

DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT

THIS DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT (“Agreement”), made and entered into as of October 7, 2008, by and between GATEWAY ETHANOL, L.L.C., a Kansas limited liability company (“Debtor”), whose address is 307 S. Main Street, Pratt, Kansas 67124, and DOUGHERTY FUNDING LLC, a Delaware limited liability company (“Lender”), whose address is Suite 4300, 90 South Seventh Street, Minneapolis, Minnesota 55402.

PRELIMINARY RECITALS:

A. Debtor is the “Debtor” and “Debtor-In-Possession” in Bankruptcy Case No. 08-22579-DLS (the “Bankruptcy Case”) pending before the United States Bankruptcy Court for the District of Kansas (the “Bankruptcy Court”). Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on October 5, 2008 (the “Petition Date”).

B. Debtor has requested that Lender make available a credit facility in the aggregate principal amount of \$5,113,326 which will be available for the purposes described in this Agreement.

C. On October 7, 2008, the Bankruptcy Court preliminarily approved Debtor’s Motion for an Interim Order: (I) 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 (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(C) (the “Interim Order”).

D. Lender has agreed to extend the requested credit facility (the “Loan”) to Debtor upon, and subject to, the terms, provisions and conditions of this Agreement, the Orders (defined below) and the other Loan Documents (defined below).

NOW, THEREFORE, in consideration of the making of the Loan and for other good and valuable consideration, the receipt of which is hereby acknowledged by the parties hereto, the parties hereto agree as follows:

1.  
DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular.

“Accounts” shall mean all of Debtor’s “accounts” (as such term is defined in the UCC), including each and every right of Debtor to the payment of money, whether such right to payment now exists or hereafter arises, whether such right to payment arises out of a sale, lease or other disposition of goods or other property, out of a rendering of services, out of a loan, or out of the overpayment of taxes or other liabilities, or otherwise arises under any contract or agreement, whether such right to payment is created, generated or earned by Debtor or by some other person who subsequently transfers such person’s interest to

Debtor, whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together with all other rights and interests (including all Liens) that Debtor may at any time have by law or agreement against any account debtor or other obligor obligated to make any such payment or against any property of such account debtor or other obligor; all including but not limited to all present and future accounts, contract rights, loans and obligations receivable, chattel papers, bonds, notes and other debt instruments, tax refunds and rights to payment in the nature of general intangibles.

“Advance” shall mean any advance of Loan Funds by Lender.

“Applicable Laws” shall mean all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and all rules, regulations, orders, interpretations and Permits of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or any activity conducted at or in connection with the Project or the Premises, as may be applicable from time to time.

“Approvals” shall mean those approvals required of the Project, the Plan Documents and all other Governmental Requirements by Governmental Authorities as a condition to constructing the Project.

“Approved Budget” shall have the meaning provided in the Interim Order or upon entry of the Final Order, the Final Order.

“Approved Budget Expenses” shall have the expenses set forth in the then current Approved Budget.

“Approved Variance” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, the Final Order.

“Assessment Agreement” shall mean the Assessment Agreement dated March, 2006 between the County, Debtor and the County Appraiser, Pratt County, Kansas

“Assignment of Contract Rights, Intangibles and Proprietary Rights” shall mean the Assignment of Contract Rights, Intangibles and Proprietary Rights made by Debtor in favor of Lender.

“Assignment of Leases and Rents” shall mean the Assignment of Leases and Rents made by Debtor in favor of Lender.

“Assignment of Operating, Service Contracts, Permits and Regulatory Approvals” shall mean the Assignment of Operating, Service Contracts, Permits and Regulatory Approvals made by Debtor in favor of Lender.

“Assignment of Parent Guarantee” shall mean the Assignment of Parent Guarantee made by Debtor in favor of Lender.

“Availability” shall mean, at any date for any Advance, an amount equal to the difference of (i) \$5,242,803 (subject to the Lender’s ability, in its sole discretion, to increase such amount in one or more increments which in the aggregate do not exceed \$500,000 as provided in the Orders), minus (ii) the aggregate amount of all Advances previously made by Lender to Debtor.

“Avoidance Actions” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, the Final Order.

“Bankruptcy Case” shall have the meaning set forth in the Recitals to this Agreement.

“Basis Points” shall mean an arithmetic expression of a percentage measured in hundredths of a percent (i.e. 50 Basis Points equals one half of one percent).

“Broker” shall mean any person or entity who for a fee or commission has been engaged by Debtor to obtain financing for the Project or to procure leases for the Project.

“Business Day” shall mean any day that national banks are open for business in Minneapolis, Minnesota.

“Cargill” shall mean Cargill, Incorporated, a Delaware corporation, or as the context requires a subsidiary or affiliate of Cargill, Incorporated; i.e. Cargill Commodity Services Inc.

“Chattel Paper” shall mean all “chattel paper” (as that term is defined in the UCC) now owned or hereafter acquired.

“City” shall mean the City of Pratt, Kansas.

“City Water Line Improvements” shall mean the extension of the City water mains to the perimeter of the Project for the furnishing of City water to the Project.

“Closing Date” shall mean the later of the date of this Agreement as executed and delivered by both Debtor and Lender.

“Closing Documents” shall mean: (i) the Loan Documents; and (ii) the Interim Order.

“CO<sub>2</sub>” shall mean the carbon dioxide co-product of the Ethanol production process cleaned of residual alcohol and compressed for storage.

“Code” shall mean the United States Internal Revenue Code of 1986, as amended.

“Collateral” shall mean the Postpetition Facility Collateral, including, without limitation, collectively, (i) all of the Plant, the Premises, Accounts, Chattel Paper, Deposit Accounts, Documents, Equipment, General Intangibles, Goods, Instruments, Inventory, Investment Property, Intellectual Property, Intellectual Property Rights, Letter-of-Credit Rights, any Letters of Credit, the Logo, the Water Rights, all sums on deposit in any collateral account, any items in any lockbox, and all real property pledged pursuant to mortgages and deeds of trust granted pursuant hereto or granted hereafter; together with (a) all

substitutions and replacements for and products of any of the foregoing; (b) in the case of all Goods, all accessions; (c) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any Goods; (d) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such Goods; (ii) all collateral subject to the lien of any Loan Document and the Orders; (iii) any money, or other assets of Debtor that now or hereafter come into the possession, custody, or control of Lender; (iv) all of the Prepetition Collateral; (v) the 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; (vi) tax refund claims; (vii) Commercial Tort Claims; (viii) Insurance Proceeds; (ix) the TIF Rebate Agreement; and (x) the proceeds, products, rents and profits of all of the foregoing.

“Collateral Assignment of Incentive Payments” shall mean each of the Assignment of Ethanol Production Incentive Payments (C.C.C.) and the Assignment of Ethanol Production Incentive Payments (KS) made by Debtor in favor of Lender.

“Collateral Assignment of Interest in Leased Equipment” shall mean the Collateral Assignment of Interest in Leased Equipment made by Debtor in favor of Lender.

“Collection Account” shall have the meaning provided in Section 2.7 of this Agreement.

“Commercial Tort Claims” shall mean all of Debtor’s commercial tort claims, as such term is defined in the UCC without the requirement to specify such Commercial Tort Claim in order for the Security Interest to attach thereto but including the Commercial Tort Claims identified in Exhibit “A” attached hereto and made a part hereof.

“Construction Contracts” shall mean any contract entered into between a Contractor and Debtor for the design, construction, equipping or Re-Start-Up of any portion of the Project.

“Contract Documents” shall mean the Lurgi Contract, the Construction Contracts, all Addenda (which pertain to the Contract Documents), any Notice to Proceed, the General Conditions, any Supplementary Conditions, if any, the Plan Documents, together with all written amendments, change orders, work change directives, field orders, and any Design Professional’s written interpretations and clarifications issued.

“Contractor” shall mean Lurgi, other contractors, any subcontractor, and any other person or entity under contract with Debtor to perform Work at the Project.

“Contractor’s Proprietary Data” shall mean that proprietary and confidential technical information, including drawings, documents, specifications and other data relating to certain processes or any plant, system or equipment employed in the use thereof or relating to construction, operation or maintenance of any such plant, system or equipment, which constitutes trade secrets or proprietary know-how and proprietary and technical information of a Contractor or its subcontractors or vendors and which has been or shall be furnished by the Contractor to Debtor, directly or indirectly, including an

inspection of plants or equipment, in connection with the performance of the Contract Document.

“Contracts, Files and Records” shall mean all contracts, franchises, licenses, permits, management records, files, consents, governmental approvals and intangibles used, useful or required in the ownership and management of the Project.

“County” shall mean the County of Pratt, Kansas.

“County Road Improvements” shall mean the upgrading of East 30<sup>th</sup> Street between State Highways 61 and 281 to provide a roadway sufficient to service the Project and its operating vehicles.

“Debtor” shall have the meaning given in the preamble to this Agreement.

“Default” shall mean the occurrence of any event that with notice and/or lapse of time would constitute an Event of Default.

“Deposit Account” shall mean all “deposit accounts” (as that term is defined in the UCC) now owned or hereafter acquired.

“DGs” shall mean distillers grains, wet or dry, and with or without solubles.

“Disbursement Account” shall have the meaning provided in Section 13.1 of this Agreement.

“Distributions” shall mean any payment of monies paid by Debtor to a Member by reason of its membership interest, whether profits, return of capital, interest on capital, or any preference payments or any distribution in respect thereof, either directly or indirectly.

“Documents” shall mean all “documents” (as that item is defined in the UCC) now owned or hereafter acquired.

“Drawings” shall mean the drawings, diagrams, schedules and other information specially prepared for the construction of the Project and the Work to be done.

“Effective Date” shall mean the date of this Agreement.

“Electrical Facilities” shall mean all mains, substations, service laterals, storage tanks, piping, valves, manholes and appurtenances for the furnishing, transmission, storage and disposal of electricity to the Project.

“Electrical Service Agreement” shall mean Agreement for Electric Service between the Ninnescah Rural Electric Cooperative Association, Inc. and Gateway Ethanol, L.L.C.

“Engineering Studies” shall mean any engineering studies, environmental studies and reports, subsurface condition studies, development plans, and surveys made for Debtor or Lender in connection with the Project.

“Environmental Audit” shall mean the Phase I Environmental Site Assessment prepared by Allied Environmental Consultants, Inc. updated January 20, 2006.

“Environmental Laws” shall mean any federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, convention, ordinance or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste, or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, including without limitation the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, the Hazardous Materials Transportation Act, as amended, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1976, the Safe Drinking Water Act, the Clean Air Act, as amended, the Toxic Substances Control Act of 1976, the Occupational Safety and Health Act of 1977, as amended, the Emergency Planning and Community Right-to-Know Act of 1986, the National Environmental Policy Act of 1975, the Oil Pollution Act of 1990, and any similar or implementing state law, and any state statute and any further amendments to these laws providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of Hazardous Substances or crude oil, or any fraction thereof and all rules and regulations promulgated thereunder.

“Equipment” shall mean all of Debtor’s “equipment” (as such term is defined in the UCC), now owned or hereafter acquired, including but not limited to all present and future machinery, vehicles, Rolling Stock, furniture, fixtures, manufacturing equipment, shop equipment, office and record keeping equipment, parts, tools, supplies, and including specifically the goods described in any equipment schedule or list herewith or hereafter furnished to Lender by Debtor.

“Equipment Lease” shall mean any Operating Lease pursuant to which Debtor leases Equipment.

“Equipment Lessor” shall mean the lessor under any Equipment Lease.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“ERISA Affiliate” shall mean each person (as defined in section 3(9) of ERISA) that together with Debtor would be deemed to be a “single employer” within the meaning of section 414(b),(c), (m) or (o) of the Code.

“Escrow and Reserves” shall mean all monies deposited with Lender pursuant to any reserve, escrow, deposit or cash collateral agreements executed by Debtor in favor of Lender together with any Deposit Accounts or Investment Property, if any, in which the aforesaid are deposited.

“Ethanol” shall mean fuel grade denatured anhydrous ethanol alcohol.

“Event of Default” shall mean any of those events specified as an event of default herein.

“Final Order” shall have the meaning provided in the Interim Order.

“Financing Statements” shall mean one or more financing statements given or authorized by Debtor under the provisions of the UCC to Lender perfecting a security interest in the Collateral.

“First Advance” shall mean the initial Advance of Loan Funds.

“Fixtures” shall mean all “fixtures” (as that item is defined in the UCC) now owned or hereafter acquired with respect to the Premises.

“GAAP” shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of any date of determination.

“General Intangibles” shall mean all of Debtor’s general intangibles, as such term is defined in the UCC, whether now owned or hereafter acquired, including all present and future Intellectual Property Rights, customer or supplier lists and contracts, manuals, operating instructions, permits, franchises, the right to use Debtor’s name, and the goodwill of Debtor’s business.

“Goods” shall mean all “goods” (as that item is defined in the UCC) now owned or hereafter acquired.

“Goods and Services” shall mean those goods and services to be provided by Cargill and its affiliates under the Goods and Services Agreements.

“Goods and Services Agreements” shall mean the following agreements between Cargill and/or its affiliates and Debtor consisting of:

- (i) the Corn Supply Agreement between Cargill Incorporated through its AgHorizons business unit and Gateway Ethanol, L.L.C. (the “Corn Supply Agreement”);
- (ii) the Distillers Grains Marketing Agreement between Cargill Incorporated and Gateway Ethanol, L.L.C. (the “Distillers Grains Marketing Agreement”);

- (iii) the Natural Gas Risk Management Advisory Agreement between and among Cargill, Incorporated, Cargill Commodities Services, Inc. d/b/a Cargill Energy Services and Gateway Ethanol, L.L.C. (the “Risk Management Advisory Agreement”);
- (iv) the Energy Supply Representation and Management Agreement between Cargill Incorporated through its Cargill Energy and Risk Management Solutions Division and Gateway Ethanol, L.L.C. (the “Gas Supply Representation Agreement”);
- (v) the Base Contract for Sale and Purchase of Natural Gas between Cargill Incorporated and Gateway Ethanol, L.L.C. (the “NAESB” Base Agreement”);
- (vi) the Corn Futures Advisory Agreement between Cargill Incorporated and Gateway Ethanol, L.L.C. (the “Corn Futures Advisory Agreement”); and
- (vii) the Risk Management Advisory Agreement between Cargill Incorporated and Gateway Ethanol, L.L.C. (the “Risk Management Advisory Agreement”)

“Governmental Authority” shall mean any governmental body or regulatory authority exercising jurisdiction over the Premises or the construction of the Project, including any department or subdivision of the County/City.

