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IN THE SUPREME COURT OF FLORIDA

MOBIL OIL CORPORATION,

Petitioner,

v. CASE NO: 80,310

JEREMY BRANSFORD,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA
CASE NO: 91-2147

INITIAL BRIEF OF MOBIL OIL CORPORATION, PETITIONER

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January 18, 1993

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STATEMENT OF THE CASE AND OF THE FACTS

On March 21, 1990, Respondent, JEREMY BRANSFORD (hereinafter "BRANSFORD"), entered the convenience store of a Mobil service station in Ft. Lauderdale, Florida. While on the premises, BRANSFORD encountered HYMAN DALE STETHEM (hereinafter "STETHEM"), a cashier employed by ALAN M. BERMAN (hereinafter "BERMAN"), the franchise operator of the service station. After an exchange of words, STETHEM exited the locked, glass-enclosed booth in which he performed his cashier's duties and engaged in a fistfight with BRANSFORD. As a result, BRANSFORD allegedly suffered physical injuries and subsequently brought suit in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, seeking monetary damages against STETHEM, BERMAN, and MOBIL OIL CORPORATION (hereinafter "MOBIL").

MOBIL, the owner of the service station property, leased the premises to BERMAN under a three (3) year service station lease and retail dealer contract (hereinafter referred to collectively as the "Lease"), from September 1, 1987, to August 31, 1990. The Lease was governed by the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. §§ 2801 *et seq*. The Lease provided that BERMAN was directly responsible for operating all facets of the service station business, in exchange for MOBIL allowing BERMAN to use MOBIL's trade name, to display MOBIL's registered logos and color schemes, and to buy MOBIL products for resale to the public at his station. BERMAN paid no fee to MOBIL for the license to so use MOBIL's trade name and marks. By the terms of the Lease, BERMAN was an independent contractor/operator, not an agent or employee of MOBIL.

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The Lease expressly declines to create any right in MOBIL to exercise any control over, or to direct in any respect, the conduct or management of BERMAN's business. *See* Lease of May 19, 1987, retail dealer contract, at page A-10 of the Appendix, ¶17.

STETHEM was an employee of BERMAN, not MOBIL. STETHEM was hired by BERMAN following an application, interview, and investigation regarding STETHEM's work and personal history. STETHEM was instructed by BERMAN as to his job duties and responsibilities. STETHEM was paid by BERMAN and was later fired by BERMAN. MOBIL did not participate in the hiring or suspension of STETHEM; in fact, MOBIL exercised no control over the daily operation of the service station.

The operative Complaint, a Second Amended Complaint, filed on October 29, 1990, contains six individual counts seeking relief against the three Defendants. Counts I, II, and V pertain to MOBIL, while the other counts pertain only to BERMAN and/or STETHEM. Count I seeks the imposition of liability against MOBIL under a theory of vicarious responsibility for the alleged negligence of BERMAN and STETHEM. This vicarious liability claim is predicated on the doctrine of "apparent agency." *See* Second Amended Complaint at ¶¶ 8-10; *See also* Initial Brief of Appellant Jeremy Bransford to the Fourth District Court of Appeal at pp. 4-6. Count II attempts to state a claim for direct negligence against MOBIL for failure to "warn of the foreseeable attack by third persons in general upon the property in question," for failure to "maintain the property in a reasonably safe condition," and for failure to "employ reasonable security measures to prevent the

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possibility of attack by third persons in general." *See* Second Amended Complaint at ¶ 14. Count V of the Second Amended Complaint purports to state a claim for the vicarious responsibility of MOBIL for the intentional acts of STETHEM, as MOBIL's "agent and/or employee." *See* Second Amended Complaint at ¶¶ 23-24.

On March 5, 1991, MOBIL and BERMAN filed separate Motions for Summary Judgment in the trial court, to which BRANSFORD did not file any opposing memoranda. After entertaining oral argument on the Motions for Summary Judgment, on May 7, 1991, Circuit Court Judge Robert Lance Andrews, without opinion, entered separate Orders granting in full both BERMAN's and MOBIL's respective Motions for Summary Judgment, thereby effectively leaving STETHEM as the only Defendant against whom BRANSFORD had a cause of action. Upon Judge Andrews' rulings in favor of MOBIL and BERMAN, BRANSFORD moved the trial court for a rehearing on the Summary Judgments. The trial court denied BRANSFORD's motion on June 20, 1991.

BRANSFORD then sought partial review of the Summary Judgments as to both MOBIL and BERMAN[1] in the Fourth District Court of Appeal. As to MOBIL, BRANSFORD sought review on the issue of apparent agency/authority under Count I of the Second Amended Complaint. *See* BRANSFORD's Initial and Reply Briefs to the Fourth

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[1] As to BERMAN, BRANSFORD sought review in the Court of Appeal of Summary Judgment on the claims of negligent retention, negligent hiring, negligent training, and negligent security against BERMAN, of which only the negligent retention issue was reversed and remanded for trial. *See* BRANSFORD's Initial and Reply Briefs to the Fourth District Court of Appeal and the Fourth District's opinion in *Bransford v. Berman*, 601 So.2d 1306 (Fla. 4th DCA 1992).

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District Court of Appeal.[2] By opinion dated July 8, 1992, the Fourth District Court of Appeal reversed portions of the Summary Judgments, as to the claim of negligent retention against BERMAN, and as to the claim of apparent agency against MOBIL. The Fourth District then remanded those portions of the case to the trial court for further proceedings.

Specifically, with regard to MOBIL, the Fourth District Court of Appeal reversed the Summary Judgment awarded to MOBIL on the basis that "MOBIL might be liable under the theory of apparent agency . . . ." *Bransford v. Berman*, 601 So.2d 1306, 1307. In consequence of the Fourth District's decision, and pursuant to Rules 9.120 and 9.030(a)(2)(A)(iv) of the Florida Rules of Appellate Procedure, MOBIL petitioned the Supreme Court of Florida to invoke its discretionary jurisdiction to effect review of the Court of Appeal's reversal of Summary Judgment on Count I, which alleged liability against MOBIL upon the theory of apparent agency/authority.[3] In its Jurisdictional Brief to the Supreme Court, MOBIL asserted that the Fourth District Court of Appeal's decision, as it relates to MOBIL, is erroneous and, as a matter of

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[2] As noted *supra*, the apparent authority issue was one of three issues pled by BRANSFORD against MOBIL which was subject to the Summary Judgment. Summary Judgment on the other two causes of action against MOBIL -- vicarious liability arising out of the intentional acts of STETHEM as an alleged employee or agent of MOBIL (Count V) and direct negligence by MOBIL in allegedly failing to provide adequate warning or security (Count II) -- were not raised in BRANSFORD's briefs to the Fourth District, were not ruled upon by the Fourth District, are therefore no longer issues in this suit, and are not now before this Court.

[3] The reversal of Summary Judgment as to BERMAN on the sole issue of negligent retention was not included in the petition for review to this Court and is not part of this review.

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law, is in conflict with this Court's decision in *Orlando Executive Park, Inc. v. Robbins*, 433 So.2d 491 (Fla. 1983), as well as other cases from the Florida District Courts of Appeal. The Court now having accepted jurisdiction of this cause, MOBIL submits this, its Initial Brief on the merits.

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SUMMARY OF ARGUMENT

MOBIL seeks reversal of the decision filed on July 8, 1992, by the Fourth District Court of Appeal of Florida, as that decision applies to MOBIL. That decision, *Bransford v. Berman*, 601 So.2d 1306 (Fla. 4th DCA 1992), expressly and directly conflicts with the decision of the Florida Supreme Court in *Orlando Executive Park v. Robbins*, *infra*, as well as several other decisions of Florida's District Courts of Appeal. Those cases have decided uniformly that a franchisor oil company, as a matter of law, may not be held liable under the doctrine of apparent agency/authority.

Moreover, MOBIL seeks reversal of the Fourth District's decision because its reversal invaded the trial court's sphere of sound discretion to enter summary judgment and improperly disturbed the trial court's correct decision as to MOBIL.

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THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL, AS IT RELATES TO MOBIL, CONSTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF THE LAW

A. The decision of the Fourth District Court of Appeal conflicts with settled Florida law that an oil company, such as MOBIL, shall not be held vicariously liable under the doctrine of apparent agency, where the claimed basis for invoking that doctrine is the plaintiff's reliance upon use of the oil company's trade name and marks at a franchised service station

BRANSFORD brought MOBIL into this action upon the premise that, despite being merely the franchisor of the service station in which BRANSFORD allegedly suffered his injuries, MOBIL nonetheless should be held vicariously liable for the actions of its franchisee and/or its franchisee's employee. It should be noted that BRANSFORD did not attempt to assert, in Count I of the Second Amended Complaint, that any *actual* agency relationship exists between MOBIL and BERMAN, the service station franchisee operator. Instead, BRANSFORD set forth his theory as to why MOBIL should be vicariously liable for the acts of its franchisee, under the doctrine of "apparent agency."

In Count I of the Second Amended Complaint, BRANSFORD stated his specific reasons why apparent agency should be deemed to exist between MOBIL and BERMAN and/or STETHEM, thereby giving rise to MOBIL's vicarious liability:

> (a) There was representation made by MOBIL that the station in question was owned and/or controlled by MOBIL and/or that the station was the agent of MOBIL. This was further supported by the fact that there was a MOBIL sign on the building and other parts of the property and that the property comported to the color schemes of the MOBIL OIL CORPORATION;
>
> (b) That there were MOBIL products sold on the property.

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> The Plaintiff relied upon these representations made by MOBIL, to his detriment, and entered the property believing that it was a MOBIL station and that the property would be operated at a level commensurate with that expected of the MOBIL OIL CORPORATION.

See Second Amended Complaint at ¶¶ 8-9. There is nothing else in the trial court record supporting BRANSFORD's claim under the theory of apparent agency.

Three elements are necessary to establish a claim for apparent agency: (1) a representation by the "principal"; (2) reliance on that representation by a third person; and (3) a change of position by the third person in reliance upon such representation to his detriment. *Orlando Executive Park, Inc. v. Robbins*, 433 So.2d at 494.

In holding that "MOBIL might be liable under the theory of apparent agency," the Fourth District Court of Appeal reasoned that "MOBIL owned the station and prominently displayed its logo there in order to induce customers to patronize the premises." 601 So.2d at 1307. Both BRANSFORD's argument and the Court of Appeal's reasoning as to why apparent agency exists in this case are based substantially upon the premise that, since MOBIL logos and products were permanently displayed at BERMAN's service station, BRANSFORD was led to believe that MOBIL was directly responsible for the operation and control of this particular service station.

However, it has long been established in the courts of Florida, including the Supreme Court, that "[a]n oil company does not confer apparent authority, subjecting itself to vicarious liability for negligence, upon a retail service station by allowing

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the use of its trade name and selling its products to the station." *Orlando Executive Park, Inc. v. Robbins*, 433 So.2d 491, 494 (Fla. 1983) (quoting *Sydenham v. Santiago*, 392 So.2d 257, 257-58 (Fla. 4th DCA 1981)). Thus the decision below, by virtue of direct conflict with the Court in *Robbins*, as well as with various other decisions of the Florida courts, constitutes a departure from the essential requirements of the law.

With regard to the issue framed by the pleadings in the case at bar, the relevant precedent in Florida holds that an oil company, as a matter of law, will not be held vicariously liable under the doctrine of apparent agency or apparent authority. *See, e.g., Sydenham v. Santiago, supra; Cawthon v. Phillips Petroleum Co.*, 124 So.2d 517 (Fla. 2d DCA 1960); *Miller v. Sinclair Refining Co.*, 268 F.2d 114 (5th Cir. 1959); *Drum v. Pure Oil Co.*, 184 So.2d 196 (Fla. 4th DCA 1966); *Cardounel v. Shell Oil Co.*, 397 So.2d 328 (Fla. 3d DCA 1981); *Nelson v. Shell Oil Co.*, 396 So.2d 752 (Fla. 3d DCA 1981); *McMillion v. Sinclair Refining Co.*, 236 So.2d 151 (Fla. 1st DCA 1970). Furthermore, the courts have found in favor of oil companies as a matter of law where the claimed injuries were the result of intentional acts, as well as where the injuries resulted from negligent acts.

For example, in *Cardounel v. Shell Oil, supra*, the operator/lessee of a Shell service station became involved in an altercation with a customer, resulting in the operator shooting the customer. The customer brought suit against Shell Oil Company, alleging that Shell was the employer or principal of the operator, that Shell knew that the operator kept a gun on the premises, and,

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therefore, that Shell knew or should have known that the operator had violent or dangerous propensities. The trial court entered summary judgment in favor of Shell, which was affirmed by the Third District Court of Appeal. Relying upon prior "oil company decisions",[4] the Third District held, as a matter of law, that a lessee of a service station is an independent contractor, and not an agent or employee of the oil company; thus Shell Oil could not be held vicariously liable. *See Cardounel*, 397 So.2d at 328-29.

In *Sydenham*, the case which the Supreme Court examined but did not disturb in *Robbins*, the plaintiff was injured while unloading a truck tire which exploded, allegedly due to the negligent manner in which the tire had been repaired at an independently operated Gulf Oil Company service station. The Fourth District Court of Appeal affirmed final summary judgment on behalf of Gulf against an unsuccessful claim of apparent agency. *See Sydenham*, 392 So.2d at 357.

The Fourth District's *Sydenham* opinion discussed, but declined to apply, *Fernandez v. Valle*, 364 So.2d 835 (Fla. 3rd DCA 1978), a case which, at first blush, appears to go against the otherwise uniform line of precedent in Florida. In *Fernandez*, Gulf Oil Company owned a service station at which the plaintiff was accidentally sprayed in the eyes with gasoline by the service station operator's son. The Third District Court of Appeal held

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[4] *Cawthon v. Phillips Petroleum Co.*, 124 So.2d 517 (Fla. 2d DCA 1960); *McMillion v. Sinclair Refining Co.*, 236 So.2d 151 (Fla 1st DCA 1970); *Sydenham v. Santiago*, 392 So.2d 357 (Fla. 4th DCA 1981); *Nelson v. Shell Oil Co.*, 396 So.2d 752 (Fla. 3d DCA 1981); *Drum v. Pure Oil Co.*, 184 So.2d 196 (Fla. 4th DCA 1966); *Miller v. Sinclair Refining Co.*, 268 F.2d 114 (5th Cir. 1959).

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that the trial court did not err in submitting the case to the jury on the issue of control by Gulf. *Fernandez*, 364 So.2d at 837.

However, the *Sydenham* court properly distinguished *Fernandez*, because, as here, the critical issue in *Sydenham* was whether an oil company's signs, logos, color schemes, *etc.*, ***created the subjective impression to the plaintiff*** that the oil company controlled the operation of the station; as a matter of law, it has been held uniformly that such appearances alone are insufficient to give rise to a jury question on the oil company's level of control. Conversely, the issue in *Fernandez* was not the subjective impressions of the plaintiff, but rather, whether the particular facts before that court created *objective, actual control* by the oil company, a question which could be answered by a jury. In *Fernandez*, there were numerous facts peculiar to the service station in question which were before the court, the combined effect of which was an examination in hindsight by the court of the *actual* control by the oil company at that station. No such facts were before Judge Andrews upon MOBIL's Motion for Summary Judgment, nor, for that matter, was the issue of actual control before the trial court on the pleadings. Accordingly, the extraordinary examination by hindsight of actual control which was conducted in *Fernandez*, but was never raised below or imitated elsewhere, is inapposite in the case at bar, as it was in *Sydenham*.

The Supreme Court of Oklahoma, in *Coe v. Esau*, 377 P.2d 815 (Okla. 1963), has provided perhaps one of the most instructive discussions on the issue in question. Although the case involved only the issue of actual agency, not apparent agency, the court

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stated:

> Neither the mere fact of ownership of property nor that goods marketed under the trade mark or trade name of the landlord are advertised and sold upon the demised premises is deemed sufficient to raise an inference that the tenant-vendor is the agent or employee of the landlord. It is indeed a matter of common knowledge and practice that distinctive colors and trade mark signs are displayed at gasoline stations by independent dealers of petroleum product suppliers. These signs and emblems represent no more than notice to the motorist that a given company's products are being marketed at the station.

Esau, 377 P.2d at 818 (citing *Cawthon*, *supra*, and other omitted citations). Florida's Fifth District Court of Appeal, in the case giving rise to the Supreme Court's review in *Robbins*, focused upon the Supreme Court of Oklahoma's reasoning and explained, "[T]he 'representation' made by service station signs is only that a certain kind of gasoline is sold, not that the operator is an agent for the oil company with respect to . . . maintenance of premises." *Orlando Executive Park v. P.D.R.*, 402 So.2d 442 (Fla. 5th DCA 1981). As *Esau* and the aforementioned Florida cases indicate, MOBIL may not to be held vicariously liable for the actions of its franchisee/independent operator under the circumstances alleged in the record below; moreover, the Supreme Court of Florida has expressly recognized and approved of this body of law in *Robbins*.

In *Robbins*, the Court held that the franchisor, Howard Johnson Company, created an apparent agency with the operator/franchisee of a Howard Johnson Motel because of the level of involvement by the franchisor in the operation of the motel. However, the Court explicitly noted that the oil company cases are distinct from the case at issue in *Robbins* and are to be accorded different

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treatment:

> On the facts of this case the district court has set out the proper standard, limiting *Sydenham* and other oil company cases to their facts, and we disapprove extending the language of *Sydenham* into cases such as the instant one to the extent of conflict with this opinion.

Robbins, 433 So.2d at 494. Thus, the Court approved of and let stand the oil company cases, which uniformly hold that, where the injured party's subjective impression of control is the basis for claiming liability against an oil company franchisor, as in the case *sub judice*, the oil company will not be held vicariously liable under the theory of apparent agency, as a matter of law.

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B. The decision of the Fourth District Court of Appeal, which reversed the trial court's summary judgment ruling in favor of Mobil on the issue of apparent agency, was error

From the foregoing discussion, it is apparent that the trial court did not abuse its discretion[5] in entering Summary Judgment in favor of MOBIL on the issue of apparent agency. In point of fact, the Fourth District Court of Appeal's opinion did not expressly state the contrary. Instead, the Fourth District Court of Appeal simply stated, "As to Mobil Oil Corporation, we likewise believe the grant of summary judgment was error." 601 So.2d at 1307.

Circuit Court Judge Andrews heard argument on MOBIL's Motion for Summary Judgment and then correctly followed the Supreme Court decision in *Robbins* in entering summary judgment in favor of MOBIL on the issue of apparent authority, as well as all other issues in the case.[6] Upon review, however, the Fourth District Court of Appeal dispensed with *Robbins*, citing instead its own opinion in

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[5] "[U]nless the trial court has abused its discretion, its determination respecting summary judgment will not be interfered with on appeal." 49 FLA.JUR.2D, Summary Judgment § 53; *See also Ocean Villa Apartments, Inc. v. City of Ft. Lauderdale*, 70 So.2d 901 (Fla. 1954); *Marshall v. Bennett*, 495 So.2d 208 (Fla. 3d DCA 1986).

[6] Although Judge Andrews' Order granting MOBIL Summary Judgment did not contain a written opinion, and the hearing regarding the issue was not stenographically recorded, Judge Andrews' reasoning is evidenced in his Order on Defendant's Motion to Stay All Proceedings, filed in the trial court on October 29, 1992. This Order is included in the Appendix to this Initial Brief (at page A-65) because it was issued after the Fourth District reversed portions of the Summary Judgment for MOBIL and, consequently, it is not contained in the Fourth District's Record before the Court. The Order of October 29, 1992, was issued *sua sponte*, insofar as it concerns Judge Andrews' rationale for granting MOBIL Summary Judgment, although the opinion was included within an Order granting MOBIL's request for a stay of trial court proceedings pending the present review by the Supreme Court of Florida.

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Holiday Inns, Inc. v. Shelburne, 576 So.2d 322 (Fla. 4th DCA 1991), in support of its reversal of the trial court's decision.

In *Shelburne*, the plaintiffs were shot with a handgun outside the Fort Pierce Holiday Inn, after leaving the hotel's bar. On the plaintiffs' claims of apparent agency, the Fourth District Court of Appeal held that the evidence supported the jury's finding that, based upon the level of control by the parent company, Holiday Inns, Inc., the franchisee/operator was the apparent agent of Holiday Inns, acting within the scope of the apparent authority of Holiday Inns. *See Shelburne*, 576 So.2d at 333, 334.

However, *Shelburne*, a "motel case," relied heavily upon the Supreme Court's reasoning in *Robbins* (the original "motel case"), which, as discussed above, distinguished the oil company cases. *Shelburne* therefore is inapposite to the case at issue, and it was erroneous for the Fourth District Court of Appeal to have based its decision, in this typical oil company case, on *Shelburne*. District Judge Barry J. Stone succinctly echoes this view in his partial dissent to the Fourth District's reversal of Summary Judgment as to MOBIL:

> *Shelburne* does not extend liability to the extent that it may be imposed, through an agency concept, simply because a well-known company contracts with a truly independent contractor for use of its signs, logo, uniforms, products, or method of operating.

601 So.2d at 1307.

In its brief opinion, the Court of Appeal also distinguished *Sydenham*. Recognizing that *Sydenham* "might lead to a contrary result," the Fourth District summarily stated, "[I]n *Sydenham*, the oil company did not own the station and had no control over it

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aside from gasoline sales." 601 So.2d at 1307. The implication is, of course, that MOBIL "owned" the service station in question and, *a fortiori*, exercised a great deal of control over it.

MOBIL does not dispute that it has fee simple ownership of the service station property or that, as landlord and PMPA franchisor, it leases that property to BERMAN. However, those facts in and of themselves should not properly give rise to a presumption that MOBIL exercises control over the day to day operations of the service station, as the Court of Appeal has implied. The status as landowner was neither the determining factor, nor even a lesser consideration, in the "oil company cases" cited *supra*. Nothing in the record before the District Court of Appeal lends support to its apparent decision to apply an objective control test to a record devoid of any evidence of control by an oil company under a typical franchise situation.

