

**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.)	

**EMERGENCY MOTION TO APPROVE STIPULATED ORDER
GRANTING EXPEDITED RELIEF AND INTERIM ORDER (I) AUTHORIZING
DEBTOR (A) TO OBTAIN SECURED POSTPETITION FINANCING PURSUANT
TO 11 U.S.C. §§ 105, 361, 363, AND 364(c) AND (d); AND (B) TO GRANT
SECURITY INTERESTS, SUPERPRIORITY CLAIMS AND ADEQUATE
PROTECTION; AND (II) SCHEDULING A FINAL HEARING
PURSUANT TO BANKRUPTCY RULE 4001(c)**

COMES NOW Gateway Ethanol, L.L.C., Debtor and Debtor in Possession (“Debtor”), and for its Emergency Motion to Approve Stipulated Order Granting Expedited Relief and Interim Order (I) Authorizing Debtor (A) to Obtain Secured Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 363, and 364(c) and (d); and (B) to Grant Security Interests, Superpriority Claims and Adequate Protection; and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c), respectfully states as follows:

**CONCISE STATEMENT OF MATERIAL PROVISIONS
PURSUANT TO BANKRUPTCY RULE 4001(c)(1)(B)**

1. Dougherty Funding LLC (“Dougherty” or “DIP Lender”) has agreed in principle, at the request of Debtor, to the entry of the proposed Interim Order, attached as **Exhibit B**, to extend Debtor post-petition financing so that Debtor can meet payroll and pay other necessary business expenditures, administer and preserve the value of the estate, and to avoid immediate and irreparable harm. Debtor has commenced this Chapter 11 proceeding with the intent to sell its ethanol plant and liquidate its other assets in an orderly manner. In order to accomplish this task for the benefit of its creditors and estate, Debtor

has an immediate need for post-petition financing. In the absence of post-petition financing, Debtor will not be able to orderly liquidate its assets and Debtor, its creditors and the estate will be seriously and irreparably harmed.

2. Debtor is seeking, and DIP Lender has agreed in principle (pursuant to the terms of the Interim Order), to provide post-petition financing in the maximum principal amount of \$5,242,803.00, subject to increase with the consent of the DIP Lender as provided in the Interim Order. The interest rate shall be 200 basis points plus the prime rate as published on the first day of each calendar month, or as published on the next immediate publication date in the month, provided that the rate of interest shall never be less than the rate of return on a United States Treasury Note having a maturity of one month.

3. As of the time of filing this Motion, DIP Lender had not given its final approval of the debtor in possession financing. However, Debtor expects DIP Lender approval by the time of the hearing on the Motion.

4. Debtor is requesting the use of the post-petition financing on an interim basis until the final hearing in an amount not to exceed the amounts in the three week budget attached as Exhibit A to the Interim Order to avoid immediate and irreparable harm to the estate.

5. The following chart^{1/} lists and sets out the location within the post-petition financing Loan Agreement, attached hereto as **Exhibit A**, and the proposed

^{1/} The chart is meant as a summary only and parties should refer directly to the proposed Interim Order and post-petition financing Loan Agreement for complete details with respect to the contemplated post-petition financing and relief provided in the proposed Interim Order.

Interim Order all material provisions of the post-petition financing Loan Agreement and the proposed Interim Order:

Provision	Location and Nature LA = Loan Agreement IO = Interim Order
(1) Interest Rate	IO ¶F; LA §2.2 200 basis points plus prime rate; default rate of 600 basis points plus prime rate
(2) Maturity	IO ¶ G Financing terminates on earliest to occur of 17 conditions, including if asset sale has not closed by December 31, 2008.
(3) Events of Default	IO ¶ G; LA §15 In addition to Termination Date conditions listed in ¶ G, Interim Order incorporates by reference certain events of default under Lender Prepetition Senior Loan Agreement.
(4) Liens	IO ¶ H; LA §§ 4.1, 4.8, 7.1 Grants Lender 1 st priority liens on all property, Pre-Petition Collateral and Avoidance Actions subject only to Noble's security interest in Noble collateral, with priority set forth in Interim Order
(5) Borrowing Limits	IO ¶ D; LA Recitals ¶ B Maximum principal amount of \$5,242,803.00, subject to increase with the consent of the DIP Lender as provided in Paragraph C of the Interim Order
(6) Borrowing Conditions	IO ¶ D; LA §§ 8.4, 12, 13 Use of advances limited to Approved Budget Expenses; conditions precedent for advances include entry of Interim Order, no default
(7) Provisions granting a priority or lien on property of the estate under § 364(c) or (d) or providing adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim	<p>IO ¶ H(1); LA § 4.8 First priority, perfected lien on all assets not otherwise encumbered by valid, perfected and non-avoidable liens, and in Avoidance Actions</p> <p>IO ¶ H(2) Priming liens senior to all other security interests and liens except Noble's interest in Noble Priority Collateral and Prepetition TIF Lender's interest in the Prepetition TIF Collateral</p> <p>IO ¶ I Adequate protection of liens of Prepetition Senior Lender, Lurgi, Prepetition TIF Lender, Interstates and Mansel interests</p>

