is  
applicable, shall jointly and severally guarantee your performance hereunder and  
shall bind themselves to the terms of this Agreement; provided, however, that  
the requirements of this Section XII.C.5. shall not apply to a publicly-held  
corporation.  
  
 D. Offerings by You. Your securities or partnership interests may be  
offered to the public, by private offering or otherwise, but only with the prior  
written consent of Able Oil, whether or not Able Oil's consent is required under  
Section XII.B. hereof, which consent shall not be unreasonably withheld. All  
materials required for such offering by federal or state law as well as any  
materials to be used in any exempt offering shall be submitted to Able Oil for  
review at least sixty (60) days prior to such documents being filed with any  
government agency or distributed to investors. No offering shall imply (by use  
of the Proprietary Marks or otherwise) that Able Oil is participating in an  
underwriting, issuance or offering of your securities, and Able Oil's review of  
any offering shall be limited solely to the subject of the relationship between  
you and Able Oil. You and any other participants in the offering must fully  
indemnify Able Oil in connection with the offering pursuant to an indemnity  
agreement in form and substance satisfactory to Able Oil and its counsel. For  
each proposed offering, you must pay to Able Oil a nonrefundable amount as is  
necessary to reimburse Able Oil for its reasonable costs and expenses associated  
with reviewing the proposed offering, including, without limitation, legal and  
accounting fees. Subsequent to approval of such offering documents, you must  
give Able Oil at least sixty (60) days written notice prior to the proposed  
effective date of any offering or other transaction covered by this Section  
XII.D.  
  
 E. Able Oil's Right of First Refusal.  
  
 1. If any party who holds an interest (as reasonably determined by  
Able Oil) in you or in the   
  
  
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Franchised Business desires to accept any bona fide offer from a third party to  
purchase his interest, you must notify Able Oil in writing of such offer. Except  
as otherwise provided herein, Able Oil shall have the right and option,  
exercisable within thirty (30) days after receipt of such written notification,  
to send written notice to the seller that Able Oil intends to purchase the  
seller's interest on the same terms and conditions offered by the third party  
less any amount of the purchase price attributable to the goodwill associated  
with the Franchised Business, the Proprietary Marks or the System. Any material  
change in the terms of any offer prior to closing shall constitute a new offer  
subject to the same right of first refusal by Able Oil as in the case of an  
initial offer. In the event that Able Oil elects to purchase the seller's  
interest, closing on such purchase must occur by the later of: (a) the closing  
date specified in the third party offer; or (b) within sixty (60) days from the  
date of notice to the seller of Able Oil's election to purchase. Failure of Able  
Oil to exercise the option afforded by this Section XII.E. shall not constitute  
a waiver of any other provision of this Agreement, including all of the  
requirements of this Section XII with respect to a proposed transfer.  
  
 2. In the event the consideration, terms and/or conditions offered  
by a third party are such that Able Oil may not reasonably be required to  
furnish the same consideration, terms and/or conditions, then Able Oil may  
purchase the Franchised Business proposed to be sold for the reasonable  
equivalent in cash. If the parties cannot agree, within a reasonable time, on  
the reasonable equivalent in cash of the consideration, terms and/or conditions  
offered by a third party, an independent appraiser shall be designated by Able  
Oil, and his determination shall be final and binding.  
  
 F. Transfer Upon Death, Mental Incapacity or Disability. Upon the death,  
mental incapacity or disability of you or shareholders of a corporation or a  
general partner of a partnership which has been formed to own and operate the  
Franchised Business, Able Oil shall consent to the transfer of said interest in  
the Franchised Business and this Agreement to your spouse, heirs or relative by  
blood or by marriage, or to the spouse, heirs or relative of such shareholder or  
partner, whether such transfer is made by will or by operation of law, if, in  
Able Oil's sole discretion and judgment, such person or persons meet Able Oil's  
educational, managerial and business standards; possess a good moral character,  
business reputation and credit rating; have the aptitude and ability to conduct  
the Franchised Business herein; have at least the same managerial and financial  
criteria required by new franchisees and have sufficient equity capital to  
operate the Franchised Business. If a transfer is not approved by Able Oil, the  
executor, administrator or personal representative of such person shall transfer  
his interest to a third party approved by Able Oil within six (6) months after  
such death, mental incapacity or disability. Such transfer shall be subject to  
Able Oil's right of first refusal and to the same conditions as any inter vivos  
transfer.  
  
 G. Non-Waiver of Claims. Able Oil's consent to a transfer of any interest  
in the Franchised Business shall not constitute a waiver of any claims it may  
have against the transferring party, and it will not be deemed a waiver of Able  
Oil's right to demand exact compliance with any of the terms of this Agreement,  
or any other agreement to which Able Oil and the transferee are parties, by the  
transferee.  
  
 H. Operation of the Franchised Business by Able Oil. In order to prevent  
any interruption of the business of the Franchised Business and any injury to  
the goodwill and reputation thereof which would cause harm to the Franchised  
Business and thereby depreciate the value thereof, you hereby authorize Able  
Oil, and Able Oil shall have the right, but not the obligation, to operate said  
Franchised Business for so long as Able Oil deems necessary and practical, and  
without waiver of any other rights or remedies Able Oil may have under this  
Agreement, in the event that: (i) any of your principals, shareholders or  
partners is absent or incapacitated by reason of illness or death and you are  
not, therefore, in the sole judgment of Able Oil, able to do the business  
licensed hereunder, or (ii) any allegation or claim is made against the  
Franchised Business, you or any of your principals, directors, shareholders,  
partners or employees, involving or relating to misrepresentations or any  
fraudulent or deceptive practice. All revenues from the operation of the  
Franchised Business during such period of operation by Able Oil shall be kept in  
a separate account and the expenses of the Franchised Business, including  
reasonable royalty fees, advertising contributions, compensation and expenses  
for Able Oil's representative, shall be charged to said account. If, as herein  
provided, Able Oil elects to temporarily operate the Franchised Business on your  
behalf, you hereby agree to   
  
  
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indemnify and hold Able Oil harmless from any and all claims arising from the  
acts and omissions of Able Oil and its representatives, and such temporary  
operation shall in no way obligate Able Oil to purchase (or be construed as a  
purchase of) your Franchised Business  
  
 I. Able Oil Buy Back of the Franchised Business. You will have the right  
to transfer your Franchised Business back to Able Oil after two years of  
operation under this Agreement. Able Oil will pay you the fair market value of  
the tangible assets of the Franchised Business, as described in Section XIV.J.  
below, and will pay you margin for the automatic delivery customer accounts you  
have signed up.  
  
XIII. DEFAULT AND TERMINATION  
  
 As a matter of policy, Able Oil shall make every good faith effort to  
avoid terminating this Agreement without having first employed all reasonable  
steps to cause you to correct and cure any default. Furthermore, the terms and  
conditions regarding default and termination contained herein shall be subject  
to any applicable state statutes or regulations regarding the termination of a  
franchise. You may terminate this Agreement under any grounds available by law.  
  