“Governmental Requirements” shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of any Governmental Authority or any other political subdivision in which the Project is located and of any other political subdivision, agency, quasi-governmental authority or instrumentality exercising jurisdiction over the Project and including all wetlands restrictions/regulations, Regulatory Approvals and Historical Requirements adopted or enacted by a Governmental Authority applicable to the Project, its construction and its use and occupancy.

“Grain Handling Facility Contract” shall mean the Construction Agreement dated January 31, 2006 between HABCO, Inc., as contractor, and Debtor, as owner, for the design, engineering, work, labor, supervision, services, material and equipment for the construction and completion of the Grain Handling Systems.

“Grain Handling Systems” shall mean the grain receiving systems and grinding and product storage facilities within the Project.

“Ground Lease” shall mean the Ground Lease between Gateway Ethanol, L.L.C., as ground landlord, and Power To Go, L.L.C., as ground tenant, demising the Substation Site.

“Hazardous Substance” shall mean any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined, prohibited, limited or regulated under any statute, law, ordinance, rule or regulation of any local, state, regional or Federal authority having jurisdiction over the property of Debtor, or its use, including but not limited to any material, substance or waste which is (a) defined, listed or otherwise classified as a hazardous substance, hazardous material, hazardous waste or other words of similar meaning under any Environmental Laws; (b) petroleum, petroleum hydrocarbons, and all



petroleum products; (c) polychlorinated biphenols; (d) lead; (e) urea formaldehyde; (f) asbestos and asbestos containing materials; (g) flammables and explosives; (h) infectious materials; (i) atmospheric radon at levels over 4 picocuries per cubic liter, (j) radio active materials; or (k) defined, prohibited, limited or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any of the foregoing Environmental Laws.

“Historical Requirements” shall mean any statutes, rules and regulations enacted by a Governmental Authority declaring the Project or any part thereof to be of historical significance.

“Impositions” shall mean all real estate, ad valorem and personal property taxes, general and special assessments imposed by Governmental Authorities, water, sewer and other municipal utility charges and any and all other fees and charges that may be assessed or imposed by Governmental Authorities on the Project and the underlying Premises.

“Improvements” shall mean the Plant, all buildings, structures, Equipment, improvements, betterments and Personalty to be constructed and/or installed on or in the Premises in accordance with the Contract Documents, together with related on site and Off Site Improvements and including a unit train loop within the Plant capable of operating a minimum of 110 cars at a time.

“Incentive Payments shall mean all incentive payments, tax credits and subsidies payable to Debtor to produce and market Ethanol including:

(i) Eligibility with the USDA Commodity Credit Corporation, 7 CFR Part 1424, Federal Register, Volume 68, No. 88, May 2, 2003, page 24596-24603 (the “Commodity Credit Corporation Payments”).

(ii) Eligibility for the Kansas Department of Revenue, Ethanol Production Incentive Payment Program. (the “State of Kansas Producer Incentive Payments”).

“Instruments” shall mean all “instruments” (as that item is defined in the UCC) now or hereafter acquired.

“Insurance Proceeds” shall mean all awards, payments, proceeds now or hereafter payable under any policy of insurance insuring the Project including but not limited to the proceeds of casualty insurance, title insurance, business interruption/rents insurance or other insurance maintained with respect to the Project.

“Intangibles” shall mean all “general intangibles” (as that item is defined in the UCC), now owned or hereafter acquired.

“Intellectual Property” shall mean all ‘intellectual property; (as that term is defined in the UCC) now owned or hereafter acquired, including, but not limited to all proprietary information made available to Debtor under Lurgi Contract and License Agreement and all Copyrights, Trademarks, Patents, trade secrets, customer lists, proprietary or confidential information, inventions (whether or not patented or patentable), technical

information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, recipes, experience, processes, models, drawings, materials and records, or any interest therein, now owned or licensed to or hereafter acquired by Debtor.

“Intellectual Property Rights” shall mean all actual or prospective rights arising in connection with any intellectual property or other proprietary rights, including all rights arising in connection with copyrights, patents, service marks, trade dress, trade secrets, trademarks, trade names or mask works.

“Interest Rate” shall mean the interest rate charged on the Loan from time to time as set forth in Section 2.2 hereof.

“Interim Order” shall have the meaning given in the Recitals to this Agreement.

“Inventory” shall mean all “Inventory” (as that item is defined in the UCC) now or hereafter used or produced from the operation of the Plant including corn and grain supplies, ethanol, distillers grains and carbon dioxide byproduct.

“Investment Property” shall mean all of Debtor’s investment property, as such term is defined in the UCC, whether now owned or hereafter acquired, including but not limited to all securities, security entitlements, securities accounts, commodity contracts, commodity accounts, stocks, bonds, mutual fund shares, money market shares and United States government securities.

“Irrigation Agreement” shall mean the permit from Kansas Department of Health and Environment, Permit #I-AR73-NP02, permitting the discharge of blow down wastewater from the Plant into collection ponds and future use as irrigation.

“KDHE” shall mean the Kansas Department of Health and Environment.

“Labor” shall mean the furnishing of any work or labor to the construction of the Project.

“Land Use Restrictions” shall mean all zoning, building, land use, subdivision, development and environmental laws which do or may regulate the construction, occupancy, development, use, operating, sale, lease, encumbering or management of the Premises, all requirements of Governmental Authorities pursuant to such laws and all development and building permits issued by Governmental Authorities for the Premises.

“Leased Equipment” shall mean those items of Equipment that are leased to Debtor under any Equipment Leases.

“Legal Requirements” shall mean all laws, ordinances, rules, regulations and requirements of all Governmental Authorities including but not limited Environmental Laws applicable to all or part of the Premises or the Project or the construction, development, improvement, repair, renovation, lease, sale, encumbering or transfer of all or any part of the Premises.

“Lender” shall have the meaning given in the preamble to this Agreement.

“Liabilities” or “Obligations” shall mean, individually and collectively, the Postpetition Indebtedness.

“Lien” shall mean any lien that may be imposed by law or by contract against the Premises for the payment of labor, materials, or services rendered by a person or entity in connection with the Work.

“Liquidated Damages” shall mean those liquidated damages required to be paid by Lurgi to Debtor in accordance with Article 17 of Lurgi Contract.

“Loan” shall mean the loan to be made pursuant to Article 2 of this Agreement.

“Loan Documents” shall mean this Agreement and the following:

- (i) the Note;
- (ii) the Mortgage;
- (iii) the Assignment of Leases and Rents;
- (iv) the Financing Statement(s);
- (v) the Assignment of Contract Rights, Intangibles and Proprietary Rights;
- (vi) the Collateral Assignment of Interest in Leased Equipment;
- (vii) the Assignment of Operating, Service Contracts, Permits and Regulatory Approvals;
- (viii) the Assignment of Parent Guarantee;
- (ix) the Collateral Assignment of Incentive Payments;
- (x) the Stipulations;

and such other documents as Lender may require in connection with this Agreement (including in connection with the Advances under this Agreement and the other Postpetition Indebtedness).

“Loan Fee” shall mean a fee of \$104,856 plus an amount equal to all of Lender’s expenses (including attorneys’ fees) incurred by Lender in connection with the negotiation, preparation, approval, review, execution, delivery, this Agreement, the other Loan Documents and the Interim Order up to and including the Closing Date and in obtaining Court approval of the Postpetition Financing or the closing of the First Advance.

“Loan Funds” shall mean the sums of money disbursed under this Agreement.

“Logo” shall mean all right and interest in and to any and all trademarks, tradenames,

corporate names, franchised names, business names, fictitious names, trade styles, logos, service marks, and business identifiers used in the operation of the Project.

“Loop Track” shall mean a circular loop track to be constructed within the Project for the operating within the Project of unit trains for loading and off loading of Inventory and which directly connects to the Class I Mainline tracks of the Union Pacific Railroad under the Rail Access Agreement.

“Loop Track Contract” shall mean the Construction Agreement dated January 31, 2006, between Railworks Track Systems, Inc., as contractor, and Debtor, as owner, for the construction of the Rail Spur.

“Loop Track Contractor” shall mean Railworks Track Systems, Inc.

“Loop Track Materials” shall mean those Materials to be provided by Debtor at its expense to the Loop Track Contractor for installation into the Loop Track pursuant to the Loop Tract Contract.

“Lurgi” shall mean Lurgi, Inc., a Tennessee corporation f/k/a Lurgi PSI, Inc.

“Lurgi Arbitration Proceeding” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order.

“Lurgi State Court Proceeding” shall mean the state court lawsuit involving Lurgi as described on Exhibit A.

“Lurgi Contract” shall mean the Restated Engineering, Procurement and Construction Agreement between Owner and Lurgi dated March 30, 2006, for the furnishing of process design engineering, procurement, and supply of labor, materials and equipment, construction, commissioning and start-up services and training of operations and maintenance for the Plant performed by or on behalf of Lurgi necessary to complete the Plant.

“Margin Stock” shall have the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System.

“Master Agreement” shall mean the Master Agreement dated February 15, 2006, by and between Cargill, Incorporated, Cargill Commodity Services Inc. and Gateway Ethanol, L.L.C. pursuant to which Cargill and its affiliates agree to provide Debtor with the Goods and Services provided under the Goods and Services Agreements.

“Material Adverse Change” shall mean a material adverse change in any of (a) the legality, validity, or enforceability of any of the Loan Documents, the Prepetition Senior Loan Documents or the Prepetition TIF Loan Documents, (b) the perfection or priority of the security interests granted pursuant to this Agreement or any other Loan Document, the Prepetition Senior Loan Documents, the Prepetition TIF Loan Documents or the Orders, (c) the rights and remedies of Lender under any of the Loan Documents, the Prepetition Senior Lender under the Prepetition Senior Loan Documents or the

Prepetition TIF Lender under the Prepetition TIF Loan Documents after in the case of (c) above, taking into account the legal and equitable effects of the Bankruptcy Code.

“Material Adverse Effect” means an effect that results in or causes, or has a reasonable likelihood of resulting or causing, a Material Adverse Change.

“Materials” shall mean all materials and goods furnished to the Premises and to be included in the Work.

“Member” shall mean in the context of Debtor any member of Debtor or constituent members of a Member of Debtor.

“Mortgage” shall mean the Mortgage and Security Agreement and Fixture Financing Statement made by Debtor in favor of Lender and creating a lien on and security interest in the Premises.

“Multiemployer Plan” shall mean a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which Debtor or any ERISA Affiliate contributes or is obligated to contribute.

“Natural Gas Agreement” shall mean the Discount Rate Agreement for Transportation of Natural Gas between Kansas Service, a division of Oneok, Inc., and Gateway Ethanol, L.L.C.

“Natural Gas Facilities” shall mean all mains, service laterals, storage tanks, piping, valves, manholes and appurtenances for the furnishing, transmission, storage and disposal of natural gas to the Project.

“Noble Priority Collateral” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order.

“Note” shall mean the Promissory Note of Debtor payable to Lender in the Loan Amount.

“Off Site Improvements” shall mean those improvements off the Premises required by any Governmental Authority to be completed by Debtor as a condition to its Approval of the Project.

“Operating Agreements” shall mean all agreements between Debtor and a third party for the servicing and operation of the Plant and marketing of Ethanol and DGs produced including:

- (i) the Master Agreement and the Goods and Services Agreements;
- (ii) the Ethanol Purchase and Sale Agreement between Noble Americas Corp. (“Noble”) and Gateway Ethanol, L.L.C.;
- (iii) the Industry Track Contract between Union Pacific Railroad Company and Gateway Ethanol, L.L.C.;

(iv) the Agreement for Electric Service between the Ninnescah Rural Electric Cooperative Association, Inc. and Gateway Ethanol, L.L.C.;

(v) the Discount Rate Agreement for Transportation of Natural Gas between Kansas Service, a division of Oneokay, Inc. and Gateway Ethanol, L.L.C.; and

(vi) the Potable Water Agreement between the City of Pratt, Kansas and Gateway Ethanol, L.L.C.

“Operating Lease” shall mean any lease of any property (whether real, personal or mixed) that, in accordance with GAAP, would be required to be classified and accounted for as an expense item on a balance sheet, including the Thermal Oxidizer Equipment Lease and the Substation Sublease.

“Orders” shall mean, individually and collectively, the Interim Order and the Final Order.

“Organizational Documents” shall mean, with respect to any Person (other than an individual), such Person’s articles of incorporation, articles of organization, certificate of limited partnership, trust agreement, or other equivalent formation documents, and regulations, bylaws, limited partnership agreement, operating agreement, limited liability company member control agreement or equivalent governing documents, and any amendments to any of the foregoing permitted hereunder.

“Owner” shall mean Debtor.

“Parent” shall mean GEA Group AG, a corporation organized and existing under the laws of the Federal Republic of Germany and its successors and assigns.

“Parent Guarantee” shall mean the irrevocable and unconditional Parent Guarantee to be given by the Parent of Lurgi’s obligations under Lurgi Contract in the form set forth in Exhibit L to Lurgi Contract.

“Payment in Full” or “Paid in Full” or any similar term(s) with respect to the Loan shall mean (i) the satisfaction and final payment in full of the Loan in cash or cash equivalents reasonably acceptable to Lender and the termination of any obligation on the part of Lender to make any further Advances or to afford any financial accommodation to Debtor with respect to the Loan and the full and timely performance of all other obligations to Lender arising out of this Agreement, the Loan Documents and the Orders, or (ii) in the case of a contingent obligation for which any Loan Documents or the Orders expressly provide for a reserve or contingency fund, the setting apart of cash sufficient to discharge such portion of such Debtor obligations in an account for the exclusive benefit of Lender, and in which account Lender shall be granted by Debtor a first priority perfected security interest in a manner acceptable to Lender, subject however to reinstatement as provided in this Agreement.

“Performance Guarantees” shall mean those levels of performance of the Plant which are specified in Exhibit E to Lurgi Contract.

“Performance Liquidated Damages” shall mean those liquidated damages required to be paid by Lurgi to Debtor in accordance with Article 17.1 of the Lurgi Contract for failure to meet the Performance Guarantees.

“Performance Tests” shall mean those tests described in Exhibit D to Lurgi Contract that are designed to determine if the Plant meets the Performance Guarantees and Minimum Performance Standards.

“Permit” shall mean any valid waiver, exemption, variance, franchise, permit, authorization, approval, acknowledgement, confirmation, license or similar order of or from any federal, commonwealth, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or the performance of the Work.

“Permitted Exceptions” shall mean the exceptions to insured coverage set forth in Schedule B to the Prepetition Senior Title Policy and the additional exceptions set forth on Exhibit “B” attached hereto and made a part hereof.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“Petition Date” shall have the meaning set forth in the Recitals to this Agreement.

