

Fill in this information to identify the case:	
Debtor 1	Gas-Mart USA, Inc.
Debtor 2	
(Spouse, if filing)	
United States Bankruptcy Court	Western District of Missouri
Case number:	15-41915

FILED
 U.S. Bankruptcy Court
 Western District of Missouri
 12/29/2015
 Paige Wymore-Wynn, Clerk

**Official Form 410
 Proof of Claim**

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	ATHERTONS AUTOMOTIVE	
	Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom?	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? ATHERTONS AUTOMOTIVE Name 2900 WEST BROADWAY COUNCIL BLUFFS IA 51501-0000 Contact phone 8162218855 Contact email victor@merrickbakerstrauss.com Uniform claim identifier for electronic payments in chapter 13 (if you use one):	Where should payments to the creditor be sent? (if different) Name Contact phone Contact email
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known)	Filed on
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing?	MM / DD / YYYY

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 65000.00
 Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
 Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as healthcare information.
 Breach of Contract

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply.</i>	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(_) that applies	\$ _____
* Amounts are subject to adjustment on 4/1/16 and every 3 years after that for cases begun on or after the date of adjustment.		

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/29/2015

MM / DD / YYYY

/s/ Victor F. Weber

Signature

Print the name of the person who is completing and signing this claim:

Name Victor F. Weber

First name Middle name Last name

Title Attorney

Company Merrick, Baker & Strauss, P.C.

Address 1044 Main Street

Number Street

Kansas City, MO 64105

City State ZIP Code

Contact phone 8162218855 Email victor@merrickbakerstrauss.com

**GAS-MART USA, INC..
BRANDED RETAILER AGREEMENT**

This Branded Retailer Agreement ("Agreement") is made between Gas-Mart USA, Inc. a Missouri corporation ("Gas-Mart") and Athertons Automotive, d/b/a Athertons 66 ("Retailer Supplied Dealer"), and is effective as of the date of acceptance on the last signature on this Agreement (the "Effective Date").

WITNESSETH:

WHEREAS, Gas-Mart is a branded marketer for the ConocoPhillips Company and is engaged in the business of marketing to independent retailers ConocoPhillips Brand petroleum products; and

WHEREAS, Gas-Mart has made a significant investment over the years in promoting and assisting independent retailers in the promotion of the ConocoPhillips Brands; and

WHEREAS, Retailer Supplied Dealer recognizes that Gas-Mart has obligations to ConocoPhillips and a protectible business interest in ensuring that Retailer Supplied Dealer's distribution of branded ConocoPhillips products under this Agreement will be accomplished in a manner which respects the high standards, reputation and integrity of the ConocoPhillips Brands which ConocoPhillips has created over the years; and

WHEREAS, Gas-Mart's ability to recover its costs and investment in its relationship with Retailer Supplied Dealer is dependent on its sales of Products to Retailer Supplied Dealer under this Agreement, and it is specifically understood and agreed by Retailer Supplied Dealer that the minimum volume requirements set forth in Section are reasonable and of material significance to this Agreement; and

WHEREAS, Gas-Mart and Retailer Supplied Dealer desire to set out the terms and conditions under which Gas-Mart shall sell to Retailer Supplied Dealer and Retailer Supplied Dealer shall purchase from Gas-Mart various petroleum products for resale by Retailer Supplied Dealer to its customers under certain ConocoPhillips Brands; and

WHEREAS, Retailer Supplied Dealer's failure to carry out its responsibilities hereunder jeopardizes the obligations of Gas-Mart to protect the reputation of ConocoPhillips, and Retailer Supplied Dealer acknowledges that adherence to the terms of this Agreement is a matter of mutual importance and consequence to itself, to Gas-Mart, to ConocoPhillips, and to all other branded ConocoPhillips retailers.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by Gas-Mart and Retailer Supplied Dealer from the execution of this Agreement, the parties hereto agree that the above recitals are a part of this Agreement and further agree as follows:

1. CERTAIN DEFINED TERMS. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings.

“Brand, Branded, and Licensed Brand” means the Phillips 66 trademark, the ConocoPhillips Brand or ConocoPhillips Brands and service marks, logotypes, emblems and other commercial symbols identified in the Branded Marketer Agreement. A Product is considered “branded” if the brand is on the Products or its containers or is displayed in association with the Products.

“Branded Marketer Agreement” means the agreement between ConocoPhillips Company and Gas-Mart USA, Inc. dated March 1, 2004. The Agreement covers the use of trademarks, trade names and service marks for ConocoPhillips Brands and the sale, payment, and marketing of said Brands.

“Calendar Year” means a twelve month period from January 1st to December 31st.

"ConocoPhillips Brand" or "ConocoPhillips Brands" means Products under certain ConocoPhillips trademarks, associated brands, service marks and trade names

“CP” means ConocoPhillips Company, a Delaware corporation.

“Minimum Gallons” means 1,080,000 gallons of Products Retailer Supplied Dealer is allocated to purchase from Gas-Mart each Calendar Year.

“Products” means those petroleum products, including gasoline and diesel fuel bearing the Licensed ConocoPhillips Brand sold by Gas-Mart to Retailer Supplied Dealer under this Agreement.

“Rack Price” means the CP per gallon rack price from various approved terminals published by CP on a daily basis from Monday through Friday.

“Seller” means Gas-Mart USA, Inc., a Missouri corporation or its affiliates.

“Gas-Mart’s Supply Agreement with CP” means the Branded Marketer Agreement and exhibits between CP and Gas-Mart USA, Inc.. The Branded Marketer Agreement is periodically revised and amended.

"Retailer Supplied Dealer" means a independent retailer or dealer supplied with Branded ConocoPhillips Products by Gas-Mart.

“Retailer Supplied Outlet” are those outlets owned and/or operated by a Retailer Supplied Dealer as a gas station/convenience store located at 2900 West Broadway, Council Bluffs, Iowa 51501.

2. SELLING RIGHTS UNDER THE CONOCOPHILLIPS BRANDS.

- A. As long as Gas-Mart shall remain a marketer of ConocoPhillips products and as long as this Agreement shall remain in effect, Gas-Mart, pursuant to authority to do so granted by ConocoPhillips to Gas-Mart, hereby gives Retailer Supplied Dealer permission to use the ConocoPhillips Brand or ConocoPhillips Brands (hereinafter called "Licensed ConocoPhillips Brand" or "Licensed ConocoPhillips Brands"), in conjunction with the advertising or sale of Branded ConocoPhillips Products, or other products selected by ConocoPhillips for sale under the Licensed ConocoPhillips Brands, in accordance with ConocoPhillips Brand and Image Standards and requirements for the ConocoPhillips Brands, as defined in Section 6 below, and ConocoPhillips' Programs (as hereinafter defined), set forth on the ConocoPhillips Marketing website, and which are incorporated herein by this reference.
- B. As long as this Agreement shall remain in effect, Retailer Supplied Dealer shall have the right to purchase from Gas-Mart (according to the provisions of this Agreement and) and to sell to its customers Products bearing the Licensed ConocoPhillips Brand or Licensed ConocoPhillips Brands.