 A. Default With No Opportunity To Cure. You shall be deemed to be in  
default and Able Oil may, at its option, terminate this Agreement and all rights  
granted hereunder, without affording you any opportunity to cure the default,  
effective immediately upon your receipt of notice from Able Oil to you, upon the  
occurrence of any of the following events:  
  
 1. You become insolvent or make a general assignment for the benefit  
of creditors, or a petition in bankruptcy is filed by you or a petition is filed  
against and consented to by you, or if you are adjudicated bankrupt, or a xxxx  
in equity or other proceeding for the appointment of a receiver of you or other  
custodian for your business or assets is filed and consented to by you, or if a  
receiver or other custodian (permanent or temporary) of your business or assets  
is appointed by any court of competent jurisdiction, or if proceedings for a  
conference with a committee of creditors under any state, federal or foreign law  
should be instituted by or against you, or a final judgment remains unsatisfied  
or of record for thirty (30) days or longer (unless supersedeas bond is filed),  
or execution is levied against your operating location or property, or suit to  
foreclose any lien or mortgage against the premises or equipment is instituted  
against you and not dismissed within thirty (30) days, or any substantial real  
or personal property of the Franchised Business is sold after levy thereupon by  
any sheriff, marshal or constable;  
  
 2. You cease to do business for two (2) or more consecutive days,  
excluding holidays, or otherwise forfeit the right to do or transact business in  
the jurisdiction where the Franchised Business is located; unless such failure  
to do business results from the governmental exercise of the power of eminent  
domain, or if, through no fault of yours, the Franchised Business is damaged or  
destroyed by a disaster;  
  
 3. You make any material misrepresentation or omission in this  
Agreement or any other agreement to which you and Able Oil are parties;  
  
 4. You misuse or make any unauthorized use of the Proprietary Marks,  
engage in any business or market any service or products under a name or xxxx  
which is confusingly similar to the Proprietary Marks, or otherwise materially  
impair the goodwill associated with, or Able Oil's rights in, the Proprietary  
Marks;  
  
 5. A threat or danger to public safety results from the operation of  
the Franchised Business;  
  
 6. You are convicted of a felony or any other crime or offense that  
Able Oil reasonably believes is likely to have an adverse effect on the System,  
the Proprietary Marks, the goodwill associated therewith or Able Oil's interest  
therein;  
  
  
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 7. A judgment or consent decree is entered against you, or any of  
your officers, directors, shareholders or partners in any case or proceeding  
involving allegations of fraud, racketeering, unfair or improper trade practices  
or similar claim which is likely to have an adverse effect on the System, or the  
Proprietary Marks, the goodwill associated therewith or Able Oil's interest  
therein;  
  
 8. You purport to transfer any rights or obligations under this  
Agreement to any third party without Able Oil's prior written consent, contrary  
to any of the terms of Section XII of this Agreement;  
  
 9. You fail to comply with any of the covenants contained in Section  
XV hereof;  
  
 10. Contrary to Sections VII and VIII of this Agreement, you misuse,  
disclose or divulge the contents of the Manual or any other trade secrets or  
Confidential Information provided to you by Able Oil;  
  
 11. You knowingly maintain false financial books or records or  
submit any false statements, applications or reports to Able Oil or any assignee  
of Able Oil;  
  
 12. You do not complete training or commence business operations  
within sixty (60) days after completing training provided by Able Oil;  
  
 13. You willfully and repeatedly engage in a course of conduct which  
constitutes a misrepresentation or a deceptive or unlawful act or practice in  
connection with your sale of the services and products offered by the Franchised  
Business;  
  
 14. You willfully engage in any illegal acts or any act in violation  
of the mission and policies of Able Oil; or  
  
 15. You receive three (3) or more notices of default under Section  
XIII.B. hereof during the term of this Agreement, whether or not such defaults  
are cured after notice.  
  
  
 B. Default With Thirty (30) Day Opportunity To Cure. Except as provided in  
Section XIII.A. of this Agreement, or as otherwise specified below, you  
generally shall have thirty (30) days after receiving from Able Oil a written  
notice of default within which to remedy any default described in this Section  
XIII.B. and provide evidence thereof to Able Oil. If any default is not cured  
within that time, or such longer period as applicable law may require, this  
Agreement, at Able Oil's option, shall terminate without further notice to you  
effective immediately upon the expiration of the thirty (30) day period or such  
longer period as applicable law may require. You will be in default hereunder  
for any failure to comply substantially with any of the requirements imposed by  
this Agreement, as it may from time to time reasonably be supplemented by  
updates to the Manual, or for any failure to carry out the terms of this  
Agreement in good faith. Such defaults shall include, without limitation, the  
occurrence of any of the following events:  
  
 1. You fail, refuse or neglect to pay promptly any monies owing to  
Able Oil or its subsidiaries or affiliates or suppliers when due, or to submit  
the financial information or other reports required by Able Oil under this  
Agreement (this default must be cured within ten (10) days);  
  
 2. You fail to comply with or maintain any of the standards or  
procedures prescribed by Able Oil in this Agreement, the Manual, any other  
franchise agreement between Able Oil and you, or any other written agreements  
between the parties or otherwise;  
  
 3. You fail to obtain and maintain all required licenses under state  
and local law (you must attempt to cure this default within ten (10) days);  
  
  
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 4. You, by act or omission, permit a continued violation in  
connection with the operation of the Franchised Business of any law, ordinance,  
rule or regulation of a governmental agency, in the absence of a good faith  
dispute over its application or legality and without promptly resorting to an  
appropriate administrative or judicial forum for relief therefrom (this default  
must be cured within ten (10) days);  
  
 5. You fail to comply with your duties set forth in Section V of  
this Agreement or fail to perform any obligation owing to Able Oil or to observe  
any covenant or agreement made by you, whether such obligation, covenant or  
agreement is set forth in this Agreement or in any other agreement with Able Oil  
including any other franchise agreement by and between Able Oil and you or any  
entity related to Able Oil;  
  
 6. You fail to maintain and submit to Able Oil all reports required  
pursuant to Section IX hereof;  
  
 7. You fail to maintain Able Oil's quality control standards with  
respect to its use of the Proprietary Marks;  
  
 8. You, your partner, manager or employees fail to attend and  
successfully complete any mandatory training program unless attendance is  
excused or waived, in writing, by Able Oil; or  
  
 9. You fail to obtain prior written approval of any and all  
advertising, marketing or promotional plans and materials in whatever form used  
by you in connection with your promotion of the Franchised Business or otherwise  
fail to comply with Able Oil's policies and procedures with respect to  
advertising, marketing or promotion.  
  
 C. No Right or Remedy. No right or remedy herein conferred upon or  
reserved to Able Oil is exclusive of any other right or remedy provided or  
permitted by law or equity.  
  
 D. Default and Termination. The events of default and grounds for  
termination described in this Section XIII shall be in addition to any other  
grounds for termination contained elsewhere in this Agreement or otherwise.  
  
 E. Right to Purchase. In the event of termination of this Agreement for  
any reason, including a default under this Section XIII, Able Oil shall have the  
right and option to purchase your interest in the Franchised Business as set  
forth in Paragraph XII.I above.  
  
XIV. OBLIGATIONS UPON TERMINATION  
  
 Upon termination or expiration of this Agreement, all rights granted to  
you hereunder shall forthwith terminate, and you must observe and perform the  
following:  
  
 A. Cessation of Operation. You shall immediately cease to operate the  
Franchised Business and shall not thereafter, directly or indirectly, represent  
to the public or hold yourself out as a franchisee of Able Oil.  
  
