

NOTE: THIS DOCUMENT AND THE FINANCING COMMITMENT REFERENCED HEREIN  
ARE SUBJECT TO APPROVAL BY CFC'S BOARD OF DIRECTORS,  
AS OF APRIL 19, 2011, SUCH APPROVAL HAS NOT BEEN OBTAINED.

## DEBTOR-IN-POSSESSION CREDIT AGREEMENT

**DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this Agreement) dated as of \_\_\_\_\_, between NAKNEK ELECTRIC ASSOCIATION, INC. ("Debtor"), a corporation organized and existing under the laws of the State of Alaska and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION ("CFC"), a cooperative association organized and existing under the laws of the District of Columbia.

### RECITALS

**WHEREAS**, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") with the United States Court for the District of Alaska (the "**Court**") on September 29, 2009 (the "**Petition Date**") and is continuing to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

**WHEREAS**, the Debtor is a party to various Prepetition Loan Documents (as hereinafter defined) with CFC. To secure the repayment of the Debtor's obligations under the Prepetition Loan Documents, the Debtor granted to CFC security interests in a DHS Drilling Company drilling rig known as DHS Rig#7 owned by the Debtor (the "**Prepetition Collateral**").

**WHEREAS**, the Debtor is also party to the First Debtor-In-Possession Loan Documents (as hereinafter defined) with CFC. To secure the repayment of the Debtor's obligations under the First Debtor-In-Possession Loan Documents, the Debtor granted to CFC a security interest in the Collateral (as hereinafter defined).

**WHEREAS**, the Debtor has requested that CFC make a second DIP Loan (as hereinafter defined) to the Debtor on a secured basis to purchase diesel fuel and continue its operations as a debtor in possession under the Bankruptcy Code, subject to the terms and conditions set forth herein; and

**WHEREAS**, CFC is willing, on the terms and conditions hereinafter set forth, to make such a DIP Loan;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01** For purposes of this Agreement, the following capitalized terms shall have the following meanings (such definitions to be equally applicable to the singular and the plural form thereof).

A. The terms "**Account**", "**Chattel Paper**", "**Deposit Account**", "**Document**", "**Equipment**", "**General Intangible**", "**Goods**", "**Instrument**", "**Inventory**", "**Investment**"

**Property**, **Payment Intangible**, **Proceeds**, have the respective meanings ascribed thereto in Article 9 of the UCC.

B. In addition, as used herein:

**“Accounting Requirements”** shall mean any system of accounts prescribed by a federal regulatory authority having jurisdiction over the Debtor (including but not limited to that prescribed by the financial and statistical report required by RUS, commonly known as the “RUS Form 7”), or in the absence thereof, the requirements of GAAP applicable to businesses similar to that of the Debtor.

**“Advance”** shall mean each advance of funds by CFC to the Debtor pursuant to the terms and conditions of this Agreement.

**“Advance Request”** shall mean a written request by the Debtor for an Advance in accordance with Section 3.02, in the form of Exhibit A hereto.

**“Availability Period”** shall mean the period from the date hereof up to, but not including, the Maturity Date.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, as may hereafter be amended from time to time.

**“Bankruptcy Rules”** shall mean the Federal Rules of Bankruptcy Procedure, as promulgated under 28 U.S.C. § 2075, as may be amended from time to time.

**“Business Day”** shall mean any day that both CFC and the depository institution CFC utilizes for funds transfers hereunder are open for business.

**“CFC Line of Credit Rate”** shall mean the rate published by CFC from time to time, by electronic or other means, for similarly classified lines of credit, but if not published, then the rate determined for such lines of credit by CFC from time to time.

**“Chapter 11 Case”** shall mean the voluntary bankruptcy case of the Debtor.

**“Collateral”** has the meaning given such term in Section 4.01 hereof.

**“DIP Loan”** has the meaning given such term in Section 3.01 hereof.

**“DIP Loan Commitment”** shall mean the commitment of CFC to make DIP Loans to the Debtor in an aggregate principal amount not to exceed \$6,000,000.00.

**“DIP Loan Documents”** shall mean, collectively, this Agreement, the Mortgage, the DIP Order, and each other order of the Court and each other instrument, document or agreement required to be delivered pursuant to this Agreement or any order of the Court or delivered in connection with this Agreement, in each case as amended, modified, waived, substituted, replaced or extended from time to time.

**“DIP Order”** shall mean the final order entered by the Court with respect to the DIP Loan or the DIP Loan Commitment, in form and substance satisfactory to CFC in its sole discretion approving the DIP Loan and the DIP Loan Documents.

**“Default Rate”** shall mean a rate per annum equal to the interest rate in effect for an Advance plus two hundred basis points.

**“Distributions”** shall mean, with respect to the Debtor, any dividend, patronage refund, patronage capital retirement or cash distribution to its members, or consumers (including but not limited to any general cancellation or abatement of charges for electric energy or services furnished by the Debtor). The term “Distribution” shall *not* include (a) a distribution by the Debtor to the estate of a deceased patron, (b) repayment by the Debtor of a membership fee upon termination of a membership, or (c) any rebate to a patron resulting from a cost abatement received by the Debtor, such as a reduction of wholesale power cost previously incurred.

**“Effective Date”** shall mean the date designated as such by CFC on the signature page hereof.

**“Environmental Laws”** shall mean all laws, rules and regulations promulgated by any Governmental Authority, with which the Debtor is required to comply, regarding the use, treatment, discharge, storage, management, handling, manufacture, generation, processing, recycling, distribution, transport, release of or exposure to any Hazardous Material.

**“Equity”** shall mean the aggregate of the Debtor's equities and margins computed pursuant to Accounting Requirements.

**“Event of Default”** shall have the meaning as described in Article VII hereof.

**“First Debtor-In Possession Loan Documents”** shall mean:

(a) the Debtor-In-Possession Loan Agreement, dated as of December 20, 2010, by and between the Debtor and CFC, evidencing a loan from CFC to the Debtor in the aggregate principal amount of \$1,500,000.00 (the “First DIP Loan Agreement”) not including interest, charges and fees owing to CFC in accordance therewith; and

(b) the Mortgage and Security Agreement, dated as of December 20, 2010, by and between the Debtor and CFC (as amended, the “First DIP Mortgage”) securing the Debtor's obligations under the DIP Loan Agreement to CFC.

**“GAAP”** shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**“Governmental Authority”** shall mean the government of the United States of America, any other nation or government, any state or other political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**“Hazardous Material”** shall mean any (a) petroleum or petroleum products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, lead and radon gas, and (b) any other substance designated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

**“Lien”** shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code.

**“Maturity Date”** shall mean the date twelve (12) months from the Effective Date.

**“Monthly Fuel Usage”** shall mean the number of gallons of fuel used by the Debtor in any given month to generate power.

**“Mortgage”** shall mean the Mortgage and Security Agreement, dated as of even date herewith, by and between the Debtor and CFC, as it may be amended, supplemented or restated from time to time.

