



SO ORDERED.

SIGNED this 30 day of October, 2008.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

In re) **In Proceedings Under Chapter 11**
)
GATEWAY ETHANOL, L.L.C.,) **Case No. 08-22579-DLS**
)
Debtor.)

**STIPULATED FINAL ORDER AUTHORIZING DEBTOR (A) TO OBTAIN SECURED
POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, AND 364(c)
AND (d); AND (B) TO GRANT SECURITY INTERESTS, SUPERPRIORITY CLAIMS
AND ADEQUATE PROTECTION**

THIS MATTER having been heard on the motion (the “Motion”) of debtor and debtor in possession, Gateway Ethanol, L.L.C., a Kansas limited liability company (“Debtor”): (A) for a final order authorizing Debtor pursuant to §§ 363(c), 364(c) and 364(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.* (as amended, the “Bankruptcy Code”) and Rules 2002, 4001(c) and (d) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and applicable Local Rules, *inter alia*, (i) to obtain “Postpetition Financing” (as defined below) pursuant to the terms of the “Postpetition Loan Documents” (as defined below) from Dougherty Funding LLC, a Delaware limited liability company (“Dougherty”), which together herewith shall include any and all affiliates, successors, agents or assignees to whom Dougherty

has assigned or may assign certain or all of its rights (hereinafter, unless otherwise specified, collectively referred to, as applicable, the “DIP Lender”), (ii) to grant the DIP Lender, pursuant to Bankruptcy Code §§ 364(c) and 364(d), superpriority and junior security interests in all of Debtor’s currently owned and after-acquired property to secure the Debtor’s “Postpetition Indebtedness” (as defined below); (iii) to grant the DIP Lender, pursuant to § 364(c)(1) of the Bankruptcy Code superpriority administrative expense status; (iv) to provide adequate protection, pursuant to Bankruptcy Code §§ 361, 363(e) and 364(d) and the Court having conducted a Final Hearing on the Motion as required by §§ 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and (c) at which the Court considered the stipulations and the arguments of counsel for the Debtor, the “Prepetition Senior Lender” (as defined below) and the “DIP Lender” (as defined below), all objections to the Motion and this Final Order and the Court having denied or overruled all objections to the Motion as set forth herein (or such objections having otherwise been withdrawn or resolved) and this Court having found good and sufficient cause appearing therefor:

IT IS HEREBY FOUND AS FOLLOWS:

1. On October 5, 2008 (the “Petition Date”), the Debtor filed a voluntary petition (the “Petition”) under Chapter 11 of the Bankruptcy Code.
2. Debtor is currently operating its business and managing its property as debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee has been appointed.
3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The notice that Debtor provided of the hearing on the Motion was sufficient and appropriate under the

circumstances of the Debtor's chapter 11 case (the "Chapter 11 Case") pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the prior orders of this Court. A copy of the Motion was properly served upon all parties entitled to service under the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules.

4. As of the Petition Date: (a) Debtor was the borrower under the Loan and Security Agreement dated as of March 30, 2006, as amended to date (as so amended, the "Prepetition Senior Loan Agreement") between Debtor and Dougherty in its capacity as the "Lender" party thereto (in such capacity, the "Prepetition Senior Lender") pursuant to which Prepetition Senior Lender made a \$54,300,000.00 loan (the "Prepetition Senior Loan") to Debtor to finance a portion of the costs of constructing a facility (the "Plant") to produce denatured, anhydrous ethanol alcohol located on the "Premises" located in Pratt County, Kansas that are described in the "Prepetition Senior Mortgage" hereinafter described; (b) the Prepetition Senior Loan was evidenced by the Promissory Note dated March 30, 2006 (the "Prepetition Senior Note") made by Debtor payable to the order of the Prepetition Senior Lender; and (c) the Prepetition Senior Loan is secured by (collectively the "Prepetition Senior Collateral" and/or the Prepetition Senior Lender's "Prepetition Collateral"): (i) the "Collateral" described in Section 4.1 of the Prepetition Senior Loan Agreement including, without limitation, the Retainage Letter of Credit; (ii) the "Premises" described in the Mortgage and Security Agreement and Fixture Financing Statement dated as of March 30, 2006 (the "Prepetition Senior Mortgage") made by Debtor in favor of the Prepetition Senior Lender; (iii) the "Assigned Rights" described in the Assignment of Leases and Rents dated as of March 30, 2006 (the "Prepetition Senior Assignment of Rents") made by Debtor in favor of the Prepetition Senior Lender; (iv) the "Collateral" described in the Assignment of Contract Documents, Intangibles and Proprietary Rights dated as of March 30,

2006 (the “Prepetition Senior Contract Documents Collateral Assignment”) made by Debtor in favor of the Prepetition Senior Lender; (v) the “Collateral” described in the Assignment of Operating, Service Contracts, Permits and Regulatory Approvals dated as of March 30, 2006 (the “Prepetition Senior Operating Agreements Collateral Assignment”) made by Debtor in favor of the Prepetition Senior Lender; (vi) the ethanol production incentive payments (“KS Incentive Payments”) from the Kansas Department of Revenue through the Kansas Qualified Agricultural Ethyl Alcohol Producer Fund, pursuant to Kansas Statutes, Chapter 79, Articles 34 and 163 and any regulations promulgated by the Kansas Secretary of Revenue pursuant thereto (the “KS Incentive Program”) pursuant to the Assignment of Ethanol Production Incentive Payments (KS) dated as of March 30, 2006 (the “Prepetition Senior KS Incentive Payments Collateral Assignment”) made by Debtor in favor of the Prepetition Senior Lender; (vii) the commodity credits (“CCC Incentive Payments”) from the USDA Commodity Credit Corporation (“CCC”) under the USDA Commodity Credit Program pursuant to Section 9010 of the Farm Security and Rural Investment Act of 2002 and 7 CFR Part 1424, Federal Register Volume 68, No. 88, May 2, 2003 Page 24596-24603 (“Bioenergy Program”) pursuant to the Assignment of Ethanol Production Incentive Payments (C.C.C.) dated as of March 30, 2006 (the “Prepetition Senior CCC Incentive Payments Collateral Assignment”) made by Debtor in favor of the Prepetition Senior Lender; (viii) the “Guaranty” (the “Parent Guarantee”) described in the Assignment of GEA Group AG Guaranty dated as of March 30, 2006 (the “Prepetition Senior Parent Guarantee Collateral Assignment”) made by Debtor in favor of the Prepetition Senior Lender; such Parent Guarantee being the Guaranty made by GEA Group AG (the “Parent”) in favor of Debtor and pursuant to which the Parent guaranteed the performance of Lurgi Inc., a Tennessee corporation f/k/a Lurgi PSI, Inc. (“Lurgi”) pursuant to the Restated Engineering, Procurement and

Construction Agreement dated March 30, 2006 (the “Lurgi Contract”), between Debtor and Lurgi; and (ix) the Equipment Lease dated December 15, 2005 (Lease No. PRG002029) (the “Thermal Oxidizer Equipment Lease”) covering a thermal oxidizer/boiler system with heat exchange and accessories for the Plant (the “Thermal Oxidizer”) pursuant to the Collateral Assignment of Interest in Leased Equipment dated as of March 30, 2006 (the “Prepetition Senior Thermal Oxidizer Lease Collateral Assignment”) made by Debtor in favor of the Prepetition Senior Lender. The Prepetition Senior Loan Agreement, the Prepetition Senior Note, the Prepetition Senior Mortgage, the Prepetition Senior Assignment of Rents, the Prepetition Senior Contract Documents Collateral Assignment, the Prepetition Senior Operating Agreements Collateral Assignment, the Prepetition Senior KS Incentive Payments Collateral Assignment, the Prepetition Senior CCC Incentive Payments Collateral Assignment, the Prepetition Senior Parent Guarantee Collateral Assignment and the Prepetition Senior Thermal Oxidizer Lease Collateral Assignment are sometimes referred to herein collectively as the “Prepetition Senior Loan Documents” and individually as a “Prepetition Senior Loan Document” and/or as the Prepetition Senior Lender’s “Prepetition Loan Documents”).

5. The Prepetition Senior Lender’s security interest in the Prepetition Senior Collateral consisting of personal property appears to have been perfected by the filing of a Financing Statement with the Kansas Secretary of State on April 4, 2006 as Document No. 6132666.

6. The Prepetition Senior Mortgage was recorded in the Office of the Register of Deeds of Pratt County, Kansas on April 10, 2006 in Book 315, Page 381, as Mortgage # 3839.