Provision	Location and Nature LA = Loan Agreement IO = Interim Order
(8) Provisions regarding a determination of the validity, enforceability, priority or amount of a claim that arose before the commencement of the case, or of any lien securing the claim	IO ¶ W, Y Releases and agreements set forth in ¶ 8, 9, 10, 14, 16, 17, 21, 22, 23, 27 and 30 (stipulations regarding validity, enforceability, priority or amount of claims of Pre-Petition Senior Lender, Lurgi, Pre-Petition TIF Lender) deemed effective upon entry of Final Order, subject only to rights of committee or party in interest with standing to bring action to challenge within 45 day days of Petition Date.
(9) Provisions regarding a waiver or modification of Bankruptcy Code provisions or applicable rules relating to the automatic stay, including provisions that establish procedures or conditions with respect to the same	IO ¶ E, N Automatic stay modified to permit DIP Lender to exercise rights granted under Interim Order and Loan Agreement, and Tax Rebates to be applied to Debtor's obligations to the Prepetition TIF Lender; DIP Lender may exercise right to foreclose by filing Affidavit regarding occurrence of Termination Date
(10) Provisions containing a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan or solicit acceptances of a plan during the time periods specified in § 1121, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364	IO ¶ L Waiver of right to obtain post-petition credit, use cash collateral, or seek extension of exclusive periods for filing plan
(11) Provisions regarding the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order	n/a
(12) Provisions regarding a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien	IO ¶ K; LA §4.9 Automatic perfection of liens and replacement granted pursuant to Interim Order, Lender not required to file financing statements, notices of lien or similar requirements.
(13) Provisions containing a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action	IO ¶ W, Y Releases and agreements set forth in ¶ 8, 9, 10, 14, 16, 17, 21, 22, 23, 27 and 30 (stipulations regarding validity, enforceability, priority or amount of claims of Pre-Petition Senior Lender, Lurgi, Pre-Petition TIF Lender) deemed effective upon entry of Final Order, subject only to rights of committee or party in interest with standing to bring action to challenge within 45 day days of Petition Date.
(14) Provisions containing the indemnification of any entity	LA §§ 8.18; 17.2 Indemnification of Lender for environmental conditions; Debtor indemnifies Lender for any loss resulting from disbursements of proceeds of DIP loan or condition of Premises.

Provision	Location and Nature LA = Loan Agreement IO = Interim Order
(15) Provisions containing a release, waiver, or limitation of any right under § 506(c)	IO ¶ L Waiver of right to surcharge collateral of DIP Lender, Prepetition Senior Lender or Prepetition TIF Lender
(16) Provisions granting a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a)	IO ¶ H Grants Lender lien on Avoidance Actions to secure Postpetition Indebtedness
(17) Provisions that prime any properly perfected lien without that lienholder's consent	IO ¶ H Grants priming lien on all pre-petition collateral except Noble, Prepetition TIF Lender
(18) Provisions that grant cross-collateralization protection to Lender (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by Lender's lien pre-petition) other than liens granted solely as adequate protection against diminution in value of Lender's pre-petition collateral	n/a
(19) Provisions that relate to a sale of substantially all of Debtor's assets	IO ¶ G (11-14) Termination of DIP in the event sale milestones not met
(20) Provisions for the payment of professional fees of Debtor or any committee, including any carve-outs for such payments	IO ¶ O Carve-Out for payment of UST fees and professional fees per approved Budget
(21) Provisions for the payment of pre-petition debt	n/a
(22) Provisions that require or prohibit specific terms in Debtor's plan or that establish that proposing a plan inconsistent with the Interim Order constitutes a default	n/a
(23) Provisions that address the rights and obligations of guarantors or co-obligors	n/a
(24) Provisions that obligate Debtor to pay any of Lender's professional fees	IO ¶ F; LA §8.6 Debtor to pay Lender's reasonable professional fees
(25) Provisions that purport to bind a subsequent trustee	IO ¶ V, Y Interim Order binding on subsequent trustee
(26) Provisions that remain in effect if interim relief is granted, but final relief is denied	IO ¶ Z DIP Lender entitled to all rights, privileges and benefits of Interim Order with respect to Post-Petition Financing incurred by Debtor pursuant to Interim Order prior to stay, modification or vacation of same Provisions of Interim Order and actions taken pursuant to same shall survive entry of any order staying, modifying or vacating the Interim Order,