**“Obligations”** shall mean any and all liabilities, obligations or indebtedness owing by the Debtor to CFC, arising from, by virtue of, or pursuant to this Agreement, any DIP Loan Documents, and any and all renewals and extensions thereof or any part thereof, or future amendments thereto, of any kind or description, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

**“Payment Date”** shall mean the last day of each month this Agreement is in effect.

**“Permitted Liens”** shall mean:

(a) Liens created pursuant to the DIP Loan Documents and authorized by the DIP Order;

(b) the Lien of RUS pursuant to the RUS Mortgage, as the same may have been or shall be modified by the court in the Chapter 11 Case;

(c) as to the Real Property, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Real Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Debtor;

(d) Liens for taxes, assessments and other governmental charges which are not delinquent;

(e) Liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings, PROVIDED the Debtor shall have set aside on its books adequate reserves with respect thereto;

(f) Liens in respect of judgments or awards with respect to which the Debtor shall in good faith currently be prosecuting an appeal or proceedings for review or avoidance;

(g) easements and similar rights granted by the Debtor over or in respect of any Real Property, PROVIDED that in the opinion of the Debtor's board of directors or a duly authorized officer of the Debtor such grant will not impair the usefulness of such property in the conduct of the Debtor's business and will not be prejudicial to the interests of CFC, and similar rights granted by any predecessor in title of the Debtor;

(h) easements, leases, reservations or other rights of others in any property of the Debtor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Real Property taken as a whole for the purposes for which it is held by the Debtor;

(i) Liens upon lands over which easements or rights of way are acquired by the Debtor for any of the purposes specified in subclause (j) of this definition, securing indebtedness neither created, assumed nor guaranteed by the Debtor nor on account of which it customarily pays interest, which Liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Debtor;

(j) leases existing at the date of this instrument affecting property owned by the Debtor at said date which have been previously disclosed to CFC in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Debtor after said date;

(k) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Debtor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Debtor;

(l) any Lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(m) Liens or privileges of any employees of the Debtor for salary or wages earned but not yet payable;

(n) the burdens of any law or governmental regulation or permit requiring the Debtor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(o) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Debtor, the Debtor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Debtor, the Debtor has power under eminent domain, or similar statutes, to remove such irregularities or deficiencies;

(p) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Debtor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Debtor;

(q) any obligations or duties, affecting the property of the Debtor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(r) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Debtor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Debtor, PROVIDED, HOWEVER, that nothing in this clause (t) is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(s) as to properties of other operating electric companies acquired after the date hereof by the Debtor, reservations and other matters as to which such properties may be subject;

(t) any Lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Debtor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause (v) is intended to waive any claim or rights that the Government may otherwise have under federal laws;

(u) Liens arising out of any defeased mortgage or indenture of the Debtor;

(v) the undivided interest of other owners, and Liens on such undivided interests, in property owned jointly with the Debtor as well as the rights of such owners to such property pursuant to the ownership contracts;

(vi) the Lien of CFC pursuant to the DIP mortgage; and

(vii) any other Liens granted by the Debtor in favor of CFC, regardless of whether such Liens were or are granted prior to, on or after the date hereof.

**“Person”** shall mean natural persons, cooperatives, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, associations, companies, trusts or other organizations, irrespective of whether they are legal entities, and Governmental Authorities.

**“Prepetition Collateral”** shall mean the DHS Drilling Company drilling rig known as DHS Rig #7 and accessories which was the subject of the UCC Financing Agreement recorded in favor of CFC at Document Number 2009-686683-1 UCC Central File.

**“Prepetition Loan Documents”** shall mean all loan documents entered into by the Debtor with CFC prior to the Petition Date, including without limitation the following:

(a) the Revolving Line of Credit Agreement, dated as of September 29, 2008, by and between the Debtor and CFC (as heretofore amended), evidencing a loan from CFC to the Debtor in the aggregate principal amount of \$6,000,000.00 not including interest, charges and fees owing to CFC in accordance therewith,

(b) the Revolving Line of Credit Agreement, dated as of April 23, 2009, by and between the Debtor and CFC (as heretofore amended), evidencing a loan from CFC to the Debtor in the aggregate principal amount of \$10,000,000.00 not including interest, charges and fees owing to CFC in accordance therewith,

(c) the Loan Agreement, dated as of October 10, 2009, by and between the Debtor and CFC, (as heretofore amended) and the Secured Promissory Note, dated as of October 10, 2009 issued thereunder evidencing a loan from CFC to the Debtor in the aggregate principal amount of \$8,500,000.00 not including interest, charges and fees owing to CFC in accordance therewith,

(d) the Letter of Credit Reimbursement Agreement, dated June 4, 2010, by and between the Debtor and CFC, evidencing the Debtor's obligation to reimburse CFC for draws in the aggregate principal amount of \$2,750,000.00 under a letter of credit issued by CFC pursuant thereto, not including interest, charges and fees owing to CFC in accordance therewith, and

(e) the Security Agreement, dated as of October 10, 2009, by and between the Debtor and CFC (as heretofore amended) securing the Debtor's obligations to CFC.

**“Prepetition Obligations”** shall mean all payment, performance or other obligations of the Debtor under the Prepetition Loan Documents, including, without limitation, the obligation to pay principal, interest, charges, expenses, fees, attorneys' fees and disbursements, and other amounts payable by the Debtor under the above-described documents and under any documents executed in connection therewith.

**“Principal Repayment Start Date”** for any DIP Loan shall mean the Payment Date in the month following the month in which such DIP Loan was made.

**“Principal Repayment Amount”** for any Payment Date for any DIP Loan shall mean the product obtained by multiplying (a) the Monthly Fuel Usage for the month prior to the month in which such Payment Date occurs, as reflected in the Debtor's Sales and Revenue Summary submitted to CFC by (b) the cost of fuel purchased with such DIP Loan as reflected in the invoice

submitted to CFC. For any month in which a DIP Loan is not outstanding for the entire month, the Monthly Fuel Usage for such month shall be prorated for the number of days such DIP Loan was outstanding.

**“RUS”** shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture, or if at any time after the execution of this Agreement RUS is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

**“RUS Mortgage”** shall mean the Restated Mortgage and Security Agreement, dated as of March 1, 2002, by and between the Debtor and the United States of America, as it may have been supplemented, amended, consolidated or restated from time to time.

**“Real Property”** shall mean any interest (including leaseholds) in real property now owned or hereafter acquired by the Debtor, together with all rights and fixtures appurtenant thereto.

**“Total Assets”** shall mean an amount constituting the total assets of the Debtor computed pursuant to Accounting Requirements.

**“Total Utility Plant”** shall mean the amount constituting the total utility plant of the Debtor computed pursuant to Accounting Requirements.

**“UCC”** shall mean the Uniform Commercial Code as the same may from time to time be in effect in the Commonwealth of Alaska.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.01** The Debtor represents and warrants to CFC that as of the date of this Agreement:

**A. Good Standing.** The Debtor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, is duly qualified to do business and is in good standing in those states in which it is required to be qualified to conduct its business.