“Plan” shall mean any multiemployer or single-employer plan as defined in section 4001 of ERISA that is maintained or contributed to by (or to which there is an obligation to contribute by) Debtor or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which Debtor or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

“Plan Documents” shall mean all final Drawings and Specifications specially prepared by the design professionals for the construction and development of the Project including mechanical and electrical, plumbing and heating and ventilation Drawings and Specifications specially prepared by subcontractors and their retained Design Professionals for particular segments of the Project and such further drawings and specifications as are from time to time prepared to further expand in detail the Scope of the Work and final definitive working drawings and specifications and shall also include any submittals filed or required to be filed with Governmental Authorities to comply with Land Use Restrictions and requirements for issuance of all Permits.

“Plant” shall mean the facilities and systems with the design capacity of fifty five (55) million gallons of denatured anhydrous ethanol per year with co-products of DGs and CO<sub>2</sub>, using grain as the feedstock, together with all buildings, equipment, fixtures and improvements used or useful in the production and distribution of Ethanol including but not limited to (i) grain handling systems and grinders, (ii) chilling system and piping, (iii) CO<sub>2</sub> scrubbers, (iv) cooking and liquefaction systems, (v) fermenters, (vi) distillation and dehydration systems, (vii) molecular sieves, (viii) ethanol storage facilities, tanks and piping (ix) centrifuge and dryer systems, (x) separators, (xi) evaporation systems, (xii)

ring dryers, (xiii) wet silages, (xiv) dust collection systems, (xv) product storage facilities, (xvi) boiler systems and piping, (xvii) cooling system and towers, (xviii) compressed air systems, (xix) thermal oxidizer systems, (xx) administrative building and furnishings, (xxi) loading and unloading docks, (xxii) natural gas systems including storage facilities, mains, service laterals, piping, valves, manholes, substations, switching and transfer systems, (xxiii) all collection systems and storage tanks for potable water, (xxiv) clean-in-place systems and piping and pumps, (xxv) DCS systems instrumentation and controls, (xxvi) wet cake storage facilities, (xxvii) dry distillers grains loadout systems and piping, (xxviii) methane digester systems and methanator, (xxix) plant lighting systems, (xxx) electrical systems including mains, service laterals, piping, valves, manholes, electrical substations, switching and transfer systems for the furnishing of electricity to the facility.

“Postpetition Facility” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order.

“Postpetition Facility Collateral” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order.

“Postpetition Facility Lien” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order

“Postpetition Indebtedness” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order and shall include, without limitation, the Advances and all other advances, debts, liabilities, obligations, covenants and duties owing, arising, due or payable from Debtor to Lender of any kind or nature, whether or not evidenced by any note, letter of credit, reimbursement agreement, guaranty or other instrument or document, arising under or issued pursuant to this Agreement, any of the other Loan Documents or any Order and whether direct or indirect (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, existing on or after the Closing Date and however acquired or extended, and whether or not of the same kind or quality or that relate to the same transactions or series of transactions, and all amendments, renewals, restatements, replacements, consolidations or other modifications of the foregoing from time to time. The term includes all principal, interest, fees, expenses and any other amounts chargeable to Debtor under any of the Loan Documents and the Orders.

“Potable Water Agreement” shall mean the agreement with the City dated February 6, 2006, to provide an uninterrupted supply of potable water to the Plant.

“Premises” shall mean the Real Property, Improvements, Utilities, Equipment, Fixtures, Plant and Rail Spur together with all buildings, structures, improvements, fixtures and annexations constructed on or added to the Real Property described in Exhibit “B”.

“Prepetition Collateral” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.

“Prepetition Senior Lender” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.



“Prepetition Senior Loan Agreement” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.

“Prepetition Senior Loan Documents” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order.

“Prepetition Senior Title Policy” shall mean the “Title Policy” defined in the Prepetition Senior Loan Agreement.

“Prepetition TIF Lender” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.

“Prepetition TIF Loan Documents” shall have the meaning provided in the Interim Order or, upon the entry of the Final Order, the Final Order.

“Prime Rate” shall mean the daily rate of interest published in the Money Rates section of The Wall Street Journal as the Prime Rate. If The Wall Street Journal ceases to publish the Prime Rate, Lender may select a substitute publication or service that publishes the Prime Rate, or its equivalent, and if such Prime Rate is no longer published, then the arithmetic mean of the rate announced as their “prime,” “base” or “reference” rate by three (3) major money center banks in the City of New York as selected by Lender shall be substituted.

“Principal” shall mean the from time to time sums of money disbursed by Lender pursuant to this Agreement.

“Principal Balance” shall mean from time to time the amount of Principal remaining unpaid.

“Project” shall mean the construction of the Plant and Improvements and the Work and all other work to be performed and all material, supplies, equipment and facilities to be supplied by Debtor and others for the design, construction, erection and Re-Start-Up of the Plant.

“Project Agreements” shall mean the agreements between Debtor and a third party for the design, construction, erection, equipping or Re-Start-Up of any portion of the Project, to the servicing, operation, maintenance, and repair of the Project and to the marketing of Ethanol and DGs produced including, without limitation, the agreements shown on Exhibit “D” attached hereto and made a part hereof.

“Public Improvements” shall mean the County Road Improvements and the City Water Line Improvements.

“Public Improvements Contributions” shall mean the payment by the City and/or County, as the case may be, of the entire cost of constructing and installing the Public Improvements.

“Rail Access Agreement” shall mean the Industry Track Contract between Union Pacific Railroad Company and Gateway Ethanol, L.L.C. wherein the Union Pacific Railroad

Company grants access to the Class I Mainline Tracks of the Union Pacific Railroad and agrees to construct through a Contractor of its choice the Rail Spur.

“Rail Spur” shall mean the connection between the Loop Track and the Class I Mainline Tracks of the Union Pacific Railroad.

“Rail Spur Contract” shall mean the Construction Contract to be entered into between the Union Pacific Railroad, as owner, and the Contractor of its choice for the construction of the Rail Spur and payment of whom is to be made by the Union Pacific Railroad.

“Real Property” shall mean all the tracts or parcels of real property lying and being in the County of Pratt, State of Kansas, all as more fully described in Exhibit “C” attached hereto and made a part hereof, together with all the estates and rights in and to the real property and in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property; together with all Water Rights (whether riparian, appropriative or otherwise whether or not appurtenant) now or hereafter relating to or used in connection with the real property.

“Receivables” shall mean all present and future rights to payment for goods sold or leased or for services rendered, with respect to the Project and its operations and all receivables of whatever nature whatsoever which are not evidenced by Chattel Paper, Documents or Instruments.

“Regulatory Approvals” shall mean the following approvals required from Governmental Authorities for the construction, operation and management of the Project including:

- (i) the KDHE Air Emission Source Construction Permit;
- (ii) the KS Historical Society Approval;
- (iii) the KDHE Construction Storm Water Discharge Permit;
- (iv) the City of Pratt Water Appropriation Agreement; and
- (v) the KDHE Irrigation Permit (Wastewater).

“Reportable Event” shall mean a reportable event (as defined in Section 4043 of ERISA), other than an event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the Pension Benefit Guaranty Corporation.

“Required Financial Reports” or “Financial Reports” shall mean those financial reports required pursuant to Section 9.1.

“Required Insurance” or “Insurance” shall mean those policies of insurance required pursuant to Section 5.1.

“Reserves” shall mean those reserves required pursuant to the Article 3 to be held by Lender in reserve and to be applied by Lender to the category for which the Reserve is established.

“Re-Start-Up” shall mean the re-start-up of operations at the Plant pursuant to the “Start-up” activities described in Exhibit K to the Lurgi Contract.

“Rolling Stock” shall mean those vehicles, rail cars, yard vehicles and self-propelled equipment to be acquired and used in the operations of the Plant.

“Senior Foreclosure Action” shall mean the foreclosure action against Debtor in the United States District Court for the District of Kansas that is captioned Dougherty Funding, LLC vs. Gateway Ethanol, L.L.C. (Civil Case No. 08-CV-2214-JAR-DJW).

“Senior Stipulation” shall mean Stipulation and Consent to Appointment of Receiver and Entry of Judgment dated as of even date herewith with respect to the Senior Foreclosure Action.

“Service Agreements” shall mean all rights and interests of Debtor in and under any and all service contracts and other agreements relating to the servicing, operation, maintenance, and repair of the Project or the buildings and improvements thereon.

“Specifications” shall mean the written technical descriptions of materials, equipment, systems, standards, and workmanship specially prepared for the construction of the Project and the Work and certain administrative details applicable thereto.

“Stipulations” shall mean the Senior Stipulation and the TIF Stipulation.

“Sub-Contracts” shall mean the contracts between Lurgi and subcontractors for the furnishing of labor or materials for the Project.

“Subsequent Advance” or “Subsequent Advances” shall mean any advance of Loan Funds subsequent to the First Advance.

“Substation” shall mean the electrical facility pursuant to which electrical energy is transferred from the suppliers main lines and down converted for use in the Plant and which Debtor shall lease under the Substation Sublease.

“Substation Contract” shall mean the Substation Erection Contract between the Substation Contractor and the Substation Lessor providing for the construction of the Substation.

“Substation Contractor” shall mean Re-Con Company, the Contractor directly engaged by the Substation Lessor to construct the Substation.

“Substation Sublease” shall mean the sublease between the Substation Lessor and Debtor subleasing the Substation to Debtor.

“Substation Lessor” shall mean Power To Go, L.L.C., the ground lessee under the Ground Lease and the Sublessor, under the Substation Sublease.

“Substation Site” shall mean the portion of the Premises on which the Substation is located and which is leased to the Substation Lessor under the Ground Lease.

“Superpriority Claims” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.

“Supplemental Approved Budget” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.

“Suppliers” shall mean those persons or entities supplying Materials to the Project other than Lurgi.

“Tax Escrow Deposits” shall mean amounts to be deposited into an escrow account maintained with Lender pursuant to Section 3.1 of this Agreement.

“Termination Date” shall have the meaning provided in the Interim Order or, upon entry of the Final Order, in the Final Order.

“Thermal Oxidizer” shall mean the Thermal Oxidizer/Boiler System with Recuperative Heat Exchange and Accessories for the Project, which Debtor shall lease under an Equipment Lease for installation into the Plant.

“Thermal Oxidizer Equipment Lease” shall mean the lease agreement between Indeck Power Equipment Co, and Debtor leasing the Thermal Oxidizer to Debtor.

“TIF” shall mean Tax Increment Rebate Financing provided by the County under the Kansas Neighborhood Revitalization Program in the amount of \$11,340,000.00.

“TIF Documents” shall mean those documents executed and delivered by Debtor to the TIF Lender consisting of the TIF Note, TIF Pledge and TIF Rebate Agreement.

“TIF Foreclosure Action” shall mean the foreclosure action against Debtor in the United States District Court for the District of Kansas that is captioned Dougherty Funding, LLC vs. Gateway Ethanol, L.L.C. (Civil Case No. 08-CV-2213-JAR-DJW).

“TIF Lender” shall mean Dougherty Funding LLC acting in its separate capacity as the purchaser of the TIF Note.

“TIF Note” shall mean the Promissory Note executed and delivered by Debtor to the order of the TIF Lender in the amount of \$11,340,000.00 and issued pursuant to the TIF.

“TIF Pledge” shall mean the Pledge Agreement executed and delivered by Debtor to the order of the TIF Lender pledging and assigning Debtor’s interest in the net proceeds of casualty insurance and business interruption maintained on the Project.

“TIF Proceeds” shall mean the net proceeds payable to Debtor from the issuance of the TIF in the approximate amount of \$9,900,000.00.

“TIF Rebate Agreement” shall mean the Property Tax Increment and Rebate Agreement executed and delivered by the County and Debtor assigning to the TIF Lender all “increments” of ad valorem taxes collected from the Project.

“TIF Stipulation” shall mean Stipulation and Consent to Entry of Judgment dated as of even date herewith with respect to the TIF Foreclosure Action.

“Title” shall mean First American Title Insurance Company of New York, the title insurer that issued the Senior Title Policy and, if required by Lender, the mortgagee’s title insurance policy insuring the Mortgage.

“Transfer” shall mean any sale, grant, pledge, assignment, mortgage, encumbrance, security interest, consensual lien, hypothecation, lease, transfer or divesture or otherwise of or an interest in (a) the Premises or (b) Debtor.

“UCC” shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of Kansas, provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Secured Party’s security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Kansas, the term shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“USEPA” means the United States Environmental Protection Agency.

“Utilities” shall mean and include private and public utility lines of any type or nature, including wires, pipes, conduits, cables, fiber optics, and ducts for utility systems used for domestic cold and hot water, sanitary sewer, storm sewer, chilled water, condenser water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditioned and non-conditioned air, ventilation and exhaust air, electricity, security, fire alarm, emergency communications, systems control and automation, video monitoring, telephone, television, other telecommunications systems, and other mechanical, electrical, and related life safety systems.

“Voidable Transfer” shall have the meaning given in Section 17.17 of this Agreement.

“Waste Disposal and Sewer Facilities” shall mean all of the waste disposal, sanitary and storm sewer rights and systems including all mains, service laterals, ponding areas, piping, valves, manholes and catch basins and appurtenances servicing the Project.

“Water Facilities” shall mean all mains, service laterals, storage tanks, piping, valves, manholes, wells and appurtenances for the furnishing, transmission, storage and disposal of potable water to the Project.

“Water Rights” shall mean all water rights, water stock, and irrigation rights accruing to or necessary for the use of the Premises including but not limited to all water rights, irrigation rights, ditch and ditch rights, reservoir and reservoir rights, stock or interest in water, irrigation or ditch companies.

“Work” shall mean and include all design, engineering, labor, supervision, materials, Re-Start-Up, fixtures, special facilities, built-ins, equipment, tools, supplies, and related inspections, and other property and services necessary to timely and properly produce all work and completed construction required or reasonably inferable from the Construction

Contracts and all work, services and materials necessary to produce fully connected, complete, operational and functional systems and the Plant meeting all Performance Guarantees.

“Working Capital” shall mean funds that are used in the day-to-day operation of the business of the Project, including, without limitation, amounts sufficient for the maintenance of change and petty cash funds, amounts deposited in operating bank accounts, receivables, amounts deposited in payroll accounts, prepaid expenses and funds required to maintain inventories, less accounts payable and accrued current liabilities.

1.2 Accounting Terms. Any accounting terms used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed, unless otherwise specifically provided herein, in accordance with GAAP consistently applied. That certain terms or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing.

1.3 Common Words. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole, including the Exhibits and Schedules hereto, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement.

1.4 Context. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter.

1.5 Other Defined Terms. Other terms defined in this Agreement shall have the meanings respectively ascribed to them herein.

