UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: ABENGOA BIOENERGY US HOLDING, LLC, *et al.*, Debtors.	Chapter 11 Case No. 16-41161-659 (Jointly Administered) Re: Docket No. 375

INTERIM ORDER (I) AUTHORIZING THE MAPLE DEBTORS TO (A) OBTAIN POSTPETITION SENIOR SECURED SUPERPRIORITY FINANCING PURSUANT TO 11 U.S.C. §§ 105(a), 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e) AND 507, BANKRUPTCY RULES 2002, 4001, 6004 AND 9014 AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING PRIMING LIENS, PRIORITY LIENS AND SUPERPRIORITY CLAIMS TO THE DIP LENDERS, (III) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c) AND (VI) GRANTING RELATED RELIEF

Upon the motion dated June 12, 2016 (the "Motion")[1] of Abengoa Bioenergy Meramec Renewable, LLC, Abengoa Bioenergy Funding, LLC, Abengoa Bioenergy Maple, LLC, Abengoa Bioenergy of Indiana, LLC, Abengoa Bioenergy of Illinois, LLC, and Abengoa Bioenergy Operations, LLC (collectively, the "Maple Debtors"), filed in the above-referenced chapter 11 cases (the "Cases"), for entry of an interim order (this "Interim Order") and a final order ("Final Order"), under sections 105(a), 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the applicable Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Missouri (the "Local Rules"), seeking, *inter alia*:

[1] Any capitalized terms not defined herein shall have the meanings ascribed to them in the DIP Credit Agreement (as defined below).

(i) (A) authorization for Abengoa Bioenergy Maple, LLC (the "Borrower"), Abengoa Bioenergy of Illinois, LLC ("ABIL"), and Abengoa Bioenergy of Indiana, LLC ("ABI" and collectively with ABIL, the "Guarantors" and the Guarantors together with the Borrower, the "DIP Credit Parties") to obtain senior secured postpetition financing consisting of a multi-draw term credit facility in an aggregate principal amount not to exceed $10 million (the "DIP Loan" or "DIP Facility"), pursuant to section 364 of the Bankruptcy Code, and (B) authorization for the Guarantors to guarantee the Borrower's obligations under the DIP Facility, in each case, pursuant to the terms of this Interim Order, the Final Order, that certain Debtor in Possession Credit Agreement dated as of June 15, 2016, by and among, *inter alia*, the Borrower, ABI, ABIL, Deutsche Bank Trust Company Americas, in its capacity as administrative agent (the "DIP Administrative Agent") and collateral agent (the "DIP Collateral Agent" and together with the DIP Administrative Agent, the "DIP Agent"), and the lenders party thereto from time to time as lenders (collectively, the "DIP Lenders"), in substantially the form submitted to the Court (as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and this Interim Order, the "DIP Credit Agreement"), and any related documents required to be delivered by or in connection with the DIP Credit Agreement (collectively, the "DIP Agreements");

(ii) authorization for the DIP Credit Parties to execute and enter into the DIP Agreements and to perform such other and further acts as may be required in connection with the DIP Agreements;

(iii) authorization for the DIP Credit Parties to grant security interests, liens and superpriority claims (including a superpriority administrative claim pursuant to

section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) in favor of the DIP Agent, for the benefit of itself and the DIP Lenders, to secure the repayment of all obligations of the DIP Credit Parties under and with respect to the DIP Agreements;

(iv) authorization for the DIP Credit Parties' use of Cash Collateral constituting Prepetition Collateral under the Prepetition Facility on the terms and conditions set forth in this Interim Order and in the DIP Agreements;

(v) authorization for the DIP Credit Parties to provide adequate protection of the liens and security interests of the Prepetition Lenders, the Prepetition Agent, and Amarillo National Bank, in its capacity as the collateral agent under the Prepetition Credit Documents (in such capacity the "Prepetition Collateral Agent") under the Prepetition Facility (as defined below) (collectively, the "Prepetition Liens"), which Prepetition Liens are being primed by the liens securing the repayment of the DIP Facility in accordance with this Interim Order and the DIP Agreements;

(vi) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the DIP Credit Parties, the DIP Agent, the DIP Lenders, the Prepetition Agent, and/or the Prepetition Lenders, to implement the terms of this Interim Order and the DIP Agreements;

(vii) the scheduling of a final hearing (the "Final Hearing") on the Motion to consider entry of a Final Order authorizing the borrowings under the DIP Agreements on a final basis and approval of notice procedures with respect thereto; and

(viii) the granting of certain related relief.

The Interim Hearing having been held by this Court on June 15, 2016; and the Court having considered the Motion and all pleadings related thereto, including the *Declarations of Sandra Porras Serrano* and the record made at the Interim Hearing; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:[2]

A. On June 12, 2016 (the "Maple Petition Date"), the Maple Debtors each commenced their Chapter 11 cases by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Maple Debtors continue to possess their property and to manage and operate their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Cases are being jointly administered for procedural purposes only under case number 16-41161-659.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Maple Debtors on each of their twenty (20) largest unsecured creditors, the counsel to the DIP Agent, counsel to the Prepetition Agent, the Prepetition Collateral Agent, the Prepetition Lenders, the Office of the United States Trustee for this District, all known holders of asserted liens upon the Maple Debtors' assets, any parties that have filed a notice of appearance in the Cases pursuant to Bankruptcy Rule 2002, and the Internal Revenue Service. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Maple Debtors

[2] The findings and conclusions set forth in this Interim Order constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

and their estates pending the Final Hearing. Under the circumstances, the notice given by the Maple Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and no further notice of the relief sought at the Interim Hearing is necessary or required.

D. Subject to paragraph 25 below, the Maple Debtors hereby admit, stipulate and agree that:

(1) Prepetition Facility: Pursuant to the Prepetition Credit Documents (as defined below), the Prepetition Lenders agreed to make loans in an aggregate principal amount not to exceed $300,000,000, which included a $215,000,000 term loan facility, to the Credit Parties from time to time, (the "Prepetition Facility"). All obligations of the Maple Debtors arising under the Prepetition Credit Documents, including all loans, advances, debts, liabilities, principal, accrued or hereafter accruing interest, fees, costs, charges, expenses (including any and all reasonable attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable, reimbursable or otherwise payable under the Prepetition Credit Documents) and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Prepetition Agent, the Prepetition Collateral Agent, or Prepetition Lenders (collectively, the "Prepetition Secured Parties") by the Maple Debtors, of any kind or nature, whether or not evidenced by any note, agreement or other instrument, shall hereinafter be referred to as the "Prepetition Secured Obligations."

(2) Pursuant to certain Prepetition Credit Documents (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Prepetition Collateral Documents"), including, without limitation, that certain Collateral Agency and Security Deposit Agreement, dated July 31, 2007, that certain Pledge Agreement by

Abengoa Bioenergy Funding LLC with respect to its interest in Abengoa Bioenergy Maple, LLC, dated as of July 31, 2007, that certain Pledge Agreement by Abengoa Bioenergy Maple, LLC with respect to its interest in ABIL and ABI dated as of July 31, 2007, that certain Security Agreement by ABI as grantor, dated as of July 31, 2007, and that certain Security Agreement by ABIL as grantor, dated as of July 31, 2007, the Credit Parties granted to the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties to secure the Prepetition Secured Obligations, a security interest in and continuing lien on all of the Maple Debtors' assets ("Prepetition Liens") (except as expressly set forth in the Prepetition Collateral Documents). All collateral granted or pledged by the Maple Debtors pursuant to the Prepetition Collateral Documents shall collectively be referred to herein as the "Prepetition Collateral."

(3) All documents executed and delivered by the Maple Debtors to the Prepetition Secured Parties (the "Prepetition Credit Documents") are valid and enforceable by the Prepetition Secured Parties against each of the Maple Debtors party to such Prepetition Credit Documents. The Prepetition Secured Parties duly perfected their liens upon and security interests in the Prepetition Collateral by, among other things, filing financing statements, mortgages, entering into deposit and securities account control agreements and, where necessary, possessing the relevant instruments, certificates, or other property. All of such financing statements were duly authorized to be filed by the Maple Debtors and were filed. Pursuant to the Prepetition Credit Documents, the Prepetition Secured Parties have perfected security interests in and liens on all of the Prepetition Collateral, including, without limitation, Cash Collateral (as such term is defined in section 363(a) of the Bankruptcy Code), including, without limitation, all of the Maple Debtors' cash on hand as of the Maple Petition Date.

(4) The liens and security interests of the Prepetition Secured Parties in the Prepetition Collateral, including the Cash Collateral, as security for the Prepetition Secured Obligations, constitute valid, binding, enforceable and perfected liens and security interests and are not subject to avoidance, disallowance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except insofar as such liens are subordinated to the DIP Liens and the Carve-Out (as defined below) in accordance with the provisions of this Interim Order). The Maple Debtors each further admit, acknowledge and agree that (a) the Prepetition Secured Obligations constitute legal, valid and binding obligations of each of the Maple Debtors, (b) no offsets, defenses or counterclaims to the Prepetition Secured Obligations exist and (c) no portion of the Prepetition Secured Obligations is subject to avoidance, disallowance, reduction, objection, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(5) The Maple Debtors have no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Secured Parties with respect to the Prepetition Credit and Collateral Documents, whether arising at law or at equity, including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510, 541 or 542 through 553, inclusive, of the Bankruptcy Code.

(6) As of the Maple Petition Date, the aggregate principal balance of the Prepetition Secured Obligations for which the Maple Debtors were truly and justly indebted to the Prepetition Secured Parties, without defense, counterclaim, recoupment or offset of any kind, was not less than approximately $152,188,557.13 on account of the Prepetition Credit Documents, plus all other Prepetition Secured Obligations.

E. The DIP Credit Parties have an immediate and critical need to obtain postpetition financing under the DIP Facility and to use Cash Collateral to, among other things, finance the ordinary costs of their operations, maintain business relationships with vendors, suppliers, employees and customers, make payroll, make capital expenditures, satisfy other working capital and operational needs and fund the administration and prosecution of the Cases. The DIP Credit Parties' access to sufficient working capital and liquidity through the incurrence of secured postpetition financing under the DIP Facility and the use of Cash Collateral under the terms of this Interim Order is vital to the preservation and maintenance of the going concern value of the Maple Debtors' estates, the orderly operation of the Maple Debtors' businesses and, ultimately, the success of the Cases. Consequently, without access to the DIP Facility and the continued use of Cash Collateral, to the extent authorized pursuant to this Interim Order, the Maple Debtors and their estates would suffer immediate and irreparable harm.

F. The Maple Debtors are unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code or (b) under section 364(c)(1) of the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of their estates under section 364(c)(2) of the Bankruptcy Code and (y) a junior lien on encumbered assets of their estates under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(1) of the Bankruptcy Code from sources other than the DIP Agent and the DIP Lenders on terms more favorable than the terms of the DIP Credit Facility. The only available source of secured credit available on a consensual basis to the DIP Credit Parties is the DIP Credit Facility. The Maple Debtors are not able to operate and manage their business solely with the use of Cash Collateral. The Maple Debtors require both additional

financing under the DIP Facility and the continued use of Cash Collateral under the terms of this Interim Order in order to satisfy their postpetition liquidity needs.

G. The DIP Lenders have indicated a willingness to provide the DIP Credit Parties with certain financing commitments, but solely on the terms and conditions set forth in this Interim Order and in the DIP Agreements. After considering all of their alternatives, the Maple Debtors have concluded, in an exercise of their sound business judgment, that the financing to be provided by the DIP Lenders pursuant to the terms of this Interim Order and the DIP Agreements represents the best financing presently available to the Maple Debtors.

H. Solely on the terms and conditions set forth in this Interim Order and in the DIP Agreements, the Prepetition Lenders who are also DIP Lenders (the "Consenting Lenders") are prepared to consent to: (i) the imposition of certain liens under section 364(d)(1) of the Bankruptcy Code in favor of the DIP Agent, for the benefit of itself and the DIP Lenders, which liens will prime the Primed Liens (as defined below) and (ii) the Maple Debtors' use of the Prepetition Collateral (including the Cash Collateral), provided that the Court authorizes the Maple Debtors, pursuant to sections 361, 363 and 364(d) of the Bankruptcy Code, to grant to the Prepetition Agent, for the benefit of the Prepetition Secured Parties, as and for adequate protection and without in any way limiting the Prepetition Secured Parties' rights under section 552 of the Bankruptcy Code, but subject to the Carve-Out, (1) a security interest in and lien and mortgage upon the DIP Collateral (as defined below) in favor of the Prepetition Secured Parties, which shall have the priorities set forth in this Interim Order (the "Adequate Protection Lien") and (2) superpriority administrative expense claims under section 507(b) of the Bankruptcy Code (collectively, the "Adequate Protection Priority Claims").

I. The security interests and liens granted pursuant to this Interim Order to the DIP Collateral Agent, for the benefit of the DIP Agent and the DIP Lenders, subject to the Carve-Out and the Permitted Liens, are appropriate under section 364(d) of the Bankruptcy Code because, among other things: (i) such security interests and liens do not impair the interests of any holder of a valid, perfected, prepetition security interest or lien in the property of the Maple Debtors' estates; and/or (ii) the Consenting Lenders with interests in such valid, perfected, prepetition security interests and liens have consented to the security interests and priming liens granted pursuant to this Interim Order to the DIP Collateral Agent for the benefit of the DIP Agent and the DIP Lenders; and (iii) the interests of any holder of a valid, perfected, prepetition security interest or lien are otherwise adequately protected. In particular, the security interests and liens of the Prepetition Secured Parties are adequately protected by the Adequate Protection Lien and the Adequate Protection Priority Claims.

J. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and the applicable Local Rules. In particular, the authorization granted herein for the Maple Debtors to execute the DIP Agreements, to continue using Cash Collateral, and to obtain interim financing, including on a priming lien basis, is necessary to avoid immediate and irreparable harm to the Maple Debtors and their estates. Entry of this Interim Order is in the best interest of the Maple Debtors, their estates and creditors. The terms of the DIP Agreements (including the Maple Debtors' continued use of Cash Collateral) are fair and reasonable under the circumstances, reflect the Maple Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

K. The Maple Debtors, the DIP Agent, the DIP Lenders, and the Consenting Lenders have negotiated the terms and conditions of the DIP Agreements (including the Maple Debtors' continued use of Cash Collateral) and this Interim Order in good faith and at arm's-length, and any credit extended and loans made to the DIP Credit Parties pursuant to this Interim Order shall be, and hereby are, deemed to have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

L. The DIP Agent, the DIP Lenders, and the Consenting Lenders request a waiver of the provisions of section 506(c) of the Bankruptcy Code and the "equities of the case" exception in section 552(b) of the Bankruptcy Code in connection with the DIP Facility at the Final Hearing.

M. Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. *Approval of Motion*. The Motion is granted on an interim basis on the terms and conditions set forth in this Interim Order. Any objections, responses or reservations of rights to or with respect to the relief requested in the Motion that have not been previously resolved or withdrawn, waived or settled are hereby overruled on the merits and denied or, to the extent applicable, deferred until the Final Hearing. The rights of all parties in interest to object to entry of a Final Order are reserved. This Interim Order shall become effective immediately upon its entry. To the extent that the terms of the DIP Agreements differ from the terms of this Interim Order, this Interim Order shall control.

2. *Authority to Enter Into DIP Agreements, Authority Thereunder*. The Maple Debtors are hereby authorized to enter into the DIP Agreements, including the DIP Credit Agreement, and such additional documents, instruments and agreements as may be reasonably

required by the DIP Agent (acting at the direction of a majority of DIP Lenders holding the principal amount outstanding under the DIP Facility (the "Majority DIP Lenders") and/or DIP Lenders to implement the terms or effectuate the purposes of this Interim Order. The Borrower is hereby authorized to borrow money under the DIP Agreements, on an interim basis, up to an aggregate principal or face amount not to exceed $6,500,000, and the Guarantors are hereby authorized to guaranty such borrowings, all in accordance with the terms of this Interim Order and the DIP Agreements.

3. *Use of Cash Collateral and DIP Loans*. The Maple Debtors are hereby authorized to use the Cash Collateral and proceeds of DIP Loans (as defined below) and the DIP Facility solely (i) for the DIP Fees and Expenses (as defined below); (ii) for the fees and expenses of Professional Persons (as defined below); (iii) for the fees and expenses of the Prepetition Secured Parties as provided for below; and (iv) to make disbursements in the ordinary course of the Maple Debtors' business and pay for the costs of administering these Cases in accordance with the Budget (subject to Permitted Deviations), in each case, pursuant to the terms, conditions and procedures set forth in the DIP Agreements and this Interim Order, it being understood that in no event shall the Budget be construed as a cap on the payment of the items set forth in clauses (i) and (iii) of this paragraph and deviations from the Budget for the payment of the items set forth in clauses (i) and (iii) of this paragraph shall not constitute defaults or Events of Default under the DIP Agreements or this Interim Order. Any and all of the Maple Debtors' cash on hand as of the Maple Petition Date shall be deemed used and exhausted prior to the Maple Debtors' use of the proceeds of the DIP Credit Facility, regardless of whether such cash on hand is commingled with such proceeds of the DIP Facility or actually used.

