

ASSET PURCHASE AGREEMENT

Between

HEREFORD BIOFUELS, L.P.,

as the Seller,

and

ETHANOL ACQUISITION, LLC,

as the Purchaser

Dated as of April 22, 2009

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of April 22, 2009, is made by and between Hereford Biofuels, L.P., a Delaware limited partnership (the “**Seller**”), as seller, and Ethanol Acquisition, LLC, a Delaware limited liability company (the “**Purchaser**”), as purchaser.

P R E A M B L E

WHEREAS, the Seller owns an innovative biomass-fueled ethanol plant currently under construction in Hereford, Texas; and

WHEREAS, on January 23, 2009 (the “**Petition Date**”), the Seller and certain of its Affiliates (as defined below) filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code, §§ 101, *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”), and those cases have been consolidated for procedural purposes and are being administered jointly as Case No. 09-30453 (HDH) (the “**Bankruptcy Case**”); and

WHEREAS, the Seller has determined that a prompt disposition of the Acquired Assets (as defined below) is necessary in order to preserve the value inherent in the Acquired Assets for the benefit of its creditors; and

WHEREAS, upon the terms and subject to the conditions set forth herein and pursuant to Sections 363 and 365 of the Bankruptcy Code, the Seller desires to sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser desires to purchase and accept from the Seller, the Acquired Assets as contemplated herein; and

WHEREAS, the members of Purchaser are the lenders (the “**Lenders**”) under that certain Financing Agreement dated as of July 28, 2006 by and among Seller, as Borrower, the Lenders, Société Générale as Administrative Agent, Disbursement Agent, Collateral Agent and LC Fronting Bank, and SG Americas Securities, LLC, as Lead Arranger (the “**Financing Agreement**”); and

WHEREAS, the Lenders have, contemporaneously with the execution of this Asset Purchase Agreement, contributed certain of their rights and obligations under the Financing Agreement to Purchaser; and

WHEREAS, the parties desire to consummate the Proposed Transactions (as defined below) as promptly as practicable after the Bankruptcy Court enters an order approving the Proposed Transactions; and

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants and agreements made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. The following words and terms as used herein shall have the following meanings:

“**Acquired Assets**” has the meaning specified in Section 2.1.

“**Action**” means any demand, claim, action, suit or proceeding, arbitral action, inquiry, criminal prosecution or investigation by or before any Governmental Authority.

“**Affiliate**” (and, with a correlative meaning, “*affiliated*”) means, with respect to any Person, any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person, including any Subsidiary of such Person. As used in this definition, “*control*” (and, with correlative meanings, “*controlled by*” and “*under common control with*”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interests, by Contract or otherwise).

“**Agreement**” means this Asset Purchase Agreement, together with the appendices, exhibits and schedules attached hereto.

“**Allocation Statement**” has the meaning specified in Section 3.3.

“**Assigned Permits**” has the meaning specified in Section 2.1(f).

“**Assignment and Assumption Agreement**” has the meaning specified in Section 4.2(b).

“**Assumed Contracts**” has the meaning specified in Section 2.1(a).

“**Assumed Liabilities**” has the meaning specified in Section 2.3.

“**Auction**” has the meaning specified in Section 10.1.

“**Bankruptcy Case**” has the meaning specified in the Preamble.

“**Bankruptcy Code**” has the meaning specified in the Preamble.

“**Bankruptcy Court**” has the meaning specified in the Preamble.

“**Bidding Procedures**” has the meaning specified in the Bid Procedures Order.

“**Bidding Procedures Order**” means the Order (I) Approving Bidding Procedures for the Sale of Substantially All of the Assets of Debtor Hereford Biofuels, L.P., (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases and (IV) Scheduling and Auction and Sale Hearing, which was entered in the Bankruptcy Case on March 12, 2009.

“**Bill of Sale**” shall mean the bill of sale transferring to the Purchaser the Acquired Assets, substantially in the form of **Exhibit A**.

“Books and Records” means business records of the Seller (in any form or medium), including all books, ledgers, files, reports, plans, records, manuals, sales and credit records, books of account, financial records, invoices, supplier lists, billing records, engineering records, drawings, blueprints, schematics, studies, surveys, reports, advertising and sales material, customer lists, customer records, test records, financing records, and personnel and payroll records, to the extent they are related to the Business or the Acquired Assets, other than (a) any Bankruptcy Court filings or documents relating to or necessary for winding up of the Seller and the administration of the Bankruptcy Case, (b) any materials about employees, disclosure of which would violate an employee’s reasonable expectation of privacy, (c) any materials that are subject to Seller’s attorney-client privilege, (d) any documents reasonably necessary for purposes of the prosecution, settlement or enforcement by the Seller of the Retained Rights of Action, or (e) any documents primarily relating to the Excluded Assets or the Excluded Liabilities (such items described in (a) through (e), the **“Retained Books and Records”**).

“Business” means the Seller’s business of developing, owning and (upon substantial completion of the construction thereof) operating the Plant, and any business activities of the Seller incidental to the foregoing.

“Business Day” means a day other than a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed for business.

“Business Permits” has the meaning specified in Section 5.6(b).

“Cash” means all cash and cash equivalents, on hand or in banks, certificates of deposit, bank or savings and loan accounts and U.S. government securities of any kind or nature.

“Closing” and **“Closing Date”** have the meanings specified in Section 4.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any written or oral contract, agreement, indenture, note, bond instrument, lease (including any real property lease), license or other document or arrangement, undertaking, practice or authorization that is binding on any Person or property under applicable Law.

“Cure Amounts” has the meaning specified in the Bidding Procedures Order.

“Deed” has the meaning specified in Section 4.2(c).

“Disclosure Schedules” has the meaning specified in the introductory paragraph of Article 5.

“Effective Time” has the meaning specified in Section 4.1.

“Entitled Real Property” has the meaning specified in Section 2.1(i).

“Environmental Laws” means any applicable Laws of any Governmental Authority: (i) imposing obligations, Liability, or standards of conduct with regard to releases or threatened

releases to soil, surface water, groundwater, air or any other environmental media of any hazardous waste, hazardous material, pollutant, contaminant or other such substance or compound, including toxic substances, asbestos containing materials, polychlorinated biphenyls (PCB), lead, hazardous waste, petroleum or any refined product or fraction or derivative thereof (collectively, “**Hazardous Substances**”); (ii) governing the use, treatment, storage, disposal, transport or handling of Hazardous Substances; (iii) imposing obligations, Liability, or standards of conduct with regard to pollution or the protection of the environment or human health or safety or (iv) imposing obligations, Liability, or standards of conduct with regard to the health and safety of employees, contractors, or other individuals. Such Environmental Laws shall include the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Toxic Substances Control Act and all other applicable Laws pertaining to Hazardous Substances, the environment, human health or safety.

“**Estates’ Assets**” has the meaning specified in the Settlement Agreement and Release that was filed with the Bankruptcy Court on April 13, 2009 under Docket No. 285.

“**Excluded Assets**” has the meaning specified in Section 2.2.

“**Excluded Contracts**” has the meaning specified in Section 2.2(a).

“**Excluded Liabilities**” has the meaning specified in Section 2.4.

“**Final Order**” means an order which has not been reversed or vacated and not stayed or subject to a stay, and as to which no motion to vacate, reconsider, alter or amend shall be pending.

“**Financing Agreement**” has the meaning specified in the Preamble.

“**GAAP**” has the meaning specified in Section 1.2(f).

“**Governmental Authority**” means any government, governmental entity, department, commission, board, agency or instrumentality, or any court, tribunal or judicial body, in each case whether federal, state, commonwealth, county, provincial, local or foreign.

“**Governmental Order**” means any Law, order, judgment, injunction, decree, stipulation or determination issued, promulgated or entered by or with any Governmental Authority of competent jurisdiction.

“**Ground Lease Assignment**” has the meaning specified in Section 4.2(c).

“**Intellectual Property Rights**” means all rights in and to (a) patents, patent applications and patent disclosures, together with all re-issuances, continuations, continuations in part, revisions, extensions, reexaminations, provisionals, divisions, renewals, revivals, and foreign counterparts thereof and all registrations and renewals in connection therewith, (b) trademarks, service marks, trade dress, logos, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated

therewith, and all applications, registrations and renewals in connection therewith, (c) copyrightable works, copyrights and all applications, registrations and renewals in connection therewith, (d) mask works and all applications, registrations and renewals in connection therewith, (e) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data, hardware reference manuals and engineering, programming, service and maintenance notes and logs), (f) Software, (g) Internet addresses, uniform resource locaters, domain names, websites and web pages, and (h) goodwill relating to any or all of the foregoing.

“**Knowledge**” of the Seller with respect to a given matter means the knowledge that the individuals identified on **Appendix I** actually possess or should possess in the exercise of reasonable diligence and investigation with respect to the matter, given their respective positions with, and authority with respect to, the Seller.

“**Law**” means any law, ordinance, regulation, rule, code or rule of common law, or otherwise of any Governmental Authority.

“**Leased Real Property**” has the meaning specified in Section 2.1(h).

“**Lenders**” has the meaning specified in the Preamble.

“**Liability**” means any claim, as defined by Bankruptcy Code Section 101(5) including any indebtedness, obligation or other liability (whether or not absolute, accrued, matured, contingent, liquidated, known, suspected, fixed or otherwise), including, any fine, assessment, penalty, judgment, award, loss, claim, demand, damage or settlement respecting any Action.

“**Lien**” means any security interest, pledge, mortgage, lien, charge, hypothecation, adverse claim of ownership or use, restriction on transfer (such as a right of first refusal or other similar right), defect of title, or other encumbrance of any kind or character.

“**Lurgi Technology License**” means that certain License of Technology, dated October 15, 2005, between Lurgi PSI, Inc. and Seller.

“**Material Adverse Effect**” means any occurrence, event or effect which individually or together with other occurrences, events or effects has, or would be reasonably expected to have, a materially adverse affect on (a) the Acquired Assets, or (b) the ability of the Seller to consummate the Proposed Transactions; provided, however, that no occurrence, event or effect arising from or relating to any of the following shall be taken into account in determining whether there has been a Material Adverse Effect:

(i) the commencement of the Bankruptcy Case, the announcement of this Agreement or the pendency or consummation of the Proposed Transactions;

(ii) compliance by the Seller with the terms of, or the taking of any action required or contemplated by, this Agreement, or the failure to take any action prohibited by this Agreement; or

(iii) any actions taken by the Seller, or failure by the Seller to take action, in each case to which the Purchaser has in writing and in advance approved, consented to or requested.

In any event, the occurrence of any material casualty with respect to the Plant and/or any of the other tangible assets included in the Acquired Assets shall constitute a “Material Adverse Effect.”

“**Obligations**” means the Obligations, as such term is defined in the Financing Agreement.

“**Operation Permits**” has the meaning specified in Section 5.6(c).

“**Other Transaction Documents**” has the meaning specified in Section 5.2.

“**Owned Real Property**” has the meaning specified in Section 2.1(h).

“**Periodic Taxes**” has the meaning specified in Section 4.4(b).

“**Permits**” means permits, licenses, franchises, approvals, certificates, certifications, consents, emissions allowances, waivers, concessions, registrations or other authorizations of any Governmental Authority.

“**Permitted Encumbrances**” means (i) Liens for Taxes not yet due or which are being contested in good faith by appropriate proceedings, provided that adequate reserves, with respect to Taxes which are being contested are maintained on the books of the Seller in conformity with GAAP and (b) easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the Business.

“**Person**” means an individual, firm, partnership, limited liability company, association, unincorporated organization, trust, corporation, or any other entity, including a Governmental Authority.

“**Petition Date**” has the meaning specified in the Preamble.

“**Plant**” means the biomass-fueled ethanol plant currently under construction in Hereford, Texas.

“**Proposed Transactions**” means all of the transactions contemplated hereby, including the transfer, sale, conveyance, assignment and delivery by the Seller to the Purchaser, and the acquisition by the Purchaser from the Seller, of substantially all of the assets of the Seller as

contemplated herein and the performance by the parties of their respective covenants and obligations hereunder.