 B. Cessation of Use of Proprietary Marks. You must immediately and  
permanently cease to use, in any manner whatsoever, any equipment, format,  
confidential methods, customer data base, programs, literature, procedures and  
techniques associated with the System, the name Able Oil(R) and any Proprietary  
Marks and distinctive trade dress, forms, slogans, uniforms, signs, symbols or  
devices associated with the System. In particular, you must cease to use,  
without limitation, all signs, fixtures, furniture, equipment, advertising  
materials or promotional displays, uniforms, stationery, forms and any other  
articles which display the Proprietary Marks or are associated with the System.  
  
  
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 C. Cancellation of Name. You must take such action as may be necessary to  
cancel any assumed name or equivalent registration that contains the Proprietary  
Marks or any other trademark, trade name or service xxxx of Able Oil, and you  
must furnish Able Oil with evidence satisfactory to Able Oil of compliance with  
this obligation within thirty (30) days after termination or expiration of this  
Agreement.  
  
 D. Able Oil's Right to Continue Operations. In the event this Agreement is  
terminated, Able Oil may, at its option, immediately continue to provide  
services to customers of the Franchised Business and apply receipts therefrom to  
debts owed to Able Oil by you. Able Oil shall have no other obligation to you in  
connection with Able Oil's operation of the Franchised Business following said  
termination.  
  
 E. Non-Usage of Marks. You agree, in the event you continue to operate or  
subsequently begin to operate any other business, not to use any reproduction,  
counterfeit, copy or colorable imitation of the Proprietary Marks or trade  
dress, either in connection with such other business or the promotion thereof,  
which is likely to cause confusion, mistake or deception, or which is likely to  
dilute Able Oil's exclusive rights in and to the Proprietary Marks or trade  
dress, and agree not to utilize any designation of origin or description or  
representation which falsely suggests or represents an association or connection  
with Able Oil so as to constitute unfair competition.  
  
 F. Prompt Payment Upon Default. You must promptly pay all sums owing to  
Able Oil and its subsidiaries, affiliates and suppliers. In the event of  
termination for any default by you, such sums shall include all damages, costs  
and expenses, including reasonable attorneys' fees, incurred by Able Oil as a  
result of the default, which obligation shall give rise to and remain, until  
paid in full, a lien in favor of Able Oil against any and all of the personal  
property, machinery, fixtures, equipment and inventory owned by you at the time  
of default.  
  
 G. Payment of Costs. You must pay to Able Oil all damages, costs and  
expenses, including reasonable attorneys' fees, incurred by Able Oil subsequent  
to the termination or expiration of this Agreement in obtaining injunctive or  
other relief for the enforcement of any provision of this Section XIV or any  
other obligation under this Agreement.  
  
 H. Return of Materials. You must immediately turn over to Able Oil all  
copies of all materials in your possession including the Manual, all records,  
files, instructions, correspondence, customer database, brochures, agreements,  
disclosure statements and any and all other materials relating to the operation  
of the Franchised Business, in your possession, and all copies thereof (all of  
which are acknowledged to be Able Oil's property), and shall retain no copy or  
record of any of the foregoing, excepting only your copy of this Agreement, any  
correspondence between the parties and any other documents which you reasonably  
need for compliance with any provision of law. In addition to the foregoing, you  
shall deliver to Able Oil a complete list of all persons employed by you during  
the two (2) years immediately preceding termination, together with all  
employment files of each employee on such list. All costs of delivering all  
materials required by this Section XIV.H. shall be borne by you.  
  
 I. Assignment of Telephone Listings. You must promptly notify the  
appropriate telephone company and all telephone directory listing agencies of  
the termination or expiration of your right to use any telephone number and any  
regular, classified or other telephone directory listings associated with any  
Proprietary Marks and authorize the transfer of same to or at the direction of  
Able Oil. You agree to execute updated letters of direction to any telephone  
companies and telephone directory listing agencies directing termination and/or  
transfer of your right to use any telephone number associated with the  
Proprietary Marks, which Able Oil may hold until termination or expiration  
hereof. You acknowledge that as between Able Oil and you, Able Oil has the sole  
right to and interest in all telephone numbers and directory listings associated  
with any Proprietary Marks. You authorize Able Oil, and hereby appoint Able Oil  
and any officer of Able Oil as your attorney in fact, to direct the appropriate  
telephone company and all listing agencies to transfer all such listings to Able  
Oil upon termination of this Agreement.  
  
 J. Option to Purchase. Able Oil shall have the right, but not the  
obligation, to purchase any or all of   
  
  
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the tangible assets of the Franchised Business, including the signs, advertising  
materials, promotional displays, supplies, forms, inventory, software, furniture  
or other items bearing the Proprietary Marks, at your cost or fair market value,  
whichever is less. In addition, Able Oil may purchase your automatic delivery  
customer accounts will at their margin, in accordance with Section XII.I. If the  
parties cannot agree on fair market value within a reasonable time, an  
independent appraiser shall be designated by Able Oil, and the appraiser's  
determination shall be final and binding. Able Oil's election to purchase  
provided for herein must be exercised by written notice to you within thirty  
(30) days after termination or expiration of this Agreement. If Able Oil elects  
to exercise any option to purchase provided herein it shall have the right to  
set off all amounts due from you under this Agreement and the cost of the  
appraisal, if any, against any payment therefor.  
  
 K. Covenant of Further Assurances. You must execute any legal document  
that may be necessary to effectuate the termination hereunder and shall furnish  
to Able Oil, within thirty (30) days after the effective date of termination,  
written evidence satisfactory to Able Oil of your compliance with the foregoing  
obligations.  
  
 L. Compliance with Covenants. You must comply with all applicable  
covenants contained in Section XIV of this Agreement.  
  
 M. No Further Interest. Other than as specifically set forth above, you  
shall have no interest in the Franchised Business upon termination or expiration  
of this Agreement.  
  
XV. COVENANTS  
  
 A. Best Efforts. You covenant that during the term of this Agreement, and  
subject to the post-termination provisions contained herein, and except as  
otherwise approved in writing by Able Oil, you shall devote your full time,  
energy and best efforts to the efficient and effective management, operation and  
capitalization of the Franchised Business.  
  
 B. Non-Solicitation and Non-Competition. You have heretofore specifically  
acknowledged that pursuant to this Agreement, you shall receive valuable  
specialized training and confidential and other information regarding the  
business, promotional, sales, marketing and operational methods and techniques  
of Able Oil and the System. You covenant that during the term of this Agreement  
and subject to the post-termination provisions contained herein, and except as  
otherwise approved in writing by Able Oil, you shall not, either directly or  
indirectly, for yourself or through, on behalf of or in conjunction with any  
person, persons, partners or corporation or other entity:  
  
 1. Divert or attempt to divert any business or customer of the  
Franchised Business to any competitor, by direct or indirect inducement or  
otherwise, or do or perform, directly or indirectly, any other act injurious or  
prejudicial to the goodwill associated with the Proprietary Marks and the  
System;  
  
 2. Employ or seek to employ any person who is at that time employed  
by Able Oil or by any other franchisee or of Able Oil, or otherwise directly or  
indirectly induce such person to leave his or her employment;  
  
 3. Own, maintain, engage in, be employed by, advise, assist, invest  
in, franchise, make loans to, sell significant assets to or have any interest in  
any business which is the same as or substantially similar to the Franchised  
Business; or  
  
 4. Sell, or offer for sale, fuel oils distribution services through  
any means other than through the Franchised Business.  
  
