

AGREEMENT TO DESIGN, EQUIP, MANAGE AND OPERATE

A DISTRIBUTION CENTER

by and between

**CIRCLE K STORES INC.,
a Texas corporation**

and

**CORE-MARK INTERNATIONAL, INC.,
a Delaware corporation**

Dated: November 3, 2000

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**AGREEMENT TO DESIGN, EQUIP, MANAGE AND OPERATE
A DISTRIBUTION CENTER**

THIS AGREEMENT TO DESIGN, EQUIP, MANAGE AND OPERATE A DISTRIBUTION CENTER (the "Agreement") is made as of the 3rd day of November, 2000 by and between CIRCLE K STORES INC., a Texas corporation ("Circle K"), and CORE-MARK INTERNATIONAL, INC., a Delaware corporation ("CMI").

RECITALS:

A. Circle K desires to create a supply chain source of convenience store products required by Circle K-supplied retail outlets in Arizona;

B. In order to create the capability to supply retail stores, Circle K desires to establish a consumer packaged goods distribution center which will perform the functions of buying, receiving, and holding product from manufacturers and other vendors, and fulfilling orders via direct deliveries from such distribution center to the retail outlets;

C. Circle K wishes to engage CMI for the purposes of providing project planning, project development and management services for the benefit of Circle K in connection with a consumer packaged goods distribution center (the "Arizona Distribution Center" or "ADC") to initially service the Circle K-supplied retail outlets in the State of Arizona;

D. Circle K wishes to engage CMI, and CMI is willing to provide such services, on the terms and conditions contained in this Agreement;

E. The services which CMI is to provide to Circle K pursuant to this Agreement require a special skill, experience and ability all of which CMI possesses and which are not generally possessed by others operating consumer packaged distribution centers servicing entities the size and complexity of Circle K; and

F. Circle K selected CMI to perform the services provided for in this Agreement because of CMI's unique experience, skills and ability in the management of consumer packaged distribution centers servicing entities the size and complexity of Circle K.

NOW THEREFORE, in consideration of the payments hereinafter specified to be made by Circle K, and in consideration of the agreements and mutual covenants of the parties herein contained, the parties hereto hereby agree as follows:

ARTICLE I

Scope of Project; Appointment of CMI

1.1 General Description. This project consists of a turn-key design, procurement, installation, operation and maintenance of a fully staffed distribution center with sufficient inventory. The ADC will initially supply the needs of the Circle K-supplied retail outlets in the State of Arizona. As of the date of this Agreement, there are approximately five hundred (500) Circle K retail locations to be supplied by the ADC. This number may increase or decrease in the future, in Circle K's sole discretion, upon thirty (30) days prior written notice to CMI. The ADC will initially supply stores in the State of Arizona; however, stores in surrounding states may be added, in Circle K's sole discretion, upon thirty (30) days prior written notice to CMI. Additionally, the ADC may supply the needs of facilities and/or users other than Circle K stores, in Circle K's sole discretion, upon thirty (30) days prior written notice to CMI.

The building in which the ADC will be located is in the greater Phoenix area, on that real property described on Schedule 1.1 (the "Real Property" and together with the ADC and surrounding facilities, the "Property"). The ADC initially will be approximately 150,000 square feet in size. The size and scope of the ADC shall be tailored from time to time to the specific needs of the retail stores and other destinations to be serviced by the ADC. Prior to the execution of this Agreement, CMI assisted Circle K in identifying the location of the ADC.

1.2 The Lease. Concurrently herewith, Circle K and Ryan Companies US, Inc., a Minnesota corporation ("Landlord") have executed a Lease (as the same may be modified from time to time, the "Lease") pursuant to which Circle K leases the Property from Landlord. CMI advised Circle K in the Lease negotiations, has received a copy of the Lease, and is familiar with the Lease terms. CMI will not have any legal or equitable interest or obligations in the Lease. Circle K will coordinate site visits to the Property to allow CMI to observe the construction of the building.

1.3 Product Lines. The ADC will initially be stocked with packaged consumer goods, as well as store supplies and fixtures, regardless of the historical supply source. The ADC will be fully equipped with the capability to handle dry product (ambient temperature product such as canned goods), frozen product, and chilled product such as produce and flowers. The goods, supplies, fixtures and product stocked in the ADC for purposes of distribution to other locations is referred to in this Agreement as the "Inventory." Circle K shall select the items of Inventory to be distributed from the ADC.

1.4 Relationship of Parties. CMI shall be an independent contractor with respect to Circle K and the performance of its duties under this Agreement. Except for the construction of the base building and tenant improvements by Landlord, CMI will arrange, supervise and manage the activities contemplated under this Agreement. In this capacity, based upon the unique skill, experience, abilities and capacity of CMI, CMI has full discretion in the manner in which the activities are completed and the day-to-day operations of the ADC; provided that CMI complies with

all applicable laws and regulations and the terms of this Agreement and, in any event, the standards CMI uses to perform any and all its obligations hereunder shall be not less than the standards CMI uses in other CMI-operated facilities. Furthermore, as a result of the unique qualities and experience of CMI, Circle K hereby confers upon CMI authority to execute obligations on behalf of Circle K as appropriate in the business judgment of CMI for the performance of this Agreement, subject to the prior approval and budgetary limitations specifically set forth in this Agreement. CMI shall have no right or authority, express or implied, to commit or otherwise obligate Circle K in any manner whatsoever except in the performance of this Agreement, subject to the prior approval and budgetary limitations specifically set forth in this Agreement.

The intent of the parties to this Agreement is that CMI will be an independent contractor to manage the ADC. Except as specifically set forth in Section 8.4(i), under no circumstances do the parties intend that CMI will acquire or will be deemed to acquire any legal or equitable interest in any property or operations of Circle K, including, but not limited to, the ADC, the Lease, the Inventory, the FF&E (as hereafter defined), and any goods located in the ADC.

ARTICLE II

Duties of CMI

2.1 General Duties.

(a) As more specifically described in this Agreement, CMI will devote its best efforts to serve Circle K in the management, operation, maintenance and repair of the ADC and shall perform to the best of its ability, all duties required of CMI under this Agreement. CMI will operate and manage the ADC in accordance with normal industry standards for similar distribution centers based upon its unique abilities and experience in this area.

(b) In no event will CMI use the ADC, or any equipment or motor vehicles or other personal property associated with the ADC, for any purpose other than for the operation of Circle K's supply and distribution business as provided in this Agreement. Additionally, in no event will CMI permit its employees employed on-site at the ADC to perform duties other than for the benefit of the ADC.

2.2 Modification of Facility. CMI shall supervise the design, layout, modification and installation of the tenant improvements being constructed by Landlord and the trade fixtures and equipment to be installed at the ADC (such trade fixtures and equipment are referred to as the "Modifications"). CMI will not be responsible in any manner for the base building, parking lot, or any other facilities to be constructed by Landlord pursuant to the Lease, except for supervisory responsibilities for the tenant improvements. CMI will, in Circle K's name, design, purchase or lease materials for, and supervise the complete build-out of the interior of the existing building on the Real Property (including installation of racks, conveyors, freezers, coolers, loading docks and other equipment), all of which shall be owned by, in the name of, and for the account of, Circle K. Where

practical, CMI will select materials and/or contractors for the construction through a competitive bidding process. In any event, all selected bids and contractors shall be approved by Circle K. CMI will also arrange, in Circle K's name, all utility connections for the operation of the ADC and all utility service. All Modifications shall be completed in a good and workmanlike manner, in accordance with the plans and specifications set forth on Schedule 2.2(a). Modifications shall be completed within the time frames set forth on the schedule attached as Schedule 2.2(b), subject to Unavoidable Delays. CMI will review and process invoices, approve lien waivers, and will present the invoices and lien waivers to Circle K for payment by Circle K directly to contractors providing materials and labor for such Modifications. Each request for payment given by CMI to Circle K shall include invoices from the contractors for the work covered by the request, together with conditional lien waivers relating to such request (the lien waiver shall be conditioned solely upon receipt of the funds requested), and unconditional lien waivers for all work covered by prior requests and paid by Circle K. CMI will notify Circle K promptly of any disputes with any contractor, or of any actual or threatened liens resulting from the work performed pursuant to this Section.

2.3 Purchase of Equipment. CMI will purchase or lease, in Circle K's name, and with Circle K's assistance, all furniture, fixtures, equipment, motor vehicle fleet, supplies, and all other materials (collectively, the "FF&E") necessary for the operation of the ADC, in accordance with the Approved Budget (as hereafter defined). Circle K shall execute all leases for the FF&E. CMI will not have or acquire any legal or equitable interest in the FF&E, except as specifically set forth in Section 8.4(i). The Start-Up Budget (as hereafter defined) attached hereto as Schedule 4.1 includes the list of FF&E necessary to initially equip the ADC.

2.4 Inventory. CMI will purchase, in Circle K's name, Inventory in the manner necessary and proper to operate the ADC in accordance with industry standards. The quantity and associated cost of Inventory will be determined by taking into account the goals of maximizing Inventory turns, providing high fill rates, assuring product freshness, capturing manufacturer discounts, rebates, allowances and incentive payments and otherwise maximizing Merchandise Income, as well as buying in brackets which enable low cost of goods given the other goals stated, and in a manner consistent with the Approved Budget and the terms of this Agreement for any variances to the Approved Budget. Circle K shall be at all times the owner of the Inventory and at no time shall CMI acquire or retain any legal or equitable interest in the Inventory except as specifically set forth in Section 8.4(i). Title to the Inventory shall pass directly from the manufacturer or vendor to Circle K.

In preparation for the initial store orders and throughout the duration of this Agreement, CMI shall perform the following Inventory supply functions:

- (a) Identify the sources of supply and volumes for the items specified by Circle K.
- (b) Build and maintain an inventory of these items in sufficient quantities to fulfill the order requirements of the stores by purchasing, receiving, and storing the Inventory in the ADC. CMI shall monitor the Inventory for shrinkage or spoilage.

(c) CMI shall use its good faith reasonable efforts to qualify for and negotiate with manufacturers, vendors, and suppliers of these items to arrange for the lowest cost of goods with accompanying discounts, rebates, refunds, credits, concessions, incentives, allowances and similar items as described on Schedule 2.4 ("Merchandise Income"), subject to the provisions of the introductory paragraph of this Section 2.4. All Merchandise Income shall belong to Circle K and Circle K shall receive the benefit thereof.

(d) Monitor deals and promotions for retail rebates and other retail incentives which are designated by the manufacturer to be forwarded to the retailer during the period of the deal and/or promotion and provide said funds to Circle K which are directly associated with the Inventory (the sale price to the stores will be reduced by the retail deal amount for the retail deal period).

(e) Pay to Circle K all Merchandise Income associated with Circle K Inventory, and share with Circle K all Merchandise Income which CMI receives from manufacturers, suppliers and vendors on joint buys. Schedule 2.4 defines this Merchandise Income sharing program in detail. Both parties understand that the amount of Merchandise Income to be shared will fluctuate from year to year in accordance with manufacturers programs and other variables. These monies are not guaranteed and may be higher or lower than estimates based on historic results.

(f) Provide for proper handling and environmental controls of all goods, including items which are perishable.

2.5 Computer Systems. CMI will install, maintain and operate all software needed to automate and manage the ADC in the manner required by this Agreement and pursuant to the terms and conditions of the Software License Agreement and the Software Maintenance Agreement (as hereafter defined). CMI represents and warrants that CMI has the right to license, sublicense or distribute, as the case may be, any third party software utilized in the DCMS while this Agreement is in effect. It is understood by both parties that the use of the Distribution Center Management System, CMI's proprietary software ("DCMS"), is a material condition to CMI executing its responsibilities under this Agreement during the first year following the Commencement of Operations for the first Arizona store supplied by the ADC. At the request of Circle K, CMI will cooperate with Circle K to modify the existing software or, after the first anniversary of the Commencement of Operations for the first Arizona store supplied by the ADC, to convert to different software ("Conversion Software"). Any modifications (other than Custom Modifications and Conversion Software) created by CMI shall be subject to the terms and conditions of the Software License Agreement and the Software Maintenance Agreement. Circle K acknowledges that any custom modification specifically requested by Circle K ("Custom Modifications") or conversion to Conversion Software will constitute a change in the scope of services performed by CMI and as part of such transition the parties will agree upon necessary changes to the Approved Budget. Any Custom Modifications and Conversion Software shall be subject to a separate agreement to be mutually agreed upon by Circle K and CMI at a future date. CMI will use its best efforts to assist in such conversion, and to minimize interference with the ongoing business of the ADC; however, CMI cannot guarantee that such business will remain unaffected and uninterrupted by any such

Software Conversion or transition. Further, CMI does not guarantee the performance of the Conversion Software used in connection with the ADC. When DCMS is used, CMI shall at all times maintain at CMI's office back-ups containing the most recent version of the software used at the ADC and redundant back-up support including daily operational back-ups. Circle K acknowledges and agrees that a conversion to a different software system than DCMS may cause significant and adverse affects on every aspect of the operation and maintenance of the ADC and that as a result the business may be significantly interrupted. Notwithstanding any provision in this Agreement to the contrary, CMI's sole responsibility and liability under this Agreement, in the event a software system other than DCMS is used, is to use its best efforts to perform its obligations under this Agreement. CMI will use its best efforts to restore the ADC system within twenty-four (24) hours in the event of a failure. When the DCMS system is used, until the ADC system can be restored, CMI will continue the ADC operations using "Hot Site" backup capabilities via its Southern California distribution center.

2.6 Licenses and Permits. Except in those instances where Circle K is required by the governmental authority to obtain the same in Circle K's name, CMI will obtain and maintain all necessary approvals, licenses, permits, consents and bonds (collectively, "Licenses") with respect to the modifications, operation and maintenance of the ADC. Unless otherwise required by the governmental authority, all Licenses shall be issued in Circle K's name. If any Licenses are issued in CMI's name, CMI will obtain and maintain the same for the benefit of Circle K.

2.7 Insurance. CMI will obtain and maintain in effect at all times the insurance policies required in this Agreement or in the Lease (unless Landlord prohibits such compliance by CMI in the form of a notice of default sent to Circle K).