“Purchase Price” has the meaning specified in Section 3.1(a).

“Purchaser” has the meaning specified in the introductory paragraph to this Agreement.

“Real Property” has the meaning specified in Section 2.1(i).

“Retained Books and Records” shall have the meaning set forth in the definition of Books and Records.

“Retained Rights of Action” has the meaning specified in Section 2.2(c).

“Rights of Action” means any and all rights, claims (including claims as defined in the Bankruptcy Code), lawsuits, causes of action, rights of recovery, rights of set off, rights of recoupment, refunds, demands, defenses, judgments, accounts, and rights, claims, powers or privileges of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, held by Seller against any Person.

“Sale Approval Order” means an order of the Bankruptcy Court approving this Agreement and the Proposed Transactions in the form of **Exhibit B**, with only such changes thereto as the Purchaser agrees in its absolute and sole discretion.

“Seller” has the meaning specified in the introductory paragraph to this Agreement.

“Software” means any computer program, operating system, application, system, firmware or software of any nature, whether operational, active, under development or design, non-operational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

“Tax” or **“Taxes”** means any federal, commonwealth, state, county, provincial, local or foreign income, gross receipts, sales, use, ad valorem, employment, severance, transfer, gains, profits, excise, franchise, personal and real property, capital stock, premium, minimum and alternative minimum or other taxes, fees, levies, licenses, duties, assessments or charges of any kind or nature whatsoever imposed by any Governmental Authority (whether payable directly or by withholding and including any tax liability incurred or borne as a transferee or successor or by contract, or otherwise), together with any interest, surcharges, penalty (civil or criminal), or additional amounts imposed by, any Governmental Authority with respect thereto.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and further including any amendment thereof.

“**Termination Date**” has the meaning specified in Section 12.1(b).

“**Transaction Taxes**” has the meaning specified in Section 4.4(a).

“**Treasury Regulations**” means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to Sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar, substitute, proposed or temporary final Treasury Regulations or their successor Treasury Regulations.

1.2 Interpretation. The following provisions shall govern the interpretation of this Agreement:

(a) “Herein” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Appendix, Exhibit or Schedule.

(b) Headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

(c) Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa, and words importing individuals shall include Persons and vice versa, in each case, as the context so requires.

(d) The calculation of time within which or following which any act is to be done or step is to be taken pursuant to this Agreement excludes the date that is the reference day in calculating such period.

(e) Unless specified otherwise, whenever anything is required to be done or any action is required to be taken hereunder on or by a day that is not a Business Day, then such thing may be validly done and such action may be validly taken on or by the next succeeding day that is a Business Day.

(f) Accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as employed in the United States of America (“**GAAP**”). Wherever in this Agreement reference is made to a calculation to be made in accordance with GAAP, such reference shall be deemed to be to GAAP from time to time applicable as at the date on which such calculation is made or required to be made in accordance with GAAP.

(g) As used in this Agreement, reference to dollar amounts, unless otherwise specifically indicated, shall mean the lawful money of the United States of America.

(h) The terms “include,” “includes” and “including” mean including without limiting the generality of any description preceding such term, and, for purposes of this Agreement, the rule of *ejusdem generis* shall not be applicable to limit a general statement that follows an enumeration of specific matters, to matters similar to the matters specifically enumerated.

(i) All references to Articles, Sections, Subsections, Appendices, Exhibits or Schedules in this Agreement are to Articles, Sections, Subsections, Appendices, Exhibits or Schedules of or to this Agreement unless otherwise specified.

ARTICLE 2 PURCHASE AND SALE OF ACQUIRED ASSETS

2.1 Purchase of the Acquired Assets. Upon the terms and subject to the conditions of this Agreement, at and as of the Effective Time, the Seller shall sell, transfer, convey, assign and deliver to the Purchaser, free and clear of all Liabilities (other than Assumed Liabilities) and Liens (other than Permitted Encumbrances), and the Purchaser shall purchase and accept from the Seller, all right, title and interest of the Seller in, to and under the Acquired Assets. “**Acquired Assets**” means all tangible and intangible rights, properties and assets of Seller of every nature, kind and description, used, held for use or useful in (or otherwise related to) the Business and/or the Plant, wheresoever located, whether arising by contract, Law or otherwise, and whether or not carried or reflected on the Books and Records, as the same may exist at the Effective Time, including such rights, properties and assets hereafter acquired by the Seller but excluding the Excluded Assets. Without limiting the generality of the foregoing and except for the Excluded Assets, the Acquired Assets shall include all right, title and interest of the Seller in, to and under the following as the same may exist at the Effective Time:

(a) Subject to Section 2.5, all Contracts listed or described on **Appendix II**, (collectively, the “**Assumed Contracts**”);

(b) All accounts and accounts receivable and other rights to payment, pre-paid expenses, prepayments, security deposits and other deposits included in prepaid assets (excluding deposits under Excluded Contracts), or rights of payment (including rights to insurance proceeds) and any claim, remedy or right related to the foregoing;

(c) All tangible personal property, including apparatus, materials, furniture, fixtures, inventory, supplies, parts, equipment, computers, machinery, vehicles and other tangible property, including those items listed or described on **Appendix III**;

(d) All Intellectual Property Rights, including all Software owned or licensed by the Seller (including related documentation);

(e) All Books and Records;

(f) To the extent (assuming the making of all necessary filings and the securing of all necessary consents) transferable under applicable Law, all Permits, including any pending applications for or with regard to any Permit (collectively, the “**Assigned Permits**”);

(g) All Rights of Action, including those listed or described on **Appendix IV**;

(h) (i) All real property listed or described as fee property on **Appendix V**, in each case together with all structures, facilities or improvements located thereon, all fixtures, systems, equipment and other items of personal property attached or appurtenant thereto and all easements, licenses, rights of way and other appurtenances thereto that affect such real property (all of the foregoing, collectively, the “**Owned Real Property**”); and (ii) all leasehold interests in (to the extent such leasehold interest exists under an Assumed Contract) real property listed or described as leasehold property on **Appendix V**, in each case together with all structures, facilities or improvements located thereon, all fixtures, systems, equipment and other items of personal property attached or appurtenant thereto and all easements, licenses, rights of way and other appurtenances thereto that affect such real property (all of the foregoing, collectively, the “**Leasehold Real Property**”);

(i) All easements, rights of way, real property licenses, and other real property entitlements benefiting the Owned Real Property and/or the Plant (the “**Entitled Real Property**” and, together with the Owned Real Property and the Leased Real Property, the “**Real Property**”);

(j) The Plant;

(k) All guarantees, warranties, indemnities and similar rights; and

(l) All refunds of insurance premiums to be paid by the Seller to the Purchaser pursuant to Section 8.3.

2.2 **Excluded Assets**. Notwithstanding anything to the contrary contained herein, including in Section 2.1, the Seller shall retain all of its right, title and interest in and to, and shall not transfer to the Purchaser, the following (collectively, the “**Excluded Assets**”):

(a) All Contracts other than the Assumed Contracts, including those Contracts identified on **Appendix VI** attached hereto (collectively, the “**Excluded Contracts**”) and deposits relating thereto;

(b) All Cash;

(c) All Rights of Action listed or described on **Appendix VI** (the “**Retained Rights of Action**”);

(d) All other assets listed or described on **Appendix VI**;

(e) All Retained Books and Records;

(f) Any real property, or interest therein, held by the Seller other than the Real Property;

(g) This Agreement and all other agreements between the Seller on the one hand and the Purchaser on the other hand entered into on or after the date of this Agreement;

(h) All Tax refunds, carry forwards or carry backs;

(i) All insurance policies maintained by the Seller which by their terms are not transferable or assignable to the Purchaser; and

(j) All Estates' Assets, excluding any trucks or vehicles that are owned by Seller.

2.3 Assumed Liabilities. At and as of the Effective Time, subject to the second sentence of Section 2.4, the Purchaser shall assume only the following Liabilities of the Seller (collectively, the "**Assumed Liabilities**"):

(a) All Liabilities first accruing or first due to be performed from and after the Effective Time pursuant to or in respect of all Assumed Contracts to the extent the Bankruptcy Court authorizes assumption and assignment of such contracts;

(b) All Liabilities arising from and after the Effective Time out of the operation of the Business, or the ownership of the Acquired Assets, by Purchaser after the Effective Time;

(c) All Liabilities for Transaction Taxes;

(d) All Liabilities related to any Cure Amounts for which the Purchaser is liable under Section 2.5, including any Cure Amounts associated with the Lurgi Technology License or any amounts which are otherwise determined to be payable under Section G(2)(i) of the Lurgi Technology License, if any; and

(e) All Liabilities for Periodic Taxes for which the Purchaser is liable under Section 4.4(b).

2.4 Excluded Liabilities. The Purchaser shall not assume or be liable for or bound by any Liabilities of the Seller (whether or not asserted, scheduled or evidenced by a filed proof of claim or other form of writing evidencing such claim filed in the Bankruptcy Case, whether secured, priority, administrative or unsecured, or whether accruing prior to or after the commencement of the Bankruptcy Case) other than the Assumed Liabilities (such Liabilities, collectively, the "**Excluded Liabilities**"). For the avoidance of doubt and without intending to limit the generality or effect of the foregoing, the Excluded Liabilities shall include, and the Assumed Liabilities will not include, the following Liabilities of the Seller:

(a) Except as provided in Section 2.3(d), all Liabilities under the Assumed Contracts accruing prior to the Effective Time; and

(b) All Liabilities under the Excluded Contracts or in respect of any other Excluded Asset, in each case whether accruing prior to, at or after the Effective Time.

2.5 Assumed Contracts; Cure Amounts. The Purchaser shall pay all Cure Amounts in respect of the Assumed Contracts at or prior to the Closing (other than Cure Amounts associated with the Lurgi Technology License, if any, which shall be paid by the Purchaser in accordance with the Sale Approval Order). Nothing in this Agreement or any Other Transaction Document, nor the consummation of the Proposed Transactions, shall be construed as an attempt or agreement to assign any Assumed Contract (other than the Lurgi Technology License) unless and until the Purchaser shall have paid the Cure Amount with respect to such Assumed Contract.

2.6 Non-Assignment of Permits.

(a) Anything contained herein to the contrary notwithstanding, (i) nothing in this Agreement shall constitute an assignment or attempted assignment of any Assigned Permit that if, after giving effect to the provisions of Sections 363 and 365 of the Bankruptcy Code, is not capable of being assigned without first obtaining the consent or approval of any Governmental Authority or other third party, or if such assignment or attempted assignment would constitute a breach thereof or a violation of applicable Law or in any way negatively affect the rights of Seller or Purchaser (as the assignee of such Assigned Permit), prior to the time that all necessary consents and approvals for such assignment have been obtained and (ii) no breach of this Agreement shall have occurred by virtue of such non-assignment. If, after giving effect to the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, the Seller shall cooperate with the Purchaser, at the Purchaser's expense but otherwise without further consideration, in any reasonable arrangement designed to provide for the Purchaser the benefits and obligations of or under any such Assigned Permit; provided, that nothing in this Section 2.6 shall (x) require the Seller to make any expenditure or incur any obligation on its own or on the Purchaser's behalf or (y) prohibit the Seller from ceasing operations or winding up its affairs following Closing. Following the Closing, any such Assigned Permit shall be assigned to the Purchaser promptly after all necessary consents and approvals for such assignment have been obtained.

(b) Notwithstanding the foregoing, and in furtherance and not in limitation of Section 7.4(a), prior to the Closing, (i) each of the Seller and the Purchaser shall use its reasonable best efforts to make and obtain approval of all filings with all Governmental Authorities for the issuance and/or transfer to the Purchaser of the Assigned Permits, or applications for the Assigned Permits, necessary in order for the Purchaser to operate the Business and own the Acquired Assets from and after the Effective Time, and (ii) the Seller shall cause its personnel and representatives to cooperate fully with the reasonable requests of the Purchaser and its representatives, accountants and counsel in connection with such issuance and/or transfer of such Assigned Permits.