Provision	Location and Nature LA = Loan Agreement IO = Interim Order
	and terms and conditions of Interim Order, as well as superiority claims, liens and security interests granted pursuant to Interim Order and Lender Pre-Petition Loan Agreements shall continue in full force and effect notwithstanding entry of such order, and superiority claims, liens and security interests shall maintain their priority as provided by the Interim Order and Lender Pre-Petition Loan Agreements
(27) Provisions that provide for a waiver or modification of the applicability of nonbankruptcy law	See Box 12 of this Chart
(28) Post-petition financing fee	IO ¶ F; LA definition of “Loan Fee” All fees specified in the Loan Documents including, without limitation, a payment of \$104,856.00

A. Background Facts

6. On October 5, 2008 (the “Petition Date”), Debtor filed a voluntary petition in this Court for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”). Debtor continues to operate its business and manage its properties as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed, and no official committee of creditors or equity interest holders has yet been established.

7. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. Additional background facts may be found in the Affidavit of Frederick S. Loomis.

B. Debtor's Pre-Petition Secured Indebtedness

9. 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”).

10. 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.

11. 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.

12. 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.

13. Subject to the provisions of paragraphs W and Y of the Interim Order, as of October 1, 2008, Debtor owed the 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”).

14. 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”.

15. 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.

16. Subject to the provisions of paragraphs W and Y of the Interim Order, as of August 31, 2008, upon information and belief Debtor owed Lurgi the repayment of approximately \$8,668,991.00 in indebtedness pursuant to the Prepetition Subordinated Loan Documents, including principal and accrued interest, 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”).

17. 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.

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 February 1, 2006, by and between Debtor and Pratt County, Kansas (“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 W and Y of the Interim Order, as of October 1, 2008, Debtor owed the 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 \$51,258.00) 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. 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”.

22. 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.

23. As of the Petition Date, Debtor was not indebted to Noble pursuant to the Prepetition LOC Loan Documents.

24. 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.

25. 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.

26. 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”).

27. 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”).

28. 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.

C. Debtor's Efforts to Obtain Postpetition Credit

29. 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"). 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 Debtor's Chapter 11 case 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. Debtor is unable to obtain sufficient credit on terms more favorable than those set forth herein and in the Loan Agreement.

30. Debtor requires cash flow to proceed with its reorganization efforts, and without sufficient post-petition financing, Debtor's efforts to reorganize and liquidate its assets in an orderly manner will be severely and irreparably jeopardized. Debtor must have financing to pay employees, utilities, insurance, and other expenses. Further, a portion of the post-petition financing will 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.

31. Debtor anticipates that approval of the post-petition financing arrangement with the DIP Lender (the "DIP Facility") is critical to Debtor's reorganization and Debtor believes will result in a significant benefit to all creditors. A copy of the Loan

Agreement evidencing the DIP Facility is attached hereto as **Exhibit A**. All defined terms in this Motion have the same definitions as used in the Loan Agreement.

D. Terms of the DIP Facility

32. The terms of the DIP Facility are more fully set forth in the Loan Agreement and Interim Order, copies of which are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

33. Pursuant to the DIP Facility, the DIP Lender is prepared to loan Debtor additional funds in the maximum principal amount of \$5,242,803.00, subject to increase with the consent of the DIP Lender as provided in the Interim Order (the “Post-Petition Obligations”). The interest rate shall be 200 basis points plus the prime rate as published on the first day of each calendar month, or as published on the next immediate publication date in the month, provided that the rate of interest shall never be less than the rate of return on a United States Treasury Note having a maturity of one month.

34. Pursuant to 11 U.S.C. § 364(d)(1), and as more fully set forth in the Loan Agreement and Interim Order, Debtor will grant to DIP Lender, to secure the DIP Facility, liens upon and security interests in all property and interests in property of Debtor’s estate constituting “Postpetition Facility Collateral”, which includes the Prepetition Collateral, as that term is defined in the Loan Agreement and Interim Order for the purpose of securing all Post-Petition Obligations. Further, the security interests and liens granted hereby in favor of DIP Lender as security for the Post-Petition Obligations shall constitute valid and perfected first-priority security interests in and liens upon all of the Postpetition Facility Collateral, superior to and with priority over all other security interests and liens whether consensual or non-consensual, statutory or otherwise, and whether existing now or

in the future except as limited by the Loan Agreement and Interim Order and subject to the Carve-Out as described below.