 C. Restrictive Covenants. You covenant that, except as otherwise approved  
in writing by Able Oil,   
  
  
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for a continuous uninterrupted period commencing upon the termination, transfer,  
expiration or non-renewal of this Agreement, regardless of the cause for  
termination, and continuing for two (2) years thereafter, you will not either  
directly or indirectly, for yourself or through, on behalf of or in conjunction  
with any person, persons, partnership or corporation, own, maintain, engage in,  
be employed by, advise, assist, invest in, franchise, make loans or sell  
significant assets to, or have any interest in, any business which is the same  
as or substantially similar to the Franchised Business and which is located  
within a radius of thirty (30) miles of the territory of any company-owned or  
operated or franchisee-operated Franchised Business which is in existence on the  
date of expiration or termination of this Agreement.  
  
 If the period of time or the area specified above, should be adjudged  
unreasonable in any proceeding, then the period of time will be reduced by such  
number of months or the area will be reduced by the elimination of such portion  
thereof, or both, so that such restrictions may be enforced in such area and for  
such time as is adjudged to be reasonable.  
  
 D. No Undue Hardship. You acknowledge and agree that the covenants not to  
compete set forth in this Agreement are fair and reasonable and will not impose  
any undue hardship on you, or your shareholders or partners, if you are a  
corporation or partnership, since you, your shareholders or partners have other  
considerable skills, experience and education which afford you, your  
shareholders or partners the opportunity to derive income from other endeavors.  
  
 E. Inapplicability of Restrictions. Sections XV.B.3. and XV.C. shall not  
apply to the ownership by you of less than a five percent (5%) beneficial  
interest in the outstanding equity securities of any publicly-held corporation.  
  
 F. Independence of Covenants. The parties agree that each of the covenants  
in this Agreement shall be construed as independent of any other covenant or  
provision of this Agreement. If any or all portions of the covenants in this  
Section XV is held unreasonable or unenforceable by a court or agency having  
valid jurisdiction in an unappealed final decision to which Able Oil is a party,  
you expressly agree to be bound by any lesser covenant subsumed within the terms  
of such covenant that imposes the maximum duty permitted by law, as if the  
resulting covenant were separately stated in and made a part of this Agreement.  
  
 G. Mission. You agree to support Able Oil's mission and to conduct the  
Franchised Business in accordance with Able Oil's operating policies and stated  
principles.  
  
 H. Modification of Covenants. You understand and acknowledge that Able Oil  
has the right, in its sole discretion, to reduce the scope of any covenant set  
forth in this Section XV or any portion thereof, without your consent, effective  
immediately upon receipt by you of written notice thereof, and you agree that  
you will forthwith comply with any covenant as so modified, which shall be fully  
enforceable notwithstanding the provisions of Section XXIII hereof.  
  
 I. Enforcement of Covenants. You expressly agree that the existence of any  
claims you may have against Able Oil, whether or not arising from this  
Agreement, shall not constitute a defense to the enforcement by Able Oil of the  
covenants in this Agreement. You agree to pay all costs and expenses (including  
reasonable attorneys' fees) incurred by Able Oil in connection with the  
enforcement of the covenants set forth in this Agreement.  
  
 J. Injunctive Relief. You acknowledge that your violation of the covenants  
not to compete contained in this Agreement would result in immediate and  
irreparable injury to Able Oil for which no adequate remedy at law will be  
available. Accordingly, you hereby consent to the entry of an injunction  
prohibiting any conduct by you in violation of the terms of the covenants not to  
compete set forth in this Agreement. You expressly agree that it may be presumed  
conclusively that any violation of the terms of said covenants not to compete  
was accomplished by and through your unlawful utilization of Able Oil's  
confidential information, know-how, methods and procedures.  
  
  
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 K. Written Agreements. At Able Oil's request, you shall require and obtain  
execution of covenants similar to those set forth in this Section XV (including  
covenants applicable upon the termination of a person's relationship with you)  
from your officers, directors, shareholders and/or members. All covenants  
required by this Section XV.K. shall be in forms satisfactory to Able Oil,  
including, without limitation, specific identification of Able Oil as a third  
party beneficiary of such covenants with the independent right to enforce them.  
Your failure to obtain execution of a covenant required by this Section XV.K.  
shall constitute a default under Section XIII.B hereof.  
  
XVI. CHANGES AND MODIFICATIONS  
  
 Able Oil may modify this Agreement only upon the execution of a written  
agreement by you and Able Oil. Able Oil reserves and shall have the sole right  
to make changes in the Manual, the System and the Proprietary Marks at any time  
and without prior notice to you. You shall promptly alter any signs, products,  
business materials or related items, at your sole cost and expense, upon receipt  
of written notice of such change or modification in order to conform with Able  
Oil's revised specifications. In the event that any improvement or addition to  
the Manual, the System or the Proprietary Marks is developed by you, then you  
agree to grant Able Oil an irrevocable, world-wide, exclusive, royalty-free  
license, with the right to sublicense such improvement or addition.  
  
 You understand and agree that due to changes in competitive circumstances,  
presently unforeseen changes in the needs of customers, and/or presently  
unforeseen technological innovations, the System must not remain static, in  
order that it best serve the interests of Able Oil, franchisees and the System.  
Accordingly, you expressly understand and agree that Able Oil may from time to  
time change the components of the System, including altering the programs,  
services, methods, standards, forms, policies and procedures of that System;  
adding to, deleting from or modifying those programs, products and services  
which the Franchised Business is authorized to offer; and changing, improving or  
modifying the Proprietary Marks. Subject to the other provisions of this  
Agreement, you expressly agree to abide by any such modifications, changes,  
additions, deletions and alterations.  
  
XVII. TAXES AND INDEBTEDNESS  
  
 A. Payment. You must promptly pay, when due, all taxes levied or assessed  
by any federal, state or local tax authority and any and all other indebtedness  
incurred by you in the operation of the Franchised Business. You must pay to  
Able Oil an amount equal to any sales tax, gross receipts tax or similar tax  
imposed on Able Oil with respect to any payments to Able Oil required under this  
Agreement, unless the tax is credited against income tax otherwise payable by  
Able Oil.  
  
 B. Dispute. In the event of any bona fide dispute as to liability for  
taxes assessed or other indebtedness, you may contest the validity or the amount  
of the tax or indebtedness in accordance with procedures of the taxing authority  
or applicable law; provided, however, in no event shall you permit a tax sale or  
seizure by levy of execution or similar writ or warrant, or attachment by a  
creditor, to occur against the Franchised Business.  
  
 C. Compliance with Federal, State and Local Laws. You must comply with all  
federal, state, and local laws, rules and regulations, and shall timely obtain  
any and all permits, registration certificates, licenses and bonds necessary for  
the full and proper operation and management of the Franchised Business,  
including, without limitation, a license to do business and provide services,  
fictitious name registration and sales tax permits. Copies of all subsequent  
inspection reports, warnings, certificates and ratings, issued by any  
governmental entity during the term of this Agreement in connection with the  
conduct of the Franchised Business which indicate your failure to meet or  
maintain the highest governmental standards or less than full compliance by you  
with any applicable law, rule or regulation, shall be forwarded to Able Oil by  
you within three (3) days of your receipt thereof.  
  