BERMAN, the franchisee, was an independent contractor who leased the premises from the landowner, MOBIL. Likewise, in *Cardounel v. Shell Oil Co.*, *supra*, Shell Oil owned the service station in question. Yet, relying upon *Sydenham* and other seminal oil company cases,[7] the Third District Court of Appeal failed to attach vicarious liability to Shell Oil by virtue of its ownership. *See Cardounel*, 397 So.2d at 328-29.

Based upon both Florida precedent and the record before it, including pleadings, discovery, and MOBIL's Motion for Summary

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[7] *Cawthon v. Phillips Petroleum Co.*, 124 So.2d 517 (Fla. 2d DCA 1960); *McMillion v. Sinclair Refining Co.*, 236 So.2d 151 (Fla. 1st DCA 1970); *Sydenham v. Santiago*, 392 So.2d 257 (Fla. 4th DCA 1981); *Nelson v. Shell Oil Co.*, 396 So.2d 752 (Fla. 3d DCA 1981); *Miller v. Sinclair Refining Co.*, 268 F.2d 114 (5th Cir. 1959).

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Judgment and Memorandum of Law, the trial court was well within its sound discretion in entering Summary Judgment in MOBIL's favor. That finding should only have been disturbed upon a clear showing that the trial court abused its discretion, but no abuse was demonstrated.

The Fourth District Court of Appeal, in holding that "it is clear that Mobil might be liable under the theory of apparent agency," 601 So.2d at 1307, has both misinterpreted and improperly discounted the decision of the Supreme Court in *Robbins*, as well as the other oil company cases. Direct conflict with an opinion of the Supreme Court of Florida and other established precedent decision constitutes a departure from the essential requirements of the law and requires that the decision of the Fourth District Court of Appeal as to MOBIL be reversed.

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CONCLUSION

The Circuit Court correctly entered Summary Judgment in favor of MOBIL on the issue of apparent agency/authority. That decision was based upon both the record and the considerable weight of authority in Florida, and was well within the sound discretion of the trial court. In disturbing the trial court's judgment, the Fourth District Court of Appeal committed reversible error. In deciding that MOBIL might be liable under the theory of apparent agency, notwithstanding the record and overwhelming precedent directly to the contrary, the Fourth District further committed reversible error.

Accordingly, Petitioner, MOBIL OIL CORPORATION, respectfully requests the Court to enter an Order reversing the decision of the Fourth District Court of Appeal as it pertains to MOBIL; to enter such further Orders as are consistent with reversal of the District Court's decision and reinstatement of the Circuit Court's decision; and to award Petitioner its costs of this review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 18th day of January, 1993 to: MARK R. McCOLLEM, ESQ., Attorneys for Respondent/Plaintiff, Chidnese & McCollem, 201 Southeast 12th Street, Ft. Lauderdale, Florida 33316 and to RICHARD B. ADAMS, ESQ., Attorneys for Defendant Hyman Dale Stethem, Adams & Adams, Suite 1000, Concord Building, 66 West Flagler Street, Miami, Florida 33130.

By: _____
ROGER S. KOBERT

SCTBRIEF

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FCO-1699 (5-84)

Mobil Oil Corporation — service station lease

THIS LEASE is made 5-19, 19 87, between MOBIL OIL CORPORATION, a New York corporation, hereafter called Landlord, having an office at 6363 N.W. 6th Way, Suite 390, Ft. Lauderdale, Florida 33309 and ALAN BERMAN jointly and severally, if more than one, hereafter called Tenant, of 2333 S. Andrews Avenue, Ft. Lauderdale, FL

1. Premises. Landlord hereby leases to Tenant and Tenant hereby hires and takes the following premises:

All of Lot 2, together with that portion of Lots 14, 15, 16, Block 128, Lauderdale according to the plat thereof recorded in Plat Book 2, Page 9 of Public Records of Dade County, Florida lying North of State Road and West of Anrews Avenue.

including the improvements and equipment now or hereafter placed thereon, listed on Schedule A attached hereto and made a part hereof, which Schedule may, from time to time, be amended to reflect additions and/or deletions (herein collectively called the premises), subject to any state of facts an accurate survey might show, to easements, encumbrances, covenants, restrictions, and reservations, if any, of record, existing or future mortgages or deeds of trust, and any underlying lease, and excluding any of the premises which are the subject of any other lease or grant by Landlord, its predecessors or assignors, and reserving to Landlord the right to use, or to grant others the right to use, a strip of the premises ten (10) feet wide along the perimeter thereon, for purposes of erecting and maintaining signs, with the right to install needed utilities for any signs so erected, and a right of access for vehicles and pedestrians for said purposes. Tenant shall not place signs, vehicles, or other structures within said ten (10) foot strip without the express written consent of Landlord.

2. Term. The term of this lease shall, except as provided in Paragraph 3, be for a fixed period of three (3) year(s) beginning September 1, 1987 and ending August 31, 1990 provided that it may be terminated by Tenant at any time on not less than ninety (90) days' notice to Landlord. Any prior Service Station Lease between the parties relating to the premises is hereby terminated effective as of the date the term of this lease begins. Any holding over by Tenant at the end of this lease or at the end of any renewal or extension period without having first renewed or extended this lease in writing, shall not be considered as a renewal or extension of this lease but shall constitute a month to month tenancy.

3. Underlying Lease. Tenant has been notified in writing prior to the commencement of the term of this lease that (a) this lease and the estate herein created are subject to all the terms and conditions of any underlying lease held by landlord which underlying lease expires on the 30. day of June, 19 93. and (b) that such underlying lease might expire and may not be renewed during the term of this lease or at the end of the term of this lease. This lease shall automatically terminate upon the date such underlying lease expires and Landlord is under no obligation to seek an extension or renewal of such underlying lease or exercise any options of renewal that Landlord may have under such underlying lease.

4. Rental. (a) Subject to the escalation provisions of Paragraph (b) of this Paragraph 4, Tenant shall pay rental without deduction, set off, notice, or demand, in accordance with the following schedule:

(1) From September 1, 19 87 to August 31, 19 88 the sum of: (i) $ 1,793.00 per month gasoline profit center rental (GPC) with a collection rate of 1.8¢ cents per gallon, plus (ii) $ 983.00 per month alternate profit center rental (APC) with a collection rate of 1.0¢ cents per gallon; such total of 2,776.00 to be collected at the rate of 2.8¢ cents per gallon.

(2) From September 1, 19 88 to August 31, 19 89 the sum of: (i) $ 1,883.00 per month GPC rental with a collection rate of 1.9¢ cents per gallon, plus (ii) $ 1,032.00 per month APC rental with a collection rate of 1.0¢ cents per gallon; such total of $ 2,915.00 to be collected ar the rate of 2.9¢ cents per gallon.

(3) From September 1, 19 89 to August 31, 19 90 the sum of: (i) $ 1,997.00 per month GPC rental with a collection rate of 2.0¢ cents per gallon, plus (ii) $ 1,083.00 per month APC rental with a collection rate of 1.1¢ cents per gallon; such total of $ 3,080.00 to be collected at the rate of 3.1¢ cents per gallon.

As used in this Paragraph 4, GPC refers to the rental for the use of the motor fuel facilities at the premises. As used in this Paragraph 4, APC refers to the rental for the use of the non-motor fuel facilities at the premises. As used in this Paragraph 4, the collection rate is the gallonage collection to be applied against each gallon of motor fuel delivered into the storage tanks at the premises. If in any month during the term of this lease there is a deficiency between the amount collected by the collection rate and the rental due for the month, Tenant shall pay such deficiency to Landlord not later than the fifteenth (15th) day of the following month. If in any month there is an overpayment, the overpayment will be refunded to Tenant or, at Landlord's option, applied to any account owing by Tenant to Landlord. The APC rent has been calculated on the use of the non-motor fuel facilities by Tenant as of the effective date of this lease. Tenant shall not alter Tenant's business practices so as to add to or

change the current use upon which the APC rent is based without Landlord's prior written consent. In the event Landlord consents to such use, Landlord reserves the right to modify the APC rent. In the event Landlord and Tenant fail to agree on a revised APC rent within thirty (30) days of Landlord's request, Tenant shall, on notice from Landlord, either discontinue the added or changed use, or vacate the premises. If requested, Tenant shall provide and maintain with Landlord, a rental security deposit of one month's rent.

(b) Landlord may, on sixty (60) days' prior written notice, increase the rent for either the GPC or the APC or both by not more than 20% each for any or all of the rental periods specified in Paragraph (a) above, effective with the commencement of the rental period as specified therein. If Landlord shall exercise this option, the collection rate will be adjusted accordingly.

(c) Landlord and Tenant acknowledge and agree that all personal property and equipment listed on Schedule A, while subject to all terms and conditions of this lease, shall be considered as loaned equipment and, unless otherwise specified, no portion of the rental specified in this Paragraph 4 shall be allocated to such personal property and equipment. Maintenance, repairs, or replacement of such personal property and equipment shall not give rise to any claim for abatement of rent.

(d) Landlord may, on written notice, immediately increase the total rent by the amount of any present of future governmental tax, fee, duty, or other imposition on, or measured by, the rental collected herein, unless Tenant is required by law to pay the same directly to the governmental taxing unit. If Landlord shall exercise this option, the collection rate will be adjusted accordingly.

5. Use of Premises — Business Operations. Tenant acknowledges that Landlord has made a substantial investment in developing the premises as a retail gasoline facility; that Landlord has developed service stations throughout the country which are distinguished by design, trademark, decor, and graphics; that Landlord has built valuable goodwill throughout the country and has fostered confidence in the motoring public in service stations and products bearing Landlord's trademarks; that Landlord has advertised its products extensively throughout the country; and that the continued success of Landlord, and of Tenant as a Mobil dealer, as well as all other Mobil dealers, is dependent upon each Mobil dealer maintaining the highest standards of service station operation and customer service. Landlord and Tenant have entered into this lease with the express understanding that Tenant will use the premises principally for the operation of a gasoline facility offering petroleum and related products and services to the motoring public, and shall not use or permit to be used such premises in connection with any purpose prohibited by law, ordinance, covenant, condition, or restriction. Tenant agrees to exercise sound business practices in conducting his business and to use his good faith and best efforts to maximize the retail motor fuel business at said premises. Tenant shall not engage in any business conduct upon the premises, either by way of action or omission, which conduct could jeopardize or diminish the value of the premises and the business as a retail service station. Tenant further agrees to: (a) devote his major efforts to the operation of the service station and not devote more of Tenant's time to any other trade, occupation, or calling, or any combination thereof; (b) maintain adequate manpower levels; (c) render prompt, efficient, and courteous service to all customers, providing continued training, guidance, and supervision to employees to insure high standards of retailing and services; (d) maintain adequate inventory of quality products; (e) employ sound retailing practices including staying current and abreast of, and promptly reacting to, competitive conditions in Tenant's market area so as to maximize sale of motor fuel; (f) maintain current and accurate business records; (g) maintain the premises and the appearance thereof, together with the display of merchandise, in order to offer a pleasing and attractive facility to the public; (h) keep business hours based upon normal needs of trade customers as measured by traffic counts and/or hours maintained by comparable service stations in proximity to the premises unless all or a portion of the blank spaces are completed in the following schedule, in which event the schedule and not the business hours referred to above will control:

(i) [illegible] AB BA-B

(ii) 24 hours per day, .7. . days per week; and

(iii) .....

6. Maintenance Obligations — Landlord. Landlord at its expense shall make repairs deemed necessary by it to keep improvements and equipment as are covered by this lease in good operating condition in accordance with the allocation of maintenance responsibilities set forth in Schedule B attached hereto and made part hereof, provided the necessity therefor is due to ordinary wear or to damage by the elements. Landlord's obligation to repair shall not arise until: (a) Landlord is notified by Tenant that the item in question is not in good operating condition, and (b) Landlord shall have determined in its sole discretion and within a reasonable period that the necessity for repair is due to a cause referred to above. Tenant shall either make the item harmless or shall not use it or permit it to be used until repaired. In lieu of repairing, Landlord may make replacements.

7. Maintenance Obligations — Tenant. Tenant shall: (a) at its expense and in accordance with Schedule B hereof, maintain the premises in good safe, and operating condition and promptly make all repairs or replacements necessary for that purpose except to the extent Landlord shall make repairs as provided in Paragraph 6; (b) operate and maintain in accordance with the instructions of the equipment manufacturer and replace as necessary all emission control equipment and comply with all laws applicable thereto; (c) promptly notify Landlord of the need for maintenance or replacement of items that are Landlord's responsibility under Paragraph 6; (d) implement a regular preventative maintenance program as prescribed in Schedule B; and (e) keep records of all preventative maintenance inspections and of all maintenance performed by Tenant and exhibit the records to Landlord upon request; (f) if requested, provide and maintain with landlord, a maintenance security deposit in such amount as Landlord may designate, which in no event shall exceed one thousand ($1,000) dollars. Notwithstanding the division of maintenance responsibility between Landlord and Tenant set forth in Schedule B, Tenant agrees that Tenant is obligated to promptly repair or replace any item that requires same if the necessity therefor is not due to ordinary wear or to damage by the elements, or is due to damage by Tenant or an unidentified third party. Provided further, should Tenant fail to

promptly repair or replace any such item, Landlord may, at its option, effect said repair or replacement and the cost of such shall at Landlord's opton, be paid by Tenant to Landlord on demand, or as additional rent, or from Tenant's maintenance security deposit.

8. Appearance Obligations — Tenant. Tenant shall keep the premises clean, orderly and well-lighted at all times. In addition, Tenant shall: (a) immediately replace, in kind, all burned out light bulbs and light tubes; (b) keep adjacent sidewalks, curbs, and drives in good and safe condition and free from snow, standing water, oil, grease, other products, and obstructions; (c) maintain all landscaped areas, including but not limited to watering, weeding, trimming, cutting and other necessary care of all grass, gardens, shrubbery, trees or other plantings on the premises; (d) replace all grass, gardens, shrubbery, trees or other plantings which require replacement due to failure of proper maintenance by Tenant; (e) keep the rest rooms open at all times during business hours and keep such rest rooms clean, neat, sanitary, and supplied adequately with towels, toilet paper, and soap; (f) keep the drive areas clear of vehicles, other mobile equipment and obstructions which may restrict traffic flow, endanger customer safety or detract from appearance; (g) not use the premises for the sale of new or used vehicles, not retain disabled or unregistered vehicles on the premises for more than forty-eight (48) hours, and not park vehicles in areas other than those designated by Landlord for parking; (h) not place rental devices, coin-operated devices, dispensing devices, telephones, vehicles or equipment on the premises without Landlord's prior written consent, except that Tenant may, without such approval, install inside the service station building, storage, and merchandising equipment for beverages, candy and tobacco products if removable without damage to the premises; (i) not make or permit alterations or additions in the premises or place any additional structures on the premises without Landlord's prior written approval, except that Tenant may, without such approval, install storage and merchandising equipment for petroleum products, if removable without damage to the premises and if permissible under applicable law; (j) not display or affix to the exterior or interior of the building or anywhere on the premises, any signs, flags, posters, writings, markings, or pennants, without Landlord's approval, but Tenant shall have the right to display in a neat and orderly manner such briefly worded and professional appearing signs as are necessary to identify the products and services offered and their prices provided such does not obscure the visibility of Landlord's logos, trademarks, or Tenant's posted price of products, and provided further, such signs do not constitute hazard or nuisance for reasons of safety or visibility; and(k) not use or permit the use of service station bays, driveways, islands, or open areas of the premises for the display and sale of non-petroleum, or non-automotive related goods or services without the prior written consent of Landlord.

9. Other Obligations — Tenant. Tenant agrees: (a) to supply and maintain all equipment necessary for Tenant's operations hereunder not supplied by Landlord as part of the premises; (b) to keep legible and visible all brand names. trademarks, and signs of Landlord on Landlord's pumps, containers, and equipment now or hereafter placed on the premises and to use such pumps, containers, and equipment, together with all Schedule A underground storage tanks, solely for Landlord's products; (c) to permit Landlord to enter the premises to make inspections and/or repairs, to post notices, to stick tanks, or for any other purpose without liability for any interference with Tenant's business; (d) to pay all utility charges and other expenses, except as may otherwise be provided in this lease, and all taxes and fees imposed on the premises or the use thereof, except real and personal property taxes on the land and buildings and on Landlord's equipment unless otherwise provided in any underlying lease between Landlord and Tenant; (e) to comply with all requirements of competent authorities with respect to the premises, sidewalks, drives, and curbs adjacent thereto, and of the National Fire Protection Association or the American Insurance Association and similar organizations; (f) not to maintain or permit any animal or condition on the premises which threatens the health, safety or well-being of customers; (g) not to permit loitering on the premises by persons who, at the time, have no proper business purposes thereon; (h) TO ACCEPT THE PREMISES AND SCHEDULE A EQUIPMENT IN THEIR PRESENT CONDITION, AS IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THEIR CONDITION OR FITNESS FOR ANY PURPOSE; (i) not to hold Landlord responsible for any defect in, or change in conditions affecting, the premises or for any damage to the premises except as provided in Paragraph 6; (j) to keep the premises free of all liens and claims; (k) to waive all present and future rights of redemption or repossession; (l) to waive any right in any appropriation, condemnation or eminent domain awards; (m) on any termination or expiration of this lease to surrender the premises to Landlord in good order and condition; (n) to monitor inventory of underground tanks daily by tank sticking or other industry accepted measurement techniques, and reconcile inventory records at least weekly in order to detect tank or piping leaks so as to safeguard the environment and prevent loss to either Tenant or Landlord; (o) to keep a daily log of all underground tank inventory readings which shall be available for inspection by Landlord, and to advise Landlord promptly of any indication of contamination or leakage; (p) not permit any consumption of intoxicating beverages or use of illegal drugs on the premises; (q) to keep filled and ready for operation all fire extinguishers on the premises; (r) not to permit the accumulation of trash, used tires, or other debris except such as shall be contained in proper trash receptacles; and (s) to comply with all the requirements of federal, state, and local authorities with respect to water, soil, and air pollution and waste disposal. If Tenant does not dispose of waste in a proper manner or is not, in Landlord's opinion, complying with said water, soil, and air pollution requirements, Landlord, at its option, may do so without liability to Tenant for business loss and the cost thereof shall be paid by Tenant, as additional rent.

10. Discontinuation of Product Storage Tanks. Landlord has leased and Tenant has taken the premises with underground storage tanks, as listed in Schedule A, of sufficient number so as to provide Tenant with the capability to market multiple products. Notwithstanding Landlord's obligations under Paragraph 6 of this lease agreement, in the event any one or more of such underground storage tanks shall require repair or replacement, Landlord may, at its option, elect not to repair or replace such tank and, in such event, Landlord shall either remove such tank, or evacuate and abandon such tank in place with no further use by Tenant and Schedule A shall be deemed amended to relect the deletion of such tank or tanks. Provided however, in the event Landlord exercises such option not to repair or replace, thereby reducing the number of underground storage tanks on the premises whereby Tenant's product number capability is reduced, Landlord shall thereupon reduce the GPC rental according to Landlord's then existing rental policy for the calculation of GPC rent based upon the reduced normal product volume resulting from the discontinued product. The volume of the discontinued product shall be based upon total deliveries of such discontinued product to Tenant during the twelve (12) month period immediately preceding the exercise of this option, or if Tenant has no twelve (12) month history of such purchases, such lesser time period as Tenant may have purchased the discontinued product. As a basis for this GPC rent recalculation, the product to be discontinued by Tenant at the premises shall be Tenant's lowest volume product during such period of time. In no event may this option be exercised by Landlord so as to eliminate Tenant's ability to market at least two (2) products. Any supply agreement between Landlord and Tenant shall be deemed amended so as to delete the sale and purchase of the discontinued product.

11. Indemnity, Notice, and Release. Tenant shall defend, indemnify, and hold Landlord, its agents, servants, employees, successors and assigns, harmless from and against any penalties, fines, charges, or expenses, for any violations of any law, regulation, order, or ordinance caused by any act or omission, whether negligent or otherwise of Tenant, or any of Tenant's agents or others under Tenant, or by Tenant's failure to notify Landlord of the need for repairs, or by Tenant's failure to otherwise comply with Paragraph 7 hereof, and from and against all liabilities, claims, actions, suits, liens, losses (including those of the parties, their agents and employees), for death, personal injury, property damage, or any other injury or claim arising out of the use, occupancy, operation, and maintenance of the premises (including adjacent sidewalks, drives, and curbs) by the Tenant or any of Tenant's agents, contractors, employees, or others under Tenant. Tenant shall promptly notify Landlord of the occurrence of any death, injury, or property damage, the circumstances regarding same, and the person or persons having knowledge of same, and thereafter cooperate with Landlord in its investigation involving any claim or suit based upon such occurrence.

Any claim by Tenant of any kind, based on or arising out of this lease or otherwise, shall be waived and barred unless Landlord is given notice within ninety (90) days after the event, action, or inaction to which such claim relates, and further, any such claim by Tenant shall be waived and barred unless asserted by the commencement of an action within twelve (12) months after the event, action, or inaction to which such claim relates. In no event shall Landlord be liable for prospective profits or special, indirect, or consequential damages. In consideration of Landlord's execution of this lease and the mutual covenants herein, Tenant expressly releases Landlord from any and all claims which Tenant may have against Landlord on the date of this lease, except only those claims if any, expressly reserved by Tenant in a schedule attached hereto.

The provisions of this Paragraph 11 shall survive any termination or nonrenewal of this lease, however arising.