4. *Payment of DIP Fees and Expenses*. The Maple Debtors are hereby authorized to pay all fees, expenses and other amounts payable under the terms of the DIP Agreements, including, without limitation, the Commitment Fee and the Upfront Fee, the fees specified in the Administrative Agent's Letter Agreement, reasonable costs and expenses of the DIP Agent and the DIP Lenders in accordance with the terms of the DIP Agreements (including, without limitation, the prepetition and postpetition reasonable fees and disbursements of legal counsel and financial advisors (collectively, the "DIP Professionals") advising the DIP Agent or the DIP Lenders (collectively, the "DIP Fees and Expenses"). None of the DIP Fees and Expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court; provided, however, that the DIP Agent and the DIP Lenders shall submit copies of their DIP Professionals' fee summary invoices for services rendered after the Maple Petition Date to the Maple Debtors and the U.S. Trustee and the Maple Debtors and U.S. Trustee shall have ten (10) days from receipt thereof to object in writing to the reasonableness of such invoices; to the extent that the Maple Debtors or U.S. Trustee so objects to any such invoices, payment of the disputed portion of such invoices will be subject to review by the Court if the parties cannot otherwise resolve such objection; provided, further, however, that such invoices may be redacted to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. In addition, the Maple Debtors are hereby authorized and directed to indemnify the DIP Agent and the DIP Lenders against any liability arising in connection with the DIP Agreements to the extent set forth in the DIP Agreements.

All such fees, expenses and indemnities of the DIP Agent and the DIP Lenders shall constitute DIP Obligations (as defined hereinafter) and the repayment thereof shall be secured by the DIP Collateral (as defined below) and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Agreements. The Maple Debtors shall pay the DIP Fees and Expenses promptly when invoiced, provided that the DIP Professionals' fees and expenses incurred and invoiced after the Maple Petition Date shall be paid after the foregoing ten (10) day period. For the avoidance of doubt, and notwithstanding any other provision herein or the DIP Agreements, the DIP Fees and Expenses are payable, in full, in cash, and are not subject to the Budget.

5. *Validity of DIP Agreements*. Upon execution and delivery of the DIP Agreements and entry of this Interim Order, the DIP Agreements shall constitute valid and binding obligations of the Maple Debtors, enforceable against each Maple Debtor party thereto in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Agreements and this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. *DIP Loans*. All Borrowings made to or for the benefit of the DIP Credit Parties on or after the Maple Petition Date under the DIP Agreements (collectively, the "DIP Loans"), all interest thereon and all reasonable fees, costs, expenses, indemnification obligations and other liabilities owing by the Maple Debtors to the DIP Agent and the DIP Lenders under the DIP Agreements and this Interim Order shall hereinafter be referred to as the "DIP Obligations." The DIP Loans shall (a) be evidenced by the books and records of the DIP Administrative Agent; (b) bear interest at the rates set forth in the DIP Agreements; (c) be secured in the manner

specified in paragraphs 7 and 8 below and in the DIP Agreements by liens that are automatically fully perfected upon the entry of this Interim Order on the Docket in the Cases; (d) be payable in accordance with the terms of the DIP Agreements and this Interim Order; and (e) otherwise be governed by the terms set forth herein and in the DIP Agreements.

7. *Continuation of Prepetition Liens and Prepetition Liens Securing DIP Obligations.* Until (a) the DIP Credit Parties have paid in full all DIP Obligations and all Prepetition Secured Obligations (in each case, other than unasserted contingent indemnification obligations), (b) the DIP Lenders' Commitment under the DIP Facility has terminated, (c) all objections and challenges to (i) the liens and security interests of the Prepetition Secured Parties (including, without limitation, liens granted for adequate protection purposes) and (ii) the Prepetition Secured Obligations have been waived, denied or barred, and (d) all of the Maple Debtors' stipulations contained in paragraph D of this Interim Order (collectively, the "Maple Debtors' Stipulations") have become binding upon their estates and parties in interest in accordance with paragraph 25 below, all liens and security interests of the Prepetition Secured Parties (including, without limitation, Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as described herein. Without limiting the foregoing, notwithstanding any payment of all or any portion of the Prepetition Secured Obligations, the Prepetition Liens shall continue in full force and effect, subject to the Carve-Out and Permitted Liens, and shall, and shall be deemed to, secure the full and timely payment of the DIP Obligations (separate from and in addition to the DIP Liens granted to the DIP Collateral Agent for the benefit of the DIP Agent and the DIP Lenders in paragraph 8 below) until the payment in full of all of the DIP Obligations and the termination of the DIP Lenders' Commitment under the DIP Facility.

8. *DIP Liens and DIP Collateral*. Subject to (x) the Carve-Out and (y) Permitted Liens, as security for the full and timely payment of the DIP Obligations, the DIP Agent, for itself and for the benefit of the DIP Lenders, is hereby granted, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, valid, enforceable, unavoidable, and fully perfected first-priority security interests in and priming liens and mortgages as set forth in the DIP Agreements (collectively, the "DIP Liens") and to the extent not otherwise set forth in the DIP Agreements upon all existing and after-acquired tangible and intangible personal and real property and assets of each of the Maple Debtors and all proceeds thereof (collectively, the "DIP Collateral"); provided that pending entry of the Final Order, this Interim Order does not grant, and shall not be deemed to grant, any security interests in or liens on claims and causes of action under chapter 5 of the Bankruptcy Code and similar laws, and any proceeds thereof and property received on account thereof, whether by judgment, settlement or otherwise (collectively, "Avoidance Actions"); provided, however, that Avoidance Actions shall not include any claims and causes of action under section 549 of the Bankruptcy Code and any proceeds thereof and property received on account thereof, whether by judgment, settlement or otherwise, and such claims and causes, proceeds and property shall constitute DIP Collateral. The DIP Liens (i) only prime the Prepetition Liens on the Prepetition Collateral and (ii) are subject and subordinate to the Carve-Out and the Permitted Liens.

9. *DIP Lenders' Superpriority Claims*. In addition to the DIP Liens, subject to the Carve-Out and in accordance with sections 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations (including, without limitation, all DIP Loans) shall constitute allowed superpriority administrative expense claims (the "DIP Superpriority Claims") with priority over any and all administrative expenses of the Maple Debtors' estates, whether heretofore or

hereafter incurred, of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, 1114 or any other provisions of the Bankruptcy Code, which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Maple Debtors, including, but not limited to, the proceeds of Avoidance Actions, and all proceeds thereof. For the avoidance of doubt, the DIP Superpriority Claims are granted to the DIP Administrative Agent, for the benefit of the DIP Agent and the DIP Lenders.

10. *Adequate Protection for Prepetition Secured Parties*. Without in any way limiting the Prepetition Secured Parties' respective rights under the Bankruptcy Code, including, without limitation, section 552 of the Bankruptcy Code, the Prepetition Secured Parties are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in Cash Collateral and for the sale, lease or use by the Maple Debtors of the Prepetition Collateral, the priming of the Prepetition Liens, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. The Prepetition Secured Parties shall receive and retain all rights and entitlements that a secured creditor that did not consent to the use of its cash collateral or other property or sought relief from the automatic stay and had such request been overruled would otherwise receive and/or retain. In addition, the Prepetition Secured Parties are hereby granted the following:

A. Effective and automatically perfected upon the date of entry of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, or taking or exercising control over or possession of the Maple Debtors' property, the Prepetition Agent, for the benefit of the Prepetition Secured Parties, is hereby granted the Adequate Protection Liens and the Adequate

Protection Priority Claims, which shall secure the payment of an amount equal to the diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral from and after the Maple Petition Date, including, without limitation, any such diminution resulting from: (A) the use by the Credit Parties of the Prepetition Collateral, including Cash Collateral and property constituting proceeds of such collateral, (B) the imposition of those liens granted to the DIP Lenders which will prime the Prepetition Secured Parties' Prepetition Liens, (C) the Carve-Out, and/or (D) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code (the "Adequate Protection Obligations").

B. As additional adequate protection, the Maple Debtors shall pay promptly (i) following entry of this Interim Order, in the form of cash payments equal to all accrued and unpaid fees and out-of-pocket expenses (including, but not limited to, (x) the fees and expenses owed to the Prepetition Agent for its services as administrative agent, and the Prepetition Collateral Agent for its services as collateral agent, and (y) the fees and expenses owed to the Prepetition Agent and the Prepetition Lenders, including fees and expenses of counsel) incurred through the Maple Petition Date; and (ii) from time to time after the Maple Petition Date, in the form of cash payments equal to all reasonable fees and out-of-pocket expenses owed to the Prepetition Agent and the Prepetition Lenders, including reasonable fees and expenses of counsel (all of the foregoing payments, the "Adequate Protection Payments"). None of the fees and expenses payable pursuant to this paragraph 10(B) shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses) or United States Trustee guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with the Court with respect thereto; provided, however, that the Prepetition Agent shall submit copies of their professional fee summary

invoices for services rendered after the Maple Petition Date to the Maple Debtors, committee, if any, and the U.S. Trustee; and the Maple Debtors, committee, and U.S. Trustee shall have ten (10) days from receipt thereof to object in writing to the reasonableness of such invoices; to the extent that the Maple Debtors, committee, or U.S. Trustee so objects to any such invoices, payment of the disputed portion of such invoices will be subject to review by the Court if the parties cannot otherwise resolve their objection; provided, further, however, that such invoices may be redacted to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. The Maple Debtors shall pay the undisputed fees and expenses provided for in this paragraph 10(B) promptly provided that the professional fees and expenses incurred and invoiced after the Maple Petition Date shall be paid after the foregoing ten (10) day period. For the avoidance of doubt, and notwithstanding any other provision herein or the DIP Agreements, the Adequate Protection Payments are payable, in full, in cash, and are not subject to the Budget.

C. The consent of the Consenting Lenders to the priming of the Prepetition Liens and Adequate Protection Liens by the DIP Liens is limited to the DIP Facility presently before the Court and shall not extend to any other postpetition financing or to any modified version of the DIP Credit Facility that is not consented to by the Prepetition Secured Parties in writing. Furthermore, the consent of the Consenting Lenders to the priming of the Prepetition Liens and Adequate Protection Liens by the DIP Liens does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Secured Parties that their interests in the Prepetition Collateral are adequately protected pursuant to this Interim

Order or otherwise, and, to the extent of any dispute regarding the payment or entitlement to adequate protection, including adequate protection granted pursuant to this Interim Order, the Maple Debtors shall retain the burden of proof.

11. *Automatic Effectiveness of Liens.* Except as expressly set forth herein (including, without limitation, with respect to the Carve-Out), the DIP Liens and Adequate Protection Liens granted pursuant to this Interim Order shall not be (a) subject to any lien that is avoided and preserved for the benefit of the Maple Debtors' estates under section 551 of the Bankruptcy Code or (b) subordinated to or made *pari passu* with any other lien under sections 363 and 364 of the Bankruptcy Code other than as explicitly provided herein. The DIP Liens and the Adequate Protection Liens shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law with the priority granted as of the Maple Petition Date without any further action by the Maple Debtors, the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, and without the necessity of execution by the Maple Debtors, or the filing or recordation, of any financing statements, guaranty agreements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office, subordination agreements, control agreements or other documents, the taking of possession of any property or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Carve-Out and other Permitted Liens as provided herein and in the DIP Agreements. If the DIP Agent (at the direction of the Majority DIP Lenders) hereafter requests that the Maple Debtors execute and deliver to the DIP Agent financing statements, guaranty agreements, security agreements, collateral assignments, mortgages, control agreements, or other instruments and documents considered by such Majority DIP Lenders to be reasonably necessary or desirable to further

evidence the perfection or facilitate the enforcement of the DIP Liens, the Maple Debtors are hereby authorized to execute and deliver such financing statements, security agreements, mortgages, control agreements, collateral assignments, instruments and documents, to the DIP Agent for onward delivery to the DIP Lenders or their counsel, and the DIP Lenders are hereby authorized to file or record such documents, including a copy of this Interim Order, in their discretion, in which event all such documents shall be deemed to have been filed or recorded as of the Maple Petition Date.

12. *Carve-Out*.

(a) Upon the DIP Administrative Agent's issuance of a Carve-Out Trigger Notice (as defined below), the DIP Collateral, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Priority Claims, and the Adequate Protection Liens shall be subject and subordinate to the payment of the Carve-Out. For purposes of this Order, the "Carve-Out" shall mean, collectively: the sum of (i) all fees required to be paid to the Clerk of the Court (including any noticing agent) and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code and 31 U.S.C. §3717, (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code not to exceed $50,000, (iii) subject to the Budget and Permitted Deviations, all accrued and unpaid claims for unpaid fees, costs, disbursements, charges and expenses incurred at any time before or on the Carve-Out Trigger Date (as defined below), or any monthly fees payable (but not any success or transaction fees), in each case, of persons or firms retained by the Maple Debtors or a committee, whose retention is approved by the Court pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code (collectively, the "Professional Persons," and the fees, costs, and expenses of Professional Persons, the "Carve-Out Expenses"), to the extent such Carve-Out Expenses are

allowed by the Court at any time (i.e., before or after the Carve-Out Trigger Date) on a final basis; and (iv) all Carve-Out Expenses incurred after the Carve-Out Trigger Date by Professional Persons and allowed by the Court at any time; provided, that, the payment of any Carve-Out Expenses to the Professional Persons incurred after the Carve-Out Trigger Date shall not exceed $250,000 in the aggregate (the "Post-Carve-Out Trigger Date Professional Expense Cap"); provided, that (A) any payments actually made in respect of Carve-Out Expenses to the Professional Persons incurred after the Carve-Out Trigger Date shall reduce the Post-Carve-Out Trigger Date Professional Expense Cap on a dollar-for-dollar basis and (B) for the avoidance of doubt, so long as no Carve-Out Trigger Date has occurred, the payment of Carve-Out Expenses shall not reduce the Post-Carve-Out Trigger Date Professional Expense Cap. For the purposes of the foregoing, "Carve-Out Trigger Date" means the first business day after (A) the occurrence and during the continuance of (x) an Event of Default under the DIP Agreements as appropriate, or (y) a default by any Credit Party in any of its obligations under any Chapter 11 Order, in each case, unless such Event of Default or default is cured or waived, and (B) delivery of written notice thereof (the "Carve-Out Notice") by the DIP Administrative Agent (at the direction of the Majority DIP Lenders) to (1) the U.S. Trustee, (2) the Credit Parties, (3) counsel to the Maple Debtors and (4) counsel to the committee, if any. For the avoidance of doubt, the Carve-Out shall be senior to any claims arising under or relating to any liens securing the DIP Facility, the Prepetition Secured Obligations (other than amounts on which Adequate Protection Payments are based), including, without limitation, any administrative or superpriority claims and all forms of Adequate Protection Liens or security interests in favor of the Prepetition Secured Parties, the DIP Agent, and DIP Lenders. In any event, the DIP Agent and the Prepetition Agent reserve the right to review and object (at the direction of the relevant lenders holding a majority in the

principal amount outstanding of the relevant loans) to any fee statement, interim application or monthly application issued or filed by Professional Persons. Any funding or payment of the Carve-Out shall be added to, and made a part of, the DIP Obligations and adequate protection and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Agreements, the Bankruptcy Code, and applicable law.

13. *Investigation of Prepetition Liens*. The Maple Debtors shall not assert or prosecute, and no portion of the DIP Credit Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with (a) asserting or prosecuting any claims or causes of action against the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders, or (b) challenging or raising any defenses to the Prepetition Obligations or the DIP Obligations, or the liens of the Prepetition Secured Parties, the DIP Agent or the DIP Lenders. Notwithstanding the foregoing, (i) the Maple Debtors shall be permitted to contest the occurrence and/or continuance of an Event of Default in accordance with the terms and conditions of this Interim Order and (ii) no more than $50,000 of the proceeds of the DIP Facility or the DIP Collateral or Cash Collateral may be used by the Committee to investigate the Prepetition Obligations and Prepetition Liens of the Prepetition Secured Parties.

14. *Cash Management System*. The cash management system described in the Maple Debtors' motion seeking authorization to use such system (among other relief) or in the DIP Agreements (the "Cash Management System") and all accounts retained or established in connection therewith shall be used for the purposes and on the terms and conditions set forth in the DIP Agreements and the other DIP Agreements. The Maple Debtors and the DIP Agent are

further authorized to enter into any additional agreements providing for the establishment of lock boxes, blocked accounts or similar arrangements in favor of the DIP Agent for purposes of facilitating cash collections from the Maple Debtors in accordance with the terms of the DIP Agreements, and to give directions and instructions (at the direction of the Majority DIP Lenders) to the Depository (as defined in the DIP Credit Agreement) which the Maple Debtors' bank accounts are maintained (or amend control agreements with such depository banks).

15. *Control by DIP Agent; Access; Insurance*. Until the DIP Obligations have been paid in full in cash, the DIP Collateral Agent will have exclusive dominion and control and following the payment in full in cash of the DIP Obligations, the Prepetition Collateral Agent will have exclusive dominion and control with respect to each depository account of the DIP Credit Parties, including any securities account or deposit account, for perfection under the Uniform Commercial Code purposes as described in Section 8 of this Interim Order. Each account control agreement with the Prepetition Collateral Agent as of the Maple Petition Date, and each account control agreements to be executed pursuant to the DIP Agreements shall hereafter be solely enforceable by the DIP Collateral Agent (acting at the direction of the Majority DIP Lenders) against, and binding upon, each depository institution party thereto until the DIP Obligations have been paid in full in cash and the DIP Agreements and Commitment shall have been terminated, after which such deposit account control agreements shall again be solely enforceable by the Prepetition Collateral Agent. Following the Carve-Out Trigger Date and for so long as the DIP Collateral Agent has exclusive dominion and control as provided above, each depositary institution that maintains any such account shall hereafter comply with instructions or entitlement orders given by the DIP Collateral Agent (at the direction of the Majority DIP Lenders) without the consent of any Maple Debtor, the Prepetition Collateral

Agent, or any other person or entity. Upon entry of this Interim Order, the Prepetition Agent, the Prepetition Collateral Agent, and the DIP Agent shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Maple Debtors which in any way relates to the DIP Collateral. The depositary bank that maintains the Revenue Account will not make payments from such account requested by any Maple Debtor unless it shall have received a Payment Instruction in the form attached as Exhibit E to the DIP Credit Agreement duly completed.