2.8 Service Contracts, Fuel. CMI shall arrange, on behalf of Circle K, or contract with a period not in excess of one (1) year where possible, for gas, electricity, water, security services, vending, telephone, trash removal, extermination, janitorial, and such other services as are necessary to operate and maintain the ADC. All contracts shall be in the name of, and for the account of, Circle K, and CMI shall, at no time, acquire or retain any legal or equitable interest in the contracts, except as specifically set forth in Section 8.4(i). CMI shall use due care in the selection of all persons and entities selected to provide services to or for the benefit of the ADC. CMI shall have the right, without the prior written consent of Circle K, to execute any contracts within the guidelines of prudent business judgment; provided, however, CMI shall not, without the prior written consent of Circle K, execute any service contract or other agreement which does not permit Circle K, without cause and without payment of any penalty or premium, to terminate same (i) upon no more than thirty (30) days prior written notice, and (ii) upon the transfer or expiration of Circle K's interest in the Real Property. CMI shall not borrow any money or enter into any sublease or license of the Property for or on behalf of Circle K without Circle K's prior written consent. CMI shall purchase fuel for the ADC from vendors approved by Circle K from time to time.

2.9 Employees. CMI will hire, train or re-deploy from another CMI distribution center a sufficient number of skilled managers and employees to operate the ADC. Additionally, CMI will

hire those Circle K employees currently employed at Circle K's liquor warehouse at their current pay rate when hired, and will give credit to such employees for their prior years of employment with Circle K so long as such employees meet CMI's criteria for hiring. CMI will designate an employee to serve as a contact person for inquiries from Circle K-supplied retail outlets concerning order processing and delivery schedules. Except for personnel employed by independent contractors engaged by CMI to perform modification obligations pursuant to Section 2.2 or contract obligations pursuant to Section 2.8, CMI shall investigate, select, train, hire, relocate, employ, pay, supervise, direct and discharge all personnel necessary for the management, operation and maintenance of the ADC and the performance of its duties under this Agreement. Such personnel shall in every instance be employees of CMI and shall be employed solely at the expense of CMI. CMI shall be responsible for the compensation and fringe benefits of such employees and for all payroll taxes, FICA and similar items with respect to such employees. CMI shall employ at all times a sufficient number of competent employees to enable it to properly and efficiently perform its duties under this Agreement. CMI may, at CMI's option, hire temporary staff from time to time on an as-needed basis, in accordance with customary business practices, in order to maintain adequate staffing to perform its obligations under this Agreement.

All matters pertaining to the employment, supervision, compensation, promotion and discharge of CMI's employees and others engaged by CMI for the operation and maintenance of the ADC are the exclusive responsibility of CMI. CMI shall comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, pension plans, working conditions, employment discrimination, accessibility for the disabled, and other employer-employee related subjects in connection with the ADC. If solicitation of labor union representation is made at the ADC, CMI should promptly give Circle K notice of same.

2.10 Deliveries to Stores: Store Relationships. CMI shall prepare an ADC Operations Manual which shall set forth the operating policies and procedures for the ADC. CMI shall submit to Circle K, on or before August 15, 2001, the initial draft of the ADC Operations Manual for Circle K's review and comments. The ADC Operations Manual will set forth the policies and procedures governing CMI's operations of the ADC, and may be updated from time to time. CMI will promptly send to Circle K copies of any updates to the ADC Operations Manual. CMI will operate the ADC in accordance with the ADC Operations Manual and this Agreement. Until the ADC Operations Manual is complete, CMI will operate the ADC in accordance with the CMI Operations Manual which is described on Schedule 2.10(a) and which will be delivered to Circle K concurrently with the execution of this Agreement. The ADC Operations Manual or the CMI Operations Manual, as applicable, is referred to herein as the "Operations Manual." In general terms, and subject to the specific requirements of the Operations Manual, CMI shall provide the following distribution services:

(a) Interface with Circle K ordering systems, whether by Telxon or the new store automation system currently being implemented by Circle K.

(b) Process the orders and deliver to the stores in temperature controlled vehicles, when appropriate, according to a pre-established schedule of deliveries which has been coordinated with Circle K. The frequency of delivery shall be determined by Circle K with reasonable advance written notice to CMI. Initially, CMI shall make or arrange for deliveries to Circle K-supplied stores in accordance with the procedures and schedules set forth in the Operations Manual.

(c) Invoice the stores for the cost of the Inventory based on the ADC's acquisition or "book" cost, plus an appropriate mark-up as designated by Circle K, plus applicable taxes. The acquisition or "book" cost is the delivered invoice cost from the manufacturer, in the buying bracket which the ADC normally buys, excluding the cash discount, i.e., the cost of goods before the cash discount is applied (the cash discount is accounted for as Merchandise Income for non-cigarette categories). For cigarette categories, the cash discount is included in the "book" cost and it is accounted for in the gross profits. CMI shall collect, and Circle K hereby authorizes CMI to collect, for Circle K's account and benefit such receivables from the stores, such collection to be accomplished in accordance with accounting procedures established by Circle K.

(d) Pick up Inventory to be returned and give the stores and Circle K credit in accordance with the Operations Manual.

(e) CMI shall make regular on-site visits to the stores, and assist the stores in selecting and stocking Inventory, and provide other in-store merchandising services as determined by Circle K and communicated to CMI, including without limitations, delivering order guides to each store every eight (8) weeks, providing shelf labels as required, providing labor support to assist in store resets as needed, and placing price stickers on full service items.

(f) Provide for emergency deliveries which are authorized by Circle K.

(g) Furnish a retail price management system, at Circle K's option, to establish and maintain retail prices.

CMI will develop and implement vendor consolidation activities. This ability and expertise is unique to CMI. For purposes of this Agreement, "Vendor Consolidation" will mean the practice of combining the products from multiple sources into one delivery, thus allowing for different products to be delivered from one vehicle. Vendor Consolidation is the primary operating premise upon which the convenience store grocery wholesaler exists, and is a major inducement for Circle K to enter into this Agreement. CMI acknowledges that in addition to the products and services traditionally provided by a convenience store grocery wholesaler, Circle K may add other products that are not typically supplied by a convenience store grocery wholesaler, including, but not limited to, milk, various dairy and bakery products, sandwiches, ice cream, liquor and other products to be identified. The other products to be identified may be shelf stable, frozen or perishable and may or may not require refrigerated or frozen storage and delivery.

Subject to the construction by Landlord of the building, CMI has included in the operation plans and facility design sufficient space, equipment and expertise to accommodate the products and quantities thus far identified by Circle K, and has included approximately 30,000 square feet for future, undefined use. Furthermore, CMI understands that the volume and scope of the ADC may change constantly and significantly throughout the term of this Agreement. In connection with such changes, CMI shall have a reasonable time to adapt to such changes in scope. Circle K and CMI will agree upon any corresponding changes to the Approved Budget as part of such changes in scope. CMI shall work with Circle K to enable the modifications necessary to meet changing supply chain needs. CMI will also "Cross Dock" at the ADC milk, various dairy and bakery products, sandwiches, and other products to be identified. For purposes of this Agreement, "Cross Docking" is the practice employed when products are ordered from one or more sources to be shipped into the ADC. Upon receipt of the products, the products are placed into a staging area. In the staging area, the products are "Picked" for delivery to various stores, and loaded onto outbound truck(s) that will deliver these products to Circle K, or other designated locations. The handling of these products differs from the traditionally provided products and services typically offered by a convenience store grocery wholesaler in that these products will not be placed in the general inventory of the warehouse, but instead will be received at the ADC and shipped to the stores within the same day. CMI acknowledges that CMI's ability and expertise to Cross Dock at the ADC is unique and is also a major inducement for Circle K to enter into this Agreement.

In performing its duties under this Agreement, CMI will use its good faith efforts to reach the objectives set forth on Schedule 2.10(b); provided, however, that an Event of Default shall be deemed to occur with respect to such objectives only as set forth on Schedule 2.10(b).

2.11 Facility Maintenance and Lease Compliance. CMI shall (i) provide regular, systematic inspections of buildings and grounds in order to comply with any agreement to which Circle K is a party or by which Circle K is bound and a copy of which has been provided to CMI affecting the Property including, without limitation, the Lease (unless Landlord prohibits such compliance by CMI in the form of a notice of default sent to Circle K) and any and all mortgages and reciprocal easement agreements affecting the Property; and (ii) perform, on behalf of Circle K, all duties to be performed by Circle K under the Lease including, without limitation, the issuance of payments (although CMI shall acquire no interest in the Lease except as specifically set forth in Section 8.4(i)) excluding any indemnity obligations payment or any other liabilities of Circle K thereunder (unless Landlord prohibits such compliance by CMI in the form of a notice of default sent to Circle K). CMI shall maintain the Property and the FF&E in compliance with (a) all applicable laws, statutes and ordinances, rules, regulations and orders of any governmental authority (specifically including, but not by way of limitation, building codes, fire regulations and environmental rules and regulations); (b) any direction or occupancy or use certificate issued pursuant to any law, regulation or rule by any public officer; and (c), to the best of CMI's ability within the circumstances, the provisions of the Lease (unless Landlord prohibits such compliance by CMI in the form of a notice of default sent to Circle K), and any agreement, mortgage, reciprocal easement agreement, operating agreement, rule, regulation or other instrument to which Circle K is a party or by which Circle K or the Property is bound and of which CMI is aware. Such maintenance

shall be performed in accordance with standards reasonably applied by CMI in other CMI operations, including within such maintenance, without limitation, interior cleaning and janitorial service, restroom supplies, repairs to improvements and common areas, enforcement of construction warranties, maintenance of mechanical systems and equipment, safety and security of employees and the property of both Circle K and the employees and such other normal maintenance, alteration and repair work as may be reasonably advisable or necessary to maintain the Property in a manner consistent with maintenance of similar facilities of similar size, age and construction in the Phoenix metropolitan area.

CMI will coordinate any entry onto the Property by Landlord, and will notify Circle K of any matters relating to the Lease. CMI will provide promptly to Circle K copies of any notices, demands or other communications relating to the Lease, the Property or the operation of the ADC. Promptly upon receipt thereof, CMI shall submit to Circle K a copy of each notice or statement received from any governmental agency together with any other notices or statements received by CMI which threaten or might have a material effect upon the Property.

CMI shall obtain the prior approval of Circle K for any capital item, and for any individual non-capital items (other than items already included in the Approved Budget) to be done in accordance with the provisions of this Section, the cost of which (as to the non-capital items) shall be in excess of \$50,000.00. In the event that CMI has requested approval for any capital item or for such non-capital item which is in excess of \$50,000.00 and Circle K has not responded or denied approval, CMI shall not be responsible to complete such item of maintenance or repair, and CMI shall be absolved of any liability or responsibility with respect to such item, except that CMI shall remain responsible for CMI's own negligence or willful misconduct. In the event of an emergency for which repairs are immediately necessary for the preservation or safety of the Property or to avoid the suspension of any essential services to the Property or to avoid a disruption to the business of the ADC as contemplated hereunder or to avoid danger to life or property (each of which shall constitute an "emergency"), such emergency repairs may and shall be made by CMI on behalf of Circle K at Circle K's sole cost, without the prior approval of Circle K, provided such emergency expenditure shall be reasonable and prudent under the circumstances. CMI shall promptly and in no event later than twenty-four (24) hours from the time CMI learns of any such emergency, provide Circle K with notice in reasonable detail of such emergency. For purposes of satisfying the notice requirement under this Section 2.11, a voicemail left on phone number (602) 728 - 4731 (or such other number as Circle K may designate from time to time) and an e-mail sent to mkormos@tosco.com (or such other e-mail address as Circle K may designate from time to time), will be sufficient.

2.12 Access to ADC. CMI will permit only duly authorized personnel and third-parties approved by Circle K to enter upon the premises of the ADC and to have access and use of the ADC. CMI will cause all persons entering the ADC to comply with reasonable security procedures established by CMI and approved by Circle K. CMI has, at its reasonable discretion, the authority to permit the following people, who are not employed by CMI, access to the ADC:

(a) Supplier representatives and/or brokers from any firm Circle K has identified as a source of goods to be delivered through the ADC. Once Circle K has identified a product or supply item to be included in the assortment, no further communication is required from Circle K to CMI to allow for CMI to give access to these people.

(b) Providers of other services such as garbage collection, communication, power, water, sewage, security, building maintenance, grounds keeping, vehicle maintenance and repair, information technology support, and other similar tasks necessary to insure uninterrupted operations of the ADC.

(c) Drivers making delivery of the products required by Circle K.

(d) OSHA, American Institute of Baking, and other inspectors that are either contracted or required by governmental authority to have access to the ADC.

2.13 Future Construction. CMI acknowledges that Circle K may elect, in its sole discretion, to increase or reduce from time to time the size and scope of the ADC. This Agreement shall continue in full force and effect notwithstanding such alteration. CMI shall supervise to the best of its ability any expansion or reduction of the ADC, including the modifications relating thereto.

2.14 Hazardous Materials, Toxic Wastes and Asbestos. CMI shall immediately notify Circle K, both orally and in writing, if CMI becomes aware of the existence of hazardous materials or wastes, toxic substances or wastes, asbestos or asbestos-bearing materials and the like at, in, on or under the Property, except those contained in packaged consumer goods and nominal levels of cleaning supplies for the ADC. Circle K shall exclusively determine such further course of action with respect to such condition. CMI will not be liable for any disruption to the business of the ADC as a result of such hazardous material or remediation thereof in each case where CMI did not cause or knowingly permit such condition to exist. CMI shall not supervise or oversee any work involving remediation of any hazardous or potentially hazardous wastes or conditions unless specifically directed by Circle K to do so pursuant to a separate agreement between Circle K and CMI. CMI shall use its good faith commercially reasonable efforts to prevent and detect the occurrence or existence of any hazardous condition at the Property and shall reasonably cooperate with Circle K, at no additional cost or expense to CMI, in abating and remedying any hazardous condition at the Property; provided that CMI shall have no liability by virtue of such cooperation and assistance.

2.15 Reports on Insurance Claims. CMI shall promptly notify Circle K of any casualty and promptly investigate and make a complete and timely written report to the appropriate insurance company as to all accidents, claims for damage relating to the ownership, operation and maintenance of the Property, any damage or destruction to the Property and the estimated cost of repair thereof and shall prepare any and all reports required by any insurance company in connection therewith. CMI shall be responsible to make any repairs (other than routine repairs and maintenance) and pay any deductibles or self-insured retentions at CMI's sole cost and expense, but

subject to each party's indemnification obligations under Sections 7.4 and 7.5. All such reports shall be timely filed with the insurance company as required under the terms of the insurance policy involved and a final copy of such report shall be furnished to Circle K. CMI shall have the sole authority to settle any claim against insurance companies; provided that any failure to settle an insurance claim will not affect the indemnity obligations of a party pursuant to Sections 7.4 and 7.5, but the amount of such settlement will be offset against the amount to be paid in satisfaction of such indemnity.