## 2.

### THE LOAN

2.1 Loan. Lender will make Advances to Debtor from time to time after the Closing Date until the Business Day immediately preceding the Termination Date in an aggregate principal amount not to exceed the Availability. Debtor acknowledges and agrees that Lender will not make any Advance (i) if Lender has not approved the Approved Budget Expense being funded by such Advance, or (ii) if any Default or Event of Default exists or would result from the making of such Advance. Subject to the terms and conditions of this Agreement, Debtor may borrow hereunder at any time in accordance with this Article 2 and Article 13 hereof. Except for the request for the First Advance (which will be made reasonably promptly following the entry of the Interim Order), each Advance shall be made on the second Business Day after Lender’s receipt of Debtor’s Request for Advance and supporting documentation pursuant to Section 13.1 hereof.

2.2 Interest Rate. The Loan shall bear interest at the following rates of interest:

- (i) Contract Rate. From and after the date of the First Advance, the Loan shall bear interest at a per annum rate of interest equal to 200 Basis Points plus the Prime Rate as published on the first (1<sup>st</sup>) day of each calendar month (or if not published

for that date, then as published on the next immediate publication date in the month), provided, that the rate of interest hereunder shall never be less than the rate of return on a United States Treasury Note having a maturity of one (1) month.

- (ii) Default Rate. If an Event of Default occurs, then, at the option of Lender hereof, during the entire period during which such Event of Default shall occur and be continuing interest shall be payable on the Principal Balance at a per annum rate of interest equal to the lesser of (i) the maximum lawful rate of interest permitted to be paid on the Loan or (ii) 600 Basis Points plus the Prime Rate as it changes from time to time (“Default Rate”) whether or not Lender has exercised its option to accelerate the maturity of the Loan and declare the entire Principal Balance due and payable.

2.3 Late Charge. In the event that any payment required hereunder is not paid when due, Debtor agrees to pay a late charge (the “Late Charge”) of \$.04 per \$1.00 of unpaid payment to defray the costs of Lender incident to collecting such late payment. This Late Charge shall apply individually to all payments past due and there will be no daily pro rata adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights Lender may have including the right to declare the entire unpaid principal and interest immediately due and payable.

2.4 Basis of Computation. Interest shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on a 360 day year.

2.5 Payment. The Loan shall be payable as follows:

- (i) On the first (1<sup>st</sup>) day of each month there shall be paid an amount equal to interest then accrued and unpaid on the outstanding Principal Balance. Debtor hereby authorizes Lender to make an Advance, at Lender’s sole and absolute discretion, to pay, on behalf of Debtor, accrued interest without further action on the part of Debtor and regardless of whether Debtor is able to comply with the terms, conditions and covenants of this Agreement at the time of such Advance.
- (ii) On the Termination Date the entire Principal Balance plus accrued interest and all other Postpetition Indebtedness shall be due and payable in full.
- (iii) One hundred percent (100%) of the amount of any Liquidated Damages paid by Lurgi to Debtor shall be applied to the prepayment of the Postpetition Indebtedness.

2.6 Voluntary Prepayment. The Loan may be prepaid at any time in whole or in part, without premium.

2.7 Collections. Notwithstanding anything in this Agreement or any other Loan Document to the contrary but subject to the Orders, Lender is hereby authorized to directly collect proceeds from the Collateral (other than the Noble Priority Collateral) and Debtor shall

pay over to Lender all revenues and collections received from any third party, which proceeds, revenues, and collections shall be deposited into a non-interest bearing bank account (the "Collection Account") of Debtor maintained at a bank acceptable to Lender, in its sole discretion, that has executed a control agreement in a form satisfactory to Lender, in its sole discretion, with respect to such Collection Account and thereafter applied to the Postpetition Indebtedness including principal, interest, Lender's attorneys fees, costs and expenses.

2.8 Application of Payments. Subject to the Orders, any payments received by Lender shall be applied (i) to any costs of collection, (ii) to Late Charges, (iii) to interest, (iv) to Principal Balance and (v) if any advance has been made by Lender under the terms of this Agreement, any Order or any other Loan Documents to repay such advances plus interest thereon, all in such order and priority as Lender shall determine. Upon an Event of Default any monies received shall, at the option and direction of Lender, be applied to any sums due hereunder and any Loan Documents and any Orders in such order and priority as Lender shall determine.

2.9 Time of Essence. Time is of the essence. No delay or omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such right or of any other remedy under this Agreement, any other Loan Document or any Orders. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on a future occasion.

2.10 Waiver of Presentment, Etc. Presentment for payment, protest and notice of non-payment are waived in connection with the enforcement of Lender's rights under the Loan Documents or any Orders. Consent is given to any extension or alteration of the time or terms of payment hereof, any renewal, any release of any part or all of the security given for the payment hereof, any acceptance of additional security of any kind, and any release of, or resort to any party liable for payment hereof. To the extent permitted by law all rights and benefits of any statute of limitations, and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal, exemption and homestead laws are waived in connection with the enforcement of Lender's rights under the Loan Documents or any Orders.

2.11 Savings Clause. It is expressly stipulated and agreed to be the intent of Debtor and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than permitted under state law) and that this section shall control every other covenant and agreement in this Agreement and any other Loan Documents delivered in connection herewith. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Agreement or under any other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Agreement ("Indebtedness"), or if Lender's exercise of the option to accelerate the maturity of this Agreement, or if any prepayment by Debtor results in Debtor having paid any interest in excess of that permitted by applicable law, then it is Debtor's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the Principal Balance (or, if the Principal Balance has been or would thereby be paid in full, refunded to Debtor), and the provisions of this Agreement and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so



as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

2.12 All Advances to Constitute Single Obligation. The Advances shall constitute one general obligation of Debtor, and shall be secured by Lender's first priority security interest in and lien upon all of the Collateral and by all other security interests, Liens, claims and encumbrances heretofore, now or at any time or times hereafter granted by Debtor to Lender, subject only to Noble's security interest and lien in Noble Priority Collateral.

2.13 Note. The Advances shall be evidenced by the Note. At the time of the First Advance and at each time a Subsequent Advance shall be requested hereunder a notation thereof shall be made on the books and records of Lender. All amounts recorded shall be, absent manifest error, conclusive and binding evidence of (i) the Principal amount of the Advances hereunder, (ii) any accrued and unpaid interest owing on the Advances, and (iii) all amounts repaid on the Advances. The failure to record any such amount or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of Debtor under the Note to repay the Principal amount of the Advances, together with all interest accruing thereon.

### 3.

#### RESERVES

3.1 Tax Escrow Account. At any time, Lender may make an Advance in the amount of the real taxes and other ad valorem taxes payable for the 2008 tax year in December, 2008 and/or March, 2009 (the "Taxes") with respect to the Premises and the proceeds of such advance shall be applied to the payment of such Taxes if they are then due or payable or, if not then due and payable, shall be deposited (the "Tax Escrow Deposit") into a tax escrow account (the "Tax Escrow Account") to be maintained with a bank acceptable to Lender, in its sole discretion, that has executed a control agreement in a form satisfactory to Lender, in its sole discretion, with respect to such Tax Escrow Account. Funds on deposit in the Tax Escrow Account shall be used to pay the Taxes in accordance with this Section. No person other than Lender (and any servicer employed by Lender), including, without limitation, Debtor, shall have any right to withdraw any of the funds held in the Tax Escrow Account. Lender will, upon the presentation to Lender by Debtor of the bills therefor, or upon its own determination of the Taxes that are due and payable, pay the Taxes from the Tax Escrow Account when they are due and payable. Debtor and Lender agree that all Taxes for 2008 shall be paid at the December, 2008 first installment due date rather than in two (2) installments. If an Event of Default shall occur, Lender may, at its option, without being required so to do, apply any deposits on hand to the prepayment of the Principal Balance of the Loan and the other Liabilities, in such order and manner as Lender may elect in its sole and absolute discretion. When the Loan and all other Liabilities have been Paid in Full

any amount remaining in the Tax Escrow Account shall be paid in accordance with the order of the Bankruptcy Court. All deposits now or hereafter held in the Tax Escrow Account are hereby pledged as additional security for the Loan and the other Liabilities. Neither Lender nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments from the Tax Escrow Account, Lender or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, then the amounts escrowed shall be based on the entire tax bill and Debtor shall have no right to require an apportionment and Lender or its servicing agent may pay the entire tax bill notwithstanding that such taxes pertain in part to other property and Lender shall be under no duty to seek a tax division or apportionment of the tax bill. The Advance permitted to be made by this Section may be made by Lender, at Lender's sole and absolute discretion, to pay, on behalf of Debtor, the Taxes without further action on the part of Debtor and regardless of whether Debtor is able to comply with the terms, conditions and covenants of this Agreement at the time of such Advance.

#### 4.

#### SECURITY INTEREST; SETOFF

4.1 Grant of Security Interest. Debtor hereby pledges, assigns and grants to Lender a lien and security interest under the provisions of the UCC (collectively referred to as the "Security Interest") in the Collateral, as security for the payment and performance of the Loan and all other Liabilities. Any Collateral installed in or used in the Premises are to be used by Debtor solely for Debtor's business purposes and such Collateral will be kept on the Premises and will not be removed therefrom without the consent of Lender and may be affixed to such buildings but will not be affixed to any other real estate.

4.2 Remedies Cumulative. The exercise of any one or more of the remedies provided for under the UCC shall not be construed as a waiver of any of the other rights of Lender including having any Collateral deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Lender. At Lender's election, all Collateral at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged under the Mortgage irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement. Debtor will on demand deliver all financing statements that may from time to time be required by Lender to establish, perfect and continue the priority of Lender's security interest in the Collateral and shall pay all expenses incurred by Lender in connection with the renewal, continuation or extensions of any financing statements executed in connection with the Premises; and shall give advance written notice of any proposed change in Debtor's name, identity or structure and will execute and deliver to Lender prior to or concurrently with such change all additional financing statements that Lender may require to establish and perfect the priority of Lender's security interest.

4.3 Notification of Account Debtors and Other Obligors. Subject to the provisions of the Orders, Lender may at any time notify any account debtor or other person obligated to pay the amount due that such right to payment has been assigned or transferred to Lender for security and shall be paid directly to Lender. Debtor will join in giving such notice if Lender so requests. At any time after Debtor or Lender gives such notice to an account debtor or other obligor, Lender may, but need not, in Lender's name or in Debtor's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, or securing, any such right to payment, or grant any extension to, make any compromise or settlement with or otherwise agree to waive, modify, amend or change the obligations (including collateral obligations) of any such account debtor or other obligor.

4.4 Assignment of Insurance. As additional security for the payment and performance of the Loan, Debtor hereby assigns to Lender any and all monies (including proceeds of insurance and refunds of unearned premiums) due or to become due under, and all other rights of Debtor with respect to, any and all policies of insurance now or at any time hereafter covering the Collateral or any evidence thereof or any business records or valuable papers pertaining thereto, and Debtor hereby directs the issuer of any such policy to pay all such monies directly to Lender. At any time Lender may (but need not), in Lender's name or in Debtor's name, execute and deliver proof of claim, receive all such monies, endorse checks and other instruments representing payment of such monies, and adjust, litigate, compromise or release any claim against the issuer of any such policy.

4.5 License. Without limiting the generality of any other Loan Document or the Orders, Debtor hereby grants to Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property Rights of Debtor for the purpose of: (i) completing the manufacture of any in-process materials so that such materials become saleable Inventory, all in accordance with the same quality standards previously adopted by Debtor for its own manufacturing and subject to Debtor's reasonable exercise of quality control; and (ii) selling, leasing or otherwise disposing of any or all Collateral.

4.6 Financing Statement. Debtor authorizes Lender to file from time to time where permitted by law, such financing statements against collateral described as "all personal property" or describing specific items of collateral including commercial tort claims as Lender deems necessary or useful to perfect the Security Interest. A carbon, photographic, or other reproduction of this Agreement or of any financing statements signed by Debtor is sufficient as a financing statement and may be filed as a financing statement in any state to perfect the security interests granted hereby. For this purpose, the following information is set forth:

Name and address of Debtor:

Gateway Ethanol, L.L.C.  
307 S. Main Street  
Pratt, Kansas 67124

State Organizational Number of Debtor

3831724

Name and address of Secured Party:

Dougherty Funding LLC  
Suite 4300  
90 South Seventh Street  
Minneapolis, MN 55402

4.7 Duty of Care, etc. This Agreement does not contemplate a sale of Accounts, Contract Rights or Chattel Paper, and, as provided by law, Debtor is entitled to any surplus and shall remain liable for any deficiency. Lender's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if it exercises reasonable care in physically keeping such Collateral, or in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and Lender need not otherwise preserve, protect, insure or care for any Collateral. Lender shall not be obligated to preserve any rights Debtor may have against prior parties, to realize on the Collateral at all or in any particular manner or order or to apply any cash proceeds of the Collateral in any particular order of application. Lender has no obligation to clean-up or otherwise prepare the Collateral for sale. Debtor waives any right it may have to require Lender to pursue any third person for any of the Obligations.

4.8 Collateral. Lender's Security Interest in the Collateral shall have the priority set forth in the Interim Order or, upon entry of the Final Order, the Final Order. In addition, the Postpetition Indebtedness shall have the Superpriority Claims. Debtor shall execute and deliver any security agreement, collateral assignment, mortgage or other document or instrument deemed necessary by Lender to create and perfect such security interest or liens.

4.9 Automatic Perfection. Pursuant to Paragraph K of the Interim Order or the corresponding provision of the Final Order, Lender's Security Interest in the Collateral is duly perfected and recorded under all applicable federal or state or other laws as of the date of the entry of the Interim Order.

4.10 No Discharge; Survival of Claims. Unless Paid in Full, Debtor hereby agrees that (i) its obligations under this Agreement shall not be discharged by the entry of an order confirming a plan of reorganization (and Debtor, pursuant to Bankruptcy Code § 1141(d)(4), hereby waives any such discharge) and (ii) the Superpriority Claims granted to Lender pursuant to the Orders and the security interests and liens granted to Lender pursuant to the Orders shall not be affected in any manner by the entry of an order confirming a plan of reorganization.