16. *Section 506(c) and 552(b) Waivers*. Upon the entry of the Final Order, the Maple Debtors (on behalf of themselves and their estates) shall irrevocably waive, and shall be prohibited from asserting, (i) any surcharge claim under section 506(c) of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Agent, the DIP Lenders, the Prepetition Secured Parties upon, the DIP Collateral and the Prepetition Collateral, and (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code in connection with the DIP Facility. In no event shall the DIP Agent or the DIP Lenders be subject to the equitable doctrine of marshaling or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral unless consented to by the DIP Agent (at the direction of the Majority DIP Lenders).

17. *Restrictions on Granting Post-Petition Liens*. Except for the Carve-Out, liens and claims otherwise permitted pursuant to section 7.03(a) of the DIP Agreements or as expressly set forth in this Interim Order, it shall constitute an Event of Default if any of the Maple Debtors incurs or requests authority to incur a claim or grants a lien (or a claim or lien is allowed) having a priority superior to or *pari passu* with those granted pursuant to this Interim Order in favor of the DIP Agent and the DIP Lenders, or the Prepetition Secured Parties,

respectively, at any time during which any portion of the DIP Facility (or any refinancing thereof), the DIP Obligations or the Adequate Protection Obligations owing to the Prepetition Secured Parties remains outstanding; provided, however, that the Maple Debtors shall be entitled to incur such liens or request such authority in connection with obtaining postpetition financing, loans or financial accommodations (or a request therefor) that will indefeasibly repay in full all DIP Obligations; provided, further, however, that in connection with the seeking or obtaining of such postpetition financing, loans, or financial accommodations, the Maple Debtors may not rely on the consent of the Consenting Lenders to the relief granted in this Interim Order and any and all such consent shall be deemed to have automatically terminated.

18. *Binding Nature of Order; Order Controls*. The provisions of this Interim Order shall be binding upon the Maple Debtors, the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Collateral Agent and the Prepetition Lenders and their respective successors and assigns (including, without limitation, any trustee or other fiduciary hereafter elected or appointed for or on behalf of any Maple Debtor's estate or with respect to its property). In the event of any inconsistency between the provisions of this Interim Order and any of the DIP Agreements, the provisions of this Interim Order shall govern.

19. *Survival of Order*. The provisions of this Interim Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Cases; (ii) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; or (iii) dismissing any of the Cases; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests granted pursuant to this Interim Order shall maintain their priority as provided by this Interim Order until all of the DIP Obligations are indefeasibly paid in full and discharged in accordance

with the terms of the DIP Agreements. The DIP Obligations shall not be discharged by the entry of any order confirming any plan of reorganization in any of the Cases.

20. *Protection under Section 364(e) of the Bankruptcy Code*. The DIP Agent and the DIP Lenders are entitled to the fullest extent to all of the protections afforded by section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations owing to the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties incurred prior to the actual receipt by the DIP Agent or the Prepetition Agent (with a copy to their respective counsel), as applicable, of written notice of the effective date of such reversal, modification, vacatur or stay, or (ii) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Agreements with respect to any DIP Obligations or adequate protection rights of the Prepetition Secured Parties. Notwithstanding any such reversal, modification, vacatur or stay, any use of Cash Collateral or the incurrence of DIP Obligations or adequate protection rights of the Prepetition Secured Parties prior to the actual receipt by the DIP Agent and the Prepetition Agent (with a copy to their respective counsel), as applicable, of written notice of the effective date of such reversal, modification, vacatur or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Interim Order and the DIP Agreements with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Adequate Protection Obligations owing to the Prepetition Secured Parties.

21. *Events of Default*. Except as otherwise provided in this Interim Order or to the extent the DIP Administrative Agent may otherwise agree in writing (at the direction of the Majority DIP Lenders), any occurrence of an "Event of Default" pursuant to the DIP Agreements shall constitute an event of default hereunder, unless the DIP Administrative Agent (at the direction of the Majority DIP Lenders) has waived such default in writing in accordance with the DIP Agreements (each, an "Event of Default"). For the avoidance of doubt, the DIP Credit Parties shall perform all obligations under the DIP Agreements, including, without limitation, satisfying the Transaction Milestones, and the failure to perform any such obligations constitutes an Event of Default.

22. *Modification of Stay*. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default and, in each case, after the provision by the DIP Administrative Agent (at the direction of the Majority DIP Lenders) to the Maple Debtors of five (5) days prior written notice of such Event of Default (such five (5)-business day period, the "Remedies Notice Period"), which written notice shall be served by the DIP Administrative Agent via electronic mail or facsimile on the Maple Debtors, counsel to the Maple Debtors, counsel to the Prepetition Agent, counsel to the Committee, and the U.S. Trustee, all rights and remedies provided for in the DIP Agreements, and to take any or all of the following actions without further order of or application to this Court following the conclusion of the Remedies Notice Period and in the absence of a determination by the Court that an Event of Default has not occurred and/or is not continuing: (a) immediately terminate the Maple Debtors' use of Cash Collateral and cease making any DIP Loans to the Maple Debtors; (b) immediately declare all DIP Obligations to be

immediately due and payable; (c) immediately terminate the Commitment; (d) immediately set off any and all amounts in accounts maintained by the Maple Debtors with the DIP Agent, the Prepetition Collateral Agent, or any of the DIP Lenders against the DIP Obligations, or otherwise enforce rights against the DIP Collateral in the possession of any of the DIP Agent or the DIP Lenders for application towards the DIP Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Agreements or applicable law to effect the repayment of the DIP Obligations. The automatic stay under section 362(a) of the Bankruptcy Code is hereby vacated and modified as provided above unless and until the Court has determined that an Event of Default has not occurred and/or is not continuing. For the avoidance of doubt, neither the DIP Agent nor any of the DIP Lenders shall exercise any such rights or remedies on account of an Event of Default until expiration of the Remedies Notice Period and the delivery of the notice giving rise to such Remedies Notice Period is expressly permitted. Any party in interest's sole recourse with respect to opposing such modification of the automatic stay under section 362(a) of the Bankruptcy Code shall be to contest the declaration of the occurrence and/or continuance of an Event of Default. During the Remedies Notice Period, the Maple Debtors shall be entitled to (x) use the proceeds of the DIP Facility or the Cash Collateral in accordance with the Budget and fund the Carve-Out (in accordance with the procedures set forth herein), and (y) to seek and obtain an emergency hearing before the Court, with proper notice to the DIP Agent and DIP Lenders (with a copy to their respective counsel), solely for the purpose of contesting whether an Event of Default has occurred and/or is continuing. The rights and remedies of the DIP Agent and the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP Lenders may have under the DIP Agreements or otherwise. The DIP Credit Parties

shall cooperate fully with the DIP Agent and the DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

23. *Limitations on Borrowings*. It shall constitute an Event of Default if any of the Maple Debtors obtain authorization from the Court for the Maple Debtors or their estates to borrow money (other than in accordance with the DIP Agreements) from any person other than the DIP Lenders.

24. *Modifications of DIP Agreements and Budgets*. Subject to the prior written consent of the DIP Agent, the Maple Debtors are hereby authorized, without further order of this Court, to enter into agreements with the DIP Agent, DIP Lenders or any other party deemed necessary providing for any non-material modifications to the DIP Agreements or of any other modifications to the DIP Agreements necessary to conform the DIP Agreements to this Interim Order.

25. *Stipulations Regarding Prepetition Obligations and Prepetition Liens Binding on Parties in Interest*. The Maple Debtors' Stipulations shall be binding on the Maple Debtors' estates and all parties in interest, including, without limitation, any Committee, unless (a) a Committee, or another party in interest (other than any of the Maple Debtors) with standing and requisite authority, has timely commenced a contested matter or adversary proceeding (a "Challenge") challenging the amount, validity or enforceability of the Prepetition Obligations, or the perfection or priority of the Prepetition Liens, or otherwise asserting any objections, claims or causes of action on behalf of the Maple Debtors' estates against the Prepetition Agent, Prepetition Collateral Agent, or the Prepetition Lenders relating to the Prepetition Obligations or the Prepetition Liens no later than the earlier of the date that is (X) forty-five (45) days after the Maple Petition Date or (Y) thirty (30) days after the appointment of the Committee, and (b) to

the extent the Court rules in favor of the plaintiff in any such timely and properly filed Challenge. If no such Challenge is timely commenced as of such date then, without further order of the Court, (x) the claims, liens and security interests of the Prepetition Secured Parties shall, without further order of the Court, be deemed to be finally allowed for all purposes in the Cases and any subsequent chapter 7 cases and shall not be subject to Challenge or objection by any party in interest as to validity, priority, amount or otherwise, and (y) without further order of the Court, the Maple Debtors and their estates shall be deemed to have released any and all claims or causes of action against the Prepetition Secured Parties with respect to the Prepetition Credit Documents or any related transactions. Notwithstanding anything to the contrary herein, if no Challenge is timely commenced, the Maple Debtors' Stipulations shall be binding on the Maple Debtors' estates, the Committee and all parties in interest. If a Challenge is timely commenced, the Maple Debtors' Stipulations shall be binding on the Maple Debtors' estates and all parties in interest except to the extent such stipulations are specifically challenged in such Challenge as and when originally filed (ignoring any relation back principles). To the extent a Challenge is withdrawn, denied or overruled, the Maple Debtors' Stipulations specifically challenged in such Challenge also shall be binding on the Maple Debtors' estates and all parties in interest.

26. *Indemnification*. The Maple Debtors shall indemnify the DIP Agent and DIP Lenders and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, counsel, controlling persons and members of each of the foregoing (each, an "Indemnified Person") and hold each of them harmless from and against all costs, expenses (including reasonable fees, disbursements and other charges of counsel, including, without limitation, fees, disbursements and other charges of counsel incurred in connection with enforcing the indemnities granted herein) and liabilities of such Indemnified Person arising out

of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Maple Debtors or any of their affiliates or shareholders) that relates to either the DIP Facility or the Interim Order, including the financial accommodations to the Maple Debtors contemplated hereby, the Chapter 11 Cases, or any transactions in connection therewith, provided that no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct. Nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Agent or DIP Lender in the DIP Agreements. For the avoidance of doubt, this Paragraph 26 does not apply or otherwise affect any indemnification rights or obligations in respect of the Prepetition Secured Parties under the Prepetition Credit Documents.

27. *Termination of Commitments and Right to Use Cash Collateral.* All commitments of the DIP Lenders and any consent or right of the Maple Debtors to use Cash Collateral shall terminate and all amounts owing under the DIP Facility shall be due and payable, on the earliest to occur of the following events (collectively, the "Cash Collateral Termination Events"): (a) in the event the Final Order has not been entered by the Court within forty-five (45) days after the entry of this Interim Order, (b) in the event the Court declines to enter the Final Order, (c) the effective date of a confirmed plan, (d) subject to the other terms and conditions of this Interim Order, the Credit Parties' receipt of a Carve-Out Trigger Notice, (e) the payment in full in cash of the DIP Obligations, (f) the closing of the Transaction, and (g) as otherwise provided in the DIP Agreements; provided that the Cash Collateral Termination Events set forth in the immediately preceding clauses (b) and (d) shall be subject to the Remedies Notice Period.

The DIP Obligations and the Prepetition Secured Obligations shall be paid indefeasibly, in full at the closing of the Transaction.

28. *Credit Bidding*. In accordance with section 363(k) of the Bankruptcy Code, the DIP Lenders are permitted to credit bid the full amount of the DIP Obligations and the Prepetition Lenders are permitted to credit bid the full amount of the Prepetition Secured Obligations.

29. *Master Proof of Claim*. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any successor cases to the contrary, none of the Prepetition Secured Parties will be required to file proofs of claim in any of the Cases or any successor cases for any claims arising under or in connection with the Maple Debtors' Stipulations or the Prepetition Credit Documents, and such stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties with regard to all claims arising under the Prepetition Credit Documents. Notwithstanding the foregoing, the Prepetition Agent (at the direction of the Prepetition Lenders holding a majority in principal amount outstanding under the Prepetition Facility), for the benefit of the Prepetition Secured Parties, is authorized and entitled, but is not required, to file (and amend and/or supplement, as it sees fit) a master proof of claim and/or proofs of claim in each of the Cases or any successor cases for any claim described herein.

30. *Successors and Assigns*. The Interim Order and the DIP Agreements shall be binding upon all parties in interest in these Chapter 11 Cases, including any subsequently appointed trustee, responsible individual, examiner with expanded powers, or other estate representative.

31. *Headings*. The headings in this Interim Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Interim Order.

32. *Final Hearing*. The Final Hearing is scheduled for July 6, 2016, at 10:00 a.m. (prevailing Central Time) in Courtroom 7-North before this Court. Any objections by creditors or other parties in interest to any provisions of this Interim Order shall be deemed waived unless timely filed and served in accordance with this paragraph 32. The Maple Debtors shall promptly serve notice of entry of this Interim Order and the Final Hearing on the appropriate parties in interest in accordance with the Federal Rules of Bankruptcy Procedures and the applicable Local Rules. Without limiting the foregoing, the Maple Debtors shall promptly serve a notice of entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid, facsimile, electronic mail or overnight mail upon the Notice Parties. The notice of the entry of this Interim Order and the Final Hearing shall state that objections to the entry of a Final Order shall be filed with the United States Bankruptcy Court for the Eastern District of Missouri by no later than 5:00 p.m. (prevailing Central Time) on June 29, 2016 (the "Objection Deadline"). The continued availability of the DIP Facility shall be subject to the entry in the Cases, not later than the earlier of thirty (30) days after the entry of this Interim Order of the Final Order, following proper notice and hearing thereon, which is in all respects reasonably satisfactory to the DIP Agent and the DIP Lenders.

Kathy A. Surratt-States

KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: June 15, 2016
St. Louis, Missouri
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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of June 15, 2016

among

ABENGOA BIOENERGY MAPLE, LLC,
as Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,

as the Borrower,

ABENGOA BIOENERGY OF INDIANA, LLC, AND
ABENGOA BIOENERGY OF ILLINOIS, LLC,
as Debtors and Debtors-in-Possession under Chapter 11 of the Bankruptcy Code,

as the Borrower Subsidiaries and the Subsidiary Guarantors,

DEUTSCHE BANK TRUST COMPANY AMERICAS,

as the Agent and the Collateral Agent,

and

LENDERS PARTY TO THIS AGREEMENT
FROM TIME TO TIME

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This Table of Contents is not part of the Agreement to which it is attached but is inserted for convenience only.

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APPENDICES, SCHEDULES AND EXHIBITS

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), dated as of June 15, 2016, is made among ABENGOA BIOENERGY MAPLE, LLC, a Missouri limited liability company, as debtor and debtor-in-possession (the "Borrower"), ABENGOA BIOENERGY OF INDIANA, LLC, an Indiana limited liability company, as debtor and debtor-in-possession ("IndianaCo"), and ABENGOA BIOENERGY OF ILLINOIS, LLC, an Illinois limited liability company, as debtor and debtor-in-possession ("IllinoisCo") (together with IndianaCo, each individually a "Borrower Subsidiary" and, collectively, the "Borrower Subsidiaries"), each of the lenders that is a signatory to this Agreement identified as a "Lender" on the signature pages to this Agreement or that, pursuant to Section 13.06(b), shall become a "Lender" under this Agreement (individually, a "Lender" and, collectively, the "Lenders") and Deutsche Bank Trust Company Americas, as administrative agent for the Lenders (in such capacity, the "Agent") and as collateral agent for the Lenders (in such capacity, together with its successors and permitted assigns, the "Collateral Agent").

WHEREAS, on June 12, 2016, (the "Petition Date"), the Borrower and the Borrower Subsidiaries commenced voluntary cases (the "Chapter 11 Cases") under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"), and the Borrower and the Borrower Subsidiaries have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower and the Borrower Subsidiaries have requested and the Lenders have agreed to provide a secured super-priority debtor-in-possession term loan facility to the Borrower (the "DIP Facility"), the proceeds of which will be used to pay related transaction costs, fees and expenses with respect to the DIP Facility and fund working capital and certain permitted administrative expenses of the Obligors during the pendency of the Chapter 11 Cases in accordance with the Budget;

WHEREAS, the Borrower Subsidiaries have agreed to guarantee the obligations of the Borrower hereunder and the Borrower and the Borrower Subsidiaries have agreed to secure their respective Obligations by granting to Agent, for the benefit of Secured Parties, a lien on substantially all of their respective assets, in accordance with the priorities provided in the DIP Order.

NOW THEREFORE: for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETIVE MATTERS

1.01 Certain Defined Terms. In addition to the terms defined in the preamble above, and unless otherwise specified in this Agreement, capitalized terms used in this Agreement shall have the meanings assigned to such terms below. Capitalized terms and other terms used in this Agreement shall be interpreted in accordance with Sections 1.02, 1.03 and 1.04, as applicable.

"Acceptable Bank" shall mean any bank or trust company which is organized or licensed under the laws of the United States or any state thereof which has capital, surplus and undivided profits of at least $500,000,000 and has outstanding unguaranteed and unsecured long-term indebtedness which is rated "A-" or better by S&P and "A3" or better by Moody's (or an equivalent rating by another nationally recognized statistical rating organization of similar standing if neither such corporation is in the business of rating unsecured bank indebtedness).

"Acceptable Insurance Broker" shall mean any nationally recognized independent insurance broker reasonably satisfactory to the Majority Lenders.