12. Insurance. Tenant shall obtain, renew, and keep current during the term of this lease agreement insurance satisfactory to Landlord including, but not limited to, the following minimum insurance: (a) garagekeeper's legal liability insurance with limits of not less than $50,000 with Landlord named as an additional insured (unless the configuration of the improvements of the premises is one having no service bays, in which event, garagekeeper's legal liability insurance is not required); (b) garage liability insurance including coverage for contractual liability and vehicles operated in the course of the Tenant's business with limits of not less than $500,000 for any one occurrence, with Landlord named as an additional insured; (c) workers' compensation as required to insure Tenant's liability under either statutory or common law in Tenant's jurisdiction; (d) insurance sufficient to replace all plate glass and security glazing in the event of loss; (e) fire and extended coverage in an amount sufficient to cover Tenant's inventory and equipment with a waiver of subrogation against Landlord; and (f) fire legal liability. All policies shall be written by insurance companies authorized to do business within the state in which the service station leased by Tenant is situated. Tenant shall pay all premiums and assessments charged for such policies when due. Each such policy shall have a provision that requires that Landlord shall be afforded ten (10) days' written notice before any termination, cancellation, or material change shall become effective. In the event that any such policy is terminated or cancelled, Tenant shall promptly, prior to the expiration date of such policy, procure a new or substitute policy containing the same or additional coverage, such policy to afford coverage concurrent with the expiration of the cancelled or terminated policy. Certificates of insurance evidencing policies required hereunder shall be provided Landlord within sixty (60) days of the effective date of policy.

The failure of Tenant to: (a) obtain any of the above coverage; (b) pay all premiums and assessments when due; (c) comply with all terms and conditions of such policy, or the directions the insurance carrier or its rating bureau, or the National Fire Protection Association; (d) obtain new or substitutive policies as herein provided; or (e) provide Landlord with a certificate of insurance evidencing policies required, within sixty (60) days of the effective date of policy, shall be a default hereunder. If Tenant fails or refuses to obtain the above coverage, or otherwise defaults hereunder, Landlord, at its option, may obtain same, or otherwise cure said default at Tenant's sole cost and expense, and any expenses incurred by Landlord hereunder shall be paid by Tenant to Landlord as additional rent or, at Landlord's option, on demand.

13. Termination; Notice; Nonrenewal; Right of Termination due to Governmental Action; Accrued Rights; Remedies.

(A) Termination of Lease and Relationship. Landlord may terminate or nonrenew this lease and the relationship between the parties, upon notice as provided herein, on any one or more of the following grounds:

(1) failure by Tenant to comply with any provision of this lease, which provision is both reasonable and of material significance to the relationship hereunder;

(2) failure by Tenant to exert good faith efforts to carry out any of the provisions of this lease;

(3) a determination is made by Landlord in good faith and in the normal course of business to withdraw from marketing of motor fuel through retail outlets in the relevant geographic market area in which the premises hereunder is located or

(4) occurrence of an event which is relevant to the relationship hereunder and as a result of which termination or nonrenewal of this lease and the relationship is reasonable including, but not limited to, such events as: (a) failure of Tenant to make prompt payment of rent and additional rent when due; (b) the termination of any Retail Dealer Contract between the parties hereto; (c) if Tenant has made any false or misleading statement on Tenant's Dealer Application (Form CO-303); (d) Tenant commits any fraud or criminal misconduct, relevant to the operation of the premises; (e) Tenant takes advantage of any law for the benefit of debtors, or if an execution or levy shall issue against Tenant or Tenant's effects, or insolvency, bankruptcy, or receivership proceedings are instituted by or against Tenant which are not contested by Tenant and dismissed, or which result in a declaration of bankruptcy or judicial determination of insolvency of Tenant; (f) death of Tenant; (g) severe mental or physical disability of Tenant which continues for three (3) months or more and which prevents the personal supervision of the operation of the premises by Tenant; (h) expiration of any underlying lease of Landlord so that Landlord loses the right to grant Tenant possession of the premises; (i) a total or partial condemnation or other taking, in whole or in part, of the premises pursuant to the power of eminent domain; (j) destruction of all or a substantial part of the premises; (k) failure of Tenant to operate the premises for the sale of motor fuel for seven (7) consecutive days or such lesser period which, under the facts and circumstances, constitutes an unreasonable period of time; (l) willful adulteration, mislabeling, or misbranding of motor fuels; (m) Tenant's misuse of Landlord's trademarks; (n) knowing failure of Tenant to comply with federal, state, or local laws, rules, regulations, or ordinances relevant to the operation of the premises; (o) conviction of Tenant of any felony involving moral turpitude; or (p) the occurrence of any other event relevant to the relationship between the parties which makes termination or nonrenewal reasonable, including but not limited to those set forth in (B) below.

(B) Nonrenewal of the Lease and the Relationship. In addition to the grounds set forth in Subparagraph (A) of this Paragraph 13, Landlord may nonrenew this lease and the relationship between the parties, upon notice as provided herein, in any of the following events: (1) failure of Tenant and Landlord to agree to changes or additions to their agreements which Landlord has, in good faith, determined are required; (2) receipt of numerous bona fide customer complaints by Landlord concerning the Tenant's operation of its premises; (3) repeated failure of Tenant to operate its premises in a clean, safe, and healthful manner; (4) a good faith determination by Landlord, made in its normal course of business, to (i) convert the premises to a use other than the sale or distribution of motor fuel, or (ii) to materially alter, add to, or replace the premises, or (iii) to sell or exchange the premises; or (5) a good faith determination by Landlord that renewal of the relationship is likely to be uneconomical to Landlord despite any reasonable changes or additions to the agreements between the parties which may be acceptable to Tenant.

(C) Notice. Should any circumstance occur constituting grounds for termination or nonrenewal of this lease and/or the relationship between the parties, including but not limited to those set forth in Subparagraphs (A) and (B) of this Paragraph 13, Landlord shall give Tenant notice thereof starting the reason(s) therefor and the date on which termination or nonrenewal shall take effect.

(D) Right of Termination Due to Governmental Action. If any federal, state, or local governmental action results in the adoption of orders, rulings, regulations, or laws that: (1) significantly alter the reasonable expectations of the parties at the time of entering into this lease agreement; or (2) result in the imposition of an obligation upon Landlord to install or construct equipment, facilities, or improvements on the premises and, in Landlord's sole judgment, the cost of such installation would be uneconomical to Landlord; or (3) modify in any way the present relationship of Mobil Oil Corporation's exploration, production, refining, transporting, or marketing functions to the structure of Mobil Oil Corporation, then either party may terminate this lease agreement, together with any supply agreement with Landlord, upon not less than 180 days' notice to the other party.

(E) Accrued Rights. Any termination or nonrenewal shall be without prejudice to Landlord's accrued rights.

(F) Remedies of Landlord. In the event of any default by Tenant or any failure or refusal by Tenant to perform any of the agreements, covenants, conditions, or provisions of this lease agreement, Landlord shall have the following remedies in addition to its right to terminate this lease agreement and to nonrenew the franchise relationship between the parties: (a) Landlord shall have the option, but shall not be obligated, to perform Tenant's obligation hereunder and any cost or expense incurred by Landlord, together with interest at the highest rate allowed by law from the date paid, shall be deemed additional rent and collectible as such by Landlord with the monthly installment of rent due ten (10) days after notice of such payment; (b) Landlord shall have the option, but shall not be obligated, to enter the demised premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied but neither any such expenditure nor any such performance by Landlord shall be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default; (c) Tenant hereby expressly waives service of any notice of intention to re-enter. Tenant hereby waives any and all rights to recover or to regain possession of the demised premises or to reinstate or to redeem this agreement or other right of redemption as permitted or provided by or under any statute, law, or decision now or hereafter in force and effect; (d) the rights and remedies given to Landlord in this agreement are distinct, separate, and cumulative, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any others herein or by law or in equity provided; and (e) in the event legal proceedings are instituted by Landlord to enforce any provision of this lease, Tenant agrees to pay Landlord's reasonable attorney fees.

14. Redevelopment of the Premises. Landlord shall have the option, but not be obligated, to redevelop the premises which may include reconstructing, remodeling, additions to buildings, equipment, facilities, and a change in configuration which may include the elimination of the service bays. Tenant agrees and understands that Landlord is under no obligation to undertake any such redevelopment and that it is solely within the discretion of Landlord whether any such redevelopment will be made, as well as the nature of any redevelopment. Provided however, any such redevelopment shall continue to provide facilities for the sale of motor fuel under any Retail Dealer Contract existing between the parties hereto.

In the event Landlord exercises this option to redevelop the premises, Landlord agrees to provide Tenant with at least thirty (30) days' written notice in advance of the commencement of any demolition or construction.

Tenant covenants and agrees to permit Landlord and its agents or contractors to enter upon the premises for the purpose of making the proposed alterations and redevelopment in the event Landlord exercises its option to make same. Tenant agrees that Landlord shall not be liable for loss, inconvenience, or annoyance to Tenant arising out of or in connection with such alteration and redevelopment including, but not limited to, any loss, damage to, or removal of any or all alterations or improvements previously installed by Tenant, or any claim by Tenant for loss of business arising out of any such redevelopment. During the period of such demolition or construction, Landlord shall reduce the rental due hereunder by an amount which, in its sole judgment, will adequately compensate Tenant for the restrictions in use of the premises resulting from such demolition or construction.

Upon completion of any such redevelopment, Landlord may, for the remaining term of this lease, increase the rent in accordance with Landlord's rental policy and/or increase the hours of operation up to twenty-four (24) hours per day, seven (7) days per week. After receipt of notice of any such rental and/or hours of operation increase, Tenant shall have the right to terminate this lease on ten (10) days' written notice to Landlord if any such rental and/or hours of operation increase by Landlord is not satisfactory to Tenant.

15. Notices. All notices hereunder shall be in writing and shall be delivered personally (to an officer or manager in case of Landlord) or sent by certified mail to the address specified herein unless changed by notice. Notice by mail shall be deemed given on the date such notice is deposited in the United States mail, postage prepaid, and properly addressed.

16. Severability. If any provision of this lease agreement or portion thereof, or the application thereof to any person or circumstance is finally determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this lease agreement.

17. Subordination. This lease agreement and all rights of Tenant hereunder are, and shall be, subject and subordinate in all respects, to all existing and future ground leases, overriding leases, and underlying leases of all, or any portion of, the demised premises now or hereafter existing and to all mortgages and building loan agreements which may now or hereafter affect the demised premises and/or the lease or leasehold estate created by any such leases, whether or not such mortgages shall also cover lands other than the demised premises and/or any such leases, to each and every advance made or to be made hereafter under any such mortgages, to all renewals, modifications, replacements, and extensions of any such lease and/or such mortgages and to all spreaders, consolidations, and correlations of such mortgages. The term "mortgages" herein shall include deeds of trust and other financing agreements.

18. Significance of Terms and Conditions. THE PARTIES HERETO AGREE THAT, IN ALL RESPECTS, THE TERMS AND CONDITIONS HEREIN ARE REASONABLE AND OF MATERIAL SIGNIFICANCE TO THE RELATIONSHIP OF THE PARTIES AND ANY BREACH OF ANY TERM OR CONDITION BY EITHER PARTY SHALL BE CONCLUSIVELY DEEMED TO BE SUBSTANTIAL.

19. Entire Agreement. This instrument, including any documents incorporated herein, contains the entire agreement covering the subject matter and supersedes any prior lease between the parties with respect to the premises. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS, OR WARRANTIES AFFECTING THIS LEASE WHICH ARE NOT FULLY SET FORTH HEREIN.

20. Miscellaneous. Any attempt to assign, mortgage, or pledge this lease agreement or any interest therein or any subletting of all or any part of the premises, in whole or in part, by Tenant without Landlord's prior written consent shall constitute a default of this lease agreement and any such assignment, mortgage, pledge, or sublease shall be void. Unless otherwise prohibited by law, Landlord reserves the right to require any proposed assignee acceptable to Landlord to enter into a Trial Franchise and satisfactorily complete dealer training as part of the conditions of Landlord's consent to any assignment. The headings of the paragraphs of this agreement are for convenience only and in no way limit, amplify, or otherwise affect the terms and conditions herein. Landlord's right to require strict performance shall not be affected by any previous waiver or course of dealing. No modification of this lease agreement shall be binding on Landlord unless in writing and signed by Landlord's Administrative and Controls Manager or such authorized representative of higher authority.

EXECUTED as of the date first herein specified.

MOBIL OIL CORPORATION

WITNESSES:

..... By: .....
Manager

Tenant

..... (L.S.)

..... (L.S.)

Mobil Oil Corporation — retail dealer contract

THIS CONTRACT is made 5-19, 19 87, between MOBIL OIL CORPORATION, hereafter called Seller, having an office at 6363 N.W. 6th Way, Suite 390, Ft. Lauderdale, Fl 33309 and ALAN BERMAN, jointly and severally if more than one, hereafter called Buyer, having a place of business at 2333 S. Andrews AVenue, Ft. Lauderdale, FL hereafter called the marketing premises.

1. Products; Quantities. Seller shall sell and Buyer shall purchase and accept from Seller, such quantities of products as Buyer shall order from time to time during the term of this contract for delivery at the marketing premises, but during each calendar month or calendar year, as the case may be, not more than the following specified quantities nor less than fifty percent (50%) of such specified quantities of all such products (in thousand gallons, unless otherwise specified):

MONTH	GASOLINES	DIESEL FUELS
January	109,200	
February	99,600	
March	110,400	
April	99,600	
May	98,400	
June	90,000	
July	99,600	
August	99,600	
September	81,600	
October	99,600	
November	102,000	
December	110,400	
TOTAL	1,200,000	

OILS AND GREASES

1,944 GALLONS

The quantities so specified for oils and greases are calendar year totals, and shall be prorated for any period less than a calendar year.

If Buyer requests deliveries of products in excess of the maximum quantities which Seller is obligated to sell hereunder, Seller may elect to accept such requests where, in its sole discretion, Seller determines said additional quantities are available. Any sale of products in excess of the quantities specified herein shall be subject to the terms and conditions of sale set forth herein.

Seller shall not be obligated to (but may at its option) make single deliveries of gasoline or diesel fuel of less than the standard delivery as defined by Seller, to the marketing premises as specified herein. For this contract, 8 pounds of grease equals 1 gallon of oil. As used in this contract, Seller's product shall mean products purchased by Buyer from Seller.

Any products purchased by Buyer from Seller (except products specifically covered by another contract between Buyer and Seller), including products not listed above, shall be covered by the terms and conditions of this contract. Nothing herein contained shall be construed as a waiver of any law, ordinance, lease and/or contract prohibiting the use of Mobil-owned and/or Mobil-branded dispensing facilities for the storage and sale of other than Mobil-branded products. Products, grades, trademarks, and packaging shall be those marketed and used by Seller at times of deliveries for similar dealers in Buyer's area, all as determined by Seller. Seller may, at any time or from time to time, change the grade, specifications, characteristics, delivery package, brand name, or other distinctive designation of any product herein listed, and such products as so changed shall remain subject to this contract. Seller may discontinue the sale of any product herein listed, in which event both Seller and Buyer shall be relieved of any further obligation hereunder with respect thereto.

2. Term. The term of this contract shall be for a fixed period of three (3) year(s) beginning September 1, 1987 and ending August 31, 1990.

3. Prices; Terms; Deliveries. Prices shall be those posted or listed by Seller at time and for place of delivery for that class of customer in which Buyer shall then fall as determined by Seller. All prices are subject to change by Seller. Unless otherwise specified, prices are prior to taxes and are subject to change by Seller at any time and without notice. All prices are payable in cash in U.S. dollars at time of delivery or order, or such other payment terms as Seller may specify, except to the ex-

tent credit is extended on such terms and conditions as Seller may determine in its sole discretion. Cash discounts, if any, are not applicable to taxes, freight charges, or container charges. Deliveries shall be made at the marketing premises and shall be promptly received by Buyer. In the event Buyer defaults in the payment of any indebtedness to Seller, in addition to any other rights it may have, Seller shall have the right to immediately suspend deliveries of all products and to apply any funds which Buyer may have on deposit in Seller's custody to the payment of such indebtedness.

4. Taxes. The amount of any present or future governmental tax, fee, duty or other imposition (not included in the price or otherwise paid by Buyer) on or measured by: (a) this contract; (b) the products or constituent materials covered hereby; or (c) the manufacture, sale, use, transportation or handling of said products or materials, shall be paid by Buyer to Seller, unless Buyer is required by law to pay the same directly to the governmental taxing unit.

5. Retail Credit Program. For so long as Seller offers to Buyer and Buyer elects to participate in Seller's Retail Credit Program, Buyer agrees to comply strictly with all terms, conditions, requirements, and provisions of Seller's Retail Credit Program, as the same may be ammended by Seller from time to time, as set forth in Seller's current Credit Card Instructions, Form CO-66. As a condition of such participation, Buyer is required to cooperate fully in preventing sales to persons not authorized to use the credit card. Buyer shall be responsible for the acts of Buyer's employees with regard to Seller's Credit Card Instructions. If Buyer fails to observe the terms of Seller's Credit Card Instructions, including the requirement that Buyer take reasonable precautions to prevent sales to unauthorized persons, Seller may take any one or more of the following actions it deems necessary in its sole discretion: (a) charge back to Buyer's account the amount of any such sale; or (b) on notice to Buyer, impose special terms and procedures on Buyer's participation in the Retail Credit Program; or (c) on notice to Buyer, exclude Buyer from participation in the Retail Credit Program. Buyer's failure to comply with Seller's Credit Card Instructions or Buyer's failure to pay promptly any charge to Buyer's account resulting from such failure, shall constitute a default under this contract. Buyer shall, upon Seller's request, return to Seller the manual credit card imprinter and/or electronic credit card point of sale terminal leased to Buyer by Seller.

Buyer acknowledges receipt of a copy of Seller's Credit Card Instructions (Form CO-66), has read the same and is familiar therewith. Buyer will insure that Buyer's employees read and become familiar with the Credit Card Instructions (Form CO-66) and that same will be maintained on the premises for reference by Buyer and Buyer's employees.

For all sales made by Buyer in accordance with such policy, Seller shall pay Buyer, or credit to Buyer's account, at Seller's discretion, the face amount of each credit sales ticket delivered to Seller, less such charges as Seller may establish for participation in its Retail Credit Program, provided such delivery of the credit sales ticket (or as Seller may otherwise direct) is made within the time specified by Seller, and not later than fifteen (15) days after such sale.

Seller reserves the right to terminate its Retail Credit Program to Buyer upon notice.

6. Trademarks, Brand Names; Advertising. Buyer shall use Seller's trademarks and brand names to identify and advertise Seller's products and shall not use such trademarks and brand names for any other purpose, or in any manner which may confuse or deceive the public. Buyer shall not mix any other products with Seller's products or adulterate them in any way, and shall not use Seller's trademarks or brand names in connection with the storage, handling, dispensing, or sale of any adulterated, mixed or substituted products. All advertising, including color schemes, of Seller's products shall be subject to Seller's approval. Any violation of the provisions of this paragraph by Buyer shall constitute a default under this contract and shall give Seller the right to immediately terminate this contract. On any termination of this contract, Buyer shall cause all reference to Seller and all use of Seller's color schemes, trademarks, brand names, slogans, and advertising to be discontinued and shall return to Seller all such advertising and promotional material in Buyer's possession. Buyer acknowledges and recognizes that injunctive relief is essential for the adequate remedy of any violation of the provisions of this Paragraph 6 by Buyer. Buyer further agrees to pay Seller's reasonable attorney fees in the event suit is instituted by Seller to enforce any of the provisions of this Paragraph 6.

7. Containers. All containers on which Seller charges a deposit shall remain Seller's property, shall be used only for the original contents and shall be returned when empty to Seller's shipping point, freight collect, unless Seller maintains in Buyer's area a regular pick-up service, in which event Seller shall collect containers on notice from Buyer. Deposit charges are payable without discount when payments for the contents are due and shall be refunded provided the containers are returned in their delivered condition, less ordinary wear, within ninety (90) days after delivery. If not so returned, Seller may retain the charges in settlement for the containers and expenses.

8. Product Quality Control. Buyer shall protect the quality of products delivered to it by the Seller. The Buyer shall inspect tanks daily for water accumulation and shall notify the Seller immediately if water exceeds 3/4 of an inch depth for each respective tank. Without limiting any of the Buyer's obligations elsewhere under this contract or otherwise, if the tank or tanks are the property of the Buyer, the Buyer shall take immediate action to correct the situation. The Seller may refuse to make motor fuel deliveries into the affected tank or tanks until the fault is corrected.

Unleaded Gasoline. The sale and distribution of unleaded gasoline is subject to Federal regulation under the Clean Air Act. This obligation addresses both the role of the Seller and Buyer in handling unleaded product. The Seller certifies that the product delivered by it as unleaded gasoline will, at the time of delivery, meet or exceed the specifications under applicable governmental regulations. The Buyer hereby covenants and agrees that the Buyer will exercise the highest degree of care and diligence in the handling, storing, and sale of unleaded gasoline. The Seller has established procedures to be observed in order to safeguard the integrity of the unleaded gasoline sold and purchased pursuant to this contract. The procedures are set forth in a pamphlet entitled "Unleaded Gasoline Handling Procedures," which is incorporated herein by reference. Buyer shall obligate himself and anyone in Buyer's employ or under Buyer's supervision involved in the handling, storage, and/or sale of unleaded gasoline to follow the procedures established in the above-described pamphlet. Buyer shall not cause or condone any contamination, mixing, or adulteration of Seller's unleaded product. Buyer must immediately notify Seller of any suspicion that unleaded gasoline is contaminated by any means whatsoever. Buyer's failure to prevent the contamination of unleaded gasoline subsequent to delivery shall constitute a default hereunder.

Seller shall not be responsible for any damages, unless it is shown that Seller's unleaded product delivered to Buyer was contaminated prior to delivery. Buyer agrees to provide Seller, at Seller's request, the results of any tests of the product conducted by or for Buyer and further agrees to permit Seller to conduct such additional tests as Seller may require.