7. The Prepetition Senior Assignment of Rents was recorded in the Office of the Register of Deeds of Pratt County, Kansas on April 10, 2006 in Book 315, Page 423.

8. Subject to the provisions of Paragraphs V and X of this Order, Debtor admits that, as of October 1, 2008, Debtor owed Prepetition Senior Lender the repayment of principal and interest in the amount of \$53,032,368.77 pursuant to the Prepetition Senior Loan Documents (consisting of \$51,801,479.44 for principal of the Prepetition Senior Loan and approximately \$1,230,889.33 for accrued interest thereon) together with accrued and unpaid fees (which, as of August 31, 2008, are in the approximate amount of \$231,217.24) plus all other liabilities, obligations and indebtedness due or payable from Debtor to Prepetition Senior Lender pursuant to the Prepetition Senior Loan Documents, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, which arose before the Petition Date, and any interest, loan fees and the legal fees and expenses incurred by counsel for Prepetition Senior Lender (collectively, the “Prepetition Senior Obligations” and/or the Prepetition Senior Lender’s “Prepetition Obligations”).

9. Subject to the provisions of Paragraphs V and X of this Order, Debtor admits that:

(a) the Prepetition Senior Loan Documents constitute legal, valid, and binding obligations of Debtor and debtor in possession enforceable in accordance with their respective terms (other than in respect of the stay of enforcement arising under § 362 of the Bankruptcy Code) with no claims, offsets, defenses, or counterclaims of any kind thereto (including without limitation any such claims, offsets, defenses or counterclaims arising under §§ 510, 544, 545, 547, 548, 549, 550, 551, 552 or 553 of the Bankruptcy Code);

(b) the liens securing the Prepetition Senior Obligations constitute valid, enforceable, and perfected first-priority liens in and to the Prepetition Senior Collateral, except insofar as such liens were junior to valid and properly perfected liens on the Petition Date, and are not subject to avoidance or subordination; and

(c) no portion of the Prepetition Senior Obligations is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

10. Subject to the provisions of Paragraphs V and X of this Order, as of the Petition Date, Debtor, in consideration of the Prepetition Senior Lender's acceptance of the adequate protection provided under the terms of this Order and the Final Order, waives, releases and discharges Prepetition Senior Lender, together with its participants and the Prepetition Senior Lender's and its participants' respective affiliates, attorneys, officers, directors and employees, from any and all claims and causes of action arising on or before the Petition Date out of, based upon or related to, in whole or in part, any of the Prepetition Senior Loan Documents, any aspect of the prepetition relationship between Prepetition Senior Lender and Debtor arising from, or in connection with, the Prepetition Senior Loan Documents, or any other acts or omissions by the Prepetition Senior Lender in connection with any of the Prepetition Senior Loan Documents or its relationship with Debtor pursuant thereto.

11. The provisions of Sections 8, 9 and 10 of this Order constitute a stipulation by the Debtor and are findings by this Court, subject to the provisions of Paragraphs V and X hereof.

12. As of the Petition Date, (a) Debtor was the borrower under the Loan Agreement dated as of March 30, 2006 ("Prepetition Subordinated Loan Agreement") between Debtor and Lurgi pursuant to which Lurgi made a \$7,000,000.00 loan (the "Prepetition Subordinated Loan") to Debtor to finance a portion of the costs of constructing the Plant; (b) the Prepetition Subordinated Loan was evidenced by a Loan Note (the "Prepetition Subordinated Note") made by Debtor payable to the order of Lurgi; and (c) the Prepetition Subordinated Loan is secured by (collectively, the "Prepetition Subordinated Collateral" and/or Lurgi's "Prepetition Collateral"): (i) the "Collateral" described in the Security Agreement dated March 30, 2008 (the "Prepetition Subordinated Pledge Agreement") made by Debtor in favor of Lurgi; (ii) the "Premises" described in the Mortgage and Security Agreement and Fixture Financing Statement dated as of

March 30, 2006 (the “Prepetition Subordinated Mortgage”) made by Debtor in favor of Lurgi, which Premises are co-extensive with the Premises subject to the Prepetition Senior Mortgage; and (iii) the “Collateral” described in the Assignment of Contract Documents, Intangibles and Proprietary Rights dated as of March 30, 2006 (the “Prepetition Subordinated Contract Documents Collateral Assignment”) made by Debtor in favor of Lurgi. The Prepetition Subordinated Loan Agreement, the Prepetition Subordinated Note, the Prepetition Subordinated Pledge Agreement, the Prepetition Subordinated Mortgage and the Prepetition Subordinated Contract Documents Collateral Assignment are sometimes referred to herein collectively as the “Prepetition Subordinated Loan Documents” and individually as a “Prepetition Subordinated Loan Document” and/or as Lurgi’s “Prepetition Loan Documents”.

13. The Prepetition Subordinated Mortgage was recorded in the Office of the Register of Deeds of Pratt County, Kansas on April 10, 2006 in Book 315, Page 449.

14. Subject to the provisions of Paragraphs V and X of this Order, Debtor admits that, as of August 31, 2008, Debtor owed Lurgi the repayment of approximately \$8,668,991.00 in indebtedness pursuant to the Prepetition Subordinated Loan Documents, plus all other liabilities, obligations and indebtedness due or payable from Debtor to Lurgi pursuant to the Prepetition Subordinated Loan Documents, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, which arose before the Petition Date, and any interest, loan fees and the legal fees and expenses incurred by counsel for Lurgi (collectively, the “Prepetition Subordinated Obligations” and/or Lurgi’s “Prepetition Obligations”).

15. The Prepetition Senior Lender and Lurgi are the parties to a Subordination and Standstill Agreement dated as of March 30, 2006 (the “Subordination Agreement”) pursuant to

which, among other things, Lurgi subordinated: (a) the payment of the Prepetition Subordinated Obligations to the payment of the Prepetition Senior Obligations; and (b) the security interests granted by Debtor to Lurgi pursuant to the Prepetition Subordinated Loan Documents to the security interests granted by Debtor to Prepetition Senior Lender pursuant to the Prepetition Senior Loan Documents; all as more particularly set forth in the Subordination Agreement.

16. Subject to the provisions of Paragraphs V and X of this Order, Debtor admits that:

(a) the Prepetition Subordinated Loan Documents constitute legal, valid, and binding obligations of Debtor and debtor in possession enforceable in accordance with their respective terms (other than in respect of the stay of enforcement arising under § 362 of the Bankruptcy Code) with no claims, offsets, defenses, or counterclaims of any kind thereto (including without limitation any such claims, offsets, defenses or counterclaims arising under §§ 510, 544, 545, 547, 548, 549, 550, 551, 552 or 553 of the Bankruptcy Code) except for claims, offsets, recoupment, defenses and/or counterclaims asserted by Debtor against Lurgi in the “Lurgi Arbitration Proceeding” and Debtor reserves all of claims, offsets, recoupment, defenses and/or counterclaims asserted by Debtor against Lurgi including, without limitation, the Lurgi Arbitration Proceeding;

(b) except as set forth above the liens securing the Prepetition Subordinated Obligations constitute valid, enforceable, and perfected liens in and to the Prepetition Subordinated Collateral described in the Prepetition Subordinated Mortgage, that are subordinated to the Prepetition Senior Lender’s security interest in the Prepetition Senior Collateral in accordance with the Subordination Agreement, to Noble Americas Corp.’s, a Delaware corporation (“Noble”), security interest in the “Prepetition LOC Collateral” (as defined below) in accordance with the “Junior Subordination Agreement” (as defined below) and except insofar as such liens were further junior to valid and properly perfected liens on the Petition Date, and are not subject to avoidance or subordination; and

(c) except as set forth above no portion of the Prepetition Subordinated Obligations is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

17. The provisions of Sections 14 and 16 of this Order constitute a stipulation by the Debtor and are findings by this Court, subject to the provisions of Paragraphs V and X hereof.

18. As of the Petition Date, (a) Debtor was the borrower under the Promissory Note dated March 30, 2006 (the “Prepetition TIF Note”) made by Debtor payable to the order of Dougherty in its separate capacity as the “Lender” payee thereof (in such capacity, the

“Prepetition TIF Lender”) pursuant to which the Prepetition TIF Lender made an \$11,340,000.00 loan (the “Prepetition TIF Loan”) to Debtor to finance a portion of the costs of constructing the Plant; and (b) the Prepetition TIF Loan is secured by (collectively the “Prepetition TIF Collateral” and/or the Prepetition TIF Lender’s “Prepetition Collateral”) the “Collateral” described in the Pledge and Security Agreement dated as of March 30, 2006 (the “Prepetition TIF Pledge Agreement”) made by Debtor in favor of the Prepetition TIF Lender. The Prepetition TIF Collateral includes but is not limited to the revenues derived from a Property Tax Increment Rebate Agreement dated as of March 30, 2006 by and between Debtor and the Prepetition TIF Lender (“Tax Rebate Agreement”) which revenues shall be referred to as the “Tax Rebates.” The Prepetition TIF Note and the Prepetition TIF Pledge Agreement are sometimes referred to herein collectively as the “Prepetition TIF Loan Documents” and individually as a “Prepetition TIF Loan Document” and/or as the Prepetition TIF Lender’s “Prepetition Loan Documents”.