"Account Control Agreements" shall mean, collectively, (i) each account control agreement, dated no later than the Final Order Entry Date, among the Depositary, the Collateral Agent and the Obligors and (ii) an account control agreement, dated no later than the Final order Entry Date, among Wells Fargo Bank, National Association, the Collateral Agent and the Obligors, in each case in form and substance satisfactory to the Collateral Agent.

"Additional Project Document" shall mean any contract or agreement relating to a Project entered into by any Obligor, or by an agent on behalf of such Obligor, subsequent to the Closing Date (other than Non-Material Project Documents).

"Adjusted LIBO Rate" shall mean, for the Interest Period for any Loan, an interest rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate for such Interest Period.

"Administrative Fee" shall have the meaning assigned to that term in Section 2.08(c).

"Advance Date" shall have the meaning assigned to that term in Section 4.06.

"Affected Property" shall mean the Property of any Obligor lost, destroyed, damaged or otherwise taken as a result of any Event of Loss.

"Affiliate" shall mean any Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, a specified Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust. Notwithstanding the foregoing, the definition of "Affiliate" shall not encompass (a) any individual solely by reason of his or her being a director, officer or employee of any Person and (b) the Agent or any Lender.

"Agent" shall have the meaning assigned to that term in the preamble.

"Agent Account" shall mean the account of the Agent as set forth on Exhibit B, or such other account as may be designated by the Agent to the Borrower in writing. Notwithstanding anything herein to the contrary, the Agent shall have no obligation to disburse any amount in excess of the amounts then held in the Agent Account.

"Agreement" shall have the meaning assigned to that term in the preamble.

"Allowed Professional Fees" shall mean all unpaid fees and expenses incurred by persons or firms retained by the Obligors and their Affiliates or the Official Committee pursuant to Sections 327, 328, or 1103 of the Bankruptcy Code at any time before or on the first business day following delivery by the Agent of a Carve Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice, provided that, any amounts paid to the Official Committee by the Obligors shall be on account of, and to the extent of, services provided for the benefit of unsecured creditors of the Obligors and provided further that any amounts paid in respect of such Allowed Professional Fees to any Affiliate of the Obligors shall be on the account of, and to the extent of, services provided to the Obligors.

"Applicable Law" means, with respect to any Person, property or matter, any of the following applicable thereto: any constitution, statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, Government Approval, authorization, approval, concession, grant, franchise, license, agreement, directive, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of, any of the foregoing, including without limitation Environmental Laws, by any Government Authority having the force of law, whether in effect as of the date hereof or thereafter and in each case as amended (including any of the foregoing pertaining to land use or zoning restrictions).

"Applicable Lending Office" shall mean, for each Lender, the "Lending Office" of such Lender (or of an affiliate of such Lender) designated for Loan on Appendix A or such other office of such Lender (or of an affiliate of such Lender) as such Lender may from time to time specify to the Agent and the Borrower as the office for its Loans; provided, that any Lender may from time to time change its "Applicable Lending Office" by delivering notice of such change to the Agent and the Borrower.

"Applicable Margin" shall mean 10%.

"Approved Fund" means, with respect to any Lender, any Person (other than a natural person) that invests in commercial loans and is administered or managed by such Lender, an Affiliate of such Lender or an Affiliate of an entity that administers or manages such Lender.

"Appurtenant Rights" shall mean, with respect to any parcel of real property, (a) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to such parcel, including the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to such parcel and (b) all permits, licenses and rights, whether or not of record, appurtenant to such parcel.

"Assignment and Assumption" shall mean an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 13.06(b)), and accepted by the Agent, in the form of Exhibit B or any other form approved by the Agent).

"Auction" shall have the meaning assigned to that term in Section 8.33.

"Authorized Officer" shall mean: (a) with respect to any Person that is a corporation, the chairman, chief executive officer, president, vice president, treasurer, assistant treasurer, attorney-in-fact, secretary or assistant secretary of such Person, (b) with respect to any Person that is a partnership, each general partner of such person or the chairman, chief executive officer, president, vice president, treasurer, assistant treasurer, attorney-in-fact, secretary or assistant secretary of a general partner of such Person and (c) with respect to any Person that is a limited liability company, the manager, the managing member or a duly appointed officer of such Person or the chairman, chief executive officer, president, vice president, treasurer, assistant treasurer, attorney-in-fact, secretary or assistant secretary of a manager or managing member of such Person.

"Avoidance Actions" shall mean all causes of action arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code and any proceeds therefrom.

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy" shall mean, with respect to any Person, the occurrence of any of the following events, conditions or circumstances: (a) such Person shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the Bankruptcy Code or any present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, reorganization or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its properties (the term "acquiesce," as used in this definition, includes the failure to file in a timely manner a petition or motion to vacate or discharge any order, judgment or decree after entry of such order, judgment or decree), (b) an involuntary case or other proceeding shall be commenced against such Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief with respect to such Person or its debts under the Bankruptcy Code or any present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, reorganization or other relief for debtors, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of 60 consecutive days, (c) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Person seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, reorganization or other relief for debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree

shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its property shall be appointed without the consent or acquiescence of such Person and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive), (d) such Person shall admit in writing its inability to pay its debts as they mature or shall generally not be paying its debts as they become due, (e) such Person shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors or (f) such Person shall take any corporate or partnership action for the purpose of effecting any of the foregoing.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as applicable to the Chapter 11 Cases, now and hereafter in effect or any successors to such statute applicable to the Chapter 11 Cases.

"Bankruptcy Court" shall have the meaning assigned to that term in the recitals hereto; provided that "Bankruptcy Court" shall also mean any other court having competent jurisdiction over the Chapter 11 Cases.

"Bankruptcy Court Approval" shall have the meaning assigned to that term in Section 8.33.

"Base Rate" shall mean, for any day, the higher of (a) the Federal Funds Rate for such day plus ½ of 1% per annum and (b) the Prime Rate for such day. Each change in any interest rate provided for in this Agreement based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.

"Bidding Procedures" shall have the meaning assigned to that term under Section 8.33, provided that the Bidding Procedures shall be in form and substance satisfactory to the Majority Lenders in their sole discretion (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be), as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Majority Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be).

"Board" shall mean the Board of Governors of the Federal Reserve System.

"Borrower" shall have the meaning assigned to that term in the preamble.

"Borrower's Knowledge" shall mean (actual knowledge by an Authorized Officer of an Obligor or the plant manager of a Project or the equivalent of the occurrence and continuance of such event, fact or circumstance, without any duty of specific inquiry as to any such event, fact or circumstance.

"Borrower Subsidiary" shall have the meaning assigned to that term in the preamble of this Agreement.

"Borrowing" shall mean a borrowing of Loans.

"Budget" shall mean (a) as of the Closing Date, the 13-week statement of cash receipts and disbursements for the next 13 weeks of the Obligors, broken down by week, including the anticipated uses of the DIP Facility and Cash Collateral for such period attached as Exhibit C hereto (the "Initial Budget"), and (b) following the Closing Date, each Supplemental Budget, if any.

"Budget Testing Period" shall have the meaning assigned to that term in Section 8.01(j).

"Business Day" shall mean any day on which commercial banks are not authorized or required to be closed in New York, New York, and, if such day relates to a Borrowing of, a payment or prepayment of principal of or interest on a Loan or a notice by the Borrower with respect to any such Borrowing, payment, prepayment or Interest Period, which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"Capital Expenditures" shall mean, for any period after the Closing Date, expenditures (including the aggregate amount of Capital Lease Obligations incurred during such period) made by (or on behalf of) the Borrower or other Obligor to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs) during such period computed in accordance with GAAP (other than such expenditures paid out of casualty insurance proceeds).

"Capital Lease Obligations" shall mean, for any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property of such Person to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board) and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount of such obligations, determined in accordance with GAAP (including such Statement No. 13).

"Carve-Out" shall have the meaning specified in the DIP Order.

"Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the Agent to the Borrower, its lead restructuring counsel, and the U.S. Trustee, counsel to the Official Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

"Cash Management Orders" shall have the meaning specified in Section 6.01(c).

"Change in Control" shall mean any reduction of the direct or indirect ownership interests of the Borrower or its Subsidiaries as approved by the Bankruptcy Court.

"Change in Law" shall mean, with respect to any Lender (or its Applicable Lending Office), the occurrence after the date of the execution and delivery of this Agreement of the following events: (a) the adoption of any applicable Government Rule, (b) any change in any applicable Government Rule (including Regulation D) or in the interpretation or administration

of any Government Rule (including Regulation D) by any Government Authority charged with its interpretation or administration or (c) the adoption or making of any interpretation, directive, guideline, policy or request applying to a class of Lenders including such Lender of or under any Government Rule or in the interpretation or administration of any Government Rule (including Regulation D) (whether or not having the force of law and whether or not failure to comply would be unlawful, but with respect to which similarly situated banks generally comply) by any Government Authority charged with its interpretation or administration.

"Chapter 11 Cases" shall have the meaning assigned to that term in the recitals hereto.

"Chapter 11 Orders" shall mean, collectively, the DIP Order, the Sale Order, the Bidding Procedures and the Cash Management Order, and any other order of the Bankruptcy Court that may impact any Liens or Collateral of the Lenders or the Agent.

"Claim" shall have the meaning assigned to that term in Section 101(5) of the Bankruptcy Code.

"Charges" shall have the meaning assigned to that term in Section 13.09.

"Closing Date" shall mean the date on or after the Interim Order Entry Date on which the conditions precedent set forth in Section 6.01 shall have been satisfied or waived by the Lenders.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean (i) all of the assets, property, rights and interests of the Obligors that are or are intended to be subject to the Liens created by or pursuant to the Security Documents and (ii) the "DIP Collateral" referred to in the DIP Order, it being understood that "Collateral" shall include all such "DIP Collateral" irrespective of whether any such property was excluded pursuant to the Prepetition Documents.

"Collateral Accounts" shall have the meaning assigned to the term in the Prepetition Facility.

"Collateral Agent" shall have the meaning assigned to that term in the preamble.

"Commitment" shall mean, with respect to each Lender at any time, the amount set forth next to such Lender's name on Appendix A hereto under the heading "Commitment", or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable, as such amount may be adjusted pursuant to Section 13.06. The aggregate amount of the Commitments of all Lenders shall equal $10,000,000, as the same may be reduced pursuant to Section 2.07 or adjusted pursuant to Section 13.06.

"Commitment Fee" shall have the meaning assigned to that term in Section 2.08(a).

"Commodity Hedging Agreement" shall mean, for any Obligor, any commodity swap, cap or collar agreement or similar arrangement between such Obligor and a Commodity Hedging Provider providing for the transfer or mitigation of commodity risks either generally or under specific contingencies, in each case in accordance with Section 8.15.

"Commodity Hedging Provider" shall mean any Person that is an Acceptable Bank, a Lender (or an Affiliate of a Lender) or a Futures Commissions Merchant and that enters into a Commodity Hedging Agreement in accordance with Section 8.15.

"Contest" shall mean, with respect to any Person, with respect to any Taxes or any Lien imposed on Property of such Person (or the related underlying claim for labor, material, supplies or services) by any Government Authority for Taxes or with respect to obligations under ERISA or any Mechanics' Lien (each, a "Subject Claim"), a contest of the amount, validity or application, in whole or in part, of such Subject Claim pursued in good faith and by appropriate legal, administrative or other proceedings diligently conducted so long as: (a) adequate reserves have been established with respect to such Subject Claim in accordance with GAAP, (b) during the period of such contest the enforcement of such Subject Claim is effectively stayed and any Lien (including any inchoate Lien) arising by virtue of such Subject Claim shall, if required by applicable Government Rule, be effectively secured by posting of cash collateral or a surety bond (or similar instrument) by a reputable surety company, (c) neither the Agent nor any Lender could reasonably be expected to be exposed to any risk of criminal liability, civil liability or financial liability as a result of such contest and (d) the failure to pay such Subject Claim under the circumstances described above could not otherwise reasonably be expected to have a Material Adverse Effect. The term "Contest" used as a verb shall have a correlative meaning.

"Control" (including, with its correlative meanings, "Controlled by" and "under common Control with") shall mean (i) possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) or (ii) any Person owning at least 30% of the voting securities of another Person, the equity of which is publicly traded, shall be deemed to Control that Person.

"Corn Oil Extraction Agreement" shall mean the Corn Oil Extraction Agreement, dated as of October 18, 2012, between IllinoisCo and Abengoa Bioenergy Trading US, LLC, and the Corn Oil Extraction Agreement, dated as of October 18, 2012, between IndianaCo and Abengoa Bioenergy Trading US, LLC.

"Cumulative Net Cash Flow" shall mean, for any period, the actual cumulative net cash flow of the Obligors for such period, without giving effect to any disbursement of the DIP Loans and after giving effect to the payment of all Allowed Professional Fees and fees of the Agent and the Lenders paid pursuant to Section 13.03.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium (by way of voluntary arrangement, scheme or arrangement or otherwise), rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada, England

and Wales or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Debt Service" shall mean, for any period, the sum, computed without duplication, of the following: (a) all amounts payable by the Borrower in respect of the Loans plus (b) all amounts payable by the Borrower in respect of interest payable on such Loans plus (c) all commitment fees and all other fees payable in accordance with the Financing Documents.

"Default" shall mean an Event of Default or an event which with notice or lapse of time or both would become an Event of Default.

"Depositary" shall mean Amarillo National Bank and its successors and permitted assigns.

"Designated Jurisdiction" shall mean any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"DIP Facility" shall have the meaning assigned to that term in the recitals hereto.

"DIP Order" shall mean, collectively, the Interim Order and the Final Order.

"Disposition" shall mean any sale, assignment, transfer or other disposition of any property (whether now owned or hereafter acquired) by the Borrower or any other Obligor to any other Person excluding any sale, assignment, transfer or other disposition of any property sold or disposed of in the ordinary course of business and on ordinary business terms.

"Distilled Grain" shall mean any of dried distillers grain ("DDG") or wet distillers grain ("WDG") or dried distillers grain with solubles ("DDGS"). With respect to products of the Projects, Distilled Grain shall mean the aggregate amount of distilled grain produced by the Projects, regardless of type of grain.

"Distilled Grain Marketer" shall mean Abengoa Bioenergy Trading US, LLC.

"Distilled Grain Marketing Agreement" shall mean (i) Dry Distillers Grains and Wet Distillers Grains Marketing Agreement, dated as of July 31, 2007 between IllinoisCo and the Distilled Grain Marketer and (ii) Dry Distillers Grains and Wet Distillers Grains Marketing Agreement, dated as of July 31, 2007 between IndianaCo and the Distilled Grain Marketer.

"Distilled Grain Sales Agreement" shall mean, as to each Project, each agreement for the sale of Distilled Grain produced by such Project between the Borrower Subsidiary that owns such Project and a Distilled Grain Purchaser.

"Distilled Grain Purchaser" shall mean each Person party to a Distilled Grain Sales Agreement with a Borrower Subsidiary (other than such Borrower Subsidiary).

"Dollars" and "$" shall mean lawful money of the United States.

"Easement Properties" shall mean, with respect to a Project, all of the leases or licenses for the use or occupancy of real property, easements and rights of way which are necessary for such Project.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Environmental Claim" shall mean any notice, inquiry, request for information, investigation, claim, administrative, regulatory or judicial action, suit, judgment, demand or other communication, in each case, requesting injunctive or equitable relief, or alleging or asserting a liability or obligation arising under any Environmental Law, including any liability or obligations for investigatory costs, corrective, rehabilitation, reclamation or restoration costs, cleanup costs, governmental response costs, contribution, cost recovery, damages to natural resources or other Property, personal injuries, fines, penalties or restrictions pursuant to an Environmental Law arising out of or based on (a) the presence, Use, exposure to, or Release or threatened Release of any Hazardous Material at any location or (b) any violation or alleged violation of any Environmental Law.

"Environmental Laws" shall mean any and all Government Rules relating to pollution or the protection of the environment, human health or safety or natural resources, including any and all Government Rules regulating or imposing liability or standards of conduct with respect to (a) emissions, discharges, Releases or threatened Releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, (b) the Use of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, (c) human exposure to chemicals, contaminants, additives or hazardous materials or conditions or (d) occupational safety and health requirements, including any standards or requirements of the Occupational Safety and Health Administration.

"Environmental Party" shall mean: (a) any Obligor, (b) any Affiliate of any Obligor, (c) any Material Affiliated Project Party or any Person indemnified by a Material Affiliated Project Party (other than the Agent, the Collateral Agent or any Lender) and (d) any officer, director, employee or agent of any of the foregoing.

"Equity Interests "shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity

ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" shall mean any corporation or trade or business which is a member of any group of organizations: (a) described in Section 414(b) or (c) of the Code of which the Borrower (or any Borrower Subsidiary) is a member and (b) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which the Borrower (or any Borrower Subsidiary) is a member.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan, (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or (h) the occurrence of one event that could result in the Termination of a Plan by the PBGC.

"Ethanol" shall mean the fuel-grade ethyl alcohol produced by the Projects through processing of Grain provided by the Grain Suppliers.

"Ethanol Marketer" shall mean Abengoa Bioenergy Trading US, LLC.

"Ethanol Marketing Agreement" shall mean (i) Ethanol Marketing Agreement, dated as of July 31, 2007 between IllinoisCo and the Ethanol Marketer and (ii) Ethanol Marketing Agreement, dated as of July 31, 2007 between IndianaCo and the Ethanol Marketer.

"Ethanol Sales Agreement" shall mean, as to each Project, each agreement for the sale of Ethanol produced by such Project between the Borrower Subsidiary that owns such Project and an Ethanol Purchaser.