2.16 Inspections. CMI acknowledges that during the term of this Agreement, designated representatives of Circle K and its Affiliated companies and representatives of other firms designated by Circle K or its Affiliated companies, may have reason to review and examine during normal business hours the operating and accounting books and records, the files, revenue, operating expenses, Inventory sales information, and other property data relating to the ADC that is under the control of CMI and is maintained at the Property or at CMI's other office facilities, and CMI will cooperate with these designated representatives. If such designated representatives are competitors or employees of competitors of CMI, then Circle K shall obtain CMI's approval prior to any review or inspection and CMI shall have the right to require any such representative to execute a reasonable non-disclosure agreement. CMI further acknowledges that these services are included within the scope of this Agreement and that no additional fees shall be payable with respect to such services (except that Circle K shall continue to be obligated to reimburse CMI for CMI Overhead pursuant to Section 5.1(c)). Additionally, Circle K may elect, at its sole discretion and at its sole expense, to retain one or more Circle K employees or representatives on-site at the ADC (on a full or part-time or intermittent basis) to perform the inspections and otherwise monitor CMI's compliance with the terms of this Agreement; provided that such on-site employee or representative does not materially disrupt the business or management of the ADC without good cause; and provided further that CMI shall not be liable for any actions or omissions of such employee or representative.

2.17 Taxes. Circle K shall identify the items of Inventory purchased by Circle K through the ADC and not intended for resale. CMI shall identify which, if any, of such items are subject to sales tax at the wholesale level. CMI will cooperate with Circle K to properly and timely include such taxes in the proper Circle K tax return and remit the same to the taxing authority involved. Additionally, CMI shall identify which, if any, of the items of Inventory that are purchased by Circle K through the ADC and are intended for resale are also subject to sales tax at the wholesale level. CMI will cooperate with Circle K to properly and timely include such taxes in the proper Circle K tax return and remit the same to the taxing authorities involved.

2.18 Consultation. At Circle K's request and upon reasonable advance notice to CMI, CMI will host periodic business reviews with Circle K management to assess progress, define opportunities, and coordinate efforts.

2.19 Limitation of Authority. Notwithstanding any provision of this Agreement to the contrary, CMI shall not, without prior approval by Circle K: (a) convey or otherwise transfer or pledge or encumber any property or other asset of Circle K, other than the conveyance of Inventory

as contemplated in this Agreement and the sale or transfer of unused, obsolete or excess equipment or supplies in the ordinary course of business; (b) retain attorneys on behalf of Circle K; (c) institute or defend lawsuits or other legal proceedings on behalf of Circle K; (d) enter into any dealings concerning the Property, the ADC, the Inventory, or with Landlord for CMI's own account, other than in the ordinary course of business or as contemplated by this Agreement; (e) pledge the credit of Circle K, except for purchases made in the ordinary course of business of operating the ADC or as otherwise contemplated pursuant to this Agreement in conformity with an Approved Budget; (f) borrow money or execute any promissory note or other obligation or mortgage, security agreement or other encumbrance in the name of or on behalf of Circle K; or (g) execute any contracts for construction, remodeling, rehabilitation or other similar work to be done on Property unless previously approved by Circle K in conformity with the Approved Budget and this Agreement.

2.20 Confidential Information. CMI and Circle K executed a letter agreement dated June 29, 1999 containing a confidentiality agreement ("Letter Agreement"). The terms and conditions of the Letter Agreement, to the extent it relates to the ADC, are hereby superceded and replaced in their entirety by the confidentiality provisions set forth in this Section 2.20. In all other respects, the terms and conditions of the Letter Agreement shall remain in full force and effect.

(a) As used in this Section, "Confidential Information" shall mean any and all confidential and proprietary information of a party, including but not limited to, any data, information, products, research and development, production, costs, finances, customers, marketing, plans, programs, processes, costs, operations, profits, losses, forecasts, names of vendors, intellectual property, trade secrets and know-how which may be disclosed to the other party or which come within the knowledge of the other party in the performance of, or as a result of, this Agreement, and consistent with this Section, except where such disclosure is required by law.

(b) Both parties shall treat as confidential all Confidential Information, shall not use such Confidential Information except as set forth in this Agreement, and shall use reasonable efforts not to disclose such Confidential Information to any third party, for a period lasting five (5) years after termination of this Agreement. Without limiting the foregoing, both parties shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information, but in no event less than a reasonable degree of care. The receiving party shall promptly notify the disclosing party of any actual or suspected misuse or unauthorized disclosure of any of the Confidential Information.

(c) Notwithstanding the above, the receiving party shall not be liable to the disclosing party with regard to any Confidential Information of the other which the receiving party can prove:

i. was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;

ii. was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

iii. is disclosed with the prior written approval of the disclosing party;

iv. becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights;

v. is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

(d) Upon expiration or termination of this Agreement, each party shall return all Confidential Information received from the other party; provided, however, that the parties may retain a copy of the Confidential Information (excluding (i) in the case of Circle K, the Software, the Modifications made by or for CMI, the Software Source Code, and Documentation thereto, as defined in the Software License Agreement, and (ii) in the case of CMI, the Modifications made by or for Circle K; as defined in the Software License Agreement) for their confidential legal files, subject to continuing confidentiality obligations so long as such files exist.

(e) Any breach of the restrictions contained in this Section 2.20 is a breach of this Agreement which may cause irreparable harm to the nonbreaching party. Any such breach shall entitle the nonbreaching party to injunctive relief in addition to all legal remedies.

(f) Neither party shall be entitled to disclose the existence of this Agreement or make any press release without the prior written consent of the other party. Both parties agree that the terms and conditions of this Agreement shall be treated as Confidential Information and shall not be disclosed to any third party; provided, however, that each party may disclose the terms and conditions of this Agreement:

i. as required by any court or other governmental body;

ii. as otherwise required by law;

iii. to legal counsel of the parties;

iv. in confidence, to accountants, banks, and financing sources and their advisors;

v. in connection with the enforcement of this Agreement or rights under this Agreement;

vi. in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction; or

vii. in confidence, in connection with the potential sale of the ADC.

(g) In the event of any conflict between the terms of this Section and the terms of Section 11 of the Software License Agreement and the terms of Section 6 of the Software Maintenance Agreement, the terms of such other Agreements shall prevail to the extent the conflict relates to the subject matter of such Agreements. In the event of any other conflict between the terms of this Section and the terms of Section 11 of the Software License Agreement or the terms of Section 6 of the Software Maintenance Agreement, the terms of this Agreement shall prevail. Except as specified in this clause (g), in no event will the provisions of this Section limit Circle K's ability to use the know-how (excluding Software, Software Source Code, Proprietary Rights, and Documentation, as defined in the Software License Agreement) or experience gained by Circle K in the performance of, or as a result of, this Agreement, in connection with Circle K's business. Except as specified in this clause (g), in no event will the provisions of this Section limit CMI's ability to use the know-how (excluding Modifications made by Circle K or a "permitted consultant" as defined in the Software License Agreement) or experience gained by CMI in the performance of, or as a result of, this Agreement, in connection with CMI's business.

2.21 Business Conduct. A copy of CMI's Ethics Policy, adopted by CMI, is attached as Schedule 2.21 (as the same may be modified from time to time, the "Ethics Policy"). CMI agrees to abide by and uphold the Ethics Policy. CMI acknowledges that the Ethics Policy represents the policies of CMI, and that such policies govern the conduct of CMI pursuant to this Agreement. Any material violation of this Section by CMI or its employees, agents and representatives, which has not been cured within thirty (30) days, will constitute an Event of Default by CMI.

2.22 Designation of Representative. Circle K and CMI shall each designate in writing to the other an individual who shall serve as its representative and who shall be authorized to act under this Agreement for and on behalf of such party. Any written act, approval, or consent of a representative so designated shall be deemed to be the act, approval, or consent of the party that designated such representative, and the other party shall not be required to inquire into the authority of such representative as to such written act, approval, or consent. Any such representative may be replaced by a successor representative by written notice to the other party. Until further notice, the designated representatives of the parties shall be Mike Walsh for CMI and Miles Kormos for Circle K.

ARTICLE III

Certain Covenants by Circle K

3.1 General Obligation of Circle K. Subject to the limitations and restrictions in this Agreement, Circle K shall be responsible for all cost associated with the design, equipping, managing, operating and maintaining the ADC, including but not limited to: the cost of Inventory; the Lease; the Property; all equipment and related installation, all furniture and fixtures; all utility expense; CMI Overhead; all operating supplies and fuel; certain administrative costs; taxes (except CMI's income and other tax); all maintenance; governmental compliance; all communication, computer hardware and software; and all construction subcontracting; plant start-up expenses, and for all other duties and responsibilities required of CMI under this Agreement; plus the management fees, and other amounts payable under the terms and conditions of this Agreement. CMI shall pay from its own funds and not from the Disbursing Account (as hereafter defined), all of CMI's overhead and administrative costs relating to the ADC, including without limitation payroll expenses, including salaries, benefits, employee withholding. CMI shall not be required to advance any other monies of its own or to be responsible for the cost of the design, equipping, managing, and operating the ADC, except that CMI shall be responsible for insurance premiums and other costs related to the ADC as specifically prescribed elsewhere herein. The foregoing general statement shall in no way (i) increase the management fees or other amounts payable to CMI pursuant to this Agreement, the Software License Agreement, the Software Maintenance Agreement or any other agreement between Circle K and CMI, (ii) expand Circle K's indemnification or other obligations or liability, or reduce CMI's indemnification or other obligations or liability under this Agreement, or (iii) supersede or replace the approvals and other limitations and restrictions contained elsewhere in this Agreement.

CMI acknowledges that except for Circle K's indemnification obligations under Section 7.5, Circle K shall have no liability to CMI if Circle K elects, in its sole discretion, not to make funds available in the Disbursing Account or to otherwise pay third parties. CMI shall have no liability to Circle K for CMI's failure to pay any such amounts solely as a result of insufficient funds in the Disbursing Account. Further, CMI's performance under this Agreement shall be excused to the extent Circle K failed to provide funds necessary for such performance as and to the extent required by this Agreement.

3.2 Purchase of Inventory; Advance Notification. Circle K shall be responsible to pay all charges, fees, mark-ups, taxes, and costs as invoiced for Inventory, in accordance with the terms of this Agreement. Circle K will use Electronic Funds Transfer (EFT) or checks as the method for paying invoices for Inventory, payment to be received by the manufacturer, vendor, broker, diverter, or other selling party not later than the last day of the stated terms period. Circle K shall provide reasonable advance notification for new items to be stocked, items to be de-activated, and all promotional items to permit CMI to adequately plan and execute.

CMI acknowledges that in certain circumstances, little advance notification may be provided, for example, items to be delivered upon a sports championship or a special event. CMI will use good faith efforts to ensure that all items of Inventory are distributed to the stores as timely as possible in such circumstances.

3.3 New Item Introduction Policy. Circle K and CMI shall cooperate to administer CMI's New Item Introduction Policy, as set forth in the Operations Manual.

3.4 Store Ordering, Receiving, and Merchandising. Circle K agrees to comply with established store order cut-off times in view of the fact that the vast majority of stores will receive the orders on the next day. Circle K store personnel are required to count the number of cigarette cartons, the number of totes, and the number of full cases delivered and to reach agreement with the CMI driver regarding these counts and sign the receiving documentation accordingly. A twenty-four (24) hour "honor" system will be used for verifying all item quantities received against item quantities invoiced, that is, the stores have twenty-four hours to call in any short-on-loads, mispicks, or other delivery errors for credit. Except for the product which is ordered by CMI merchandisers, Circle K store personnel shall be responsible for ordering and merchandising all other product which is provided by CMI. It is recognized by the parties that Circle K may require changes in the scope of prescribed service levels such as implementing automatic store ordering, restricting delivery schedules, increasing CMI merchandising inside the store or changing driver check-in procedures or other related services not currently identified.

3.5 No Hiring. Circle K shall not permit the hiring of CMI's ADC Senior Management Personnel by Circle K or any Affiliate of Circle K, at any time prior to the earlier of (i) the date Circle K terminates this Agreement due to an Event of Default by CMI; or (ii) two (2) years after the termination of this Agreement for any reason other than an Event of Default by CMI; or (iii) thirty (30) days after the date such person is no longer employed by CMI following a change in control of CMI that would constitute an Event of Default under Section 9.1(c)(xii), or two (2) years after the date such person is no longer employed by CMI for any other reason. CMI's ADC "Senior Management Personnel", in this instance, shall mean the CMI ADC President, the Controller, the Operations Manager, the Merchandising Manager, and the Purchasing Manager. The provisions of this Section shall survive the termination of this Agreement. For purposes of this Agreement, "Affiliate" means any entity which controls, is controlled by, or is under common control with CMI or Circle K, as applicable, either directly or indirectly. "Control" means owns or holds a beneficial or ownership interest of ten percent (10%) or more.

ARTICLE IV

Project Schedule and Budget

4.1 Start-Up Budget. CMI has developed and submitted to Circle K a start-up budget (such budget, as amended by the parties from time to time, is referred to as the "Start-Up Budget"), covering all costs estimated to initially design, modify, equip and stock the ADC, a copy of which

is attached hereto as Schedule 4.1. During the course of installing the Modifications, the parties shall meet once each month to review the progress of the project, make any needed adjustments to the Start-Up Budget resulting from a change in scope, and agree on any necessary action items.