9. Customer Service. Buyer agrees that while using any trademark, brand name, or other identification of Seller, Buyer shall: (a) render prompt, fair, courteous, and efficient service to Buyer's customers; (b) promptly investigate all customer complaints, and make such adjustments which are reasonable and appropriate; (c) maintain the marketing premises in a manner which will foster customer acceptance of Seller's products sold hereunder; (d) provide qualified attendants to render good service to customers; (e) keep the rest rooms open at all times during business hours and keep such rest rooms clean, sanitary, and furnished with adequate supplies; (f) not employ or permit any illegal, unethical, deceptive, or unfair practices in the conduct of Buyer's business; and (g) price all products and services as Buyer shall determine, provided same are lawful.

10. Claims; Release. Seller shall have no liability to Buyer for any defect in quality, or shortage in quantity, of any products delivered unless Buyer gives Seller notice of Buyer's claim within: (a) two (2) days after delivery for shortages in quantity of products, or (b) within four (4) days after delivery (or discovery in the case of any latent defect) for quality deficiencies, and further provides Seller with reasonable opportunity to inspect the products and take test samples. Any other claim by Buyer of any kind, based on or arising out of this contract or otherwise, shall be waived and barred unless Seller is given written notice within ninety (90) days after the event, action, or inaction to which such claim relates and further, any such claim by Buyer shall be waived and barred unless asserted by the commencement of any action within twelve (12) months after the event, action, or inaction to which such claim relates. In no event shall Seller be liable for prospective profits or special, indirect, or consequential damages.

In consideration of Seller's execution of this contract and the mutual covenants herein, Buyer expressly releases Seller from any and all claims which Buyer may have against Seller on the date of this contract, except only those claims, if any, expressly reserved by Buyer in a schedule attached hereto.

11. Contingencies. Seller shall not be liable for loss, damage or demurrage due to any delay or failure in performance: (a) because of compliance with any action, order, direction, request, or control of any governmental authority or person purporting to act therefor; or (b) when the supply of products or any facility of production, manufacture, storage, transportation, distribution, or delivery contemplated by Seller is interrupted, unavailable, or inadequate because of wars, hostilities, public disorders, acts of enemies, sabotage, strikes, lockouts, labor or employment difficulties, fires, floods, acts of God, accidents or breakdowns, plant shutdowns for repairs, maintenance or inspection, weather conditions, or for any other cause which Seller determines is beyond its reasonable control when acting in good faith and in the ordinary course of business, whether or not similar to any of the foregoing. Seller shall not be required to remove any such cause or replace the affected source of supply or facility if it shall involve additional expense or a departure from its normal practices. If, for any cause, there is, or Seller believes in its reasonable opinion there may be, a shortage of supplies, for whatever reason, so that Seller is or may be unable to meet the demands of all of its customers of all kinds, Seller may allocate to and among its Retail Dealers such quantities of product as Seller determines in the exercise of its ordinary business judgment it has available for distribution to that class of trade from any given terminal or point of supply, provided that Seller's plan of allocation shall not unreasonably discriminate between Buyer and Seller's other Retail Dealers. Seller shall not be required to make up any deliveries or quantities omitted pursuant to the provisions of this Paragraph 11, including but not limited to, deliveries or quantities omitted pursuant to Seller's right to allocate product among its Retail Dealers, nor shall Seller be liable for any damages or losses in connection with such omitted deliveries or quantities. In all instances in this Paragraph 11 wherein a decision or determination of Seller is referred to, such decision or determination shall be made in Seller's sole and absolute discretion when acting in the ordinary course of business. Buyer shall not be liable for failure to receive products if Buyer is prevented from receiving and using them in its customary manner by any cause beyond its reasonable control.

12. Indemnity. Buyer shall defend, indemnify, and hold Seller, its agents, servants, employees, successors, and assigns, harmless from and against any fines, penalties, charges, or expenses, for violations of any law, ordinance or regulation, caused by any act or omission, whether negligent or otherwise, of Buyer or its agents, servants, employees, or otherwise under it. Buyer shall defend, indemnify, and hold Seller, its agents, servants, employees, successors, and assigns, harmless from and against any claims, losses, liability, suits, liens and expenses (including those of the parties, their agents, and employees) for death, personal injury, property damage, or any other injury or claim arising out of Buyer's business or businesses and/or the use, occupancy, operation, and maintenance of the marketing premises (including adjacent sidewalks, drives, and curbs) by Buyer or any of its agents, contractors, employees, or others under it.

The provisions of Paragraphs 10 and 12 shall survive any termination or nonrenewal of this contract, however arising.

13. Expenses; Permits. Except as otherwise provided in this contract, or in any lease between the parties covering the premises, Buyer shall pay all expenses, taxes, and fees in connection with the maintenance and operation of the premises and the business conducted thereon, shall obtain all required permits and licenses, and shall comply with all applicable governmental laws and regulations.

14. Default; Termination; Nonrenewal; Notice; Right of Termination Due to Governmental Action; Accrued Rights and Unsold Products at Termination.

(A) Default. If Buyer is in default hereunder, or under any Service Station Lease between the parties, Seller may suspend deliveries during such default and may terminate or nonrenew as provided herein or as otherwise provided by law.

(B) Termination of Contract and Relationship. Seller may terminate or nonrenew this contract and the relationship between the parties, upon notice as provided herein, on any one or more of the following grounds:

(1) failure by Buyer to comply with any provision of this contract, which provision is both reasonable and of material significance to the relationship hereunder;

(2) failure by Buyer to exert good faith efforts to carry out any of the provisions of this contract;

(3) a determination is made by Seller in good faith and in the normal course of business to withdraw from marketing of motor fuel through retail outlets in the relevant geographic market area in which Buyer's station is located; or

(4) occurrence of an event which is relevant to the relationship hereunder and as a result of which termination or nonrenewal of this contract and the relationship is reasonable, including but not limited to, such events as: (a) failure of Buyer to make prompt payment of any sums due to Seller; (b) the termination of any Service Station Lease between the parties hereto; (c) if Buyer has made any false or misleading statement on Buyer's Financial Statement or Form CO-422; (d) Buyer commits any fraud or criminal misconduct, relevant to the operation of the marketing premises; (e) Buyer takes advantage of any law for the benefit of debtors, or if an execution or levy shall issue against Buyer or Buyer's effects, or insolvency, bankruptcy or receivership proceedings are instituted by or against Buyer which are not contested by Buyer and dismissed, or which result in a declaration of bankruptcy or judicial determination of insolvency of Buyer; (f) death of Buyer; (g) severe mental or physical disability of Buyer which continues for 3 months or more and which prevents the personal supervision of the operation of the marketing premises by Buyer; (h) a total or partial condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain; (i) destruction of all or a substantial part of the marketing premises; (j) failure of Buyer to operate the marketing premises for the sale of motor fuel for seven (7) consecutive days or such lesser period which, under the facts and circumstances, constitutes an unreasonable period of time; (k) willful adulteration, mislabeling or misbranding of motor fuels; (l) Buyer's misuse of Seller's trademarks; (m) knowing failure of Buyer to comply with federal, state or local laws, rules, regulations, or ordinances relevant to the operation of the marketing premises; (n) conviction of Buyer of any felony involving moral turpitude; or (o) the occurrence of any other event relevent to the relationship between the parties which makes termination or nonrenewal reasonable, including but not limited to those set forth in subparagraph (C) below.

(C) Nonrenewal of the Contract and the Relationship. In addition to the grounds set forth in Subparagraph (B) of this Paragraph 14, Seller may nonrenew the contract and the relationship between the parties, upon notice as provided herein, in any of the following events: (1) failure of Buyer and Seller to agree to changes or additions to their agreements which Seller has, in good faith, determined are required; (2) receipt of numerous bona fide customer complaints by Seller concerning Buyer's operation of its marketing premises; (3) repeated failure of Buyer to operate the marketing premises in a clean, safe, and healthful manner; (4) a good faith determination by Seller that renewal of the relationship is likely to be uneconomical to the Seller despite any reasonable changes or additions to the agreements between the parties which may be acceptable to Buyer.

(D) Notice. Should any circumstance occur constituting grounds for termination or nonrenewal of this contract and the relationship between the parties, including but not limited to those set forth in Subparagraphs (B) and (C) of this Paragraph 14, Seller shall give Buyer notice thereof stating the reasons therefor and the date on which termination or nonrenewal shall take effect.

(E) Right of Termination Due to Governmental Action. If any federal, state or local governmental action results in the adoption of orders, rulings, regulations, or laws that (1) significantly alter the reasonable expectations of the parties at the time of entering into this contract, or (2) result in the imposition of an obligation upon Seller to install or construct equipment, facilities, or improvements on the marketing premises and in Seller's sole judgment, the cost of such installation or construction would be uneconomical to Seller, or (3) modify in any way the present relationship of Mobil Oil Corporation's exploration, production, refining, transporting, or marketing functions to the structure of Mobil Oil Corporation, then either party may terminate this contract upon not less than 180 days' notice to the other party.

(F) Accrued Rights and Unsold Products at Termination. Any termination shall be without prejudice to Seller's accrued rights. If Buyer is indebted to Seller at time of termination, title to Buyer's unsold products, in good condition, bought from Seller, shall on notice to Buyer, revest in Seller who shall apply the amount charged therefor against such indebtedness.

15. Labeling and Posting. Buyer shall comply with all health, labeling or posting requirements of any governmental agency, manufacturer, and of Seller.

16. Representations and Assurances. Seller has entered into this contract in reliance on Buyer's personal qualifications and Buyer's representations to Seller of its desire to operate a retail service station selling Mobil-branded products. Furthermore, Buyer represents to Seller it will conduct its business so as to maintain and enhance the public acceptance of Seller's trademarks, products, and other Mobil-brand dealers. Buyer acknowledges its conduct will impact these areas so long as Buyer holds itself out to the public as a Mobil-branded dealer. Buyer agrees to use its best efforts to promote and maximize the sale of Seller's products, to conduct its business so as to meet or exceed Seller's high standards of retailing, appearance, customer service, and product quality, and to refrain from conduct which will detract from the value of Seller's trademarks or which would tend to lower the public acceptance of Seller's branded dealers. At all times, Buyer shall keep visible and legible Seller's logos, signs, trademarks, and brand names which are affixed to, located upon, or associated with pumps, signs, or merchandising equipment used in connection with the sale of Seller's products at Buyer's place of business. The obligations assumed by Buyer herein are the very essence of this contract, and Buyer's failure or refusal to comply therewith shall constitute grounds for termination or nonrenewal of this contract and the relationship between the parties.

17. Relationship of Seller and Buyer. Buyer is an independent businessman, and nothing in this contract shall be deemed as creating any right in Seller to exercise any control over, or to direct in any respect, the conduct or management of Buyer's business, subject only to Buyer's performance of the obligations imposed under this contract. Neither Buyer nor any person performing work at the marketing premises for, or on behalf of, Buyer shall be deemed an employee or agent of Seller.

18. Notices. All notices hereunder, except those under Paragraph 7, shall be in writing and shall be delivered personally (to an officer or manager in case of Seller) or sent by certified mail to the address specified herein unless changed by notice. Notice by mail shall be deemed given on the date such notice is deposited in the United States mail, postage prepaid and properly addressed.

19. Severability. If any provision of this contract, or any portion thereof, or the application thereof to any person or circumstance is finally determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this contract.

20. Significance of Terms and Conditions. The parties hereto agree that in all respects, the terms and conditions herein are reasonable and of material significance to the relationship of the parties, and any breach of any term or condition by either party shall be conclusively deemed to be substantial.

21. Entire Agreement. This instrument, including any documents incorporated herein and any lease of the premises from Seller to Buyer, contain the entire agreement covering the subject matter, and supersedes any prior supply contract between the parties relating to the marketing premises. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES AFFECTING THIS CONTRACT WHICH ARE NOT FULLY SET FORTH HEREIN.

22. Miscellaneous. Any attempt to assign this contract by Buyer without Seller's prior written consent shall constitute a default of this contract and any assignment shall be void. Unless otherwise prohibited by law, Seller reserves the right to require any proposed assignee acceptable to Seller, to enter into a trial franchise as part of the conditions of Seller's consent to any assignment. The headings of the paragraphs of this contract are for convenience only and in no way limit, amplify, or otherwise affect the terms and conditions herein. Seller's right to require strict performance shall not be affected by any previous waiver or course of dealing. No modification of this contract shall be binding on Seller unless in writing and signed by Seller's Administrative and Controls Manager or such authorized representative of higher authority.

EXECUTED as of the date first herein specified.

MOBIL OIL CORPORATION

WITNESSES:

By: _____
Manager

_____

Buyer: _____

CO-1506 RIDER (7-79)

Mobil Oil Corporation

sign and equipment rent rider

(TO BE ATTACHED TO AND MADE A PART OF FORM CO-1506 RETAIL DEALER CONTRACT)

CONTRACT DATED 5-19, 19 87 BETWEEN MOBIL OIL CORPORATION, AS SELLER (LESSOR HEREUNDER), AND ALAN BERMAN, AS BUYER (LESSEE HEREUNDER), COVERING PREMISES SITUATED AT 2333 S. Andrews Avenue, Ft. Lauderdale, FL 33315

1. Leased Equipment.

Lessor hereby leases to Lessee and Lessee hires from Lessor the following items of personal property for use at the above premises. Lessee shall pay to Lessor the respective amounts of rent for each item as set forth below on the first day of each month of the term hereof and any extension and renewal hereof except where otherwise noted.

	RENT PAYABLE MONTHLY IN ADVANCE	RENT PAYABLE ANNUALLY IN ADVANCE
SIGNS:		
NUMBER _____ TYPE _____ SIZE _____	$ _____	
NUMBER _____ TYPE _____ SIZE _____	$ _____	
NUMBER _____ TYPE _____ SIZE _____	$ _____	
TIRE MERCHANDISERS:		
NUMBER _____ TYPE _____		$ _____
OIL CAROUSELS:		
NUMBER _____		$ _____
IMPRINTERS:		
NUMBER 2 TYPE Cr. Cd. @ $24.00		$ 48.00
OTHER (NUMBER OF ITEMS AND DESCRIPTION):		
_____		
_____		
_____		
_____		
_____	$ _____	
TOTAL:	$ _____	$ 48.00

2. Term.

The term of this lease shall begin on September 1, 19 87, and shall continue for a period of 3 year(s) and thereafter until terminated by either party on not less than ninety (90) days' written notice to the other, provided, however, that it shall automatically terminate on any termination of any Retail Dealer Contract or Distributor Contract between the parties hereto. Lessor may terminate this lease at any time by written notice on default by Lessee.

3. Lessee's Obligations.

With respect to said equipment, Lessee shall (a) make no additions thereto or alterations therein without Lessor's written consent, (b) keep legible and visible all brand names, trademarks and signs of Lessor, (c) comply with all laws and regulations covering its use, (d) do or permit to be done nothing prejudicial to Lessor's title, (e) not remove it or deliver it to anyone but Lessor, (f) use it solely for Lessor's products on the premises, and (g) exercise reasonable care to prevent damage.

4. Lessor's Obligations.

Lessor shall pay all charges for permits and licenses (except periodic renewal fees) installation, maintenance (except the cost of electric current) and repairs, provided the necessity therefore is due to ordinary wear or to damage by the elements. Lessor's obligation to repair shall not arise until (a) Lessor is notified by Lessee that the item in question is not in good operating condition and (b) Lessor shall have determined in its sole discretion and within a reasonable period that the necessity for repair is due to a cause referred to above. Lessee shall either make the item harmless or shall not use it or permit it to be used until repaired. In lieu of repair, Lessor may make replacements.

5. Equipment Removal.

Not withstanding the notice provisions in Section 2 hereof, Lessor reserves the right to remove any of the leased items at any time and to replace the same with similar personal property. Lessor reserves the further right to discontinue the leasing of any item at any time without any obligation to replace the same in which event the rental for said item or items will cease effective as of the date of removal. On any termination of the Retail Dealer Contract or Distributor Contract between the parties hereto, Lessor may remove said equipment without liability and without obligation to restore the premises to their former condition or to repair or pay for damage incidental to removal, or Lessor may abandon said equipment.

6. Miscellaneous.

With respect to said equipment, this lease shall supersede any other agreement between the parties covering equipment.

Witnesses:

MOBIL OIL CORPORATION

Manager

Lessee

Consent of Owner of Premises

In consideration of Lessor's entering into the foregoing agreement and leasing the equipment therein specified, the owner of the premises consents to the agreement and to any similar one with any other occupant and agrees (1) that any equipment leased to any occupant shall remain Lessor's personal property, irrespective of how it may be affixed and may be removed or abandoned at any time, (2) that Lessor shall have all rights provided for in agreement whether or not then in effect and (3) that no such equipment shall be subject to lien or process on account of any rents or other amounts now or hereafter due.

In the presence of:

Owner

Mobil Oil Corporation

P.O. BOX 5364
FT. LAUDERDALE, FLORIDA 33310 5364

Alan Berman
2333 S. Andrews Avenue
Ft. Lauderdale, Florida 33315

Dear Mr. Berman:

You may be currently responsible to pay a lower maximum rent than your lease requires as a result of a unilateral and temporary rent adjustment made by Mobil. Please be advised that Mobil hereby rescinds that unilateral rent adjustment effective May 31, 1987. Commencing June 1, 1987 you will pay the amount specified in your service station lease unless your 1987 volume meets or exceeds the 1986 corresponding month's volume times 110%. If your 1987 volume meets or exceeds the 1986 corresponding month's volume times 110%, your rental for your station will be calculated monthly in arrears by multipying your corresponding 1986 volume for the month being adjusted by 110% to arrive at a base volume. The base volume will then be multiplied by 1.6¢ to arrive at your GPC incentive base rent for the month. An incentive of 3.25¢ per gallon will be credited to the GPC incentive base rent on all volume in excess of 110% of that month's corresponding 1986 volume. This Temporary GPC Incentive Rent, when combined with your present monthly Alternate Profit Center (APC) rent as set forth in your lease, will equal your Temporary Incentive Rent for a given month.

In the event your service station's 1986 volume was affected by the occurrence of events beyond your reasonable control, such as a Full Self-Serve Conversion, Facelift, Rebuild, road construction, temporary closure, tank replacement, etc., your base volume for the affected months in 1986 will be determined by using the average of the 1986 months excluding the months affected by the particular situation.

In no event will this revised Temporary Incentive Rent result in a rental which exceeds the rental amount called for in your lease. In no event will the incentive credited over 110% of that month's 1986 volume exceed the base GPC Rent for that month.

A credit will be issued on your monthly statement for rent collected which exceeds your temporary rent.

This unilateral rental adjustment under which you are still paying less than your obligation under the lease may be rescinded by Mobil at any time in which case you will thereafter be responsible for payment of rent as provided in your lease.

Please attach this letter to a copy of your lease.

Very truly yours,

4927A

Manager

ACKNOWLEDGED:

_____ 19___
Dealer Signature

Mobil Oil Corporation

P.O. BOX 5364
FT. LAUDERDALE, FLORIDA 33310-5364

Alan Berman
2333 S. Andrews Avenue
Ft. Lauderdale, Florida 33315

RE: S/S # 02-A29

Dear Mr. Berman:

State law requires that all service stations post a Fill Box Identification Chart in a prominent place.

For uniformity, please post this chart on the nearest inside wall to the right of the salesroom door so that it is visible to the tank truck driver.

Very truly yours,

Manager

I acknowledge receipt of one Fill Box Identification Chart.

5-19, 1987

Dealer Signature

UNDERGROUND STORAGE TANK MONITORING

AND

RECORDS ADDENDUM

Pursuant to State of Florida,
Department of Environmental Regulation,
Stationary Tank Regulations,
Chapter 17-61

This addendum is made this 19 day of MAY, 1987 between Mobil Oil Corporation (herein called "Seller"), having an office at 6363 N.W. 6th Way, Suite 390, Ft. Lauderdale, FL 33309 and Alan Berman, jointly and severally if more than one (herein called "Buyer"), having a place of business at 2333 S. Andrews Avenue, Ft. Lauderdale, Florida 33315, (hereafter called the "Premises").

I. Buyer shall perform all monitoring of the underground storage tank or tanks at the premises required by state, federal or local law. Buyer's obligations shall include, but are not limited to, requirements imposed under Florida Stationary Tank Regulations, Chapter 17-61 and the following:

a. Buyer shall maintain inventory records for each pollutant containing tank as required in Section 17-61.06. The data required shall be accumulated for each day a tank has pollutants added or withdrawn, but not less frequently than once in a week.

b. Buyer shall average losses or gains from each day's inventory for each five consecutive readings or once a week. For any average which shows a significant loss or gain, the investigation procedure set forth below shall be followed. Significant loss or gain is defined as a loss or gain of pollutant in a storage system over five (5) consecutive inventory periods which exceeds 1% of the storage system capacity, or 1% of the output or 50 gallons, whichever is greater.

c. The investigation shall not stop until the source of the discrepancy has been found, the tank has been tested, repaired, or replaced, or the entire procedure has been completed. In the event of a discrepancy, Buyer shall recheck all records of inventory input and output for the arithmetical error. Buyer shall remeasure physical inventory to determine whether there has been an error in measurement. If significant loss or gain is not

reconcilable by remeasuring inventory and checking for arithmetical error, or can not be affirmably demonstrated to be the result of theft, the accessible parts of the storage system shall be checked for damage or leaks and Buyer shall notify Mobil. Monitoring wells and leak detection systems shall be checked for signs of a discharge. Calibration of the inventory measuring system and any dispenser shall be checked.