"Ethanol Purchaser" shall mean each Person party to a Ethanol Sales Agreement with a Borrower Subsidiary (other than such Borrower Subsidiary).

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Abandonment" shall mean a formal, public announcement by any Obligor of a decision to abandon the operation of any material portion of either Project for any reason; provided, however, that delays in operation of either Project solely caused by the failure of any Government Authority to provide in a timely manner a Government Approval that was properly and timely applied for shall not constitute an "Event of Abandonment".

"Event of Default" shall have the meaning assigned to that term in Section 9.01.

"Event of Loss" shall mean any loss of, destruction of or damage to, or any condemnation or other taking of (including an Event of Taking), any Property of any Obligor.

"Event of Taking" shall mean any taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action or threat of any such action of or proceeding by any Government Authority or other Person relating to all or any part of the Projects.

"Event of Total Loss" shall mean the occurrence of an Event of Loss affecting all or substantially all of either Project or the Property of any Obligor.

"Excess Funding Guarantor" has the meaning given in Section 11.08.

"Excess Payment" has the meaning given in Section 11.08.

"Excluded Taxes" shall mean, any of the following Taxes imposed on or with respect to any Agent or Lender or required to be withheld or deducted from a payment to an Agent or Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Agent or Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.04, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Agent or Lender's failure to comply with Section 5.04(e) and (d) any Taxes imposed under FATCA.

"Existing Primed Secured Facilities" shall have the meaning assigned to that term in Section 12.05(b).

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended version that is substantively comparable and not materially

more onerous to comply with), and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements entered into by the United States of America that implement or modify the foregoing (together with the portions of any law implementing such intergovernmental agreements).

"Federal Funds Rate" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depositary institutions, as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate.

"Fee Letter" shall mean the fee letter entered into among the Borrower, the Agent and the Collateral Agent, with respect to, among other matters, certain fees payable for the account of the Agent and the Collateral Agent.

"Final Loan" shall mean a Loan made on or after the Final Order Entry Date.

"Final Maturity Date" shall mean the date that is the earliest of:

(a) September 30, 2016

(b) the date occurring forty-five days after the entry of the Interim Order, unless a final order (the "Final Order") approving the DIP Facility in form and substance satisfactory to the Majority Lenders shall have been entered by the Bankruptcy Court on or before such date;

(c) the date the Bankruptcy Court orders a conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases;

(d) the date of the acceleration of the DIP Loans and the termination of the Commitment under the DIP Facility; and

(e) the date of the consummation the Transaction,

in each case, provided that if such date is not a Business Day, the Final Maturity Date shall be the next preceding Business Day.

"Final Order" shall mean the final order of the Bankruptcy Court with respect to the Obligors approving, among other things, the DIP Facility, in form and substance satisfactory to the Majority Lenders in their sole discretion (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be), as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Majority Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be).

"Final Order Entry Date" shall mean the date on which the Final Order shall have been entered on the docket of the Bankruptcy Court.

"Financing Documents" shall mean this Agreement, the Fee Letter, each of the Security Documents and each Guarantee and credit support instrument provided in connection with any of the foregoing.

"Foreign Lender" shall have the meaning given such term in Section 5.04(e).

"Futures Commissions Merchant" shall mean FC Stone, Iowa Grain or another futures commissions merchant acceptable to the Majority Lenders.

"GAAP" shall mean generally accepted accounting principles in the United States applied on a basis consistent with those principles set forth in Section 1.02(a).

"Government Approval" shall mean (a) any authorization, consent, approval, license, lease, ruling, permit, certification, waiver, exemption, filing, variance, claim, order, judgment or decree of, by or with, (b) any required notice to, (c) any declaration of or with or (d) any registration by or with, any Government Authority, in each case relating to the Projects to the extent (i) not routine, (ii) not ministerial in nature or (iii) not otherwise immaterial to the Projects or an Obligor's compliance with any Government Rule or obtaining or maintaining any Government Approval.

"Government Authority" shall mean any United States federal, state, municipal, local, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body.

"Government Rule" shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, requirement of, or other governmental restriction or any similar binding form of decision of or determination by, or any binding interpretation or administration of any of the foregoing by, any Government Authority, including all common law, whether now or hereafter in effect, including the Chapter 11 Orders.

"Grain" shall mean corn, sorghum or such other commodity approved by the Majority Lenders to be utilized as feedstock in the production of Ethanol.

"Grain Supplier" shall mean each Person party to a Grain Supply Agreement with a Borrower Subsidiary (other than such Borrower Subsidiary).

"Grain Supply Agreement" shall mean, as to each Project, each agreement for the applicable supply of raw materials to a Project to produce Ethanol and Distilled Grain between the Borrower Subsidiary that owns such Project and a Grain Supplier.

"Guarantee" shall mean a guarantee, an endorsement, a contingent agreement to purchase or to furnish funds for the payment or maintenance of, or otherwise to be or become contingently liable under or with respect to, the Indebtedness, other obligations, net worth, working capital or earnings of any Person, or a guarantee of the payment of dividends or other

distributions upon the stock or equity interests of any Person, or an agreement to purchase, sell or lease (as lessee or lessor) Property of any Person, products, materials, supplies or services primarily for the purpose of enabling a debtor to make payment of his, her or its obligations or an agreement to assure a creditor against loss, and including causing a bank or other financial institution to issue a letter of credit or other similar instrument for the benefit of another Person, but excluding (a) endorsements for collection or deposit in the ordinary course of business and (b) indemnity or hold harmless provisions included in contracts with non-Affiliates entered into in the ordinary course of business. The terms "Guarantee" and "Guaranteed" used as verbs shall have correlative meanings.

"Guaranteed Obligations" has the meaning given in Section 11.01.

"Hazardous Material" shall mean: (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (PCBs) and, to the extent regulated by Environmental Laws, noise and odors, (b) any chemicals, other materials, substances or wastes which are now or hereafter become defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants", "pollutants" or words of similar import under any Environmental Law and (c) any other chemical, material, substance or waste which is now or hereafter regulated under or with respect to which liability or standards of conduct are imposed under any Environmental Law.

"Illinois Facility" shall mean a name plate 88 MGY fuel-grade ethanol production plant, together with all equipment necessary for the receipt of Grain and the generation and transportation of Ethanol and Distilled Grain for resale, located in Madison, Illinois.

"Illinois Facility Site" shall mean each parcel of real property described on Schedule I of the Illinois Mortgage and all Appurtenant Rights attached thereto, which shall include the Easement Properties.

"Illinois Lease Agreement" shall mean that certain lease agreement, to be entered into between Tri-City Regional Port District and IllinoisCo for the lease of the Illinois Facility site.

"Illinois Mortgage" shall mean the Mortgage, Assignments of Rents, Security Agreement and Fixture Filing by IllinoisCo, as mortgagor, in favor of the Collateral Agent, as mortgagee, encumbering the Illinois Facility Site, to be entered into no later than the Final Order Entry Date.

"Illinois Project" shall mean an 88 MGY name plate fuel-grade ethanol production plant in Madison, Illinois.

"IllinoisCo" shall have the meaning given such term in the Preamble.

"Impairment" shall mean, with respect to any Material Project Document or Government Approval, (a) the rescission, early termination, cancellation, repeal or invalidity thereof, (b) the suspension or injunction thereof, (c) the inability to satisfy in a timely manner

stated conditions to effectiveness thereof or (d) the amendment, modification or supplement (other than, in the case of a Material Project Document, any such amendment, modification or supplement effected in accordance with Section 8.21 and, in the case of a Government Approval, any such amendment, modification or supplement effected in accordance with Section 8.03(b)) of such Material Project Document or Government Approval in whole or in part. The verb "Impair" shall have a correlative meaning.

"Indebtedness" shall mean, for any Person, without duplication: (a) indebtedness created, issued or incurred by such Person for borrowed money (whether by loan or the issuance and sale of debt securities or the sale of Property of such Person to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property of such Person from such Person), (b) obligations of such Person to pay the deferred purchase or acquisition price of Property of such Person or services, (c) obligations of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for account of such Person, (d) obligations of such Person in respect of surety bonds or similar instruments, (e) indebtedness of others described in clauses (a) through (d) above secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person, (f) Capital Lease Obligations of such Person and (g) indebtedness of others described in clauses (a) through (f) above Guaranteed by such Person.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Indemnitee" shall have the meaning assigned to that term in Section 13.03.

"Indiana Facility" shall mean a name plate 88 MGY fuel-grade ethanol production plant, together with all equipment necessary for the receipt of Grain and the generation and transportation of Ethanol and Distilled Grain for resale, located in West Franklin, Indiana.

"Indiana Facility Site" shall mean each parcel of real property described on Schedule I of the Indiana Mortgage and all Appurtenant Rights attached thereto, which shall include the Easement Properties.

"Indiana Mortgage" shall mean the Mortgage, Assignments of Rents, Security Agreement and Fixture Filing by IndianaCo, as mortgagor, in favor of the Collateral Agent, as mortgagee, encumbering the Indiana Facility Site, to be entered into no later than the Final Order Entry Date.

"Indiana Project" shall mean an 88 MGY name plate fuel-grade ethanol production plant in West Franklin, Indiana.

"IndianaCo" shall have the meaning given such term in the Preamble.

"Interest Payment Date" shall mean, for each Loan, the Final Maturity Date.

"Interest Period" shall mean, with respect to any Loan, each period commencing on the date such Loan is made (or in the case of the Interim Loans, the period commencing on the third Business Day after such Interim Loan is made) and ending on the Interest Payment Date

(or such other period as the Borrower and the Agent (acting at the direction of the Majority Lenders) may agree from time to time), provided that, in the case of the Interim Loans, notwithstanding that the Interest Period ends on the Interest Payment Date, the Interest Period shall be deemed to have a duration of three months.

"Interim Loan" shall mean a Loan made on or after the Closing Date and before the Final Order Entry Date.

"Interim Order" shall mean the order of the Bankruptcy Court with respect to the Obligors approving, among other things, the DIP Facility, substantially in the form of Exhibit D hereto, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Majority Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be).

"Interim Order Entry Date" shall mean the date on which the Interim Order shall have been entered on the docket of the Bankruptcy Court.

"Investment" shall mean, for any Person: (a) the acquisition (whether for cash, Property of such Person, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any other sale of any securities at a time when such securities are not owned by the Person entering into such sale), (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding 90 days representing the purchase price of inventory or supplies sold in the ordinary course of business), (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (d) the entering into of any Commodity Hedging Agreement.

"Lender" shall mean any Lender with an outstanding Commitment or Loan, or both.

"LIBO Rate" shall mean, with respect to any any Interest Period: (a) the ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period appearing on the display designated as the Reuters LIBOR01 page (or on any successor or substitute page or service providing quotations of interest rates applicable to dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by the Agent) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; (b) if the rate referenced in clause (a) above does not appear on such page or service or such page or service shall cease to be available, the rate per annum equal to the rate determined by the Agent to be the offered rate on such other page or other service that displays an average ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London

time) two Business Days prior to the first day of such Interest Period; or (c) if the rates referenced in the clauses (a) and (b) above are not available, the rate per annum determined by the Agent as the rate of interest (rounded upward to the next 1/100th of 1%) at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Borrowing being made and with a term equivalent to such Interest Period would be offered by major banks of international repute reasonably satisfactory to the Agent in the offshore Dollar market at their request at approximately 11:00 a.m., London time, two Business Days prior to the first day of such Interest Period. At no time shall the LIBO Rate be less than 0%.

"Lien" shall mean, with respect to any Property of any Person, any mortgage, lien, pledge, charge, lease, easement, servitude, security interest or encumbrance of any kind in respect of such Property of such Person.

"Loan" shall mean any extension of credit made by a Lender pursuant to its Commitment.

"Local Deposit Accounts" shall have the meaning given such term in the Prepetition Documents.

"Loss Proceeds" shall mean insurance proceeds, condemnation awards or other compensation, awards, damages and other payments or relief (exclusive, in each case, of the proceeds of liability insurance and business interruption insurance and other payments for interruption of operations) with respect to any Event of Loss.

"Majority Lenders" shall mean, subject to the last paragraph of Section 13.04, Lenders holding over 50% of the aggregate outstanding Loans and Commitments (if any).

"Management Consulting Agreement" shall mean (i) the Management Consulting Agreement between IllinoisCo and the Management Consultant and (ii) the Management Consulting Agreement between IndianaCo and the Management Consultant.

"Management Consultant" shall mean Abengoa Bioenergy US Holding, Inc., and each of its permitted successors and assigns.

"Maple Debtors" shall mean Abengoa Bioenergy Maple, LLC; Abengoa Bioenergy of Indiana, LLC; Abengoa Bioenergy of Illinois, LLC; Abengoa Operations, LLC; Abengoa Bioenergy Meramec Renewable, LLC; and Abengoa Bioenergy Funding, LLC.

"Margin Stock" shall mean margin stock within the meaning of Regulation U and Regulation X.

"Material Adverse Effect" shall mean a material adverse effect on one or more of the following: (a) the business, assets, operations or financial condition of any Obligor or either Project, (b) the ability of any Obligor to perform its material obligations under any Financing Document or any document governing the Transaction to which it is a party in accordance with the terms thereof or to comply with any Chapter 11 Order, (c) the validity or enforceability of the obligations of any Obligor or the rights of the Agent or Lenders under this Agreement or under

any other Financing Document, documents governing the Transactions or comply with any Chapter 11 Order or (d) the value of the Collateral or the validity, enforceability or priority of the security interests granted to the Collateral Agent pursuant to the Security Documents.

"Material Affiliated Project Party" shall mean each Material Project Party that is an Affiliate of an Obligor.

"Material Distilled Grain Sales Agreement" shall mean any Distilled Grain Sales Agreement under which sales of Distilled Grain to the Distilled Grain Purchaser thereunder and its Affiliates exceed 100,000 tons (on a dry matter basis) or which would exceed such amount in the aggregate in any single fiscal year when taken together with the other Distilled Grain Sales Agreements then outstanding among the applicable Obligor and such Distilled Grain Purchaser and its Affiliates.

"Material Ethanol Sales Agreement" shall mean any Ethanol Sales Agreement under which sales of Ethanol to the Ethanol Purchaser thereunder and its Affiliates exceed 30 million gallons or which would exceed such amount in the aggregate in any single fiscal year when taken together with the other Ethanol Sales Agreements then outstanding among the applicable Obligor and such Ethanol Purchaser and its Affiliates.

"Material Grain Supply Agreement" shall mean any Grain Supply Agreement under which sales of Grain to the Grain Supplier thereunder and its Affiliates exceed 10 million bushels or which would exceed such amount in the aggregate in any single fiscal year when taken together with the other Grain Supply Agreements then outstanding among the applicable Obligor and such Grain Supplier and its Affiliates.

"Material Project Documents" shall mean: (a) each Ethanol Marketing Agreement, (b) each Distilled Grain Marketing Agreement, (c) each Material Ethanol Sales Agreement, (d) each Material Grain Supply Agreement, (e) each Material Distilled Grain Sales Agreement, (f) the Vogelbusch License Agreement, (g) the Vogelbusch Process Guarantee, (h) the Management Consulting Agreement, (i) the Illinois Lease Agreement, (j) each Corn Oil Extraction Agreement, (k) each natural gas supply and/or transportation agreement (other than agreements for which such service is required to be provided at specified tariff rates determined by Government Rule), (l) each electricity supply agreement (other than agreements for which such service is required to be provided at specified tariff rates determined by Government Rule), (m) each water supply agreement (other than agreements for which such service is required to be provided at specified tariff rates determined by Government Rule), (n) each operations and maintenance agreement, (o) each Commodity Hedging Agreement, (p) all relevant Project permits, (q) each document representing a material interest in real property related to either Project, (r) each rail use or similar agreement, (s) each rail car lease that provides for the lease of 20 or more rail cars (or that would provide for the lease of 20 or more rail cars in the aggregate when combined with each other rail car lease with the same lessor or its Affiliates) or barge lease or similar agreement, (t) each Project Document in full force and effect as of the Closing Date that is not a Non-Material Project Document, (u) each Additional Project Document, (v) each Guarantee or credit support instrument provided in connection with any of the foregoing and (w) any replacement of any of the foregoing agreements or instruments.

"Material Project Parties" shall mean the Pledgor, Vogelbusch, each Person party to a credit support instrument provided in connection with any Material Project Document and each other Person (other than an Obligor) party to a Material Project Document.

"Maximum Rate" shall have the meaning assigned to that term in Section 13.09.

"Mechanics' Liens" shall mean carriers', warehousemen's, mechanics', workmen's, materialmen's, construction or other like statutory Liens (other than Liens described in paragraphs (a) and (b) of Section 8.13).

"MGY" shall mean million gallons per year.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgages" shall mean the Project 1 Mortgage and the Project 2 Mortgage.

"Multiemployer Plan" shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been made by the Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA.

"Net Available Amount" shall mean (a) in the case of any Disposition, the amount of Net Cash Payments received in connection with such Disposition and (b) in the case of any Event of Loss, the aggregate amount of Loss Proceeds received by an Obligor in respect of an Event of Loss related to a Project net of reasonable expenses incurred by such Obligor or the Borrower in connection with the collection of such Loss Proceeds.

"Net Cash Flow Permitted Deviation" shall have the meaning assigned to that term in Section 8.34.