19. The Prepetition TIF Lender’s security interest in the Prepetition TIF Collateral appears to have been perfected by the filing of a Financing Statement with the Kansas Secretary of State on April 4, 2006 as Document No. 6132625.

20. Subject to the provisions of Paragraphs V and X of this Order, Debtor admits that, as of October 1, 2008, Debtor owed Prepetition TIF Lender the repayment of principal and interest in the amount of \$9,740,224.88 pursuant to the TIF Loan Documents (consisting of \$9,175,043.24 for principal of the TIF Loan and approximately \$565,181.64 for accrued interest thereon) together with accrued and unpaid fees (which, as of August 31, 2008, are in the approximate amount of \$51,258) plus all other liabilities, obligations and indebtedness due or payable from Debtor to the Prepetition TIF Lender, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, which

arose before the Petition Date, and any interest, loan fees and the legal fees and expenses incurred by counsel for the Prepetition TIF Lender (collectively, the “Prepetition TIF Obligations” and/or as the Prepetition TIF Lender’s “Prepetition Obligations”).

21. Subject to the provisions of Paragraphs V and X of this Order, Debtor admits that:

(a) the Prepetition TIF Loan Documents constitute legal, valid, and binding obligations of Debtor and debtor in possession enforceable in accordance with their respective terms (other than in respect of the stay of enforcement arising under § 362 of the Bankruptcy Code) with no claims, offsets, defenses, or counterclaims of any kind thereto (including without limitation any such claims, offsets, defenses or counterclaims arising under §§ 510, 544, 545, 547, 548, 549, 550, 551, 552 or 553 of the Bankruptcy Code);

(b) the liens securing the Prepetition TIF Obligations constitute valid, enforceable and perfected first-priority liens in and to the Prepetition TIF Collateral, except insofar as such liens were junior to valid and properly perfected liens on the Petition Date, and are not subject to avoidance or subordination; and

(c) no portion of the Prepetition TIF Obligations is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

22. Subject to the provisions of Paragraphs V and X of this Order, as of the Petition Date, Debtor, in consideration of the Postpetition Financing to be made available by the Prepetition TIF Lender under the terms of this Order and the Final Order, waives, releases and discharges the Prepetition TIF Lender (in its capacity as the Prepetition TIF Lender and as the DIP Lender and any reference to the "Prepetition TIF Lender" herein shall also mean the DIP Lender), together with its participants and the Prepetition TIF Lender’s and participants’ respective affiliates, attorneys, officers, directors and employees, from any and all claims and causes of action arising on or before the Petition Date out of, based upon or related to, in whole or in part, any of the Prepetition TIF Loan Documents or the Postpetition Loan Documents, any aspect of the prepetition relationship between the Prepetition TIF Lender and Debtor arising from, or in connection with, the Prepetition TIF Loan Documents, or the Postpetition Loan Documents or any other acts or omissions by the Prepetition TIF Lender in connection with any

of the Prepetition TIF Loan Documents, or the Postpetition Loan Documents or its relationship with Debtor pursuant thereto

23. The provisions of Sections 20, 21 and 22 of this Order constitute a stipulation by the Debtor and are findings by this Court, subject to the provisions of Paragraphs V and X hereof.

24. As of the Petition Date, (a) Debtor was the borrower under the Revolving Credit and Security Agreement dated as of November 3, 2006 (“Prepetition LOC Loan Agreement”) between Debtor and Noble pursuant to which Noble made a \$7,500,000.00 revolving credit loan facility (the “Prepetition LOC”) to Debtor to finance Debtor’s working capital requirements; (b) the “Revolving Loan” made by Noble to the Debtor pursuant to the Prepetition LOC (the “Prepetition LOC Loan”) is evidenced by a Revolving Note (the “Prepetition LOC Note”) made by Debtor payable to the order of Noble; and (c) the Prepetition LOC Loan is secured by (collectively, the “Prepetition LOC Collateral” and/or the “Noble’s Prepetition Collateral”) the “Collateral” described in the Prepetition LOC Loan Agreement (the “Prepetition LOC Collateral” and/or the “Noble’s Prepetition Collateral” together with the Prepetition Senior Lender’s Prepetition Collateral, Lurgi’s Prepetition Collateral, and Prepetition TIF Lender’s Prepetition Collateral will be referred to herein as the “Creditor’s Prepetition Collateral”). The Prepetition LOC Loan Agreement and the Prepetition LOC Note are sometimes referred to herein collectively as the “Prepetition LOC Loan Documents” and individually as a “Prepetition LOC Loan Document” and/or as “Noble’s Prepetition Loan Documents”.

25. Noble’s security interest in the Prepetition LOC Collateral appears to have been perfected by the filing of a Financing Statement with the Kansas Secretary of State on November 15, 2006 as Document No. 94932225.

26. Subject to the provisions of Paragraphs V and X of this Order, as of October 6, 2008, Debtor owed Noble the repayment of approximately \$282,946.29 in indebtedness pursuant to the Prepetition LOC Loan Documents plus all other liabilities, obligations and indebtedness due or payable from Debtor to Noble pursuant to the Prepetition LOC Loan Documents, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, which arose before the Petition Date, and any interest, loan fees and the legal fees and expenses incurred by counsel for Noble (collectively, the “Prepetition LOC Obligations” and/or Noble’s “Prepetition Obligations”).

27. The Prepetition Senior Lender and Noble are the parties to an Intercreditor and Collateral Priority Agreement dated as of November 3, 2006 (the “LOC Intercreditor Agreement”) pursuant to which, among other things, the Prepetition Senior Lender subordinated the security interests granted by Debtor to the Prepetition Senior Lender in the following “Collateral” (the “Noble Priority Collateral”) to Noble’s security interest therein (terms capitalized in the following quote shall, for purposes of such quote, have the meaning ascribed to them in the Prepetition LOC Loan Agreement):

“Collateral” shall mean all of the following assets of the Borrower, whether now owned or hereafter acquired, and wherever located: (a) all Accounts; (b) all Inventory; (c) all Commodity Accounts and Commodity Contracts; (d) the Deposit Account and all cash, credits and assets therein; (e) all accessions to, substitutions for, and all replacements, and all products of the foregoing Collateral; (f) all cash and non-cash proceeds of any of the foregoing Collateral, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and (g) all books and records (including customers lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing Collateral.

28. Noble and Lurgi are the parties to a Subordination and Standstill Agreement dated as of November 3, 2006 (the “Junior Subordination Agreement”) pursuant to which, among other things, Lurgi subordinated: (a) the payment of the Prepetition Subordinated Obligations to the

payment of the Prepetition LOC Obligations; and (b) the security interests granted by Debtor to Lurgi pursuant to the Prepetition Subordinated Loan Documents to the security interests granted by Debtor to Noble in the Prepetition LOC Collateral.

29. Subject to the provisions of Paragraphs V and X of this Order, The Debtor admits that:

(a) the Prepetition LOC Loan Documents constitute legal, valid, and binding obligations of Debtor and debtor in possession enforceable in accordance with their respective terms (other than in respect of the stay of enforcement arising under § 362 of the Bankruptcy Code) with no claims, offsets, defenses, or counterclaims of any kind thereto (including without limitation any such claims, offsets, defenses or counterclaims arising under §§ 510, 544, 545, 547, 548, 549, 550, 551, 552 or 553 of the Bankruptcy Code);

(b) the liens securing the Prepetition LOC Obligations constitute valid, enforceable and perfected first-priority liens in and to the Prepetition LOC Collateral, except insofar as such liens were junior to valid and properly perfected liens on the Petition Date, and are not subject to avoidance or subordination; and

(c) no portion of the Prepetition LOC Obligations is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

30. The provisions of Sections 26 and 29 of this Order constitute a stipulation by the Debtor and are findings by this Court, subject to the provisions of Paragraphs V and X hereof.