ARTICLE 3 CONSIDERATION

3.1 Consideration. The total consideration payable by the Purchaser to the Seller in consideration of the sale, transfer, conveyance, assignment, and delivery of the Acquired Assets to the Purchaser, and in reliance upon the representations, warranties, covenants and agreements of the Seller set forth herein, is (i) a principal amount of the Obligations equal to \$25,000,000 (the "**Purchase Price**"); and (ii) the assumption by the Purchaser of the Assumed Liabilities.

3.2 Purchase Price Allocation. The Purchaser and Seller shall negotiate in good faith prior to the Closing to agree on a statement setting forth the value of the Acquired Assets to be used for the allocation of the Purchase Price (together with the Assumed Liabilities) among the Acquired Assets in accordance with Section 1060 of the Code and the applicable Treasury Regulations. If the Purchaser and the Seller agree on such statement (the “**Allocation Statement**”), the Seller and the Purchaser shall report an allocation of such Purchase Price among the Acquired Assets in a manner entirely consistent with the Allocation Statement and shall act in accordance with such Allocation Statement in the preparation of financial statements and filing of all Tax Returns (including filing Internal Revenue Service Form 8594 with its federal income tax return for the taxable year that includes the Closing Date) and in the course of any Tax audit, Tax review or Tax litigation matter relating hereto. Nothing in the Allocation Statement shall be binding upon creditors of the Seller or in any way bind any party in interest to the Bankruptcy Case.

ARTICLE 4 CLOSING

4.1 Closing. The consummation of the Proposed Transactions (the “**Closing**”) shall take place on the first Business Day following the satisfaction or waiver of all conditions set forth in Article 9 (other than those conditions that by their terms are to be satisfied at the Closing (but subject to the full satisfaction or due waiver of all such conditions prior to or at the Closing)) (the “**Closing Date**”) commencing at 10:00 a.m. at the offices of Jones Day, 2727 N. Harwood Street, Dallas, Texas 75201, or at such other time, place and date as may be mutually agreed upon by the Purchaser and the Seller. The Closing will be effective as of 12:01 a.m. (“**Effective Time**”) on the Closing Date.

4.2 The Seller’s Deliveries. At or prior to the Closing, the Seller shall deliver to the Purchaser the Acquired Assets, free and clear of all Liens (other than Permitted Encumbrances) and Liabilities (other than Assumed Liabilities), and the following:

- (a) Bill of Sale. The Bill of Sale duly executed by the Seller and notarized;
- (b) Assignment and Assumption Agreement. The Assignment and Assumption Agreement pertaining to the Assumed Liabilities duly executed by the Seller, substantially in the form of **Exhibit C** (the “**Assignment and Assumption Agreement**”);
- (c) Real Property. For each parcel of Real Property owned by the Seller and included in the Acquired Assets, a recordable deed without warranty (each, a “**Deed**”) substantially in the form of **Exhibit D-1**, executed by the Seller, with all appropriate notarizations and certifications as required by the applicable Governmental Authority, and for each parcel of Real Property leased by the Seller and included in the Acquired Assets, a recordable assignment and assumption (the “**Ground Lease Assignment**”) substantially in the form of **Exhibit D-2**, executed by the Seller, with all appropriate notarizations and certifications as required by the applicable Government Authority;
- (d) Titles to Vehicles. Titles and licenses to any vehicles owned by the Seller and included in the Acquired Assets duly endorsed and notarized;

(e) FIRPTA. A non-foreign affidavit of the Seller (and/or its tax-paying parent if the Seller is a disregarded entity under the Code) dated as of the Closing Date in form and substance as required under the Treasury regulations issued pursuant to Section 1445 of the Code.

(f) Copies. Copies, as filed in the Bankruptcy Case, of (i) the Bidding Procedures Order, (ii) Sale Approval Order, (iii) Certificates of Service or Publication of the Bidding Procedures Motion, (iv) any notices or publication required by the Bidding Procedures Order, and (v) all pleadings, notices and orders pertaining to, resulting from or in connection with any Cure Notice (as defined in the Bidding Procedures Order); and

(g) Other Documents and Instruments. Such other endorsements, assignments, assumptions, instruments and documents as may be reasonably requested by the Purchaser to consummate the Proposed Transactions, each in form and substance reasonably satisfactory to the Purchaser and its counsel (including such other endorsements, assignments, assumptions, instruments and documents as may be reasonably requested by the Purchaser's senior lenders and their counsel).

4.3 The Purchaser's Deliveries. At or prior to the Closing, the Purchaser shall deliver to the Seller the following:

(a) Purchase Price. Evidence that an amount of the Obligations equal to the Purchase Price will be cancelled effective upon the Closing;

(b) Assignment and Assumption Agreement. The Assignment and Assumption Agreement pertaining to the Assumed Contracts and the Ground Lease Assignment pertaining to the Leased Real Property in each case duly executed by the Purchaser; and

(c) Other Documents and Instruments. Such other endorsements, assignments, assumptions, instruments and documents as may be reasonably requested by the Seller to consummate the Proposed Transactions, each in form and substance reasonably satisfactory to the Seller and its counsel.

4.4 Taxes.

(a) Transaction Taxes. Any sales, use, transfer or similar Taxes that may be payable by reason of the sale of the Acquired Assets under this Agreement in the Proposed Transactions ("**Transaction Taxes**") shall be the responsibility and obligation of the Purchaser regardless of whether any Tax authority seeks to collect such Taxes from the Seller or the Purchaser. In no event shall either party to this Agreement be responsible for the Taxes based on net income, margin or gain of the other party that arises as a consequence of the consummation of the Proposed Transactions.

(b) Periodic Taxes. As to any Acquired Assets acquired by the Purchaser, the Purchaser shall assume the liability for all real and personal property taxes and ad valorem Taxes ("**Periodic Taxes**") for all Tax periods including but not ending on the Closing Date that (as of the Closing Date) are not yet due and payable. The Periodic

Taxes described in this Section 4.4(b) shall not be apportioned between the Seller and the Purchaser in any way.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as specifically set forth on the disclosure schedules attached to this Agreement (“**Disclosure Schedules**”), as a material inducement to the Purchaser to enter into this Agreement and consummate the Proposed Transactions, the Seller hereby represents and warrants to the Purchaser that the statements contained in this Article 5 are true and correct on the date hereof and as of the Closing Date. The Disclosure Schedules shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Article 5.

5.1 **Organization.** The Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware and, except as affected by the pendency of the Bankruptcy Case, has all requisite power and authority to own, lease and operate its properties and to carry on the Business as it is now being conducted. The Seller is duly qualified to transact business and is in good standing as a foreign limited partnership in each jurisdiction where the character of its activities requires such qualification. The Seller has heretofore made available to the Purchaser true, correct and complete copies of its certificate of limited partnership and agreement of limited partnership or other organizational documents as are currently in effect.

5.2 **Authorization.** Subject only to Bankruptcy Court approval pursuant to the Sale Approval Order, the Seller has full power and authority to execute and deliver this Agreement and each agreement, document or instrument contemplated hereby (collectively, the “**Other Transaction Documents**”) required to be delivered by it hereby or in connection herewith and to perform its obligations under this Agreement and the Other Transaction Documents required to be delivered by it hereby or in connection herewith and, subject to the requisite Governmental Authority authorizations set forth on **Schedule 5.3**, to consummate the Proposed Transactions. The execution and delivery by the Seller of this Agreement and the Other Transaction Documents required to be delivered by it hereby or in connection herewith and the performance by the Seller of its obligations hereunder and thereunder have been duly and validly authorized by all necessary action on the part of the Seller. This Agreement and each of the Other Transaction Documents required to be delivered by the Seller hereby or in connection herewith have been, or when executed and delivered will have been, duly executed and delivered by the Seller and is, or once executed will be, the valid and binding agreement of the Seller, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws relating to or affecting the enforceability of creditor’s rights generally, general equitable principles (regardless of whether enforcement is sought in a proceeding at law or equity) and the discretion of the courts in granting equitable remedies.

5.3 **Governmental Authority Authorizations and Other Consents.** Except as set forth on **Schedule 5.3**, (i) no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the execution and delivery of this Agreement by the Seller, and (ii) no consent, approval, order, authorization of, or registration, declaration or filing with any Governmental Authority or other

Person is required in connection with the performance of this Agreement or the execution, delivery or performance by the Seller of the Other Transaction Documents required to be delivered by it hereby or in connection herewith or the consummation by the Seller of the Proposed Transactions and fulfillment of and compliance by the Seller with the terms and conditions of this Agreement and the Other Transaction Documents required to be delivered by it hereby or in connection herewith.

5.4 Noncontravention. Subject to the provisions of the Sale Approval Order and except as set forth on **Schedule 5.4**, neither the execution and delivery by the Seller of this Agreement or any of the Other Transaction Documents required to be delivered by it hereby or in connection herewith, the performance by the Seller of its obligations hereunder or thereunder, nor the consummation by the Seller of the Proposed Transactions in accordance with the terms hereof, will, in any material respect, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration or increase the amount or scope of any obligation under, (i) any Contract to which the Seller is a party or by which the Seller (or any of the Acquired Assets) is subject or bound, or (ii) any Law applicable to the Seller or by which the Seller or any of the Acquired Assets are bound, including any order of the Bankruptcy Court.

5.5 Litigation. Except as set forth on **Schedule 5.5** and except for Actions filed in the Bankruptcy Court, there are no Actions pending or, to the Knowledge of the Seller, threatened in writing against the Seller that questions or challenges (i) the validity of this Agreement or the Other Transaction Documents, (ii) any action taken or proposed to be taken by the Seller pursuant to this Agreement or the Other Transaction Documents or in connection with the Proposed Transactions, or (iii) the Seller's Intellectual Property Rights. Except as set forth on **Schedule 5.5** and except for Actions filed in the Bankruptcy Court, there are no Actions pending or, to the Knowledge of the Seller, threatened in writing against the Seller that involves or affects the Acquired Assets or the Business.

5.6 Compliance with Laws; Permits.

(a) Except as excused by the Bankruptcy Code or Bankruptcy Court or otherwise in connection with the Bankruptcy Case or as disclosed on **Schedule 5.6(a)**, (i) the Seller is not in material violation of any Laws relating to the Business or the Acquired Assets, (ii) the Seller has not been notified in writing that it has been or may be charged with, and, to the Seller's Knowledge, the Seller has not been charged with or threatened in writing with any charge concerning, any material violation of any provision of any Law relating to the Business or the Acquired Assets that has not already been resolved and (iii) the Seller is not in material violation of, or in default under, and no event has occurred which, with the lapse of time or the giving of notice, or both, would result in the material violation of or default under, the terms of any Governmental Order relating to the Acquired Assets or the Business.

(b) **Schedule 5.6(b)** sets forth a list of all Permits of a type other than the types enumerated in the first sentence of Section 5.6(c) held by the Seller for the operation of the Business as currently conducted (collectively, the "**Business Permits**"). Except as set forth on **Schedule 5.6(b)**, all the Business Permits are valid and in full force

and effect. Except as set forth on **Schedule 5.6(b)**, the Seller is in compliance in all material respects with the Business Permits and no suspension or cancellation of any of the Business Permits is pending or, to the Knowledge of the Seller, threatened. True, correct and complete copies of each Business Permit listed or required to be listed on **Schedule 5.6(b)** have been delivered or made available to the Purchaser.

(c) The Seller has all necessary zoning and use permits, construction and building permits and approvals and any other similar governmental and quasi-governmental authorizations relating to the construction, operation and use of the Real Property of the Seller (the “**Operation Permits**”). All the Operation Permits were legally issued and are valid and in full force and effect. All the Operation Permits are listed on the attached **Schedule 5.6(c)**. Except as set forth on **Schedule 5.6(c)**, the Seller is in compliance in all material respects with the Operation Permits and no suspension or cancellation of any of the Operation Permits is pending or, to the Knowledge of the Seller, threatened. True, complete and correct copies of each Operation Permit have been delivered or made available to the Purchaser.