3. DURATION.

- A. Subject to the early termination provisions herein after set forth, the term of this Agreement shall be for the period commencing on the Effective Date and ending on the December 31, 2015 ("Term").
- B. Retailer Supplied Dealer shall have the absolute right to non-renew this Agreement without cause at the end of the Term by giving Gas-Mart written notice at least ninety (90) days in advance of such non-renewal date.
- C. Gas-Mart shall have the right not to renew this Agreement at the end of the Term and the right to terminate this Agreement at any time during the Term upon ninety (90) days' written notice, or upon a lesser period of notice where ninety (90) days' notice is unreasonable, for any of the grounds permitted by the Petroleum Marketing Practices Act ("PMPA").

4. NO EXCLUSIVE TERRITORY. NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS GRANTING RETAILER SUPPLIED DEALER AN EXCLUSIVE TERRITORY OR AN EXCLUSIVE GROUP OF CUSTOMERS. GAS-MART RESERVES THE RIGHT TO SELL CONOCOPHILLIPS PRODUCTS TO ANY CUSTOMER OF ITS CHOOSING. IN ORDER TO ENSURE THE VIABILITY OF THE CONOCOPHILLIPS BRANDS AND ENHANCE CONSUMER AWARENESS OF THE BRANDS FOR THE BENEFIT OF ALL BRANDED CONOCOPHILLIPS OUTLETS.

5. USE OF TRADEMARKS, ASSOCIATED BRANDS SERVICE MARKS, AND TRADE NAMES.

- A. Retailer Supplied Dealer shall not at any time, or in any manner, contest the validity of ConocoPhillips' ownership of or rights to Licensed Conoco Phillips Brands, whether now existing or hereafter obtained. Retailer Supplied Dealer further acknowledges that all goodwill relating to the Licensed ConocoPhillips Brands shall inure to the benefit of ConocoPhillips and its authorized marketer, Gas-Mart.

- B. Upon Gas-Mart's request, Retailer Supplied Dealer agrees to keep Gas-Mart informed of the actual Product volumes sold at its outlet. ConocoPhillips and/or Gas-Mart shall also have the right to revoke its approval to use the Licensed ConocoPhillips Brand or Licensed ConocoPhillips Brands for Retailer Supplied Dealer's failure to conform to the ConocoPhillips Brand use requirements in Section 2.A and in this Section 5; failure to conform to ConocoPhillips' then current Brand and Image Standards and requirements set forth in Section 6, as supplemented or amended from time to time; failure to conform to the product standards in Section 9 below; or Retailer Supplied Dealer engaging in any action or activity that brings the ConocoPhillips or the ConocoPhillips Brands into disrepute. In the event of such revocation, which is also refer/ed to as "debranding", Retailer Supplied Dealer shall cease using or displaying, certain or all of the ConocoPhillips Brands at that Retailer Supplied Outlet.

- C. Retailer Supplied Dealer shall maintain, at its expense, all signs and poles displaying the Licensed ConocoPhillips Brands at the Retailer Supplied Outlets in good condition and repair. Retailer Supplied Dealer further agrees to keep clean all such signs and promptly replace, at its expense, all burned out or defective lamps illuminating said signs. Gas-Mart reserves the right at any and all times to enter upon the Retailer Supplied Outlet premises to inspect any or all of the Licensed ConocoPhillips Brands to:
 - i. Determine if the obligations of Retailer Supplied Dealer are being fulfilled hereunder with regard to the display of the Licensed ConocoPhillips Brands, and
 - ii. Maintain and/or repair any or all of the displayed Licensed ConocoPhillips Brands, at Retailer Supplied Dealer's expense, in the event Retailer Supplied Dealer fails to maintain as required.

- D. Retailer Supplied Dealer shall, at its sole cost and expense, perform all brand image upgrades on the Retailer Supplied Outlet as may be required by CP, including but not limited to the "Oasis Image Upgrade". The Oasis Image Upgrade must be completed by December 31, 2006. Gas-Mart shall select the contractor/installer of the Oasis Image Upgrade and shall advance the monies necessary to pay the cost of the Oasis Image Upgrade, and Retailer Supplied Dealer shall repay Gas-Mart by allowing Gas-Mart to deduct 100% of Retailer Supplied Dealer's Rebate Allowance monies until the upgrade is fully paid.

- E. For Retailer Supplied Outlets existing at the Effective Date of this Agreement, if requested by Gas-Mart, Retailer Supplied Dealer agrees to take title to all signs bearing the Licensed ConocoPhillips Brands and related poles, if applicable, previously owned by Gas-Mart, and has or will execute a separate purchase agreement and Bill of Sale with Gas-Mart.
- F. Retailer Supplied Dealer shall not use ConocoPhillips name and/or the ConocoPhillips Brands in any email address, domain name, website name and/or URL address.
- G. At no time during the Term hereof shall Retailer Supplied Dealer advertise or use in advertising or any other form of promotion the ConocoPhillips Brands except as may be approved by Gas-Mart, such approval not to be unreasonably withheld. Furthermore, if Retailer Supplied Dealer is granted the right to use the Licensed ConocoPhillips Brands in conjunction with websites, advertising, business forms, structures, vehicles and other Retailer property directly related to the advertising, distribution and/or sale of Branded ConocoPhillips Products under this Agreement, Retailer Supplied Dealer must properly identify itself as a "Products Retailer" adjacent to the Licensed ConocoPhillips Brands. At no time during the Term hereof and at no time from and after the expiration or termination of the Term hereof shall Retailer Supplied Dealer advertise or otherwise utilize, either at the Retailer Supplied Outlets or elsewhere, any marks, trade dress, logotypes, or names confusingly similar to the ConocoPhillips Brands.
- H. For the benefit of consumers, Retailer Supplied Dealer shall display in or on the Retailer Supplied Outlet building, in a prominent, conspicuous location, the name of the Retailer Supplied Outlet's operator and/or owner and the Retailer Supplied Outlet address, as more specifically set forth in ConocoPhillips' Brand and Image Standards and requirements for the ConocoPhillips Brands, as described on the ConocoPhillips Marketing website.
- I. Upon the termination or nonrenewal of this Agreement, Retailer Supplied Dealer shall immediately cease holding itself out to the public as a Branded ConocoPhillips retailer; and upon such termination or nonrenewal, or the debranding for any reason of a Retailer Supplied Outlet, Retailer Supplied Dealer shall immediately discontinue the use of the Licensed ConocoPhillips Brand or Licensed ConocoPhillips Brands and the related trade dress, and remove from the premises and surrender to Gas-Mart, at Retailer Supplied Dealer's risk and expense, any and all ConocoPhillips Brand identification, including credit card imprinters, which makes it appear that Retailer Supplied Dealer is an authorized branded ConocoPhillips retail dealer. Further rules and conditions for the removal of ConocoPhillips Brands, and related trade dress are set forth in ConocoPhillips' Brand and Image Standards and requirements for the ConocoPhillips Brands, as described on the ConocoPhillips Marketing website. If Retailer Supplied Dealer fails to remove such ConocoPhillips Brand identification

from the Retailer Supplied Outlet, Gas-Mart may enter and remove it at the expense of Retailer Supplied Dealer, including any reasonable attorneys' fees and costs.