4.2 Operating Budget. CMI has also developed and submitted to Circle K a short-form operating and capital budget for the operation, repair, and maintenance of the Property for the remainder of calendar year 2001, following the Commencement of Operations (as defined herein) for the first Arizona store supplied by the ADC, a copy of which is attached hereto as Schedule 4.2. On or before February 16, 2001, CMI shall prepare and deliver to Circle K for its review a detailed operating and capital budget for the remainder of calendar year 2001, that supports the short-form budget as adjusted for changes in the scope of the ADC operations. CMI shall prepare and deliver to Circle K on or before August 15 of each calendar year separate capital and operating budgets for the then next succeeding calendar year. At such time, CMI shall also furnish Circle K with projections of cash flow and expenses for such year in such format as Circle K shall reasonably request. In addition, six (6) months after the commencement of each calendar year and upon changes in circumstances or events (other than failure by CMI to perform its obligations under this Agreement) which cause any budget to be no longer feasible or appropriate and from time to time as CMI deems appropriate, CMI shall recommend to Circle K modifications of or additions to such budget. Each budget shall be in the format reasonably required by Circle K. Any proposed budgets submitted to Circle K by CMI shall be considered disapproved by Circle K unless within thirty (30) days of the date on which such budget is first submitted to Circle K, Circle K notifies CMI in writing that Circle K approves such budget. If any proposed budget is disapproved by Circle K or deemed disapproved by Circle K pursuant to this Agreement, CMI shall continue to use the most recently Approved Budget until a new budget is approved by Circle K. CMI shall eliminate or revise any item or amount in the budgets which is disapproved by Circle K, to the extent necessary to obtain Circle K's approval. CMI shall not have any obligation to incur costs for any specified line items in excess of the Approved Budget. CMI shall not be liable for any disruptions to its performance of this Agreement due to budgetary issues or any liability which may have been avoided if the budget proposed by CMI had been approved. CMI shall not be required to perform work which has not been funded by Circle K. CMI shall execute its duties under this Agreement and shall not make expenditures for the operation, maintenance or improvement of the Property in any year except within the categories and amounts contained in the Approved Budgets for the Property for that year, unless:

- (a) such expenditure is specifically authorized under any of the other provisions of this Agreement;
- (b) CMI first obtains Circle K's written approval of such expenditure; or
- (c) such expenditure does not create a variance in the Approved Budget by more than:

(i) Accounts Receivable - an increase in the average number of days accounts receivables are outstanding of 14 days over the Approved Budget.

(ii) Inventories - An increase in the carrying value of cigarette Inventory of 5 days of the value of cigarette Inventory cost of sales over the Approved Budget for average monthly cigarette Inventory; and an increase in the carrying value of non-cigarette Inventory of 10 days of the value of non-cigarette cost of sales over the Approved Budget for average monthly non-cigarette Inventory.

(iii) Non-Cigarette Accounts Payable - A decrease in the average number of days non-cigarette accounts payable are outstanding of 5 days under the Approved Budget.

(iv) CMI Overhead - An increase of two percent (2%) over the Approved Budget for CMI Overhead, on an annual basis, and an increase of five percent (5%) over the Approved Budget for CMI Overhead on a fiscal quarter basis.

(v) Non-CMI Overhead operating expenses - An increase of two percent (2%) over the Approved Budget for non-CMI Overhead operating expenses, on an annual basis; and an increase of five percent (5%) over the Approved Budget for non-CMI Overhead operating expenses on a fiscal quarter basis; excepting rate increases for utilities, fuel prices, licenses, taxes, and rent on land and building.

(vi) Inventory Losses - An increase in the amount of Inventory losses (e.g. Damage, Spoilage, Shrink) as a percent of sales of 0.05% over the Approved Budget for Inventory losses as a percent of sales on an annual basis, and an increase of 0.10% over the Approved Budget for Inventory losses as a percent of sales on a fiscal quarter basis.

(vii) Capital Expenditures - An increase of zero percent (0%) over the Approved Budget for each capital expenditure, on a capital project by capital project basis. (Note: This provision has the effect that requires CMI to obtain pre-approval from Circle K to spend over the approved expenditures amount for each capital project).

Circle K reserves the right to make revisions to the then current Approved Budget deemed necessary by Circle K in its reasonable discretion. As used in this Agreement, the term "Approved Budget"

means any operating and capital budget and amendments thereto approved by Circle K, and/or (as applicable) the Start-Up Budget and amendments thereto approved by Circle K.

4.3 Project Schedule. CMI has developed and submitted to Circle K the project schedule set forth on Schedule 4.3(a) for the initial modification, equipping, and stocking the ADC, hiring employees, and otherwise preparing the ADC so that CMI can commence delivering Inventory from the ADC to the Circle K stores in Arizona. The date upon which CMI commences delivering Inventory from the ADC to the Circle K stores in Arizona in accordance with this Agreement is referred to as the "Commencement of Operations." CMI shall perform its obligations under this Agreement in order to achieve as close as practical the Project Schedule, as such schedule is extended for Unavoidable Delays, which shall be adjusted from time to time with the approval of Circle K, which approval will not be unreasonably withheld or delayed. CMI shall submit to Circle K weekly progress reports in reasonable detail of the progress achieved, the status of procurement and delivery of equipment and any requested changes in the Project Schedule. As used in this Agreement, the term "Project Schedule" means any project schedule approved by Circle K.

CMI acknowledges that Circle K is a party to an existing agreement with a distributor ("Current Supplier") pursuant to which Current Supplier delivers Inventory to the Circle K stores in Arizona. Circle K's agreement with Current Supplier expires on April 18, 2001, and as amended provides for an orderly transition to a new supplier in accordance with, and upon the dates set forth on, Schedule 4.3(b) (the "Transition Schedule"). CMI further acknowledges that Circle K is entering into this Agreement in reliance upon the unique experience, expertise and assurances of CMI that the Commencement of Operations shall occur in accordance with the Transition Schedule, so that the delivery of Inventory to Circle K stores in Arizona is not interrupted, and that such experience, expertise and assurances are a material inducement to Circle K entering into this Agreement. CMI shall ensure that the Commencement of Operations occurs in the manner and on the applicable dates set forth in the Transition Schedule. If the Commencement of Operations does not occur on or before the Transition Grace Period End Date (as defined on Schedule 4.3(b)) for all Circle K stores to be supplied by the ADC (as such date may be extended by Unavoidable Delays, as hereafter defined), CMI acknowledges that the damages to Circle K will be substantial and will be difficult to calculate. Consequently, CMI will pay to Circle K, as liquidated damages and not as a penalty, the sum of \$100,000.00 per day for each day (including the date upon which performance was to be rendered) that lapses from the Transition Grace Period End Date set forth on the Transition Schedule until the date Commencement of Operations occurs (as described on Schedule 4.3(b)), limited to a maximum of ten (10) days or \$1,000,000.00. Such payment shall be made by CMI on a daily basis, and the failure to make any such daily payment to Circle K on the date due shall constitute an Event of Default by CMI. Additionally, if such lapsed time period exceeds ten (10) days, an Event of Default shall have occurred.

As used in this Agreement, "Unavoidable Delay" means (i) any Force Majeure Delay, and (ii) any delay to the extent caused by Circle K's failure to perform its obligations under this Agreement, or (iii) any delay past the date of this Agreement in Landlord's delivery of the building for the ADC in the condition that will permit commencement of construction of the Modifications, or (iv) any

delays arising from the base building or tenant improvements being installed by Landlord (except to the extent the delay is caused by CMI) or the Property, or (v) any delays resulting from any acts or omissions of Circle K, any of its employees, agents or representation including failure to pay any amounts due, or (vi) any delays resulting from the acts or omissions of a governmental authority, or (vii) any delay caused by a third party not within the control of CMI, or (viii) any delay which could have been avoided if Circle K did not withhold an approval or consent requested by CMI after the date of this Agreement.

ARTICLE V

Payments, Accounts and Records

5.1 Depositor Account and Disbursing Account.

(a) Establishing the Account. Circle K shall provide CMI on a timely basis sufficient working capital to meet the operational expenses of the ADC, including without limitation CMI Overhead, as set forth on the Approved Budget. Within fifteen (15) days after the date of this Agreement, Circle K shall establish and designate one or more depositor bank accounts (severally and collectively, the "Depositor Account") and one or more Imprest zero balance disbursing bank accounts for the ADC (severally and collectively, the "Disbursing Account") in a federally insured banking institution acceptable to Circle K. Circle K shall fund the Disbursing Account on a daily basis as disbursements are presented for payment. CMI shall not withdraw funds from the Depositor Account. CMI shall not withdraw funds from the Disbursing Account except to pay costs relating to the ADC operations in accordance with the Approved Budget. CMI shall deposit, no later than one (1) business day after receipt, any monies received from the operation of the ADC in the Depositor Account including, without limitation, all rebates and allowances, and CMI shall not commingle such monies with funds of CMI or with funds received from the operation of any other property or facility. All monies received by CMI for or on Circle K's account shall be received and held by CMI only for the account of Circle K. The Disbursing Account shall be styled as follows: CMI for the account of Circle K for the ADC. CMI shall not have or attain any legal or equitable interest in the Depositor Account or the Disbursing Account or any other account utilized by Circle K and at all times all monies in or available in the Depositor Account or the Disbursing Account or other such account shall be and remain the property of Circle K.

(b) Payments. Except for CMI Overhead (as hereafter defined), unless otherwise directed by Circle K, CMI shall timely pay all sales taxes, Inventory purchases and other accounts payable and operating expenses authorized pursuant to the Approved Budget, but not otherwise. CMI shall submit to Circle K for approval, not more than once per month, a list of all operating expenses (other than CMI Overhead) that are not then authorized pursuant to the Approved Budget and, to the extent approved by Circle K in writing, CMI shall pay such operating expenses from the Disbursing Account. CMI shall make no payment from the Disbursing Account without Circle K's prior written consent for any expense which, under the provisions of this Agreement, requires Circle K's prior written approval or consent or for any expense not related to the operation of the ADC.

(c) CMI Overhead. Commencing on the first Monday after the issuance of the certificate of occupancy for the tenant improvements at the ADC and continuing on each Monday throughout the Term, Circle K shall make a weekly payment of \$100,000.00 (or such other amount as reasonably designated by Circle K from time to time, provided that in no event shall the weekly payments be significantly lower than the actual requirements of the ADC based on the Approved Budget) to CMI to offset the cost of the items of CMI Overhead authorized in the Approved Budget. Within thirty (30) days after the end of each calendar quarter, CMI shall prepare and submit to Circle K a reconciliation of the CMI Overhead actually incurred and authorized in the Approved Budget compared to the sum of the weekly CMI Overhead payments. CMI's reconciliation shall be accompanied by a payment of any amounts due from CMI to Circle K if the weekly payments exceeded the amount for such items of CMI Overhead actually incurred and authorized in the Approved Budget, plus interest on such amount from the date the overpayment was made until the amount is repaid to Circle K at the prime rate announced by Bank One, Arizona, NA, as its prime rate on the last day of such calendar quarter ("Applicable Rate"). If the weekly payments for such items of CMI Overhead were less than the amount actually incurred and authorized in the Approved Budget for such items, then Circle K shall pay CMI the difference within ten (10) days after receipt of such reconciliation and supporting documentation, plus interest on such amount from the date the cost was incurred until the amount is repaid to CMI at the Applicable Rate.

(d) Merchandise Income. CMI will track Merchandise Income throughout the Term. Merchandise Income can be realized by receipt of funds directly from the respective manufacturer, vendor, broker, diverter or other selling party or by an allowance off of the invoice amount normally due upon the purchase of Inventory. The receipt of monies for Merchandise Income associated with the Inventory purchased by Circle K shall belong to Circle K as of the date earned, shall be paid directly to the ADC when paid by the manufacturer or vendor (and shall be paid directly to the ADC from the manufacturer or vendor, if possible), shall be deposited into the Depositor Account within two (2) business days, and shall be reconciled as necessary. In no event will CMI acquire or retain a legal or equitable interest in the Merchandise Income associated with the Inventory purchased by Circle K.

(e) Insufficient Funds. CMI shall monitor the cash flow of the ADC and shall provide to Circle K a monthly report detailing such cash flow and a forecast of such cash flow for the next succeeding month. Except for the payment of CMI Overhead, CMI shall not be obligated to advance any of its own funds to or for the account of Circle K, nor to incur any liability unless Circle K shall have furnished CMI with funds necessary for the discharge thereof. If CMI advances funds to pay an expense of the ADC which was authorized by Circle K, Circle K shall reimburse CMI within seven (7) days after Circle K's receipt of itemized invoices thereof.

(f) Signature Requirements. Any single check withdrawal in a day from the Disbursing Account in excess of \$250,000.00 shall require pre-approval by an authorized representative of Circle K identified in Section 2.22. All wire transfer requests shall be processed by CMI but shall be executed by Circle K. Circle K shall pre-approve all vendors who have the right to initiate ACH debits. The authorized signors of CMI shall be any one or more of the ADC Senior

Management Personnel. All such representatives of CMI shall be insured in accordance with Section 7.1 or otherwise in a manner reasonably satisfactory to Circle K. Circle K shall have the right to withdraw any funds deposited in the Depositor Account or other accounts established pursuant to this Agreement on the basis of its signature alone and without the joinder of CMI. CMI's authority to make disbursements pursuant to this Agreement and draw checks or make withdrawals from the Disbursing Account or other bank accounts established, held or maintained by CMI in the name of or on behalf of Circle K shall immediately terminate upon the expiration or earlier termination of this Agreement and/or during any period in which CMI is in default of this Agreement.

5.2 Payment of Certain Sums in Advance. Where it is contemplated by the Approved Budget or is commercially required in order for CMI to act hereunder, to the extent funds are not available in the Disbursing Account, Circle K shall pay to CMI in advance of such sums being due to a third party for goods or services provided in connection with the activities contemplated by this Agreement. In unusual circumstances where commercially practical, Circle K may make payments directly to third parties, including advance payments made to obtain rebates, and will notify CMI so that CMI can make appropriate accounting journal entries.

5.3 Maintenance of Books and Records. CMI shall keep on behalf of Circle K separate and complete books of account and other records, including, but not limited to, records relating to the costs of construction and development and Inventory acquisition and distribution. The books and records will be kept in the same manner as the Chart of Accounts currently maintained by CMI with respect to its own operations, a copy of which is attached hereto as Schedule 5.3. Such books and records shall be kept in a manner sufficient to respond to Circle K's reasonable financial information requirements and shall show, without limitation, the actual financial information for the ADC for each accounting period and each fiscal year to date as compared to the budgeted information for such accounting period and fiscal year and, after the first year of this Agreement, as compared to the immediately preceding fiscal year. All financial books and records shall be kept in accordance with generally accepted accounting principles consistently applied, on an accrual basis of accounting. CMI will comply with all IRS and other regulatory requirements relating to record retention and documentation requirements.