5.7 Title to and Completeness of Acquired Assets; No Material Adverse Effect. Except as set forth on **Schedule 5.7**, the Seller has good and indefeasible fee or leasehold, as applicable, title to, and pursuant to the Sale Approval Order has the full right to sell, transfer, convey, assign and deliver to the Purchaser, the Plant and the Real Property, free and clear of all Liabilities (other than Assumed Liabilities) and Liens (other than Permitted Encumbrances). Except as set forth on **Schedule 5.7**, the Seller has good and marketable title to (or in the case of leased assets, valid and enforceable leasehold rights in), is the lawful owner or lessee of, and pursuant to the Sale Approval Order has the full right to sell, transfer, convey, assign and deliver to the Purchaser, the Acquired Assets (other than the Plant and the Real Property) free and clear of all Liabilities (other than Assumed Liabilities) and Liens (other than Permitted Encumbrances). No Affiliate of the Seller has any interest in any of the Acquired Assets (or in any other right, property or asset that is used or held for use primarily in connection with, or that otherwise is primarily related to, the Plant and/or the Business). The Acquired Assets constitute all of the Seller’s rights, properties or other assets, other than the Excluded Assets. At and as of the Closing, the Seller will convey to the Purchaser (i) good and indefeasible title to the Plant and the Real Property and (ii) good and marketable title to (or in the case of leased assets, valid and enforceable leasehold rights in) the Acquired Assets (other than the Plant and the Real Property), in each case free and clear of all Liabilities (other than Assumed Liabilities) and Liens (other than Permitted Encumbrances). No Material Adverse Effect has occurred since the Petition Date.

5.8 Validity of Contracts.

(a) **Schedule 5.8(a)** sets forth a true, correct and complete list of all Contracts to which the Seller is a party or by which Seller or any of its properties or assets are bound. There are no Actions pending or, to the Knowledge of the Seller, threatened in writing by or against the Seller that questions or challenge the validity of any Contract set forth on or required to be set forth on **Schedule 5.8(a)** (excluding any Excluded Contract). Each Contract set forth on or required to be set forth on **Schedule 5.8(a)** (other than any Excluded Contract) is valid, binding and enforceable against the parties thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization,

moratorium and other similar Laws relating to or affecting the enforceability of creditor's rights generally, general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity) and the discretion of the courts in granting equitable remedies.

(b) Except as excused by the Bankruptcy Code or Bankruptcy Court or otherwise in connection with the Bankruptcy Case or as disclosed on **Schedule 5.8(b)**, the Seller has duly performed all its material obligations under each Contract set forth on or required to be set forth on **Schedule 5.8(a)** (other than any Excluded Contract) to the extent that such obligations to perform have accrued, and no material breach or default, or, to the Seller's Knowledge, alleged material breach or default or event that would (with the passage of time, notice or both) constitute a material breach or default by the Seller has occurred thereunder.

(c) Except as set forth on **Schedule 5.8(c)**, to the Knowledge of the Seller, no material breach or default or event that would (with the passage of time, notice or both) constitute a material breach or default by any third party has occurred with respect to the Contracts set forth on or required to be set forth on **Schedule 5.8(a)** (other than the Excluded Contracts).

(d) The Seller has delivered or made available to the Purchaser a true, correct and complete copy of all Contracts set forth on or required to be set forth on **Schedule 5.8(a)** and all amendments or modifications thereto.

5.9 Environmental Matters.

(a) Except as set forth on **Schedule 5.9(a)**, the Seller is in compliance in all material respects with all applicable Environmental Laws, and there are no written or, to the Knowledge of the Seller, verbal claims pursuant to any Environmental Laws pending or, to the Knowledge of the Seller, threatened, against the Seller in connection with the conduct or operation of the Business or the ownership or use of the Acquired Assets.

(b) Except as set forth on **Schedule 5.9(b)**, there are no material Liabilities under any Environmental Law with respect to the Real Property. Except as set forth on **Schedule 5.9(b)**, neither the Seller nor, to the Knowledge of the Seller, any other Person has used the Real Property for the manufacture, handling, transportation, treatment, storage or disposal of Hazardous Substances except in the ordinary course of business in material compliance with Environmental Law. Except as set forth on **Schedule 5.9(b)**, to the Knowledge of the Seller, the Seller does not own and/or operate nor has the Seller owned and/or operated underground or aboveground storage tanks that store or have stored any Hazardous Substance on, at or under any of the Real Property, there have been no releases of any Hazardous Substances on or from, nor are there any Hazardous Substances on, at, or under any of the Real Property that violate any applicable Environmental Law, including violations that require notification to any Governmental Authority or require any response action pursuant to any applicable Environmental Law.

(c) The Seller has delivered or made available to the Purchaser copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by the Seller pertaining to Hazardous Substances at, on, about, under or within any of the Real Property or concerning compliance by the Seller with applicable Environmental Laws with regard to the Real Property.

5.10 No Employees. The Seller does not have any employees.

5.11 Financial Advisors. The Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the Proposed Transactions based upon any arrangement made by or on behalf of Seller.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as specifically set forth on the Disclosure Schedules attached to this Agreement, as a material inducement to the Seller to enter into this Agreement and consummate the Proposed Transactions, the Purchaser hereby represents and warrants to the Seller that the statements contained in this Article 6 are true and correct on the date hereof and as of the Closing Date. The Disclosure Schedules will be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Article 6.

6.1 Organization. The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all the requisite power and authority to own, operate and lease its properties and to carry on its business as it is now being conducted.

6.2 Authorization. The Purchaser has full power and authority to execute and deliver this Agreement and the Other Transaction Documents required to be delivered by it hereby or in connection herewith, to perform its obligations under this Agreement and the Other Transaction Documents required to be delivered by it hereby or in connection herewith and to consummate the Proposed Transactions. The execution and delivery by the Purchaser of this Agreement and the Other Transaction Documents required to be delivered by it hereby or in connection herewith and the performance by the Purchaser of its obligations hereunder and thereunder have been or will be duly and validly authorized by all necessary action on the part of the Purchaser. This Agreement and each of the Other Transaction Documents required to be delivered by the Purchaser hereby or in connection herewith have been, or when executed and delivered will have been, duly executed and delivered by the Purchaser and is, or once executed will be, the valid and binding agreement of the Purchaser, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws relating to or affecting the enforceability of creditor's rights generally, general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity) and the discretion of the courts in granting equitable remedies.

6.3 Noncontravention. Except as would not result in a material adverse effect on the Purchaser's ability to consummate the transactions contemplated hereby, none of the execution and delivery by the Purchaser of this Agreement or any of the Other Transaction Documents

required to be delivered by it hereby or in connection herewith, the performance by the Purchaser of its obligations hereunder or thereunder, nor the consummation by the Purchaser of the Proposed Transactions, will violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration or increase the amount or scope of any obligation under, (i) the certificate of formation, operating agreement or any other organizational document, as the case may be, of the Purchaser, (ii) any Contract to which the Purchaser is a party or by which the Purchaser (or any of its respective properties or assets or the Acquired Assets) is subject or bound, (iii) any Governmental Order to which the Purchaser is party or by which the Purchaser or any of its properties or assets or any of the Acquired Assets is bound, or (iv) any Law applicable to the Purchaser or by which the Purchaser or any of its properties or assets are bound.

6.4 Solvency; Availability of Funds.

(a) As of the Closing and immediately after consummating the Proposed Transactions, the Purchaser will not be insolvent (either because of its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable liabilities on its debts as they become absolute and matured).

(b) The Purchaser owns and will own at the Closing an amount of the Obligations not less than the Purchase Price, and the Purchaser has or will have at the Closing sufficient funds to enable the Purchaser to pay the Cure Amounts with respect to the Assumed Contracts in accordance with the terms of the Agreement and the Sale Approval Order and otherwise to consummate the Proposed Transactions.

ARTICLE 7 PRE-CLOSING COVENANTS

The parties hereto agree as follows with respect to the period prior to the Closing:

7.1 Access by the Purchaser. Prior to the Closing, the Purchaser shall be permitted to continue to conduct an investigation of the prospects, business, assets, Contracts, rights, Liabilities and obligations of the Seller, including environmental, financial, marketing, employee, legal and regulatory matters in order that the Purchaser may more fully familiarize itself with the Business and the Acquired Assets. To effect this investigation, prior to the Closing, the Seller shall provide the Purchaser and its designated representatives, consultants, accountants and counsel reasonable access during normal business hours and upon reasonable notice to the Seller's Real Property and to the Books and Records and other information relating to the Seller's assets and liabilities as the Purchaser may reasonably request. Prior to the Closing, the Seller shall cause its personnel and representatives to cooperate fully with any reasonable request of the Purchaser or any of its representatives, accountants and counsel in connection with the Purchaser's investigation.

7.2 Conduct of Business. Except as otherwise expressly contemplated by this Agreement or with the prior written consent of the Purchaser, prior to the Closing (a) the Seller shall maintain insurance upon all of the Acquired Assets in such amounts and of such kinds comparable to that in effect on the date of this Agreement, and (b) the Seller shall not (i) renew,

amend or voluntarily terminate any Contract set forth on or required to be set forth on **Schedule 5.8(a)** that is not an Excluded Contract or (ii) sell, encumber or grant any Lien or other right with respect to any Acquired Asset (or any right, property or asset that, but for such action, would (if owned by the Seller as of the Effective Time) constitute an Acquired Asset).

7.3 Consummation of Transaction.

(a) Each of the Seller and the Purchaser shall use its reasonable best efforts to take, or cause to be taken, all actions, or do, or cause to be done, all things, necessary to consummate the Proposed Transactions as promptly as practicable, and neither the Seller nor the Purchaser shall take any action after the date hereof (other than any action required to be taken under this Agreement or to which the other shall have granted its consent) that could reasonably be expected to materially delay the consummation of the Proposed Transactions.

(b) In furtherance and not in limitation of Section 7.4(a), the Seller shall use its reasonable best efforts to obtain all consents and approvals of any Governmental Authority or any other Person (including Bankruptcy Court approvals) necessary in order to transfer any of the Acquired Assets from the Seller to the Purchaser or otherwise to consummate the Proposed Transactions. The Purchaser shall cause its personnel and representatives to cooperate fully with the reasonable requests of the Seller and its representatives, accountants and counsel in connection with obtaining such consents and approvals.

7.4 Bankruptcy Case.

(a) The Seller shall, subject to the requirements and obligations under the Bankruptcy Code, use its reasonable best efforts to obtain entry of the Sale Approval Order by the Bankruptcy Court.

(b) The Purchaser shall take the following actions in the Bankruptcy Case :

(i) The Purchaser shall use its reasonable best efforts to provide, as required under the Bankruptcy Code, adequate assurance of the future performance of the Assumed Contracts by the Purchaser.

(ii) The Purchaser shall promptly take all reasonable actions reasonably requested by the Seller to assist in obtaining the Bankruptcy Court's entry of the Sale Approval Order, such as furnishing affidavits or other documents or information for filing with the Bankruptcy Court and making the Purchaser's employees and representatives available to testify before the Bankruptcy Court.

7.5 Casualty Loss. Notwithstanding any provision hereof to the contrary, if, before the Closing Date, all or any portion of the Acquired Assets is (i) condemned or taken by eminent domain or is the subject of a pending or threatened condemnation or taking which has not been consummated, or (ii) materially damaged or destroyed by fire or other casualty, the Seller shall notify the Purchaser promptly in writing of such fact, and (x) in the case of a condemnation or taking, Seller shall assign or pay, as the case may be, any proceeds thereof to the Purchaser at the

Closing and (y) in the case of a fire or other casualty, the Seller shall either restore such damage prior to the Closing or assign the insurance proceeds therefrom to the Purchaser at the Closing. Nothing in the preceding sentence shall be deemed to modify any Disclosure Schedule or Appendix hereto or (without limitation of the foregoing) cure any breach of any representation or warranty of the Seller made in this Agreement, and (for the avoidance of doubt) the preceding sentence shall be disregarded in the context of Sections 9.2 and 9.3.