**B. Authority; Validity.** Subject to the entry of the DIP Order, the Debtor has the power and authority (i) to enter into this Agreement and the Mortgage, (ii) to make the borrowing hereunder (iii) to execute and deliver all documents and instruments required hereunder and (iv) to incur and perform the obligations provided for herein and in the Mortgage, all of which have been duly authorized by all necessary and proper action. Except for entry by the Court of the DIP Order, no consent or approval of any Person, including, as applicable and without limitation, members of the Debtor, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

Each of this Agreement and the Mortgage is, and when fully executed and delivered will be, subject to the entry by the Court of the DIP Order, legal, valid and binding upon the Debtor and enforceable against the Debtor in accordance with its terms, subject to applicable bankruptcy,



insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity.

**D. No Conflicting Agreements.** Subject to the entry by the Court of the DIP Order, the execution and delivery of the DIP Loan Documents and performance by the Debtor of the obligations thereunder, and the transactions contemplated hereby or thereby, will not: (i) violate any provision of law, any order, rule or regulation of any court or other agency of government, any award of any arbitrator, the articles of incorporation or by-laws of the Debtor, or any indenture, contract, agreement, mortgage, deed of trust or other instrument to which the Debtor is a party or by which it or any of its property is bound; or (ii) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien (other than the Liens arising hereunder, under the DIP Order) upon any of the property or assets of the Debtor. However, the Debtor is out of compliance with covenants in loans documents with RUS, CoBank, ACB and CFC.

**E. Taxes.** The Debtor has filed or caused to be filed all federal, state and local tax returns which are required to be filed and has paid or caused to be paid all federal, state and local taxes, assessments, and governmental charges and levies thereon, including interest and penalties to the extent that such taxes, assessments, and governmental charges and levies have become due, except for such taxes, assessments, and governmental charges and levies which the Debtor is contesting in good faith by appropriate proceedings for which adequate reserves have been set aside.

**F. Licenses and Permits.** The Debtor has duly obtained and now holds all licenses, permits, certifications, approvals and the like necessary to own and operate its property and business that are required by Governmental Authorities and each remains valid and in full force and effect.

**G. Litigation.** Except for the Chapter 11 Case, or as disclosed in the Debtor's bankruptcy schedules, there are no outstanding judgments, suits, claims, actions or proceedings pending or, to the knowledge of the Debtor, threatened against or affecting the Debtor or any of its properties which, if adversely determined, either individually or collectively, would have a material adverse effect upon the business, operations, prospects, assets, liabilities or financial condition of the Debtor. The Debtor is not, to the Debtor's knowledge, in default or violation with respect to any judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority which would have a material adverse effect upon the business, operations, prospects, assets, liabilities or financial condition of the Debtor.

**H. Financial Statements.** The audited financial statements of the Debtor as of December 31, 2010, including the balance sheet and the statement of operations of the Debtor for the period ending on said date, and the interim financial statements of the Debtor as of February 28, 2011, all heretofore furnished to CFC, are complete and correct. Said balance sheet fairly presents the financial condition of the Debtor as at said date and said statement of operations fairly reflects its operations for the period ending on said date. The Debtor has no contingent obligations or extraordinary forward or long-term commitments except as specifically stated in said balance sheet or herein. There has been no material adverse change in the financial condition or operations of the Debtor since the Petition Date.

**I. Debtor's Legal Status.**

- (i) The Debtor's exact legal name is Naknek Electric Association, Inc.;
- (ii) The Debtor's organizational type is: Electric Cooperative;
- (iii) The Debtor's jurisdiction of organization is the State of Alaska;
- (iv) The Debtor's organizational identification number is 1869D; and
- (v) The Debtor's place of business or, if more than one, its chief executive office as well as the Debtor's mailing address if different is 101 School Road, Naknek, AK 99633.

**J. Required Approvals.** Except for entry by the Court of the DIP Order, no license, consent or approval of any Governmental Authority is required to enable the Debtor to enter into this Agreement and the Mortgage, or to perform any of its Obligations provided for in such documents, including without limitation (and if applicable), that of any state public utilities commission and any state public service commission.

**K. Compliance With Laws.** The Debtor is in compliance, in all material respects, with all applicable requirements of law and all applicable rules and regulations of each Governmental Authority.

**L. Disclosure.** To the Debtor's knowledge, information and belief, neither this Agreement nor any document, certificate or financial statement furnished to CFC by or on behalf of the Debtor in connection herewith (all such documents, certificates and financial statements, taken as a whole) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading.

**M. No Other Liens.** As to property which is presently included in the description of Collateral, the Debtor has not, without the prior written approval of CFC, executed or authenticated any security agreement or mortgage, or filed or authorized any financing statement to be filed with respect to assets owned by it, other than (i) security agreements, mortgages and financing statements in favor of RUS, and (ii) the vacated Consent Judgments of creditor Baker Hughes (and its affiliates) and creditor CoBank, ACB, except as disclosed in writing to CFC prior to the date hereof or relating to Permitted Liens.

**N. Environmental Matters.** Except as to matters which individually or in the aggregate would not have a material adverse effect upon the business or financial condition of the Debtor, (i) the Debtor is in compliance with all Environmental Laws (including, but not limited to, having any required permits and licenses), (ii) there have been no releases (other than releases remediated in compliance with Environmental Laws) from any underground or aboveground storage tanks (or piping associated therewith) that are or were present at the portion of the Collateral consisting of Real Property, (iii) the Debtor has not received written notice or claim of any violation of any Environmental Law, (iv) there is no pending investigation of the Debtor in regard to any Environmental Law, and (v) to the best of the Debtor's knowledge, there has not been any release or contamination (other than releases or contamination remediated in compliance with Environmental Laws) resulting from the presence of Hazardous Materials on property owned, leased or operated by the Debtor.

## ARTICLE III

### DIP LOAN

**Section 3.01 DIP Loan Commitment.** Subject to and in accordance with the terms and conditions of this Agreement, CFC agrees that it shall make Advances for the account of the Debtor (each a “DIP Loan” and collectively, the “DIP Loans”) up to the maximum principal amount of the DIP Loan Commitment. The Debtor may borrow and repay funds at any time or from time during the Availability Period. The amount of any funds repaid shall not be available for reborrowing.

**Section 3.02 No Note.** This Agreement, the DIP Loan Documents and the DIP Order fully evidence and memorialize the Obligations, and no other instrument is required to evidence such Obligations.

**Section 3.03 Advance Procedure.** The Debtor shall submit each Advance Request to CFC in writing no later than 12:00 noon local time at CFC’s offices in Herndon, Virginia on the Business Day prior to the Business Day the Debtor seeks to have funds advanced. Advance Requests may be submitted by facsimile.

**Section 3.04 Use of Proceeds.** The proceeds of the DIP Loan shall be used to pay for the Debtor’s purchase of diesel fuel for its operations to the extent such purchases are not prohibited by the Court or by other applicable law.

**Section 3.05 Advance Disbursement.** Each Advance shall be disbursed by CFC directly to the vendor shown in the invoice submitted to CFC with the Advance Request for such Advance, in accordance with the payment instructions identified therein, or if not identified therein, in accordance with the payment instructions for paying such invoice received from the Debtor. The Debtor hereby irrevocably authorizes to transmit each such Advance directly to such vendor in accordance herewith and agrees that CFC shall not incur any liability to the Borrower as a result of following the instructions set forth herein or in any Advance Request.