CMI shall use the software which is then used at the ADC to prepare and maintain the books, records and reports required pursuant to this Agreement, subject to the limitations on CMI's liability set forth in Section 2.5. CMI shall keep vouchers, statements, receipted bills and invoices, and all other records covering all collections, if any, disbursements, and other data in connection with the ADC, including all invoices it receives from contractors, sub-contractors, designers, vendors, manufacturers, Landlord and others engaged in the activities contemplated hereunder. CMI shall prepare and keep current a list of all personal property, furniture, fixtures, equipment and rolling stock owned or leased by Circle K and used at the ADC or in its operation. All books and records prepared or maintained by CMI shall be kept and maintained at all times at the ADC or at the CMI Corporate Offices, and shall be available for and subject to audit, inspection, and copying by Circle K, or any representative of Circle K, during normal business hours and after three (3) days' prior notice. All accounts, books and records relating to the ADC, including without limitation all

correspondence, photographs and logs shall be the property of Circle K and shall be surrendered to Circle K upon demand. Upon termination of this Agreement, CMI shall turn over all such books and records to Circle K.

5.4 Reporting Requirements. CMI shall deliver to Circle K, in such intervals or time periods designated by Circle K, such reports in such formats and with such supporting information as Circle K may from time to time reasonably request. CMI agrees to maintain at the Property or, if necessary, at CMI's corporate office, all documentation necessary to support the information included on such reports, including all bank statements, bank deposit slips, comprehensive bank reconciliations, detailed cash receipts and disbursement records, operating expense invoices and CMI Overhead supporting documentation. Such reports shall include, but not be limited to, the following:

(a) Accounting Reports. CMI agrees to render the following accounting reports for the preceding accounting period (i.e., every calendar month period), on or before the fifteenth (15th) business day of each accounting period (to the best of CMI's ability), in form reasonably satisfactory to Circle K:

- Management report summary (a narrative summary of the ADC operations and issues);
- Profit and loss statements (in summary and detail basis)
- Balance sheets (in summary and detail basis);
- Cash flow report, including a comparison of projected versus actual period and fiscal year-to-date gross receipts and expenses;
- Budget variance report, including a summary and detail variance analysis together with a narrative explanation of such variations;
- Analysis of Merchandise Income;
- Analysis of Inventory;
- Analysis of CMI Overhead;
- Analysis of department operating expenses;
- Cash reconciliation report;
- Summary of all capitalized expenditures; and

- Operating statistical reports showing fill rates, operational errors, and on time deliveries.

(b) Annual Reports. CMI shall provide to Circle K within sixty (60) days after the close of each fiscal year annual financial statements relating to the ADC, including a balance sheet and statement of income, and otherwise in a format reasonably designated by Circle K. CMI shall also prepare and deliver to Circle K, within such 60-day period, an annual inventory of the personal property and equipment owned or leased by or on behalf of Circle K.

(c) Certification. CMI hereby represents and warrants that to the best of its knowledge and belief, all information contained in all reports, statements and other data required under this Section 5.4 are materially true, correct and complete, and not misleading in any material respect. The CMI ADC president and controller shall execute and deliver to Circle K, together with quarterly and annual reports required in this Article V, a certification to such effect as to the information contained in such reports.

5.5 Audit Rights. Circle K shall have the right to conduct examinations and/or audits of (i) the books and records maintained by CMI for Circle K, including receipts and disbursement testing, and (ii) CMI's other books and records, limited to the extent that they relate to the specific requirements of this Agreement; however, CMI shall also provide such other information from CMI's other distribution centers that will enable Circle K to evaluate the Merchandise Income and operating expenses of the ADC, such information to be certified by the responsible officer of CMI. CMI will cooperate with and give reasonable assistance to Circle K and to any independent certified public accountant or other agent retained by Circle K to examine such books and records. Should Circle K or its agents or employees discover either weaknesses in internal control or errors in record keeping, CMI, at its sole cost and expense (except that Circle K shall remain responsible to reimburse CMI for CMI Overhead otherwise incurred at the ADC, pursuant to Section 6.2), shall correct such discrepancies either upon discovery or within a reasonable period of time thereafter. CMI shall inform Circle K in writing of the action taken to correct such audit discrepancies. Any and all audits conducted either by Circle K's employees or appointees will be at the sole expense of Circle K. In addition, if any audit discloses a deficiency in the amount of funds which CMI should have delivered to Circle K or deposited into the Depositor Account during the period covered by the audit, CMI shall immediately endeavor to collect and deliver such deficiency to Circle K.

5.6 CMI Financial Statements. CMI shall provide to Circle K, within ninety (90) days after the close of each fiscal year annual financial statements for CMI, including a balance sheet and statement of income. If not available to the general public, CMI shall also provide to Circle K, within forty-five (45) days after the end of each of the first three (3) fiscal quarters, financial statements for CMI, including a balance sheet and statement of income. Annual financial statements shall be audited by an independent certified public accountant, and quarterly financial statements may be internally prepared and certified by the responsible officer of CMI. All financial statements shall include a certification by the responsible officer of CMI identifying any direct or indirect transfer or conveyance of any stock or beneficial interest in CMI.

ARTICLE VI

Compensation of CMI; Earnest Money Payment

6.1 General. As more specifically set forth in Section 3.1, and subject to the limitations set forth therein, Circle K shall pay for all costs involved in the design, equipping, managing and operating the ADC and CMI shall not be required to advance monies under any circumstances except as otherwise set forth in this Agreement.

6.2 Payments to Third Parties; Reimbursement of CMI Costs. CMI shall be responsible to issue payment, funded by Circle K, to the applicable third parties all costs and expenses related to the operation of the ADC (excluding insurance premiums required under Section 7.1 and excluding insurance premiums for Employment Practices Liability Insurance), including without limitation the rent and other sums due under the Lease (unless Landlord prohibits such payment by CMI in the form of a notice of default sent to Circle K), utilities, Inventory, equipment, motor vehicle fleet, computer leasing, third-party software and hardware, supplies, legal fees (to the extent authorized by Circle K), sales and real property taxes and zoning and permit costs (provided, however, that Circle K shall pay directly the construction and Modification costs associated with the construction of the ADC and shall coordinate the application of the tenant improvement allowance provided by Landlord), but only to the extent that such costs are included in the Approved Budget or the Start-Up Budget including variance amounts provided for in Section 4.2(c). Additionally, Circle K shall pay CMI an amount equal to the following costs and expenses incurred by CMI during the course of performing under this Agreement:

(a) An amount equal to the CMI Overhead. For purposes hereof, "CMI Overhead" shall equal the gross salaries, payroll taxes, employee benefits (excluding workers compensation), personnel training expenses (including lost usage of personnel during training), personnel travel and relocation costs, of on-site employees including the ADC Senior Management Personnel, but only to the extent reflected in the Approved Budget or otherwise provided for in Schedule 6.2, and only to the extent the same reflect services provided for the benefit of the ADC;

(b) The gross salaries, taxes, and benefits (excluding worker's compensation) of labor costs for CMI personnel while they are performing start-up and training functions on-site at the ADC. However, CMI will not charge for labor for technical and management support provided by its corporate office staff;

(c) All travel and local living expenses (lodging, meals, car rental, phone, and gas) incurred by off-site CMI personnel, including corporate office staff, incurred in support of construction, start-up and training;

(d) Outside consulting support for the ADC;

(e) Temporary office space rental and associated expenses for hiring and other functions related to start-up; and

(f) General office operating expenses and other reasonable expenses of CMI incurred at the ADC.

Circle K shall reimburse CMI for the costs and expenses provided for in clauses (b) through (f), upon receipt of a detailed invoice from CMI together with such other supporting documentation that Circle K may reasonably request. In no event shall Circle K be liable for expenses in excess of the Approved Budget, subject to the approved budget variances permitted under Section 4.2(c). Circle K shall reimburse CMI for CMI Overhead pursuant to Section 5.1(c).

6.3 Non-Reimbursable Expenses. Except to the extent the same were included in the Start-Up Budget, the following expenses or costs incurred by or on behalf of CMI in connection with the operation of the ADC shall be the sole cost and expense of CMI, shall not be included in CMI Overhead and shall not otherwise be reimbursable by Circle K:

(a) Cost of gross salary and wages, payroll taxes, insurance, worker's compensation, pension benefits, and any other benefits of CMI's personnel that are employed off-site, except that CMI shall have the flexibility to temporarily support the ADC as needed with personnel from other CMI distribution centers during the term of this Agreement. The cost of such support shall be included in CMI Overhead pursuant to Section 5.1(c).

(b) General accounting and reporting services not directly required to support the ADC.

(c) Cost of forms, stationery, ledgers, and other supplies and equipment used in CMI's offices other than the ADC.

(d) Cost, or pro-rata cost of telephone and general office expenses incurred by CMI either (i) at locations other than the Property, or (ii) at the Property to the extent incurred for the operation and management of facilities other than the Property.

(e) Cost of all bonuses, incentive compensation, profit sharing, or any pay advances by CMI to CMI's employees, except to employees located at the Property and then only to the extent provided in this Agreement or set forth in the Approved Budget.

(f) Cost attributable to Losses arising from criminal acts or from negligence or fraud on the part of CMI or CMI's affiliates or employees, or Losses arising from any employee-related lawsuits, discrimination charges, wage and hour audits to the extent attributable to fines or penalties, and workers' compensation claims, that arise or accrue during such employee of the ADC's employment with CMI.

(g) Cost of insurance purchased by CMI.

(h) Costs for meals, travel and hotel accommodations for CMI's principal office or regional office personnel who travel to and from the Property, except as budgeted during start up, and for operational support from other CMI distribution centers.

(i) Relocation costs of CMI employees, except to the extent such relocation costs are in the Approved Budget, such approval to not be unreasonably withheld.

6.4 Management Fee. Commencing on the calendar year in which the Commencement of Operations occurs, and continuing during each subsequent calendar year of operation during the Term, Circle K shall pay CMI an annual management fee (the "Annual Management Fee"). The Annual Management Fee may be increased or decreased in accordance with the provisions of Schedule 6.4 but shall not exceed the maximum amounts set forth below, nor be less than the minimum amounts set forth below. The Annual Management Fee during the Initial Term shall be \$1,500,000.00, and may be increased or decreased in accordance with Schedule 6.4, but shall not be more than \$2,000,000.00 nor less than \$1,000,000.00 in any calendar year. During the first Renewal Term, the Annual Management Fee shall be \$1,850,000.00 and may be increased to a maximum of \$2,460,000.00 and decreased to a minimum of \$1,240,000.00 in any calendar year. During the second Renewal Term, the Annual Management Fee shall be \$2,150,000.00, and may be increased to a maximum of \$2,870,000.00 and decreased to a minimum of \$1,430,000.00 in any calendar year. During the third Renewal Term, the Annual Management Fee shall be \$2,500,000.00 and may be increased to a maximum of \$3,325,000.00 or decreased to a minimum of \$1,675,000.00 in any calendar year. The Annual Management Fee shall be paid in arrears within thirty (30) days following the end of each calendar year of the Term. The Annual Management Fee shall be prorated on a daily basis for any partial calendar year; the commencement date for the Annual Management Fee shall be the date of Commencement of Operations for the first Arizona store supplied by the ADC.

In addition to the Annual Management Fee, Circle K shall pay to CMI, commencing on the calendar year in which CMI commences occupancy of the ADC following issuance of the certificate of occupancy for the tenant improvements, and continuing during each subsequent calendar year of operation during the Term, a supplemental management fee (the "Supplemental Management Fee"; and, severally and collectively with the Annual Management Fee, the "Management Fee"). The Supplemental Management Fee shall be paid in advance as follows: \$250,000.00 shall be paid when CMI commences occupancy of the ADC following issuance of the certificate of occupancy for the tenant improvements; and one-half of the annual Supplemental Management Fee shall be paid on each July 1 and January 1 thereafter, with the first such payment due July 1, 2001. During the Initial Term, the annual Supplemental Management Fee shall be \$500,000.00. During each Renewal Term, the amount of the annual Supplemental Management Fee shall be determined as follows:

(a) The parties acknowledge that the amount of the annual Supplemental Management Fee is the sum of the following amounts: (i) the estimated annual

premiums for the insurance to be maintained by CMI pursuant to Section 7.1; (ii) the estimated annual amount of deductibles, self-insured retentions, underinsured amounts and claims paid by CMI for losses under the insurance policies described in Section 7.1; (iii) the estimated annual amount of claims paid by CMI for losses that would typically be covered in whole or in part under a typical policy of Employment Practices Liability Insurance, and (iv) six percent (6%) of the total sums under the foregoing clauses (i), (ii) and (iii). During each Renewal Term, the Supplemental Management Fee shall continue to be an estimate of such amounts to be incurred during each year of the Renewal Term, as calculated in accordance with clause (b) below, and shall be determined by the parties no later than thirty (30) days prior to the date that Circle K must exercise its option to renew the Term pursuant to Section 8.1.

(b) Not later than six (6) months before the expiration of the then-current term, CMI will provide to Circle K its proposal for the Supplemental Management Fee for the upcoming Renewal Term. Such proposal will be accompanied by a detailed breakdown of the sums described in clauses (a)(i) through (iv) above, with reasonable supporting documentation. The sums to be determined under clauses (a)(ii) and (iii) will be the average annual amount actually paid by CMI during the preceding Term for such items.

(c) Circle K will have the right, by notice given to CMI within thirty (30) days after Circle K receives CMI's proposal, to require that the amount set forth in clause (i) be determined in accordance with this clause (c). Circle K's notice shall set forth the names of two (2) insurance companies selected by Circle K, from which CMI shall obtain the estimate of the annual premium described in clause (i). CMI shall designate the name of a third insurance company to provide such estimate. Within fifteen (15) days after CMI's receipt of Circle K's notice, CMI shall provide to Circle K written premium quotes from such companies for the annual cost of such insurance. The average amount of the two (2) closest quotes shall be deemed to be the annual premium for purposes of calculating the annual Supplemental Management Fee during the upcoming Renewal Term.

6.5 License and Servicing Fee. Circle K and CMI will concurrently herewith execute a Software License Agreement (the "Software License Agreement") and a Software Maintenance Agreement (the "Software Maintenance Agreement"). The terms and conditions of the Software License Agreement and Software Maintenance Agreement are the sole agreements of Circle K and CMI regarding fees, ownership and rights and obligations relating to the DCMS and any modifications thereto. The Software Maintenance Agreement and the Software License Agreement are each a separate and independent agreement between Circle K and CMI, and represent rights and obligations of the parties that are independent of their rights and obligations under this Agreement.