ARTICLE 8 POST-CLOSING COVENANTS

8.1 Further Assurances. At any time and from time to time from and after the Closing, the Seller and the Purchaser shall, at the request the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and other documents and perform or cause to be performed such acts and provide such information, as may reasonably be requested by such other party to evidence or effectuate the transactions contemplated hereunder.

8.2 Access to Records After the Closing. From and after the Closing Date, each party hereto shall have reasonable access to inspect and (at the requesting party's expense) copy all of the Books and Records (in the case of the Seller as the inspecting party) and all of the Retained Books and Records (in the case of the Purchaser as the inspecting party) that the other party hereto may retain after the Closing Date. Such access shall be afforded by the party maintaining such records upon receipt of reasonable advance notice and during normal business hours. Nothing contained in this Section 8.2 shall require the Purchaser or the Seller to retain any books or records longer than such books or records would be retained in the ordinary course of business; provided, however, that, if, prior to the third anniversary of the Closing Date, the party maintaining such books and records shall desire to dispose of any of such books and records, such party shall, prior to such disposal, give the other party a reasonable opportunity, at such other party's expense, to segregate and remove such books and records as such other party may select.

8.3 Insurance. With respect to any insurance policy maintained by the Seller which by its terms is not transferable or assignable to the Purchaser, at the written request of the Purchaser, the Seller shall use its reasonable best efforts to ensure that the Purchaser shall have the right to make, or, if made prior to the Effective Time, to continue to pursue, directly any claim under such insurance policy relating to the Acquired Assets. If, notwithstanding the foregoing, the Purchaser itself does not have the right to make or continue to pursue any such claim directly, at the written request of the Purchaser, the Seller shall use its reasonable best efforts to make or continue to pursue such claim under such insurance policy for the benefit of the Purchaser. The Purchaser acknowledges that any right of the Purchaser under this Section 8.3 shall be subject to any deductibles, exclusions and other terms of the applicable insurance policy. The Seller shall maintain all insurance policies in effect on the date hereof until the Closing Date. To the extent the Seller terminates any such insurance policy after the Effective Time, all refunds of premiums made to the Seller shall be an Acquired Asset and shall be paid by the Seller to the Purchaser.

8.4 Improper Receipt of Payment. From and after the Closing Date, (i) Seller shall promptly forward to the Purchaser any and all payments received by the Seller from third parties

that constitute part of the Acquired Assets or proceeds thereof and (ii) the Purchaser shall promptly forward to Seller any and all payments received by Purchaser from third parties that constitute part of the Excluded Assets or proceeds thereof.

ARTICLE 9 CONDITIONS

9.1 Conditions to Each Party's Obligations. The respective obligations of each party to consummate the Proposed Transactions shall be subject to the condition that, at the Closing Date:

(a) No Injunction. There shall be no Governmental Order, or Action pending by or before any Governmental Authority to obtain a Governmental Order, to the effect that the Proposed Transactions may not be consummated as herein provided or otherwise seeking to prohibit or restrict the consummation of the Proposed Transactions; and

(b) No Threat of Injunction. No written notice shall have been received from any Governmental Authority indicating an intent to restrain, prevent, materially delay or restructure the Proposed Transactions.

9.2 Conditions to Obligations of the Seller. The obligations of the Seller to consummate the Proposed Transactions shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions (unless waived in writing by the Seller in its absolute and sole discretion):

(a) Sale Approval Order. The Sale Approval Order shall have been entered in the Bankruptcy Case in form and substance satisfactory to the Seller.

(b) Closing Deliveries. The Purchaser shall have tendered or delivered to the Seller the items listed in Section 4.3.

(c) Representations and Warranties of the Purchaser. Each of the representations and warranties of the Purchaser set forth in Article 6 shall be true and correct in all material respects (other than such representations and warranties that are qualified as to materiality, which shall be true and correct in all respects) as of the date of this Agreement, and shall be true and correct in all material respects (other than such representations and warranties that are qualified as to materiality, which shall be true and correct in all respects) at and as of the Closing Date with the same force and effect as though newly made as of that date.

(d) Covenants of the Purchaser. The Purchaser shall have performed in all material respects all of its obligations under this Agreement that, by the terms of such obligations, are to be performed on or before the Closing Date.

(e) Officer's Certificate. The Seller shall have received a certificate duly executed by a senior officer of the Purchaser, in a form reasonably satisfactory to the Seller, to the effect that each of the conditions specified in Sections 9.2(c) and 9.2(d) have been satisfied.

9.3 Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the Proposed Transactions shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions (unless waived in writing by the Purchaser in its absolute and sole discretion):

(a) Consents and Approvals; Permits. The Seller shall have obtained the consents and approvals listed on Appendix VII and the Purchaser shall have obtained the Permits listed on Appendix VII.

(b) Cure Amounts. The Cure Amounts to be paid by the Purchaser pursuant to Section 2.5 in respect of the Assumed Contracts shall not exceed \$6,000,000 in the aggregate.

(c) Bidding Procedures Order. The Bidding Procedures Order shall:

(i) Have remained in full force and effect and shall not have been stayed, vacated, modified or supplemented in any respect without the Purchaser's prior written consent; and

(ii) Have been timely and fully complied with by the Seller, including the implementation of the Bidding Procedures approved by the Bankruptcy Court, and the service or publication of all notices in accordance with the Bidding Procedures Order.

(d) Sale Approval Order. On or prior to the Closing Date, the Sale Approval Order shall:

(i) Have been entered in the Bankruptcy Case and become a Final Order; and

(ii) Have remained in full force and effect and shall not have been stayed, vacated, modified or supplemented in any respect without the Purchaser's prior written consent.

(e) Closing Deliveries. On or prior to the Closing Date, the Seller shall have delivered to the Purchaser the items set forth in Section 4.2.

(f) Representations and Warranties of the Seller. Each of the representations and warranties of the Seller set forth in Article 5 shall be true and correct in all material respects (other than such representations and warranties that are qualified as to materiality, which shall be true and correct in all respects) as of the date of this Agreement, and shall be true and correct in all material respects (other than such representations and warranties that are qualified as to materiality, which shall be true and correct in all respects) at and as of the Closing Date with the same force and effect as though newly made as of that date.

(g) Covenants of the Seller. The Seller shall have performed in all material respects all of its obligations under this Agreement that, by the terms of such obligations, are to be performed on or before the Closing Date.

(h) Officer's Certificates.

(i) The Purchaser shall have received a certificate duly executed by a senior officer of the Seller, in a form reasonably satisfactory to the Purchaser, to the effect that each of the conditions specified in Sections 9.3(f) and 9.3(g) have been satisfied.

(ii) The Purchaser shall have received a certificate duly executed by an authorized officer of the Seller to which is attached: (A) true, correct and complete copies of the organizational documents of the Seller; (B) true, correct and complete copies of the resolutions of Seller's partners respecting the transactions contemplated by this Agreement and the Other Transaction Documents; (C) a schedule respecting the incumbency and true signatures of the officers of the Seller who execute this Agreement and the Other Transaction Documents on behalf of the Seller; and (D) a certificate from the Secretary of State of the State of Delaware, dated within 10 days of the Closing Date, with respect to the existence and good standing of the Seller. The certificate required pursuant to this Section 9.3(h)(ii) shall certify that the documents referred to in (A) and (B) above and attached thereto are true, correct and complete copies, have been duly and validly adopted and have not been amended or altered except as reflected therein.

(i) No Material Adverse Effect. There shall not have occurred on or prior to the Closing Date any Material Adverse Effect since the date of this Agreement.

(j) Lurgi Technology License. The Sale Approval Order shall provide that (a) at the Effective Time the Seller shall assume and assign to the Purchaser the Lurgi Technology License, and (b) with respect to Liabilities arising under the Lurgi Technology License, the Purchaser shall assume only (i) Liabilities first accruing or first due to be performed from and after the Effective Time and (ii) Liabilities for any Cure Amounts associated with the Lurgi Technology License and any other amounts which are otherwise determined to be payable under Section G(2)(i) of the Lurgi Technology License.

ARTICLE 10 NO SURVIVAL; "AS IS/WHERE IS" SALE

10.1 No Survival of Representations and Warranties. None of the representations or warranties of the parties made herein or in any Other Transaction Document, nor any covenants or agreements of the parties set within Article 7 hereof, nor any rights arising out of any breach of such representations, warranties, covenants or other agreements, shall survive the Closing.

10.2 "AS IS/WHERE IS" SALE. EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE 5, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND

(INCLUDING ANY REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY OR FITNESS OF THE ACQUIRED ASSETS FOR THEIR INTENDED PURPOSES OR ANY PARTICULAR PURPOSE), EXPRESSED OR IMPLIED, WITH RESPECT TO THE ACQUIRED ASSETS OR THE ASSUMED LIABILITIES. THE PURCHASER ACKNOWLEDGES THAT THE ACQUIRED ASSETS ARE BEING SOLD, TRANSFERRED, CONVEYED, ASSIGNED AND DELIVERED TO, AND PURCHASED AND ACCEPTED BY, THE PURCHASER ON AN “AS IS/WHERE IS” BASIS.

ARTICLE 11 TERMINATION

11.1 Termination of Agreement. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

- (a) by the mutual written consent of the Purchaser and the Seller;
- (b) by either the Seller or the Purchaser, upon written notice to the other, if the Proposed Transactions have not been consummated by May 31, 2009 (“Termination Date”), provided, however, that, if the failure to consummate the Proposed Transactions is due to material breach by the party attempting to terminate this Agreement, such party shall have no right to do so;
- (c) by either the Seller or the Purchaser, upon written notice to the other, if a Governmental Authority issues a Final Order prohibiting the Proposed Transactions;
- (d) by the Purchaser, upon written notice to the Seller, if the Sale Approval Order has not been entered by the Bankruptcy Court prior to April 30, 2009, provided, however, that if after such date the Sale Approval Order is entered by the Bankruptcy Court, and the Purchaser has not previously delivered such a notice, then the Purchaser shall have no right to do so;
- (e) by the Purchaser, upon written notice to the Seller, if there is a Material Adverse Effect occurring between the date of this Agreement and the Closing;
- (f) by the Purchaser, upon written notice to the Seller, if there shall be a material breach by the Seller of any representation, warranty, covenant or agreement contained in this Agreement which would reasonably be expected to result in a failure of a condition set forth in Sections 9.3(f) or 9.3(g) to be satisfied, which breach has not been cured by the earlier of (i) 10 days after the giving of written notice by the Purchaser to the Seller of such breach and (ii) the Termination Date; or
- (g) by the Seller, upon written notice to the Purchaser, if there shall be a material breach by the Purchaser of any representation, warranty, covenant or agreement contained in this Agreement which would reasonably be expected to result in a failure of a condition set forth in Sections 9.2(c) or 9.2(d) to be satisfied, which breach has not been cured by the earlier of (i) 10 days after the giving of written notice by the Seller to the Purchaser of such breach and (ii) the Termination Date.

11.2 Effect of Termination. Upon the termination of this Agreement pursuant to Section 11.1, this Agreement, except this Section 11.2, Section 3.2 and Article 12, shall become void and have no further effect and there shall be no liability hereunder on the part of the Seller or the Purchaser with respect to this Agreement except in connection with its obligations set forth in such Sections and Articles.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 Expenses. Each party hereto will bear its own expenses in connection with the Proposed Transactions.

12.2 Public Announcements. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), the Purchaser and the Seller shall consult with each other before issuing any press releases or making any public statement or other public communication with respect to this Agreement or the Proposed Transactions. The Purchaser and the Seller shall not issue any such press release or make any such public statement or public communication without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that either party hereto may, without the prior consent of the other party, issue such press release or make such public statement as may, upon the advice of counsel, be required by applicable Law, any Governmental Authority with competent jurisdiction or any listing agreement with any national securities exchange; provided, further, that the party intending to make such press release shall give the other party prior notice and shall use its commercially reasonable efforts consistent with such applicable Law or other obligation to consult with the other party with respect to the text thereof.