31. Interstates Construction Services, Inc., an Iowa corporation (“Interstates”) filed a Lien Statement against the Premises on March 13, 2008, asserting a mechanics’ lien of \$81,254.00 (the “Interstates Mechanic’s Lien Claim”).

32. Mansel Construction, Inc., a Kansas corporation (“Mansel”) filed a Statement of Lien on Real Estate against the Premises on May 8, 2008 asserting a mechanics’ lien of \$421,821.84 (the “Mansel Mechanic’s Lien Claim”).

33. Lurgi filed a Statement of Lien for Labor, Equipment, Material, and Supplies against the Premises on June 19, 2008 asserting a mechanics’ lien of \$14,027,796, which was subsequently reduced to \$5,000,000 pursuant to K.S.A. 58-4301 (the “Lurgi Mechanic’s Lien

Claim”). The Lurgi Mechanic’s Lien is disputed and is subject to further challenges by the Debtor.

34. Debtor’s current financial condition as of the Petition Date is such that it has *de minimus* cash collateral within the meaning of Bankruptcy Code § 363(a) (the “Cash Collateral”). Cash collateral in the Debtor’s possession, or that may come into the Debtor’s possession, in the approximate amount of \$18,700 has been or will be segregated by the Debtor based upon Noble’s security interest in it and the Debtor will pay over such amounts as collected. Moreover, Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense. Sufficient post-petition financing for the expected duration of the Chapter 11 Case basis is not otherwise available without Debtor granting, pursuant to Bankruptcy Code § 364(c)(1), claims having priority over any and all administrative expenses of the kinds specified in §§ 503(b) and 507(b) of the Bankruptcy Code and securing such indebtedness and obligations with the security interests in and the liens upon the property described below pursuant to §§ 364(c) and 364(d) of the Bankruptcy Code.

35. Based on the record presented to this Court by Debtor, the Postpetition Financing has been negotiated in good faith and at arm’s-length between Debtor and the DIP Lender and any credit extended and loans made to Debtor by the DIP Lender pursuant to this Order shall be deemed to have been extended, issued or made, as the case may be, in good faith as required by, and within the meaning of, § 364(e) of the Bankruptcy Code and the DIP Lender shall have all of the protections thereunder.

36. Based on the record before this Court, the terms of this Order, including, without limitation, the terms of the Postpetition Financing, are fair and reasonable, reflect Debtor’s

exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

37. Debtor has requested immediate entry of this Order. The permission granted herein for Debtor to obtain the Postpetition Financing and obtain funds thereunder is necessary to avoid immediate and irreparable harm to Debtor. This Court concludes that entry of this Order is in the best interests of Debtor's estate and creditors as its implementation will, among other things, allow Debtor to preserve, protect and maximize the value of Debtor's estate.

38. The proceeds from the Postpetition Facility will be used, inter alia, to maintain and protect the assets of the Borrower and to pay real estate taxes that, if not paid, would become a tax lien senior to all other existing real estate liens securing not only the original tax obligation but all interest and penalties. Preserving the assets and paying the real estate taxes provides adequate protection for the interests of any party claiming a lien or other interest in any assets of the Debtor and thus satisfies the adequate protection requirements of 11. U.S.C. Section 364(d)(1)(B).

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, DETERMINED AND DECREED that:

A. Motion Granted. The Motion is granted on the terms and conditions set forth in this Order.

B. Authorization. Debtor is expressly authorized and empowered to (1) obtain the Postpetition Financing and perform its obligations strictly pursuant to the provisions of this Order; (2) perform its obligations under the Prepetition Senior Loan Documents and Prepetition TIF Loan Documents as such documents are, or may be, amended and modified pursuant to the terms of this Order; and (3) enter into such other agreements, instruments and documents as may be necessary or required to evidence and/or secure the obligations to the DIP Lender to consummate the terms and provisions of the Motion and this Order and to evidence perfection of the liens and security interests to be given to DIP Lender including, without limitation, a Postpetition Loan and Security Agreement (the “Postpetition Loan Agreement”), a Promissory Note (the “Postpetition Note”), a Mortgage and Security Agreement and Fixture Financing Statement (the “Postpetition Mortgage”) and an Assignment of Leases and Rents (the “Postpetition Rent Assignment”) filed with this Court at the hearing on the Motion. The Postpetition Loan Agreement, the Postpetition Note, the Postpetition Mortgage, the Postpetition Rent Assignment and each other agreement, instrument and document evidence and/or secure the Postpetition Financing being sometimes referred to collectively as the “Postpetition Loan Documents” and individually as a “Postpetition Loan Document”. The DIP Lender’s advances of the Postpetition Financing shall be made pursuant to the terms of this Order, the Final Order and the Postpetition Loan Documents. The borrowing(s) made under the credit facility established by this Order and the Postpetition Loan

Documents (the “Postpetition Facility”) and all other indebtedness and obligations incurred on or after the Petition Date with respect to loans, advances and any other indebtedness or obligations, contingent or absolute, pursuant to this Order and the Postpetition Loan Documents which may now or from time to time hereafter be owing by the Debtor to the DIP Lender (including principal, accrued and unpaid interest, and fees costs and expenses, including without limitation reasonable attorneys’ fees and expenses) are referred to herein as the “Postpetition Indebtedness”. Debtor, with the express written consent of the DIP Lender, but without the need of further notice and hearing or order of this Court, may enter into nonmaterial amendments of or modifications to the Postpetition Loan Documents including, without limitation, increasing the maximum outstanding principal amount of Postpetition Indebtedness by an amount up to \$500,000 (with three (3) business days prior notice to Noble) and without the need of further hearing or order of this Court.

C. Borrowing. Subject to the Approved Budget (as defined in Paragraph P below) and solely in compliance therewith and subject further to the terms and conditions of this Order and the Postpetition Loan Documents, the DIP Lender will provide the Postpetition Facility in accordance with the terms of the Postpetition Loan Documents in a maximum principal amount of \$5,242,803 subject to increase with the consent the DIP Lender as provided in Paragraph C herein.

D. Application of Proceeds. Except as provided herein with respect to the Tax Rebate and subject to the Carve-Out (as defined in Paragraph N below), proceeds or payments received by Debtor or DIP Lender with respect to the “Postpetition Facility Collateral” (as defined below) shall be applied to the outstanding balance of the

Postpetition Facility, including all accrued and accruing interest, fees, costs expenses and principal in such order at the DIP Lender may determine in its sole discretion; provided, however, that if the source of any such proceeds or payments is not clearly identifiable as attributable to the Noble Priority Collateral or the Postpetition Facility Collateral, then such proceeds or payments shall be maintained by Debtor in a segregated bank account until Debtor, the Prepetition Senior Lender, the DIP Lender and Noble agree as to the source of such proceeds or payments or such source is determined by order of this Court and shall be distributed from the segregated bank account as ordered of the Court. This Order shall not be construed as permitting the Debtor to grant a “priming lien” in favor of the DIP Lender over Noble’s security interest and lien in the Noble Priority Collateral. Notwithstanding the foregoing, any Tax Rebates received by or paid for the benefit of the Debtor shall be paid to the Prepetition TIF Lender and applied to the obligations owed to the Prepetition TIF Lender under the Prepetition TIF Loan Documents. The automatic stay under § 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit: a) the DIP Lender to retrieve, collect and apply payments and proceeds in respect of the Postpetition Facility Collateral in accordance with the terms and provisions of this Order and the DIP Loan Documents; and b) any Tax Rebate to be paid to the Prepetition TIF Lender and applied to the obligations of the Debtor to the Prepetition TIF Lender under the Prepetition TIF Loan Documents.

E. Interest, Fees, Costs and Expenses. The Postpetition Indebtedness shall bear interest at rates set forth in the Postpetition Loan Documents. The DIP Lender shall be entitled to recover all of its reasonable attorneys’ fees and other reasonable professional fees as well as all costs and expenses incurred in connection with the

Postpetition Indebtedness and this proceeding. In consideration for providing the Postpetition Facility, the DIP Lender shall be paid all fees specified in the Postpetition Loan Documents in accordance with the terms therein for such payment including, without limitation, a payment (“Postpetition Facility Payment”) in the amount of \$104,856, which shall be included in the Postpetition Indebtedness and fully earned and non-refundable upon entry of the Final Order. The Prepetition Lender shall be entitled to recover all of its reasonable attorneys’ fees and other reasonable professional fees as well as all costs and expenses incurred in connection with the preparation and negotiation of the Postpetition Loan Documents, this Order and the Final Order. The DIP Lender is authorized but not required to make advances under the Postpetition Facility to pay the DIP Lender any interest, fees, reasonable attorney’s fees, costs and expenses when due or as incurred and the Prepetition Senior Lender its reasonable attorney’s, costs and expenses when due or as incurred in connection with the preparation and negotiation of the Postpetition Loan Documents, this Order and the Final Order.