II. Buyer agrees to keep all records required by Section 17-61.05 and 17-61.06 in a permanent form for a two year period. The records must be made available for inspection by the Department of Environmental Regulation and must be maintained at the facility. Records of the following are required as a minimum:

a. Measurements taken and reconciliation of inventory.
b. Results of examinations of monitoring wells and other leak detection systems.
c. Dates of retrofitting of existing storage systems.
d. Results of maintenance examinations of storage systems.
e. Results of interior examinations of aboveground tanks
f. Results of all NFPA 329 tests of underground tanks.
g. Results of tests of pipes.
h. Description of repairs.

III. Inventory records shall be maintained in a manner equivalent to that shown in API 1621, Appendices A, D & E and shall include as a minimum:

a. The type of pollutant contained in the tanks.
b. The amount of physical inventory of the pollutant.
c. Input and outputs of the pollutant.
d. The amount of water in the tank, and
e. A reconciliation of the above.

IV. Where a pollutant containing tank has pollutants added or withdrawn for 24 hours per day, physical inventory shall be measured at least every 24 hours.

V. A copy of Florida Stationary Tank Regulations, Chapter 17-61 is attached, incorporated by reference and made a part of this addendum.

VI. Buyer shall also comply with any applicable local and federal laws and regulations governing the underground storage tanks at the premises.

VII. Buyer agrees that in all respects, the terms and conditions herein are reasonable and of material significance to the

relationship of the parties, and any breach of any term or condition by Buyer shall be conclusively deemed to be substantial.

VIII. This addendum is made part of:

(a) That Retail Dealer Contract effective from September 1, 1987 to August 31, 1990 and executed on 5-19, 1987 ; and

(b) That Lease effective from September 1, 1987 to August 31, 1990 and executed on 5-19, 1987

MOBIL OIL CORPORATION

Witness

BY _____
Manager

Witness

_____, Buyer

4927A

CHAPTER 17-61

STATIONARY TANKS

17-61.01 Introduction and Scope.

(1) In Section 376.30, Florida Statutes, the Legislature finds and declares that:

(a) the storage of pollutants within the state is a hazardous undertaking and that the discharge of pollutants poses a great threat to the environment and the citizens of Florida, and

(b) the preservation of surface water and groundwater quality is a primary public concern and the benefit of regulating the storage of pollutants outweighs the burden imposed on facilities by these rules.

(2) This chapter establishes rules regulating underground and aboveground pollutant storage facilities. In addition to the requirements of this chapter, facilities may be subject to the groundwater requirements of Chapters 17-3 and 17-4, FAC.

Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S. History: New

17-61.02 Definitions.

(1) "Abandoned" means a storage system which:

(a) is not intended to be returned to service, or

(b) has been out of service for over three (3) years, or

(c) cannot be tested in accordance with the requirements of this Chapter.

(2) "Aboveground tank" means that more than ninety percent (90%) of the tank volume is not buried below the ground surface. An aboveground tank may either be in contact with the ground, or elevated above it.

(3) "API" means American Petroleum Institute.

(4) "ASTM" means American Society for Testing and Materials.

(5) "Department" means the Department of Environmental Regulation.

(6) "Discharge" shall include, but not be limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping of any pollutant which occurs and affects lands and the surface waters and groundwaters of the state not regulated by Sections 376.011-376.21, Florida Statutes.

(7) "Discovery" means either actual discovery or knowledge of the existence of the abandoned facility or discharge.

(8) "Emergency replacement" means the replacement of the damaged parts of a storage system when that storage system is leaking and cannot be repaired to meet the standards contained in Sections 17-61.05 and 17-61.06.

(9) "Existing" means a facility or tank for which installation of a tank began prior to September 1, 1984.

(10) "Facility" means any nonresidential location or part thereof containing a stationary storage system or systems which contain pollutants, which have an individual storage capacity greater than 550 gallons, and which are not regulated by Sections 376.011 - 376.21, Florida Statutes.

(11) "Impervious material" means a material of sufficient

thickness, density and composition (e.g., concrete, metal, plastic, clay) that will prevent the discharge to the lands, ground waters, or surface waters of the state of any pollutant for a period at least as long as the maximum anticipated time during which the pollutant will be in contact with the material.

(12) "In service" means a storage system which contains pollutants and has pollutants regularly added or withdrawn.

(13) "Integral piping system" means continuous on-site wetted pipes within the facility used in the transfer or transmission of pollutant to and from a storage tank.

(14) "NACE" means National Association of Corrosion Engineers.

(15) "New" means a facility or tank for which the installation of a tank began on or after September 1, 1984.

(16) "NFPA" means National Fire Protection Association, Inc.

(17) "Non-residential" means the primary purpose of the tank is the operation of a business rather than domestic use such as home heating at the facility.

(18) "Operator" means any person operating a facility whether by lease, contract, or other form of agreement.

(19) "Out of service" means a storage system which:

(a) is not in use; that is, which does not have pollutants regularly added to or withdrawn from the storage system; and

(b) is intended to be placed in service.

(20) "Owner" means any person owning a storage system or part thereof.

(21) "Person" means any individual, partner, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(22) "Pipe" means any hollow cylinder or tubular conveyance which is constructed of non-earthen materials (e.g., concrete,

metal, plastic, glass) and is designed to transport pollutant.

(23) "Pollutant" in accordance with Section 376.32(6) is interpreted to mean:

(a) "oil of any kind and in any form" and "derivatives thereof" to include, but not be limited to, crude petroleum or liquid products that are derived from crude petroleum by distillation, cracking, hydroforming, and/or other petroleum refinery processes to include "gasoline";

(b) "pesticides" means all preparations intended for use as insecticides, rodenticides, nematocides, fungicides, herbicides, amphibian and reptile poisons or repellents, fish poisons or repellents, mammal poisons or repellents, invertebrate animal poisons or repellents, plant regulators, plant defoliants, and plant desiccants. A product shall be deemed to be a pesticide regardless of whether intended for use as packaged or after dilution or mixture with other substances, such as carriers of baits. Products intended only for use after further processing or manufacturing, such as grinding to dust or more extensive operations, shall not be deemed to be pesticides. Substances which have recognized commercial uses other than uses as pesticides shall not be deemed to be pesticides unless such substances are:

1. specially prepared for use as pesticides, or

2. labeled, represented, or intended for use as pesticides;

(c) "ammonia" and "derivatives thereof" include, but are not limited to, anhydrous liquid ammonia (NH_3), ammonia in aqueous solution (NH_4OH), ammonium salts or other liquid chemical preparations which when discharged release free ammonia (NH_3), or ammonium ion (NH_4+);

(d) "chlorine" and "derivatives thereof" include, but are not limited to, anhydrous liquid chlorine (Cl_2), chlorine in aqueous solution (H+ HOCl Cl^-), compounds containing

hypochlorite (ClO^-), chlorite (ClO_2^-), chlorate (ClO_3^-), perchlorate (ClO_4^-) ions, and other liquid preparations which, when discharged, release free chlorine (Cl or Cl_2) or any of the above chlorine-containing ions.

(24) "Pollutant-tight" means a material which is not subject to significant chemical or physical deterioration by the pollutant which is or could be contained therein so as to prevent discharge of the pollutant.

(25) "Retrofit" means to modify a storage system to meet standards contained in this Chapter.

(26) "Secretary" means the secretary of the Department of Environmental Regulation.

(27) "Significant loss or gain" means a loss or gain of pollutant in a storage system over five (5) consecutive inventory periods which exceeds one percent (1%) of the storage system capacity, or one percent (1%) of the output, or 50 gallons, whichever is greater.

(28) "Stationary" means a tank or tanks not meant for multiple site use or a tank or tanks which remain at the facility site for a period of 180 days or longer.

(29) "Storage system" means a storage tank and all associated integral piping, excluding aboveground dispensing units.

(30) "Substantial modifications" shall mean the construction of any additions to an existing storage system or restoration, refurbishment or renovation which significantly impairs or affects the physical integrity of the storage system or its monitoring system.

(31) "Tank" means an enclosed stationary device which is constructed primarily of non-earthen materials (e.g., concrete, metal, plastic, glass) and which is designed for the primary purpose of storing pollutants.

(32) "UL" means Underwriters Laboratories, Inc.

(33) "Underground tank" means that ten percent (10%) or more of the tank volume is buried below the ground surface.

Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S.

History: New

17-61.03 Referenced Standards.

(1) Referenced standards are available for inspection at the Department of Environmental Regulation's District and Tallahassee Offices and from the following sources:

(a) American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005;

(b) National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, Texas 77218;

(c) National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269;

(d) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; and

(e) Underwriters Laboratories (UL), 333 Pfingston Road, Northbrook, Illinois 60062.

(2) Titles of documents.

Specific references to documents listed in (a) through (e) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated as standards only to the extent that they are specifically referenced in this Chapter.

(a) National Fire Protection Association Standards.

1. Standard Number 30, 1981, "Flammable and Combustible Liquids Code";

2. Standard Number 329, 1983, "Underground Leakage of Flammable and Combustible Liquids".

(b) American Petroleum Institute Standards.

1. Standard Number 650, 1980, "Welded Steel Tanks for Oil Storage," Seventh Edition;

2. Standard Number 620, 1982, "Recommended Rules for Design and Construction of Large, Welded, Low-Pressure Storage Tanks," Seventh Edition;

3. Publication 1110, 1981, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines";

4. Specification Number 12B, 1977 (and Supplement 1, 1982), "Specification for Bolted Tanks for Storage of Production Liquids," Twelfth Edition;

5. Specification Number 12D, 1982 (and Supplement 1, 1983), "Specification for Field Welded Tanks for Storage of Production Liquids," Ninth Edition;

6. Specification Number 12F, 1982 (and Supplement 1, 1983) "Specification for Shop Welded Tanks for Storage of Production Liquids," Eighth Edition;

7. Bulletin 1615, 1979, "Installation of Underground Petroleum Storage Systems";

8. Publication 1632, 1983, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," First Edition;

9. Publication 1604, 1981, "Recommended Practice for Abandonment or Removal of Used Underground Service Station Tanks";

10. Publication 1631, 1983, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and

11. Publication 1621, 1977, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets".

(c) National Association of Corrosion Engineers Standard Number RP-01-69 "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" (1976).

(d) Underwriters Laboratories standards.

1. Specification 58 "Steel Underground Tanks for Flammable and Combustible Liquids" (1981);

2. Specification 1316, "Standard for Glass Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; and

3. Specification 142 "Steel Aboveground Tanks For Flammable and Combustible Liquids" (1982).

(e) American Society for Testing and Materials Specification D4021-81, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks".

Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S.
History: New

17-61.04 Applicability.

(1) Standards contained in this Chapter shall apply only to those facilities which receive, store, or use petroleum products which are distributed from such facilities for use as fuel in vehicles, including, but not limited to, those used on and off roads, aircraft, watercraft, and rail, and which receive, store, or use either more than 1,000 gallons in any one calendar month, or more than 10,000 gallons in any calendar year. The above described facilities which do not receive, store, or use more than 1,000 gallons in any one calendar month, or more than 10,000 gallons in any calendar year shall only meet the requirements in 17-61.06(1)(b)1. or 17-61.06(2)(b)1. for new tank construction standards.

(2) Exemptions.

The following are exempt from the requirements of this Chapter:

(a) Stationary storage systems which contain liquefied petroleum (lp) gas;

(b) Stationary storage systems whose contents have a

softening point above 100°F.

(c) Aboveground tanks which are elevated above the soil and comply with subparagraph 17-61.06(1)(c)2. shall comply only with the requirements of paragraph 17-61.05(4)(b) concerning discharges, subsection 17-61.05(1) concerning registration and notification, and subparagraphs 17-61.06(1)(d)2. and 3. concerning repair.

(3) This rule shall not apply to new large petroleum storage facilities (often known as tank farms) which have more than five (5) above-ground storage tanks whose total combined storage capacity exceeds 500,000 gallons of stored petroleum product at any one time. The department will regulate these new large petroleum storage facilities on a case-by-case basis until such time as specific rules governing such facilities are adopted. Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S. History: New .

17-61.05 General Provisions.

(1) Registration and Notification Requirements.

(a) Each owner or operator shall register the following on forms provided by the department:

1. All existing facilities by December 31, 1984.

2. All new storage systems or facilities at least ten (10) days prior to start of installation of tanks except in cases of emergency replacement.

3. A non-pollutant containing installation which is to be converted to a facility, at least ten (10) days prior to the placement of pollutants in such a facility.

(b) Each owner or operator shall make notification of the following on forms provided by the department.

1. All storage systems within ten (10) days of abandonment.

2. Facility sale within ten (10) days of the sale. Notice

shall be made by the seller.

3. Retrofitting of existing facilities within ten (10) days of completion.

4. Results of tank testing which reveals a discharge within three (3) working days of testing.

5. Discharges exceeding 100 gallons on pervious surfaces as described in Section 17-61.05(4)(b) within three (3) working days of discovery.

6. Positive response of a detection device, monitoring well test or sample or laboratory report within three (3) working days of discovery.

(2) Overfill protection.

No person shall construct, install, use, or maintain any new facility without providing a reliable means of detecting and preventing an overfilling condition of a storage system before any discharge can occur. Overfill protection may consist of:

(a) an impervious containment system, or

(b) a tight fill device, or

(c) another equivalent design approved by the department.

(3) Storage system status.

A facility may contain storage systems which are:

(a) In-service storage systems.

Any pollutant may be placed in an in-service storage system if the storage system is pollutant-tight and meets the requirements of this Chapter.

(b) Out-of-service storage systems.

1. An out-of-service storage system shall have recorded a weekly inventory of contents and the results of monthly leak detection and monitoring system examinations unless the storage system contains no free liquid pollutant or vapors. An out-of-service storage system which contains no pollutant shall be secured against tampering and unauthorized filling and

inspected monthly for signs of damage to the security system. The storage system may be filled with water for ballasting. The water shall be disposed of in an environmentally sound manner consistent with department rules when pumped out of the system.

2. A storage system may be kept in the out-of-service status for more than three (3) years and not deemed abandoned if approved by the department.

(c) Abandoned storage systems.

1. The owner of an abandoned storage system must within 90 days after discovery, pump the system clean of free liquid, and remove the storage system in a safe manner, except that underground tanks may be filled with sand, concrete, or other inert material in lieu of removal, in accordance with the requirements in API Bulletin 1604, 1981, Chapter 2.

2. The owner or operator of an abandoned tank shall not dispose of it unless he meets the requirements of API 1604, Chapters 3 and 6, and:

a. the tank is removed for sale or use elsewhere, in which case it must be permanently labeled "Not For Food Use" if it has at any time contained leaded fuel, cleaned, and made vapor free to be safe in transit; or

b. the tank is disposed of as junk by rendering it vapor free, and dismantling or perforating it in a safe manner so as to render it unfit for further use.

3. An abandoned storage system may be brought into service only if it has been completely retrofitted in compliance with the applicable requirements in Section 17-61.06.

4. No person shall place pollutants in an abandoned storage system.

(4) Record Keeping, Discharge Reporting and Contamination Cleanup

(a) Records required in Sections 17-61.05, and 17-61.06

shall be maintained in permanent form for two (2) years and shall be available for inspection by the department at the facility. If records are not kept at the facility they shall be available at the facility or other location approved by the department upon two (2) working days notice. Records of the following are required as a minimum.

1. Measurements taken and reconciliations of inventory.

2. Results of examinations of monitoring wells and other leak detection systems.

3. Dates of retrofitting of existing storage systems.

4. Results of maintenance examinations of storage systems.

5. Results of interior examinations of aboveground tanks.

6. Results of all NFPA 329 tests of underground tanks.

7. Results of tests of pipes.

8. Descriptions of repairs.

(b) Any person discharging pollutants from a facility described in Section 17-61.04(1) shall:

1. immediately undertake to contain, remove, and abate the discharge; and

2. in the case of a discharge to the groundwater in violation of applicable standards, as soon as possible institute such further corrective action as necessary under the provisions of Section 17-4.245(7), FAC.

(c) Leak Detection Systems, Inventory Schedules and Loss Investigation.

1. Leak detection devices.

a. All continuously operating leak detection systems or devices shall be installed, maintained, and operated in accordance with manufacturer's requirements, and shall include a warning device to indicate the presence of a leak of pollutant or other failure or breach of integrity. A leak detection device shall be inspected at least once a month to determine that the

device is functioning.

b. All monitoring wells for which manual test devices or methods are used shall be tested at least once a month in a manner which will indicate the presence of a pollutant leak or other failure or breach of integrity..

c. All monitoring wells not tested with automatic or manual detection devices or methods shall be tested at least once a month in accordance with the requirements in 17-61.05(5)(b) below.

d. A monitoring well which contains less than one (1) foot of water may not be tested by removal of a sample as described in Section 17-61.05(5)(b) below, but must be tested with a manual or automatic detection method.

2. Inventory records.

a. All facilities shall maintain inventory records for each pollutant-containing tank as required in Section 17-61.06. The data required shall be accumulated for each day a tank has pollutants added or withdrawn, but not less frequently than once a week.

b. Losses or gains from each day's inventory shall be averaged for each five (5) consecutive readings or once a week. For any average which is a significant loss or gain, the investigation procedure below shall be followed.

3. Investigation procedure.

The investigation shall not stop until the source of the discrepancy has been found, the tank has been tested, repaired, or replaced, or the entire procedure has been completed.

a. Inventory, input, and output records shall be checked for arithmetical error.

b. Inventory shall be checked for error in measurement.

c. If the significant loss or gain is not reconcilable by steps a. and b., or cannot be affirmatively demonstrated to be

the result of theft, the accessible parts of the storage system shall be checked for damage or leaks.

d. Monitoring wells and leak detection systems shall be checked for signs of a discharge.

e. Calibration of the inventory measuring system and any dispensers shall be checked.

f. The entire storage system, excluding the vent but including joints and remote fill lines, shall be tested in accordance with the applicable portions of Section 17-61.06.

g. If a discharge or leak is discovered, the requirements of applicable Sections 17-61.06(1)(d), (2)(d), or (3)(d) shall be met.

(5) Monitoring wells.

(a) Monitoring wells used to meet the requirements of Section 17-61.06 shall be designed to meet the following specifications, or shall be a part of an approved groundwater monitoring plan for the pollutant storage facility pursuant to 17-4.245. Monitoring wells installed before the effective date of this Chapter may be used as a part of a monitoring system as approved by the department. The well casing shall:

1. be a minimum of two (2) inches in diameter;

2. be slotted from the bottom to at least two (2) feet above the normal annual high water table;

3. have a minimum slot size of .010 inches;

4. be completed by backfilling with appropriate clean filter pack or wrapping in an appropriate filter cloth to prevent clogging under soil conditions where silty fines will blind the minimum slot size;

5. be constructed of schedule 40 PVC or other material which is impervious to the pollutant stored;

6. be sealed into the bore hole at the surface with an impervious barrier designed to prevent contamination of the well

by surface pollutants and damage to the well;

7. be equipped with a watertight cap; and

8. be of sufficient length that:

a. the bottom of the casing shall be at least five (5) feet below the water level at the time of drilling but no deeper than twenty-five (25) feet; or

b. the casing shall extend to within six (6) inches of the bottom of a secondary containment, but shall not contact the containment.

(b) All monitoring wells shall:

1. be placed as required in Section 17-61.06; and

2. if water enters the well, be developed upon drilling until the water is clear and relatively sand free by overpumping, bailing, surging with compressed air, backwashing, a combination of the above, or other methods approved by the department; and

3. if not equipped with a continuously functioning detection device, or tested with a portable device inserted into the well, be sampled by the removal of at least one (1) cup of fluid from the well, using a Kemmerer-type sampler, bailer, or a sampler of similar design. The fluid shall be taken from the surface of the water table. The fluid shall:

a. be poured into a clean, clear glass container kept for the purpose, and examined for signs of an oily layer or odor of pollutant; or

b. be tested at the site; or

c. be sent to a laboratory and tested.

(c) The positive response of a detection device, the presence of a layer or odor of pollutant, or the positive report of a laboratory that the sample contains pollutant shall be treated as a discharge unless the owner or operator affirmatively demonstrates that no discharge has occurred.

(d) All wells shall be kept capped when not being tested.

(6) Required testing.

(a) In addition to the testing requirements of Section 17-61.05(4)(c)3.f., the owner or operator of a storage system shall test the entire storage system whenever the department has ordered that such a test is necessary to protect the lands, ground waters, or surface waters of the state. The department may order a test if:

1. the operator of a storage system has failed to comply with the provisions of Section 17-61.06; or

2. a discharge detection device or monitoring well indicates that pollutant has been or is being discharged; or

3. groundwater contamination exists in the vicinity and the facility is reasonably likely to be a source of the contamination.

(b) Testing shall be conducted in accordance with the requirements of Sections 17-61.06(1)(d)4., 17-61.06(2)(d)4., and 17-61.06(3)(a)4.

Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S. History: New .

17-61.06 Facility Construction, Operation and Repair Standards.

(1) Aboveground Facilities

(a) All storage tanks.

Inventory records as required by subparagraph 17-61.05(4)(c)2. shall be maintained for all aboveground tanks and shall include:

1. pollutant contained,

2. physical inventory,

3. inputs and outputs of pollutant, and

4. reconciliation of the above.

(b) New storage tanks.

1. No person shall install, use or maintain any new aboveground storage system in a manner which will allow the discharge of a pollutant to the lands, groundwaters, or surface waters of the state, and without meeting the requirements contained in NFPA 30, Chapters 2-1, 2-2, 2-5, and 2-7; API Standards 650, 620, 12B and Supplement 1, 12D and Supplement 1, 12F and Supplement 1, and UL 142, as applicable.

2. No person shall use or maintain any new aboveground storage system without having constructed around and under it an impervious containment system, including a dike enclosing the tank or tanks, conforming to the requirements of NFPA 30, Chapter 2-2.3, regardless of whether or not the tank is in contact with the containment or supported above it.

a. The dikes and the entire areas enclosed by the dikes including the area under the tanks shall be made impervious to the types of pollutants stored in the tanks.

b. Drainage of precipitation from within the diked area shall be controlled in a manner that will prevent pollutants from entering the lands, groundwaters or surface waters of the state in excess of water quality standards established by department rule.