12.3 Amendment; Waiver. None of this Agreement or the Other Transaction Documents may be amended, modified or supplemented except by a written instrument signed by all parties hereto or thereto as the case may be. No waiver of any of the terms or provisions of this Agreement or any Other Transaction Document shall be effective unless set forth in a written instrument signed by the party granting such waiver. No waiver of any of the terms or provisions of this Agreement or any Other Transaction Document shall be deemed to be or shall constitute a waiver of any other term or provision hereof or thereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No failure of a party hereto to insist upon strict compliance by the other party hereto with any covenant or agreement contained in this Agreement shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

12.4 Notices.

(a) All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and mailed or delivered by facsimile transmission, hand or courier service:

If to the Seller, to:

Hereford Biofuels, L.P.
c/o Panda Ethanol, Inc.
4100 Spring Valley
Suite 1002
Dallas, Texas 75244
Fax: (972) 361-1201
Attention: General Counsel

With a copy, which shall not constitute notice, to:

Jones Day
2727 N. Harwood
Dallas, TX 75201
Fax: (214) 969-5100
Attention: Gregory M. Gordon
Troy B. Lewis

If to the Purchaser, to:

Ethanol Acquisition, LLC
c/o Capstone Advisory Group, LLC
Park 80 West, Plaza I
Plaza Level
Saddle Brook, NJ 07663
Fax: (201) 587-7102
Attention: Edward M. Kleinschmidt

With a copy, which shall not constitute notice, to:

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
Fax: (212) 422-4726
Attention: Michael Luskin

(b) All notices and other communications required or permitted under this Agreement that are addressed as provided in this Section 12.4 (i) if delivered personally against proper receipt or by confirmed facsimile transmission, shall be effective upon delivery and (ii) if delivered (A) by certified or registered mail with postage prepaid, shall be effective five (5) Business Days or (B) by an internationally recognized overnight express mail service such as Federal Express, UPS, or DHL Worldwide, with courier fees paid by the sender, shall be effective two (2) Business Days following the date when mailed or couriered, as the case may be. Either party hereto may from time to time change its address for the purposes of notices to such party by a similar notice

specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents.

12.5 Succession and Assignment. This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement or any of its rights, interest or obligations hereunder without the prior written approval of the other; provided, however, that the Purchaser may assign any or all of its rights under this Agreement to one or more of its Affiliates without the Seller's consent, though no such assignment shall relieve the Purchaser of any of its obligations hereunder. Any assignments made in contravention of the terms of this Section 12.5 shall be void *ab initio*.

12.6 Governing Law. This Agreement, the Other Transaction Documents, and the legal relations between the parties hereto shall be governed and interpreted in accordance with the laws of the State of New York (provided that, the validity and enforceability of all conveyance documents or instruments executed and delivered pursuant to this Agreement insofar as they affect title to real property shall be governed by and construed in accordance with the Laws of the jurisdiction in which such property is located) without regard to principles of conflicts of law, except to the extent that United States bankruptcy law is applicable.

12.7 Consent to Jurisdiction.

(a) Until the entry of an order either closing or dismissing the Bankruptcy Case, each party hereto hereby: (i) irrevocably elects as the sole judicial forum for the adjudication of any matter arising under or in connection with this Agreement or any Other Transaction Document, and consents to the exclusive jurisdiction of, the Bankruptcy Court; (ii) expressly waives any defense or objection to jurisdiction or venue based on the doctrine of *forum non conveniens*; and (iii) stipulates that the Bankruptcy Court shall have *in personam* jurisdiction over such party.

(b) After the entry of an order either closing or dismissing the Bankruptcy Case, each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts in the county of New York in the State of New York (the "**New York Courts**") in any action arising out of or relating to this Agreement or any Other Transaction Document, and each such party hereto hereby irrevocably agrees that all claims in respect of any such action shall be heard and determined in New York Courts. Each party hereto, to the extent permitted by applicable Law, hereby expressly waives any defense or objection to jurisdiction or venue based on the doctrine of *forum non conveniens*, and stipulates that the New York Courts shall have *in personam* jurisdiction and venue over such party for the purpose of litigating any dispute or controversy between the parties arising out of or relating to this Agreement or any Other Transaction Document. In the event that either party hereto shall commence or maintain any action arising out of or relating to this Agreement or any Other Transaction Document in a forum other than New York Courts, the other party hereto shall be entitled to request the dismissal or stay of such action, and each party hereto stipulates for itself that such action shall be dismissed or stayed. To the extent that either party hereto has or hereafter may acquire any immunity from the jurisdiction of New York Courts or from any legal

process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to itself or its property, each such party hereby irrevocably waives such immunity.

12.8 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.8.

12.9 Entire Agreement. This Agreement and the Other Transaction Documents, each of which are incorporated herein, embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements, commitments, arrangements, negotiations or understandings, whether oral or written, between the parties hereto, their respective Affiliates or any representatives of any of them with respect thereto. There are no agreements, covenants or understandings with respect to the subject matter of this Agreement or the Other Transaction Documents other than those expressly set forth or referred to herein or therein and no representations or warranties of any kind or nature, whatsoever, express or implied, have been made or shall be deemed to have been made by the parties hereto except those expressly made in this Agreement and the Other Transaction Documents.

12.10 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction in such manner as will effect as nearly as lawfully possible the purposes and intent of such invalid, illegal or unenforceable provision. To the extent permitted by Law, the parties hereto waive any provision of Law that renders any such provision prohibited or unenforceable in any respect. Notwithstanding anything to the contrary set forth herein, the provisions hereof for entry of the Bidding Procedures Order and the Sale Approval Order are not severable and may not be reformed.

12.11 No Third Party Beneficiaries. Except as and to the extent otherwise provided herein, nothing in this Agreement is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns.

12.12 Exhibits, Appendices and Schedules. All Appendices, Exhibits, and Schedules hereto, or other documents expressly referenced in and incorporated into this Agreement, are hereby incorporated into this Agreement and are hereby made a part hereof as it set out in full in this Agreement.

12.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the date first above written.

THE SELLER

HEREFORD BIOFUELS, L.P.

By: PHE I, LLC, its General Partner

By: _____
Name: _____
Title: _____

THE PURCHASER

ETHANOL ACQUISITION LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

Bill of Sale

EXHIBIT A

FORM OF BILL OF SALE

This **BILL OF SALE** (this "**Bill of Sale**") is executed and delivered as of April [___], 2009, by Hereford Biofuels, L.P. (the "**Seller**") to Ethanol Acquisition, LLC (the "**Purchaser**") pursuant to the Asset Purchase Agreement, dated as of April 22, 2009 (the "**Asset Purchase Agreement**"), between the Seller and the Purchaser.

1. **Defined Terms.** Capitalized terms used but not defined herein shall have the meanings set forth in the Asset Purchase Agreement.
2. **Transfer of Acquired Assets.** For the consideration set forth in the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller does hereby sell, transfer, convey, assign and deliver to the Purchaser, its successors and assigns, forever, effective as of the date hereof, all of the Seller's right, title and interest in and to the Acquired Assets (other than (i) the Real Property as and to the extent that all of the Seller's right, title and interest in and to the Real Property is being sold, transferred, conveyed, assigned and delivered to Purchaser pursuant to the Deed and (ii) the Assumed Contracts, in which case all of the Seller's right, title and interest in and to the Assumed Contracts is being sold, transferred, conveyed, assigned and delivered to Purchaser pursuant to the Assignment and Assumption Agreement).
3. **Title to Assets.** The Seller covenants and agrees that it will whenever and as often as reasonably requested so to do by the Purchaser, its successors and assigns, execute, acknowledge and deliver such other instruments of conveyance and transfer and take such other action as may be required more effectively to transfer to, and vest in, the Purchaser, its successors and assigns, all of the Seller's right, title and interest in, to and under the Acquired Assets.
4. **Governing Law.** This Bill of Sale shall be governed and interpreted in accordance with the Laws of the State of New York without regard to principles of conflicts of law, except to the extent that United States bankruptcy law is applicable.
5. **Conflict with Purchase Agreement.** In the event the terms of this Bill of Sale conflict with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale as of the date first written above.

Hereford Biofuels, L.P.

By: PHE I, LLC, its General Partner

By: _____
Name: _____
Title: _____

EXHIBIT B

Sale Approval Order

EXHIBIT B

FORM OF SALE APPROVAL ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re	:	Chapter 11
	:	
HEREFORD BIOFUELS, L.P., <i>et al.</i> , ¹	:	Case No. 09-30453 (SGJ)
	:	
Debtors.	:	(Jointly Administered)
	:	

**ORDER AUTHORIZING (I) THE SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF
DEBTOR HEREFORD BIOFUELS, L.P. FREE AND CLEAR OF
LIENS, CLAIMS AND ENCUMBRANCES AND (II) THE ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

This matter coming before the Court on the Motion of the Debtors for an Order Authorizing (I) the Sale of Substantially All of the Assets of Debtor Hereford Biofuels, L.P. Free and Clear of Liens, Claims and Encumbrances and (II) the Assumption and Assignment of

¹ The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Hereford Biofuels, L.P. (7548); Hereford Biofuels Holdings, LLC (9762); PHE I, LLC (7511); and PHE II, LLC (9412). The address of each of the Debtors is 4100 Spring Valley, Suite 1002, Dallas, Texas 75244.

Executory Contracts and Unexpired Leases (the “Sale Motion”)² filed by the above-captioned debtors (collectively, the “Debtors”) seeking authority to sell substantially all of the assets of Debtor Hereford Biofuels, L.P. (the “Seller”); the Court having reviewed the Sale Motion, the Bidding Procedures Motion, and the Lindloff Declaration; and this Court having entered an order dated March 12, 2009 (the “Bidding Procedures Order” and attached as Annex 1 thereto, the “Bidding Procedures”) authorizing the Seller to conduct, and approving the terms and conditions of, the Auction to consider offers for the Seller’s assets; and the Court having reviewed the Sale Motion, the asset purchase agreement, dated as of April [22], 2009 (as it may be amended, the “Purchase Agreement”), between the Seller and [_____] (the “Purchaser”) entered into following the Auction and all other papers filed with the Court relating thereto and having considered the statements of counsel with respect to the Sale Motion at the Sale Hearing; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) notice of the relief sought in the Sale Motion and the Sale Hearing was sufficient under the circumstances, and no further notice need be given; (iv) a sound business purpose exists to grant the relief contained herein, and (v) there is good cause to waive the ten-day stay imposed by Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and the Court having determined that the legal and factual bases set forth in the Sale Motion, the other papers filed by the Debtors and at the Sale Hearing establish just cause to grant the relief ordered herein;

² Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Sale Motion, the Purchase Agreement or the Bidding Procedures.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction and authority to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (N). Venue of these cases in this District is proper under 28 U.S.C. § 1409. The statutory predicates for the relief sought herein are sections 105, 363, and 365 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006 and 9014.

B. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

C. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate and sufficient notice of the Sale Motion and the Sale Hearing has been provided in accordance with Bankruptcy Rules 2002, 6004, 9006, 9007, 9008 and 9014 and in compliance with the Bidding Procedures Order. Notice of the Sale Hearing was also published in the *Hereford Brand* and the national editions of *The Wall Street Journal* and *The New York Times*. The Debtors provided due and proper notice of the sale, and assumption and assignment of each contract and lease (and related Cure Amounts, if any) listed in the Assumption and Assignment Notice to each non-debtor party to such contract or lease. The Debtors further provided due and proper notice of the Sale to any claimant or potential claimant under any Environmental Laws. Such notice was sufficient and appropriate under the circumstances. No other or further notice of the Sale Motion, the Sale Hearing, the assumption and assignment of the Assumed Contracts or the entry of this Sale Order is necessary or shall be required.

D. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities as outlined in the Bidding Procedures Motion and the Bidding Procedures Order.