- J. Retailer Supplied Dealer shall only offer for sale or sell Branded ConocoPhillips Products under the ConocoPhillips Brands. Retailer Supplied Dealer shall use the ConocoPhillips Brands only in a form and manner approved by Gas-Mart, and shall not sell any products, whether purchased from Gas-Mart or not, under any brand, trademark, service mark, or trade name which is confusingly similar to any ConocoPhillips Brand, or under any circumstances likely to cause confusion, mistake, or deception as to the origin, source, or sponsorship of the products.
- K. Retailer Supplied Dealer acknowledges that ConocoPhillips reserves the right at any time to change its product line and specifications, trade dress, trade names, and trademarks or to change or withdraw any services offered in connection with any products such as, but not limited to, credit card acceptance. In the event of such change, Gas-Mart shall be relieved of all obligation to sell such discontinued products or to offer such discontinued products, trade dress, trade name, trademark or services to Retail Supplied Dealer; and if ConocoPhillips shall market any other brand or product in lieu of the discontinued items, this Agreement shall embrace such new brands or products. Gas-Mart shall not be liable to Retailer by reason of any such changes.
- L. If Retailer Supplied Dealer charges a different price for Branded ConocoPhillips Products sold for cash than for Branded ConocoPhillips Products sold for credit under a ConocoPhillips credit card, then to avoid confusion and to protect the goodwill and integrity of the ConocoPhillips Brands, such Retailer Supplied Dealer shall either:
 - i. dispense Branded ConocoPhillips Products through dispensers which are capable of displaying both prices, not only in price per unit but in price per sale; or
 - ii. dispense Branded ConocoPhillips Products sold at a cash price and Branded ConocoPhillips Products sold at a credit price from separate dispenser islands, with each island being clearly and prominently identified as to whether it is dispensing Branded ConocoPhillips Products at the cash or credit price.

6. BRAND AND IMAGE STANDARDS.

- A. Consistent with the principles herein set forth, including but not limited to Section 26 of this Agreement, Retailer Supplied Dealer shall conduct its independent business operations in compliance with the standards set forth herein or in any other document or exhibit pertaining to brand and image standards which will promote the continuing good reputation of ConocoPhillips and all other branded ConocoPhillips retailers.

- B. All persons on Retailer Supplied Outlets must be treated fairly, honestly, and courteously, and consumer complaints must be handled in accordance with Section 7 below.
- C. Each Retailer Supplied Outlet, in its entirety, including the grounds must be clean, in good repair, and well maintained.
- D. A Retailer Supplied Outlet must complement the community and the environment. Furthermore, a Retailer Supplied Outlet must not engage, permit, or cooperate in any conduct that reflects unfavorably on the reputation of ConocoPhillips in the community served by Retailer, or in ConocoPhillips' or Gas-Mart's opinion impairs the goodwill associated with the ConocoPhillips Brands, or constitutes a deceptive or unfair trade practice under applicable laws. Retailer Supplied Dealer shall cooperate, and shall take reasonable steps to ensure that the operators of each Retailer Supplied Outlet including its employees, vendors, contractors and agents cooperate, fully with the performance of Retailer Supplied Dealer obligations under this Agreement and any related or supplemental agreements. Retailer Supplied Dealer shall not permit on, in or from the Retailer Supplied Outlet:
 - i. price gouging or any conduct constituting an unfair trade practice, in the sale of any product or service;
 - ii. any illegal consumption of intoxicating beverages;
 - iii. the sale or use of illegal drugs or drug paraphernalia;
 - iv. the sale of tobacco or alcoholic beverages to minors or to persons who are reasonably believed to be intoxicated or impaired; or
 - v. any offensive merchandise, action or activity (including without limitation books, magazines, video tapes, and video games that emphasize nudity) that ConocoPhillips in its reasonable judgment determines may be offensive to the general public and may bring one of the ConocoPhillips Brands into disrepute.
- E. A Retailer Supplied Outlet must be operated with personnel who are well groomed and wear clean, appropriate apparel.
- F. A Retailer Supplied Outlet must make reasonable efforts to display and sell the Licensed ConocoPhillips Brand of motor oil.
- G. Retailer Supplied Dealer shall comply with all applicable petroleum product regulations, as revised from time to time.
- H. To ensure consistent quality and brand image, each Retailer Supplied Outlet must attain passing scores in ConocoPhillips' Image Evaluation Program, described in ConocoPhillips' Brand and Image Standards. The Image Evaluation form in use at any time during the Term of this Agreement may be obtained from ConocoPhillips, and

is incorporated into this Agreement by this reference. If a Retailer Supplied Outlet fails an image evaluation, it will be re-evaluated approximately thirty (30) to forty-five (45) days after such image evaluation. If the Retailer Supplied Outlet fails the re-evaluation, it will be debranded. It is understood and agreed that a Retailer Supplied Outlet will also be debranded for habitual failures if it fails three (3) image evaluations (excluding re-evaluations) in a row based on either pass/fail Brand image requirements or exterior/interior appearance points, even though the Retailer Supplied Outlet is able to pass each re-evaluation. Notwithstanding any provision to the contrary in this Agreement, this remedy for habitual failures and the counting of the three (3) failed image evaluations shall survive the renewal of this Agreement. Retailer Supplied Dealer acknowledges that ConocoPhillips reserves the right to amend the Image Evaluation Program set forth above or the Image Evaluation form at any time upon thirty (30) days' written notice to Retailer Supplied Dealer..