"Net Cash Payments" shall mean, with respect to any Disposition, the aggregate amount of all cash payments, and the fair market value of any non-cash consideration, received by the Borrower or any other Obligor directly or indirectly in connection with such Disposition; provided that (a) Net Cash Payments shall be net of (i) the amount of any legal, title and recording tax expenses, commissions and other fees and expenses paid by the Borrower or any other Obligor in connection with such Disposition and (ii) any Federal, state and local income or other taxes estimated to be payable to a Taxing Authority by the Borrower or any other Obligor as a result of such Disposition (but only to the extent that such estimated taxes are in fact paid to the relevant Federal, state or local governmental authority within three months of the date of such Disposition) and (b) Net Cash Payments shall be net of any repayments by the Borrower or any or any other Obligor of Indebtedness permitted pursuant to Section 8.17(a)(iii) to the extent that (i) such Indebtedness is secured by a Lien on the property that is the subject of such Disposition and (ii) the transferee of (or holder of a Lien on) such property requires that such Indebtedness be repaid as a condition to the purchase of such property.

"Non-Consenting Lender" shall have the meaning assigned to that term in Section 13.06(h).

"Non-Material Project Documents" shall mean (a) contracts or agreements entered into by an Obligor, or by an agent on behalf of such Obligor, in the ordinary course of its business in connection with the Projects under which such Obligor could not reasonably be expected to have aggregate obligations or liabilities in excess of $3,000,000 under any such agreement, (b) contracts or agreements that are used in connection with the acquisition and/or disposition of Permitted Investments and (c) contracts or agreements entered into by an Obligor in the ordinary course of its business for legal, accounting, engineering, environmental consulting or other professional services in connection with the Projects (other than to the extent such are Material Project Documents or contracts or agreements in substitution of any Material Project Document) in accordance with the then current Budget.

"Nonrecourse Persons" shall have the meaning assigned to that term in Section 13.10.

"Notice of Borrowing" shall have the meaning assigned to that term in Section 4.05(a).

"NPL" shall mean the National Priorities List established pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.

"Obligations" means all advances to, and debts, liabilities and obligations of, any Obligor arising under any Financing Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and expenses that accrue after the commencement by or against any Obligor or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees or expenses are allowed claims in such proceeding, and shall include on and after the Closing Date any Prepetition Obligations.

"Obligor" shall mean the Borrower and each Borrower Subsidiary.

"OFAC" shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

"Official Committee" shall mean the official committee of unsecured creditors, if appointed in the Chapter 11 Cases pursuant to Section 1102 of the Bankruptcy Code.

"Operating Disbursement Permitted Deviation" shall have the meaning assigned to that term in Section 8.34.

"Other Connection Taxes" means, with respect to any Agent or Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or Financing Document).

"Other Taxes" shall mean any and all present or future stamp, execution, recording or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Financing Document or from the execution, delivery, recording or enforcement of, payments under, or otherwise with respect to, any Financing Document.

"Participant" shall have the meaning assigned to that term in Section 13.06(e).

"Payment" shall mean a disbursement of funds from the Revenue Account.

"Payment Date" shall mean the date of a Payment.

"Payment Instruction" shall have the meaning assigned to that term in Section 2.01(d).

"Payor" shall have the meaning assigned to that term in Section 4.06.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any successor trustee.

"Permitted Adequate Protection Payments" shall mean the adequate protection payments to the secured parties under the Prepetition Documents pursuant to the terms of the DIP Order.

"Permitted Capital Expenditures" shall mean Capital Expenditures that are reviewed and approved by the Majority Lenders; provided, that no such review and agreement shall be required for (a) Capital Expenditures required to comply with applicable Government Rules, including Environmental Laws for such Obligor's property, (b) other Capital Expenditures of not more than $200,000 in the aggregate per Project in any fiscal year or (c) Capital Expenditures in respect of the grain elevator project as such amounts are contemplated in the capital expenditures set forth the Budget.

"Permitted Deviation" shall mean the Net Cash Flow Permitted Deviation or the Operating Disbursement Permitted Deviation.

"Permitted Indebtedness" shall mean the Indebtedness permitted under Section 8.17.

"Permitted Investments" shall mean the Investments permitted under Section 8.14.

"Permitted Liens" shall mean the Liens permitted under Section 8.13.

"Permitted Prior Liens" shall mean Liens otherwise permitted by the Prepetition Documents (other than Existing Primed Secured Facilities) only to the extent that, as of the Petition Date, such Liens were valid, properly perfected (or subsequently perfected as permitted by Section 546(b) of the Bankruptcy Code) non-avoidable and senior in priority to the Liens securing the Prepetition Facilities.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or Government Authority.

"Petition Date" shall have the meaning assigned to that term in the recitals hereto.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledge Agreement" shall mean the Pledge Agreement dated no later than the Final Order Entry Date, among the Pledgor and the Collateral Agent, relating to the pledge of all Equity Interests in the Borrower.

"Pledgor" shall mean Abengoa Bioenergy Funding, LLC.

"Post-Carve Out Trigger Notice Cap" shall mean Allowed Professional Fees in an aggregate amount not to exceed $250,000 incurred after the first Business Day following delivery by the Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise.

"Post-Default Rate" shall mean, a rate per annum equal to 2.00% above the LIBO Rate as in effect from time to time plus the Applicable Margin; provided, if the date of the occurrence of the relevant Event of Default is any day other than the last day of an Interest Period for such Loan, the "Post-Default Rate" for the principal amount of such Loan shall be 2.00% above the interest rate for such Loan as provided in Section 3.02 for the period from and including the date of occurrence of the relevant Event of Default to but excluding the date that is the earlier of (a) the date that is the last day of the Interest Period and (b) if pursuant to Article IX such Loan is accelerated, the date of such acceleration, and thereafter, the rate provided for above in this definition.

"Prepayment Premium" shall mean 1.00% of the amount of the aggregate outstanding amount under the DIP Facility.

"Prepetition Agent" shall mean Deutsche Bank Trust Company Americas, as administrative agent for the Prepetition Lenders.

"Prepetition Documents" shall mean the Prepetition Facility and all instruments and documents executed at any time in connection therewith.

"Prepetition Facility" shall mean that certain Credit Agreement, dated as of July 31, 2007, among the Borrower, IndianaCo, IllinoisCo, the Prepetition Lenders, and the Prepetition Agent, as amended by Amendment No. 1 to the Credit Agreement, dated as of October 17, 2012, among the Borrower, IndianaCo, IllinoisCo, the Prepetition Lenders, and the Prepetition Agent.

"Prepetition Lenders" shall mean the lenders party to the Prepetition Facility, from time to time, under and as defined in the Prepetition Facility.

"Prepetition Liens" shall mean collectively all Liens that secure all Prepetition Obligations.

"Prepetition Loans" shall mean those Prepetition Obligations for all loans outstanding under (and as defined in) the Prepetition Facility as of the Petition Date.

"Prepetition Obligations" shall mean all indebtedness, obligations and liabilities of the Borrower and its Subsidiaries to the Prepetition Agent and the Prepetition Lenders incurred prior to the Petition Date arising from or related to the Prepetition Facility and the other agreements, instruments and other documents related thereto including fees, premiums, expenses, indemnities and reimbursement obligations due thereunder and interest thereon accruing both before and after the Petition Date, whether such indebtedness, obligations or liabilities are direct or indirect, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising.

"Prime Rate" shall mean the rate of interest from time to time publicly announced by the Agent (or an Affiliate thereof) as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced.

"Priming Lien" shall have the meaning assigned to that term in Section 12.05(a)(iv).

"Pro Rata Share" shall have the meaning given in Section 11.08.

"Project" shall mean the Indiana Project and the Illinois Project.

"Project 1" shall mean the Illinois Project.

"Project 1 Accounts" shall have the meaning given such term in the Prepetition Documents.

"Project 1 Facility" shall mean the Illinois Facility.

"Project 1 Facility Site" shall mean each parcel of real property described on Schedule I of the Project 1 Mortgage and all Appurtenant Rights attached thereto, which shall include the Easement Properties.

"Project 1 Loss Proceeds Account" shall have the meaning given such term in the Prepetition Documents.

"Project 1 Mortgage" shall mean the Illinois Mortgage.

"Project 1 Project Revenues" shall mean, for any period, all cash revenues received by ProjectCo 1 during such period from: (a) the sales of Ethanol and Distilled Grain

during such period, (b) all interest earned with respect to such period on Permitted Investments held in the Project 1 Accounts, (c) the proceeds of any business interruption insurance and other payments received for interruption of operations during such period, (d) all other income or revenue, however earned or received, by ProjectCo 1 during such period, including any Government Authority incentives received pursuant to VEETC or otherwise, whether as tax credits, tax deductions or otherwise and (e) net amounts receivable in connection with ordinary course settlement payments under Commodity Hedging Agreements in respect of Project 1. Project 1 Project Revenues shall exclude, to the extent included, the Net Available Amount in respect of an Event of Loss at the Project 1 Facility.

"Project 1 Revenue Account" shall have the meaning given such term in the Prepetition Documents.

"Project 2" shall mean the Indiana Project.

"Project 2 Accounts" shall have the meaning given such term in the Prepetition Documents.

"Project 2 Facility" shall mean the Indiana Facility.

"Project 2 Facility Site" shall mean each parcel of real property described on Schedule I of the Project 2 Mortgage and all Appurtenant Rights attached thereto, which shall include the Easement Properties.

"Project 2 Loss Proceeds Account" shall have the meaning given such term in the Prepetition Documents.

"Project 2 Mortgage" shall mean the Indiana Mortgage.

"Project 2 Project Revenues" shall mean, for any period, all cash revenues received by ProjectCo 2 during such period from: (a) the sales of Ethanol and Distilled Grain during such period, (b) all interest earned with respect to such period on Permitted Investments held in the Project 2 Accounts, (c) the proceeds of any business interruption insurance and other payments received for interruption of operations during such period, (d) all other income or revenue, however earned or received, by ProjectCo 2 during such period, including any Government Authority incentives received pursuant to VEETC or otherwise, whether as tax credits, tax deductions or otherwise and (e) net amounts receivable in connection with ordinary course settlement payments under Commodity Hedging Agreements in respect of Project 2. Project 2 Project Revenues shall exclude, to the extent included, the Net Available Amount in respect of an Event of Loss at the Project 2 Facility.

"Project 2 Revenue Account" shall have the meaning given such term in the Prepetition Documents.

"Project Documents" shall mean each Material Project Document, Non-Material Project Document and Additional Project Document.

"Project Party" shall mean each Person from time to time party to a Project Document.

"Project Revenues" shall mean, for any period, with respect to the Borrower, all cash (without duplication) received by the Borrower during such period from: (a) distributions from ProjectCo 1 and ProjectCo 2 that are characterized as Project 1 Project Revenues and Project 2 Project Revenues, (b) all Project 1 Project Revenues and Project 2 Project Revenues, (c) all interest earned with respect to such period on Permitted Investments held in the Borrower Accounts, Project 1 Accounts and Project 2 Accounts, (d) all other income or revenue, however earned or received by any Obligor during such period, including any Government Authority incentives received pursuant to VEETC or otherwise, whether as tax credits, tax deductions or otherwise and (e) net amounts receivable in connection with ordinary course settlement payments under Commodity Hedging Agreements earned by the Borrower. Project Revenues shall exclude, to the extent included, (i) proceeds of Permitted Indebtedness and (iii) contributions to capital of the Borrower.

"ProjectCo 1" shall mean IllinoisCo.

"ProjectCo 2" shall mean IndianaCo.

"Projects" shall mean the Illinois Project and the Indiana Project.

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Regulation D, Regulation U and Regulation X" shall mean, respectively, Regulation D, Regulation U and Regulation X of the Board.

"Rate Determination Notice" shall have the meaning assigned to that term in Section 5.01.

"Related Parties" shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers and advisors of such Person and of such Person's Affiliates.

"Release" shall mean any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of any Hazardous Material into the environment, including the movement of such Hazardous Material through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

"Responsible Officer" when used with respect to the Agent, means any officer of the Agent with direct responsibility for the administration of this Agreement.

"Required Payment" shall have the meaning assigned to that term in Section 4.06.

"Restore" shall mean, with respect to any Affected Property, to rebuild, repair, restore or replace such Affected Property. The term "Restoration" shall have a correlative meaning.

"Restricted Payment" shall mean all distributions by the Borrower (in cash, Property of the Borrower or obligations) on, or other payments or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any portion of any membership interest in the Borrower.

"Revenue Account" shall have the meaning given such term in the Prepetition Documents.

"S&P" shall mean Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc.

"Sale Order" shall mean the order of the Bankruptcy Court with respect to the Obligors authorizing, among other things, the Transaction, in form and substance satisfactory to the Majority Lenders in their sole discretion (and with respect to any provisions that affect the rights and duties of the Agent, the Agent), as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Majority Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Agent, the Agent).

"Sanction(s)" shall mean any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"Secured Obligations" shall mean, as at any date, the sum, computed without duplication, of the following: (a) the aggregate outstanding principal amount of the Loans plus all accrued but unpaid interest on such amount plus (b) all other amounts from time to time payable under the Financing Documents plus accrued interest on such amounts plus (c) any and all obligations of the Borrower to the Agent, the Collateral Agent, the Depositary or any other Secured Party for the performance of its agreements, covenants or undertakings under or in respect of any Financing Document.

"Secured Parties" shall mean the Agent, the Collateral Agent, the Depositary and each Lender.

"Security Agreement" shall mean the (a) pledge and security agreement between the Borrower and the Collateral Agent, (b) a security agreement between IllinoisCo and the Collateral Agent and (c) a security agreement between IndianaCo and the Collateral Agent, in each case, to be entered into no later than the Final Order Entry Date.

"Security Documents" shall mean each Security Agreement, each Mortgage, the DIP Order, the Pledge Agreement, the Account Control Agreements, any such other security agreement, control agreement, patent and trademark assignment, lease assignment and other

similar agreement securing the Secured Obligations between any Person and the Collateral Agent on behalf of the Secured Parties, and all financing statements, agreements or other instruments to be filed in respect of the Liens created under each such agreement.

"Statutory Reserve Rate" shall mean, for the Interest Period for any Loan, a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subsidiary" shall mean, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. "Wholly Owned Subsidiary" shall mean any such corporation, partnership or other entity of which all of the equity securities or other ownership interests (other than, in the case of a corporation, directors' qualifying shares) are so owned or Controlled.

"Subsidiary Guarantors" shall have the meaning assigned to that term in Section 11.01.

"Supplemental Budget" shall have the meaning assigned to that term in Section 8.01(i).

"Taxes" shall mean, with respect to any Person, all taxes, assessments, imposts, deductions, fees, duties, withholdings, or other governmental charges or levies imposed directly or indirectly on such Person or its income, profits or sales or Property by any Taxing Authority, including any interest, additions to tax or penalties applicable thereto.

"Taxing Authority" shall mean any United States federal, state, municipal, local, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body that is responsible for the levying and collection of Taxes and any such person, authority or entity in any other jurisdiction in which an Obligor is resident for tax purposes, has an office, permanent establishment or is engaged in business, and any jurisdiction from or through which payments hereunder are made by or on the behalf of an Obligor.

"Termination Date" shall mean the date on which (a) the Agent, the Collateral Agent and the other Secured Parties shall have received final indefeasible payment in full in cash of all of the Secured Obligations and all other amounts owing to the Agent, the Collateral Agent and the other Secured Parties under the Financing Documents (other than indemnities and other obligations that by their terms survive such payment in full) and (b) all Commitments shall have terminated, expired or been reduced to zero.

"Transaction" shall mean a sale of the assets of the Obligors (or alternatively, the equity interests thereof) pursuant to a process conducted under Section 363 of the Bankruptcy Code.

"Transaction Documents" shall mean each Financing Document and each Project Document.

"UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

"United States" and "U.S." shall mean the United States of America.

"Upfront Fee" shall have the meaning assigned to that term in Section 2.08(b).

"Use" shall mean the generation, manufacture, processing, distribution, handling, use, treatment, recycling, storage, disposal, arrangement for or permitting the disposal, transportation or Release of any Hazardous Material.

"Variance Report" has the meaning specified in Section 8.01(j).

"Variance Report Date" has the meaning specified in Section 8.01(j).

"VEETC" shall mean the Volumetric Ethanol Excise Tax Credit, codified in H.R. 4520, the American Jobs Creation Act of 2004 as heretofore and hereafter amended, and codified as 26 U.S.C. 6426.

"Vogelbusch" means Vogelbusch U.S.A., Inc.

"Vogelbusch License Agreement" shall mean (i) License Agreement, dated as of November 20, 2006, between IllinoisCo and Vogelbusch and (ii) License Agreement, dated as of November 20, 2006, between IndianaCo and Vogelbusch.

"Vogelbusch Process Guarantee" shall mean (i) Process Guarantee, dated as of November 20, 2006, between IllinoisCo and Vogelbusch and (ii) Process Guarantee, dated as of November 20, 2006, between IndianaCo and Vogelbusch.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 Accounting Terms and Determinations.

(a) Except as otherwise expressly provided in this Agreement, all accounting terms used in this Agreement shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders under this Agreement shall (unless otherwise disclosed to the Lenders in writing at the time of delivery in the manner described in subsection (b) below) be prepared, in accordance with generally accepted accounting principles as in effect from time to time, including applicable statements, bulletins and interpretations issued by the Financial Accounting Standards Board, and all calculations made for the purposes of determining compliance with this Agreement shall (except as otherwise expressly provided in this Agreement) be made by application of generally accepted accounting principles referred to above; provided, however, that if any financial statements shall be prepared in accordance with generally accepted accounting principles that are not the same as the principles used for the preparation of the financial statements for the preceding applicable period (to the extent such change has a material effect) or if any calculations shall be made for the purposes of determining compliance with this Agreement on a basis that is not the same as was used for purposes of determining compliance for the preceding applicable period, then the financial statements for the comparable prior period shall be restated and the calculations re-made as specified above to enable a comparison to be made with such prior period; provided, further, that the restatement and remaking of such calculations shall be made solely for comparison purposes and shall not result in any finding of non-compliance hereunder.