3. No person shall construct, install, use or maintain any new aboveground metal tank making contact with the soil unless portions in contact with the soil are corrosion protected. Such corrosion protection shall be in accordance with NACE Standard Number RP-01-69.

(c) Existing storage tanks.

1. Commencing January 1, 1990, no person shall use, maintain or fill with pollutants any existing in-service aboveground storage system without conforming to all of the requirements of Section 17-61.06(1)(a) and (b) above, except that impervious barriers are not required under existing field-erected tanks in

contact with the soil. In lieu of the impervious barrier, existing field-erected tanks in contact with the soil shall have:

a. the interior bottom and at least 18 inches of the interior sides joining the bottom of the tank coated with a glass fiber-reinforced epoxy coating or other suitable material which is impervious to the pollutant to be stored; or

b. a network of monitoring wells installed outside of and around the dike surrounding the tank or tanks. There shall be at least four wells in each network, with no two consecutive wells farther apart than 150 feet. Each well shall be within 25 feet of the dike, and may be part of more than one network; or

c. a groundwater monitoring plan submitted and implemented for the pollutant storage facility in accordance with the requirements in Chapter 17-4.245, FAC, or

d. a copy of a Spill Prevention Control and Countermeasure plan for the pollutant storage facility as required by 40 CFR Part 112, submitted to the department; or

e. the portions of the tank in contact with the soil corrosion protected in accordance with NACE RP-01-69.

2. Commencing January 1, 1990, no person shall use, maintain or fill any existing tank elevated above the soil without placing an impervious containment system under and around it and sealed to its supports in accordance with NFPA 30, Section 2-2.3.3.

(d) Pollutant leaks, maintenance, and repairs.

1. The owner or operator of an aboveground facility shall at least once a month inspect the exterior of each pollutant-containing tank and the dike and impervious containment surrounding the tank for wetting, discoloration, blistering, corrosion, cracks, or other signs of structural damage, paying particular attention to the condition of the containment at the base of the tank.

2. Any aboveground tank which shows signs of damage which could impair the ability of the tank to retain pollutants shall, as soon as practicable, be drained of sufficient contents to permit repair.

3. When an aboveground tank is found to be leaking, the leak shall be contained as soon as practicable or the tank must be drained of sufficient contents to prevent further leakage and allow repair.

4. When the inventory records of an aboveground tank show a significant loss or gain of pollutant and tank testing is required, the tank shall be emptied, cleaned, and visually and mechanically or electronically examined on the interior and bottom, or tested by other means approved by the department.

5. No person shall use or repair an aboveground tank which is leaking or which has leaked without:

a. containing the leak;

b. performing or having the repairs performed in a manner which restores the structural integrity of the tank, except that temporary repairs may be made to lesser standards and may remain in place for up to six (6) months.

6. Any dike or impervious containment which shows damage which could impair its ability to retain pollutants shall be repaired.

(2) Underground Facilities

(a) All storage tanks.

1. Inventory records as required by subparagraph 17-61.05(4)(c)2. shall be maintained for all underground tanks in a manner equivalent to that shown in API 1621, Appendices A, D, and E, and shall include as a minimum:

a. pollutant contained,

b. physical inventory,

c. inputs and outputs of pollutant,

d. amount of water in tank, and

e. reconciliation of the above.

2. Where a tank has pollutants added and withdrawn for 24 hours per day, physical inventory shall be measured at least every 24 hours.

(b) New storage tanks.

1. All new tanks installed for the underground storage of pollutants shall be designed and constructed in a manner which will prevent discharges of pollutant to the land, groundwaters, or surface waters of the state. Acceptable designs for tank construction include cathodically protected steel, glass fiber-reinforced plastic, steel clad with glass fiber-reinforced plastic, double-walled steel or plastic, or other equivalent design approved by the department. Design, construction and installation of new underground tanks shall be in accordance with standards contained in NFPA 30, Chapters 2-1 and 2-3, API 1615, Chapters 3(3) and 3(4), and UL 58 or UL 1316, and manufacturers' requirements. The design of double-walled tanks shall be approved by the department on a case-by-case basis.

2. All new tanks shall be equipped with a strike plate beneath the fill pipe and gauge opening.

3. All new tanks must be provided with a means of monitoring for any leakage and spillage of the stored pollutant at the time of installation. The monitoring system may consist of:

a. a continuous leak detection system in between the walls of a double-walled tank; or

b. a single monitoring well or detector located in an impervious secondary containment; or

c. a continuously operating leak detection system placed around a tank in an excavation or secondary containment in accordance with the manufacturer's requirements; or

d. a network of at least four monitoring wells placed in the

excavation around a tank or tanks in compliance with the requirements of Section 17-61.05; or

e. a groundwater monitoring plan submitted to and approved by the department for the pollutant storage facility pursuant to Chapter 17-4.245; or

f. a Spill Prevention Control and Countermeasure plan for the pollutant storage facility as required by 40 CFR Part 112, submitted to the department; or

g. another alternative approved by the department.

4. A cathodically protected tank shall meet the specifications in API 1632, be coated in accordance with NACE RP-01-69, and shall meet the following requirements.

a. A sacrificial anode-type tank shall be electrically isolated.

b. A tank protected by an impressed current system shall:

i. be designed so that the impressed current source cannot be de-energized at any time, including during closure of the facility, except during power failures or to perform service work on the storage system or the impressed current cathodic protection system; and

ii. include a continuously operating meter to show that the system is working.

5. A glass fiber-reinforced plastic tank shall:

a. be tested in accordance with ASTM Specification D4021-81; and

b. be labeled on the tank and fill cap "Non-metallic Underground Tank for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures", or "Non-metallic Underground Tank for Petroleum Products Only".

6. A glass fiber-reinforced plastic-clad steel tank shall as a minimum:

a. be cleaned by sandblasting to SSPC 6;

b. be clad with a mixture of isophthalic resin and fiberglass 100 mils thick;

c. be tested by a 10,000 volt holiday test performed over 100 percent of the surface; and

d. be electrically isolated.

(c) Existing storage tanks.

1. Commencing January 1, 1999, no person shall use, maintain, or fill any in-service existing undergound storage system without retrofitting the system so as to comply with all of the provisions of 17-61.06(2)(b), except that:

a. strike plates are not required to be retrofitted; and

b. tanks which are other than the approved types must either be lined in accordance with the recommendations in API 1631, or replaced with an approved type tank. A tank which has been lined shall be tightness tested before being put into service.

2. In achieving the above compliance, retrofitting shall be completed by December 31 of the appropriate year shown in the table below. If the age of the tank cannot be determined, retrofitting shall be completed by the earliest date shown.

Year Tank Installed	Year Retrofitting Required						
	1986	1987	1988	1989	1992	1995	1998
Prior to 1970	MO			LR			
1970 - 1975		MO			LR		
1976 - 1980			MO			LR	
1981 - Sept. 1, 1984				MO			LR

MO = Installation of Monitoring system and devices and Overfill protection.

LR = Lining or Replacement of Non-Approved-Type Tanks.

(d) Pollutant leaks, maintenance and repairs.

1. All underground tanks shall be maintained in the following manner.

a. A sacrificial anode type tank shall have the structure-to-soil potential tested six (6) weeks after installation or construction in the area, at the end of the first year, and every five (5) years thereafter. If the cathodic protection system is not operating in accordance with manufacturer's requirements, the cause shall be determined and the necessary repairs made within 60 days of the test.

b. An impressed current type tank shall be inspected monthly, and if the protective system is not operating in accordance with manufacturer's requirements, the cause shall be determined and the necessary repairs made within 60 days of the test.

c. A glass fiber reinforced tank shall be tested for deflection in accordance with manufacturer's requirements at the time of installation.

2. When an underground tank is found to be leaking, the tank must be emptied of all free liquid and meet the requirements of Section 17-61.05(4).

3. No person shall put back into service any underground tank which has leaked or has otherwise failed, for the purpose of reusing the facility, without:

a. containing the leak;

b. performing or having the repairs performed in a manner which restores the structural integrity of the tank or meets the specifications in API 1631; and

c. testing or having the tank tested.

4. Testing and inspection.

a. All testing of underground tanks shall be done by the precision test of NFPA 329, Chapter 4-3.10 or other test of

equivalent or superior accuracy.

b. Such tests shall be conducted by a person trained and certified by the manufacturer of the test equipment or his agent in the correct use of the necessary equipment, and shall be performed in accordance with the testing procedures and requirements of the test system manufacturer.

c. If for any reason testing required by this Chapter cannot be performed, the tank shall be deemed abandoned.

(3) Integral Piping Systems

(a) All systems.

1. All integral piping systems shall be installed, used, and maintained in a manner which will prevent the discharge of pollutants to the lands, groundwaters and surface waters of the state.

2. All integral piping systems shall be constructed in accordance with accepted engineering practices, and NFPA 30, Chapter 3.

3. All integral piping systems shall be designed, constructed and installed in a manner which will permit periodic testing of the entire system.

4. Each owner or operator of any integral piping system shall test the piping whenever the associated tank is tested. All tests shall be conducted in accordance with API 1110, or other equivalent methods approved by the department.

(b) Systems in contact with the ground.

1. New systems.

a. All integral piping systems shall:

i. be constructed of corrosion resistant materials; or

ii. for metal integral piping systems be protected against corrosion by the use of double-walled piping or cathodic protection in accordance with API 1632, NACE RP-01-69, or an equivalent system.

b. Cathodically protected piping systems of the sacrificial anode type shall:

i. be designed and installed to permit measurement of structure to soil potential, and be tested six (6) weeks after installation or construction in the area, at the end of the first year, and every five (5) years thereafter; and

ii. if inadequate cathodic protection is indicated, the cause determined, and necessary repairs made to meet manufacturer's requirements within 60 days of the test.

c. Cathodically protected integral piping systems of the impressed current type shall:

i. be designed so that the impressed current source cannot be de-energized at any time including during closure of the facility, except during power failures or to perform service work on the storage system or the impressed current cathodic protection system; and

ii. be equipped with a continuously operating meter to show that the system is working. The system shall be inspected monthly, and if any test indicates that the system is not functioning in accordance with manufacturer's requirements, the cause shall be determined and the necessary repairs made within 60 days of the test.

d. All integral piping systems shall be equipped with a leak detection system which may consist of:

i. a network of monitoring wells; or

ii. a continuously operating leak detector in the excavation along the piping, between the walls of double-walled piping or in a secondary containment in which the piping lies; or

iii. a single monitoring well or detector in an impervious underground catchment basin where piping is installed so that all leaks will enter the basin; or

iv. a groundwater monitoring plan submitted to and approved

by the department for the pollutant storage facility subsequent to Chapter 17-4.245;

v. a Spill Prevention Control and Countermeasure plan for the pollutant storage facility as required by 40 CFR 112, submitted to the department; or

vi. another alternative approved by the department.

e. Where monitoring wells are used, they shall:

i. be installed in the excavation beside the integral piping system and shall be located along its entire length, with one well within 100 feet of each end of the excavation; and

ii. be located so that no two (2) consecutive wells are more than 250 feet apart.

2. Existing systems.

Commencing January 1, 1999, no person shall use or maintain any existing in-service integral piping system in association with any facility unless the existing system complies with all of the provisions of 17-61.06(3)(a) and (b)1. An integral piping system shall be retrofitted on the same schedule as the associated tank.

(c) Systems not in contact with the ground.

All new and existing systems.

1. All integral piping systems shall be inspected at least once a month for wetting, discoloration, blistering, corrosion, cracks or other signs of surface or structural damage.

2. Any integral piping system which shows signs of damage which could impair its ability to retain pollutants shall, as soon as practicable, be drained of sufficient contents to permit repair, and be repaired in a manner which restores the structural integrity of the system.

3. Commencing January 1, 1990, no person shall use or maintain any existing in-service integral piping system which does not meet the requirements in 17-61.06(3)(a). An integral

piping system shall be retrofitted on the same schedule as the associated tank.

(d) Product leaks and repairs.

1. When an integral piping system is found to be leaking, the leak must be contained as soon as practicable or the system must be drained of sufficient contents to prevent further leakage and allow repair.

2. No person shall use or repair an integral piping system which is leaking or which has leaked without:

a. containing the leak;

b. performing or having the repairs performed in a manner which restores the structural integrity of the storage system and is in accordance with accepted engineering practices; and

c. testing the integral piping system.

Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S. History: New

17-61.07 Financial Responsibility. (Reserved)

17-61.08 Approval of Alternative Procedures and Requirements.

(1) The owner or operator of a facility subject to the provisions of this Chapter may request in writing a determination by the Secretary or his designee that any requirement of this Chapter shall not apply to such facility, and shall request approval of alternate procedures as requirements.

(2) The request shall set forth at a minimum the following information:

(a) Specific facility for which an exception is sought.

(b) The specific provision of Chapter 17-61 from which an exception is sought. Any provisions which reference this section are subject to the approval procedures set forth herein.

(c) The basis for the exception including, but not limited to, the hardship which would result from compliance with the established provision.

(d) The alternate procedure or requirement for which approval is sought and a demonstration that the alternate procedure or requirement provides a substantially equivalent degree of protection for the lands, surface waters, or groundwaters of the state as the established requirement.

(e) A demonstration that the alternate procedure or requirement is at least as effective as the established procedure or requirement.

(3) The Secretary or his designee shall specify by order each alternate procedure or requirement approved for an individual facility in accordance with this section or shall issue an order denying the request for such approval. The department's order shall be final agency action, reviewable in accordance with Section 120.57, Florida Statutes.

Specific Authority: 376.303, F.S. Law Implemented: 376.303, F.S.

History: New .

LEASE AMENDMENT RIDER TO BE ATTACHED TO AND MADE A PART OF THE FORM FCO-1699 LEASE OR THE FORM FCO-1699TF LEASE DATED 5-19, 1987 BETWEEN MOBIL CORPORATION, AS LANDLORD, AND ALAN BERMAN AS TENANT, COVERING PREMISES SITUATED AT 2333 S. Andrews Avenue, Ft. Lauderdale, Florida 33315.

Tenant, hereby represents that Tenant desires the installation of a self-service dispensing system for gasoline at subject service station and understands that landlord contemplates installing such a self-service dispensing system for gasoline including all related equipment, on the premises. Tenant covenants and agrees to permit landlord and/or its agents or contractors to enter upon the premises for the purpose of making the proposed installation, in the event that landlord decides to make same. In no event shall landlord be liable for or on account of any loss, inconvenience, or annoyance to tenant arising out of or in connection with such installation, including and without limitation any claim by tenant for allowance or abatement of rent and loss, damage to or removal of any and all alterations and construction installed by tenant, as hereinabove provided Tenant acknowledges and consents to the making of such installation and agrees that such installation, should landlord determine to make same, is for the mutual benefit of the parties hereto.

This Lease Amendment made, accepted and agreed to this 19 day of May, 1987

MOBIL OIL CORPORATION

By: _____

By: _____
Tenant

By: _____
Manager

I have received the complete 1985 amended Mobil Dealer Relations Policy, seventh edition, from my Marketing Representative.

Dealer

FT. LAUDERDALE
Location

Witness

5-19-87
Date

RECOMMENDED PRACTICES FOR GASOLINE INVENTORY CONTROL

- I have REVIEWED and understand the recommended practices for good gasoline inventory control.

- I further understand that Mobil is not responsible for product losses or water contamination claims at least until a leak or water contamination problem has been determined and Mobil has been notified.

- I will use the following items for good stock control:

  1. Gauge Pole
  2. Tank Chart
  3. Water Finding Paste

ALAN BERMAN
Dealer Name

B. A. Bal
Mobil Oil Corporation
Representative

Dealer Signature

5-19-87
Date

Mobil Oil Corporation

lease agreement for electronic credit card point of sale terminal

THIS LEASE is made 5-19, 19 87 between MOBIL OIL CORPORATION (Lessor hereunder), having an office at 6363 N.W. 6th Way, Suite 390, Ft. Lauderdale, FL 33309, and ALAN BERMAN (Lessee hereunder) having a place of business at 2333 S. Andrews AVenue Ft. Lauderdale, FL 33315 hereinafter called the marketing premises.

1. **Leased Equipment.**

Lessor hereby leases to Lessee and Lessee hires from Lessor one Electronic Credit Card Point of Sale Terminal, Model No. FT-3205, Serial No. 0877-1937, (hereinafter referred to as the "terminal") for use by Lessee in the Electronic Processing of Mobil Credit Card transactions at the marketing premises. Lessor agrees to arrange for installation of the necessary telephone line equipment and to cause such terminal to be connected thereto and installed at the marketing premises, in operable condition.

2. **Lease Term.**

The term of this Lease shall begin on September 1, 19 87, or at such date as installation has been completed, whichever is the later date, and shall end on August 31, 19 90, provided, however, it shall automatically terminate (a) on the effective date of any termination or nonrenewal of any Retail Dealer Contract, Wholesale Distributor Agreement, or Service Station Lease between the parties hereto, (b) in the event Lessee elects not to participate in the Mobil Credit Card Program at the location specified, (c) in the event that Lessee is excluded from the Mobil Credit Card Program, or (d) in the event Mobil withdraws from electronic point of sale credit card processing. Lessor may terminate this Lease at any time by written notice on default by Lessee.

3. **Rental.**

Lessee agrees to pay Lessor as rental for the terminal the sum of $ 80.00 per month, payable in advance. Provided, however, Lessor may at any time during the term of this Lease, upon not less than sixty (60) days' prior written notice, increase the monthly rent payable hereunder. In the event Lessor exercises this option to increase the rent, Lessee may, upon written notice, prior to the effective date of such rental increase, terminate this Lease Agreement upon the said effective date of such rent increase. Should Lessee fail to give notice of termination to Lessor prior to any such effective date, then this Lease Agreement shall continue for the remainder of this lease term at the specified new rental rate.

4. **Lessor's Obligations**

Lessor shall cause said terminal to be installed at the marketing premises, the costs of installation to be at (Lessor's expense) (Lessee's expense).

Lessor shall pay all charges for permits and licenses (except periodic renewal fees), maintenance (except the cost of electric current), telephone line connecting the terminal, repairs and maintenance, provided the necessity therefor is due to ordinary wear and tear or defect in material or workmanship. Lessor's obligations to repair and maintain shall not arise until (1) Lessor is notified by Lessee that the terminal is not in good operating condition and (2) Lessor shall have determined in its sole discretion and within a reasonable period that the necessity for repair and maintenance is due to a cause referred to hereinabove. Any repairs or maintenance which in Lessor's sole discretion are required as the result of (a) damage by accident, negligence, abuse, or misuse, or (b) operation for which the terminal was not intended, or (c) any alteration or modification of the dedicated power source or telephone connecting line, shall be at the expense of Lessee.

5. **Lessee's Obligation.**

With respect to said terminal and connecting telephone line, Lessee shall (a) make no additions or alternations, (b) make no movement or rearrangement of the terminal and connecting telephone line after installation, (c) comply with all applicable credit card policies covering its use, (d) comply with all laws and regulations applicable thereto, (e) do or permit to be done nothing prejudicial to Lessor's title, (f) not remove it or deliver it to anyone but Lessor or Lessor's representatives, (g) exercise the degree of care necessary to prevent damage, and (h) upon termination of this Lease, return the terminal to Lessor in good and operable condition, ordinary wear and tear excepted. Lessee agrees to indemnify and hold Lessor harmless against all losses and claims (including those of the parties, their agents and employees) for death, personal injury or property damage arising out of the use or condition of the terminal. Lessor does not warrant or guarantee the terminal.

6. **Terminal Removal.**

Lessor reserves the right to remove the terminal at any time and to replace same with similar equipment. Lessor reserves the further right to discontinue the leasing of the terminal at any time without any obligation to replace the same in which event the rental for said item will cease effective as of the date of removal. On the effective date of any termination of this Lease, Lessor may remove said terminal without liability and without obligation for any restoration of the premises or damage incidental to such removal.

7. **Notices.**

All notices shall be in writing and shall be delivered personally (to an officer or manager in the case of Lessor) or sent by registered or certified mail to the parties at the addresses specified hereinbefore. Notice by mail shall be deemed given on the date such notice is deposited in the United States mail, postage prepaid and properly addressed.

8. **Miscellaneous.**

Lessor shall not be responsible for or liable to Lessee for any loss or damage due to down time of the terminal because of repair or maintenance, failure of connecting telephone lines or Mobil Oil Credit Corporation's equipment. Any assignment of this Lease without Lessor's express written consent shall be void. This instrument contains the entire agreement covering the subject matter and supersedes any and all prior understandings or dealings between the parties relative to this subject matter. No modification of this Lease shall be binding on Lessor unless in writing and signed by Lessor's District Manager or such authorized representative of higher authority.

WITNESSES:

MOBIL OIL CORPORATION
(Lessor)

By: _____

(Lessee)

Mobil Oil Corporation

electronic debit card point of sale participation agreement

This Agreement is made 5-19, 1987 between MOBIL OIL CORPORATION, hereafter called "Mobil" having an office at 6363 N.W. 6th Way, Suite 390, Ft. Lauderdale, Florida 33309 and ALAN BERMAN, jointly and severally if more than one, hereafter called "Participant", having a place of business at 2333 S. Andrews AVenue, Ft. Lauderdale, Fl hereafter called the "marketing premises".

WHEREAS, Mobil is lessor and Participant is lessee of an Electronic Credit Card Point of Sale Terminal, hereafter called "Terminal" pursuant to a lease agreement dated 5-17-87, and

WHEREAS, Mobil has related to Participant the various features of Mobil's Electronic Debit Card Point of Sale Program and Participant has elected to participate in such program, and

WHEREAS, Mobil and Participant desire to expand the usage of said Terminal in order to accommodate authorized debit card transactions.