6.6 Earnest Money Payment. The parties contemplate that CMI will operate the ADC under the terms hereof for the entire Initial Term of sixty (60) months from the Commencement of Operations for the first Arizona store supplied by the ADC. As an inducement to Circle K, within fifteen (15) days after the date of this Agreement, CMI will pay to Circle K the earnest money sum of \$1,000,000.00 (the "Earnest Money Payment") in the form of cash or wire transfer of cash credit. Immediately upon the termination of this Agreement prior to the expiration of the Initial Term by either party for any reason other than a termination by Circle K pursuant to Section 8.2, and other than upon the Bankruptcy of CMI, Circle K shall refund to CMI that pro-rated portion of the Earnest Money Payment related to the number of months remaining between the effective date of the early termination and June 18, 2006. For example, if the Agreement is terminated on June 18, 2004, Circle K would repay $24/60 (=2/5)$ of the Earnest Money Payment, or \$400,000. Circle K shall have no obligation to invest the Earnest Money Payment or to keep the Earnest Money Payment segregated from other funds of Circle K or its Affiliates. If Circle K is obligated to return all or any portion of the Earnest Money Payment (including without limitation upon a default by Circle K), Circle K shall have no obligation to pay to CMI any interest or other earnings on the Earnest Money Payment. Upon a Bankruptcy of CMI, Circle K shall be entitled to retain all of the Earnest Money Payment.

ARTICLE VII

Insurance

7.1 Insurance to be Maintained by CMI. CMI, at its sole cost and expense, shall maintain in full force and effect insurance policies as required hereunder with respect to the ADC:

- (i) Commercial General Liability Insurance;
- (ii) Comprehensive automobile liability insurance for all owned, hired and otherwise operated non-owned vehicles;
- (iii) Workers' Compensation Insurance with statutory coverage for all persons employed by CMI with regard to the operation of the ADC (Workers Compensation insurance may be in the form of a self insurance program);
- (iv) Employers' Liability Insurance;
- (v) Umbrella insurance;
- (vi) Commercial Crime insurance;
- (vii) Property insurance insuring the building and contents associated with the ADC, which includes business interruption insurance relating to the ADC and not Circle K stores;

(viii) Inland marine insurance, to cover Inventory while in transit, with minimum limits of \$50,000.00 per occurrence and \$200,000.00 aggregate (CMI may, upon the approval of Circle K, self-insure for all or part of the foregoing insurance); and

(ix) Such other insurance policies, or such other amounts of coverage, as are reasonably requested by Circle K if the same are commercially available, provided that CMI is given a reasonable amount of time to obtain such insurance; provided, however, that any changes shall constitute a change in the scope of the CMI's duties hereunder and Circle K and CMI shall agree in good faith on any resulting changes to the annual Supplemental Management Fee.

Circle K acknowledges that it has reviewed Schedule 7.1 and agrees that such insurance policies including limits, deductibles, terms and conditions per Schedule 7.1 satisfy CMI's insurance obligations under this Section 7.1. CMI acknowledges that the foregoing are minimum requested insurance requirements and Circle K in no way suggests or represents itself as a professional insurance advisor. CMI shall be responsible for any and all deductibles, self-insured retentions, premium costs, losses in excess of the coverage limits, and insurance administration costs arising out of this Agreement. CMI hereby assumes all risk for those claims for which there is insurance available under the insurance coverages described on Schedule 7.1 and under Employment Practices Liability Insurance even if CMI chooses not to purchase such insurance, or if the coverage is not sufficient to cover the full loss.

7.2 Additional Requirements. Unless the same are not commercially available, CMI will reasonably ensure that all insurance policies required in this Agreement are issued by insurance companies with an A.M. Best service rating of not less than A-VII, which are licensed in the state of Arizona and which are otherwise reasonably satisfactory to Circle K. Circle K and CMI shall mutually agree to any decrease in coverage under the Schedule 7.1 policies. CMI shall provide Circle K with prompt notice of any alteration, cancellation or material change by endorsement of the coverage.

The insurance policies required pursuant to clauses 7.1 (i), (ii), (vi), (vii) and (viii) shall designate Circle K as the Loss Payee or additional insured, whichever applies, and CMI as the named insured. All such insurance policies shall also specifically state that Circle K's parent, subsidiaries, agents, assigns, affiliates, employees, directors and officers are additional insureds or loss payee, as appropriate, as their interest may appear. The remaining policies shall name CMI as the named insured. Any lender designated by Circle K shall also be named as loss payee or as an additional insured, as appropriate, on all policies. All insurance policies shall contain a clause that the insurance is primary insurance and not excess over or contributory with any other valid, existing and applicable insurance carried by Circle K, its parent, subsidiaries and affiliates. The insurance policies required pursuant to clauses 7.1 (iii) and (iv) shall contain a waiver of subrogation clause with respect to Circle K. The insurance policies required pursuant to clauses 7.1 (i), (ii), (vi) (if commercially available), (vii) and (viii) shall contain cross-liability and severability of interest clauses with respect to Circle K. With respect to additional insureds, waiver of subrogation, cross-

liability and severability of interests, any umbrella insurance policy shall follow the form of the underlying primary insurance policy.

CMI will provide to Circle K evidence that coverage has been renewed seven (7) days prior to the expiration date of the then effective insurance policies. In the event that two or more prospective carriers are being considered at that time, CMI will advise Circle K which carrier quotes are being considered and confirm which coverage will be bound prior to expiration. CMI shall obtain copies of certificates of insurance evidencing insurance required of the subcontractors performing any work with respect to the ADC and shall keep such documents in CMI's files available for inspection by Circle K upon request by Circle K.

7.3 Product Liability Certificates. CMI will obtain and deliver to Circle K product liability certificates issued by the manufacturer for each item of Inventory (or current renewals of existing certificates), naming Circle K as an additional insured. Such certificates shall be in such amounts and from insurance companies as are reasonably acceptable to Circle K. If CMI is unable to obtain product liability certificates for any items of Inventory, CMI will promptly notify Circle K.

7.4 Indemnification by CMI. CMI shall indemnify, defend (with counsel reasonably acceptable to Circle K), and hold harmless Circle K and its Affiliates, officers, directors, employees, representatives and agents (excluding CMI) from and against any and all claims, losses, liabilities, damages, obligations, payments, costs, and expenses (whether or not any of the foregoing result from or arise out of third party claims) including, without limitation, the costs and expenses of any and all actions, suits, judgments, and settlements relating thereto, and reasonable attorneys' fees in connection therewith ("Losses"), of such indemnified party arising directly out of or due to any acts or omissions of CMI or its directors, officers, employees, contractors, subcontractors and agents: (i) in material violation of this Agreement (other than a breach of Section 2.1(a), Section 2.10 or Section 2.11 [except the portions of Section 2.11 which are covered by the insurance described in Section 7.1, or which require compliance with applicable laws, statutes and ordinances, rules, regulations and orders of any governmental authority, or which require compliance with the provisions of the Lease] or a violation described in Section 9.1(c) (i), (ii), (iii), (xi) or (xii), for which Circle K's remedies shall be limited as otherwise set forth in this Agreement); (ii) outside the scope of CMI's authority hereunder; or (iii) otherwise constituting negligence, fraud, malfeasance, breach of fiduciary duty or willful, reckless or criminal misconduct in connection with the performance of CMI's duties under this Agreement. The amount paid by CMI under the foregoing indemnification shall be reduced by the amount of any proceeds received by Circle K from the insurance maintained by CMI under Section 7.1. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

Notwithstanding anything in this Agreement to the contrary, CMI, its successors and assigns, its subsidiaries, its Affiliates, and its representatives shall have no liability or responsibility in any manner to Circle K, its successors or assigns, its subsidiaries, its Affiliates, its representatives, any Circle K stores or other stores serviced under this Agreement for costs, expenses, or liability (including but not limited to claims, losses, actions, suits, judgments, damages, payments,

obligations, settlements and attorneys' fees (whether or not any of the foregoing result from or arise out of third party claims)) arising in any manner from the consumption of tobacco and/or cigarettes and/or tobacco related products (including but not limited to the buying of such products, the use of such products, or the consequences or effects (whether to the consumer or other persons) from the use of such products), except to the extent CMI, its successors and assigns, its subsidiaries, its Affiliates, and its representatives are tobacco producers or manufacturers of cigarettes or other tobacco products.

The term "negligence" as used in this Agreement shall not apply to (a) non-insurable acts, errors, omissions, and failures by CMI in the normal course of business to the extent the same results in loss of sales or profits or increase in operating or maintenance costs to Circle K, its successors, assigns, and Affiliates, or Circle K stores or other stores serviced under this Agreement, and (b) when CMI performs at a level better than the default criteria specified in Schedule 2.10(b) including allowances for cure period. If CMI fails to maintain any insurance that is not described in Section 7.1, CMI will have no liability to Circle K merely for CMI's failure to maintain such insurance.

7.5 Indemnification by Circle K. Circle K shall indemnify, defend (with counsel reasonably acceptable to CMI) and hold harmless CMI and its Affiliates, officers, directors, employees, representatives and agents from and against any Losses, of such indemnified party,

(a) arising directly out of or due to any acts or omissions of Circle K or its directors, officers, employees, contractors, subcontractors and agents (other than CMI) in material violation of this Agreement (other than a violation described in Section 9.1(d)(ii), for which CMI's remedies shall be limited as otherwise set forth in this Agreement); or

(b) arising directly out of Circle K's failure to make payments owed by Circle K to third parties associated with the ADC, as contemplated and described in Section 3.1;

except that the indemnification described in this Section 7.5 shall not apply (i) in the case of the direct acts or omissions of CMI or its directors, officers, employees, contractors, subcontractors, or agents in violation of this Agreement, outside the scope of CMI's authority hereunder or otherwise constituting negligence, fraud, malfeasance, breach of fiduciary duty or willful, reckless or criminal misconduct, provided that this clause (i) shall not apply to CMI's failure to make payments due to Circle K's election not to make funds available as contemplated and described in Section 3.1; (ii) to any matter for which CMI has agreed to indemnify Circle K under this Agreement; or (iii) to the extent CMI shall have failed to maintain the insurance required to be maintained by CMI under Section 7.1 if and to the extent all or a portion of such Losses would likely have been paid under such insurance policies. The amount paid by Circle K under the foregoing indemnification shall be reduced by the amount of any proceeds received by CMI from the insurance maintained by CMI under Section 7.1. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

7.6 Conditions of Indemnification. The obligations of the parties under Sections 7.4 and 7.5 are subject to the following conditions: (a) the party to be indemnified shall deliver a notice to the indemnifying party with respect to the matter promptly after the party to be indemnified becomes actually (and not constructively) aware of the same, to the extent failure to notify would prejudice the indemnifying party; and (b) the party to be indemnified shall not take any actions, including any admission of liability, which would bar the indemnifying party from enforcing any applicable coverage under policies of insurance or prejudice any defense and related legal proceedings or otherwise prevent such indemnifying party from defending itself with respect to the matter. Each party shall have a duty to mitigate its Losses under Sections 7.4 and 7.5.

ARTICLE VIII

Term and Termination

8.1 Term. The initial term of this Agreement (the "Initial Term") shall commence on the date hereof and shall continue until that date that is sixty (60) months from the Commencement of Operations for the first Arizona store supplied by the ADC, unless sooner terminated by mutual agreement or in accordance with the provisions of this Article VIII. Circle K shall have the right, in its sole discretion, by notice given to CMI no later than sixty (60) days prior to the expiration of the Initial Term or the then-effective Renewal Term, to renew the term of this Agreement for three (3) periods of five (5) years each (each of the foregoing is referred to as a "Renewal Term"; the Initial Term and the Renewal Terms, to the extent exercised by Circle K, are referred to as the "Term"). During the Renewal Terms, the terms and conditions of this Agreement shall remain in full force and effect.

8.2 Termination upon Event of Default. Either party shall have the right to terminate this Agreement upon ten (10) days notice to the other party following an Event of Default (subject to the prescribed cure periods within the definition of an "Event of Default") by the party receiving such notice of termination; provided, however, that with respect to an Event of Default by CMI pursuant to Section 9.1(c)(i) or 9.1(c)(ii), only five (5) days notice shall be required. Upon such termination, the non-defaulting party shall have the rights and remedies set forth in Sections 8.8 and 8.9.

8.3 Circle K's Right to Termination for Self-Distribution. Circle K shall have the right to terminate this Agreement at any time upon satisfaction of the following terms and conditions:

(a) No Event of Default by Circle K has occurred and is continuing, except in the case of a Bankruptcy of CMI (as hereafter defined);

(b) Circle K gives CMI at least 180 days prior notice of the termination, which notice shall set forth the effective date of the termination for purposes of this Agreement (which effective date of termination may not be prior to the third anniversary of the Commencement of Operations for the first Arizona store supplied by the ADC), except in the case of a Bankruptcy of CMI in which event such notice of termination shall not be required, and the termination shall be

effective on the earlier of the filing date of such Bankruptcy or the date the Bankruptcy Court having jurisdiction over the Bankruptcy Case approves a rejection of this Agreement if such an order is necessary; and

(c) During the Initial Term, Circle K takes over the day-to-day management and operation of ADC and does not utilize another third party to manage and operate the ADC before the fifth anniversary of the Commencement of Operations for the first Arizona store supplied by the ADC.

(d) Circle K pays to CMI the amounts owed pursuant to Section 8.8.

8.4 Circle K's Right to Terminate Self-Distribution. Circle K shall also have the right to terminate this Agreement by notice given to CMI at least sixty (60) days prior to the effective date of termination, if Circle K elects to abandon the concept of "self distribution," and instead elects to procure from CMI or another third party distribution services for the benefit of its retail stores from distributors and other suppliers as Circle K has done during the time prior to the creation and operation of the ADC. If, during the Term, Circle K notifies CMI that Circle K does not elect to operate the ADC for its own behalf, then on the effective date of termination:

(i) CMI shall: (A) assume the rights, interest and obligations of the Lease, subject to the approval of Landlord; (B) purchase the Inventory at book cost less cash discount; provided, however, if Circle K does not utilize CMI as the successor primary supplier to the retail outlets in Arizona, CMI would not be required to purchase Circle K proprietary product, which covers those items which are either imprinted with the brands owned by Circle K or which are not sold by CMI to other convenience retail outlets serviced by CMI; (C) purchase all physical assets of the ADC at a value based on straight line depreciation methods and asset service lives; provided that if Circle K does not utilize CMI as the successor primary supplier to the retail outlets in Arizona, then CMI is not obligated to purchase any assets which are employed solely for the service of the Circle K-supplied retail outlets and would not have application for servicing other CMI customers; (D) assume the rights, interest and obligations under motor vehicle, equipment and other personal property leases; (E) assume responsibility for property tax, maintenance and utility obligations with respect to the ADC as of the effective date of termination; (F) have full responsibility for all liabilities and claims arising from events relating to the ADC which occur on or after the effective date of termination; and (G) have full responsibility for all accounts payable relating to the ADC which accrue or otherwise are owed on or after the effective date of termination. CMI shall not be responsible for any environmental remediation or compliance or any other liabilities or costs for issues existing or arising from causes existing prior to or on the date of termination except in each case if caused or knowingly permitted by CMI.