 D. Duty to Notify. You must notify Able Oil in writing within three (3)  
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,   
  
  
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agency or other governmental instrumentality, which may adversely affect the  
operation or financial condition of the Franchised Business. Additionally, any  
and all consumer related complaints shall be answered by you within fifteen (15)  
days after receipt thereof or such shorter period of time as may be provided in  
said complaint. A copy of said answer shall be forwarded to Able Oil within  
three (3) days of the date that said answer is forwarded to the complainant.  
  
XVIII. INDEPENDENT CONTRACTOR AND INDEMNIFICATION  
  
 A. Independent Contractor.  
  
 1. It is understood and agreed by the parties hereto that this  
Agreement does not create a fiduciary relationship between them, that you are an  
independent contractor, and that nothing in this Agreement is intended to make  
either party an agent, legal representative, subsidiary, joint venturer,  
partner, employee or servant of the other for any purpose whatsoever.  
  
 2. During the term of this Agreement and any extensions hereof, you  
will hold yourself out to the public as an independent contractor operating the  
Franchised Business pursuant to a license from Able Oil and as an authorized  
user of the System and the Proprietary Marks which are owned by Able Oil. You  
agree to take such affirmative action as may be necessary to do so, including  
exhibiting to customers a sign provided or required by Able Oil in a conspicuous  
place or on any vehicle(s).  
  
 3. Able Oil shall not have the power to hire or fire your employees,  
and except as herein expressly provided, Able Oil may not control or have access  
to your funds or the expenditures thereof, or in any other way exercise dominion  
or control over the Franchised Business.  
  
 B. No Liability. You understand and agreed that nothing in this Agreement  
authorizes you to make any contract, agreement, warranty or representation on  
Able Oil's behalf, or to incur any debt or other obligation in Able Oil's name,  
and that Able Oil shall in no event assume liability for or be deemed liable  
hereunder as a result of any such action or by reason of your act or omission in  
your conduct of the Franchised Business or any claim or judgment arising  
therefrom against Able Oil. You agree at all times to defend at your own cost,  
and to indemnify and hold harmless to the fullest extent permitted by law, Able  
Oil, its corporate parent, corporate subsidiaries, affiliates, successors,  
assigns and designees of either entity, and the respective directors, officers,  
employees, agents, shareholders, designees, and representatives of each (Able  
Oil and all other hereinafter referred to collectively as "Indemnitees") from  
all losses and expenses incurred in connection with any action, suit,  
proceeding, claim, demand, investigation, or formal or informal inquiry  
(regardless of whether same is reduced to judgment) or any settlement thereof  
which arises out of or is based upon any of the following: your alleged  
infringement or any other violation or any other alleged violation of any  
patent, trademark or copyright or other proprietary right owned or controlled by  
third parties; your alleged violation or breach of any contract, federal, state  
or local law, regulation, ruling, standard or directive of any industry  
standard; libel, slander or any other form of defamation by you; your alleged  
violation or breach of any warranty, representation, agreement or obligation in  
this Agreement; any acts, errors or omissions of you or any of your agents,  
servants, employees, contractors, partners, proprietors, affiliates, or  
representatives; latent or other defects in the Franchised Business, whether or  
not discoverable by Able Oil or you; any services or products provided by you  
at, from or related to the operation at the Franchised Business; any services or  
products provided by any affiliated or nonaffiliated participating entity; any  
action by any customer of the Franchised Business; and, any damage to the  
property of any one or more of the Indemnitees, their agents or employees, or  
any third person, firm or corporation.  
  
 C. Identification. You shall conspicuously identify yourself and the  
Franchised Business and in all dealings with your clients, contractors,  
suppliers, public officials and others, as an independent Franchisee of Able  
Oil, and shall place such notice of independent ownership on all forms, business  
cards, stationery, advertising, signs and other materials and in such fashion as  
Able Oil may, in its sole and exclusive discretion, specify and require from  
  
  
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time to time, in its Manual (as same may be amended from time to time) or  
otherwise.  
  
 D. No False Representations. Except as otherwise expressly authorized by  
this Agreement, neither party hereto will make any express or implied  
agreements, warranties, guarantees or representations or incur any debt in the  
name of or on behalf of the other party, or represent that the relationship  
between Able Oil and you other than that of franchisor and franchisee. Able Oil  
does not assume any liability, and will not be deemed liable, for any  
agreements, representations, or warranties made by you which are not expressly  
authorized under this Agreement, nor will Able Oil be obligated for any damages  
to any person or property which directly or indirectly arise from or relate to  
the operation of the Franchised Business franchised hereby.  
  
XIX. APPROVALS AND WAIVERS  
  
 A. Written Consent. Whenever this Agreement requires the prior approval or  
consent of Able Oil, you shall make a timely written request to Able Oil  
therefor and such approval or consent shall be obtained in writing.  
  
 B. No Waiver. No failure of Able Oil to exercise any power reserved to it  
by this Agreement, or to insist upon strict compliance by you with any  
obligation or condition hereunder, and no custom or practice of the parties at  
variance with the terms hereof, shall constitute a waiver of Able Oil's right to  
demand exact compliance with any of the terms herein. Waiver by Able Oil of any  
particular default by you shall not affect or impair Able Oil's rights with  
respect to any subsequent default of the same, similar or different nature, nor  
shall any delay, forbearance or omission of Able Oil to exercise any power or  
right arising out of any breach or default by you of any of the terms,  
provisions or covenants hereof affect or impair Able Oil's right to exercise the  
same, nor shall such constitute a waiver by Able Oil of any right hereunder or  
the right to declare any subsequent breach or default and to terminate this  
Agreement prior to the expiration of its term. Subsequent acceptance by Able Oil  
of any payments due to it hereunder shall not be deemed to be a waiver by Able  
Oil of any preceding breach by you of any terms, covenants or conditions of this  
Agreement.  
  
 C. Waiver to Jury Trial. You hereby waive any right to a jury trial with  
respect to this Agreement and/or any matters arising hereunder.  
  
XX. NOTICES  
  
 Any and all notices required or permitted under this Agreement shall be in  
writing and shall be personally delivered or mailed by certified mail, return  
receipt requested, or dispatched by overnight delivery envelope, to the  
respective parties at the following addresses unless and until a different  
address has been designated by written notice to the other party:  
  
 Notices to Franchisor: Able Oil Company  
 000 Xxxxx 00  
 Xxxxxxxx, Xxx Xxxxxx 00000  
 Attn: President  
  
 With a Copy (which shall  
 not constitute notice) to: Xxxx X. Xxxxxxxxx, Esq.  
 Xxxxxxxxx Traurig  
 0000 Xxxxxxxxxxx Xxxxxx, X.X.  
 Xxxxx 0000  
 Xxxxxxxxxx, X.X. 00000  
  
 Notices to Franchisee: Xxxxxx Xxxxxxx  
  
  
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 0000 Xxxxxx Xx.  
 Xxxxxxx, XX  
  
 With a Copy to:  
 -----------------------------------------  
 -----------------------------------------  
 -----------------------------------------  
  
 Any notice sent by certified mail shall be deemed to have been given at  
the date and time of mailing.  
  