- I. Each Retailer Supplied Outlet must remain open to the public each day, during hours determined by Gas-Mart and/or the Retailer Supplied Dealer of the Retailer Supplied Outlets. If a Retailer Supplied Outlet is closed to the public for a period of seven (7) consecutive days, or does not offer Branded ConocoPhillips Products for sale to the public for a period of seven (7) consecutive days; Gas-Mart and/or ConocoPhillips shall have the right, at their discretion, to debrand the Retailer Supplied Outlet and remove or cause Retailer Supplied Dealer to remove all ConocoPhillips Brands and trade dress, according to the procedure described in Section 5.I of this Agreement.
- J. Retailer Supplied Dealer specifically understands and agrees that the Brand and Image Standards are reasonable and of material significance to this Agreement and to the consumers who patronize Retailer Supplied Outlets. Retailer Supplied Dealer further understands that it is reasonable for ConocoPhillips and/or Gas-Mart to debrand any Retailer Supplied Outlet which does not comply with this Section 6, or to terminate this Agreement in its entirety where the violation involves multiple Retailer Supplied Outlets, upon written notice to Retailer in accordance with the Petroleum Marketing Practices Act.

7. CONSUMER COMPLAINTS. Retailer Supplied Dealer shall manage consumer complaints in accordance with ConocoPhillips' consumer complaint process, which is provided on the ConocoPhillips Marketing website. Retailer Supplied Dealer agrees to develop consumer responsiveness programs designed to respond to and resolve consumer inquiries or complaints received directly by Retailer Supplied Dealer in a consistent, timely and appropriate manner. For consumer inquiries and complaints received by ConocoPhillips and forwarded to Retailer for response, Retailer Supplied Dealer is responsible for providing feedback to Gas-Mart, within ten (10) business days from receipt of the complaint, concerning the corrective action which Retailer Supplied Dealer has taken or will take. If the corrective action requires more than ten (10) business days, Retailer shall provide ConocoPhillips with status updates within each ten day business period until the corrective action is complete. If timely response or update is not received from Retailer Supplied

Dealer and Gas-Mart determines it is prudent to pay the consumer, Gas-Mart reserves the right to invoice the Retailer for such amount paid to the consumer. In situations where the severity of the complaint, in Gas-Mart's opinion, requires more timely response, the Retailer Supplied Dealer shall respond as requested by ConocoPhillips. In situations where the consumer complaint involves allegations of abusive language, sexual harassment, discriminatory treatment, physical altercation, or personal injury, Retailer Supplied Dealer will contact ConocoPhillips' Consumer Services group within two (2) business days. Retailer Supplied Dealer agrees that the provisions contained in this Section 7 are reasonable and of material significance to this Agreement, and further understands and acknowledges that it is reasonable for ConocoPhillips to debrand any Retailer Supplied Outlet if Retailer Supplied Dealer fails to take reasonable action to satisfy consumer complaints as outlined in this Section 7 with regard to such Retailer Supplied Outlet.

8. PROGRAMS.

- A. Gas-Mart may provide to Retailer Supplied Dealer and, if so provided, Retailer Supplied Dealer shall comply with the provisions of Incentive Programs or Marketing Services Allowance for the ConocoPhillips Brands, as may be established from time to time by Gas-Mart, and which Gas-Mart may revise from time to time at its sole discretion. Retailer Supplied Dealer shall execute a separate agreement or amendment to this Agreement to enroll in any such program and to evidence Retailer Supplied Dealer's agreement with the provisions of such program.
- B. Gas-Mart may make available to Retailer Supplied Dealer, on such terms as Gas-Mart and Retailer Supplied Dealer may agree and within the confines of existing laws and regulations, advertising and promotional materials, including materials Gas-Mart may require Retailer Supplied Dealer to participate in such promotional plans as ConocoPhillips may undertake to sponsor, and materials necessary for participation in such promotional plans as ConocoPhillips may provide and Gas-Mart may sponsor. In order to optimize effective brand and image representation, except where prohibited by applicable state law, Retailer Supplied Dealer shall participate in promotions and point-of-purchase programs as Gas-Mart may require from time to time. Promotions shall be required no more than twice per calendar year and the cost of each promotion shall be shared by Gas-Mart and Retailer Supplied Dealer as Gas-Mart shall reasonably determine in its sole discretion.
- C. Notwithstanding any provision of this Agreement to the contrary, the provisions of all prior agreements related to incentive payments between Gas-Mart and Retailer Supplied Dealer or any of its predecessors related to incentive program payments on a Retailer Supplied Outlet that is still a part of this Agreement shall remain in full force and effect and be a part of this Agreement, unless specifically superceded and cancelled by Retail Supplied Dealer's written agreement to a subsequent ConocoPhillips program offered by Gas-Mart. It is specifically understood and agreed, however, that all unamortized Incentive Program payments which are due to

ConocoPhillips and/or Gas-Mart upon debranding of a Retailer Supplied Outlet or termination or nonrenewal of this Agreement shall survive the termination or nonrenewal of this Agreement or Retailer Supplied Dealer's agreement to enter into a subsequent ConocoPhillips program until fully paid to ConocoPhillips and/or Gas-Mart.

9. PRODUCT IDENTIFICATION. Consistent with the principles herein set forth, including but not limited to Section 26 of this Agreement, Retailer Supplied Dealer shall conduct its independent business operations in compliance with the standards set forth below, which will promote the continuing good reputation of ConocoPhillips, Gas-Mart and all other branded ConocoPhillips retailers:

- A. As stated in more detail in Section 5 above, Retailer Supplied Dealer may only use the Licensed ConocoPhillips Brand or Licensed ConocoPhillips Brands in connection with any advertising, distribution or sale of Branded ConocoPhillips Products or other products selected by Gas-Mart for sale under the Licensed ConocoPhillips Brand or Licensed ConocoPhillips
- B. Retailer Supplied Dealer may not adulterate, misbrand or mislabel motor fuels sold hereunder.
- C. Retailer Supplied Dealer agrees not to sell any Branded ConocoPhillips Products under the ConocoPhillips Brand which do not contain the additives which are required by ConocoPhillips at any given time.
- D. Retailer Supplied Dealer understands and agrees that, except for octane blending of pure gasolines, no blended gasolines shall be sold hereunder unless previously approved by ConocoPhillips in writing.
- E. No alternative motor fuel as defined by the Energy Policy Act of 1992 (such as propane and CNG.) shall be sold from a premises displaying any of the ConocoPhillips Brands unless the alternative motor fuel is supplied by Gas-Mart or by a supplier approved in writing by Gas-Mart. Additionally, Retailer Supplied Dealer must execute a separate agreement before selling alternative motor fuels from a premises or dispenser displaying any of the ConocoPhillips Brands. Further more, alternative fuels sold as non-motor fuel shall not be in the trade dress associated with any of the ConocoPhillips Brands, shall not be sold from the motor vehicle fueling area or in close proximity thereto, and shall be clearly marked that the fuel is not a Branded ConocoPhillips Product.
- F. No off-road distillate (red dyed) shall be sold from a premises displaying any of the ConocoPhillips Brands unless the off-road distillate is supplied by Gas-Mart or by a supplier approved in writing by ConocoPhillips and Gas-Mart.