(b) The Borrower shall deliver to the Agent (in sufficient numbers for the Agent and each of the Lenders) at the same time as the delivery of any annual or quarterly financial statement under Section 8.01 (i) a description in reasonable detail of any material variation between the application of accounting principles employed in the preparation of such statement and the application of accounting principles employed in the preparation of the next preceding annual or quarterly financial statements and (ii) reasonable estimates of the difference between such statements arising as a consequence of any such difference.

(c) To enable the consistent determination of compliance with the terms of this Agreement, the Borrower will not change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively, without the prior written consent of the Agent (acting at the direction of the Majority Lenders).

1.03 [Intentionally Omitted].

1.04 Certain Principles of Interpretation. In this Agreement, unless otherwise indicated, the singular includes the plural and plural the singular; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation"; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to this Agreement (unless otherwise specified); references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, extensions and other modifications and substitutions thereof (including by change orders where applicable) (without, however, limiting any prohibition on any such amendments, extensions and other modifications and substitutions by the terms of this Agreement); and references to Persons include their respective permitted successors and assigns and, in the case of Government Authorities, Persons succeeding to their respective functions and capacities.

ARTICLE II

LOAN COMMITMENTS

2.01 Loans.

Subject to the terms and conditions of this Agreement and the DIP Order, each Lender agrees, severally and not jointly, to make, on the applicable borrowing date, a Loan to the Borrower in an aggregate principal amount not in excess of such Lender's Commitment. The Borrower may make (i) in the case of Interim Loans on the Closing Date, one Borrowing in an aggregate principal amount not to exceed $6,500,000 and (ii) in the case of the Loans from and after the Final Order Entry Date, one or more Borrowings in an aggregate principal amount for all such Borrowings not to exceed $3,500,000. All Loans and all other amounts owed hereunder with respect to the Loans shall be paid in full not later than the Final Maturity Date. Proceeds of the Loans shall be deposited in the Agent Account and used solely as permitted herein.

2.02 [Intentionally Omitted]

2.03 [Intentionally Omitted]

2.04 [Intentionally Omitted]

2.05 [Intentionally Omitted]

2.06 Borrowings.

(a) To request a Borrowing (or an optional prepayment in full of Loans) pursuant to this Agreement, the Borrower shall give the Agent (which shall promptly notify the Lenders) notice of such Borrowing as provided in Section 4.05(a).

(b) Not later than 11:00 a.m. New York City time on the date specified for each Borrowing of a Loan, each Lender shall make available the amount of the Loan to be

made by it on such date to the Agent, in immediately available funds, by wire transfer to the Agent Account as specified on the attached Appendix B.

(c) The amount with respect to Loans so received by the Agent in the Agent Account shall be transferred by 3:00 p.m. New York City time, in immediately available funds into the Revenue Account (or, in the case of the Interim Loans, to such payees and accounts, and in such amounts, as shall be designated in the Notice of Borrowing delivered in connection with the Interim Loans), after which time the Agent shall have no further responsibility in relation to such funds.

(d) Subject to Section 6.03 and the other terms and conditions set forth herein, the Borrower may only request disbursements from the Revenue Account by delivering to the Depositary a written notice substantially in the form of Exhibit E hereto (a "Payment Instruction"), not later than 12:00 p.m., New York City time, one Business Day before the proposed date of the applicable Payment. Promptly, but in no event later than one Business Day, following receipt of a Payment Instruction and the satisfaction of the conditions set forth in Section 6.03, the Depositary shall disburse funds from the Revenue Account in an aggregate principal amount equal to the amount specified in such Payment Instruction to the payee specified by the Borrower in such Payment Instruction. Except as otherwise stated herein, all proceeds of the Loans shall be held in the Revenue Account at all times until such proceeds are disbursed in accordance with this Section 2.06(d) solely for purposes permitted under Section 8.09 or to be applied in accordance with Section 3.04 or Section 12.05.

(e) Each submission by the Borrower to the Depositary of a Payment Instruction shall include a certification (and shall be deemed to constitute a certification to the Agent and the Lenders) by the Borrower that the conditions set forth in Section 6.03 have been satisfied as of the date of the Payment.

2.07 [Intentionally Omitted]

2.08 Fees.

(a) Commitment Fee. The Borrower shall pay to the Agent for the account of each Lender a commitment fee (the "Commitment Fee"), on the daily average unused amount of such Lender's Commitment, at a rate per annum equal to 0.50%, for the period from and including the Final Order Entry Date to, but not including, the date the Commitments are reduced to zero. The accrued Commitment Fee shall be payable in arrears on the last Business Day of each calendar month (with the first such payment falling due on June 30th, 2016) and upon termination of the Commitments.

(b) Upfront Fee. On the Closing Date, the Borrower shall pay to the Agent for the account of each Lender an upfront fee (the "Upfront Fee") in an amount equal to 2.00% of such Lender's Commitment.

(c) Administrative Fee. The Borrower shall pay to the Agent, for its own account, a non-refundable agency fee (the "Administrative Fee") and the Collateral Agent, for its own account, a non-refundable agency fee (the "Collateral Agency Fee") in the amounts set

forth in the Fee Letter. The Administrative Fee and the Collateral Agency Fee shall be payable in advance in accordance with the terms and in the amounts as set forth in the Fee Letter.

2.09 Lending Offices. The Loans made by each Lender shall be made and maintained at such Lender's Applicable Lending Office.

2.10 Several Obligations; Remedies Independent. The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but neither any Lender nor the Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender. The amounts payable by the Borrower at any time under this Agreement or any other Financing Document to each Lender shall be a separate and independent debt and, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement, and it shall not be necessary for any other Lender or the Agent to consent to, or be joined as an additional party in, any proceedings for such purposes.

2.11 Register.

(a) Maintenance of Records by the Agent. The Agent shall maintain a record of (i) the names and addresses of the Lenders, (ii) the Commitments of each Lender and the amount of each Loan made hereunder and each Interest Period therefor, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iv) the amount of any sum received by the Agent hereunder for the account of the Lenders and each Lender's share thereof and (v) a copy of each Assignment and Assumption delivered to it pursuant to Section 13.06(b). Upon reasonable notice to the Agent, the Borrower and each Lender shall have the right to inspect such records from time to time during normal business hours.

(b) Effect of Entries. Absent manifest error, the entries made in the record maintained pursuant to paragraph (a) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Agent to maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

ARTICLE III

PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayment of Loans.

(a) Loans. The Borrower hereby agrees to pay to the Agent for the account of each Lender, in a single installment on the Final Maturity Date, the aggregate principal amount of all of such Lender's Loans outstanding on such date, together with all other Obligations in respect thereof.

(b) Following the occurrence and during the continuance of an Event of Default, the Agent may (and at the direction of the Majority Lenders, shall) apply all funds

transferred and credited to the Agent Account or the Revenue Account to the Obligations in accordance with Section 9.01 and 9.02.

3.02 Interest. The Borrower hereby agrees to pay to the Agent for account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the following rates per annum:

(a) except as set forth in paragraph (c) below, in the case of Interim Loans

(i) for the period beginning on the Closing Date and ending on the second Business Day thereafter, Base Rate plus the Applicable Margin; and

(ii) for the period beginning on the third Business Day after the Closing Date, for the Interest Period relating to such Loan, Adjusted LIBO Rate for such Interest Period plus Applicable Margin;

(b) except as set forth in paragraph (c) below, in the case of Final Loans, for each Interest Period relating to such Loan, the Adjusted LIBO Rate for such Loan for such Interest Period plus the Applicable Margin; and

(c) during such periods that an Event of Default has occurred and is continuing, all outstanding Loans shall bear interest at a rate per annum equal to the Post-Default Rate to but excluding the dates such Event of Default is remedied or waived.

Accrued interest on each Loan shall be payable in arrears (i) on each Interest Payment Date and (ii) upon the payment or prepayment of any Loan (but only on the principal amount so paid or prepaid); provided, that interest payable at the Post-Default Rate shall be payable from time to time on demand (or, if no demand is made during any month, on the last Business Day of such month). Promptly after the determination of any interest rate provided for in this Agreement or any change in any such rate, the Agent shall give notice of such interest rate to the Lenders to which such interest is payable and to the Borrower.

3.03 Optional Prepayments of Loans. Subject to Section 4.04, the Borrower shall have the right to prepay the Loans in full (but not in part) at any time or from time to time; provided, that the Borrower shall give the Agent notice of each such prepayment as provided in Section 4.05(a) and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable. Any prepayment by the Borrower pursuant to this Section 3.03 shall be made simultaneously with, and is conditioned upon, the payment by the Borrower of the Prepayment Premium and any costs, expenses or other amounts incurred by any Lender in connection with such prepayment, provided that the Prepayment Premium shall not be payable in respect of any repayment made on the Final Maturity Date upon consummation of the Transaction.

3.04 Mandatory Prepayments. In addition to mandatory repayments of principal of Loans as set forth in Section 3.01 above, the Borrower shall make the following mandatory prepayments:

(a) Event of Loss. The Borrower shall prepay the Loans in an amount equal to 100% of the Net Available Amount resulting from an Event of loss not allocated to and used for Restoration in accordance with Section 8.05(l) (subject to the terms of the DIP Order, such prepayments shall be directed to the Agent Account and paid to each Lender on a pro rata basis pursuant to Section 4.02 below).

(b) Asset Sales. Except as otherwise permitted pursuant to Section 8.11(a), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Available Amount in excess of $500,000 resulting from the Disposition of any of its or any other Obligor's physical assets (other than sales of inventory in the ordinary course of business and on ordinary terms) (subject to the terms of the DIP Order, such prepayments shall be directed to the Agent Account and paid to each Lender on a pro rata basis pursuant to Section 4.02 below).).

(c) Project Payments. The Borrower shall prepay the Loans in an amount equal to 100% of the net proceeds received from Material Project Parties pursuant to Material Project Documents in connection with amounts received by the Borrower in respect of termination payments, indemnity payments and damages payments due under the terms of such Material Project Documents (subject to the terms of the DIP Order, such prepayments shall be directed to the Agent Account and paid to each Lender on a pro rata basis pursuant to Section 4.02 below).

ARTICLE IV

PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.

4.01 Payments.

(a) Except to the extent otherwise provided in this Agreement, all payments of principal, interest, fees and other amounts to be made by the Borrower under this Agreement and, except to the extent otherwise provided in any of the other Financing Documents, all payments to be made by the Borrower under any such other Financing Documents, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Agent by wire transfer to the account specified on the attached Appendix B. No payment shall be made later than 11:00 a.m. New York time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) The Borrower shall, at the time of making each payment under this Agreement for account of any Lender, specify to the Agent (which shall so notify the intended recipient or recipients) the Loans or other amounts payable by the Borrower under this Agreement to which such payment is to be applied (and in the event that it fails to so specify, or if an Event of Default has occurred and is continuing, the Agent may distribute such payment to the Lenders for application in such manner as it or the Majority Lenders, subject to Section 4.02, may determine to be appropriate, in each case pursuant to Section 4.08 of this Agreement).

(c) Each payment received by the Agent under this Agreement for account of any Lender shall be paid by the Agent promptly (but in no event later than 2:00 p.m. New York City time on any date such payment is received or deemed to be received) to such Lender, in immediately available funds, for account of such Lender's Applicable Lending Office for the Loan or other obligation in respect of which such payment is made.

(d) If the due date of any payment under this Agreement would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall be payable for any principal so extended for the period of such extension.

(e) Loans repaid or prepaid may not be reborrowed.

4.02 Pro Rata Treatment. Except to the extent otherwise provided in this Agreement: (a) the Borrowing of Loans under Section 2.01 shall be made from the Lenders and each payment of Commitment Fees and Upfront Fees under Sections 2.08(a) and (b) shall be made for account of the applicable Lenders on a pro rata basis (based on their respective Commitments), (b) except as otherwise specified herein, each payment or prepayment of principal of Loans by the Borrower shall be made for account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; provided, that if immediately prior to giving effect to any such payment in respect of any Loan, the outstanding principal amount of the Loans shall not be held by the Lenders pro rata in accordance with their respective Commitments in effect at the time such Loans were made (by reason of a failure of a Lender to make a Loan in the circumstances described in the last paragraph of Section 13.04), then such payment shall be applied to the Loans in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Loans being held by the Lenders pro rata in accordance with their respective Commitments and (c) each payment of interest on the Loans by the Borrower shall be made for account of the Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

4.03 Computations. Interest and fees on Loans shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

4.04 Minimum Amounts. Except for (a) mandatory prepayments made pursuant to Section 3.04 and (b) prepayments made pursuant to Section 5.03, each Borrowing, voluntary and partial prepayment of principal of Loans shall be in a minimum amount equal to $1,000,000 (or, if less, the full amount of such Loans outstanding) with integral multiples of $1,000,000 in excess of such minimum amount.

4.05 Certain Notices.

Notices by the Borrower to the Agent of Borrowings and optional prepayments of Loans and of the duration of Interest Periods shall be irrevocable and shall be effective only if received by the Agent not later than 11:00 a.m. New York City time on the number of Business

Days prior to the date of the relevant Borrowing or prepayment or the first day of such Interest Period specified below:

Notice	Number of Business Day(s) Prior
Borrowing of Interim Loan	1
Borrowing of Final Loans and Prepayments of Loans	3

Each such notice of a Borrowing (each such notice, a "Notice of Borrowing") shall be in substantially the form of Exhibit A, shall be subject to the satisfaction of the conditions set forth in Article VI and shall include the following details: (i) the amounts of such Borrowing (which shall be a Business Day); (ii) the requested date of such Borrowing; and (iii) a reasonable description of the specific use of the proceeds of the requested Borrowing; provided that in the case of the Interim Loans, the Notice of Borrowing shall also include a funds flow for disbursement of the proceeds of the Borrowing in accordance therewith specifying the payees and accounts, and the respective amounts to which such proceeds shall be allocated. Each such notice of optional prepayment shall specify the date of optional prepayment (which shall be a Business Day). The Agent shall notify the Lenders on the same day as its receipt of notice of the contents of each such notice.

4.06 Non-Receipt of Funds by the Agent. The Agent shall have no obligation to make any payments to any person without its prior receipt in full of cleared funds for the purpose.

4.07 Sharing of Payments; Etc.

(a) The Borrower agrees that, in addition to (and without limitation of) any right of set-off, banker's lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option, to offset balances held by it for account of the Borrower at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans or any other amount payable to such Lender under this Agreement, that is not paid when due (regardless of whether such balances are then due to the Borrower), in which case it shall promptly notify the Borrower and the Agent of such action; provided, that such Lender's failure to give such notice shall not affect the validity of such action.

(b) If any Lender shall obtain from the Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement held by it or any other Financing Document or through the exercise of any right of set-off, banker's lien or counterclaim or similar right or otherwise (other than from the Agent as provided in this Agreement), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder by the Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due on such Loans or other amounts, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, with the effect that all the Lenders shall share the benefit of such excess payment

(net of any expenses which may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of or interest on the Loans or such other amounts, respectively, owing to each of the Lenders; provided, that if at the time of such payment the outstanding principal amount of the Loans shall not be held by the Lenders pro rata in accordance with their respective Commitments in effect at the time such Loans were made (by reason of a failure of a Lender to make a Loan hereunder in the circumstances described in the last paragraph of Section 13.04), then such purchases of participations or direct interests shall be made in such manner as will result, as nearly as is practicable, in the outstanding principal amount of the Loans being held by the Lenders pro rata according to the amounts of such Commitments. To such end all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) The Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise all rights of set-off, banker's liens, counterclaims or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained in this Agreement shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 4.07 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.07 to share in the benefits of any recovery on such secured claim.

4.08 Distribution of Collateral Proceeds

Upon the occurrence and during the continuation of an Event of Default and following the exercise of remedies pursuant to Section 9.01, the Collateral Agent shall apply the proceeds of any sale, disposition, or other realization, collection or recovery toward the payment of the Secured Obligations in the following order of priority:

First, to any fees, costs, charges and expenses then due and payable to the Agent, the Collateral Agent and the Depositary under any Financing Document pro rata based on such respective amounts then due to such Persons;

Second, to the respective outstanding fees, costs, charges and expenses then due and payable to the Secured Parties other than those amounts paid under level *First*, under any Financing Document pro rata based on such respective amounts then due to such Persons;

Third, to any accrued but unpaid interest expense owed to the Secured Parties on the Secured Obligations pro rata based on such respective amounts then due to the Secured Parties;

Fourth, to the respective overdue principal and other Debt Service with respect to the Secured Obligations owed to the Secured Parties, pro rata based on such respective amounts then due to the Secured Parties;

Fifth, to the unpaid principal and other Debt Service with respect to the Secured Obligations then due and payable to the Secured Parties under the Credit Agreement, pro rata based on such respective amounts then due to the Secured Parties; and

Sixth, after final payment in full of all Secured Obligations and the Termination Date shall have occurred, to the payment of the Prepetition Obligations.

ARTICLE V

YIELD PROTECTION; ETC.