E. The Seller has demonstrated a sufficient basis and the existence of compelling circumstances requiring it to enter into the Purchase Agreement, sell the Acquired Assets on the terms outlined therein and assume and assign the Assumed Contracts under sections 363 and 365 of the Bankruptcy Code, and such actions are appropriate exercises of the Seller's business judgment and in the best interests of the Seller, its creditors, and its estate.

F. The Debtors and their professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As demonstrated by the evidence adduced at the Sale Hearing, the Debtors (i) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offers to acquire the Acquired Assets, and (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets. Additionally, the Debtors have, under the circumstances, adequately and appropriately marketed the Acquired Assets through, inter alia, the dissemination of information regarding the Acquired Assets to interested purchasers.

G. The offer of the Purchaser, upon the terms and conditions set forth in the Purchase Agreement, including the form and the total consideration to be realized by the Seller pursuant to the Purchase Agreement, (i) is the highest and best offer received by the Seller, (ii) is fair and reasonable, (iii) is in the best interest of the Seller, its creditors and its estate, (iv) constitutes full and adequate consideration and reasonably equivalent value for the Acquired Assets, and (v) constitutes reasonably equivalent value under the Bankruptcy Code and the

Uniform Fraudulent Transfer Act and fair consideration under the Uniform Fraudulent Conveyance Act.

H. The Seller's determination that the Purchase Agreement constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Seller's business judgment.

I. The Debtors have demonstrated compelling circumstances and a sufficient and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization.

J. The Purchaser is a buyer in good faith, as that term is used in the Bankruptcy Code, and is entitled to the protections of sections 363(m) and 363(n) with respect to the Acquired Assets. The Purchase Agreement was negotiated and entered into in good faith, based upon arm's length negotiations and without collusion or fraud of any kind.

K. The Seller has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the sale of the Acquired Assets by the Seller has been duly and validly authorized by all necessary action of the Seller. No consents or approvals other than those provided for in the Purchase Agreement are required for the Seller to consummate the transactions described in the Purchase Agreement.

L. The terms of the Purchase Agreement are fair and reasonable and the transactions contemplated therein are in the best interests of the Seller's estate.

M. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Seller, its estate, and its creditors, if either (i) the Sale and the assignment of the Assumed Contracts to the Purchaser were not free and clear of all interests, liens, claims and

encumbrances of any kind or nature whatsoever, except those expressly assumed by the Purchaser in the Purchase Agreement, or (ii) the Purchaser would, or in the future could, be liable for any of such interests, liens, claims and encumbrances, including, but not limited to, any claims against the Debtors based upon successor or vicarious liability or otherwise.

N. The Seller may sell the Acquired Assets free and clear of all interests, liens, claims and encumbrances of any kind or nature whatsoever, except as otherwise provided in the Purchase Agreement, because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those non-debtor parties with interests in the Seller's assets who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented to the Sale pursuant to 11 U.S.C. §§ 363(f)(2) and 365. Those non-debtor parties with interests in the Debtors' assets who did object fall within one or more of the other subsections of 11 U.S.C. §§ 363(f) and 365. Accordingly, all persons having liens, claims, encumbrances or interests of any kind or nature whatsoever against or in any of the Acquired Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such liens, claims, encumbrances or interests against the Acquired Assets, the Purchaser or any of its assets, property, successors or assigns.

O. The transfers contemplated by the Purchase Agreement do not and shall not subject the Purchaser to any liability for claims against the Debtors by reason of such transfers under the laws of the United States, any state, territory or possession thereof, including claims relating to the operation of the Debtors' businesses before the Effective Time, except as specifically provided in the Purchase Agreement.

P. The Seller may assume each contract and lease listed on Appendix II of the Purchase Agreement, as such Appendix II has been amended, and assign each of them to the

Purchaser or its designee pursuant to sections 363 and 365 of the Bankruptcy Code and this Sale Order notwithstanding any anti-assignment clause or other similar provision in the Assumed Contract, as provided by section 365(f) of the Bankruptcy Code. The assumption and assignment of the Assumed Contracts listed on Appendix II of the Purchase Agreement, as such Appendix II has been amended, is in the best interest of the Seller and its estate, creditors and other parties in interest, representing the reasonable exercise of sound and prudent business judgment by the Seller. The Purchaser and the Seller have provided evidence of adequate assurance of future performance by the Purchaser under the Assumed Contracts.

Q. Except with respect to any Cure Amount due in connection with the assumption and assignment of the Lurgi Technology License, the Purchaser (i) has cured, or has provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(A), and (ii) has provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B).

R. With respect to the Lurgi Technology License, the Seller (i) has cured, or has provided adequate assurance of cure, of any default existing prior to the date hereof, within the meaning of 11 U.S.C. § 365(b)(1)(A), and (ii) has provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof, within the meaning of 11 U.S.C. § 365(b)(1)(B).

S. The cure amounts, if any, set forth in the Assumption and Assignment Notice with respect to each Assumed Contract (collectively, the "Cure Amounts") are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code

to cure all defaults and pay all actual pecuniary losses under the Assumed Contracts. In accordance with the method set forth in the Purchase Agreement, the Purchaser shall pay the Cure Amounts for each of the Assumed Contracts, except with respect to any Cure Amounts due in connection with the assumption and assignment of the Lurgi Technology License.

T. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Seller may sell the Acquired Assets free and clear of any interest in the Acquired Assets other than the Assumed Liabilities under the Purchase Agreement.

U. The Purchaser is assuming only the Assumed Liabilities, as defined and set forth in the Purchase Agreement, and is not assuming any obligations other than the Assumed Liabilities.

V. The Seller is assuming, assigning, and selling to the Purchaser only the Assumed Contracts in accordance with the terms of the Purchase Agreement and is not assuming, assigning, or selling any executory contracts or unexpired leases other than the Assumed Contracts.

W. Given all of the circumstances of the Debtors' chapter 11 cases and the adequacy and fair value of the Purchase Price and the assumption by the Purchaser of the Assumed Liabilities under the Purchase Agreement, the proposed Sale of the Acquired Assets to the Purchaser under the Purchase Agreement constitutes a reasonable and fair exchange of consideration and reasonable and sound exercise of the Seller's business judgment, and should be approved.

X. All findings of fact and conclusions of law announced by the Court at the Sale Hearing are incorporated herein.

Y. Time is of the essence in consummating the Sale. In order to maximize the value of the Acquired Assets, it is essential that the Sale occur promptly, and within the time constraints set forth in the Purchase Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

General Provisions

1. The Sale Motion is GRANTED, as further described herein.

2. All objections to the Sale Motion have either been resolved or are OVERRULED.

Approval of the Purchase Agreement

3. The Purchase Agreement and all of the terms and conditions thereof, are hereby approved.

4. The sale to the Purchaser is approved pursuant to sections 105, 363 and 365 of the Bankruptcy Code, and the Seller and the Purchaser and their affiliates, officers, directors, employees and agents are authorized and directed to immediately take such actions as are necessary to consummate and implement the Purchase Agreement. The terms and conditions of the Purchase Agreement are hereby approved in all respects.

5. The Seller, as well as its affiliates, officers and agents, are authorized and directed to execute and deliver the Purchase Agreement, together with all additional agreements, instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and effectuate the provisions of this Sale Order and the transactions approved hereby, all without further order of the Court. Additionally, pursuant to section 363(b) of the Bankruptcy Code, the Seller is hereby authorized and empowered to fully assume, perform

under, consummate, and implement the Purchase Agreement, together with such additional agreements, instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of selling, assigning, transferring, granting, conveying, conferring and delivering to the Purchaser, or transferring to the Purchaser's possession, any or all of the Acquired Assets, or as may be necessary or appropriate to the performance of the obligations, and make effective the transactions contemplated by the Purchase Agreement, all without further order of this Court.

Transfer of the Acquired Assets

6. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Seller is authorized to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement, and, upon the closing under the Purchase Agreement, such transfers shall (a) be valid, legal, binding and effective transfers, (b) vest the Purchaser with all right, title and interest of the Seller in and to the Acquired Assets, and (c) be free and clear, unless otherwise specified in the Purchase Agreement, of all liens, claims, encumbrances and interests, whether arising prior to or subsequent to the commencement of the Debtors' chapter 11 cases, and whether imposed by agreement, law, equity or otherwise, with all such liens, claims, encumbrances and interests attaching to the proceeds of the sale.

7. All persons or entities holding liens, claims, encumbrances or interests of any kind or nature with respect to the Acquired Assets are hereby barred from asserting such liens, claims, encumbrances or interests of any kind or nature against the Purchaser, its successors or assigns, or the Acquired Assets.

8. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Seller to transfer the Acquired Assets to the Purchaser in accordance with this Sale Order and the terms of the Purchase Agreement.

Assumption and Assignment of Assumed Contracts to the Purchaser

9. Pursuant to 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Sale, the Seller's assumption and assignment to the Purchaser of the Assumed Contracts is hereby approved, and the requirements of 11 U.S.C. § 365(b)(1) with respect thereto are hereby deemed satisfied.

10. The Seller is hereby authorized and directed in accordance with 11 U.S.C. §§ 105(a) and 365 to (a) assume and assign to the Purchaser, effective upon the Closing of the Sale, the Assumed Contracts free and clear of all interests, liens, claims and encumbrances of any kind or nature whatsoever, except as provided in the Purchase Agreement, and (b) execute and deliver to the Purchaser such agreements, documents or other instruments as may be necessary to sell, assign, transfer, convey and deliver the Assumed Contracts to the Purchaser.

11. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to 11 U.S.C. § 365(k), the Seller shall be relieved from any further liability with respect to the Assumed Contracts after such assignment to and assumption by the Purchaser.

12. All defaults or other obligations of the Seller under any Assumed Contract arising or accruing prior to the date of this Sale Order (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy

Code) shall be deemed cured upon payment at the Closing of the Sale or as soon thereafter as practicable of the Cure Amounts with respect to each Assumed Contract.

13. Except for the obligation to pay the Cure Amounts, each nondebtor party to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from asserting against the Debtors or the Purchaser, or the property of any of them, any default existing as of the date of the entry of this Order, whether declared or undeclared or known or unknown; or, against the Purchaser, any counterclaim, defense, setoff or any other claim asserted or assertable against the Debtors.

14. The failure of the Seller or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Purchaser's rights to enforce every term and condition of the Assumed Contract.

15. Any provisions in any Assumed Contract that prohibit or condition the assignment of any Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition a renewal or extension, or modify or limit any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Seller and assignment to the Purchaser of the Assumed Contracts have been satisfied. Upon the Effective Date, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all rights, title, privilege and interest of the Seller under the applicable Assumed Contract.

16. The payment of the Cure Amounts (if any) shall (a) effect a cure of all defaults existing thereunder as of the Effective Time, (b) compensate for any actual pecuniary loss to such non-debtor party resulting from such defaults, (c) constitutes satisfaction in full of all amounts accrued as of the Effective Time and (d) together with the assumption and purchase of the Assumed Contracts by the Purchaser, constitute adequate assurance of future performance thereof. Upon the payment of the Cure Amounts, the Purchaser shall have assumed the Assumed Contracts and, pursuant to sections 363, 365(f), and 365(k) of the Bankruptcy Code, the assignment and sale by the Debtors of such Assumed Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither the Seller nor the Purchaser shall have any further obligations to the non-debtor parties to the Assumed Contracts other than the Purchaser's obligations under the Assumed Contracts that accrue on or after the Effective Time, or otherwise pursuant to the Assumed Liabilities.

17. Upon the Effective Time and the payment of the relevant Cure Amounts by the Purchaser, the Purchaser shall be deemed to be substituted for the Seller as a party to the applicable Assumed Contracts, and the Seller shall be relieved from all liability on such Assumed Contracts arising after the Effective Time.

18. The Purchaser has provided adequate assurance of its future performance under the relevant Assumed Contract within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable), and 365(f)(2)(B) of the Bankruptcy Code.

19. There shall be no rent accelerations, assignment fees, increases (including advertising rates), or any other fees charged to the Purchaser as a result of the assumption, assignment, and sale of the Assumed Contracts.

20. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Purchaser or the Purchased Assets any assignment fee, default, breach, or claim or pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts existing as of the Effective Time or arising by reason of the Closing, except for any post-petition amounts that are Assumed Liabilities being assumed by the Purchaser under the Purchase Agreement.

21. At the Effective Time the Seller shall assume and assign to the Purchaser the Lurgi Technology License. With respect to Liabilities arising under the Lurgi Technology License, (a) the Purchaser shall assume only Liabilities accruing or due to be performed from and after the Effective Time, and (b) the Seller shall retain all Liabilities other than Liabilities accruing or due to be performed from and after the Effective Time, including Liabilities for any Cure Amounts associated with the Lurgi Technology License, any amounts which are otherwise determined to be payable under Section G(2)(i) of the Lurgi Technology License, or any amounts arising or resulting from or related to any litigation or arbitration claims that arose prior to or could have been brought before the Effective Time.

Additional Provisions

22. The Purchaser shall have no liability or responsibility for any liabilities or other obligations of the Debtors arising under or related to the Acquired Assets. Without limiting the generality of the foregoing, the Purchaser shall not be liable for: (i) any fixed, unliquidated or contingent claims against the Debtors or any of their predecessors or affiliates, whether based upon successor or vicarious liability or otherwise, and whether any of such items are known or unknown as of the Closing Date; (ii) any violation or alleged violation of any environmental laws; or (iii) liabilities under any pension, ERISA, tax, employment, labor,

employment or antidiscrimination laws or regulations, any products liability law, or any other liability related to the Debtors or the Excluded Assets.

23. On and after the Closing Date, each of the Debtors' creditors asserting a lien in any of the Acquired Assets is authorized and directed to execute such documents and take all other actions as may be necessary to release its liens on or against the Acquired Assets being transferred pursuant to the Purchase Agreement, as such liens may have been recorded or otherwise exist; provided that the failure of any such creditors to comply with the provisions of this paragraph shall in no way limit the release, discharge and termination of any such lien against the Acquired Assets purchased as otherwise provided by this Sale Order.

24. If any person or entity that has filed financing statements, mortgages, mechanics' liens, lis pendens, or other documents or agreements evidencing claims against or in the Debtors or the Acquired Assets shall not have delivered to the Debtors prior to closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Acquired Assets or otherwise, then only with regard to the Acquired Assets being acquired by the Purchaser pursuant to the Purchase Agreement, the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all claims against the Acquired Assets other than the Assumed Liabilities and all liabilities and obligations under the Assumed Contracts. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

25. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and provisions of the Purchase Agreement and the provisions of this Sale Order.

26. Each and every federal, state and local government agency or department and all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds and other similar persons are hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and this Sale Order.

27. All persons or entities that are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date.

28. Article 6 of the Uniform Commercial Code governing Bulk Sale Transfers and comparable state statutes are not applicable to the sale of the Acquired Assets to the Purchaser.

29. This Court retains jurisdiction to (a) enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith; (b) compel delivery of the Acquired Assets to the Purchaser, (c) compel delivery of the Purchase Price; (d) compel specific performance of the Seller's and the Purchaser's obligations under the Purchase Agreement; (e) resolve any disputes arising under or related to the Purchase Agreement; (f) interpret, implement and enforce the provisions of this Sale Order; and (g) determine any disputes relating to or concerning the receipt, use, application or retention of the proceeds from the sale of the Acquired Assets.

30. Nothing contained in any plan of reorganization or liquidation confirmed in these bankruptcy cases or the order of confirmation confirming such plan shall conflict with or contradict the provisions of the Purchase Agreement or this Sale Order. To the extent that any provision of this Sale Order is inconsistent with the provisions of the Purchase Agreement, any prior order, or any pleading with respect to the motions in these cases, the terms of this Sale Order control.

31. The Purchaser is deemed a buyer in good faith of the Purchased Assets and thus entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

32. The terms and provisions of the Purchase Agreement, together with the terms and provisions of this Sale Order, shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, the Debtors' estates and the Debtors' creditors, the Purchaser and its affiliates, successors and assigns, and any affected third parties and persons or entities asserting a claim against or interest in or lien on the Debtors' estates or any of the Acquired Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee for the Debtors under any chapter of the Bankruptcy Code, as to which trustee such terms and provisions likewise shall be binding in all respects.

33. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material and notice of such modification, amendment or supplement is provided to the Senior Lenders and the Committee.

34. The failure specifically to reference any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the efficacy of such provision.

35. The Seller and the Purchaser are hereby authorized and directed to take all actions reasonably necessary to effectuate the terms of the Purchase Agreement, the transactions contemplated thereunder and the provisions of this Sale Order, all without the necessity of any further order of the Bankruptcy Court.

36. The provisions of Bankruptcy Rules 6004(g) and 6006(d) shall not apply to stay consummation of the sale of the Acquired Assets to the Purchaser under the Purchase Agreement, as contemplated in the Sale Motion and approved by this Sale Order, and the Seller and the Purchaser are hereby authorized to consummate the transactions contemplated and approved herein immediately upon entry of this Sale Order.

37. Any appeal seeking to enjoin or stay consummation of the Sale (the "Appeal") shall be subject to the appellant depositing or posting a bond in an amount equal to the then aggregate purchase price, and applicable damages, pending the outcome of the Appeal.

38. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Purchase Agreement, all modifications thereto, and any waivers and consents thereunder and each of the agreements executed in connection therewith.

END OF ORDER

Prepared by:

Gregory M. Gordon (TX 08435300)

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JONES DAY

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Attorneys for Debtors

EXHIBIT C

Assignment and Assumption Agreement

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “**Agreement**”) is made and entered into as of April [___], 2009, by Hereford Biofuels, L.P. (the “**Seller**”) and Ethanol Acquisition, LLC (the “**Purchaser**”).

A. The Seller and the Purchaser are parties to that certain Asset Purchase Agreement, dated as of April 22, 2009 (the “**Asset Purchase Agreement**”).

B. On the terms and subject to the conditions set forth in the Asset Purchase Agreement, the Seller desires to assign to the Purchaser, and the Purchaser desires to assume, all of the Assumed Liabilities and all of the Seller’s right, title and interest in and to the Assumed Contracts (but excluding any obligations thereunder which constitute Excluded Liabilities).

C. The execution and delivery of this Agreement is a condition to the consummation of the transactions contemplated by the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and the Seller hereby agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in the Asset Purchase Agreement.

2. Assignment. The Seller does hereby assign to the Purchaser all of the Assumed Liabilities and all of its right, title and interest in and to the Assumed Contracts (but excluding any obligations thereunder which constitute Excluded Liabilities).

3. Acceptance and Assumption. The Purchaser does hereby accept the assignment set forth in Section 2 hereof and expressly assumes and agrees to keep, perform and fulfill all of the Assumed Liabilities required to be kept, performed or fulfilled by the Seller under the Assumed Contracts (but excluding any Excluded Liabilities).

4. No Expansion of Rights. This Agreement, being further documentation of the conveyances, transfers, assignments and assumptions contemplated by the Asset Purchase Agreement, neither expands upon nor limits the rights, benefits, responsibilities, liabilities or obligations of the Seller or the Purchaser under the Asset Purchase Agreement.

5. Conflict with Asset Purchase Agreement. In the event the terms of this Agreement conflict with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

7. Counterparts; Effectiveness. This Agreement may be executed in two counterparts, each of which shall be deemed an original and both of which shall together

constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original. This Agreement will become effective when each party to this Agreement shall have received a counterpart hereof signed by the other party hereto.

8. Governing Law. This Agreement shall be governed and interpreted in accordance with the Laws of the State of New York without regard to principles of conflicts of law, except to the extent that United States bankruptcy law is applicable.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Hereford Biofuels, L.P.

By: PHE I, LLC, its General Partner

By: _____
Name: _____
Title: _____

Ethanol Acquisition, LLC

By: _____
Name: _____
Title: _____

EXHIBIT D-1

Deed

EXHIBIT D-1

**FORM OF DEED
(Without Warranties)**

THE STATE OF TEXAS §
 §
COUNTY OF DEAF SMITH §

KNOW ALL BY THESE PRESENTS:

THAT the undersigned, Hereford Biofuels, L.P., hereinafter referred to as "Grantor," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by Ethanol Acquisition, LLC, hereinafter referred to as "Grantee," the receipt and sufficiency of which are hereby acknowledged, has granted, sold and conveyed, and by these presents does grant, sell and convey, unto Grantee the real property described on attached Exhibit A together with all and singular the rights and appurtenances thereto in any way belonging.

TO HAVE AND HOLD the above described property and premises unto the said Grantee, Grantee's heirs, administrators, executors, successors and/or assigns forever. This conveyance is made without covenants or warranties of any kind or nature, express or implied, statutory or otherwise, and all warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code are excluded.

EXECUTED to be effective for all purposes as of April [__], 2009.

GRANTOR:

Hereford Biofuels, L.P.

By: PHE I, LLC, its General Partner

By:
Name:
Title:

Grantee's Address:

Ethanol Acquisition, LLC
[_____]

[_____]

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2009, by _____, _____ of PHE I, LLC, a Delaware limited liability company, general partner of Hereford Biofuels, L.P., a Delaware limited partnership, on behalf of said limited liability partnership.

NOTARY PUBLIC, STATE OF _____
PRINTED NAME OF NOTARY

MY COMMISSION EXPIRES:

[seal]

Exhibit A

Legal Description

EXHIBIT D-2

Ground Lease Assignment

EXHIBIT D-2

FORM OF GROUND LEASE ASSIGNMENT

THIS ASSIGNMENT OF GROUND LEASE (this "Assignment"), dated to be effective for all purposes as of _____, 2009, is between Hereford Biofuels, L.P. ("Assignor"), and Ethanol Acquisition, LLC ("Assignee").

RECITALS:

A. Assignor is the lessee of the real property described on Exhibit A attached hereto (the "Property") under that certain lease described on Exhibit B attached hereto (the "Ground Lease").

B. Under that certain Asset Purchase Agreement dated as of April 22, 2009, between Assignor and Assignee (the "Purchase Agreement"), Assignee agreed to acquire the leasehold interest under the Ground Lease, and Assignor agreed to sell and assign to Assignee its leasehold interest under the Ground Lease, on the terms and conditions contained therein.

C. Assignor desires to assign its interest as lessee in the Ground Lease to Assignee, and Assignee desires to accept the assignment thereof, on the terms and conditions set forth in the Purchase Agreement and this Assignment.

NOW, THEREFORE, in consideration of Ten Dollars and other valuable consideration paid by Assignee, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor does hereby assign, transfer and set over unto Assignee all of Assignor's right, title and interest in and to the Ground Lease, TO HAVE AND TO HOLD, the same unto Assignee, its successors and assigns, from and after the date hereof, subject to the terms, covenants, conditions and provisions contained in the Ground Lease. Assignee hereby accepts such assignment and agrees to perform, observe, assume and discharge all of the lessee's covenants, obligations and liabilities under the Ground Lease arising from and after the date hereof.

2. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

3. This Assignment shall be governed and construed in accordance with the laws of the State of Texas.

4. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

5. This Assignment is made by Assignor without recourse against Assignor of any kind or nature whatsoever and without any warranty, covenants or representations of any kind or nature, express, implied or statutory, by Assignor, except as may be expressly set forth in the

Purchase Agreement, and expressly without any covenants, recourse, warranty or representation of any kind or nature regarding title in and to the Ground Lease.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment to be effective for all purposes as of the day and year first set forth above.

ASSIGNOR:

HEREFORD BIOFUELS, L.P.

By: PHE I, LLC, its general partner

By: _____

Name: _____

Title: _____

ASSIGNEE:

ETHANOL ACQUISITION, LLC

By: _____

Name: _____

Title: _____

THIS INSTRUMENT PREPARED BY:

Martha Wach
Jones Day
2727 North Harwood
Dallas, Texas 75201

AFTER RECORDING RETURN TO:

Send subsequent tax bills to:

Exhibit A
Legal Description

Exhibit B

Description of Ground Lease