**Section 3.05 Payment, Amortization and Interest Rate.** The DIP Loan shall be payable and bear interest as follows:

**A. Maturity; Amortization; Payment.** The Debtor unconditionally promises and agrees to pay, as and when due, interest on all amounts advanced hereunder from the date of each Advance and to repay all amounts advanced hereunder with interest on the Maturity Date, if not sooner paid.

During the Availability Period, for each Advance, the Debtor shall promptly pay interest in the amount invoiced on each Payment Date until the Principal Repayment Start Date. On the Principal Repayment Start Date, and on each Payment Date thereafter, the Borrower shall promptly pay the Principal Repayment Amount plus interest in the amounts invoiced. If not sooner paid, any amount due on account of the unpaid principal, interest accrued thereon and fees, if any, shall be due and payable on the Maturity Date.

The following example is provided for illustrative purposes as to the expected timing of revenue collection and payment process:

Advance Date:	May 20, 2011
Debtor bills ratepayers:	June 5, 2011
Debtor collects revenue from ratepayers:	June 25, 2011
Principal Payment due:	June 30, 2011
Principal Payment amount:	Monthly Fuel Usage, multiplied by the price per gallon paid by the Debtor for such fuel. In the case above, the Monthly Fuel Usage would be prorated for the period May 20 - May 31, 2011.

The above example illustrates that the principal payment required to be made at each Payment Date is based upon the Monthly Fuel Usage for the prior month. The Debtor acknowledges and agrees that, therefore, on the Maturity Date, there will be due and owing a remaining principal balance not only for the Monthly Fuel Usage for the prior month, but also for the entire outstanding principal balance, regardless of whether the amount thereof corresponds to the Monthly Fuel Usage of any given month.

CFC shall invoice the Debtor at least five days prior to the due date of any payment, provided, however, that CFC's failure to timely send an invoice with respect to any interest payment shall not constitute a waiver by CFC or be deemed to relieve the Debtor of its obligation to make such payment as provided for herein or to repay all amounts advanced hereunder in full with accrued interest as provided for herein. All amounts shall be payable at CFC's main office at 2201 Cooperative Way, Herndon, Virginia 20171-3025 or at such other location as designated by CFC from time to time.

**B. Interest Rate; Computation.** The interest rate on all Advances will be equal to the CFC Line of Credit Rate in effect from time to time. Interest will be computed on the basis of a 365 day year for the actual number of days that any Advance is outstanding. The effective date of an interest rate adjustment will be determined from time to time by CFC, and shall remain in effect until any subsequent change in the interest rate occurs.

**C. Application of Payments.** Each payment shall be applied to the Obligations, first to any fees, costs, expenses or charges other than interest or principal, second to interest accrued and the balance to principal.

**D. Usury Savings Clause.** No provision of this Agreement shall require the payment, or permit the collection, of interest in excess of the highest rate permitted by applicable law.

**Section 3.06 Optional Prepayment.** The Debtor may at any time prepay any Advance, in whole or in part.

**Section 3.07 Default Rate.** If the Debtor defaults on its obligation to make a payment due hereunder by the applicable Payment Date, and such default continues for thirty days thereafter, then beginning on the thirty-first day after the Payment Date and for so long as such default continues, Advances shall bear interest at the Default Rate.

**Section 3.08 Patronage Capital; Interest Rate Discounts.** No patronage capital shall be earned, and no interest rate discounts shall apply, to the Loan.

**Section 3.09 Security and Priority.** As provided in the DIP Order, all indebtedness and DIP Obligations under this Agreement and the DIP Loan Documents shall be secured by automatically perfected first priority security interests and Liens granted pursuant to Section 364(c) and 364(d)(1) of the Bankruptcy Code on all Collateral. The Mortgage and the security interest here granted is superior to any interests in the Collateral, and, specifically, is superior to any interests of creditors CoBank, ACB, Baker Hughes (and its affiliates) and RUS.

## **ARTICLE IV**

### **COLLATERAL SECURITY**

**Section 4.01 Grant of Security Interest in Collateral.** To secure the prompt and complete payment and performance of all of the DIP Obligations, the Debtor hereby pledges and grants to CFC, a continuing security interest in and Lien subject to Permitted Liens upon all Collateral of the Debtor. Such Lien shall have the priority as set forth in Section 3.11 hereof.

“Collateral” shall mean all property, assets, rights, privileges and franchises of the Debtor of every kind and description, real, personal or mixed, tangible and intangible, whether now owned or existing or hereafter created, acquired or arising (irrespective of whether the same existed on or was created or acquired after the Petition Date) except the Prepetition Collateral, in the power generation plant in King Salmon, Alaska and all distribution lines or ducts from that generation plant, including, but not limited to:

- (a) all Accounts;
- (b) all Inventory;
- (c) all Equipment;
- (d) all General Intangibles (including all Payment Intangibles and Intellectual Property);
- (e) all Instruments;
- (f) all Chattel Paper (whether tangible or electronic);
- (g) all Documents;
- (h) all Investment Property;

(i) all other Goods and personal property, whether tangible or intangible, wherever located, including money, letters of credit and all rights of payment or performance under letters of credit, whether or not in the possession or under the control of CFC or a bailee of CFC;

(j) Lots 9 & 12, USS 3513; Government Lot 3, section 2 and Government Lot 12, Section 3, T17W, R47W, Kvichak Recording District;

(k) all other personal property of the Debtor, whether tangible or intangible, and whether now owned or hereafter acquired;

(l) all proceeds and products of any of the foregoing, in any form, including, without limitation, any claims against third parties for loss or damage to or destruction of any or all of the foregoing and to the extent not otherwise included, all (i) payments under insurance (whether or not the CFC is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral and (ii) cash, all subject to any prior interests of RUS as approved by the court in the Chapter 11 Case; and

(m) all property described as subject to the mortgage and security interest of RUS in that Restated Mortgage and Security Agreement between the Debtor and RUS recorded in the Kvichak Recording district at Document Number 2002-000081.

**Section 4.02 Perfection; Duty of Care.** Until all the Obligations have been paid and performed in full, the Debtor shall take all actions requested by CFC or otherwise required to perfect, maintain and protect CFC's security interest in the Collateral, including delivering to CFC all Collateral in which CFC's security interest may be perfected by possession together with such endorsements as CFC may request. The Debtor shall pay all taxes, assessments and other charges imposed upon or with respect to the Collateral or any part thereof, first arising after the Petition Date. If the Debtor shall fail to pay such amounts, CFC may do so and add the amount of such payment to the principal owed under the DIP Loan. CFC may discharge any Lien that is not a Permitted Lien, pay for any insurance, or take any other action the Debtor is required to take pursuant to this Agreement but has not taken, and add the amount of such payment to the principal owed under the DIP Loan. CFC shall have no duty of care with respect to the Collateral.

**Section 4.03 Mortgage.** To further evidence the grant of security described herein, the Debtor shall execute the Mortgage.