XXI. RELEASE OF PRIOR CLAIMS  
  
 By executing this Agreement, you, individually and on behalf of your  
heirs, legal representatives, successors and assigns, and each assignee of this  
Agreement by accepting assignment of the same, hereby forever release and  
discharge Able Oil and its officers, directors, employees, agents and servants,  
including Able Oil's subsidiary and affiliated corporations, their respective  
officers, directors, employees, agents and servants, from any and all claims  
relating to or arising under any franchise agreement or any other agreement  
between the parties executed prior to the date of this Agreement including any  
and all claims, whether presently known or unknown, suspected or unsuspected,  
arising under the franchise, securities or antitrust laws of the United States  
or of any state or territory thereof.  
  
XXII. DISCLOSURE STATEMENT AND DISCLAIMER  
  
 A. Compliance with Applicable Laws. You acknowledge, by your signature  
hereto, that you received from Able Oil a Federal Trade Commission or Uniform  
Franchise Offering Circular for the State in which the Franchised Business will  
be located, or your place of residence, as appropriate, at least ten (10)  
business days prior to the execution of this Agreement.  
  
 \_\_\_ [Please initial to acknowledge that you have read and understand this  
Paragraph XXII.A.]  
  
 B. Receipt of Agreement. You acknowledge that you received from Able Oil  
this Agreement with all blanks filled in at least five (5) days prior to the  
execution of this Agreement. You represent that you have read this Agreement in  
its entirety and that you has been given the opportunity to clarify any  
provisions that you did not understand and to consult with an attorney or other  
professional advisor. You further represents that you understand the terms,  
conditions and obligations of this Agreement and agree to be bound thereby.  
  
 \_\_\_ [Please initial to acknowledge that you have read and understand this  
Paragraph XXII.B.]  
  
 C. Acknowledgment. You acknowledges and accepts the following:  
  
 YOUR SUCCESS IN OPERATING A FRANCHISE IS SPECULATIVE AND WILL DEPEND  
 ON MANY FACTORS INCLUDING, TO A LARGE EXTENT, YOUR INDEPENDENT BUSINESS  
 ABILITY. THIS OFFERING IS NOT A SECURITY AS THAT TERM IS DEFINED UNDER  
 APPLICABLE FEDERAL AND STATE SECURITIES LAWS. THE OBLIGATION TO TRAIN,  
 MANAGE, PAY, RECRUIT AND SUPERVISE EMPLOYEES OF THE FRANCHISED BUSINESS  
 RESTS SOLELY WITH YOU. YOU HAVE NOT RELIED ON ANY WARRANTY OR  
 REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL SUCCESS OR  
 PROJECTED INCOME OF THE BUSINESS VENTURE CONTEMPLATED HEREBY. NO  
 REPRESENTATIONS OR PROMISES HAVE BEEN MADE BY Able Oil TO INDUCE YOU TO  
 ENTER INTO THIS AGREEMENT EXCEPT AS SPECIFICALLY INCLUDED HEREIN. Able Oil  
 HAS NOT MADE ANY REPRESENTATION, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED,  
 AS TO THE POTENTIAL REVENUES, PROFITS OR SERVICES OF THE BUSINESS VENTURE  
 TO YOU AND CANNOT, EXCEPT UNDER THE TERMS OF THIS AGREEMENT, EXERCISE  
 CONTROL OVER YOUR BUSINESS. YOU   
  
  
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 ACKNOWLEDGE AND AGREE THAT YOU HAVE NO KNOWLEDGE OF ANY REPRESENTATION  
 MADE BY Able Oil OR ITS REPRESENTATIVES OF ANY INFORMATION THAT IS  
 CONTRARY TO THE TERMS CONTAINED HEREIN.   
  
 \_\_\_ [Please initial to acknowledge that you have read and understand this  
Paragraph XXII.C.]  
  
XXIII. ENTIRE AGREEMENT  
  
 This Agreement, the documents referred to herein and the Attachments  
hereto, if any, constitute the entire, full and complete Agreement between the  
parties hereto concerning the subject matter hereof, and supersede all prior  
agreements with no other representations having induced you to execute this  
Agreement. No amendment, change or variance from this Agreement shall be binding  
on the parties hereto unless mutually agreed to by the parties and executed by  
themselves or their authorized officers or agents in writing.  
  
XXIV. SEVERABILITY AND CONSTRUCTION  
  
 A. Severability. Except as expressly provided to the contrary herein, each  
section, part, term and/or provision of this Agreement shall be considered  
severable, and if, for any reason, any section, part, term and/or provision  
herein is determined to be invalid and contrary to, or in conflict with, any  
existing or future law or regulation by a court or agency having valid  
jurisdiction, such shall not impair the operation of, or have any other effect  
upon, such other portions, sections, parts, terms and/or provisions of this  
Agreement as may remain otherwise intelligible, and the latter shall continue to  
be given full force and effect and bind the parties hereto, and said invalid  
sections, parts, terms and/or provisions shall be deemed not to be a part of  
this Agreement; provided, however, that if Able Oil determines that such finding  
of invalidity or illegality adversely affects the basic consideration of this  
Agreement, Able Oil, at its option, may terminate this Agreement.  
  
 B. Covenants. You expressly agree to be bound by any promise or covenant  
imposing the maximum duty permitted by law which is subsumed within the terms of  
any provision hereof, as though it were separately articulated in and made a  
part of this Agreement, that may result from striking from any of the provisions  
hereof any portion or portions which a court may hold to be unreasonable and  
unenforceable in a final decision to which Able Oil is a party, or from reducing  
the scope of any promise or covenant to the extent required to comply with such  
a court order.  
  
 C. Captions. All captions in this Agreement are intended solely for the  
convenience of the parties, and none of the captions shall be deemed to affect  
the meaning or construction of any provision hereof.  
  
 D. References. All references herein to the masculine, neuter or singular  
shall be construed to include the masculine, feminine, neuter or plural, where  
applicable, and all acknowledgments, promises, covenants, agreements and  
obligations herein made or undertaken by you shall be deemed jointly and  
severally undertaken by all of the parties executing this Agreement in their  
individual capacity on your behalf. This Agreement may be executed in one or  
more originals, each of which shall be deemed an original.  
  
 E. Definition of "You". As used in this Agreement, the term "you" shall  
include all persons who succeed to the interest of the original franchisee by  
transfer or operation of law and shall be deemed to include not only the  
individual or entity defined as the "you" in the introductory paragraph of this  
Agreement, but shall also include all partners of the entity that executes this  
Agreement, in the event said entity is a partnership; all shareholders, officers  
and directors of the entity that executes this Agreement, in the event said  
entity is a corporation; and all members of the entity that executes this  
Agreement, in the event said entity is a limited liability company. By their  
signatures hereto, all partners, members, shareholders, officers and directors  
of the entity that signs this Agreement as franchisee acknowledge and accept the  
duties and obligations imposed upon each of them, individually, by the terms of  
this Agreement.  
  
  
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 F. Force Majeure. If, as a result of hurricane, tornado, typhoon,  
flooding, lightning, blizzard and other unusually severe weather, earthquake,  
avalanche, volcanic eruption, fire, riot, insurrection, war, explosion,  
unavoidable calamity or other act of God (a "Force Majeure"), compliance by any  
party with the terms of this Agreement is rendered impossible or would otherwise  
create an undue hardship upon any party, all parties shall be excused from their  
respective obligations hereunder for the duration of the Force Majeure and for a  
reasonable recovery period thereafter, but otherwise this Agreement shall  
continue in full force and effect.  
  