(ii) Circle K shall: (A) have full responsibility for all amounts payable by Circle K pursuant to this Agreement which accrued or otherwise are owed prior to the effective date of termination, including without limitation, all management fees and other sums due to CMI, prorated to the effective date of termination and/or as specified elsewhere in this Agreement; (B)

during the Initial Term, pay to CMI the portion of the Earnest Money Payment due pursuant to Section 6.6, prorated to the effective date of termination; (C) assume responsibility for all Vendor Consolidation activities and obligations, except in the event that Circle K selects CMI to be the successor supplier to the Circle K retail outlets; and (D) forebear from performing itself or sub-contracting any self-distribution services for Circle K stores in Arizona prior to that date that is sixty (60) months from the Commencement of Operations for the first Arizona store supplied by the ADC.

(iii) If Circle K selects CMI to be the successor supplier to the Circle K retail stores, then such stores shall be added to the list of outlets supplied by CMI pursuant to that "Agreement for Primary Supply of Products and Distribution Services to Retail Convenience Outlets" between Circle K and CMI relating to Circle K's west coast region and other designated stores, to be executed by Circle K and CMI after the execution of this Agreement (the "West Coast Agreement"). The terms and conditions of the West Coast Agreement shall govern the supply relationship between Circle K and CMI for the Arizona stores, except that the fee for service for the Arizona stores will be as set forth in the RFP, as hereinafter defined. If the West Coast Agreement has not been executed, then the terms and conditions of the Request for Proposal dated January 25, 2000, submitted by CMI to Circle K (the "RFP"), shall govern the supply relationship between Circle K and CMI for the Arizona stores, until the West Coast Agreement (or other formal agreement integrating such terms) is executed.

8.5 Circle K's Right to Terminate Upon a Default Under West Coast Agreement. Circle K shall also have the right to terminate this Agreement upon a breach or default by CMI under the West Coast Agreement, after expiration of applicable notice and cure periods. The parties acknowledge that the West Coast Agreement is a separate and independent agreement between Circle K and CMI and represents rights and obligations of the parties that are independent of their obligations under this Agreement.

8.6 Termination as a Result of Other Events. In the event of (a) a bona fide demolition of all or a substantial portion of the ADC; or (b) foreclosure or deed in lieu of foreclosure with respect to any mortgage encumbering the ADC; or (c) the Property is entirely or substantially either taken by eminent domain or deed in lieu thereof; or (d) the ADC is entirely or substantially damaged by fire or other casualty; Circle K may terminate this Agreement upon not less than thirty (30) days' notice to CMI. Additionally, if the Lease is terminated by Landlord as a result of eminent domain or deed in lieu thereof, or fire or other casualty, then this Agreement will automatically terminate as of the date the Lease is terminated.

8.7 Transition Upon Termination or Expiration. Upon any termination or expiration of this Agreement, CMI and Circle K shall each be relieved of all further obligations under this Agreement other than those obligations which expressly survive the termination of this Agreement or which, by their nature, are performable after termination or expiration. Upon the termination or expiration of this Agreement, CMI shall remove any property owned by CMI at the ADC and shall assist Circle K in coordinating with Circle K or any successor manager of the Property to ensure a smooth transition from CMI to Circle K or such manager, and the continuation of uninterrupted

delivery of Inventory to the Circle K stores and other destinations. Such transition responsibilities will include, without limitation, assistance in transferring of bank accounts, obtaining all books, records, files and personal property with respect to management of the Property, notifying vendors and other interested parties, and collecting such other information required by Circle K and inputting the same into a software program designated by Circle K. Additionally, upon termination of this Agreement for any reason, CMI shall deliver the following to Circle K as soon as reasonably possible, but in no event, except as noted below, later than thirty (30) days following the termination or expiration date:

(a) A preliminary accounting, reflecting the balance of income and expenses for the ADC as of the effective date of termination or expiration, with final accounting to be prepared and submitted to Circle K as soon as reasonably possible, but in no event later than thirty (30) days following the effective date of termination or expiration.

(b) Any balance and monies due to Circle K held by CMI with respect to the Property.

(c) All books, records, contracts, unpaid invoices, unpaid bills, and all other papers or documents which pertain to the Property.

(d) All keys to any locks on the Property, together with any plans and specifications pertaining to the Property.

Upon termination of this Agreement for any reason, CMI's authority under this Agreement shall immediately cease and CMI shall have no further right to act for Circle K nor to draw checks on the Disbursing Account.

8.8 Payments by Circle K for Termination Other than Default. In the event of any termination of this Agreement pursuant to Sections 8.3, 8.4, 8.5 or 8.6, Circle K shall pay to CMI the Management Fee that CMI had earned for the portion of the year which CMI managed and operated the ADC prior to the effective date of termination. Circle K shall also reimburse CMI for all reimbursable expenses due to CMI and, during the Initial Term, shall refund to CMI the portion of the Earnest Money Payment due pursuant to Section 6.6, prorated to the effective date of termination. Payment of these amounts shall be due thirty (30) days after the effective date of termination.

If Circle K terminates this Agreement during the Initial Term pursuant to Section 8.3, Circle K shall also be obligated to pay to CMI the estimated Annual Management Fee for each of the remaining years of the Initial Term (prorated on a daily basis for any partial calendar year), which shall, for each year, be \$1,500,000.00. Such estimated Annual Management Fee shall be paid to CMI within thirty (30) days after the end of each of the remaining years of the Initial Term.

If Circle K terminates this Agreement pursuant to Section 8.5, Circle K shall also be obligated to pay to CMI, based on the effective date of termination, the following additional amounts:

<u>Effective Date of Termination</u>	<u>Additional Amount Due from Circle K</u>
April 19, 2001 - April 18, 2002	\$4,500,000.00
April 19, 2002 - April 18, 2003	\$3,000,000.00
April 19, 2003 - April 18, 2004	\$2,000,000.00
April 19, 2004 - April 18, 2006	\$1,000,000.00

8.9 Payments Upon Default.

(a) Notwithstanding anything else in this Agreement to the contrary, if Circle K elects to terminate this Agreement because of an Event of Default by CMI pursuant to Section 9.1(c)(i) or (ii), then Circle K's sole remedy shall be to recover from CMI, and CMI shall pay to Circle K, liquidated damages of \$1,000,000.00 (i.e., \$100,000.00 per day for ten (10) days, as set forth in Section 4.3), and Circle K shall retain the Earnest Money Payment as described in Section 6.6. Subject to the provisions of this Section 8.9(a), Circle K shall be responsible to pay to CMI any amounts owed to CMI under this Agreement. Circle K shall have the right to offset or recoup any amounts due from CMI to Circle K against (1) any amounts due from Circle K to CMI under this Agreement; (2) any amounts due from Circle K to CMI under the West Coast Agreement, and/or (3) any amounts due from Circle K to CMI under the Software License Agreement or the Software Maintenance Agreement. Additionally, in the event any such amounts or any other amounts shall be found to be due and owing to CMI by Circle K in any Bankruptcy of CMI, Circle K shall be entitled to recoup or setoff any damages incurred as a result of the Bankruptcy against any amounts found to be due and owing to CMI. The payment of liquidated damages and the retention of the Earnest Money Payment shall be Circle K's sole remedy for an Event of Default by CMI default pursuant to Section 9.1(c)(i) or (ii); provided, however, that in the event of the Bankruptcy of CMI (as hereafter defined) and the rejection of this Agreement in accordance with Article X below, Circle K shall not be limited to the amount of damages it may seek as a claim against CMI. The stipulation of liquidated damages in this Section shall not affect any recovery under any business interruption insurance that CMI or Circle K may maintain, and shall not restrict Circle K's enforcement of CMI's indemnification obligations under this Agreement.

(b) Notwithstanding anything else in this Agreement to the contrary, if Circle K elects to terminate this Agreement because of an Event of Default by CMI pursuant to Section 9.1(c)(xii), Circle K's sole remedy shall be to recover from CMI and CMI shall pay to Circle K; (i) a termination fee of \$3,000,000.00 less the portion of the Earnest Money Payment retained by Circle K pursuant to clause (iii), plus (ii) the amount of actual damages incurred by Circle K, provided that such amount shall not exceed \$5,000,000.00, and shall be reduced by the termination fee paid under clause (i) and by the portion of the Earnest Money Payment retained by Circle K pursuant to clause (iii), plus (iii) the portion of the Earnest Money Payment due pursuant to Section 6.6. An example

of such default payment is set forth on Schedule 8.9(b). Subject to the provisions of this Section 8.9(b), Circle K shall be responsible to pay to CMI any amounts owed to CMI under this Agreement. Circle K shall have the right to offset or recoup any amounts due from CMI to Circle K against (1) any amounts due from Circle K to CMI under this Agreement; (2) any amounts due from Circle K to CMI under the West Coast Agreement, and/or (3) any amounts due from Circle K to CMI under the Software License Agreement or the Software Maintenance Agreement. Additionally, in the event any such amounts or any other amounts shall be found to be due and owing to CMI by Circle K in any Bankruptcy of CMI, Circle K shall be entitled to recoup or setoff any damages incurred as a result of the Bankruptcy against any amounts found to be due and owing to CMI. The payment of the amounts set forth above shall be Circle K's sole remedy for an Event of Default by CMI default pursuant to Section 9.1(c)(xii); provided, however, that in the event of the Bankruptcy of CMI (as hereafter defined) and the rejection of this Agreement in accordance with Article X below, Circle K shall not be limited to the amount of damages it may seek as a claim against CMI.

(c) Notwithstanding anything else in this Agreement to the contrary, if Circle K terminates this Agreement because of any other Event of Default by CMI (including but not limited to the Bankruptcy of CMI), Circle K's sole remedy shall be to recover any actual damages incurred by Circle K, provided that such amount shall not exceed the sum of (i) the portion of the Earnest Money Payment due pursuant to Section 6.6; (ii) any earned but unpaid Management Fee; and (iii) \$1,000,000.00. Subject to the provisions of this Section 8.9(c), Circle K shall be responsible to pay to CMI the Management Fee that CMI earned, and other amounts owed to CMI under this Agreement. Circle K shall have the right to offset or recoup any amounts due from CMI to Circle K against (1) the Annual Management Fee or any amounts due from Circle K to CMI under this Agreement and/or, (2) any amounts due from Circle K to CMI under the West Coast Agreement, and/or (3) any amounts due from Circle K to CMI under the Software License Agreement or the Software Maintenance Agreement. Additionally, in the event any such amounts or any other amounts shall be found to be due and owing to CMI by Circle K in any Bankruptcy of CMI, Circle K shall be entitled to recoup or setoff any damages incurred as a result of the Bankruptcy against any amounts found to be due and owing to CMI. Notwithstanding Circle K's right to recoup or offset with respect to the Software License Agreement, the Software Maintenance Agreement or the West Coast Agreement, the parties acknowledge that the Software License Agreement, the Software Maintenance Agreement and the West Coast Agreement are each a separate agreement and are not integrated with or dependent upon this Agreement.

(d) Notwithstanding anything else in this Agreement to the contrary, upon an Event of Default by Circle K, Circle K shall pay CMI the amounts due pursuant to Section 8.8, and CMI shall be entitled as its sole remedy to terminate this Agreement and to recover any other actual damages incurred by CMI, provided that such amount shall not exceed the minimum amount of the Annual Management Fee for such year (i.e., either \$1,000,000.00 (for the Initial Term), \$1,240,000.00 (for the first Renewal Term), \$1,430,000.00 (for the second Renewal Term) or \$1,675,000.00 (for the third Renewal Term), as applicable).

The limitation of the remedies set forth in Section 8.8 and this Section 8.9 shall in no event (i) limit the liability of any party pursuant to the indemnification provisions of this Agreement upon an Event of Default or otherwise, including upon any termination following an Event of Default, provided that this sentence shall in no way expand the items covered by such indemnification provisions, or (ii) limit the remedies of a party under Section 2.20(e).

8.10 Employees. Upon any termination of this Agreement, excluding termination pursuant to Section 8.4, Circle K shall have complete discretion in staffing the ADC. CMI will be responsible for terminating or relocating any CMI employees not hired by Circle K, at CMI's expense. CMI shall be solely responsible for giving all necessary Worker Adjustment and Retraining Notification (WARN) Act notices or other notices to employees required of CMI by law as a result of the transactions contemplated hereby. During the term of the Agreement and upon any termination, CMI shall be responsible for all employee-related lawsuits, discrimination charges, wage and hour audits to the extent attributable to fines or penalties, workers' compensation claims, that arise or accrue during such employee of the ADC's employment with CMI.

ARTICLE IX

Default

9.1 Events of Default. A party shall be considered in default of its obligations under this Agreement upon the occurrence of any of the events described in this Section 9.1 (each, an "Event of Default").

(a) The dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to perform or pay hereunder; or a party is generally not paying its debts as such debts become due; or a party makes an assignment for the benefit of creditors, commences (as the debtor) a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or commences (as the debtor) any proceeding under any other insolvency law; or a case in bankruptcy or any proceeding under any other insolvency law is commenced against a party (as the debtor) and a court having jurisdiction enters a decree or order for relief against the party as the debtor in such case or proceeding, or such case or proceeding is consented to by the party or remains undismissed for a period of sixty (60) days, or the party consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver, custodian, liquidator or agent (however named) is appointed to administer part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or a party takes any corporate action for the purpose of effecting any of the foregoing;

(b) The failure by a party to observe or perform any material covenant, condition, agreement or undertaking under this Agreement (other than those specified in any other subparagraph of this Section 9.1) on its part to be observed or performed for a period of thirty (30) days (or ten (10) days in case of failure to pay) after notice specifying such failure and requesting

that it be remedied is given to such party, unless (i) the other party shall consent, in writing and in its sole discretion, to an extension of such time prior to its expiration, or (ii) in all cases other than failure to pay, if the default cannot reasonably be cured within such thirty (30) day period, the defaulting party shall have commenced to cure such default within such thirty (30) days and shall thereafter diligently pursue such cure and cure is complete within sixty (60) days.