## ARTICLE V

### CONDITIONS OF LENDING

**Section 5.01 Conditions Precedent to Initial Advance.** The obligation of CFC to make the initial Advance hereunder shall not become effective until the date on which the following conditions precedent have been satisfied:

**A. Legal Matters.** All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for CFC.

**B. Representations and Warranties.** The representations and warranties contained in Article II shall be true on the date hereof.

**C. Closing Deliverables.** CFC shall have been furnished with the following, in form and substance satisfactory to CFC:

(i) **DIP Order.** CFC shall have received a copy of the DIP Order entered by the Court in form and substance acceptable to CFC and such DIP Order shall provide that CFC is a good faith lender within the meaning of Section 364(e) and Section 363(m) of the Bankruptcy Code, and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended;

(ii) **Documents.** (a) the executed DIP Loan Documents, (b) certified copies of all such organizational documents and proceedings of the Debtor authorizing the transactions hereby contemplated as CFC shall require and (c) all other such documents as CFC may reasonably request.

(iii) **Government Approvals.** True and correct copies of all certificates, authorizations, consents, permits and licenses from Governmental Authorities necessary for the execution or delivery of the DIP Loan Documents or performance by the Debtor of the obligations thereunder.

(iv) **Mortgage Recordation.** CFC shall have received evidence of the due filing, recordation or indexing of the Mortgage in all jurisdictions necessary (and in any other jurisdiction that CFC shall have reasonably requested) to provide CFC a Lien, subject to Permitted Liens, on all of the Debtor's Real Property identified as Collateral in this Agreement, all in accordance with applicable law, and satisfactory evidence that the Debtor has paid all applicable taxes, recording and filing fees.

(v) **UCC Filings.** CFC shall have received evidence of the due filing, recordation or indexing of Uniform Commercial Code financing statements (and any continuation statements and other amendments thereto) in all jurisdictions necessary (and in any other jurisdiction that CFC shall have reasonably requested) to provide CFC a perfected security interest, subject to Permitted Liens, in the Collateral which may be perfected by the filing of a financing statement, all in accordance with applicable law, and satisfactory evidence of the payment of all applicable taxes, recording and filing fees.

(vi) **Requisitions.** CFC shall have received an Advance Request with respect to the initial Advance.

(vii) **Fuel Invoice, Fuel Inventory Statement and Vendor Payment Information.** CFC shall have received (a) a copy of the fuel invoice to be paid with the proceeds of the initial Advance, (b) a current statement of the Debtor's fuel inventory and (c) all information related to where payment related to such invoice is to be remitted in order to permit CFC to send the proceeds of such Advance directly to such vendor to pay such invoice.

**Section 5.02 Conditions to Subsequent Advances.** Following the initial Advance, the obligation of CFC to make each subsequent Advance hereunder is additionally subject to satisfaction of the following conditions:

**A. Requisitions.** CFC shall have received an Advance Request with respect to such Advance.

**B. Representations and Warranties; Default.** The representations and warranties contained in Article II shall be true on the date of the making of each Advance hereunder with the same effect as though such representations and warranties had been made on such date; no Event of Default and no event which, with the lapse of time or the notice and lapse of time would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to each Advance on the books of the Debtor; there shall have occurred no material adverse change in the business or condition, financial or otherwise, of the Debtor; and nothing shall have occurred which in the opinion of CFC materially and adversely affects the Debtor's ability to perform its obligations hereunder.

**C. Fuel Invoice, Fuel Inventory Statement and Vendor Payment Information.** CFC shall have received (a) a copy of the fuel invoice to be paid with the proceeds of each Advance, (b) a current statement of the Debtor's fuel inventory and (c) and all information related to where payment related to each such invoice is to be remitted in order to permit CFC to send the proceeds of such Advance directly to such vendor to pay such invoice.

## **ARTICLE VI**

### **COVENANTS**

**Section 6.01 Affirmative Covenants.** The Debtor covenants and agrees with CFC that until payment in full of the DIP Loan and performance of all obligations of the Debtor hereunder:

**A. Loan Proceeds.** The proceeds of the DIP Loan shall be used by the Debtor for general corporate purposes to continue the operation of the Debtor's business but shall not in any case be used for the expansion of the Debtor's geothermal project beyond the well drilled as of the date hereof.

**B. Notice.** The Debtor shall promptly notify CFC in writing of:

- (i) any material adverse change in the business, operations, prospects, assets, liabilities or financial condition of the Debtor arising after the Petition Date;
- (ii) the institution or threat of any litigation or administrative proceeding of any nature involving the Debtor arising after the Petition Date which could materially affect the business, operations, prospects, assets, liabilities or financial condition of the Debtor;
- (iii) the occurrence of an Event of Default hereunder other than a default arising solely from the commencement of the Chapter 11 Case, or any event that, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

**C. Default Notices.** Upon receipt of any notices with respect to a default by the Debtor under the terms of any evidence of any indebtedness with parties other than CFC or of any loan agreement, mortgage or other agreement relating thereto, the Debtor shall deliver copies of such notice to CFC.



**D. Maintenance of Property; Insurance.** The Debtor shall keep all property useful and necessary in its business in good working order and condition (ordinary wear and tear excepted) and shall maintain insurance with responsible and reputable insurance companies or associations in at least such amounts and with only such deductibles as are usually maintained by, and against at least such risks as usually carried by companies engaged in the same or a similar business and owning similar properties to the Debtor; and furnish to CFC, at its request, full information as to the insurance carried.

**E. Financial Books; Financial Reports; Right of Inspection.**

(i) The Debtor will at all times keep, and safely preserve, proper books, records and accounts in which full and true entries will be made of all of the dealings, business and affairs of the Debtor, in accordance with Accounting Requirements.

(ii) Within 30 after the end of every month, the Debtor will prepare and furnish CFC monthly financial reports on its condition and operations. All of such reports shall be in such form and include such information as may be specified by CFC.

(iii) Within one hundred twenty (120) days of the end of each calendar year during the term hereof, the Debtor shall furnish to CFC a full and complete report of its financial condition and statement of its operations as of the end of such calendar year, in form and substance satisfactory to CFC. In addition, within one hundred twenty (120) days of the end of each the Debtor's fiscal years during the term hereof, the Debtor shall furnish to CFC a full and complete consolidated and consolidating report of its financial condition and statement of its operations as of the end of such fiscal year, audited and certified by independent certified public accountants nationally recognized or otherwise satisfactory to CFC and accompanied by a report of such audit in form and substance satisfactory to CFC, including without limitation a consolidated and consolidating balance sheet and the related consolidated and consolidating statements of income and cash flow.

(iv) CFC, through its representatives, shall at all times during reasonable business hours and upon prior notice have access to, and the right to inspect and make copies of, any or all books, records and accounts, and any or all invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Debtor or in anyway pertaining to its property or business.

**F. Compliance With Laws.** The Debtor shall remain in compliance, in all material respects, with all applicable requirements of law and applicable rules and regulations of each Governmental Authority.