G. RETAILER SUPPLIED DEALER AGREES THAT THE PROVISIONS CONTAINED IN THIS SECTION 9 ARE REASONABLE AND OF MATERIAL SIGNIFICANCE TO THIS AGREEMENT. RETAILER SUPPLIED DEALER FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT, GIVEN THE SERIOUSNESS OF THE VIOLATION, IT IS REASONABLE FOR CONOCOPHILLIPS AND/OR GAS-MART TO DEBRAND ANY RETAILER SUPPLIED OUTLETS WHICH ARE IN VIOLATION OF SAID PROVISIONS, OR TO TERMINATE THIS AGREEMENT IN ITS ENTIRETY UPON 10 DAYS WRITTEN NOTICE TO RETAILER SUPPLIED DEALER.

10. RIGHT TO AUDIT AND INSPECT. Retailer Supplied Dealer shall permit such inspection of its business operations by Gas-Mart, its employees and agents, as may reasonably be required to determine whether Retailer Supplied Dealer is in compliance with the Agreement. To ensure the integrity of Branded ConocoPhillips Products and the proper use of ConocoPhillips Brands, ConocoPhillips and/or Gas-Mart reserves the right to take samples, to take meter readings, and to inspect bills of lading and other relevant records during business hours at any Retailer Supplied Outlet.

11. RETAILER SUPPLIED DEALER REBATE ALLOWANCE. Gas-Mart shall pay to Retailer Supplied Dealer a Rebate Allowance of \$.0185 per gallon for all gasoline Products purchased. The Rebate Allowance shall be determined on a monthly basis and paid on a quarterly basis within thirty days (30) after the end of the quarter.

12. PRICE. The purchase price for all Products purchased during the Term shall be one-half cent (\$.0050) per gallon above the Rack Price. In addition to the Rack Price charged for Products, Retailer Supplied Dealer shall pay such other and additional sums as Gas-Mart deems appropriate and in effect for such Products at the time of such delivery, including and subject to delivery charges provisions regarding imposition of federal, state or local taxes, licenses fees, inspection fees, or other charges imposed by any governmental authority or agency. Prompt payment discounts, when applicable, shall be allowed on the amount of the invoice less all such taxes, fees or charges.

13. DELIVERY OF PRODUCTS. Gas-Mart will provide or arrange for delivery of Products to Retailer Supplied Dealer at the Retailer Supplied Outlet. Delivery shall be completed upon unloading of the transport truck at the appropriate Retailer Supplied Outlet. Delivery charges will be billed directly to Buyer from the common carrier for the motor fuel deliveries. Buyer shall be responsible for back-haul charges if Buyer without justification fails to accept all or part of any delivery.

14. PAYMENT TERMS.

A. Normal payment terms apply for so long as Retailer Supplied Dealer is approved by Gas-Mart for a line of credit. Normal payment terms hereunder shall be Gas-Mart's

established payment terms for Branded ConocoPhillips Products sold to a branded ConocoPhillips Retailer Supplied Dealer, as established from time to time. As set forth in Section 16 below, credit card invoices assigned to ConocoPhillips and when accepted by ConocoPhillips shall be automatically applied to Retailer Supplied Dealer's outstanding account balance for product purchases and other amounts owing to Gas-Mart. All payments and other fees or charges due from Retailer Supplied Dealer shall be made in a manner designated by Gas-Mart.

- B. Normal payment terms do not apply to purchases that cause Retailer Supplied Dealer to exceed its approved credit limit which may be adjusted or canceled by Gas-Mart from time to time at Gas-Mart's sole discretion. Notwithstanding payment terms printed on any invoice, if Retailer Supplied Dealer's outstanding payment obligations exceed the credit limit, payment terms for the over limit amounts shall be immediate payment upon delivery of product, unless Gas-Mart approves a temporary higher credit limit. The payment shall be made by wire transfer in an amount sufficient to bring such payment obligations within the credit limit.
- C. No payment made to Gas-Mart by check, electronic funds transfer, or by any other instrument shall contain a restrictive endorsement of any kind, and any such restrictive endorsement shall have no legal effect even if the instrument restrictively endorsed is processed for payment and Gas-Mart retains the proceeds.
- D. Gas-Mart may assess a delinquency charge on all overdue sums owing to Gas-Mart. Such delinquency charge shall be determined in accordance with applicable law.
- E. If Gas-Mart refers Retailer Supplied Dealer's account for collection, Retailer Supplied Dealer agrees to pay all collection costs permitted by applicable law, including any and all reasonable attorneys' fees, court costs, and allowable interest necessary to secure collection, in addition to the outstanding balance. In the event this Agreement is terminated for nonpayment or for failure to pay timely all sums due, then no liability shall exist for any undelivered products hereunder.

15. CREDIT CARDS, OTHER PAYMENT METHODS, EPOS AND NETWORK ACCESS.

- A. Certain terms used in this Section 15 are defined below:

Card Transaction - means a Credit Transaction, Debit Transaction, and/or transaction involving a Prepaid Card.

Credit Card - means a card or other evidence of credit, authorizing the cardholder to obtain goods and services on credit. It includes off-line debit cards that authorize electronic transfer of funds from the cardholder's account but generally does not require use of the cardholder's personal identification number.

Credit Transaction - means the process of data capture and transaction processing that allows a consumer to use a Credit Card for payment of authorized purchases.

Debit Card - means a card or access device issued by a financial institution that authorizes an electronic transfer of funds from the cardholder's account for payment of authorized purchases. it generally requires use of the cardholder's personal identification number and may commonly be known as an on-line debit card.

Debit Transaction - means the process of data capture, authorization and electronic transfer of funds from the cardholder's account for payment of authorized purchases.

EPOS - means electronic point of sale - equipment used to process credit and debit card transactions.

NSP- means Network Service Provider or its assignee or successor with respect to the NSP's functions related to this policy.

Prepaid Card - means a retail cash card that can be activated and then redeemed at Retailer Supplied Outlets.