4.11 Power of Attorney. Subject to the Orders, Debtor hereby irrevocably designates, makes, constitutes and appoints Lender (and all Persons designated by Lender) as Debtor's true and lawful attorney (and agent in fact) and Lender, or Lender's agent, may, without notice to Debtor and in either Debtor's or Lender's name, but at the cost and expense of Debtor:

- (i) At such time or times on or after the Closing Date as Lender or such agent, in its sole discretion, may determine, endorse Debtor's name on any checks, notes, acceptances, drafts, money orders or any other evidence of payment or proceeds of the Collateral which come into the possession of Lender or under Lender's control; and
- (ii) At such time or times upon or after the occurrence and during the continuance of any Event of Default as Lender or its agent in its sole and absolute discretion may determine: (a) settle, adjust, compromise, discharge or release any Collateral or any legal proceedings brought to collect any Collateral; (b) sell or otherwise transfer any Collateral upon such terms, for such amounts and at such time or times as Lender deems advisable; (c) take control, in any manner, of any item of payment or proceeds relating to any Collateral; (d) prepare, file and sign Debtor's name to a proof of claim in bankruptcy or similar document against any account debtors or to any notice of Lien, assignment or satisfaction of Lien or similar document in connection with any of the Collateral; (e) receive, open and process all mail addressed to Debtor and to notify postal authorities to change the address for delivery thereof to such address as Lender may designate; (f) endorse the name of Debtor upon any of the items of payment or proceeds relating to any Collateral and deposit the same to the account of Lender on account of the Postpetition Indebtedness; (g) endorse the name of Debtor upon any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or agreement relating to any Collateral; (h) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to any Collateral and to which Debtor has access; (i) make and adjust claims under policies of insurance; and (j) do all other acts and things necessary, in Lender's determination, to fulfill Debtor's obligations under this Agreement.

## 5.

### INSURANCE AND BONDS

5.1 Insurance. Contemporaneous with the First Advance Debtor shall obtain and shall continuously maintain thereafter, the insurance required by 5.1(d) through (h) of the Prepetition Senior Loan Agreement (the "Required Insurance") and thereafter shall comply with the duties, covenants and agreements respectively set forth in Section 5.3 of the Prepetition Senior Loan Agreement, which provisions are incorporated herein by reference and shall survive the termination of the Prepetition Senior Loan Agreement .

5.2 Collection of Proceeds. Debtor shall give Lender prompt notice of any damage to or destruction of the Premises and in case of any covered loss, Lender is hereby authorized at its option to settle and adjust any claim arising out of such coverage and collect and receipt for the Insurance Proceeds payable with respect to such loss. Any expense incurred by Lender in the adjustment and collection of Insurance Proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Lender) shall be reimbursed to Lender first out of any Insurance Proceeds. Debtor shall cooperate with Lender in obtaining for Lender the benefits of any coverage or other Insurance Proceeds payable to it and shall pay all reasonable expenses of Lender in participating in any loss adjustments (including the payment by Debtor of the expense

of an independent appraisal on behalf of Lender, if reasonably necessary to facilitate adjustment of a loss).

5.3 Self-Help. Subject to the provisions of the Orders, in the event Debtor fails to provide Lender with evidence of the insurance coverage required by this Section or at any time hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay any premium in whole or in part relating thereto, then Lender, without waiving or releasing any obligation or default by Debtor hereunder, may at any time (but shall be under no obligation to so act), obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto, which Lender deems advisable. This insurance coverage (i) may, but need not, protect Debtor's interests in such property, including, but not limited to, the Collateral, and (ii) may not pay any claim made by, or against, Debtor in connection with such property, including, but not limited to, the Collateral. Debtor may later cancel any such insurance purchased by Lender, but only after providing Lender with evidence that Debtor has obtained the insurance coverage required by this Section. If Lender purchases insurance for the Collateral, Debtor will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the principal amount of the Loans owing hereunder. The costs of the insurance may be more than the cost of the insurance Debtor may be able to obtain on its own.

5.4 Insurance Proceeds. In the event of an insured casualty to the Project, the Insurance Proceeds shall be applied to the payment of the Postpetition Indebtedness, whether due or not, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Lender. Any Insurance Proceeds applied to the payment of the Postpetition Indebtedness shall be applied in such order of application as Lender, may elect in its sole discretion. Any Insurance Proceeds applied to the restoration or repair of the Premises shall be applied in accordance with Sections 5.6(d), (e), and (f) and (h) of the Prepetition Senior Loan Agreement, which provisions are incorporated herein by reference and shall survive the termination of the Prepetition Senior Loan Agreement.

## 6.

CONDEMNATION

6.1 Condemnation. Debtor shall give Lender prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Premises and hereby assigns, transfers, and sets over to Lender the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Premises taken or damaged under such eminent domain or condemnation proceedings, Lender being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Excepting for the 30<sup>th</sup> Street County Road Improvements, Debtor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises or agreeing to a settlement unless prior written consent of Lender is obtained. Any expenses incurred by Lender in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to Lender first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Loan then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Lender.

6.2 Disbursement of Condemnation Proceeds. In the event of condemnation, the condemnation proceeds shall be applied upon or in reduction of the Postpetition Indebtedness, whether due or not, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Lender. Any such proceeds applied to the payment of the Postpetition Indebtedness shall be applied in such order of application as Lender, may elect in its sole discretion. Any such proceeds applied to the restoration or repair of the Premises shall be applied in accordance with Sections 5.6(d), (e), (f) and (h) of the Prepetition Senior Loan Agreement, which provisions are incorporated herein by reference and shall survive the termination of the Prepetition Senior Loan Agreement.

## 7.

REPRESENTATIONS AND WARRANTIES OF DEBTOR

7.1 Validity of Loan Documents. The Loan Documents and the Orders grant to Lender a valid and enforceable first lien and security interest in the Collateral subject only to Noble's security interest in the Noble Priority Collateral.

7.2 Conflicting Transactions of Debtor. The consummation of the transactions hereby contemplated and the performance of the obligations of Debtor under and by virtue of the Loan Documents and the Orders will not result in any breach of, or constitute a default under the Organizational Documents.

7.3 Legal Status of Debtor. Debtor is a duly organized, limited liability company, validly existing and in good standing under the laws of the State of Kansas and, subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, where applicable) has all power, authority, permits, consents, authorizations and licenses necessary to carry on its business, to construct, equip, own and operate the Project and, subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, where applicable) to execute, deliver and perform this Agreement and the other Loan Documents to which Debtor is a party; all

consents required of the ownership of Debtor necessary to authorize the execution, delivery and performance of this Agreement and of the other Loan Documents which have been or are to be executed by and on behalf of Debtor have been duly adopted and are in full force and effect; and, upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable) this Agreement and such other Loan Documents have been duly authorized, executed and delivered by and on behalf of Debtor and are the valid and binding obligations of Debtor, enforceable in accordance with their respective terms.

7.4 Pending Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Debtor threatened, against or affecting it, or the Premises, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, at law or in equity, or before or by any Governmental Authority, except actions, suits and proceedings which are fully covered by insurance or the Senior Foreclosure Action, the TIF Foreclosure Action, the Lurgi Arbitration Proceeding, the Lurgi State Court Proceeding and the Bankruptcy Case; and to Debtor's knowledge Debtor is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

7.5 Violations of Governmental Law, Ordinances or Regulations. Debtor has no knowledge of any violations or notices of violations of any federal or state law or municipal ordinance or order or requirement of the State in which the Premises are located or any municipal department or other governmental authority having jurisdiction affecting the Premises, which violations in any way relate to or affect the Premises.

7.6 Condition of Premises. The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, or subject to any condemnation action or exercise of eminent domain by a Governmental Authority.

7.7 Brokerage Commissions. Except for fees owed to William Blair & Company pursuant to its engagement letter with Debtor dated September \_\_\_, 2008 and as set forth in the Approved Budget, Debtor has not engaged the services of any broker to obtain the Loan. Debtor agrees to pay and shall indemnify Lender from any liability, claims or losses arising by reason of any Broker claiming a fee or commission due in connection with the Loan. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists. Debtor represents and warrants to Lender that no brokerage commissions are due in connection with the transaction contemplated hereby.

7.8 Hazardous Substances. Debtor represents that, to the best of its knowledge following due inquiry as a duly diligent property owner, (i) the Premises has been, now is and will in the future be free from contamination by Hazardous Substances excepting (a) immaterial quantities of Hazardous Substances leaked or spilled inadvertently from the operation of the Plant and which are reported in accordance with all Environmental Laws and remediated in accordance with Environmental Laws and (b) immaterial quantities of substances customarily and prudently used in the operation, cleaning and maintenance of the Premises in accordance with any applicable law, (ii) no release of any such Hazardous Substance has occurred on or about the Premises or into adjoining lands or the environment, (iii) the Premises currently complies, and will comply based on its current and anticipated use, with all current Environmental Laws, (iv) in connection with the ownership, operation, and use of the Premises, all necessary notices have been filed and all required permits, licenses and other authorizations



have been obtained, including those relating to the generation, treatment, storage, disposal or use of Hazardous Substances, (v) there is not presently at this time any non-remediated past or threatened investigation, inquiry or proceeding relating to the environmental condition of, or to the discharge of Hazardous Substances or violation of Environmental Laws on from or about the Premises, (vi) there are not to the best of Debtor's knowledge any underground storage tanks currently existing or to the extent such underground storage tanks are existing they are registered under the required Environmental Laws and do not contain any leakages, and (vii) Debtor has not received nor does it have any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning (a) the existence of Hazardous Substances on the Premises or in the immediate vicinity, (b) the transportation, releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Substances onto the Premises or from the Premises into the environment, waters or adjacent lands or (c) violation of Environmental Laws.

7.9 Flood Plain. The Premises are not located in a 100 Year Flood Plain as depicted on any FIRM Maps or as determined by the Federal Emergency Management Agency ("FEMA").

7.10 Margin Stock. Debtor is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System) and no proceeds of the Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

7.11 Purchase of Materials Under Conditional Sales Contract Other than the Thermal Oxidizer. No Materials, Equipment, or any other part of the Improvements, or articles of Materials or Equipment to be placed in the Project, have been or will be purchased or installed under any security agreement, title retention agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the Work except for those in existence prior to the Petition Date or unless authorized by Lender in writing.

7.12 Investment Company Act, etc. Debtor is not subject to regulation with respect to the creation or incurrence of indebtedness under the Investment Act of 1940, as amended, the Interstate Commerce Act, as amended, the Federal Power Act, as amended, or any applicable state public utility Law.

7.13 Office of Foreign Asset Control. Debtor represents and warrants that neither Debtor or any of its respective Affiliates is a Prohibited Person and Debtor and all of its respective Affiliates are in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. At all times throughout the term of the Loan, Debtor and all of its respective Affiliates shall: (i) not be a Prohibited Person (defined below); and (ii) be in full compliance with all applicable orders, rules, regulations and recommendations of OFAC.

The term "Prohibited Person" shall mean any person or entity:

- (a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the “Executive Order”);
- (b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (c) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;
- (d) who commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;
- (e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac), or at any replacement website or other replacement official publication of such list;
- (f) who is an Affiliate of or affiliated with a person or entity listed above; or
- (g) who is a “disregarded entity” as defined in IRS Regulation 1.1445-2(b)(2)(iii).

The term “Affiliate,” as used herein, shall mean as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with such person or entity or is a director or officer of such person or entity or of an Affiliate of such person or entity. As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

#### 7.14 Intellectual Property Rights.

- (i) Owned Intellectual Property. Attached as Exhibit “E” is a complete list of all patents, applications for patents, trademarks, applications for trademarks, service marks, applications for service marks, mask works, trade dress and copyrights for which Debtor is the registered owner (the “Owned Intellectual Property”). Except as disclosed on Exhibit “E”, (a) Debtor owns the Owned Intellectual Property free and clear of all restrictions (including covenants not to sue a third party), court orders, injunctions, decrees, writs or Liens, whether by written agreement or otherwise, (b) no Person other than Debtor owns or has been granted any right in the Owned Intellectual Property, (c) all Owned Intellectual Property is valid,

subsisting and enforceable and (d) Debtor has taken all commercially reasonable action necessary to maintain and protect the Owned Intellectual Property.

- (ii) Agreements with Employees and Contractors. Debtor has entered into a legally enforceable agreement with each of its salaried exempt employees and subcontractors obligating each such Person to assign to Debtor, without any additional compensation, any Intellectual Property Rights created, discovered or invented by such Person in the course of such Person's employment or engagement with Debtor (except to the extent prohibited by law), and further requiring such Person to cooperate with Debtor, without any additional compensation, in connection with securing and enforcing any Intellectual Property Rights therein; provided, however, that the foregoing shall not apply with respect to employees and subcontractors whose job descriptions are of the type such that no such assignments are reasonably foreseeable.
- (iii) Intellectual Property Rights Licensed from Others. Exhibit "E" also contains a complete list of all agreements under which Debtor has licensed Intellectual Property Rights from another Person ("Licensed Intellectual Property") including, without limitation, Contractor's Proprietary Data, other than readily available, non-negotiated licenses of computer software and other intellectual property used solely for performing accounting, word processing and similar administrative tasks ("Off-the-shelf Software") and a summary of any ongoing payments Debtor is obligated to make with respect thereto. Except as disclosed on Exhibit "E" and in written agreements copies of which have been given to Lender, Debtor's licenses to use the Licensed Intellectual Property are free and clear of all restrictions, Liens, court orders, injunctions, decrees, or writs, whether by written agreement or otherwise. Except as disclosed on Exhibit "E", Debtor is not obligated or under any liability whatsoever to make any payments of a material nature by way of royalties, fees or otherwise to any owner of, licensor of, or other claimant to, any Intellectual Property Rights.
- (iv) Other Intellectual Property Needed for Business. Except as disclosed on Exhibit "E", the Owned Intellectual Property and the Licensed Intellectual Property constitute all Intellectual Property Rights used or necessary to conduct Debtor's business as it is presently conducted or as Debtor reasonably foresees conducting it.
- (v) Infringement. Debtor has no knowledge of, and has not received any written claim or notice alleging, any infringement of another Person's Intellectual Property Rights (including any written claim that Debtor must license or refrain from using the Intellectual Property Rights of any third party) nor, to Debtor's knowledge, is there any threatened claim or any reasonable basis for any such claim.

7.15 Statements Made. The information that has been delivered in writing by Debtor to Lender or to the Bankruptcy Court in connection with any Loan Document, and any financial statement delivered pursuant thereto or hereto (other than to the extent that any such statements constitute projections), taken as a whole and in light of the circumstances in which made,

contains no untrue statement of a material fact and does not omit to state a material fact necessary to make such statements not misleading.

7.16 Boundary Lines; etc. The exterior lines of the Improvements are, and at all times will be, within the boundary lines of the Real Property. Debtor has examined and is familiar with all applicable covenants, conditions, restrictions and reservations, and with all applicable Governmental Requirements including, without limitation, Permits and Land Use Restrictions including, without limitation, building codes and zoning, environmental, Hazardous Substance, energy and pollution control laws, ordinances and regulations affecting the Plant, and the Plant conforms to and complies with said covenants, conditions, restrictions, reservations and Governmental Requirements and Land Use Restrictions in all material respects.

7.17 Public Improvements. The City has completed the City Water Line Improvements in accordance and the County has completed the County Road Improvements and each have the City and the County have paid all of the Public Improvements Contributions required to be paid to complete the relevant Public Improvements. Debtor has no obligation to contribute to the payment of the costs of the Public Improvements.