F. Termination of the Postpetition Facility. The DIP Lender’s agreement to provide the Postpetition Facility in accordance with the Postpetition Loan Documents shall immediately and automatically terminate (except as the DIP Lender may otherwise agree in writing in its sole discretion), and all Postpetition Indebtedness shall be immediately due and payable in cash upon the earliest to occur of any of the following (each, a “Termination Date” or an “Event of Termination”):

- (1) (A) One Business Day following the Final Hearing Date (as defined below) if a Final Order in form and substance satisfactory to the DIP Lender, the Prepetition Senior Lender and the Prepetition TIF Lender has not been entered by the Final Hearing Date; or (B) on the day that the Court enters any Final Order that approves postpetition financing on terms and conditions that are different than those set forth in this Order and such different terms and

conditions are not acceptable to the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender (in their sole discretion);

(2) The date of final indefeasible payment and satisfaction in full in cash of the Postpetition Indebtedness;

(3) The effective date of any confirmed plan of reorganization in this Chapter 11 Case;

(4) The consummation of the sale or other disposition of all or substantially all of the assets of the Debtor;

(5) Upon three (3) Business Days notice by facsimile or email to Debtor's counsel of the occurrence of any breach by the Debtor of this Order (including, but not limited to, the Debtor's failure to adhere to the Approved Budget as set forth in Paragraph P of this Order or violation of any of the covenants provided for in Paragraph Q of this Order) or in the Final Order, or in any of the Postpetition Loan Documents or of any "Event of Default" (howsoever defined) under any of the Postpetition Loan Documents;

(6) The dismissal of this Chapter 11 Case or the conversion of this Chapter 11 Case into a case under Chapter 7 of the Bankruptcy Code;

(7) Upon and following the entry of an order authorizing the appointment in this Chapter 11 Case of a trustee or an examiner with enlarged powers (beyond those set forth in § 1106(a)(3) and (4) of the Bankruptcy Code), relating to the operation of the business of the Debtor without the prior written consent of the DIP Lender (which consent may be withheld, or, if given, revoked, by DIP Lender in its sole discretion), or if Debtor applies for, consents to, or acquiesces in, any such appointment without the prior written consent of the DIP Lender (which consent may be withheld in its sole discretion);

(8) This Order or the Final Order is stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the DIP Lender (which consent may be withheld in its sole discretion);

(9) The Court enters an order granting a party relief from the automatic stay with respect to any portion of any person's Prepetition Collateral or the Postpetition Facility Collateral provided that the value of the relevant collateral is more than \$100,000;

(10) This or any other Court of competent jurisdiction enters an order or judgment in this Chapter 11 Case modifying, limiting, subordinating or avoiding the priority of the Prepetition Senior Obligations, the Prepetition TIF Obligations or the Postpetition Indebtedness, or the perfection, priority or validity of the Prepetition Senior Lender's security interests in and liens on the Prepetition

Senior Collateral, the Prepetition TIF Lender's security interests in and liens on the Prepetition TIF Collateral, or the DIP Lender's security interests in and liens on the Postpetition Facility Collateral or imposing, surcharging or assessing against the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender or their claims or any of their respective Prepetition Collateral, Postpetition Facility Collateral or any fees, costs or expenses, whether pursuant to § 506(c) of the Bankruptcy Code or otherwise;

(11) If the Court has not entered an order establishing procedures relating to the conducting of an auction in connection with the "Asset Sale" (as defined below) that are acceptable to the Prepetition Senior Lender, the Prepetition TIF Lender, and DIP Lender and permit the Prepetition Senior Lender and DIP Lender to credit bid the Prepetition Senior Obligations and the Postpetition Indebtedness, without condition (the "Asset Sale Procedures") by October 31, 2008, which Asset Sale may be a sale to the Prepetition Senior Lender and DIP Lender;

(12) If the Court has not entered an order approving the Asset Sale in a form reasonably acceptable to the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender (the "Sale Order") by December 18, 2008;

(13) If the Asset Sale acceptable to the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender has not closed by December 31, 2008; or

(14) If Debtor does not fully cooperate in the disclosure of information reasonably requested by the Prepetition Senior Lender or the DIP Lender or any consultant retained by the Prepetition Senior Lender or the DIP Lender;

(15) December 31, 2008; or

(16) The occurrence of any "Event of Default" under 15.16, 15.17, 15.19, 15.20, 15.23 or 15.24 of the Prepetition Senior Loan Agreement.

G. Liens to Secure the DIP Indebtedness. Subject to the "carve-out" described in Paragraph N below, as security for the payment and performance of the DIP Indebtedness only, the DIP Lender is hereby granted the following security and liens (the "Postpetition Facility Liens") in all currently owned or hereafter acquired property and assets of Debtor of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products,

rents and profits thereof, including, without limitation, all cash, goods, accounts receivable, inventory, cash in advance deposits, the Debtor's rights in escrow accounts and to receive any remaining proceeds from previous sale transactions, general intangibles, goodwill, investment property (including, without limitation, ownership interests in corporations, partnerships, and limited liability companies), deposit accounts, real estate, intellectual property, machinery, leasehold interests, equipment, vehicles, trademarks, trade names, licenses, the Creditor's Prepetition Collateral, causes of action including actions for preferences, fraudulent conveyances, and other avoidance power claims and any recoveries under §§ 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and the proceeds thereof (collectively, "Avoidance Actions" which, other than Avoidance Actions under § 549 of the Bankruptcy Code, shall be effective upon entry of the Final Order) and actions and recoveries thereon against third parties, tax refund claims, commercial tort claims and insurance proceeds, and the proceeds, products, rents and profits of all of the foregoing (all of the foregoing, the "Postpetition Facility Collateral"):

(1) Pursuant to § 364(c)(2) of the Bankruptcy Code, a perfected first priority senior security interest in and lien upon all property noted above of Debtor, whether existing on the Petition Date or thereafter acquired, that, as of the Petition Date, is not subject to valid, perfected and non-avoidable liens, except that any lien on Avoidance Actions shall be effective upon entry of the Final Order;

(2) Pursuant to § 364(d)(1) of the Bankruptcy Code, a perfected first priority senior priming lien (the "Priming Liens") on all of the Postpetition

Facility Collateral, including the Creditors' Prepetition Collateral, which shall be senior to all other security interests and liens in property of Debtor's estate, except only Noble's security interest and lien in the Noble Priority Collateral and the Prepetition TIF Lender's security interest and lien in the Prepetition TIF Collateral insofar as such security interests and liens were valid and properly perfected liens on the Petition Date, and are not subject to avoidance or subordination ; and

(3) In addition, except to the extent otherwise expressly set forth in this Order, or in a written instrument, agreement or other document executed by the DIP Lender and subject to Paragraph V of this Order, the Postpetition Facility Liens shall not be subject to subordination to any other liens, security interests or claims under § 510 of the Bankruptcy Code, or otherwise. Any security interest or lien upon any person's Prepetition Collateral or the Postpetition Facility Collateral which is avoided or otherwise preserved for the benefit of Debtor's estate under § 551 or any other provision of the Bankruptcy Code shall be subordinate to the Postpetition Facility Liens.

The liens and security interest in the Postpetition Facility Collateral granted by the Debtor to the DIP Lender and approved by the Court under this Order are liens and security interests securing the repayment of the DIP Indebtedness, not the Prepetition Senior Obligations or the Prepetition TIF Obligations.

H. Adequate Protection. The Postpetition Financing provides adequate protection of the liens of the Prepetition Senior Lender, Lurgi (both as the holder of the Prepetition Subordinated Obligations and of the Lurgi Mechanic's Lien Claim to the

extent allowed as a secured claim), the Prepetition TIF Lender, Interstates and Mansel interests in their respective Prepetition Collateral by paying expenses necessary to maintain and preserve the Prepetition Collateral.

I. Superpriority Claims. Subject to the Carve-Out described in Paragraph N below, all of the Postpetition Indebtedness shall have the highest administrative priority under § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, §§ 105, 326, 330, 331, 503(b), 507(a), 507(b) or 726 or any other provision of the Bankruptcy Code or otherwise (whether incurred in this Chapter 11 Case or any successor case), and shall at all times be senior to the rights of the Debtor, any successor trustee or estate representative in this Chapter 11 Case or any successor case (the “Superpriority Claims”). Nothing in this Order or the Approved Budget (as defined in Paragraph P below) shall constitute the consent by the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender to the imposition of any costs or expenses of administration or other charge, fees, liens, assessment or claim (including, without limitation, any amounts set forth in the Approved Budget) against the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender, their claims or collateral (including their respective Prepetition Collateral and the Postpetition Facility Collateral) under § 506(c) of the Bankruptcy Code or otherwise, all of which rights have been waived pursuant to the terms of this Order.