35. Pursuant to 11 U.S.C. § 364(c)(2), and as more fully set forth in the Loan Agreement and Interim Order and subject to the Carve-Out as described below, as security for the payment of all Post-Petition Obligations, the DIP Lender shall be granted 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.

36. Subject to the Carve-Out described below, all of the Post-Petition Obligations 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 Debtor, any successor trustee or estate representative in this Chapter 11 Case or any successor case (the “Superpriority Claims”).

37. Neither the Postpetition Facility Collateral, the Prepetition Senior Lender, the Prepetition TIF Lender, nor DIP Lender shall be subject to surcharge, pursuant to Section 506(c) of the Bankruptcy Code or otherwise, by Debtor or any other party in interest, until the PrePetition Senior Obligations, Prepetition TIF Obligations, and all Post-Petition Obligations are indefeasibly paid in full in cash, without the prior written consent of DIP Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by DIP Lender in this proceeding, including but not limited to the post-petition

funding provided by DIP Lender to Debtor. Further, the liens and security interests of DIP Lender shall not be subject to subordination to any other liens, security interests, or claims under Section 510 of the Bankruptcy Code, or otherwise.

38. Notwithstanding anything to the contrary, without limiting any right which Debtor and its professionals may otherwise have to pay interim compensation to the professionals from the proceeds of DIP Lender's Loans to Debtor, for Court-approved fees and expenses of professionals authorized to perform services in this Chapter 11 Case, the respective liens and security interests of DIP Lender in the Collateral, as defined in the Loan Agreement and Interim Order, and the respective Superpriority Claims accorded to the Post-Petition Obligations as set forth in the Interim Order 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) paid professional fees and expenses as well as professional fees and expenses accrued, incurred, and/or unpaid on or before the Termination Date under any Approved Budget, as defined in the Interim Order; 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 "Carve-Out"). Effective upon entry of the Interim Order, no party shall be entitled, directly or indirectly, to charge the Carve-Out, whether by operation of Bankruptcy Code Sections 105, 506(c) or 552(b), or otherwise.

E. Conclusion

39. Debtor has determined, in its business judgment, that obtaining post-petition financing is necessary for its reorganization efforts and orderly liquidation of its assets, and will assist Debtor in maximizing the value of its assets for creditors. Despite diligent efforts, Debtor has been unable to obtain a sufficient amount of cash from other

sources to allow it to move forward with its reorganization and asset liquidation without a cash infusion. Debtor has concluded that the DIP Facility which DIP Lender is willing to provide is the only sufficient credit, secured or unsecured, available to Debtor.

F. Request for Interim Relief and Motion for Expedited Hearing

40. An immediate need exists for Debtor to obtain interim approval of the DIP Facility in order to pay payroll, utilities, insurance, and other expenses, as identified in the three week budget attached as Exhibit A to the Interim Order. Without the immediate use of at least a portion of the proceeds of the DIP Facility pending a final hearing, Debtor's ability to reorganize and orderly liquidate its assets will be severely impaired. It is imperative that a preliminary hearing on this matter be held on or before October 7, 2008.

41. Pursuant to Fed. R. Bankr. P. 4001(c)(2) Debtor requests that the Court set a preliminary hearing on the approval of the DIP Facility and that at such preliminary hearing, the Court authorize the temporary extension of post-petition secured and priority credit. Prior to a final hearing, Debtor's use of the proceeds of the DIP Facility shall be consistent with the three week budget in order to avoid immediate and irreparable harm to this bankruptcy estate pending a final hearing. Debtor requests that the Court also set a final hearing for the approval of the DIP Facility at the earliest possible date.

42. This Motion is being sent, either by electronic mail, facsimile or overnight mail, to the Lender, the Debtor's twenty largest unsecured creditors, the United States Trustee, the IRS, the United States Attorneys Office for the District of Kansas, and those creditors requesting notice pursuant to Fed. R. Bankr. P. 2002. Once a preliminary hearing is set, Debtor shall send, by the same means, a notice of the hearing to the persons and entities set forth above.

WHEREFORE, Debtor requests that this Court enter an order:

- (1) setting an expedited preliminary hearing date for the temporary, interim approval of the DIP Facility on or before October 7, 2008;
- (2) setting a time and date for a final hearing on the approval of the DIP Facility;
- (3) approving the DIP Facility under the terms and conditions set forth herein; and
- (4) granting such other and further relief as may be just and proper.

Respectfully submitted,

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