XXV. APPLICABLE LAW  
  
 A. Governing Law. This Agreement takes effect upon its acceptance and  
execution by Able Oil. This Agreement shall be interpreted and construed under  
the laws of the State of New York except to the extent governed by the United  
States Trademark Act of 1946 (Xxxxxx Act, 15 U.S.C. Section 1051 et seq.).  
  
 B. Jurisdiction and Venue. Except as otherwise expressly provided by  
applicable state law or regulation, the parties agree that any action brought by  
either party against the other shall be brought in the State of New York in the  
City of New York and the parties do hereby waive all questions of personal  
jurisdiction or venue for the purpose of carrying out this provision.  
  
 C. Remedy. No right or remedy conferred upon or reserved by Able Oil or  
you by this Agreement is intended and it shall not be deemed to be exclusive of  
any other right or remedy provided or permitted herein, by law or at equity, but  
each right or remedy shall be cumulative of every other right or remedy.  
  
 D. Injunctive Relief. Nothing herein contained shall bar Able Oil's right  
to obtain injunctive relief against threatened conduct that will cause it loss  
or damage under the usual equity rules, including the applicable rules for  
obtaining restraining orders and preliminary injunctions.  
  
XXVI. ARBITRATION  
  
 Except as specifically otherwise provided in this Agreement, the parties  
agree that any and all disputes between them and any claim by either party that  
cannot be amicably settled shall be submitted to the American Arbitration  
Association (the "AAA") for arbitration under the AAA's Commercial Rules of  
Arbitration. The arbitrator(s) shall be selected in accordance with standard AAA  
procedure. Except as otherwise expressly provided by applicable state law or  
regulation, the mediator shall hear the dispute in New York, New York or at such  
other location as may be designated by Able Oil. Each party shall bear all of  
its own fees, costs and attorneys' fees. The decision of the arbitration shall  
be binding. You know, understand and agree that it is the intent of the parties  
that any arbitration between Able Oil and you shall be of your individual claims  
and that the claims subject to arbitration shall not be arbitrated on a  
classwide basis.  
  
 Notwithstanding any provision contained in this Section XXVI, Able Oil  
may, at its sole option, institute in a court of law or equity an action or  
actions for temporary, preliminary, or permanent injunctive relief or seeking  
any other equitable relief against you in addition to any other rights and  
remedies provided herein. In no event shall you be entitled to make, and you  
hereby waive, any claim for money damages by way of set-off, counterclaim,  
defense or otherwise based upon any claim or assertion by you that Able Oil has  
unreasonably withheld or unreasonably delayed any consent or approval to a  
proposed act by you under any of the terms of this Franchise Agreement. Your  
sole remedy for any such claim shall be an action or proceeding to enforce any  
such provisions, for specific performance or declaratory judgment.  
  
XXVII. ESTOPPEL STATEMENT  
  
 You hereby agree that from time to time, upon not less than ten (10) days'  
prior request by Able Oil, you   
  
  
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will deliver to Able Oil a statement in writing certifying (a) that this  
Agreement is unmodified and in full force and effect (or, if there have been  
modifications, that this Agreement as modified is in full force and effect and  
stating the modifications); (b) the dates to which all of the royalty and other  
fees have been paid; (c) that Able Oil is not in default under any provisions of  
this Agreement, or, if in default, the nature thereof in detail; and (d) other  
matters reasonably requested by Able Oil. Your failure to deliver such statement  
within ten (10) days of request shall constitute an affirmation by you that this  
Agreement is in full force and effect, free of any claims and free of any  
default on Able Oil's part.  
  
XXVIII. ACKNOWLEDGMENTS  
  
 You acknowledge that you have conducted an independent investigation of  
all aspects relating to the Franchised Business and recognize that the business  
venture contemplated by this Agreement involves business risks and that its  
success will be largely dependent upon your skills and ability as an independent  
business person or organization. You acknowledge that you have received, read  
and understand this Agreement and Able Oil's Uniform Offering Circular,  
including all related attachments and agreements. You acknowledge that you have  
no knowledge of any representations about the Franchised Business or about Able  
Oil, its franchising program or its policies made by Able Oil, its officers,  
directors, shareholders, employees or agent which are contrary to statements  
made in the Offering Circular or this Agreement. Able Oil has accorded you ample  
time and opportunity to consult with advisors of your choosing about the  
potential benefits and risks of entering into this Agreement. You understand and  
accept the terms, conditions and covenants contained in this Agreement as being  
reasonably necessary to maintain Able Oil's high standards of quality and  
service, to maintain the uniformity of those standards at all facilities  
operating pursuant to the System, and to protect and preserve the goodwill of  
the Propriety Marks. \_\_\_ [Please initial to acknowledge that you have read and  
understand this Paragraph XXVII]  
  
  
 31  
  
  
 IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and  
delivered this Agreement on the day and year first above written.  
  
ATTEST: FRANCHISOR:  
  
 Able Oil Company  
  
  
 By: /s/ Xxxxxxx X. Xxxxxxxxxx  
---------------------------- ------------------------------------------  
 Xxxxxxx X. Xxxxxxxxxx, Chief Executive  
 Officer  
  
  
WITNESS: FRANCHISEE:  
  
  
 By: /s/ Xxxxxx X. Xxxxxxx  
---------------------------- ------------------------------------------  
  
  
 32  
  
  
 ATTACHMENT A  
  
  
  
 GUARANTY  
  
 In consideration of, and as an inducement to, the execution of that  
 certain Franchise Agreement, and any revisions, modifications and  
 amendments thereto, (hereinafter collectively the "Agreement") dated  
 Deember 31, 19 98 , by and between Able Oil Company, a New Jersey limited  
 corporation (hereinafter the "Franchisor") and Xxxxxx Xxxxxxx (hereinafter  
 the "Franchisee"), each of the undersigned Guarantors agrees as follows:  
  
 1. The Guarantors do hereby jointly and severally unconditionally  
 guaranty the full, prompt and complete performance of the Franchisee under  
 the terms, covenants and conditions of the Agreement, and any other  
 Franchise Agreement entered into between the Franchisor and the  
 Franchisee, its directors, officers, agents, employees or other  
 representatives (hereafter incorporated into and made part of all  
 references to the "Agreement"), including without limitation the complete  
 and prompt payment of all indebtedness to the Franchisor under the  
 Agreement. The word "indebtedness" is used herein in its most  
 comprehensive sense and includes without limitation any and all advances,  
 debts, obligations and liabilities of the Franchisee, now or hereafter  
 incurred, either voluntarily or involuntarily, and whether due or not due,  
 absolute or contingent, liquidated or unliquidated, determined or  
 undetermined, or whether recovery thereof may be now or hereafter barred  
 by any statute of limitation or is otherwise unenforceable.  
  
 2. The obligations of the Guarantors are independent of the  
 obligations of the Franchisee and a separate action or actions may be  
 brought and prosecuted against any or all of the Guarantors, whether or  
 not actions are brought against the Franchisee or whether the Franchisee  
 is joined in any such action.  
  