J. Perfection of Postpetition Facility Liens. The Postpetition Facility Liens shall be, and they hereby are, deemed duly perfected and recorded under all applicable federal or state or other laws as of the date hereof, and no notice, filing, mortgage

recordation, possession, further order, or third party consents or other act, shall be required to effect such perfection; provided, however, that notwithstanding the provisions of § 362 of the Bankruptcy Code, (1) the DIP Lender may, at its sole option, file or record or cause Debtor to obtain any third party consents or execute, file or record, at Debtor's expense, any such UCC financing statements, notices of liens and security interests, mortgages and other similar documents as the DIP Lender may require, and (2) the DIP Lender may require Debtor to deliver to the DIP Lender any chattel paper, instruments or securities evidencing or constituting any Postpetition Facility Collateral, and Debtor is directed to cooperate and comply therewith. If the DIP Lender, in its sole discretion, shall elect for any reason to cause to be obtained any third party consents or cause to be filed or recorded any such notices, financing statements, mortgages or other documents with respect to such security interests and liens, or if the DIP Lender, in accordance with the Postpetition Loan Documents or this Order, elects to take possession of any Postpetition Facility Collateral, all such landlord or warehouse lien waivers or other third party consents, financing statements or similar documents or taking possession shall be deemed to have been filed or recorded or taken in this Chapter 11 Case as of the commencement of this Chapter 11 Case but with the priorities as set forth herein. The DIP Lender may (in its sole discretion), but shall not be required to, file a certified copy of this Order in any filing or recording office in any county or other jurisdiction in which Debtor has real or personal property and such filing or recording shall be accepted and shall constitute further evidence of the DIP Lender's interest in the Postpetition Facility Collateral. Additionally, to the extent that the affected third parties have been served with the Motion, any provision of any lease, license, contract or other agreement that

requires the consent or approval of one or more landlords or other parties, or requires the payment of any fees or obligations to any governmental entity, in order for Debtor to pledge, grant, sell assign or otherwise transfer any such leasehold interest or the proceeds thereof or other Postpetition Facility Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code and shall have no force or effect with respect to the transactions granting the DIP Lender a priority security interest in such leasehold interest or the proceeds of any assignment and or sale thereof by Debtor in favor of the DIP Lender in accordance with the Postpetition Loan Documents and this Order.

K. Waiver by Debtor of Liens and Other Matters. Debtor and its estate (and any party in interest acting on behalf of Debtor) hereby irrevocably waive, and are barred from asserting or exercising any right (1) without the Prepetition Senior Lender's, the Prepetition TIF Lender's and the DIP Lender's prior written consent (which may be withheld in their sole discretion) or (2) without prior indefeasible payment and satisfaction in full of the Postpetition Indebtedness: (a) to grant or impose, or request that the Court grant or impose, under §364 of the Bankruptcy Code or otherwise, liens on or security interests in any Postpetition Facility Collateral, which are pari passu with or senior to the Postpetition Facility Liens; (b) to seek a surcharge of the Postpetition Facility Collateral or the Prepetition Senior Collateral or Prepetition TIF Collateral under § 506(c) of the Bankruptcy Code (which waiver shall be effective upon entry of the Final Order); (c) to seek use of Cash Collateral under § 363 of the Bankruptcy Code (except to the extent that the Debtor is entitled to use the proceeds of the Post-Petition Facility in accordance with the Approved Budget and the for Payment of 2008 Real Estate Taxes as provided in Paragraph P); (d) to modify or affect any of the rights of the DIP Lender

under this Order or any Postpetition Loan Documents by any order entered in this Chapter 11 Case or any successor case; or (e) propose a plan of reorganization or liquidation, or seek an extension of the exclusive right to file a plan or solicit acceptances with respect to any plan of reorganization or liquidation without the written consent of the DIP Lender.

L. Sale Out of the Ordinary Course of Business. Debtor may not propose a sale of any of its assets outside the ordinary course of business unless (1) all proceeds realized from such sale, less the Carve-Out as contained in this Order, are transferred to the Prepetition Senior Lender and DIP Lender, as their respective interests appear, for immediate application in reduction of the Prepetition Senior Obligations and the Postpetition Indebtedness in the manner set forth in this Order, until such time as the Prepetition Senior Obligations and the Postpetition Indebtedness shall have been satisfied in full and (2) the purchaser acquires the Premises subject to the Assessment Agreement dated March, 2006 between the The Board of County Commissioners of Pratt County, Kansas, Debtor and the County Appraiser, Pratt County, Kansas, the Tax Rebate Agreement and the Prepetition TIF Lender's rights, liens and assignments granted therein as well as the rights and liens granted to the Prepetition TIF Lender in Prepetition TIF Loan Documents. Such sale proceeds shall not be permitted to be used by Debtor under any circumstances except as otherwise provided by this Order, and any sale application or procedure involving all or any portion of Debtor's assets shall expressly provide that the Prepetition Senior Lender and the DIP Lender may exercise their rights to credit bid their indebtedness under § 363(k) of the Bankruptcy Code.

M. Modification of Automatic Stay; Other Remedies.

(1) Except as set forth in subparagraph (2) of this Paragraph, which governs any action of the DIP Lender to foreclose on its liens on Postpetition Facility Collateral or to exercise any other default-related remedies (other than those specifically referenced in the next sentence), the automatic stay pursuant to § 362 of the Bankruptcy Code is hereby vacated as to the DIP Lender to permit it to perform in accordance with, and exercise, enjoy and enforce their respective rights, benefits, privileges and remedies pursuant to this Order and the Postpetition Loan Documents without further application or motion to, or order from, the Court, and regardless of any change in circumstances (whether or not foreseeable), and neither § 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code, or any other law, shall be utilized to prohibit the DIP Lender from the exercise, enjoyment and enforcement of any of such rights, benefits, privileges and remedies. The DIP Lender is hereby granted leave to receive and apply payments to the Postpetition Indebtedness from collections on and proceeds of the Postpetition Facility Collateral in the manner specified in this Order and the Postpetition Loan Documents. In addition, the DIP Lender is hereby granted leave to, among other things, (a) file or record any financing statements, mortgages or other instruments or other documents to evidence the Postpetition Facility Liens; (b) charge and collect any interest, fees, costs, and expenses and other amounts accruing at any time under the Postpetition Loan Documents or this Order as provided therein, (c) give Debtor any notice provided for in any of the Postpetition Loan Documents or this Order, and (d) upon the

occurrence of the Termination Date, and without application or motion to, or order from the Court or any other court, (i) terminate the Postpetition Facility and the Postpetition Loan Documents, and (ii) declare all Postpetition Indebtedness immediately due and payable.

(2) The automatic stay pursuant to § 362 of the Bankruptcy Code is modified to permit the Prepetition Senior Lender, the Prepetition TIF Lender and/or the DIP Lender foreclosure on Debtor's assets and exercise of the rights of the Prepetition Senior Lender provided in Prepetition Senior Loan Documents, the Prepetition TIF Lender in the Prepetition TIF Loan Documents and/or the DIP Lender in the Postpetition Loan Documents, or any other security documents executed in connection therewith or with this Order or otherwise permitted by law or equity upon the occurrence of the Termination Date and the Prepetition Senior Lender's, the Prepetition TIF Lender's and/or the DIP Lender's filing with the Court of an affidavit describing the Termination Date that has occurred and a proposed order granting it relief from the automatic stay. Notwithstanding Bankruptcy Rule 4001(a)(3), the entry of any order of the Court pursuant to this Paragraph N.(2) granting the Prepetition Senior Lender, the Prepetition TIF Lender and/or the DIP Lender relief from the automatic stay shall be effective immediately. Upon entry of such order, the Prepetition Senior Lender and the Prepetition TIF Lender are authorized to file the "Stipulations" described in the Postpetition Loan Agreement pursuant to which, among other things, Debtor has agreed not to contest the appointment of a receiver for the Prepetition Collateral and entry of judgment of foreclosure against the Prepetition Collateral and Debtor

shall reasonably cooperate with the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender in connection with any enforcement action by such parties by, among other things, (a) providing access to its premises to representatives of the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, (b) providing the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender or their designees access to Debtor's books and records, (c) performing all other obligations set forth in the Prepetition Senior Loan Documents, the Prepetition TIF Loan Documents, this Order and/or the other Postpetition Loan Documents and (d) taking reasonable steps to safeguard and protect the Prepetition Collateral, and the Postpetition Facility Collateral until the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender can make adequate provision to protect and safeguard the Prepetition Collateral and the Postpetition Facility Collateral, and Debtor shall not otherwise interfere or encourage others to interfere with enforcement of the rights of the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender.