THEREFORE, Mobil and Participant agree as follows:

1. Mobil shall install or cause to be installed, on Participant's terminal at the marketing premises, a cabled PIN PAD, and in situations wherein the Participant offers full service at the marketing premises, a remote PIN PAD.
2. Mobil shall make available to Participant and Participant's employees, training and instruction on the use and operation of the PIN PADs in order that Participant may process authorized debit card transactions in association with participating banks.
3. The PIN PADs furnished hereunder shall be considered as leased equipment subject to all of the terms and conditions of the Electronic Credit Card Point of Sale Terminal Lease Agreement described hereinbefore, and Participant shall indemnify and hold Mobil harmless against loss of any and all items of said leased equipment.
4. Participant agrees to comply with the rules and regulations of the Debit Card Point of Sale Program, attached hereto as Exhibit A, and as same may be hereafter amended from time to time. In the event of a failure by Participant or Participant's employees to observe any of said Exhibit A rules and regulations, Mobil reserves the right to chargeback any sales ticket(s) resulting from such failure and/or withdraw Participant's right of continued participation in said Program, in which event Participant agrees to immediately return the PIN PADs to Mobil.
5. This Agreement may be terminated by either party upon written notice to the other mailed certified or registered mail, postage prepaid to the address given hereinbefore.

Upon any termination of this Agreement, Participant shall immediately return the PIN PADs to Mobil, and Mobil agrees to accept and reimburse Participant for all debit card sales made prior to such termination and made in accordance with the terms and conditions of this Agreement.

This agreement and the Exhibit A attachment contains the entire agreement covering the subject matter and supersedes any and all prior understandings or dealings between the parties relative to this subject matter. No modification of this agreement shall be binding on Mobil unless in writing and signed by Mobil's District Manager or such authorized representative or higher authority.

WITNESSES:

MOBIL OIL CORPORATION

By: _____

Participant

EXHIBIT A

RULES AND REGULATIONS FOR MOBIL'S ELECTRONIC DEBIT CARD POINT OF SALE PROGRAM

The following rules and regulations for the processing of Debit Card sales apply to all participants in Mobil's Electronic Debit Card Point of Sale program:

1. Mobil's goal is to provide many customers access to the POS terminal via a group of selected debit cards. The debit card base will consist of various styles of cards which will be identified on an "Acceptance Placard" for station usage. As new debit cards are introduced to the system, placard decals will be made available. If a customer believes that the debit card he presents is good but it is not on the placard, you should try it to determine system acceptance. If the system rejects the transaction further advice is available by calling the Help Desk at Kansas City, telephone no. 1-800-231-1122.

2. Daily limits governing individual purchase amounts at Mobil stations will vary by bank. In most cases, however, the maximum limit for combined ATM cash withdrawals and Mobil purchases will not be less than $200 daily. The electronic Debit Card System will automatically monitor individual cardholder's daily activity and will deny any attempted sale in excess of the limit. If the sale is denied, do not attempt to use the card in the manual backup system.

3. The Debit Card holder must personally enter his or her own Personal Identification Number (PIN) in order for the transaction to take place. Should the customer fail to enter the correct number after three attempts, the sale will be denied and some other form of payment from that customer must be made. Neither Participant nor any employee or agent of Participant shall enter the customer's PIN or assist any customer in the entry of the PIN, even if so requested by the customer, except to explain to the customer the proper method of making such entry.

4. In a pre-pay environment, if the difference between the actual purchase and the amount shown on the customer's receipt is $5.00 or more, the initial transaction must be cancelled and reprocessed for the correct amount of the purchase. If the difference is less than $5.00, change may be made from the cash drawer.

5. A debit card inadvertently left at the station by a customer is to be cut in half and mailed to MOCC in the manual envelope E192D. No compensation will be paid for these returned cards.

6. If a sale is rejected and the customer wishes an explanation, the customer should be advised to call the card issuing bank's Customer Service department. The call should be placed by the customer, not the dealer.

7. Handling of customer relations for goods and services complaints will be through Mobil's existing Customer Relations system. Customers with posting discrepancies should be directed to contact the card issuing bank's Customer Service department.

8. Normal system operating questions should be directed to Mobil's Help Desk at telephone no. 1-800-231-1122.

9. Submission, to Mobil, of debit card tickets should be handled exactly the same as CO-65 POS credit card sales which will be comingled on the FCO-490 POS (without service charge) and submitted in the E-192 POS envelope.

10. In the event the terminal or electronic system is inoperative and the customer has no other means of payment for purchase, the following manual backup procedures will apply:

    Any other use of this manual system may result in the sale being charged back.

    STEP 1—Imprint the Manual Voucher form (FCO-65D) ensuring the total amount, the customer's debit card number, the current date, and the information on your dealer imprinter plate is legible.

    STEP 2—Complete the sale information portion of the form being careful to make certain the total amount is clearly legible.

    STEP 3—Identify yourself in the sales person portion of the form by name or initials.

    STEP 4—Record the time of day the sale occurs.

    STEP 5—Record the customer's drivers license number and compare customer's signature to that on voucher.

    STEP 6—Record the complete name of the bank which appears on the debit card.

STEP 7—Obtain the customer's signature.

STEP 8—Give customer the first copy.

NOTE: Total individual sale amount is not to exceed $50 per transaction. A maximum of two (2) transactions per customer will be allowed per 24 hour period.

Listed below are the steps for submitting the Manual Voucher of Payment forms to Mobil:

NOTE: *Submit all forms immediately.*

STEP 1—Imprint the Manual Debit Card Summary form (FCO-490D) ensuring the current date and the information on your dealer imprinter plate is legible.

STEP 2—List the number of transactions and the total dollar amount on the Manual Debit Card Summary form (FCO-490D).

STEP 3—Sign your name in the appropriate block.

STEP 4—Place the Manual Debit Card Summary form (FCO-490D) and the corresponding Voucher of Payment forms (FCO-65D) in the Manual envelope (FE-192D) and mail promptly to Kansas City in the pre-addressed envelope (FE-428). Be certain to keep your copy of all documents for your records.

STEP 5—On receipt by Mobil, the documents will be processed and a check will be mailed to you for an amount equal to the amount shown on the Summary plus or minus any adjustments.

11. Mobil reserves the right to suspend, amend, add to or delete from these rules and regulations, at its sole discretion, upon written notice to participant.

SCHEDULE B

SUPPLY AND MAINTENANCE OF SERVICE STATION IMPROVEMENTS, EQUIPMENT, AND ACCESSORIES

ITEM	NEW SERVICE STATION OR NEW DEALER ORIGINAL FURNISHED BY	REPLACEMENT AND/OR MAINTENANCE BY
BUILDING		
1. STRUCTURE		
Roof, walls and floors	Mobil	Mobil
Windows including plate glass	Mobil	Dealer
Heating Plant	Mobil	Mobil
Furnace Filters	Mobil	Dealer
Furnace Oil Tank	Mobil	Mobil
All locks	Mobil	Dealer
Safes incl. recombinating as required	Mobil	Dealer
Painting — exterior & interior	Mobil	Mobil
Painting — curb flashing	Mobil	Dealer
Gutters and downspouts	Mobil	Mobil Dealer — clean out
2. STORE PLANNING		
Lubritory backwall	Mobil	Mobil
Customer record desk	Mobil	Mobil
Overhead tire racks	Mobil	Mobil
Utility room shelving	Mobil	Mobil
Salesroom backwall	Mobil	Mobil
Salesroom module	Mobil	Mobil
3. REST ROOM FURNISHINGS		
Waste baskets	Dealer	Dealer
Soap dispensers	Mobil	Dealer
Mirrors	Mobil	Dealer
Shelves	Mobil	Dealer
Towel Dispenser	Mobil	Dealer
Toilet tissue dispensers	Mobil	Dealer
Coat Hooks	Mobil	Dealer
4. PLUMBING		
Lavatory	Mobil	Mobil
Faucets, valves and washers	Mobil	Dealer
Toilet	Mobil	Mobil
Toilet mechanism and float	Mobil	Dealer
Urinal	Mobil	Mobil
Flush mechanism and valve	Mobil	Dealer
Sewer system incl. septic tank	Mobil	Mobil — incl. cleaning
Stopped fixture drains	Mobil	Dealer
Sump and grease traps	Mobil	Mobil Dealer — clean out
Air and Water piping	Mobil	Mobil Dealer — Freeze damage
Water Heater	Mobil	Mobil
5. ELECTRICAL		
Panelboard and switches	Mobil	Mobil
Light fixtures inside or atached to building	Mobil	Mobil — Elect. maintenance Dealer — Cleaning
Fuses	Mobil	Dealer
Lamps — interior	Mobil	Dealer — includes labor to install

ITEM	NEW SERVICE STATION OR NEW DEALER ORIGINAL FURNISHED BY	REPLACEMENT AND/OR MAINTENANCE BY
YARD		
1. YARD FACILITIES		
Yard & General Premises	Mobil	Dealer — to keep weed & trash free
Concrete drives, tank, pads, etc.	Mobil	Mobil
Yard surfacing	Mobil	Mobil
Landscaping and planting	Mobil	Dealer
Pump Islands	Mobil	Mobil Dealer — repainting as required
Air and Water Piping	Mobil	Mobil Dealer — freeze damage
Driveway signal system and hoses	Dealer	Dealer
Trash enclosure	Mobil	Mobil
Fence	Mobil	Mobil
Tire racks, portable	Dealer	Dealer
Canopy	Mobil	Mobil Dealer — clean downspouts
2. ELECTRICAL		
Floodlight poles	Mobil	Mobil
Light Fixtures	Mobil	Mobil — gen. maintenance Dealer — cleaning
Fluorescent and mercury vapor lamps	Mobil	Dealer
Labor to install exterior lamps	Mobil	Mobil
EQUIPMENT		
1. BUILDING EQUIPMENT		
Air compressor	Mobil	Mobil Dealer — drain water, change oil, maintain oil level, repairs due to lack of oil
Lifts	Mobil	Mobil Dealer — maintain oil level, repairs from misuse
Air conditioning	Mobil	Mobil
Self-service console	Mobil	Mobil
Water coolers	Mobil	Mobil
Refrigeration — coolers	Mobil	Mobil Dealer — preventative maintenance
2. LUBRICATION EQUIPMENT		
Overhead reels, pumps and hoses	Mobil	Dealer
Control handles & nozzles	Mobil	Dealer
Gear oil dispenser — one in lieu of overhead reel	Mobil	Dealer
Control handles & nozzles	Mobil	Dealer
Waste oil drain unit	Mobil	Dealer
Portable chassis, gear, ATF at Dealer option	Dealer	Dealer
Hand guns	Dealer	Dealer
3. ISLAND AND YARD EQUIPMENT		
Tanks	Mobil	Mobil
Water Removal	Mobil	Dealer — checks daily Mobil — removes

ITEM	NEW SERVICE STATION OR NEW DEALER ORIGINAL FURNISHED BY	REPLACEMENT AND/OR MAINTENANCE BY
Product piping, valves & fittings	Mobil	Mobil
Fill pipe and cap	Mobil	Mobil Dealer — to keep tight and free of snow and ice
Waste oil tank and piping	Mobil	Mobil Dealer — waste oil removal
Gasoline pumps and dispensers	Mobil	Mobil Dealer — cleaning and polishing, checks accuracy & maintain required govt. stickers where required by law.
Hoses	Mobil	Dealer
Retractor cables	Mobil	Dealer
External pump filters	Mobil	Dealer
Regular nozzle — automatic	Dealer	Dealer
Vapor recovery nozzle	Dealer	Dealer
Dual Swivel	Dealer	Dealer
Remote pumps	Mobil	Mobil
Air and water islanders, towers reels and wells	Mobil	Mobil
Hose	Mobil	Dealer
Air gauges and water bibbs	Dealer	Dealer
Credit Card Imprinter	Mobil — Dealer rents from Mobil	Mobil
POS terminal	Mobil — Dealer rents from Mobil	Mobil
Water cans or buckets	Dealer	Dealer
Pump price signs — where required by law (excludes govt. required stickers)	Dealer	Dealer
Emission control equipment	Mobil	Dealer
4. MISCELLANEOUS EQUIPMENT		
Fire Extinguisher	Mobil	Dealer — Refills Dealer — Inspects annually
Electronic Cash Register	Dealer	Dealer
Electronic Console	Mobil	Mobil
Combination Console/Register	Dealer	Dealer
Other	Dealer	Dealer
5. SIGNS		
Internally Illuminated plastic ID signs and high rise signs	Mobil	Mobil
Pegasus Disc, Internally Illuminated	Mobil	Mobil
Building Legends, Rest Room Signs, Emblems and other Mobil product signs	Mobil	Mobil
Dealer Name Plates	Dealer	Dealer
Misc. Dealer Service Signs merchandise, stamp signs, price signs, etc.	Dealer	Dealer
Internally Illuminated Price Signs	Dealer	Dealer
Externally Illuminated Price Signs	Dealer	Dealer
Canopy Legends	Mobil	Mobil

SCHEDULE A

S/S # 02-A29

This lease dated 5-19-87 includes the following personal property and equipment, receipt whereof is hereby acknowledged:

Quantity	Item Description
4	Floodlights & Poles
0	Disc Island Lites (3) & Poles
0	Disc Island Lites (4) & Poles
0	Self-Serve Island Sign Int. Only
0	Full-Serve Island Sign Int. Only
1	Sunoco - Canopy
0	MPD's
0	Single Dispenser
6	Duo-1 Dispenser
0	Duo-2 Dispenser
0	Single Pump
0	Duo-1 Pump
0	Duo-2 Pump
3	Submersible Pumps
0	Air Tower
0	Water Cooler
0	Drive-On Lift
2	Frame Contact Lift
0	Overhead Lube Equip. _____ Reels
0	Portable Lube Equip.
1	Air Compressor 3 HP
1	Self-Serve Console
1	Intercom
1	550 Gal. Waste Oil Tank
0	275 Gal. Heating Oil Tank
0	1000 Gal. UG Tank
0	2000 Gal. UG Tank
0	3000 Gal. UG Tank
0	4000 Gal. UG Tank
0	5000 Gal. UG Tank
0	6000 Gal. UG Tank
1	8000 Gal. UG Tank
2	10,000 Gal. UG Tank
0	12,000 Gal. UG Tank
1	8 Ft. Mobil I.D. Sign
1	Oil Carousel
0	2 Door Cooler
1	POS Terminal

Date Verified: _____

Signed: _____
Dealer

_____
Mobil

Fire Extinguisher:
Date Checked 5-19-87

The parties hereto acknowledge and agree that all personal property and equipment listed hereon, while subject to all terms and conditions of the Lease, shall be considered as loaned equipment, and unless otherwise specified, no portion of the rental specified in Paragraph 4 of the Lease shall be allocated to such personal property and equipment. Maintenance, repairs or replacement of such personal property and equipment shall not give rise to any claim for abatement of rent.

[3128-01]

Office of the Secretary

SUMMARY OF TITLE I OF THE PETROLEUM MARKETING PRACTICES ACT

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: This notice contains a summary of title I of the Petroleum Marketing Practices Act, a new Federal law enacted on June 19, 1978. The law is intended to protect franchised distributors and retailers of gasoline and diesel motor fuel against arbitrary or discriminatory termination or nonrenewal of franchises. The summary describes the reasons for which a franchise may be terminated or not renewed under the new law, the responsibilities of franchisors, and the remedies and relief available to franchisees. Franchisors must give franchisees copies of the summary contained in this notice whenever notification of termination or nonrenewal of a franchise is given.

FOR FURTHER INFORMATION CONTACT:

William C. Lane, Jr., Office of Competition, Department of Energy, 20 Massachusetts Avenue NW., Room 712, Washington, D.C. 20545, 202-376-9495.

Michael Paige or Judith H. Garfield, Office of General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461, 202-566-9565 or 202-566-2085.

SUPPLEMENTARY INFORMATION: Title I of the Petroleum Marketing Practices Act, Pub. L. 95-297 (the "Act"), enacted on June 19, 1978, provides for the protection of franchised distributors and retailers of motor fuel by establishing minimum Federal standards governing the termination of franchises and the nonrenewal of franchise relationships by the franchisor or distributor of such fuel. Section 104(d)(1) of the Act provides that the Secretary of Energy shall prepare and publish in the FEDERAL REGISTER, not later than 30 days after enactment of the Act, a simple and concise summary of the provisions of title I, including a statement of the respective responsibilities of, and the remedies and relief available to, franchisors and franchisees under that title.

As required by section 104(d)(1) of the Act, the following is a summary statement of the respective responsibilities of, and the remedies and relief available to, franchisors and franchisees. Franchisors must give copies of this summary statement to their franchisees when entering an agreement to terminate the franchise or not to renew the franchise relationship, and when giving notification of termination or nonrenewal. In addition to the summary of the provisions of title I, a more detailed description of the definition contained in the Act and of the legal remedies available to franchisees is also included in this notice, following the summary statement.

SUMMARY OF LEGAL RIGHTS OF MOTOR FUEL FRANCHISEES

This is a summary of the franchise protection provisions of the Federal Petroleum Marketing Practices Act. This summary must be given to you, as a person holding a franchise for the sale, consignment or distribution of gasoline or diesel motor fuel, in connection with any termination or nonrenewal of your franchise by your franchising company (referred to in this summary as your supplier).

The franchise protection provisions of the Act apply to a variety of franchise arrangements. The term "franchise" is broadly defined as a license to use a motor fuel trademark which is owned or controlled by a refiner, and it includes secondary arrangements such as leases of real property and motor fuel supply agreements which have existed continuously since May 15, 1973 regardless of a subsequent withdrawal of a trademark. Thus, if you have lost the use of a trademark previously granted by your supplier but have continued to receive motor fuel supplies through a continuation of a supply agreement with your supplier, you are protected under the Act.

You should read this summary carefully, and refer to the Act if necessary, to determine whether a proposed termination or nonrenewal of your franchise is lawful, and what legal remedies are available to you if you think the proposed termination or failure to renew is not lawful. In addition, if you think your supplier has failed to comply with the Act, you may wish to consult an attorney in order to enforce your legal rights.

The Act is intended to protect you, whether you are a distributor or a retailer, from arbitrary of discriminatory termination or nonrenewal of your franchise agreement. To accomplish this, the Act first lists the reasons for which termination or nonrenewal is permitted. Any notice of termination or nonrenewal must state the precise reason, as listed in the Act, for which the particular termination or nonrenewal is being made. These reasons are described below under the headings "Reasons for Termination" and "Reasons for Nonrenewal."

You should note that the Act does not restrict the reasons which may be given for the termination of a franchise agreement entered into before the June 19, 1978 effective date of the Act. However, any nonrenewal of such a terminated franchise must be based on one of the reasons for nonrenewal summarized below.

The Act also requires your supplier to give you a written notice of termination or intention not to renew the franchise within certain time periods. These requirements are summarized below, under the heading "Notice Requirements for Termination or Nonrenewal."

The Act allows trial and interim franchise agreements, which are described below under the heading "Trial and Interim Franchises."

The Act gives you certain legal rights if your supplier terminates or does not renew your franchise in a way that is not permitted by the Act. These legal rights are described below under the heading "Your Legal Rights."

This summary is intended as a simple and concise description of the general nature of your rights under the Act. For a more detailed description of these rights, you should read the text of the Petroleum Marketing Practices Act itself (Pub. L. 95-297, 92 Stat. 322, 15 U.S.C. 2801).

I. REASONS FOR TERMINATION

The following is a list of the only reasons for which your franchise is permitted to be terminated by the Act. One or more of these reasons must be specified if your franchise was entered into on or after June 19, 1978 and is being terminated. If your franchise was entered into before June 19, 1978, as discussed above, there is no statutory restriction on the reasons for which it may be terminated. If such a franchise is terminated, however, the Act requires the supplier to renew the franchise relationship unless one of the reasons listed under this heading or one of the additional reasons for nonrenewal described below under the heading "Reasons for Nonrenewal" exists.

If your supplier attempts to terminate a franchise which you entered into on or after June 19, 1978 for a reason that is not listed under this heading, you can take the legal action

against your supplier that is described below under the heading "Your Legal Rights."

Noncompliance with franchise agreement. Your supplier may terminate your franchise if you do not comply with a reasonable and important requirment of the franchise relationship. In order to use this reason, your supplier must have learned of this non-compliance recently. The Act limits the time period within which your supplier must have learned of your non-compliance to various periods, the longest of which is 120 days, before you receive notification of the termination.

Lack of good faith efforts. Your supplier may terminate your franchise if you have not made good faith efforts to carry out the requirements of the franchise, provided you are first notified in writing that you are not meeting a requirement of the franchise and you are given an opportunity to make a good faith effort to carry out the requirement. This reason can be used by your supplier only if you fail to make good faith efforts to carry out the requirements of the franchise for a period of 180 days before you receive the notice of termination.

Mutual agreement to terminate the franchise. A franchise can be terminated by an agreement in writing between you and your supplier if the agreement is entered into not more than [redacted] days before the effective date of termination and you receive a copy of this agreement, together with this summary statement of your rights under the Act. You may cancel the agreement to terminate within 7 days after you receive a copy of the agreement, by mailing (by certified mail) a written statement to this effect to your supplier.

Withdrawal from the market area. Under certain conditions, the Act permits your supplier to terminate your franchise if your supplier is withdrawing from marketing activities in the entire geographic area in which you operate. You should read the Act for a more detailed description of the conditions under which market withdrawal terminations are permitted.

Other events permitting a termination. If your supplier learns within the time period specified in the Act (which in no case is more than 120 days prior to the termination notice) that one of the following events has occurred, your supplier may terminate your franchise agreement:

(1) Fraud or criminal misconduct by you that relates to the operation of your marketing premises.

(2) You declare bankruptcy or a court determines that you are insol-[redacted]

[redacted] You have a severe physical or mental disability lasting at least 3 months which makes you unable to provide for the continued proper operation of the marketing premises.