- B. Retailer Supplied Dealer shall accept Prepaid Cards and Debit Cards and shall grant credit to holders of all ConocoPhillips Accepted Credit Cards at Retailer Supplied Dealer' places of business where ConocoPhillips marketing standards are maintained, as outlined in the then current ConocoPhillips Credit Card Guide with the applicable ConocoPhillips Brand, and subject to the terms thereof. "ConocoPhillips Accepted Credit Cards" are defined in the applicable ConocoPhillips Credit Card Guide, which is incorporated herein by this reference and which may be revised from time to time or discontinued at ConocoPhillips' sole discretion, and which may be supplemented with the ConocoPhillips Marketing website communications, and other forms of notification to Retailer Supplied Dealer (all referred to collectively as the "Credit Card Guide"). Retailer Supplied Dealer shall accept other payment methods designated by ConocoPhillips and/or Gas-Mart from time to time in the applicable ConocoPhillips Credit Card Guide ("Payment Methods").
- C. Gas-Mart shall accept assignment of ConocoPhillips Accepted Credit Card invoices from all ConocoPhillips Accepted Credit Cards, subject to the terms and conditions in the applicable Credit Card Guide. Gas-Mart will refuse to honor ConocoPhillips Accepted Credit Cards for purchases made at locations other than a Retailer Supplied Outlet, and may not assign invoices to ConocoPhillips for sales or purchases made at retail outlets not previously approved by ConocoPhillips. Except as otherwise stated in this Section 15.C, assigned credit card invoices shall be automatically applied to Retailer Supplied Dealer outstanding account balance for product purchases and any other amounts owing to Gas-Mart.

- D. A Retailer Supplied Outlet shall use ConocoPhillips "Endorsed" or "Limited-Endorsed" Electronic Point of Sale ("EPOS") equipment in accordance with the provisions of this Section 16. A Retailer Supplied Outlet shall have and use the most current version software for such EPOS equipment. Such "Endorsed" or "Limited-Endorsed" EPOS equipment and the most current version software are listed on the ConocoPhillips Marketing website, and such list may be revised from time to time at ConocoPhillips' sole discretion.
- E. Retailer Supplied Outlets shall process, all consumer purchases of Gasoline and Distillate that use ConocoPhillips Accepted Credit Cards through the NSP designated by ConocoPhillips. For all other consumer purchases except Gasoline and Distillate, each Retailer Supplied Outlet must process, at a minimum, the Licensed ConocoPhillips Brand proprietary cards (including but not limited to proprietary fleet cards and the ConocoPhillips MasterCard), Voyager and Wright Express cards through the NSP designated by Gas-Mart. Retailer Supplied Dealer agrees to pay network fees associated with the processing of Card Transactions electronically, which fees are set forth on the ConocoPhillips Marketing website...
- F. Retailer Supplied Dealer agrees that this Section 15 is reasonable and of material significance to this Agreement and to the consumers who patronize Retailer Supplied Outlets. Retailer Supplied Dealer understands and acknowledged that it is reasonable for ConocoPhillips to debrand any Retailer Supplied Outlet which does not comply with this Section 15.

16. FINANCIAL RESPONSIBILITY.

- A. Retailer Supplied Dealer is required to submit annual (and quarterly, if requested by Gas-Mart) business financial statements to Gas-Mart within ninety (90) days of the end of Retailer Supplied Dealer fiscal year (and, if requested, within sixty (60) days of the end of Retailer Supplied Dealer's fiscal quarter). Such business financial statements shall include balance sheets, income statements and cash flow in addition to applicable notes and schedules, and other information necessary for Gas-Mart to render a decision on a line of credit, and/or to furnish reasonable collateral, letters of credit, guarantees, and/or other security to support a line of credit in accordance with Gas-Mart's secured credit policy in effect from time to time. Provided, however, neither execution of this Agreement nor anything contained herein shall give Retailer Supplied Dealer the right to receive credit, or constitute approval of a line of credit for Retailer Supplied Dealer, unless it is expressly granted by Gas-Mart. Similarly, nothing herein shall give Retailer Supplied Dealer the right to exceed any credit limit established for Retailer Supplied Dealer by Gas-Mart. Retailer Supplied Dealer's failure to provide such financial information and/or collateral satisfactory to Gas-Mart may result in Gas-Mart's denial of credit or restriction of credit to Retailer Supplied Dealer. Furthermore, if in Gas-Mart's sole judgment, Retailer Supplied Dealer

Supplied Dealer's ability to pay/creditworthiness is unsatisfactory or deteriorates, or if Retailer Supplied Dealer fails to fulfill the payment terms, Gas-Mart may without prejudice to any other lawful remedy, defer shipment until payment is made, deny credit and demand cash payment, or immediately terminate or non-renew this Agreement pursuant to Section 3.C of this Agreement.

- B. If Retailer Supplied Dealer fails to make a timely payment of any amount due, in accordance with the terms hereof, then Gas-Mart shall, in addition to any other rights or remedies available to it, have the right, but not the obligation, to recoup or set off against any amount then or thereafter due to Retailer Supplied Dealer, including, but not limited to, any amounts due Retailer Supplied Dealer for the assignment of credit card invoices pursuant to Section 15 of this Agreement, up to the total amount outstanding.

17. TAXES. In addition to applicable prices hereunder, Retailer Supplied Dealer shall pay to Gas-Mart, and shall be solely responsible for, any applicable federal, state and local taxes, license fees, inspection fees, environmental fees or other charges imposed by any governmental or regulatory authority or agency on, or measured by, gross receipts from any products sold hereunder, or levied on the production, manufacture, transportation, sale, delivery, or levied on volumes sold or delivered, or other handling of products under this Agreement. Failure of Gas-Mart to add any such tax, fee, or charge to the invoice shall not relieve Retailer Supplied Dealer from any applicable liability otherwise due and payable. Retailer Supplied Dealer shall reimburse Gas-Mart for any interest and/or penalty assessed by any governmental or regulatory authority or agency when the penalty and/or interest is assessed as the result of false, incorrect or delinquent certification(s) made to Gas-Mart by Retailer Supplied Dealer.

18. ALLOCATION.

- A. The amount of Branded ConocoPhillips Products to be supplied to Retailer Supplied Dealer shall be subject to any good faith allocation program which Gas-Mart may find necessary to effect for any reason, including, but not limited to, shortage of product or government regulations. When an allocation program is in place, Gas-Mart shall have the right to impose a surcharge on any gallons purchased which exceed 100% of Retailer Supplied Dealer's allocation.
- B. In the event Gas-Mart's inventory is not sufficient to meet demand at Retailer Supplied Dealer's Retailer Supplied Outlet (regardless of whether Gas-Mart may have diverted supply to other distribution points to alleviate shortages at such other distribution points), Gas-Mart shall not be bound to acquire by purchase or otherwise additional quantities of crude petroleum or refined petroleum products from other suppliers or to take any other action which is uneconomic to Gas-Mart. No allocation pursuant to this Section 18 shall operate to extend the period of this Agreement and Gas-Mart shall not be obligated to make available any quantities omitted due to any

allocation program.