**G. Taxes.** The Debtor shall pay, or cause to be paid all taxes, assessments or governmental charges lawfully levied or imposed on or against it and its properties prior to the time they become delinquent, except for any taxes, assessments or charges that are being contested in good faith and with respect to which adequate reserves as determined in good faith by the Debtor have been established and are being maintained.

**H. Further Assurances.** The Debtor shall execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable law, or which CFC may reasonably request, to effectuate the transactions contemplated by the DIP Loan Documents or

to grant, preserve, protect or perfect the Liens created or intended to be created thereby. The Debtor also agrees to provide to CFC, from time to time upon request, evidence reasonably satisfactory to CFC as to the perfection and priority of the Liens created or intended to be created by the DIP Loan Documents.

**I. Environmental Covenants.** The Debtor shall:

- (i) at its own cost, comply in all material respects with all applicable Environmental Laws, including, but not limited to, any required remediation; and
- (ii) if it receives any written communication alleging the Debtor's violation of any Environmental Law, provide CFC with a copy thereof within ten (10) Business Days after receipt, and promptly take appropriate action to remedy, cure, defend, or otherwise affirmatively respond to the matter.

**J. Limitations on Loans, Investments and Other Obligations.** The Debtor shall remain in a compliance with the provisions of 7 C.F.R., Part 1717, Subpart N, as it may be amended, superseded or restated from time to time.

**K. RUS Application.** Within three days of the Debtor's submission of its final loan application for financing to RUS, the Debtor shall furnish a complete copy of such application to CFC.

**L. State and Federal Grants.** The Debtor shall deliver to CFC such information as it may reasonably request relating to the Debtor's application for state and/or federal grant funding for its geothermal project.

**M. Sales and Revenue Summary.** No later than the twelfth (12<sup>th</sup>) of each month, the Debtor shall deliver to CFC a copy of its "Sales and Revenue" summary for the previous month, in form and substance acceptable to CFC and showing the Monthly Fuel Usage for the previous month.

**Section 6.02 Negative Covenants.** The Debtor covenants and agrees with CFC that until payment in full of the DIP Loan and performance of all obligations of the Debtor hereunder, the Debtor will not, directly or indirectly, without CFC's prior written consent:

**A. Limitations on Mergers.** Consolidate with, merge, or sell all or substantially all of its business or assets, or enter into an agreement for such consolidation, merger or sale, to another entity or person unless such action is either approved, as is evidenced by the prior written consent of CFC, or the purchaser, successor or resulting corporation is or becomes a member in good standing of CFC and assumes the due and punctual payment of amounts due hereunder and the due and punctual performance of the covenants contained in the Mortgage and this Agreement.

**B. Limitations on Sale, Lease or Transfer of Capital Assets; Application of Proceeds.** Sell, lease or transfer (or enter into an agreement to sell, lease or transfer) any capital asset, except in accordance with this Section 6.02.B, or, as long as Debtor is subject to the jurisdiction of the Bankruptcy Court, without an unappealable Bankruptcy Court Order. If no Event of Default (and no event which with notice or lapse of time and notice would become an

Event of Default) shall have occurred and be continuing, the Debtor may, without the prior written consent of CFC, sell, lease or transfer (or enter into an agreement to sell, lease or transfer) any capital asset in exchange for fair market value consideration paid to the Debtor if the value of such capital asset is less than five percent (5%) of Total Utility Plant and the aggregate value of capital assets sold, leased or transferred in any 12-month period is less than ten percent (10%) of Total Utility Plant. Subject to the terms of the Mortgage, if the Debtor does sell, lease or transfer any capital assets, then the proceeds thereof (less ordinary and reasonable expenses incident to such transaction) shall immediately (i) be applied as a prepayment of hereunder, to such installments as may be designated by CFC at the time of any such prepayment; (ii) in the case of dispositions of equipment, material or scrap, applied to the purchase of other property useful in the Debtor's business, although not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage; or (iii) applied to the acquisition or construction of other property or in reimbursement of the costs of such property.

**C. Limitation on Dividends, Patronage Refunds and Other Distributions.**

(i) Make any Distribution if an Event of Default under this Agreement has occurred and is continuing; or

(ii) Make a Distribution in any calendar year in an amount greater than thirty percent (30%) of the Debtor's total margins for the preceding calendar year, unless, after giving effect to the Distribution, the total Equity of the Debtor will be at least twenty percent (20%) of its Total Assets.

**D. Organizational Change.** Change its type of organization or other legal structure, except as permitted by Section 6.02.A. hereof, in which case the Debtor shall provide at least 30 days prior written notice to CFC together with all documentation reflecting such change as CFC may reasonably require.

**E. Notice of Change in Debtor Information.** Change its (i) state of incorporation, (ii) legal name, (iii) mailing address, or (iv) organizational identification number, if it has one, unless the Debtor provides written notice to CFC at least thirty (30) days prior to the effective date of any such change together with all documentation reflecting any such change as CFC may reasonably require.

**F. Limitation on Indebtedness.** Create, incur, assume, become liable in any manner in respect of, any indebtedness except (i) the Obligations and (ii) accounts payable to trade creditors for goods or services incurred in the ordinary course of business, as presently conducted, and paid within the specified time unless contested in good faith and by appropriate proceedings.

**G. Limitation on Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets, income or profits, whether now owned or hereafter acquired, except Permitted Liens and Liens previously disclosed in the Debtor's bankruptcy schedules.

**H. Limitation on Geothermal Project.** Expand the Debtor's existing geothermal project beyond required maintenance.

## ARTICLE VII

### EVENTS OF DEFAULT

**Section 7.01** The following shall be “Events of Default” under this Agreement:

**A. Representations and Warranties.** Any representation or warranty made by the Debtor herein, or in any of the other DIP Loan Documents, or in any certificate or financial statement furnished to CFC hereunder or under any of the other DIP Loan Documents shall prove to be false or misleading in any material respect.

**B. Payment.** The Debtor shall fail to pay (whether upon stated maturity, by acceleration, or otherwise) any principal, interest, premium (if any) or other amount payable under the DIP Loan and the DIP Loan Documents within five (5) Business Days after the due date thereof.

**C. Other Covenants.**

**(i) No Grace Period.** Failure of the Debtor to observe or perform any covenant or agreement contained in Sections 6.01.A, 6.01.C, 6.01.E, 6.01.H, 6.01.J, 6.01.M or 6.02 of this Agreement.

**(ii) Thirty Day Grace Period.** Failure of the Debtor to observe or perform any other covenant or agreement contained in this Agreement or any of the other DIP Loan Documents, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Debtor by CFC.

**D. Legal Existence, Permits and Licenses.** The Debtor shall forfeit or otherwise be deprived of (i) its authority to conduct business in the jurisdiction in which it is organized or in any other jurisdiction where such authority is required in order for the Debtor to conduct its business in such jurisdiction or (ii) permits, easements, consents or licenses required to carry on any material portion of its business.

**E. Other CFC Obligations.** The Debtor shall be in breach or default of any Obligation, which breach or default continues uncured beyond the expiration of any applicable grace period.