(4) Expiration of your supplier's underlying lease to the leased marketing premises, if you were given written notice before the beginning of the term of the franchise of the duration of the underlying lease and that the underlying lease might expire and not be renewed during the term of the franchise.

(5) Condemnation or other taking by the government, in whole or in part, of the marketing premises pursuant to the power of eminent domain. If the termination is based on a condemnation or other taking, your supplier must give you a fair share of any compensation which he receives for any loss of business opportunity or good will.

(6) Loss of your supplier's right to grant the use of the trademark that is the subject of the franchise, unless the loss was because of bad faith actions by your supplier relating to trademark abuse, violation of Federal or State law, or other fault or negligence.

(7) Destruction (other than by your supplier) of all or a substantial part of your marketing premises. If the termination is based on the destruction of the marketing premises and if the premises are rebuilt or replaced by your supplier and operated under a franchise, your supplier must give you a right of first refusal to this new franchise.

(8) Your failure to make payments to your supplier of any sums to which your supplier is legally entitled.

(9) Your failure to operate the marketing premises for 7 consecutive days, or any shorter period of time which, taking into account facts and circumstances, amounts to an unreasonable period of time not to operate.

(10) Your intentional adulteration, mislabeling or misbranding of motor fuels or other trademark violations.

(11) Your failure to comply with Federal, State, or local laws or regulations of which you have knowledge and that relate to the operation of the marketing premises.

(12) Your conviction of any felony involving moral turpitude.

(13) Any event that affects the franchise relationship and as a result of which termination is reasonable.

II. REASONS FOR NONRENEWAL

If your supplier gives notice that he does not intend to renew any franchise agreement, the act requires that the reason for nonrenewal must be either one of the reasons for termination listed immediately above, or one of the reasons for nonrenewal listed below.

Failure to agree on changes or additions to franchise. If you and your supplier fail to agree to changes in the franchise that your supplier in good faith has determined are required, and your supplier's insistence on the changes is not for the purpose of preventing renewal of the franchise, your supplier may decline to renew the franchise.

Customer complaints. If your supplier has received numerous customer complaints relating to the condition of your marketing premises or to the conduct of any of your employees, and you have failed to take prompt corrective action after having been notified of these complaints, your supplier may decline to renew the franchise.

Unsafe or unhealthful operations. If you have failed repeatedly to operate your marketing premises in a clean, safe and healthful manner after repeated notices from your supplier, your supplier may decline to renew the franchise.

Operation of franchise is uneconomical. Under certain conditions specified in the act, your supplier may decline to renew your franchise if he has determined that renewal of the franchise is likely to be uneconomical. Your supplier may also decline to renew your franchise if he has decided to convert your marketing premises to a use other than for the sale of motor fuel, to sell the premises, or to materially alter, add to, or replace the premises.

III. NOTICE REQUIREMENTS FOR TERMINATION OR NONRENEWAL

The following is a description of the requirements for the notice which your supplier must give you before he may terminate your franchise or decline to renew your franchise relationship. These notice requirements apply to all franchise terminations, including franchises entered into before June 19, 1978 and trial and interim franchises, as well as to all nonrenewals of franchise relationships.

How much notice is required. In most cases, your supplier must give you notice of termination or nonrenewal at least 90 days before the termination or nonrenewal takes effect.

In circumstances where it would not be reasonable for your supplier to give you 90 days notice, he must give you notice as soon as he can do so. In addition, if the franchise involves leased marketing premises, your supplier may not establish a new franchise relationship involving the same premises until 30 days after notice was given to you or the date the termination or nonrenewal takes effect, whichever is later. If the franchise agreement permits, your supplier may repossess the premises and, in reasonable circumstances, operate them through his employees or agents.

If the termination or nonrenewal is based upon a determination to withdraw from the marketing of motor fuel in the area, your supplier must give you notice at least 180 days before the termination or nonrenewal takes effect.

Manner and contents of notice. To be valid, the notice must be in writing and must be sent by certified mail or personally delivered to you. It must contain:

(1) A statement of your supplier's intention to terminate the franchise or not to renew the franchise relationship, together with his reasons for this action;

(2) The date the termination or nonrenewal takes effect; and

(3) A copy of this summary.

IV. TRIAL FRANCHISES AND INTERIM FRANCHISES

The following is a description of the special requirements that apply to trail and interim franchises.

Trial franchises. A trial franchise is a franchise, entered into on or after June 19, 1978, in which the franchisee has not previously been a party to a franchise with the franchisor and which has an initial term of 1 year or less. A trial franchise must be in writing and must make certain disclosures, including that it is a trial franchise, and that the franchisor has the right not to renew the franchise relationship at the end of the initial term by giving the franchisee proper notice.

The unexpired portion of a transferred franchise (other than a trial franchise, as described above) does not qualify as a trail franchise.

In exercising his right not to renew a trail franchise at the end of its initial term, your supplier must comply with the notice requirements described above under the heading "Notice Requirements for Termination or Nonrenewal."

Interim franchises. An interim franchise is a franchise, entered into on or after June 19, 1978, the duration of which, when combined with the terms of all prior interim franchises between the franchisor and the franchisee, does not exceed 3 years, and which begins immediately after the expiration of a prior franchise involving the same marketing premises which was not renewed, based upon a lawful determination by the franchisor to withdraw from marketing activities in the geographic area in which the franchisee operates.

An interim franchise must be in writing and must make certain disclosures, including that it is an interim franchise and that the franchisor has the right not to renew the franchise at the end of the term based upon a lawful determination to withdraw from marketing activities in the geographic area in which the franchisee operates.

In exercising his right not to renew a franchise relationship under an interim franchise at the end of its term, your supplier must comply with the notice requirements described above under the heading "Notice Requirements for Termination or Nonrenewal."

V. YOUR LEGAL RIGHTS

Under the enforcement provisions of the Act, you have the right to sue your supplier if he fails to comply with the requirements of the Act. The courts are authorized to grant whatever equitable relief is necessary to remedy the effects of your supplier's failure to comply with the requirements of the Act, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief. Actual damages, exemplary (punitive) damages under certain circumstances, and reasonable attorney and expert witness fees are also authorized. For a more detailed description of these legal remedies you should read the text of the Act.

FURTHER DISCUSSION OF TITLE I—DEFINITIONS AND LEGAL REMEDIES

I. DEFINITIONS

Section 101 of the Petroleum Marketing Practices Act sets forth definitions of the key terms used throughout the franchise protection provisions of the Act. The definitions from the Act which are listed below are of those terms which are most essential for purposes of the foregoing summary statement. (You should consult section 101 of the Act for additional definitions not included here.)

Franchise. A franchise is any contract between a refiner and a distributor, between a refiner and a retailer, between a distributor and another distributor, or between a distributor and a retailer, under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

The term "franchise" includes any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy. The term also includes any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed under a trademark owned or controlled by a refiner, or under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner. The unexpired portion of a transferred franchise is also included in the definition of the term.

Franchise relationship. The term "franchise relationship" refers to the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

Franchisee. A franchisee is a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

Franchisor. A franchisor is a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

Marketing premises. Marketing premises are the premises which, under a franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of motor fuel.

Leased marketing premises. Leased marketing premises are marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

Fail to renew and nonrenewal. The terms "fail to renew" and "nonrenewal" refer to a failure to reinstate, continue, or extend a franchise relationship (1) at the conclusion of the term, or on the expiration date, stated in the relevant franchise, (2) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date, or (3) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978 and has not been renewed after such date.

II. LEGAL REMEDIES AVAILABLE TO FRANCHISEE

The following is a more detailed description of the remedies available to the franchisee if a franchise is terminated or not renewed in a way that fails to comply with the Act.

Franchisee's right to sue. A franchisee may bring a civil action in United States District Court against a

franchisor who does not comply with the requirements of the Act. The action must be brought within one [redacted]r after the date of termination or [redacted]renewal or the date the franchisor fails to comply with the requirements of the law, whichever is later.

Equitable relief. Courts are authorized to grant whatever equitable relief is necessary to remedy the effects of a violation of the law's requirements. Courts are directed to grant a preliminary injunction if the franchisee shows that there are sufficiently serious questions, going to the merits of the case, to make them a fair ground for litigation, and if, on balance, the hardship which the franchisee would suffer if the preliminary injunction is not granted will be greater than the hardship which the franchisor would suffer if such relief is granted.

Courts are not required to order continuation or renewal of the franchise relationship if the action was brought after the expiration of the period during which the franchisee was on notice concerning the franchisor's intention to terminate or not renew the franchise agreement.

Burden of proof. In an action under the Act, the franchisee has the burden of proving that the franchise was terminated or not renewed. The franchisor has the burden of proving, as an affirmative defense, that the termination or nonrenewal was permitted [redacted]er the Act and, if applicable, that the franchisor complied with certain other requirements relating to terminations and nonrenewals based on condemnation or destruction of the marketing premises.

Damages. A franchise who prevails in an action under the Act is entitled to actual damages and reasonable attorney and expert witness fees. If the action was based upon conduct of the franchisor which was in willful disregard of the law's requirements or the franchisee's rights under the law, exemplary (punitive) damages may be awarded where appropriate. The court, and not the jury, will decide whether to award exemplary damages and, if so, in what amount.

On the other hand, if the court finds that the franchisee's action is frivolous, it may order the franchisee to pay reasonable attorney and expert witness fees.

Franchisor's defense to permanent injunctive relief. Courts may not order a continuation or renewal of a franchise relationship if the franchisor shows that the basis of the nonrenewal of the franchise relationship was a determination made in good f[redacted] and in the normal course of busi[redacted]

To convert the leased marketing premises to a use other than the sale or distribution of motor fuel;

(2) To materially alter, add to, or replace such premises;

(3) To sell such premises;

(4) To withdraw from marketing activities in the geographic area in which such premises are located; or

(5) That renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or additions to the franchise provisions which may be acceptable to the franchisee.

In making this defense, the franchisor also must show that he has complied with the notice requirements of the Act.

This defense to permanent injunctive relief, however, does not affect the franchisee's right to recover actual damages and reasonabale attorney and expert witness fees if the nonrenewal is otherwise prohibited under the Act.

Issued in Washington, D.C. on August 23, 1978.

JOHN F. O'LEARY,
Deputy Secretary.

[FR Doc. 78-24419 Filed 8-28-78; 9:15 am]

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO: 90-20170 (05)

JEREMY BRANSFORD,

Plaintiff,

vs.

ALAN M. BERMAN d/b/a BERMAN'S SERVICE STATION, MOBIL OIL CORPORATION and HYMAN DALE STETHEM,

Defendants.

ORDER ON DEFENDANT'S MOTION TO STAY ALL PROCEEDINGS

THIS CAUSE having come before this Court on Defendant Mobil Oil Corporation's (hereinafter "Mobil") Motion to Stay All Proceedings in this Court pending the Florida Supreme Court's disposition of the proceedings presently before it with regard to this action, and the Court having considered the motion, the argument of counsel, having reviewed the file herein, and being otherwise duly advised in the premises, hereby makes the following conclusions:

This action arose out of an alleged assault and battery committed on the Plaintiff Jeremy Bransford (hereinafter "Bransford") by the Defendant Hyman Dale Stethem (hereinafter "Stethem"), at the time, an employee of the Defendant Alan M. Berman d/b/a Berman's Service Station (hereinafter "Berman"), a franchise operator of a Mobil service station.

11/15/92

It is alleged that on March 21, 1990, Plaintiff Bransford, while in the convenience store of the Mobil service station encountered Stethem, a cashier employed by Berman. After a series of verbal exchanges, Stethem left the locked glass-enclosed booth in which he performed his cashier duties and engaged in an altercation with Bransford. This allegedly resulted in physical injuries to the Plaintiff, thereby providing the basis for which this action against the aforementioned Defendants has ensued.

This Court granted summary judgment in favor of Defendants Mobil and Berman on May 7, 1991. Plaintiff appealed these rulings and on July 8, 1992, the Fourth District Court of Appeal reversed the trial court's summary judgment rulings with regard to a "negligent retention" claim as to Berman and an "apparent authority" claim as to Mobil.

As a result of the opinion issued by the Fourth District Court of Appeal, Defendant Mobil has petitioned the Florida Supreme Court to review the decision by the Court of Appeal as it relates to Mobil via the court's discretionary jurisdiction. Mobil maintains that the Fourth District's opinion directly conflicts with the Supreme Court decision in Orlando Executive Park v. Robbins, 433 So.2d 491 (Fla. 1983), as well as other District Court of Appeals decisions on the same question of law.

In the present action, the Fourth District reversed the summary judgment in favor of Mobil by stating that "...Mobil might

be liable under the theory of apparent agency..." [1] Clearly, this Fourth District opinion directly conflicts with Orlando, supra, and other District Court of Appeals decisions which have consistently held that oil companies are not vicariously liable under the doctrine of apparent agency. In each case, the Court has granted summary judgment in favor of the oil company. See, Sydenham v. Santiago, 392 So.2d 357 (Fla. 4th DCA 1981); Cawthon v. Phillips Petroleum Company, 124 So.2d 517 (Fla. 2d DCA 1960); Cardounel v. Shell Oil Company, 397 So.2d 328 (Fla. 3d DCA 1981); Nelson v. Shell Oil Company, 396 So.2d 752 (Fla. 3d DCA 1981); Drum v. Pure Oil Company, 184 So.2d 196 (Fla. 4th DCA 1966).

As a general rule of agency, a principal is liable civilly for the tortious acts of his agent which are within the course and scope of the agent's employment, or for those beyond the scope of the employment which has been ratified after the act. 2 Fla. Jur 2d, Agency and Employment § 89 (1977). (emphasis added). However, in situations in which an oil company is sued for tortious acts committed by service station operators or employees of the operator, Florida courts have made the distinction between that of an agent and that of an independent contractor. As such, service station operators have been considered, as a matter of law, independent contractors rather than agents or servants of the oil

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[1] To establish liability under the doctrine of apparent agency, there must be "(1) a representation by the principal; (2) reliance on that representation by a third person; (3) a change of position by the third person in reliance upon such representation to his detriment." Orlando, supra at 494.

company and thus are not vicariously liable for the tortious acts of a service station employee. Nelson, supra; Cawthon, supra.

In the present action, the Fourth District's opinion clearly misapplies Sydenham, supra. In Sydenham, the court held that Gulf Oil Company could not be held vicariously liable for the alleged negligence of a service station employee in performing repairs on the plaintiff's tire, notwithstanding the plaintiff's reliance upon Gulf's representations, through national advertising, coupled with the Gulf corporate logo on the premises. In its reversal of the summary judgment, the Fourth District concluded that the alleged error by the trial court was premised entirely upon the following:

> We are not unaware of an earlier case out of this court, Sydenham v. Santiago, 392 so.2d 357 (Fla. 4th DCA 1981), limited by Orlando v. Executive Park, Inc. v. Robbins, which might lead to a contrary result. However, in Sydenham, the oil company did not own the station and had no control over it, aside from gasoline sales. (emphasis added).

The issue before the court is not whether Santiago or Mobil owned the premises, but the degree of control exacted by Mobil over the "mode of doing the work", in order to establish the apparent authority of an agent to act on behalf of a principal. See, Sydenham, supra and Cawthon, supra.

In case at bar, Mobil is the owner of the real property upon which the service station is located. Through a franchise agreement, Mobil leased the station premises to Berman for a term of three years, commencing September 1, 1987 and ending August 31, 1990. Under the terms of this agreement, Berman was required to

use the premises as a gasoline facility offering petroleum related products and services, while maintaining full responsibility for its operation. As such, Berman is considered an independent contractor.

Furthermore, it is abundantly clear, that in keeping with agency principles, Stethem was acting outside of the scope of his employment, when he committed a tortious act upon Bransford. At his deposition, Stethem testified with specificity as to the instructions given to him by Berman with regard to leaving his station in the booth:

> Question: What I'm wondering is if Mr. Berman ever told you that it was proper for you to get out of the booth if there were a problem with a customer not involving someone, an elderly person, a problem involved with merchandise?
>
> Answer: Someone presenting a problem, to stay in the booth, tell them to leave, go outside, whatever would be necessary. Call the police, whatever. Just stay in the booth. (emphasis added.) Stethem Deposition p. 73.
>
> Question: From the time that you put your hand on the doorknob and opened the door from the cage or the booth, if you will, at that moment that you opened up the door to the booth were you then acting outside the instructions which Mr. Berman had given you?
>
> Answer: Yes. Stethem Deposition p. 75.
>
> Question: Is it fair then to say that you were leaving the booth to address a situation involving a threat to you and not to the gas station itself?
>
> Answer: I would say my main concern at the time was the threat against me... Stethem Deposition p. 77.

Notwithstanding, in a similar case decided on summary judgment, the court in Cardounel, supra, held that even if the

lessee of the service station was an employee or agent of the oil company, the mere knowledge that the lessee had a gun on the premises would not make the oil company liable to the plaintiff for injuries sustained, unless the oil company knew of particular facts that would have put it on notice of the lessee's dangerous propensities.[2] As such, there is no evidence to indicate any knowledge on the part of Mobil to sustain Plaintiff's position that Mobil can be held vicariously liable through apparent agency for the actions of Stethem.

Further, the Supreme Court in Orlando v. Robbins, 433 So.2d 491, 494 (1983), citing Sydenham v. Santiago, 392 So.2d at 357-358, recognized the standard set forth in Sydenham, in which the Sydenham court held that

> [a]n oil company does not confer apparent authority, subjecting itself to vicarious liability for negligence, upon a retail service station by allowing the use of its trade name and selling its products to the station.

Plaintiff maintains that the Supreme Court did not approve Sydenham in its decision in Orlando, thus rendering a conflict between them nonexistent. The court in Orlando, held that an apparent agency existed against Howard Johnson Company through its motel operator in a negligence action. However, the Orlando court went on to limit Sydenham and other oil company cases to their facts. In refusing to extend the language of Sydenham to cases such as

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[2]Berman's testimony at deposition clearly indicates that he had no prior knowledge of Stethem either carrying a concealed weapon or engaging in any physical altercations prior to the incident in question. Berman Deposition p.25-29.

Orlando, the court merely set the standard for applying apparent agency to oil company cases apart from other factual scenarios. For the Fourth District to now hold that an apparent agency claim may exist against an oil company in the face of this litany of decisions by the District Courts of Appeal, culminating in the Supreme Court's recognition of this uniform body of law in Orlando, is in direct contravention of existing precedents. Any other conclusion must be precluded as a matter of law.

Accordingly, it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion to Stay All Proceedings is hereby GRANTED.

DONE AND ORDERED in Chambers, at the Broward County Courthouse, Fort Lauderdale, Florida this 29th day of October 1992.

ROBERT LANCE ANDREWS
CIRCUIT COURT JUDGE

cc: Counsel of Record

A TRUE COPY

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1992

JEREMY BRANSFORD,

Appellant,

v.

ALAN BERMAN and MOBIL OIL CORPORATION,

Appellees.

CASE NO. 91-2147.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed July 8, 1992

Appeal from the Circuit Court for Broward County; Robert Lance Andrews, Judge.

Mark R. McCollem of Chidnese & McCollem, Fort Lauderdale, for appellant.

Roger S. Kobert of Mark A. Cohen & Associates, P.A., Miami, for appellees.

LETTS, J.

An employee of a gas station emerged from his enclosed booth and started a fist fight with a customer. The gas station was owned by Mobil Oil Corporation and was leased to a franchisee who operated it. The operator, in turn, employed the attendant who started the fight. The customer filed suit against both the operator and Mobil Oil Corporation but the trial judge granted summary judgment in their favor. We reverse.

As to the station operator, the complaint alleged that the operator was negligent in failing, "to discharge [the] employee when [he] assaulted patrons." We find this, together

with other facts gleaned from the record, sufficient to allege a negligent retention claim. There is evidence in the record that the station operator had knowledge of prior violent behavior by the employee inflicted upon another customer of the station. This being so, there is a material issue of fact as to whether the operator "knew or should have known that the employee was a threat to others," Tallahassee Furniture, Inc. v. Harrison, 583 So.2d 744, 750 (Fla. 1st DCA 1991), rev. denied, 595 So.2d 558 (Fla. 1992), and therefore summary judgment on the negligent retention claim was improper.

As to Mobil Oil Corporation, we likewise believe the grant of the summary judgment was error. Under the facts in the record at the summary judgment hearing, it is clear that Mobil might be liable under the theory of apparent agency for failing to provide adequate security and/or failing to remedy a foreseeable danger. See Holiday Inns, Inc. v. Shelburne, 576 So.2d 322 (Fla. 4th DCA), dismissed, 589 So.2d 291 (Fla. 1991). Mobil owned the station and prominently displayed its logo there in order to induce customers to patronize the premises. We are not unaware of an earlier case out of this court, Sydenham v. Santiago, 392 So.2d 357 (Fla. 4th DCA 1981), limited by Orlando Executive Park, Inc. v. Robbins, which might lead to a contrary result. However, in Sydenham, the oil company did not own the station and had no control over it, aside from gasoline sales.

REVERSED AND REMANDED.

WARNER, J., concurs.
STONE, J., concurs in part and dissents in part with opinion.

STONE, J., concurring in part and dissenting in part.

I concur in reversing as to the defendant Berman. However, as to Mobil Oil, I would affirm on the authority of Sydenham v. Santiago, 392 So.2d 357 (Fla. 4th DCA 1981). See also Orlando Executive Park, Inc. v. Robbins, 433 So.2d 491 (Fla. 1983) and Cardounel v. Shell Oil Co., 397 So.2d 328 (Fla. 3d DCA), dismissed by 407 So.2d 1102 (Fla. 1981). In my judgment Holiday Inns, Inc. v. Shelburne does not extend liability to the extent that it may be imposed, through an agency concept, simply because a well-known company contracts with a truly independent contractor for use of its signs, logo, uniforms, products, or method of operating.