19. **LIQUIDATED DAMAGES.** In the event Branded Products under the CP trademarks cease to be sold at the Retailer Supplied Outlet, the Retailer Supplied Dealer and Gas-Mart agree that it may be difficult, if not impossible, to accurately determine the amount of damages that Gas-Mart may incur by Retailer Supplied Dealer's default. Accordingly, Retailer Supplied Dealer agrees to immediately pay Gas-Mart liquidated damages equal to \$.02 per gallon on the Minimum Gallons times the number of years remaining on the Term of this Agreement. The parties further agree that the damages set forth above are reasonable, and not a penalty, based upon the facts and circumstances of the parties at the time of entering this Agreement, and with due regard to future expectations.

20. **FORCE MAJEURE.** No failure or omission by either party in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor create any liability for damages if same shall arise from any cause or causes beyond the reasonable control of a nonperforming party including, but not limited to, the following which for the purposes of this Agreement, shall be regarded as beyond the control of the parties: acts of God, acts of Federal, State or local governments or agencies, compliance with requests, recommendations, rules, regulations or orders of any governmental authority or any officer, department, agency or instrumentality thereof, fire, storm, riot, sabotage, strikes, lockouts, disputes or differences with workmen, accidents, equipment failure, reduction or unavailability of refined products or refinery capacity, failures or delays in transportation, or exhaustion, reduction or unavailability of petroleum products at the source of supply from which deliveries are made hereunder, or exhaustion or reduction or unavailability or delays in delivery of any product or material necessary in the manufacture of petroleum products deliverable hereunder, including crude oil, natural gas supplies and raw materials. In the event that either party finds it necessary to assert the existence of the foregoing force majeure, the Term of this Agreement shall not be extended for the duration of the force majeure event thereby but the Minimum Gallons specified in this Agreement shall be ratably reduced for the period during which such condition of force majeure may exist. **IN NO EVENT SHALL GAS-MART BE LIABLE FOR LOSS OF PROFITS OR SPECIAL OR CONSEQUENTIAL DAMAGES BECAUSE OF DELAY OR FAILURE TO MAKE DELIVERIES.**

21. **TRANSFER OF AGREEMENT.**

- A. This Agreement is personal to Retailer Supplied Dealer and assignable or transferable by Retailer Supplied Dealer only with the prior written consent of Gas-Mart, which consent shall not be unreasonably withheld. Retailer Supplied Dealer understands, however, that Gas-Mart may condition its consent to any assignment upon the agreement of the proposed assignee to: (1) enter into a trial franchise in conformity to the provisions of the Petroleum Marketing Practices Act; (2) assume responsibility in writing for the financial and contractual liabilities to Gas-Mart of the Retailer Supplied Dealer, such as but not limited to, unamortized program funds due upon debranding of a Retailer Supplied Outlet or termination or nonrenewal of the Agreement; (3) accept that all warning/default letters issued by Gas-Mart to Retailer

Supplied Dealer transfer to the proposed assignee; and (4) simultaneously therewith, enter into a mutual termination of this Agreement. Refusal of the proposed assignee or transferee to enter into such trial franchise and mutual termination and to accept the above liabilities shall conclusively be adequate reason for Gas-Mart to withhold its consent to the assignment. Any attempt by Retailer Supplied Dealer to assign this Agreement or any rights hereunder without Gas-Mart's prior written consent shall be void and of no force and effect and shall be an event which makes termination of this Agreement reasonable, and upon the occurrence thereof Gas-Mart shall have the immediate right to terminate this Agreement and the relationship created hereunder.

- B. Upon the death or incapacity of Retailer Supplied Dealer, if Retailer Supplied Dealer is not a corporation or other legal entity, the rights granted under this Agreement may be transferable as provided by State or Federal law, or, if no valid State or Federal law shall be applicable, to the spouse or adult child of Retailer Supplied Dealer, provided arrangements have been made satisfactory to Gas-Mart for the continued active and competent management of Retailer Supplied Dealer's business. Upon the death or incapacity of the controlling stockholder or stockholders, if Retailer Supplied Dealer is a corporation or other legal entity, this Agreement will continue in effect, provided the active management of Retailer Supplied Dealer's business and the Retailer Supplied Outlets continues in a manner which fully and completely complies with all of the terms of this Agreement.

22. INDEMNITY AND COMPLIANCE WITH LAWS.

- A. Retailer Supplied Dealer hereby agrees to indemnify, defend and hold harmless Gas-Mart, and its affiliates, and its and their officers, directors, employees, agents, and representatives, from any and all claims, demands, suits, actions or other loss or liability, including all reasonable attorney's fees and legal expenses, fines, and penalties (hereinafter collectively the "Liabilities"), arising out of any claim or cause of action at law or in equity, or any administrative or judicial action, concerning or relating to any loss, loss of use of, remediation of, or damage to property or natural resources (including, but not limited to, that arising from storage tank leaks or spills, waste disposal, or air emissions), personal injuries, death, violation of any governmental laws, regulations, or orders or patent or trademark infringement or environmental claims arising in any manner out of a Retailer Supplied Dealer's operations, including but not limited to, the loading, transportation, unloading, storage, handling, sale, or use of Branded ConocoPhillips Products sold hereunder, or from Retailer Supplied Dealer's performance or failure to perform under this Agreement, whether or not Retailer Supplied Dealer was negligent or otherwise at fault. Provided, however, such indemnification obligations shall not apply:
- i. To the percentage of such Liabilities, if any, attributable to Gas-Mart's negligence or willful misconduct, or

- ii. When such Liabilities are caused by defects in the Branded ConocoPhillips Products not caused or contributed to by any act or omission of Retailer Supplied Dealer or its employees, contractors, agents.
 - (a) Gas-Mart shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of Gas-Mart's selection. Once Retailer Supplied Dealer has assumed the defense of Gas-Mart, Gas-Mart shall have the right to participate in the defense of the claims or litigation, but it shall do so at its own expense.
 - (b) Retailer Supplied Dealer's obligations in this Section 22 shall survive any termination or nonrenewal of this Agreement.
- B. Retailer Supplied Dealer agrees to acquaint itself and strictly comply with all applicable federal, state, and local laws, regulations, orders and ordinances relating to Retailer Supplied Dealer's business. Retailer Supplied Dealer hereby agrees to indemnify, defend and hold harmless Gas-Mart, and its affiliates, and its and their officers, directors, employees, agents, and representatives, from any and all Liabilities arising out of Retailer Supplied Dealer's failure to observe, or violation of, such laws, regulations, orders and ordinances.