**F. Other Obligations.** The Debtor shall (i) fail to make any post-petition payment of any principal, premium or any other amount due or interest on any indebtedness with parties other than CFC which shall remain unpaid beyond the expiration of any applicable grace period, or (ii) be in breach or default with respect to any other term of any evidence of any other post-petition indebtedness with parties other than CFC or of any loan agreement, mortgage or other agreement relating thereto which breach or default continues uncured beyond the expiration of any applicable grace period, if the effect of such failure, default or breach is to cause the holder or holders of that indebtedness to cause that indebtedness to become or be declared due prior to its stated maturity (upon the giving or receiving of notice, lapse of time, both or otherwise) unless such occurrence happened before the Debtor's Petition Date.

**G. Dissolution or Liquidation.** The dissolution or liquidation of the Debtor, or failure by the Debtor promptly to forestall or remove any execution, garnishment or attachment of such

consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within sixty (60) days. The term dissolution or liquidation of the Debtor, as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Debtor resulting either from a merger or consolidation of the Debtor into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions set forth in Section 5.02.A.

**H. Material Adverse Change.** Any material adverse change in the business or condition, financial or otherwise, of the Debtor.

**I. Monetary Judgment.** The Debtor shall suffer any post-petition money judgment not covered by insurance, writ or warrant of attachment or similar process involving an amount in excess of \$100,000 and shall not discharge, vacate, bond or stay the same within a period of sixty (60) days.

**J. Nonmonetary Judgment.** One or more post-petition nonmonetary judgments or orders (including, without limitation, injunctions, writs or warrants of attachment, garnishment, execution, distraint, replevin or similar process) shall be rendered against the Debtor that, either individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the business, operations, prospects, assets, liabilities or financial condition of the Debtor.

**K. Bankruptcy Court.** The occurrence of any of the following in the Bankruptcy Case:

(i) The Chapter 11 Case shall be dismissed or converted from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or the Debtor shall file a motion or other pleading seeking the dismissal of the Bankruptcy Case under Section 1112 of the Bankruptcy Code or otherwise;

(ii) The Court shall enter an Order granting relief from or modifying the automatic stay applicable under Section 362 of the Bankruptcy Code to any creditor or any other party as to any assets of the Debtor;

(iii) (a) The Debtor shall fail to comply with the terms of the DIP Order, (b) the Debtor shall apply for authority to amend, supplement, stay, vacate or otherwise modify the DIP Order, (c) an order is entered that modifies or vacates the DIP Order, in each case without the written consent of CFC or (d) the DIP Order otherwise ceases to be in full force and effect;

(iv) The Debtor shall file, support or fail to oppose a motion seeking, or the Court shall enter, an order (i) approving additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement, (ii) granting any Lien upon or affecting any Collateral or any Prepetition Collateral which are pari passu or senior to the Liens of CFC on the Collateral or the Prepetition Collateral, (iii) granting any claim priority senior to or pari passu with the claims of the CFC under the DIP Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in Section 503(b) or Section 507(b) of the Bankruptcy Code, (iv) limiting, affecting or modifying any of CFC's rights with respect to the Obligations, including rights with respect to the Collateral and the priority thereof, except with the prior written

consent of CFC or (v) granting any other relief that is adverse to the CFC's interest under any DIP Loan Document or its rights and remedies hereunder or its interest in the Collateral;

(v) The Debtor shall file, support or fail to oppose a motion seeking, or the Court shall enter, an order appointing (x) a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, (y) a responsible officer or (z) an examiner, in each case with enlarged powers relating to the operation of the business (powers beyond those set forth in sub clauses (3) and (4) of Section 1106(a) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; or

(vi) Except as permitted under the DIP Order, the Debtor shall file, support or fail to oppose a motion seeking, or the Court shall enter, an order for the authority to incur, create, assume, suffer or permit any claim, Lien or encumbrance (other than Permitted Liens) against the Debtor, or any of its assets in the Chapter 11 Case to be pari passu with, or senior to, the Liens and claims of CFC granted and arising under the DIP Loan Documents.

## ARTICLE VIII

### REMEDIES

**Section 8.01** If any of the Events of Default listed in Section 7 hereof shall occur after the date of this Agreement and shall not have been remedied within the applicable grace periods specified therein, then CFC may:

- (i) Cease making Advances hereunder;
- (ii) Declare all unpaid principal outstanding on the DIP Loan, all accrued and unpaid interest thereon, and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived;
- (iii) Exercise rights of setoff or recoupment and apply any and all amounts held, or hereafter held, by CFC or owed to the Debtor or for the credit or account of the Debtor against any and all of the Obligations of the Debtor now or hereafter existing hereunder or under the DIP Loan, including, but not limited to, patronage capital allocations and retirements, money due to the Debtor from equity certificates purchased from CFC, and any membership or other fees that would otherwise be returned to the Debtor. The rights of CFC under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which CFC may have. The Debtor waives all rights of setoff, deduction, recoupment or counterclaim;
- (iv) Pursue all rights and remedies available to CFC that are contemplated by the Mortgage and the other DIP Loan Documents in the manner, upon the conditions, and with the effect provided in the Mortgage and the other DIP Loan Documents, including, but not limited to, a suit for specific performance, injunctive relief or damages;

- (v) Pursue any other rights and remedies available to CFC at law or in equity.

Nothing herein shall limit the right of CFC to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default. Each right, power and remedy of CFC shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01 Notices.** All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the Address for Notices specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. All such communications shall be deemed to have been duly given (i) when personally delivered including, without limitation, by overnight mail or courier service, (ii) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (iii) in the case of notice by telecopy, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (i) or (ii) above in each case given or addressed as provided for herein. The Address for Notices of each of the respective parties is as follows:

National Rural Utilities Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Attention: Senior Vice President – Member Services  
Fax # 703-709-6776

The Debtor:

The address set forth in  
Schedule 1 hereto

**Section 9.02 Expenses.** The Debtor shall reimburse CFC for any reasonable costs and out-of-pocket expenses paid or incurred by CFC (including, without limitation, reasonable fees and expenses of outside attorneys, paralegals and consultants) for all actions CFC takes, (a) to enforce the payment of any Obligation, to effect collection of any Collateral, or in preparation for such enforcement or collection, (b) to institute, maintain, preserve, enforce and foreclose on CFC's security interest in or Lien on any of the Collateral, whether through judicial proceedings or otherwise, (c) to restructure any of the Obligations, (d) to review, approve or grant any consents or waivers hereunder, (e) to prepare, negotiate, execute, deliver, review, amend or modify this Agreement, and (f) to prepare, negotiate, execute, deliver, review, amend or modify any other agreements, documents and instruments deemed necessary or appropriate by CFC in connection with any of the foregoing.

The amount of all such expenses identified in this Section 9.02 shall be secured by the Mortgage and shall be payable upon demand, and if not paid, shall accrue interest at the then prevailing CFC Line of Credit Rate plus two hundred basis points.

**Section 9.03 Late Payments.** If payment of any amount due hereunder is not received at CFC's office in Herndon, Virginia, or such other location as CFC may designate to the Debtor within five (5) Business Days after the due date thereof, the Debtor will pay to CFC, in addition to all other amounts due under the terms of the DIP Loan Documents, any late-payment charge as may be fixed by CFC from time to time pursuant to its policies of general application as in effect from time to time.