(c) An Event of Default shall occur with respect to CMI upon the occurrence of any of the following:

(i) the Commencement of Operations for the Arizona stores to be supplied by the ADC, as described on Schedule 4.3(b) shall not have occurred within ten (10) days after the Transition Grace Period End Date set forth on the Transition Schedule, as such date may be extended on a day for day basis for a period equal to the length of Unavoidable Delays;

(ii) if CMI shall fail to pay to Circle K the daily liquidated damages payment of \$100,000.00 described in Section 4.3;

(iii) if CMI shall permit an Event of Default to occur within the parameters set forth in Schedule 2.10(b);

(iv) if CMI shall fail to pay to Circle K the Earnest Money Payment within the 15-day period described in Section 6.6;

(v) if CMI shall fail to maintain the insurance required under this Agreement subject to amendments that the parties may agree to, and such failure continues for seven (7) days after notice to CMI from Circle K or, if no material adverse affect has resulted, such failure continues for thirty (30) days after notice to CMI from Circle K;

(vi) if CMI or any of its directors, officers, employees, contractors, subcontractors or agents, who are directly involved in the construction, start-up, and operation of the ADC shall be found guilty of any gross negligence, willful misconduct, fraud, malfeasance or breach of fiduciary duty which has a material adverse effect on Circle K sales or profit or shall materially violate the provisions of Section 2.20 or 2.21, unless CMI shall cure the same to the reasonable satisfaction of Circle K within thirty (30) days after CMI's discovery thereof;

(vii) if CMI shall assign this Agreement or delegate its duties hereunder, except as permitted under Section 11.7;

(viii) if CMI's corporate existence shall be dissolved or terminated except by merger, consolidation or acquisition that does not constitute an Event of Default under clause (xii) below;

(ix) if any material license held by CMI necessary for the performance of its duties or services hereunder shall be terminated or suspended, and CMI does not arrange for the reinstatement of such license immediately after its termination or suspension;

(x) if CMI or any of its directors, officers, employees or agents shall misappropriate any funds of Circle K and CMI shall not (A) make full restitution thereof, or otherwise cure the same to the reasonable satisfaction of Circle K, within five (5) days after CMI's discovery thereof, and (B) thereafter permanently bar the director, officer, employee, agent or other representative who misappropriated such funds from acting in any capacity with respect to the ADC and any other property that CMI knows is owned by Circle K or any, known (to CMI) Affiliate or agent thereof;

(xi) if a material breach or default by CMI occurs under the Software License Agreement, Software Maintenance Agreement or the Non-Compete Agreement, after expiration of any applicable notice and cure periods. For purposes hereof, the "Non-Compete Agreement" means that Noncompetition Agreement between Circle K and CMI of even date herewith. The Noncompetition Agreement is a separate and independent agreement between Circle K and CMI, and represents right and obligations of the parties that are independent of their rights and obligations under this Agreement; or

(xii) if any transfer or conveyance of more than 4.9% of the stock or beneficial ownership in CMI (either in an individual transaction or in the aggregate, as measured from the date of this Agreement) is made to a Prohibited Assignee. For purposes of this Agreement, a "Prohibited Assignee" shall mean a person or entity who, directly or indirectly, owns, controls or operates a material competitor of Circle K in the drug store business, any petroleum or gasoline-related business (including without limitation, a refinery, wholesale distribution, or retail distribution), or convenience store business on the date of the transfer or conveyance or, unless this Agreement has expired or terminated, within a two (2) year period following the date of the transfer or conveyance, that is in each case, a material competitor to Circle K.

(d) An Event of Default shall occur with respect to Circle K upon the occurrence of any of the following:

(i) if Circle K shall fail to pay to CMI when due any amounts owed to CMI under this Agreement, and such failure continues for ten (10) days after notice from CMI to Circle K; or

(ii) if a breach or default by Circle K occurs under the Software License Agreement, the Software Maintenance Agreement or the Non-Compete Agreement, after expiration of any applicable notice and cure periods.

9.2 Legal Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged breach or default relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding, in addition to any other relief to which it may be entitled, the amount thereof to be set by the court and not a jury.

ARTICLE X

Special Bankruptcy Provisions

In the event of a filing by or against CMI of a case pursuant to the United States Bankruptcy Code or any other similar state or federal insolvency, reorganization, receivership or bankruptcy proceedings (the "Bankruptcy"), the following shall apply to this Agreement:

10.1 Agreement Not Assumable. Neither this Agreement nor the rights and privileges granted to CMI hereunder shall be subject to the provisions of §365(a) of the Bankruptcy Code (11 U.S.C. §365(a)) and this Agreement shall not be assumable by a Trustee or Debtor in Possession in the Bankruptcy nor shall this Agreement be assumable and assignable by a Trustee or Debtor in Possession in the Bankruptcy notwithstanding any provision of the Bankruptcy Code which applies to the assumption and/or the assumption and assignment of executory contracts.

The parties agree that this Agreement is, pursuant to applicable law and the agreement of the parties, nonassumable and nonassignable and, accordingly, the provisions of §365(c) of the Bankruptcy Code (11 U.S.C. §365(c)) apply to and govern the assumability and/or assumability and assignability of this Agreement in a Bankruptcy.

10.2 Stay Relief. In the event a Bankruptcy is filed by CMI, or against CMI and, if filed against CMI, such case has not been dismissed within 60 days of such filing, Circle K will have immediate, automatic, irrevocable and presently effective stay relief. Pursuant to such stay relief, all stays and injunctions in the Bankruptcy, including, but not limited to, the automatic stay arising Section 362(a) of the Bankruptcy Code (11 U.S.C. §362(a)), will be terminated automatically and irrevocably as to Circle K and with respect to the enforcement of its rights and remedies, including, but not limited to, its right to terminate this Agreement. In accordance with such stay relief terminating the automatic stay and any and all other applicable stays and injunctions: (i) CMI will cooperate with Circle K in seeking any necessary or appropriate order of the Bankruptcy Court

having jurisdiction of the Bankruptcy to allow Circle K to enforce its rights and remedies hereunder; (ii) CMI expressly and irrevocably waives and releases any right to claim, in the Bankruptcy Court or in any other federal court or state court, that any stay, injunction, or other restraint or prohibition of any kind should be issued, imposed, or reimposed against or with respect to Circle K; and (iii) CMI expressly and irrevocably waives any claim or argument that this Agreement is assumable by CMI or assumable and assignable by CMI in the Bankruptcy and waives any right to disclaim or disavow the applicability of §365(c) (11 U.S.C. §365(c)) to this Agreement. CMI's waiver and release heretofore stated in this Section 10.2 includes, without limitation, any and all proceedings for injunctive relief of any kind filed by or on behalf of CMI under authority of §105 or §362 of the Bankruptcy Code (11 U.S.C. §105 or §362), Bankruptcy Rule 7065, Rule 65 of the Federal Rules of Civil Procedure, or any other or similar substantive or procedural provisions of federal law, or state law, or federal or state rules of procedures.

ARTICLE XI

General Provisions

11.1 Force Majeure. Either party shall be excused for delays and failures to perform for a period equal to the length of any Force Majeure Delay; provided, that a Force Majeure Delay shall not delay a party's performance if it fails to use all reasonable efforts and diligence to cause the cessation of the Force Majeure Delay. "Force Majeure Delay" shall mean delay to the extent caused by acts of God; acts of a public enemy; fire; civil disturbances; mudslides, landslides, fire or other casualty; strikes, work stoppages, unavailability of or delay in receiving labor or materials, defaults by contractors or subcontractors, weather conditions, and moratoriums, governmental delays and other such factors which are beyond the reasonable control of either party (financial inability excepted). Notwithstanding the foregoing, however, a Force Majeure Delay shall not be deemed to have commenced until the date upon which notice of the occurrence of such event is given by the party claiming the delay to the other party.

11.2 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

11.3 Entire Agreement. This Agreement and the schedules and exhibits attached hereto constitute the entire agreement of the parties with respect to the subject matter hereof. All prior negotiations, representations, understandings and agreements, are hereby superseded and deemed merged herein. This Agreement may be amended, extended, supplemented or modified only by a written instrument executed by Circle K and CMI.

11.4 Governing Law; Venue; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona, without regard to conflict of law principles. The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Arizona and of the United States of America located in the City of Phoenix, Arizona for any actions, suits or proceedings arising out of or relating to this

Agreement and the transactions contemplated hereby, and agree not to commence any action, suit or proceedings relating thereto except in such courts. The parties hereby waive any trial by jury in any action relating to this Agreement.

11.5 Waiver. The failure of either party to require the performance of any terms or obligations of the Agreement, or the waiver by either party of any breach of the Agreement, shall not prevent a subsequent enforcement of such terms or obligations or any other term or obligation or be deemed a waiver of any other breach. No such waiver shall be effective unless it is in writing, executed by the party waiving such breach.

11.6 Validity of Provisions. Except as may otherwise be provided herein, any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, but to the extent that a provision is held to be unenforceable the parties or the court shall attempt to construe the remaining provisions so as to effect the parties' original intent. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

11.7 No Assignment. CMI shall have no right to assign this Agreement, in whole or in part, and any attempted assignment shall be void; provided, however, that CMI may retain contractors for purposes of completing construction as contemplated by this Agreement. Circle K shall have no right to assign this Agreement, in whole or in part, without the prior written consent of CMI; provided, however, that Circle K shall have the right to assign this Agreement in whole or in part, without CMI's consent, to any parent, subsidiary or other Affiliate of Circle K. This Agreement shall be binding on all permitted successors and assigns.

11.8 No Partnership. This Agreement does not create any partnership or joint venture or other relationship between Circle K and CMI, and CMI shall at all times be deemed an independent contractor to Circle K in connection with its obligations under this Agreement.

11.9 No Strict Construction. This Agreement is the result of negotiation between the parties and their respective attorneys and it is the product of cooperative efforts by the parties and their attorneys. All of the terms, conditions and provisions of this Agreement shall be construed in a fair and even manner and not more strictly against any of the parties, and none of the parties will be considered the drafter of this Agreement.

11.10 Notices. All notices, demands and other communications hereunder shall be made in writing, and shall be deemed given or made: (i) as of the date of personal delivery; (ii) when delivered to the United States Postal Service, on the third business day following the deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid; (iii) when delivered by a nationally or internationally recognized delivery service promising delivery within

a period of twenty-four (24) hours, receipt obtained, charges prepaid, on the first business day following the deposit with such delivery service; or (iv) upon confirmation of receipt if sent by facsimile, addressed as follows, or to such other address as a party from time to time designate in writing to the other party:

Circle K: Circle K Stores Inc.
 1500 North Priest Drive
 Tempe, Arizona 85281
 Attn.: Vice President of Marketing
 Facsimile: (602) 728-5202

With a copy to: Circle K Stores Inc.
 1500 North Priest Drive
 Tempe, Arizona 85281
 Attn.: Legal Department
 Facsimile: (602) 728-5277

CMI: Core-Mark International, Inc.
 395 Oyster Point Blvd., Suite 415
 South San Francisco, CA
 Attn.: Executive Vice President of Sales

11.11 No Publicity. Except for such announcements and statements as are required by law or applicable rule or regulations, the parties hereto agree to obtain the consent of each other prior to issuing any public announcement or statement with respect to this Agreement or the transactions contemplated herein.


11.12 Time. Time is of the essence as to this Agreement. The foregoing is a rule of construction of this Agreement and is not, standing alone, a covenant.

11.13 Schedules. The Schedules attached hereto are incorporated herein by reference for all purposes.

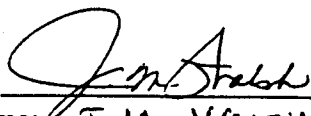
11.14 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CIRCLE K STORES INC., a Texas corporation

By: 
Name: Robert J. LAVINIA
Title: PRESIDENT

CORE-MARK INTERNATIONAL, INC., a Delaware corporation

By: 
Name: J.M. WALSH
Title: EXECUTIVE V.P.

List of Schedules

Schedule 1.1	Real Property
Schedule 2.2(a)	Plans and Specifications for the Modifications
Schedule 2.2(b)	Schedule for Construction of the Modifications
Schedule 2.4	Merchandise Income
Schedule 2.10(a)	Description of CMI Operations Manual
Schedule 2.10(b)	Measurable Performance Objectives
Schedule 2.21	CMI Ethics Policy
Schedule 4.1	Start-Up Budget
Schedule 4.2	Operating Budget (summary form)
Schedule 4.3(a)	Project Schedule
Schedule 4.3(b)	Transition Schedule
Schedule 5.3	Chart of Accounts
Schedule 6.2	Employee Compensation Criteria
Schedule 6.4	Calculation of Annual Management Fee
Schedule 7.1	Insurance Policies
Schedule 8.9(b)	Example of Default Payment

Schedule 1.1

Real Property

EXHIBIT B

LEGAL DESCRIPTION

That part of the East half of the Southeast quarter of Section 3, Township 1 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of said Southeast quarter of Section 3;

thence North 00 degrees 00 minutes 00 seconds East, along the East line of said Southeast quarter of Section 3, also being the monumented line of 83rd Avenue, a distance of 1545.62 feet;

thence departing said Section line, North 90 degrees 00 minutes 00 seconds West, along a line perpendicular to the Easterly line of said Section, a distance of 55.00 feet to the POINT OF BEGINNING;

thence continuing North 90 degrees 00 minutes 00 seconds West, a distance of 1207.92 feet;

thence North 00 degrees 00 minutes 00 seconds East, a distance of 466.92 feet;

thence North 78 degrees 04 minutes 00 seconds East, a distance of 128.94 feet;

thence South 90 degrees 00 minutes 00 seconds East, a distance of 1081.76 feet to the Westerly right-of-way of 83rd Avenue;

thence South 00 degrees 00 minutes 00 seconds West, along the westerly right-of-way of 83rd Avenue, parallel with and 55.00 feet West of said Southeast quarter of Section 3 line, a distance of 493.58 feet, to the POINT OF BEGINNING.

Schedule 2.2(a)

Plans and Specifications for the Modifications