7.18 Facilities. The Electrical Facilities, the Grain Handling Systems, the Natural Gas Facilities, the Waste Discharge and Sewer Facilities and the Water Facilities have been completed in accordance with the applicable Project Agreements and Regulatory Approvals and are operating in accordance with the applicable Project Agreements. Debtor has no payment obligation under any such Project Agreement.

7.19 Construction Contracts. Except for the reciprocal claims being asserted by Debtor and Lurgi or that may in the future be asserted against Lurgi in the Lurgi Arbitration Proceedings and the Lurgi State Court Proceedings or otherwise, all Contractors (other than Lurgi), to Debtor's actual knowledge without investigation, have completed their Work in accordance with the terms of the applicable Construction Contracts and Permits. Except for the "Interstates Mechanic's Lien Claim", the "Mansel Mechanic's Lien Claim" and the "Lurgi Mechanic's Lien Claim" (as respectively defined in the Interim Order or, upon entry of the Final Order, as defined in the Final Order) Debtor has no payment obligation under any Construction Contract.

7.20 The Orders. On the Closing Date, the Interim Order will have been entered and will not have been stayed, amended, vacated, reversed or rescinded. Upon the maturity (whether by the acceleration or otherwise) of any of the obligations of Debtor hereunder and under the other Loan Documents, Lender shall be entitled to immediate payment of such obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court except as set forth in Paragraph N(2) of the Interim Order or its corresponding paragraph in the Final Order.

## 8.

### COVENANTS OF DEBTOR

8.1 Site. Debtor holds marketable fee simple title to the Premises subject only to the Permitted Exceptions and shall execute and deliver or cause to be executed and delivered such instruments as may be required by Lender and, if Lender, in its sole discretion requires a Title

Policy, Title to provide Lender with a valid first lien on and security interest in the Premises subject only to the Permitted Exceptions.

8.2 Closing Documents. Prior to any request for an Advance, Debtor shall cause the Closing Documents to be executed and delivered to Lender.

8.3 Other Documents. Prior to any request for an Advance, Debtor shall furnish Lender with copies of such other documents, instruments or materials as may be reasonably required by Lender, if any.

8.4 Use of Proceeds. Debtor shall use the proceeds of the Advances only for purposes set forth in the Approved Budget Expenses.

8.5 Restrictions on Transfer. Debtor may not effect or permit a Transfer except in accordance with Paragraph M of the Interim Order or the corresponding provision of the Final Order.

8.6 Expenses. Debtor shall pay all of Lender's reasonable out-of-pocket costs and expenses incurred in connection with obtaining Bankruptcy Court approval of the Interim Order and the Final Order, the preparation and negotiation of this Agreement, the other Loan Documents and the Orders and the closing of the Loan including Lender's reasonable attorney's fees and legal expenses. Debtor shall further pay all reasonable out-of-pocket costs and expenses (including Lender's reasonable attorney's fees and legal expenses) incurred in connection with the administration, amendment, modification and interpretation of this Agreement, the other Loan Documents and the Orders, the fees and costs of Lender's Inspecting Engineer, and the costs of title insurance, transfer taxes, license and permit fees, recording expenses, surveys, intangible taxes, appraisal fees, costs of collection and foreclosure including Lender's reasonable attorney's fees and legal expenses in litigation, mediation, bankruptcy and administrative proceedings and all appeals therefrom and all other costs and expenses incurred in the collection of the amounts due under this Agreement. Subject to the Approved Budget, Debtor agrees to pay any and all documentary stamps and/or intangible taxes and all interest and penalties associated therewith which may be assessed on account of the Loan. The obligations of Debtor under this Section shall survive the termination of this Agreement.

8.7 Governmental Requirements; etc. Debtor shall comply promptly with any Governmental Requirements, including Permits Regulatory Approvals, all Land Use Restrictions and appropriate supervising boards of fire underwriters and similar agencies and the requirements of any insurer issuing coverage on the Project.

8.8 Right of Lender to Inspect Premises. Debtor shall permit Lender and Title and their representatives and agents to enter upon the Premises and to inspect the Work and all Materials to be used in construction thereof and to cooperate and cause the Contractor(s) to cooperate with Lender, Title, and their representatives and agents during such inspections; provided, however, that this provision shall not be deemed to impose upon Lender or Title any duty or obligation whatsoever to undertake such inspections, to correct any defects in the Work or to notify any person with respect thereto. Debtor will hold Lender and Title harmless from and Lender and Title shall have no liability or obligation of any kind to Debtor, any third parties or creditors of Debtor in connection with any defective, improper or inadequate workmanship or

materials brought in or related to the Work or the Premises, or any Liens arising as a result of such workmanship or materials. Upon Lender's request, Debtor shall replace or cause to be replaced any such Work or Material found to be deficient; provided, that the cost of doing so has been included in an Approved Budget. Such inspections are solely for the purpose of Lender's underwriting requirements and such review shall not be construed as a review of suitability, merchantability, fitness, compliance with Governmental Requirements and Land Use Requirements or otherwise and may not be relied upon by Debtor or any other person or entity.

8.9 Lender's Professionals. Debtor shall permit Lender's designated appraisers, environmental consultants, surveyors and other management professionals access to the Premises and the Improvements, shall co-operate with such Persons in the performance of their respective duties. Debtor agrees that all of the costs incurred by Lender in connection therewith together with interest at the applicable interest rate shall be secured by the Collateral. If requested by Lender, Debtor shall permit Lurgi access to the Premises and the Improvements in order to permit Lurgi to perform its obligations under the Lurgi Contract and co-operate with Lurgi in order to permit Lurgi to do so.

8.10 Books and Records. Debtor shall set up and maintain accurate and complete books, accounts and records pertaining to the Project and the maintenance of the Plant. Lender, Title and Inspecting Engineer shall have the right at all reasonable times to inspect, examine and copy all books and records of Debtor relating to the Project and the operation of the Plant, and to enter and have free access to the Premises and Improvements and to inspect all Work done, labor performed, Materials and Equipment furnished in or about the Project. Any such inspection is solely for the purpose of Lender's underwriting requirements and such review shall not be construed as a review of suitability, merchantability, fitness, compliance with Governmental Requirements or otherwise and may not be relied upon by Debtor or any other person or entity.

8.11 Correction of Defects. Debtor shall from time to time promptly correct or cause the Contractor(s) to correct any defects in the Work or any departure from the Plan Documents not previously approved by Lender; provided, that the cost of doing so have been included in an Approved Budget.

8.12 Additional Documents. Debtor shall assign and deliver to Lender such documents, instruments, assignments and other writings, and to do such other acts necessary or desirable to preserve and protect the Collateral at any time securing or intended to secure the Note, as Lender may reasonably require; and shall do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the intents and purposes of this Agreement, as Lender shall reasonably require from time to time.

8.13 Compliance with Governmental Requirements. Debtor shall comply with and shall require the Contractor(s) to comply with all Governmental Requirements, Land Use Restrictions, Regulatory Approvals, and all rules, regulations, ordinances and laws bearing on the conduct of the Improvements, including the requirements of any insurer issuing coverage on the Project and the requirements of any supervising boards of fire underwriters or similar agencies.

8.14 Intentionally Omitted.

8.15 Regulation U. None of the transactions contemplated in this Agreement (including without limitation thereof, the use of the proceeds of the Loan) will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto including, without limitation, Regulation U of the Board of Governors of the Federal Reserve System. None of the proceeds of the Loan will be used to (i) purchase any “security” within the meaning of the Securities Exchange Act of 1934, as amended, or (ii) refinance any borrowing, the proceeds of which were used to purchase any such “security”.

8.16 Material Adverse Effect. Debtor will transmit to Lender, immediately upon receipt thereof, any communication which could have a material adverse affect on Lender’s security for the Loan or have a material adverse effect on the Project or the financial condition of Debtor and will promptly respond fully to any inquiry of Lender made with respect thereto.

8.17 Environmental Covenants. Debtor hereby covenants to Lender that Debtor shall (i) operate (to the extent of any operations thereon) and maintain the Project in full and complete compliance with all federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Substances, (ii) remediate any Hazardous Substances that are released, spilled, leaked, poured, emptied or otherwise released into the Premises, environment, waters or adjacent lands immediately upon discovery of same, in accordance with applicable laws, ordinances and orders of governmental authorities having jurisdiction thereof, (iii) pay or cause to be paid all costs associated with such remediation; (iv) prevent the migration of Hazardous Substances from or through the Premises into the environment, waters or adjacent lands; (v) keep the Premises free of any lien imposed pursuant to any state or federal law, rule, regulation or order in connection with the existence of Hazardous Substances on the Premises; (vi) not install or permit to be incorporated into any improvements in the Premises or to exist in or on the Premises any asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and environment; (vii) not cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of Debtor or any occupant of the Premises, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Hazardous Substances onto the Premises or into the environment or waters or other lands; and (viii) give all notifications and prepare all reports required by Environmental Laws or any other law with respect to Hazardous Substances existing on, released from or emitted from the Premises.

8.18 Environmental Indemnification. Debtor indemnifies and holds harmless Lender, its officers, directors, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns (“Indemnified Parties”) from and against any and all claims, losses, liabilities (including without limitation strict liability), suits, obligations, fines, damages, judgments, injuries, administrative orders, consent agreements and orders, penalties, actions, causes of action, charges, costs and expenses, including without limitation attorneys’ fees and consultants’ fees (i) arising out of the inclusion in the Premises of Hazardous Substances or the presence on, the release from, the generation, manufacture, refining, treatment, storage, handling or disposal on, in or from the Premises of any Hazardous Substances, or any underground or above ground storage tanks containing Hazardous Substances and the cost of removal and remediation of the foregoing, or (ii) arising out of the transportation, discharge or removal from the Premises of any Hazardous Substance, or (iii) arising out of the inclusion in any product

manufactured on the Premises of a Hazardous Substance; or (iv) arising out of the failure to perform the removal or abatement of or to institute a safe, effective and environmentally approved control plan for any Hazardous Substance or the replacement or removal of any soil, water, surface water, or ground water containing Hazardous Substance in accordance with Environmental Laws; or (v) arising out of the existence of any environmental lien against the Premises pursuant to any Environmental Laws; or (vi) arising out of any violation or claim of violation of Environmental Laws with respect to the Premises; or (vii) arising out of any administrative proceedings and negotiations of any description with any and all persons, political subdivisions, or governmental agencies in connection with an alleged or actual violation of an Environmental Law or presence of Hazardous Substances on the Premises; or (viii) arising out of any breach of any of the representations and covenants contained herein relating to Hazardous Substances and Environmental Laws (collectively the “Indemnified Loss”). Debtor shall bear, pay and discharge such Indemnified Loss as and when the same becomes due and payable.

## 9.

### FINANCIAL COVENANTS

9.1 Financial Information. Debtor covenants and agrees that until full and final payment of the Postpetition Indebtedness, Debtor shall provide to Lender the same information and reports that it has been providing to the Lender during the 90 days prior to the date of this Agreement and monthly accounts payable reports. Further, the Debtor covenants and agrees that it will provide the Lender with the following financial reports (“Required Financial Reports”) provided that if such reports are not required in the preceding sentence, such additional reports will be provided to the extent Debtor has the resources and capability to do so:

- (i) Monthly Financial Statements. As soon as available and in any event within 20 days after the end of each calendar month, Debtor will deliver to Lender an unaudited/internal balance sheet and statements of income and retained Cash Flow of Debtor as at the end of and for such calendar month and for the year to date period then ended, including in reasonable detail and stating in comparative form the figures for the corresponding date and periods in the previous year, all prepared in accordance with GAAP (excluding footnotes), subject to year-end audit adjustments and fairly representing Debtor’s financial position and the results of its operations, and accompanied by a certificate of one of Debtor’s authorized officers stating (a) that such financial statements have been prepared in accordance with GAAP (excluding footnotes), subject to year-end audit adjustments, and (b) whether or not such officer has knowledge of the occurrence of any Event of Default not theretofore reported and remedied and, if so, stating in reasonable detail the facts with respect thereto.
- (ii) Collateral Reports. On request within 20 days after the end of each calendar month or more frequently if Lender so requires, Debtor will deliver to Lender agings of Debtor’s accounts receivable and its accounts payable.
- (iii) Defaults. As promptly as practicable (but in any event not later than five business days) after an Officer of Debtor obtains actual knowledge of the occurrence of any Default or Event of Default, Debtor will deliver to Lender notice of such



occurrence, together with a detailed statement by a responsible officer of Debtor of the steps being taken by Debtor to cure the effect thereof.

- (iv) Collateral. Promptly upon knowledge thereof, Debtor will deliver to Lender notice of any material loss of or material damage to any Collateral or of any substantial material adverse change in any Collateral or the prospect of payment thereof.
- (v) Intellectual Property.
  - (a) Debtor will give Lender 30 days prior written notice of its intent to acquire material Intellectual Property Rights; Debtor will give Lender 30 days prior written notice of its intent to dispose of material Intellectual Property Rights; and upon request, shall provide Lender with copies of all applicable documents and agreements.
  - (b) Promptly upon knowledge thereof, Debtor will deliver to Lender notice of (A) any infringement of its Intellectual Property Rights by others, (B) claims that Debtor is infringing another Person's Intellectual Property Rights and (C) any threatened cancellation, termination or material limitation of its Intellectual Property Rights.
  - (c) Promptly upon receipt, Debtor will give Lender copies of all registrations and filings with respect to its Intellectual Property Rights.
- (vi) Reports to Members. Promptly upon their distribution, Debtor will deliver to Lender copies of all financial statements, reports and proxy statements that Debtor shall have sent to all of its Members.
- (vii) Tax Returns. If requested by Lender, Debtor will delivery to Lender copies of the state and federal tax returns and all schedules thereto for Debtor when filed.
- (viii) Violations of Law. Promptly upon knowledge thereof, Debtor will deliver to Lender notice of Debtor's violation of any law, rule, or regulation, the non-compliance with which could materially and adversely affect Debtor's business or its financial condition.
- (ix) Supplemental Approved Budget; etc. By no later than 5:00 p.m. (Central time) each Monday, a proposed Supplemental Approved Budget in the form of the Approved Budget updating the information on the then current Approved Budget for the remaining period of the Postpetition Financing, which proposed Supplemental Approved Budget can be approved or rejected by Lender, in its sole discretion to the extent such proposed amounts exceed the amounts in the Proposed Budget (after taking into account the Permitted Variances).
- (x) Other Reports. From time to time, with reasonable promptness, Debtor will deliver to Lender any and all receivables schedules, collection reports, deposit records, equipment schedules, copies of invoices to account debtors, shipment

documents and delivery receipts for goods sold, and such other material, reports, records or information as Lender may reasonably request.