23. RETAILER SUPPLIED DEALER CLAIMS/LAWSUITS.

- A. Gas-Mart shall not be liable to Retailer for breach of this Agreement or for any other claim by Retailer, unless Retailer provides Gas-Mart with written notice of the incident (which forms the basis of the alleged breach or claim) within ninety (90) days of the occurrence of the incident and files suit within one (1) year after the occurrence of the incident, unless otherwise required by applicable law.
- B. Notwithstanding the above paragraph, Gas-Mart shall not be liable to Retailer Supplied Dealer for any defect in quality or shortage in quantity of any Branded ConocoPhillips Products delivered hereunder unless (a) Retailer Supplied Dealer notifies Gas-Mart of Retailer Supplied Dealer's claim immediately but no later than within twenty-four (24) hours after delivery thereof, or in the case of any latent defect in quality, immediately but no later than within twenty-four (24) hours after Retailer Supplied Dealer discovery of such defect, and (b) Gas-Mart is given a reasonable opportunity to inspect the Branded ConocoPhillips Products and to take and test samples thereof. All delivery documentation, weigh cards summaries, reports, retain samples, laboratory analyses and the like in Retailer Supplied Dealer's possession or control must be preserved for Gas-Mart's inspection and review. Retailer Supplied Dealer's failure to notify Gas-Mart of any shortage, defect or nonconformity shall constitute a waiver of that defect or nonconformity.
- C. UNDER NO CIRCUMSTANCES SHALL CONOCOPHILLIPS BE LIABLE FOR

ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES.

24. ATTORNEYS FEES. In the event either party to this Agreement retains counsel and/or institutes a lawsuit for violation of or to enforce any of the covenants, obligations and/or conditions of this Agreement, or if either party initiates a lawsuit against the other for a declaration of rights under this Agreement, or if either party intervenes in a lawsuit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party shall be entitled to all of its costs, expenses and reasonable attorneys fees incurred in connection therewith.

25. NON WAIVER. Subject to the provisions of the Petroleum Marketing Practices Act and any other applicable provision of law, no course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Agreement shall operate as a waiver of any of the rights provided hereunder or by law or equity, nor shall any waiver of any prior breach or default operate as the waiver of any subsequent breach or default, and no express waiver will affect any term or condition other than the one specified in such waiver and the express waiver will apply only for the time and manner specifically stated. Execution of this Agreement by Gas-Mart shall not constitute automatic approval of the image of any Retailer Supplied Outlet or constitute a waiver of the requirement that every Retailer Supplied Outlet must comply with ConocoPhillips' Brand and Image Standards, as set forth herein.

26. RELATIONSHIP OF THE PARTIES. Retailer Supplied Dealer is an independent business and is not, nor are its employees, an employee of Gas-Mart. Gas-Mart and Retailer Supplied Dealer are completely separate entities. They are not partners, general partners, limited partners, joint venturers, nor agents of each other in any sense whatsoever and neither has the power to obligate or bind the other.

FURTHERMORE, NOTHING HEREIN CONTAINED IS INTENDED, NOR SHALL IT BE CONSTRUED AS RESERVING TO GAS-MART RIGHTS OR POWERS TO EXERCISE CONTROL OVER THE BUSINESS PRACTICES OF RETAILER SUPPLIED DEALER OR TO DIRECT THE MANNER IN WHICH ITS BUSINESS OPERATIONS SHALL BE CONDUCTED; EXCEPT, GAS-MART MAY TAKE REASONABLE ACTIONS TO PROMOTE COMPLIANCE WITH THE STANDARDS SET FORTH ABOVE AND MAY PROVIDE SUCH INSTRUCTIONS, GUIDANCE, AND RECOMMENDATIONS AS MAY BE NECESSARY AND DESIRABLE TO PROMOTE THE MUTUAL OBJECTIVES OF GAS-MART AND RETAILER, INCLUDING THE PROMOTION OF PUBLIC GOODWILL TOWARD CONOCOPHILLIPS BRANDS, AND THE REPUTATION OF BRANDED CONOCOPHILLIPS PRODUCTS. CONOCOPHILLIPS SHALL HAVE NO CONTROL WHATSOEVER OVER RETAILER'S RESALE PRICES OF THE BRANDED CONOCOPHILLIPS PRODUCTS PURCHASED HEREUNDER.

27. SEVERABILITY. Any provision of this Agreement prohibited by law or by court decree in any locality or state shall be ineffective to the extent of such prohibition without in any way invalidating or otherwise affecting the remaining provisions of this Agreement within states and

localities where not prohibited by law or court decree. '

28. APPLICABLE LAW. THE INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH RETAILER SUPPLIED DEALER MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS EXCEPT FOR ANY RULE OF COURT OR LAW OF SAID STATE WHICH WOULD MAKE THE LAW OF ANY OTHER JURISDICTION APPLICABLE.

29. NOTICES. Any notice in connection with this Agreement required by the Petroleum Marketing Practices Act shall be made in writing and sent by certified mail or personal delivery to the attention off:

David George, President
Gas-Mart USA, Inc.
10777 Barkley Street
Overland Park, Kansas 66211

and to Retailer Supplied Dealer at the address of the Retailer Supplied Outlet above noted. The deposit in the United States mail of a properly addressed and postage pre-paid communication shall be deemed delivery to the party addressed. Where the notice concerns termination or nonrenewal of this Agreement, the notice shall contain:

- i. A statement of intention to terminate or not to renew, together with the reasons therefor;
- ii. The date on which such termination or non renewal will take effect; and
- iii. A copy of the Summary of Title I of the Petroleum Marketing Practices Act, prepared and published by the Secretary of Energy.

30. PREVIOUS AGREEMENTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THIS AGREEMENT SUPERSEDES ALL PRIOR AND CURRENT BRANDED RETAILER AGREEMENTS BETWEEN THE PARTIES. FURTHERMORE THIS AGREEMENT CONTAINS EACH AND EVERY UNDERSTANDING OF THE PARTIES RELATING TO THE SUBJECT COVERED HEREBY. NO VERBAL REPRESENTATIONS, STATEMENTS OR AGREEMENTS OF ANY NATURE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO ANY RELATIONSHIP BETWEEN THE PARTIES WILL BE CONSIDERED VALID OR ENFORCEABLE.

31. AMENDMENT. No amendment or other modification of this Agreement shall be valid or binding on either party hereto unless reduced to writing and executed by the parties hereto.

32. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the

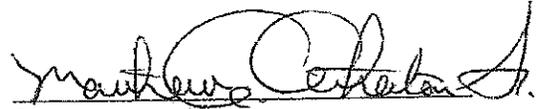
heirs, executors, administrators, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the dates below written.

Gas-Mart USA, Inc.

Athertons Automotive, Retailer
Supplied Dealer

Signature


Signature

Name Printed

Matthew A. Atherton Sr.
Name Printed

Title

Manager
Title

Date: _____ 2006

Date: 12-5-06 2006