(3) The automatic stay pursuant to § 362 of the Bankruptcy Code is modified to permit the Prepetition Senior Lender and/or the DIP Lender to exercise any right or remedy available to them by contract, at law or in equity to enforce Debtor's claims against Lurgi arising under the Lurgi Contract and to settle such claim, subject to this Court's approval of such settlement pursuant to Bankruptcy Rule 9019. Debtor shall cooperate with the Prepetition Senior Lender and the DIP Lender in connection with any enforcement action by such parties by, among other things, (a) providing access to its premises to representatives of the

Prepetition Senior Lender and the DIP Lender, (b) providing the Prepetition Senior Lender and the DIP Lender or their designees access to Debtor's books and records, (c) providing the Prepetition Senior Lender and the DIP Lender or their designees access to Debtor's books and records and (c) performing all obligations set forth in the Prepetition Senior Loan Documents, this Order and/or the other Postpetition Loan Documents.

(4) The automatic stay pursuant to § 362 of the Bankruptcy Code is modified to permit the Prepetition TIF Lender to exercise any right or remedy available to it by contract, at law or in equity to collect the "Rebate" (as defined in the "Rebate Agreement" that is defined in the Prepetition TIF Pledge Agreement) and to apply such Rebate to the payment of the Prepetition TIF Obligations in accordance with the Prepetition TIF Loan Documents.

N. Carve-Out. The Postpetition Facility Liens and the Superpriority Claims shall be subject and subordinate to (a) the payment of any unpaid fees payable pursuant to 28 U.S.C. § 1930 (including, without limitation, fees under 28 U.S.C. § 1930(a)(6)), (b) the fees due to the Clerk of the Court, and (c) other than fees for which the DIP Lender has made any advance to the Debtor, paid professional fees and expenses as well as professional fees and expenses accrued, incurred, and/or unpaid on or before the Termination Date, in each case in the amount set forth for each individual professional in the detailed line items under any Approved Budget (as defined below); provided, however, that these fees are subject to approval by the Court pursuant to 11 U.S.C. §§ 330 and 331 and Bankruptcy Rule 2016 (the "Professional Fee Expenses"). Effective upon entry of this Interim Order, no party shall be entitled, directly or indirectly, to

surcharge the Carve-Out, whether by operation of Bankruptcy Code Sections 105, 506(c) or 552(b) or otherwise.

O. Cash Collection Procedures. From and after the date of the entry of this Order all collections and proceeds of any Postpetition Facility Collateral (other than Cash Collateral arising from the collection of the Noble Priority Collateral that is required to be deposited into a segregated bank account in accordance with Paragraph E of this Order) or services provided by Debtor and all other cash or cash equivalents which shall at any time come into the possession or control of Debtor, or to which Debtor shall become entitled at any time, shall be deposited in new segregated bank accounts into which no collections and proceeds of the Prepetition Collateral have been deposited, and such collections and proceeds upon such deposit shall become the sole and exclusive property of the DIP Lender and shall be applied against the Postpetition Indebtedness as provided in this Order and the Postpetition Loan Documents until the Postpetition Indebtedness is indefeasibly paid in full in cash. Prior to opening any new bank accounts, Debtor shall first obtain a “lock box agreement” or other written confirmation to the satisfaction of the DIP Lender from the relevant banking institution recognizing the rights of the DIP Lender as provided for in this Order. All financial institutions in which any lockboxes, blocked accounts or other accounts of Debtor is located are hereby authorized and directed to comply with any request of the DIP Lender to turnover to the DIP Lender all funds therein without offset or deduction of any kind.

P. Budget; Use of Postpetition Facility Proceeds.

(1) Attached as Exhibit A hereto and incorporated herein by reference is a budget (which has been approved by the Prepetition Senior Lender, the

Prepetition TIF Lender and the DIP Lender) setting forth by line item all projected cash receipts, billings and cash disbursements for the time period from the weeks ending October 12, 2008 through business day immediately following the date of the Final Hearing as set forth hereinafter (the “Initial Approved Budget”). The Initial Approved Budget may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) to which the Prepetition Senior Lender, Prepetition TIF Lender and the DIP Lender agree in their sole discretion (each such additional budget, a “Supplemental Approved Budget”), so long as such modification or supplement does not alter the amount of the Professional Fee Expenses set forth on any Approved Budget without the consent of the Debtor Professionals. The aggregate of all items approved by the Prepetition Senior Lender, Prepetition TIF Lender and the DIP Lender in the Initial Approved Budget and any and all Supplemental Approved Budgets (acceptable to the Prepetition Senior Lender, Prepetition TIF Lender and the DIP Lender in their sole discretion) shall constitute an “Approved Budget.” The Approved Budget shall include amounts which the DIP Lender requires to pay real estate taxes (“Real Estate Taxes”) during the term of the Postpetition Facility.

(2) Debtor may use the proceeds of the Postpetition Facility exclusively to pay for the expenses incurred by Debtor as provided for in the Approved Budget. Debtor represents and warrants that: (a) the expenditures set forth in the Approved Budget constitute all of Debtor’s projected expenses during the period of the Approved Budget, and (b) the sums to be advanced by DIP

Lender pursuant to the Postpetition Facility are sufficient to pay all of the expenses set forth in the Approved Budget including real Estate Taxes. Debtor's expenses shall not exceed those set forth in the Approved Budget, subject to the "Approved Variance" (as defined below). "Approved Variance" means a positive variance of (a) less than 10%, between Debtor's actual disbursements and Debtor's projected disbursements, on a line item basis, and (b) less than 15% of Debtor's actual disbursements and Debtor's projected disbursements, on a cumulative basis, each measured commencing as of the end of the second week covered by the Approved Budget and each week thereafter for both (i) the two-week period concluding with the week during which the variance is being calculated, and (ii) cumulatively from the commencement of this Chapter 11 Case concluding with the week during which the variance is being calculated; provided, however that no disbursement of Professional Fee Expenses in excess of the amount set forth on the then applicable Approved Budget shall be made without the consent of the Prepetition Senior Lender and the DIP Lender (which shall be given or refused in their sole discretion).

(3) The Borrower is granted authority to use cash collateral consisting of the loan proceeds of the Postpetition Facility only in accordance with Approved Budgets and the Debtor's authority to use such loan proceeds will immediately terminate upon the occurrence of an Event of Termination unless the DIP Lender consents otherwise.

Q. Financial Reporting. The Debtor shall also provide the following reports to the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender: (1) no

later than 5:00 p.m. (Central time) each Wednesday, a comparison of the items in the Approved Budget for the preceding week to Debtor's actual performance that includes a narrative summary of any material variances from the Budget for the preceding week; and (2) no later than 5:00 p.m. (Central time) each Monday, a detailed report from Debtor's investment bankers that summarizes the status of Debtor's efforts to sell substantially all of its assets as a going concern, which report shall include (a) a tracking chart reflecting what communications, if any, the investment bankers had with interested parties during the prior week; (b) copies of expressions of interest or letters of intent received by Debtor from third parties; (c) a summary of the due diligence activities conducted by interested parties in the preceding week; (d) a time table for execution of definitive agreements with potential parties and the filing of pleadings with the Court seeking approval of the sale; and (e) the financial reports required by Paragraph 9.1 of the Postpetition Loan Documents.

R. Covenants. Except to the extent Debtor was in default as of the Date of the Petition, Debtor shall timely comply with all of the covenants set forth in the Prepetition Senior Loan Documents, the Prepetition TIF Loan Documents, this Order and the Postpetition Loan Documents; provided, however, that, notwithstanding anything that may be contained to the contrary in the Prepetition Senior Loan Documents or the Prepetition TIF Loan Documents, if Debtor's performance of its agreements, promises or covenants contained in any Prepetition Senior Loan Document or Prepetition TIF Loan Document would violate, or be inconsistent with, Debtor's corresponding agreements, promises or covenants set forth in any Postpetition Loan Document, then Debtor's performance of its corresponding agreements, promises and covenants set forth in the

Postpetition Loan Documents shall be deemed to constitute performance of its agreements, promises or covenants for the purposes of the Prepetition Senior Loan Documents or the Prepetition TIF Loan Documents.