- (xi) US Trustee Reports and Pleadings. The Debtor shall deliver to the Lender all reports made to the United States Trustee at the same time such reports are delivered to the US Trustee. The Debtor will serve the Lender with any pleading it serves in the Bankruptcy Case.

In the event Debtor fails to furnish any such Required Financial Reports within five (5) days after written request to Debtor, the same shall be an Event of Default and in addition to any other remedies available to Lender, Lender may cause an audit to be made of the respective books and records at the sole cost and expense of Debtor. Lender also shall have the right to examine at their place of safekeeping at reasonable times all books, accounts and records relating to the operation of the Premises.

9.2 Permitted Liens. Debtor will not create, incur or suffer to exist any Lien upon or of any of its assets, now owned or hereafter acquired, to secure any indebtedness; excluding, however, from the operation of the foregoing, the following (collectively, “Permitted Liens”):

- (a) the security interest and liens created by the Loan Documents; and
- (b) the security interest and liens that existed prior to the Petition Date.

Notwithstanding the foregoing, all Permitted Liens shall be subordinated to the extent provided in the Orders.

9.3 Indebtedness. Debtor will not incur, create, assume or permit to exist any indebtedness or liability on account of deposits or advances or any indebtedness for borrowed money or letters of credit issued on Debtor’s behalf, or obligations under any Operating Lease any other indebtedness or liability evidenced by notes, bonds, debentures, leases or similar obligations, except:

- (i) the Postpetition Indebtedness;
- (ii) indebtedness incurred prior to the Petition Date.

9.4 Guaranties. Debtor will not assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person, except the endorsement of negotiable instruments by Debtor for deposit or collection or similar transactions in the ordinary course of business.

9.5 Member Loans and Distributions. Debtor:

- (i) Shall not make any Distributions to its Members.
- (ii) Shall not (a) pay any dividend or distribution, whether in cash or otherwise, to any of its Members, or (b) purchase or redeem any of its membership interests or any warrants, options or other rights in respect thereof or set aside funds for any of the foregoing.

9.6 Books and Records; Inspection and Examination. To the extent that the Debtor has the resources and capability to do so, Debtor will keep accurate books of record and account for itself pertaining to the Collateral and pertaining to Debtor's business and financial condition and such other matters as Lender may from time to time request in which true and complete entries will be made in accordance with GAAP and, upon Lender's request, will permit any officer, employee, attorney or accountant for Lender to audit, review, make extracts from or copy any and all company and financial books and records of Debtor at all times during ordinary business hours, to send and discuss with account debtors and other obligors requests for verification of amounts owed to Debtor, and to discuss Debtor's affairs with any of its Directors, Officers, employees or agents. Debtor hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender, at Debtor's expense, all financial information, books and records, work papers, management reports and other information in their possession regarding Debtor provided however that the authorization granted herein shall not be deemed to authorize any attorney to disclose information subject to the attorney client privilege. Debtor will permit Lender, or its employees, accountants, attorneys, or agents, to examine and inspect any Collateral or any other property of Debtor at any time during ordinary business hours.

9.7 Payment of Expenses. Debtor will only use the proceeds of the Loan to pay expenses set forth in the Approved Budget Expenses and will not incur any expense or liability that is not set forth in the Approved Budget without first obtaining Lender's prior consent.

9.8 Maintenance of Properties. Debtor will make the expenditures set forth in the Approved Budget that are necessary to keep and maintain the Plant and other Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted).

9.9 Preservation of Existence. Debtor will preserve and maintain its limited liability company existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business and shall conduct its business in an orderly, efficient and regular manner.

9.10 Delivery of Instruments, etc. Upon request by Lender, Debtor will promptly deliver to Lender in pledge all Instruments, Documents and Chattel Paper constituting Collateral, duly endorsed or assigned by Debtor.

9.11 Sale or Transfer of Assets. Debtor will not sell, lease, assign, transfer or otherwise dispose of all or a substantial part of its assets, or (ii) any Collateral or any interest therein (whether in one transaction or in a series of transactions) to any other Person except as permitted by Paragraph M of the Interim Order or the corresponding provision of the Final Order.

9.12 Accounting. Debtor will not adopt any material change in accounting principles other than as required by GAAP. Debtor will not adopt, permit or consent to any change in its fiscal year.

9.13 Place of Business; Name. Debtor will not transfer its chief executive office or principal place of business, or move, relocate, close or sell any business location. Debtor will not permit any tangible Collateral or any records pertaining to the Collateral to be located in any

state or area in which, in the event of such location, a financing statement covering such Collateral would be required to be, but has not in fact been, filed in order to perfect the Security Interest. Debtor will not change its name or jurisdiction of organization.

9.14 Trade Account Payables. Debtor will not permit any of its trade account payables incurred after the Petition Date to remain unpaid for more than 20 Business Days after Debtor receipt of the invoice therefor, regardless of the terms of payment that are set forth in such invoice.

9.15 Notification of Inability to Perform Covenant. In the event the Debtor determines that the Approved Budget does not include amounts necessary to comply with a covenant contained in this Agreement, the Debtor shall immediately notify the Lender of the covenant with which it will be unable to comply and the amount of funds necessary to comply. Notwithstanding the Debtor's obligation to make the report provided herein, the Lender will have no obligation to provide such additional funding.

## 10.

### OPERATING COVENANTS

#### 10.1 Operating Covenants.

- (i) Debtor will not conduct any business operations on the Premises without first obtaining the prior written consent of Lender.
- (ii) Debtor will secure the Premises in a manner satisfactory to Lender and shall maintain the Plant in a condition that will permit it to be returned to operational status and in accordance with the maintenance requirements set forth on Exhibit "F" attached hereto and incorporated herein by reference.
- (iii) Debtor will not take any action that adversely affects the value of any Collateral for the Postpetition Indebtedness or that adversely affects the rights of Lender with respect thereto including, without limitation, the filing of any motion to reject any Project Agreement or Regulatory Approval pursuant to Section 365 of the Bankruptcy Code.

10.2 Compliance With Americans With Disabilities Act. Debtor covenants and agrees that it will comply with the requirements of the Americans with Disabilities Act, as the same may be amended from time to time, during the entire term of the Loan and that it will comply with any requirements established by any federal, state or local governmental authorities having jurisdiction over such matters. All future maintenance, renovation, repair and construction conducted on the Project shall all be completed in accordance with the Americans with Disabilities Act. Failure to comply with the provisions of the Americans with Disabilities Act shall constitute an Event of Default and shall entitle Lender to exercise all remedies available to it hereunder.

10.3 Compliance With OSHA. Debtor covenants and agrees that it will comply with the requirements of the Occupational Safety and Health Act ("OSHA"), as the same may be amended from time to time, during the entire term of the Loan and that it will comply with any requirements established by any federal, state or local governmental authorities having

jurisdiction over such matters. All operations, maintenance, renovation, repair and construction conducted on the Project shall all be completed in accordance with OSHA. Failure to comply with the provisions of OSHA shall constitute an Event of Default and shall entitle Lender to exercise all remedies available to it hereunder.

10.4 Intellectual Property, etc. Debtor shall maintain its right to use all material patents, trademarks, service marks, trade names, copyrights, licenses and other rights with respect to the foregoing necessary for the present and planned future conduct of its business, without any known conflict with the rights of others, except for such patents, trademarks, service marks, trade names, copyrights, licenses and rights the loss of which, and such conflicts, that in any such case individually or in the aggregate could not reasonably be expected to have a material adverse effect on Debtor and the operations of the Project.

## 11.

### ERISA

11.1 ERISA Plans. Neither Debtor nor any ERISA Affiliate (i) maintains or has maintained any Plan, (ii) contributes or has contributed to any Multiemployer Plan or (iii) provides or has provided post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required under Section 601 of ERISA, Section 4980B of the IRC or applicable state law). Neither Debtor nor any ERISA Affiliate will (i) adopt, create, assume or become a party to any Plan, (ii) incur any obligation to contribute to any Multiemployer Plan, (iii) incur any obligation to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required by law) or (iv) amend any Plan in a manner that would materially increase its funding obligations without giving prior written notice thereof to Lender.

11.2 ERISA Representation. Debtor represents, warrants and covenants that it is acting on its own behalf and that as of the date hereof it is not an employee benefit plan as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended, each of the foregoing hereinafter referred to collectively as a “Plan”, and the assets of Debtor do not constitute “plan assets” of one or more such Plans within the meaning of Department of Labor Regulation Section 2510.3-101. Debtor also represents, warrants and covenants that it will not be reconstituted as a Plan or as an entity whose assets constitute “plan assets”.

11.3 Full Compliance. Neither Debtor nor any ERISA Affiliate has received any notice or has any knowledge to the effect that it is not in full compliance with any of the requirements of ERISA, the IRC or applicable state law with respect to any Plan. No Reportable Event exists in connection with any Plan. Each Plan which is intended to qualify under the IRC is so qualified, and no fact or circumstance exists which may have an adverse effect on the Plan’s tax-qualified status. Neither Debtor nor any ERISA Affiliate has (i) any accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the IRC) under any Plan, whether or not waived, (ii) any liability under Section 4201 or 4243 of ERISA for any withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan or (iii) any liability or knowledge of any facts or circumstances which could result in any liability to the Pension Benefit Guaranty Corporation, the Internal Revenue Service, the Department of

Labor or any participant in connection with any Plan (other than routine claims for benefits under the Plan).

11.4 Reportable Event. As soon as possible, and in any event within 30 days after Debtor knows or has reason to know that any Reportable Event with respect to any Plan has occurred, Debtor will deliver to Lender a statement signed by the Officer who is Debtor's chief financial officer setting forth details as to such Reportable Event and the action which Debtor proposes to take with respect thereto, together with a copy of the notice of such Reportable Event to the Pension Benefit Guaranty Corporation. As soon as possible, and in any event within 10 days after Debtor fails to make any quarterly contribution required with respect to any Plan under Section 412(m) of the IRC, Debtor will deliver to Lender a statement signed by the Officer who is Debtor's chief financial officer setting forth details as to such failure and the action which Debtor proposes to take with respect thereto, together with a copy of any notice of such failure required to be provided to the Pension Benefit Guaranty Corporation. As soon as possible, and in any event within ten days after Debtor knows or has reason to know that it has or is reasonably expected to have any liability under Sections 4201 or 4243 of ERISA for any withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan, Debtor will deliver to Lender a statement of Debtor's chief financial officer setting forth details as to such liability and the action which Debtor proposes to take with respect thereto.

11.5 Withdrawal. Debtor will not and will not permit any Affiliate to withdraw from any Multiemployer Plan if such withdrawal could result in withdrawal liability (as described in Part I of Subtitle E of Title IV of ERISA). Debtor will not and will not permit any Affiliate to terminate any Plan if such termination could result in the imposition of a lien on any property of Debtor or any Affiliate pursuant to Section 4068 of ERISA.

11.6 Compliance. Compliance by Debtor and managing Member with the provisions hereof will not involve any "Prohibited Transaction" (as defined in ERISA).

11.7 Indebtedness. Debtor shall not, directly or indirectly, contract, create, incur, assume or suffer to exist any indebtedness (including the guaranty or the assumption of the indebtedness of any other Person or the pledge of property to secure the indebtedness of any other Person), except for (i) the Postpetition Indebtedness under this Agreement, (ii) indebtedness incurred prior to the Petition Date, and (iii) indebtedness that represents trade payables or expenses incurred in the ordinary course of Debtor's business as currently conducted and due and payable within thirty (30) days.

11.8 Chapter 11 Claims. Debtor shall not incur, create, assume, suffer to exist or permit any other superpriority claim that is pari passu with or senior to the claims of Lender against Debtor in the Bankruptcy Case.

## 12.

CONDITIONS PRECEDENT TO AN ADVANCE

12.1 Conditions Precedent to any Advance. It shall be a condition precedent to the First Advance and any Subsequent Advance that:

- (i) Title. Marketable fee simple title to the Premises shall be vested in Debtor subject only to Permitted Exceptions and the Mortgage and other Loan Documents shall have been duly recorded in such offices as required to create a valid and binding, enforceable first lien against the Premises and, if required by Lender, a Title Policy shall have been issued insuring Lender to that effect.
- (ii) Loan Documents. The Loan Documents shall have been duly executed and delivered to Lender and shall be in full force and effect with no default thereunder.
- (iii) Order on Postpetition Facility. The Interim Order shall have been entered by the Bankruptcy Court in form and substance satisfactory to Lender and its counsel in their sole and absolute discretion and shall be in full force and effect and shall not have been stayed, reversed, modified, or amended in any respect without Lender's prior written consent.
- (iv) Representations and Warranties. The representations and warranties in this Agreement shall be true and correct on and as of the date of each Advance.
- (v) Adverse Changes. No Material Adverse Change shall have occurred.
- (vi) Covenants. Debtor shall have complied with all of the covenants made by it in this Agreement.
- (vii) Good Standing and Authority. Lender shall have received reasonable evidence of good standing and authority of Debtor.
- (viii) Loan Fee. Debtor shall pay to Lender the Loan Fee, which shall be fully earned and payable on the Closing Date. The Loan Fee shall constitute part of the Postpetition Indebtedness and may, at Lender's option, be charged directly to any loan account of Debtor maintained by, or for the benefit of, Lender.
- (ix) Approvals. All Required Approvals shall have been satisfied.
- (x) No Default or Event of Default. No Default Event of Default has occurred and is continuing under this Agreement or would result from this Agreement becoming effective.

12.2 Conditions Precedent to Future Advances. It shall be a condition precedent to all Advances subsequent to the First Advance that all Conditions Precedent to First Advance set forth in Section 8.1 have been satisfied.

## 13.

METHODS OF DISBURSEMENTS OF LOAN PROCEEDS

13.1 Procedure. Provided that the Conditions Precedent to an Advance under the Loan Agreement with Lender are satisfied, not more often than bi-weekly, Debtor may submit a Request For Advance requesting an Advance of Loan Funds to pay the Approved Budget Expenses. Each Request For Advance shall clearly set forth the Approved Budget Expenses to be paid by Debtor out of the Advance and, if requested by Lender, shall be accompanied by a statement or invoice for the cost or service rendered and such other supporting evidence as Lender may require to substantiate the payment requested. Debtor irrevocably authorizes Lender to disburse all Advances into a non-interest bearing, bank account (the “Disbursement Account”) of Debtor maintained at bank acceptable to Lender, in its sole discretion, that has executed a control agreement in a form satisfactory to Lender, in its sole discretion, with respect to such Disbursement Account; provided, that proceeds of the Loan can be paid directly to Lender to pay interest, fees and expenses on the Loan, to fund the Tax Escrow or to fund any other expense included on an Approved Budget. The proceeds of the Loan shall bear interest from and after the date of an Advance.