**Section 9.04. Non-Business Day Payments.** If any payment to be made by the Debtor hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

**Section 9.05 Filing Fees.** To the extent permitted by law, the Debtor agrees to pay all expenses of CFC (including the reasonable fees and expenses of its counsel) in connection with the filing, registration, recordation or perfection of the Mortgage and any other security instruments as may be required by CFC in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to execution, filing, registration or recordation of any document or instrument in connection herewith. The Debtor agrees to save harmless and indemnify CFC from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by CFC in connection with this Agreement. The provisions of this subsection shall survive the execution and delivery of this Agreement and the payment of all other amounts due under the DIP Loan Documents.

**Section 9.06 CFC Accounts.** The Debtor agrees that the records of, and all computations by, CFC (in whatever media they are recorded or maintained) as to the amount of principal, interest and fees due on the DIP Loan shall be conclusive in the absence of manifest error.

**Section 9.07 Waiver; Modification.** No failure on the part of CFC to exercise, and no delay in exercising, any right or power hereunder or under the other DIP Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by CFC of any right hereunder, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No modification or waiver of any provision of this Agreement or the other DIP Loan Documents and no consent to any departure by the Debtor therefrom shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent, and then such modification, waiver or consent shall be effective only in the specific instance and for the purpose for which given.

#### **SECTION 9.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

(A) THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA.



(B) THE DEBTOR AND CFC HEREBY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA TO THE EXTENT OF THAT COURT'S JURISDICTION OF ISSUES WHICH ARISE IN THE DEBTOR'S CASE AND UNDER THE TERMS OF THIS AGREEMENT. TO THE EXTENT THE BANKRUPTCY COURT DOES NOT HAVE JURISDICTION OVER ISSUES WHICH ARISE UNDER THE TERMS OF THIS AGREEMENT, THE DEBTOR AND CFC SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA OR ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. TO THE EXTENT THE BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA DOES NOT HAVE JURISDICTION, THE DEBTOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTIONS THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDINGS BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(C) THE DEBTOR AND CFC EACH HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**SECTION 9.09 INDEMNIFICATION.** THE DEBTOR HEREBY INDEMNIFIES AND AGREES TO HOLD HARMLESS, AND DEFEND CFC AND ITS MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS AND REPRESENTATIVES (EACH AN "INDEMNITEE") FOR, FROM, AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COSTS AND EXPENSES OF LITIGATION AND REASONABLE ATTORNEYS' FEES) ARISING FROM ANY CLAIM OR DEMAND IN RESPECT OF THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS, THE COLLATERAL, OR THE TRANSACTIONS DESCRIBED IN THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS AND ARISING AT ANY TIME, WHETHER BEFORE OR AFTER PAYMENT AND PERFORMANCE OF ALL OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS IN FULL, EXCEPTING ANY SUCH MATTERS ARISING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CFC OR ANY INDEMNITEE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN SECTION 9.11 HEREOF, THE OBLIGATIONS IMPOSED UPON THE DEBTOR BY THIS SECTION SHALL SURVIVE THE REPAYMENT OF THE DIP LOAN, THE TERMINATION OF THIS AGREEMENT AND THE TERMINATION OR RELEASE OF THE LIEN OF THE MORTGAGE.

**Section 9.10 Complete Agreement.** This Agreement, together with the schedules to this Agreement and the other DIP Loan Documents, and the other agreements and matters referred to herein or by their terms referring hereto, is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement. In the event of any conflict in the terms and provisions of this Agreement and any other DIP Loan Documents, the terms and provisions of this Agreement shall control.

**Section 9.11 Survival; Successors and Assigns.** All covenants, agreements, representations and warranties of the Debtor which are contained in this Agreement shall survive the execution and delivery to CFC of the DIP Loan Documents and the making of the Loan hereunder and shall continue in full force and effect until all of the obligations under the DIP Loan Documents have been paid in full. All covenants, agreements, representations and warranties of the Debtor which are contained in this Agreement shall inure to the benefit of the successors and assigns of CFC. The Debtor shall not have the right to assign its rights or obligations under this Agreement without the prior written consent of CFC, except as provided in Section 6.02.A hereof.

**Section 9.12 Use of Terms.** The use of the singular herein shall also refer to the plural, and vice versa.

**Section 9.13 Headings.** The headings and sub-headings contained in this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**Section 9.14 Severability.** If any term, provision or condition, or any part thereof, of this Agreement or the other DIP Loan Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement and the other DIP Loan Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

**Section 9.15 Binding Effect.** This Agreement shall become effective when it shall have been executed by both the Debtor and CFC and thereafter shall be binding upon and inure to the benefit of the Debtor and CFC and their respective successors and assigns.

**Section 9.16 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**Section 9.17 Exhibit A.** Exhibit A attached hereto is an integral part of this Agreement.

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

NAKNEK ELECTRIC ASSOCIATION, INC.

(SEAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

(SEAL)

By: \_\_\_\_\_  
Lawrence Zawalick  
Senior Vice President

Attest: \_\_\_\_\_  
Assistant Secretary-Treasurer

**Effective Date:** \_\_\_\_\_ (to be filled in by CFC)

**Loan Number: AK010-R-**

## EXHIBIT A



## Advance Request

Debtor Name	Debtor ID #	Facility #	Advance Date	Advance Amount
Naknek Electric Association, Inc.	AK010	R-		

Loan Advance Purpose (Disbursement of Funds) and Vendor Name	

Banking Information		Correspondent Bank Information	
Bank Name:		Routing Bank Name	
City, State:		Routing Bank City, State	
Bank ABA #		Routing Bank ABA #	
Bank Account #			

## Certification

Acting on behalf of the Debtor, I hereby certify that as of the date below: (1) I am duly authorized to make this certification and to request funds on the terms specified herein; (2) the Debtor has met all of the conditions contained in the Debtor-In-Possession Credit Agreement governing the terms of this Advance (the "Agreement") that the Debtor is required to meet prior to an Advance of funds; (3) all of the representations and warranties contained in said Agreement are true; (4) no Event of Default, as defined in said Agreement, has occurred and is continuing; (5) I know of no other event that has occurred which, with the lapse of time and/or notification to CFC of such event, or after giving effect to this Advance, would become an Event of Default; and (6) the funds requested herein will be used only for the purposes specified in said Agreement.

I hereby authorize CFC, for and on behalf of the Debtor, to make this Advance directly to the vendor identified herein on the following terms, and hereby acknowledge and agree that such terms shall be binding upon the Debtor under the provisions of the Agreement governing this Advance:

Certified By:

Signature	Date	Title of Authorized Officer
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**PLEASE FAX TO 703-709-6811      ATTN: \_\_\_\_\_, Associate Vice President**

**\*\*FOR INTERNAL USE ONLY\*\***

**Recommended by:** \_\_\_\_\_ **Approved by:** \_\_\_\_\_  
**AVP** **AVP/Portfolio Manager**