S. Application of Proceeds. Neither Debtor nor any other party shall have the right to direct or seek an order directing the manner of application of any payments to the DIP Lender or any other receipts by the DIP Lender of proceeds of any of the Prepetition Collateral or Postpetition Facility Collateral other than in the manner set forth in this Order and the Postpetition Loan Documents.

T. Reservation of Rights. The Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender do not waive, and expressly reserve, any and all claims, defenses, rights and remedies they have pursuant to any or all of the Prepetition Senior Loan Documents, the Prepetition TIF Loan Documents, the Postpetition Loan Documents, the Bankruptcy Code and/or other applicable law against Debtor and any officer, director, employee, agent or other representative of Debtor. In addition, the rights and obligations of the Debtor and the rights, claims, liens, security interests and priorities of the Prepetition Senior Lender and the DIP Lender arising under this Order are in addition to, and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security interests and priorities granted by the Debtor, in its pre-petition capacity, under the Prepetition Senior Loan Documents or the Prepetition TIF Loan Documents.

U. Order Binding on Successors. The provisions of this Order shall be binding upon and inure to the benefit of the Prepetition Senior Lender, Lurgi (both as the holder of the Prepetition Subordinated Obligations and of the Lurgi Mechanic's Lien

Claim), the Prepetition TIF Lender, Noble, Interstates, Mansel and Debtor and their respective successors and assigns (including any trustee or other estate representative appointed as a representative of Debtor's estate or of any estate in any successor cases). No third parties are intended to be or shall be deemed to be third party beneficiaries of this Order or the Postpetition Loan Documents.

V. Releases and Validation of Prepetition Obligations and Prepetition Liens: Allowance of Prepetition Obligations as Fully Secured Claim. The release, discharge, waivers and agreements respectively set forth in Paragraphs 8, 9, 10, 14, 16, 17, 21, 22, 23, 27, and 30 will be deemed effective upon the entry of a Final Order (as defined below) incorporating this Paragraph, subject only to the rights of the Committee, if any, or any party in interest with requisite standing as set forth in Paragraph X below. Subject to the rights of the Committee, if any, or any party in interest with requisite standing acting on behalf of the estate pursuant to Paragraph X below, Debtor and its estate, hereby agrees, without further Court order and without the need for the filing of any proof of claim, to the allowance of the respective pre-petition claims of the Prepetition Senior Lender and the Prepetition TIF Lender pursuant to §§ 502 and 506 of the Bankruptcy Code on account of the Prepetition Senior Obligations and the Prepetition TIF Obligations, as fully secured claims.

W. No Liability to Third Parties. None of the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender shall (1) have any liability to any third party nor shall it be deemed to be in control of the operations of Debtor or to be acting as a "controlling person", "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in

the Internal Revenue Code, the United States Comprehensive, Environmental Response, Compensation and Liability Act as amended, or any similar Federal or state statute), or owe any fiduciary duty to Debtor, its creditors or its estate, and (2) the Prepetition Senior Lender's, the Prepetition TIF Lender's and the DIP Lender's relationship with Debtor shall not constitute nor be deemed to constitute a joint venture or partnership with Debtor.

X. Objections by Parties in Interest. Except as set forth in Paragraph V and this Paragraph X, all of the provisions of this Order shall be final and binding on Debtor (including, without limitation, their successors and assigns), Debtor's members, and all creditors and other parties in interest, including any Chapter 11 or Chapter 7 trustee hereinafter appointed. The Committee or any party in interest with requisite standing shall have until 45 days from the Petition Date to file, on behalf of Debtor's estate, and to serve upon the respective counsel for the Prepetition Senior Lender, Lurgi, the Prepetition TIF Lender and Noble, objections or complaints respecting (1) the claims, causes of actions and defenses released by Debtor pursuant to Paragraphs 10, 17, and/or 23 of this Order; or (2) the validity, extent, priority, avoidability, or enforceability of the Prepetition Senior Obligations and/or the Prepetition Senior Lender's security interests in and liens on the Prepetition Senior Collateral, the Prepetition Subordinated Obligations and/or Lurgi's security interests in and liens on the Prepetition Subordinated Collateral, the Prepetition TIF Obligations and/or the Prepetition TIF Lender's security interests in and liens on the Prepetition TIF Collateral, the Prepetition LOC Obligations and/or Noble's security interests in and liens on the Prepetition LOC Collateral including seeking to subordinate any liens or claims of Lurgi or Noble under § 510 of the Bankruptcy Code or

otherwise. Notwithstanding the foregoing, Noble shall have until December 12, 2008, to object to the security interests and claims of Lurgi. In the event that standing is not obtained or no objections or complaints are filed with this Court by the Committee and served upon counsel within the time period set forth above, the provisions of this Order including, without limitation, Paragraph V and Debtor's Stipulations in this Order shall become final and binding for all purposes and upon all parties. For purposes of this Paragraphs V and X, any Chapter 11 or Chapter 7 trustee or a committee appointed pursuant to 11 USC § 1102 shall be deemed a party-in-interest with requisite standing to assert the objections or complaints described herein within the aforesaid objection period.

Y. Standing of Parties. Nothing in this Order is intended to be construed as granting standing to any party in interest to make objections under Paragraphs V and X that does not already have standing or to deny standing to any party in interest to make objections under Paragraphs V and X that already has standing.

Z. Effect of Modification of Order. Debtor shall not, without the Prepetition Senior Lender's, the Prepetition TIF Lender's and the DIP Lender's prior written consent (which shall be given or refused in their sole discretion), seek to modify, vacate or amend this Order or any Postpetition Loan Document. If any of the provisions of this Order are hereafter modified, vacated or stayed by subsequent order of this or any other Court, such stay, modification or vacation shall not affect the validity of any obligation outstanding immediately prior to the effective time of such stay, modification or vacation, or the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to any such obligations. Notwithstanding any such stay, modification or vacation, any obligation outstanding immediately prior to the effective time of such

modification, stay or vacation shall be governed in all respects by the original provisions of this Order, and the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted herein, with respect to all such obligations.

AA. Safe Harbor. The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize Debtor to obtain credit on the terms and conditions upon which Debtor and the DIP Lender have agreed. Thus, each of such terms and conditions constitutes a part of the authorization under § 364 of the Bankruptcy Code, and is, therefore, subject to the protections contained in § 364(e) of the Bankruptcy Code.

BB. Interim Order Superseded. This order supersedes the Stipulated Interim Order Authorizing Debtor: (A) to obtain Secured Postpetition Financing pursuant to 11 U.S.C. §§ 105, 361, 362 and 364(c) and (d); and (B) to grant security interests, superpriority claims and adequate protection and Other Relief dated October 8, 2008 (the “Interim Order”), provided that, except as expressly modified hereby, all of the rights, remedies, privileges and benefits granted by such Interim Order to the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender, including the liens, security interests and priorities granted thereby, remain in full force and effect.

CC. Objections Overruled or Withdrawn. All objections to the entry of this Order have been withdrawn or are hereby overruled.

DD. Controlling Effect of Order. Pursuant to the terms of this Order, the Court has approved the Postpetition Loan Documents, which contain provisions which

supplement the obligations of the Debtor under this Order. In the event there is any material conflict between the Postpetition Loan Documents and the terms of this Order, which the Debtor and the DIP Lender do not believe exists, then the provisions of this Order shall control.

EE. Order Effective. This Order shall be effective as of October 8, 2008.

FF. Non Waiver. No omission or delay by the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender in exercising any rights or powers under this Order, the Prepetition Loan Documents or Postpetition Loan Documents, or any related agreement, will impair such right or power or be construed to be a waiver of any default or breach or an acquiescence therein, and any single or partial exercise of any such right or power will not preclude other or further exercise thereof or the exercise of any other right, and no waiver will be valid unless in writing and signed by the Prepetition Senior Lender, the Prepetition TIF Lender or the DIP Lender and then only to the extent specified.

#

The parties hereto stipulate to the entry by the Court of this Final Order authorizing Debtor to Incur Secured Postpetition Financing and Other Relief.

Dougherty Funding, LLC

s/ Paul L. Ratelle

Paul L. Ratelle
Fabyanske, Westra, Hart & Thomson, P.A.
800 LaSalle Avenue, Suite 1900
Minneapolis, Minnesota 55402
Telephone : (612) 359-7600
Facsimile: (612) 359-7602

and

s/ Steven W. Meyer

Steven W. Meyer
Oppenheimer Wolff & Donnelly LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, MN 55402
Telephone : (612) 607-7411
Facsimile: (612) 607-7100