 3. If the Franchisee is a corporation, partnership or limited  
 liability company, the Franchisor shall not be obligated to inquire into  
 the power or authority of the Franchisee or its partners or the officers,  
 directors, agents, members or managers acting or purporting to act on the  
 Franchisee's behalf and any obligation or indebtedness made or created in  
 reliance upon the exercise of such power and authority shall be guaranteed  
 hereunder. Where the Guarantors are corporations or partnerships it shall  
 be conclusively presumed that the Guarantors and the partners, agents,  
 officers and directors acting on their behalf have the express authority  
 to bind such corporations or partnerships and that such corporations or  
 partnerships have the express power to act as the Guarantors pursuant to  
 this Guaranty and that such action directly promotes the business and is  
 in the interest of such corporations or partnerships.  
  
 4. The Franchisor, its successors and assigns, may from time to  
 time, without notice to the undersigned: (a) resort to the undersigned for  
 payment of any of the   
  
  
  
  
 indebtedness, whether or not it or its successors have resorted to any  
 property securing any of the indebtedness or proceeded against any other  
 of the undersigned or any party primarily or secondarily liable on any of  
 the indebtedness; (b) release or compromise any indebtedness of any of the  
 undersigned hereunder or any indebtedness of any party or parties  
 primarily or secondarily liable on any of the indebtedness; (c) extend,  
 renew or credit any of the indebtedness for any period (whether or not  
 longer than the original period); (d) alter, amend or exchange any of the  
 indebtedness; or (e) give any other form of indulgence, whether under the  
 Agreement or otherwise.  
  
 5. The undersigned further waive presentment, demand, notice of  
 dishonor, protest, nonpayment and all other notices whatsoever, including  
 without limitation: notice of acceptance hereof; notice of all contracts  
 and commitments; notice of the existence or creation of any liabilities  
 under the Agreement and of the amount and terms thereof; and notice of all  
 defaults, disputes or controversies between the Franchisee and the  
 Franchisor resulting from the Agreement or otherwise, and the settlement,  
 compromise or adjustment thereof.  
  
 6. This Guaranty shall be enforceable by and against the respective  
 administrators, executors, successors and assigns of the Guarantors and  
 the death of any Guarantor shall not terminate the liability of such  
 Guarantor or limit the liability of the other Guarantors hereunder.  
  
 7. If more than one person has executed this Guaranty, the term "the  
 undersigned," as used herein shall refer to each such person, and the  
 liability of each of the undersigned hereunder shall be joint and several  
 and primary as sureties.  
  
 8. In each case where the spouse of a Franchisee has executed any  
 documents in connection with the granting of the Agreement, and the  
 Franchisee subsequently divorces from such spouse, then, in the event that  
 the Franchisee subsequently remarries, the new spouse of such Franchisee  
 must execute, and agree to be bound by the provisions of, each of the  
 documents previously executed by the Franchisee's original spouse.  
  
 IN WITNESS WHEREOF, each of the undersigned has executed this  
 Guaranty under seal effective as of the 23 day of December, 1998.  
  
  
/s/ Xxxxxx Xxxxxxx  
-------------------------------- --------------------------------  
 Signature Signature of Spouse (if married)  
  
  
Xxxxxx Xxxxxxx  
-------------------------------- --------------------------------  
 Printed Name Printed Name  
  
  
 2  
  
  
12/31/98  
-------------------------------- --------------------------------  
Date Date  
  
  
 3  
  
  
 ATTACHMENT B  
  
  
 4  
  
  
 TELEPHONE ASSIGNMENT AGREEMENT  
  
 THIS TELEPHONE ASSIGNMENT AGREEMENT is made as of this 31 day of  
 December, 1993 by and between Xxxxxx Xxxxxxx (hereinafter the "Assignor")  
 and Able Oil Company, a New Jersey corporation (hereinafter the  
 "Assignee").  
  
 WITNESSETH:  
  
 WHEREAS, the Assignee has developed and owns the proprietary system  
 ("System") for the operation of a retail business under the trademark and  
 logo ABLE OIL (the "Franchised Business");  
  
 WHEREAS, the Assignor has been granted a license to operate a  
 Franchised Business pursuant to a Franchise Agreement dated even date  
 herewith, in accordance with the System;  
  
 WHEREAS, in order to operate its Franchised Business, the Assignor  
 shall be acquiring one or more telephone numbers, telephone listings and  
 telephone directory advertisements; and  
  
 WHEREAS, as a condition to the execution of the Franchise Agreement,  
 the Assignee has required that the Assignor assign all of its right, title  
 and interest in its telephone numbers, telephone listings and telephone  
 directory advertisements to the Assignee in the event of a termination of  
 the Franchise Agreement;  
  
 NOW, THEREFORE, in consideration of the foregoing, the mutual  
 promises herein contained and other good and valuable consideration, the  
 receipt and sufficiency of which are hereby acknowledged, the parties  
 hereto, intending to be legally bound, hereby agree as follows:  
  
 1. Assignment. In the event of termination of the Franchise  
 Agreement, and in order to secure continuity and stability of the  
 operation of the System, the Assignor hereby sells, assigns, transfers and  
 conveys to the Assignee all of its rights, title and interest in and to  
 certain telephone numbers, telephone listings and telephone directory  
 advertisements pursuant to which Assignor shall operate its Franchised  
 Business in accordance with the terms of the Franchise Agreement;  
 provided, however, such Assignment shall not be effective unless and until  
 the Franchise Agreement is terminated in accordance with the provisions  
 thereof.  
  
 2. Representation and Warranties of the Assignor. The Assignor  
 hereby represents, warrants and covenants to the Assignee that:  
  
  
  
 (a) As of the effective date of the Assignment, all of  
 the Assignor's obligations and indebtedness for telephone, telephone  
 listing services and telephone directory advertisement services shall be  
 paid and current;  
  
 (b) As of the date hereof, the Assignor has full power  
 and legal right to enter into, execute, deliver and perform this  
 Agreement;  
  
 (c) This Agreement is a legal and binding obligation of  
 the Assignor, enforceable in accordance with the terms hereof;  
  
 (d) The execution, delivery and performance of this  
 Assignment does not conflict with, violate, breach or constitute a default  
 under any contract, agreement or instrument to which the Assignor is a  
 party or by which the Assignor is bound, and no consent of nor approval by  
 any third party is required in connection herewith; and  
  
 (e) The Assignor has the specific power to assign and  
 transfer its right, title and interest in its telephone numbers, telephone  
 listings and telephone directory advertisements, and the Assignor has  
 obtained all necessary consents to this Assignment.  
  
 3. Miscellaneous. The validity, construction and performance  
 of this Assignment shall be governed by the laws of the State of New York.  
 All agreements, covenants, representations and warranties made herein  
 shall survive the execution hereof. All rights of the Assignee shall inure  
 to its benefit and to the benefit of its successors and assigns.  
  
 IN WITNESS WHEREOF, each of the parties have executed this  
 Assignment as of the day and year first written above.  
  
 "ASSIGNEE"  
 Able Oil Company  
  
  
 By: /s/ Xxxxxxx X. Xxxxxxxxxx  
 -----------------------------------------  
 Xxxxxxx X. Xxxxxxxxxx, President and CEO  
  
  
 ASSIGNOR  
  
  
 2  
  
  
 By: /s/ Xxxxxx Xxxxxxx  
 -----------------------------------------  
 Title:  
 -----------------------------------------  
  
  
WITNESS: FRANCHISEE:  
  
  
 By: /s/ Xxxxxx X. Xxxxxxx  
---------------------- -----------------------------------------  
  
  
 3