13.2 Disbursement for Approved Budget Expenses. No disbursements will be made for amounts other than for Approved Budget Expenses and then not to exceed without the consent of Lender the line items set forth therein as such amounts may be increased by an Approved Variance.

## 14.

RESERVED

## 15.

EVENTS OF DEFAULT

It shall be an “Event of Default” under this Agreement if : a) the Postpetition Facility terminates pursuant to the Interim Order or the Final Order; b) there occurs a breach or default under any covenant, warranty or agreement contained in this Agreement or any other Loan Document unless such covenant, warranty or agreement is in direct conflict with the provisions of the Orders; or c) any material representation made this Agreement or any other Loan Document proves to be untrue.

## 16.

REMEDIES OF LENDER

16.1 Exercise of Rights. Subject to the Orders and upon the occurrence of an Event of Default, all Postpetition Indebtedness shall be immediately due and payable and Lender may, at its option, exercise one or more of the following:

- (i) Foreclosure. Exercise any of the various remedies provided in any of the Loan Documents, including the foreclosure of the Mortgage and in connection therewith file the Stipulations;
- (ii) Cumulative Rights. Cumulatively exercise all other rights, options and privileges provided by law;



- (iii) Cease Making Advances. Cease making Advances;
- (iv) Vote the Collateral. Vote the Collateral;
- (v) Assignment of Construction Contracts. Enforce the assignment of any Construction Contracts and exercise Debtor's rights thereunder;
- (vi) Receiver. Seek the appointment of a receiver to take possession of the Project and to operate the Project and to complete the Project and in connection therewith file the Stipulations;
- (vii) Protect Interest. Do all things necessary to protect its interest in the Project and the security afforded the Loan by a completed Project;
- (viii) Perform Work. Perform or cause to be performed any and all Work and labor necessary to complete the Project;
- (ix) Provide Security. Employ security watchmen to protect the Premises;
- (x) Prevent Waste. Take such action as necessary to prevent waste;
- (xi) Regulatory Approvals. Comply with, effect a cure under and/or prevent a failure or default under any Regulatory Approvals;
- (xii) Operating Agreements. Comply with, effect a cure under and/or prevent a failure or default under any Operating Agreement;
- (xiii) Cumulative Rights. Singularly or cumulatively exercise all other rights, options and privileges provided by law;
- (xiv) Rights to Enter and Complete. Require Debtor to vacate the Premises and Lender may, at its election, (whether prior to any sale pursuant to a foreclosure of the Mortgage or during any period of redemption) either through itself, its agents or a receiver appointed by a court of competent jurisdiction:
  - (a) Do all things necessary to protect its interest in the Project and the security afforded the Loan by a completed Project;
  - (b) Enter into possession;
  - (c) Perform or cause to be performed any and all Work and labor necessary to complete the Project;
  - (d) Employ security watchmen to protect the Premises;
  - (e) Take such action as necessary to prevent waste;
  - (f) Comply with, effect a cure under and/or prevent a failure or default under the Construction Contract(s);

- (g) Comply with, effect a cure under and/or prevent a failure or default under any Regulatory Approval;
- (h) Comply with, effect a cure under and/or prevent a failure or default under any Operating Agreement;
- (i) Comply with, effect a cure under and/or prevent a failure or default under the TIF;

and in furtherance thereof Debtor irrevocably, absolutely and unconditionally agrees that Lender may disburse that portion of the Loan not previously disbursed and such amounts as Lender may deem necessary or appropriate to protect the Project and the lien of the Loan Documents and the Orders and to do all of the things in connection with the Project which Debtor may do in its own behalf and hereby appoints Lender as its attorney in fact to perform the foregoing. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked by death or otherwise. Said attorney-in-fact shall also have power to prosecute and defend all actions and proceedings in connection with the construction of the Project and to take such action and require such performance as it deems necessary. In accordance therewith, Debtor hereby assigns and quitclaims unto Lender all sums to be advanced hereunder including Retainage. Any funds so disbursed or fees or charges so incurred shall be included in any amount necessary for Debtor to pay to redeem the Premises after any foreclosure sale over and above and notwithstanding the bid price at any foreclosure sale. SUBJECT IN EACH CASE TO THE BANKRUPTCY CODE, THE ORDERS, AND THE BANKRUPTCY CASE GENERALLY, DEBTOR AGREES THAT IT WILL COOPERATE WITH LENDER IN LENDER'S EXERCISE OF ITS REMEDIES HEREUNDER, WILL NOT OBJECT OR CONTEST THE EXERCISE OF LENDER'S REMEDIES HEREUNDER AND EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHT NOW OR HEREAFTER EXISTING AT LAW, IN EQUITY OR BY STATUTE TO OBJECT TO THE EXERCISE BY LENDER OF ALL OR ANY OF THE AFORESAID REMEDIES. DEBTOR ACKNOWLEDGES THAT IT IS REPRESENTED BY COUNSEL AND THE REMEDIES HEREIN AND THE CONTENT AND EFFECT OF THIS WAIVER HAVE BEEN FULLY DISCUSSED WITH AND EXPLAINED BY COUNSEL AND EXECUTES AND DELIVERS THIS WAIVER ONLY UPON A FULL UNDERSTANDING OF THE SAME AND THE RIGHTS WAIVED HEREUNDER. DEBTOR FURTHER UNDERSTANDS THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT IN RELIANCE UPON THIS WAIVER AND THE RIGHT TO EXERCISE SUCH REMEDIES AND BUT FOR SUCH WAIVER WOULD NOT MAKE THE LOAN.

16.2 Rights Cumulative. No right or remedy by this Agreement or by any Loan Document or the Orders or instrument delivered by Debtor pursuant hereto, conferred upon or reserved to Lender shall be or is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy or now or hereafter arising at a law or in equity or by statute. Except as Lender may hereafter otherwise agree in writing, no waiver by Lender or any breach by or default of Debtor of any of its obligations, agreements, or covenants under this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other obligation, agreement or covenant, nor shall any forbearance by Lender to seek a remedy for such breach be deemed a waiver of its rights and

remedies with respect to such a breach, nor shall Lender be deemed to have waived any of its rights and remedies unless it be in writing and executed with the same formality as this Agreement.

## 17.

GENERAL CONDITIONS AND MISCELLANEOUS

17.1 Direct Conflict with Orders. Pursuant to the terms of the Interim Order and the Final Order (when entered), the Court has approved this Agreement and the other Loan Documents, which contain provisions which supplement the obligations of the Debtor under the Orders. In the event there is any material conflict between this Agreement and the other Loan Documents and the terms of the Orders, which the Debtor and the Lender do not believe exists, then the provisions of the Orders shall control.

17.2 Rights of Third Parties. All conditions of the obligations of Debtor hereunder are imposed solely and exclusively for the benefit of Lender and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it desirable to do so. In particular, Lender makes no representations and assumes no duties or obligations as to third parties concerning the quality of the construction of the Improvements or the absence therefrom of defects. In this connection, Debtor agrees to and shall indemnify Lender from any liability, claims or losses resulting from the disbursement of the Loan proceeds or from the condition of the Premises whether related to the quality of construction or otherwise and whether arising during or after the term of the Loan made by Lender to Debtor in connection therewith. This provision shall survive the repayment of said Loan and shall continue in full force and effect so long as the possibility of any such liability, claims or losses exists.

17.3 Evidence of Satisfaction of Conditions. Any condition of this Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and Lender shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or non-existence at its sole cost and expense except as otherwise expressly provided in the Loan Documents.

17.4 Assignment. Debtor may not assign this Loan Agreement or any of its rights or obligations hereunder, including the right to an Advance, without the prior written consent of Lender.

17.5 Successors and Assigns Including in Parties. Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Agreement by or on behalf of Debtor or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.

17.6 Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

17.7 Invalid Provisions to Affect no Others. If fulfillment of any provision hereof, or any transaction related thereto at the time performance of any such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and such clause or provision shall be deemed invalid as though not herein contained, and the remainder of this Agreement shall remain operative in full force and effect.

17.8 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

17.9 Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

17.10 Notices. Any notices and other communications permitted or required by the provisions of this Agreement (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Lender shall be addressed as follows:

Dougherty Funding LLC  
Suite 4300  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
Attention: Executive Vice President and Chief Operating Officer

Each notice to Debtor shall be addressed as follows:

Gateway Ethanol, L.L.C.  
307 S. Main Street  
Pratt, Kansas 67124  
Attention: President

17.11 Governing Law. Notwithstanding the place of execution of this instrument, the parties to this instrument have contracted for Minnesota law to govern this instrument and it is

controllingly agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of Minnesota without regard to the principles of conflicts of law.

17.12 Participation. Lender may in its sole and exclusive discretion issue participations in the Loan and/or assign all or a portion of its obligations to make the Loan to participant(s) in the Loan. Lender may assign the Loan and its rights and obligations to another lender or to a Person that Lender merges with, is merged into, or who acquires the assets of Lender or whose assets are acquired by Lender. Lender may divulge all information received by it from Debtor or any other source, including but not limited to information relating to the Loan, to the Project and to Debtor, to any such participant(s) or other lenders, and Debtor shall cooperate with Lender, at Lender's expense, in satisfying the reasonable requirements of any such participant(s) or other lenders for consummating such a purchase or participation.

17.13 Consent to Jurisdiction. Debtor and Lender submit and consent to the jurisdiction of the Bankruptcy Court. Upon the occurrence of the Termination Date, Debtor submits and consents to personal jurisdiction of the Courts of the State of Kansas and Courts of the United States of America sitting in such State for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of Kansas. Upon the occurrence of the Termination Date, litigation may be commenced in any state court of general jurisdiction for the State of Kansas or the United States District Court located in that state, at the election of Lender. Subject to any requirement that Lender obtain relief from the automatic stay imposed by §362 of the Bankruptcy Code, nothing contained herein shall prevent Lender from bringing any action against any other party or exercising any rights against any security given to Lender, or against Debtor personally, or against any property of Debtor, within any other state. Commencement of any such action or proceeding in any other state shall not constitute a waiver of consent to jurisdiction or of the submission made by Debtor to personal jurisdiction within the State of Kansas.

17.14 Counterparts. This instrument may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The signatures to this instrument may be executed on separate pages and when attached to this instrument shall constitute one complete document.

17.15 Exculpation. Lender, for itself and its successors and assigns, acknowledges and agrees that (i) no Member is a party to this Agreement and each Member is a legal entity separate from Debtor; (ii) no Member has, and no Member assumes any of the obligations of Debtor; and (iii) no Member has any obligation to contribute capital, or otherwise provide financial support, to Debtor or to any other Person in respect of the Project or the Plant (excepting for those equity contributions required to be made by a Member in accordance with the provisions of the Organizational Documents of Debtor) and Lender enters into this Agreement without reliance upon the creditworthiness of any Member for repayment of the Loan and without reliance upon any undertaking by any Member in respect of the Project or the Plant. Each Member is a third party beneficiary of this Section 17.14 and is entitled to rely on and enforce this Section 17.14 against the parties to this Agreement and their respective successors and assigns. For purposes of this Section 17.14 the term "Member" means and includes all subsidiaries and affiliates of a Member. Nothing herein shall be construed or is intended to prevent Lender from commencing a

foreclosure action, an action in lieu of foreclosure, the exercise of any power of sale under any Loan Document, an action for specific performance, any demand for a deficiency judgment against Debtor, or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, and the other Loan Documents, or in any collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable solely against Debtor but not its Members and in any collateral given to Lender, and Lender agrees that it shall not sue for, seek or demand any deficiency judgment against any Member of Debtor in any such action or proceeding. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Lender to name Debtor but not its Members as a party defendant in any action or suit for foreclosure and sale of the collateral; (iii) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; or (v) constitute a prohibition against Lender to seek a deficiency judgment against Debtor but not its Members in order to fully realize upon the Collateral or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies under each Loan Document.

17.16 Waiver. THE UNDERSIGNED WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH ANY PARTIES TO THIS INSTRUMENT ARE INVOLVED DIRECTLY OR INDIRECTLY AND ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS INSTRUMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, AND WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS INSTRUMENT.

17.17 Revival and Reinstatement of Obligations. If the incurrence or payment of the Postpetition Indebtedness by Debtor or the transfer by any or all of such parties to Lender of any property of either or both of such parties should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, and other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of Lender related thereto, the liability of such Debtor or such guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.18 Business Purpose; Not for Nominee. Debtor agrees that it will use the proceeds of the Loan for "business purposes", within the meaning of Section 16-207 of the Kansas Statutes Annotated, and not for personal, family or household purposes. Debtor hereby represents and warrants to Lender that Debtor is borrowing the Loan on Debtor's own behalf, and not as nominee, designee, or agent for another, nor is Debtor acting for another in so borrowing the Loan.

17.19 Interim Order and Final Order. Debtor and Lender have reviewed this Agreement and the other Loan Documents and have determined that nothing in this Agreement or any other

Loan Document conflicts or disagrees with, or is otherwise inconsistent with the Interim Order in any material respect.

17.20 Fees, Costs and Expenses Payable by Debtor. Notwithstanding anything to the contrary contained herein or in any other Loan Document, Lender acknowledges and agrees that to the extent Debtor is required to pay any invoices, fees, costs or expenses of any kind or nature under or pursuant to any Loan Document, the source of any such payment is the proceeds of the Loan, and that Debtor does not and will not have a source of, or means for obtaining any such amounts independent of the Loan.

17.21 Statutory Notice. NOTICE: The following provisions are included in compliance with K.S.A. Sections 16-117 and 16-118. THIS WRITTEN AGREEMENT IS THE FINAL EXPRESSION OF DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT BETWEEN DEBTOR AND LENDER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR OR CONTEMPORANEOUS ORAL AGREEMENT BETWEEN DEBTOR AND LENDER. THE FOLLOWING SPACE (WHICH DEBTOR AND LENDER AGREE IS SUFFICIENT SPACE) IS PROVIDED FOR THE PLACEMENT OF NONSTANDARD TERMS, IF ANY (IF THERE ARE NO NONSTANDARD TERMS TO BE ADDED, STATE "NONE"):

NONE

**DEBTOR AND LENDER HEREBY AFFIRM THAT THERE IS NO UNWRITTEN ORAL LOAN AGREEMENT BETWEEN DEBTOR AND LENDER WITH RESPECT TO THE SUBJECT MATTER OF THIS WRITTEN DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT.**

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**Initialed For Debtor**

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**Initialed For Lender**

IN WITNESS WHEREOF, Debtor and Lender have hereunto caused these presents to be executed on the date first above written.

GATEWAY ETHANOL, L.L.C., a Kansas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: President

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF PRATT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, the President of Gateway Ethanol, L.L.C., a Kansas limited liability company, on behalf of the limited liability company.

In Witness whereof, I have hereunto set by hand and affixed my seal the day and year last written above.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Minnesota  
My Commission expires: \_\_\_\_\_