5.01 Alternate Rate of Interest. If prior to the commencement of any Interest Period (an "Affected Interest Period") with respect to a making (for the purposes of this Section 5.01, a "borrowing") of Loans:

(a) the Agent reasonably determines (upon consultation with the Majority Lenders) that by reason of circumstances affecting the London interbank Eurodollar market, Adjusted LIBO Rate cannot be determined pursuant to the definitions thereof; or

(b) the Agent is advised by the Majority Lenders that such Lenders have reasonably determined that the Adjusted LIBO Rate for that Interest Period will not adequately and fairly reflect the cost to those Lenders of making or maintaining their Loans included in such borrowing for such Interest Period (each an "Affected Lender" and together, the "Affected Lenders");

then the Agent will give notice of those circumstances (a "Rate Determination Notice") to the Borrower and the Lenders by telephone or telecopy as soon as practicably thereafter. If such notice is given, during the 30 day period following such Rate Determination Notice (the "Negotiation Period"), the Affected Lenders and the Borrower shall negotiate in good faith with a view to agreeing upon a substitute interest rate basis for their *pro rata* share of the Loans that shall reflect the cost to the Affected Lenders of funding their *pro rata* share of the Loans from alternative sources (a "Substitute Basis"), and if such Substitute Basis is so agreed upon during the Negotiation Period, upon notice to the Agent of such Substitute Basis, such Substitute Basis shall apply with respect to the *pro rata* share of the Loans of an Affected Lender in lieu of Adjusted LIBO Rate to all Interest Periods commencing on or after the first day of the Affected Interest Period, until the circumstances giving rise to such notice have ceased to apply and the Affected Lenders have notified the Agent that such Substitute Basis should no longer apply in lieu of Adjusted LIBO Rate. If a Substitute Basis is not agreed upon during the Negotiation Period, the Borrower may elect to prepay the Affected Lenders' *pro rata* share of the Loans pursuant to Section 3.03; provided, however, that if the Borrower does not elect so to prepay, each Affected Lender shall reasonably determine (and shall certify from time to time in a certificate delivered by such Lender to the Agent setting forth in reasonable detail the basis of the computation of such amount) the *per annum* rate basis reflecting the cost to such Affected

Lender of funding its *pro rata* share of the Loans for the Interest Period commencing on or after the first day of the Affected Interest Period, until the circumstances giving rise to such notice have ceased to apply, and the Affected Lenders have notified the Agent that such Substitute Basis should no longer apply in lieu of Adjusted LIBO Rate, and such rate basis shall be binding upon the Borrower and such Lender and shall apply in lieu of Adjusted LIBO Rate for the relevant Interest Period.

5.02 Increased Costs.

(a) If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(ii) subject any Lender to any Taxes (other than (A) Indemnified Taxes and (B) Excluded Taxes) on its Loans, loan principal, Commitments, or other Obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) imposes on any Lender or the London interbank market any other condition affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender under any Financing Document (whether of principal, interest or otherwise), then the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender for the additional costs incurred or reduction suffered. For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203 (signed into law July 21, 2010)) and all requests, rules, guidelines or directives in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy in connection with the implementation of the proposals (referred to as Basel III) on capital and liquidity of the Basel Committee on Bank Supervision (the "BCBS") issued in December 2009 and related publications and guidance (including the additions to and refinements of the proposals published by the BCBS in July 2010), shall be deemed to have been introduced or adopted, as applicable, after the date of this Agreement, regardless of the actual date such request, rule, guideline or directive actually goes into effect.

(b) If any Lender reasonably determines that any Change in Law regarding capital requirements or (pursuant to the BCBS) liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of its holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's and its holding company's policies with respect to capital adequacy and liquidity), then from time to time the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered (except to the extent the Borrower is excused from payment pursuant to Section 5.05).

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, under this Section 5.02(a) or Section 5.02(b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.02 shall not constitute a waiver of such Lender's right to demand that compensation; provided, that the Borrower shall not be required to compensate a Lender pursuant to this Section 5.02 for any increased costs or reductions incurred more than nine months prior to the date on which such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation for those circumstances; provided, further, that, if the Change in Law giving rise to those increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

5.03 Break Funding Payments. In the event of (a) the payment of any principal of any Loan other than on the last day of the Interest Period for that Loan (including under Section 3.03 or Section 3.04 or as a result of an Event of Default), (b) the failure to borrow or prepay any Loan on the date specified in any Notice of Borrowing request or (c) the assignment of any Loan other than on the last day of its Interest Period as a result of a request by the Borrower pursuant to Section 5.05, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to any such event. Such loss, cost or expense to any Lender shall be deemed to include an amount reasonably determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, for the period that would have been the Interest Period for such Loan) over (ii) the amount of interest that would accrue on such principal amount for that period at the interest rate that such Lender would bid were it to bid, at the commencement of that period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market. To claim any amount under this Section 5.03, the Lender must deliver to the Borrower a certificate setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.03 (including calculations, in reasonable detail, showing how such Lender computed such amount or amounts and such certificate shall be conclusive absent manifest error). The Borrower shall pay such Lender the amount due and payable and set forth on any such certificate within 30 days after its receipt.

5.04 Taxes.

(a) Any and all payments by or on account of any Secured Obligation shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided, that if the Borrower is required to deduct any Indemnified Taxes or Other Taxes from those payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.04) each Person entitled thereto receives an amount equal to the sum it

would have received had no such deductions been made, (ii) the Borrower shall make those deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Taxing Authority in accordance with applicable Government Rule.

(b) In addition, the Borrower shall timely pay any Other Taxes to the relevant Government Authority in accordance with Applicable Law.

(c) The Borrower shall indemnify the Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by such Person (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.04) and any penalties, interest and reasonable expenses arising from, or with respect to, those Indemnified Taxes or Other Taxes, whether or not those Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Government Authority. The amount of such payment or liability delivered to the Borrower by a Lender or by the Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Government Authority, the Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Government Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Each Lender that is not (i) a citizen or resident of the United States of America, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States of America (or any jurisdiction thereof), or (iii) an estate or trust that is subject to U.S. federal income taxation regardless of the source of its income (any such Person, a "Foreign Lender") shall deliver to Borrower and Agent two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Foreign Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement with respect to such interest, that the Foreign Lender is not a bank for purposes of section 881(c)(3)(A) of the Code, is not a 10-percent shareholder of the Borrower within the meaning of section 871(h)(3)(B) of the Code and is not a controlled foreign corporation related to the Borrower (within the meaning of section 864(d)(4) of the Code), along with Form W-8BEN, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Foreign Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by Borrower under this Agreement and the other Financing Documents. Such forms shall be delivered by each Foreign Lender on or before the date it becomes a party to this Agreement (or if applicable, a party to such other Financing Document). Each Person supplying forms hereunder shall, upon the request of the Borrower, also deliver to the Borrower such forms or appropriate replacements before the expiration, obsolescence or invalidity of any form previously delivered. In addition, each Foreign Lender shall deliver to the Borrower such other evidence of exemption from, or reduction of, U.S. federal withholding tax as may reasonably be satisfactory to the Borrower if a change in fact or circumstance specific to such Foreign Lender (other than a Change in Law) makes previously provided forms or other evidence of exemption from, or reduction of, U.S. federal withholding tax no longer applicable. Each

Foreign Lender shall promptly notify Borrower at any time it determines that such Person is no longer in a position to provide any previously delivered certificate to Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this subsection (e), no Foreign Lender shall be required to deliver any form pursuant to this subsection (e) that such Foreign Lender is not legally able to deliver. Each Lender that is not a Foreign Lender shall deliver to the Borrower and the Agent two copies of U.S. Internal Revenue Service Form W-9 on or before the date that the Lender becomes a party to this Agreement or any other Financing Document. The Borrower shall withhold all Taxes required to be withheld on payments hereunder, except to the extent the Borrower has been furnished evidence of exemption from withholding in accordance with the foregoing provisions of this subsection, and under no circumstances shall the failure of any Lender or other Person to receive any amounts so withheld constitute an Event of Default or otherwise result in the incurrence of any liability by the Borrower except in respect of Indemnified Taxes or Other Taxes to the extent set forth in Section 5.04(a).

(f) If a payment made to any Lender under any Financing Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(g) If a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of such Lender, as the case may be, and without interest (other than any interest paid by the relevant Government Authority with respect to such refund), provided that the Borrower, upon the request of such Lender agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Government Authority) to such Lender in the event that such Lender is required to repay such refund to such Government Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will any Lender be required to pay any amount to an Obligor pursuant to this paragraph (g) the payment of which would place such Lender in a less favorable net after-Tax position than such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(h) This Section 5.04 shall not be construed to require any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(i) Each party's obligations under this Section 5.04 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Financing Document.

5.05 Mitigation of Secured Obligations.

(a) If any Lender requests compensation under Section 5.02 or if the Borrower is required to pay any additional amount to any Lender or any Government Authority for the account of any Lender pursuant to Section 5.04, then such Lender, if requested by the Borrower, will use reasonable efforts to designate a different lending office for funding or booking its Loans or to assign its rights and obligations under the Financing Documents to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.02 or 5.04, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

5.06 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

ARTICLE VI

CONDITIONS PRECEDENT

6.01 Conditions to Closing Date. The occurrence of the Closing Date is subject to receipt by the Agent of each of the agreements and other documents, and the satisfaction of the conditions precedent, set forth below, each of which shall be (i) in form and substance satisfactory to the Lenders in their sole discretion (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be) and (ii) if applicable, in full force and effect (unless, in each case, waived by each Lender):

(a) The Chapter 11 Cases shall have been commenced in the Bankruptcy Court and all of the "first day orders" to be entered and all related pleadings to be filed at the time of commencement of the Chapter 11 Cases or shortly thereafter shall be in form and substance satisfactory to the Majority Lenders.

(b) The Interim Order shall have been entered by the Bankruptcy Court and the Agent shall have received a true and complete copy of such order, and such order shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Majority Lenders (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be). The Obligors shall be in compliance with the Interim Order.

(c) All orders entered by the Bankruptcy Court, including orders pertaining to cash management ("Cash Management Order") and adequate protection and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance satisfactory to the Majority Lenders (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be) in their sole discretion.

(d) No trustee, examiner or receiver shall have been appointed or designated with respect to the Obligors' business, properties or assets and no motion shall be pending seeking any such relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral.

(e) The Prepetition Agent and the Prepetition Lenders shall have each received adequate protection in respect of the liens securing the obligations owed to the Prepetition Agent and/or the Prepetition Lenders, as the case may be, pursuant to the Interim Order.

(f) The Collateral Agent, for its benefit and the benefit of each Secured Party, shall have been granted an automatically perfected lien on the Collateral by the Interim Order on the terms and conditions set forth in the Financing Documents.

(g) The Agent and the Lenders shall have received the Budget which shall be in form and substance satisfactory to the Lenders in their reasonable discretion.

(h) The Agent and the Lenders shall have received the consolidated financial statements of the Obligors for the fiscal quarter ended March 31, 2016.

(i) The Agent shall have received a Notice of Borrowing at least one (1) Business Day prior to the Closing Date.

(j) The Borrower shall have provided for the payment to the Agent, the Collateral Agent, the Lenders, the Prepetition Agent and the Prepetition Lenders, of all fees and expenses due under the Financing Documents and/or the Prepetition Documents, subject to and in accordance with the Interim Order, from the proceeds of the Interim Loans.

(k) This Agreement duly executed and delivered by the intended parties hereto with no Default hereunder.

(l) A certificate of an Authorized Officer of the Borrower dated the Closing Date and certifying that:

(i) the Material Project Documents remain in full force and effect and no default or event of force majeure exists thereunder; and

(ii) no event or condition having a Material Adverse Effect has occurred and is continuing between the execution of the Material Project Documents and the Closing Date.

(m) The following documents, each certified as indicated below:

(i) in the case of each Obligor and Pledgor, a copy of such Person's certificate of incorporation or formation (as the case may be), together with by-laws, articles or other constitutive documents, together with any amendments thereto, certified by the Secretary of State of the Person's state of organization as of a recent date;

(ii) a certificate dated as of a recent date as to the good standing of and payment of franchise taxes by each Obligor and Pledgor, Abengoa Bioenergy US Holding, Inc. and Abengoa Bioenergy Trading, LLC from the Secretary of State of such Person's state of organization;

(iii) a certificate of an Authorized Officer of each Obligor and Pledgor certifying:

(A) (i) attached to such Person's certificate is a true and complete copy of such Person's certificate of incorporation or formation (as the case may be) together with the by-laws, operating agreement or other organizational documents of such Person, as in effect on the date of such certificate, and (ii) such agreements and other organizational documents have not been modified, rescinded or amended and are in full force and effect;

(B) that attached to such certificate is a true and complete copy of resolutions duly adopted by the authorized governing body of such Person, authorizing the execution, delivery and performance of such of the Transaction Documents to which such Person is or is intended to be a party, and that such resolutions have not been modified, rescinded or amended and are in full force and effect;

(C) that the constitutive documents of such Person have not been amended since the date of the certification furnished pursuant to paragraph (m)(i) of this Section 6.01; and

(D) as to the incumbency and specimen signature of each officer, member or partner (as applicable) of such Person executing the Transaction Documents to which such Person is or is intended to be a party and each other document to be delivered by such Person from time to time pursuant to the terms thereof (and the Agent and each Lender may conclusively rely on such incumbency certification until it receives notice in writing from such Person);

(iv) a certificate of an Authorized Officer of the Pledgor certifying (i) that as of the Closing Date the Pledgor has no Indebtedness and (ii) the Pledgor's sole business is owning 100% of the Equity Interests of the Borrower; and

(n) Filings, Registrations and Recordings; Fees and Taxes.

(i) Search Reports. Copies of (x) Uniform Commercial Code Requests for Information or Copies (Form UCC-11), or a similar search report, dated a date reasonably near to the Closing Date and searching the applicable central filing offices in the state of each Obligor's organization, listing all effective financing statements which name any Obligor (under their respective present names or any previous name) as a debtor, together with copies of such financing statements and (y) tax and judgment lien searches and other appropriate evidence in form and substance satisfactory to the Majority Lenders in their sole discretion, in each case, evidencing the absence of any other liens or mortgages on the Collateral, except the liens securing the Prepetition Facility, liens permitted under the Prepetition Facility and other existing liens acceptable to the Majority Lenders in their sole discretion.

(ii) Termination Statements. Appropriately completed copies, which have been duly authorized for filing by the appropriate Person, or which will, upon payment of a specified amount, which amount shall be paid prior to or concurrently with the Closing Date, be authorized for filing by the appropriate Person, of each UCC Financing Statement Amendment (Form UCC-3) termination statement, if any, necessary to release all Liens of any Person in any Collateral previously granted by any Obligor to the extent not permitted under this Agreement after the Closing Date (including (A) Liens granted in connection with

all Indebtedness to be refinanced on the Closing Date and (B) other existing Liens which are not permitted hereunder after the Closing Date).

(o) Receipt of all documentation and other information required by bank regulatory authorities under the applicable "know your customer" and anti-money-laundering rules and regulations.

(p) Evidence that all fees and expenses due and payable and all reasonable costs and expenses, including pursuant to Sections 2.08 and 13.03 and the Fee Letter, in each case due and payable as of the Closing Date shall be paid upon the first Borrowing of Loans under this Agreement.

(q) No Default or Event of Default has occurred and is continuing, as certified to by the Obligors.

(r) (i) No Event of Abandonment or Event of Total Loss shall have occurred and be continuing and (ii) no Event of Taking shall have occurred, in each case as certified to by the Obligors.

6.02 Conditions to each Credit Extension. In addition to the conditions set forth in Sections 6.01, the obligation of each Lender to make the Loans hereunder, is subject to the satisfaction of each of the conditions precedent set forth below, each of which shall be satisfactory to each of the Lenders in their sole discretion, unless in each case waived by each of the Lenders:

(a) With respect to the Borrowings on and after the Final Order Entry Date, the Final Order shall have been entered by the Bankruptcy Court no later than thirty (30) days following the Interim Order Entry Date and the Agent shall have received a true and complete copy of such order, and such order shall and shall be in form and substance satisfactory to the Majority Lenders (and with respect to any provisions that affect the rights or duties of the Agent, the Agent) in their sole discretion, be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Majority Lenders (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be).

(b) With respect to the Borrowings on and after the Final Order Entry Date, the Final Order shall be in full force and effect, and shall not (in whole or in part) have been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged.

(c) The Obligors shall be in compliance with the Final Order.

(d) The Obligors shall be in compliance with the interim and final Cash Management Order.

(e) The Collateral Agent shall have received copies of each UCC-1 financing statement filed under the UCC of each jurisdiction of organization of each Obligor and each Mortgage, duly filed in the relevant county recorder's office of each of the Borrower

Subsidiaries. For the avoidance of any doubt, the Collateral Agent has no responsibility or duties in relation to the making of such filings.

(f) The Agent and Lenders shall have received all periodic Budget updates in accordance with Section 8.01(i), each in form and substance satisfactory to the Majority Lenders, and the Obligors shall be in compliance with the Budget.

(g) Except as disclosed to the Agent in writing (which shall be copied to the Lenders), since the Petition Date, no event, circumstance or change shall have occurred that has caused, be reasonably expected to cause, or evidences, either in any case or in the aggregate, to have a Material Adverse Effect.

(h) Other than the Bankruptcy Cases, there shall exist no claim, action, suit, investigation, litigation or proceeding or pending in any court or before any arbitrator or governmental instrumentality (i) which relates to the DIP Facility or the transactions contemplated thereby or (ii) except for claims, actions, suits, investigations, litigation or proceedings (A) disclosed in a schedule to the Financing Documents or (B) otherwise stayed by 11 U.S.C. § 362.

(i) The Borrower shall have paid to the Agent, Collateral Agent, Lenders, Prepetition Agent and Prepetition Lenders, all fees and expenses then due and payable under the Financing Documents or the Prepetition Documents, including without limitation, all professional fees and expenses of legal counsel and financial advisors, subject to and in accordance with the Final Order.

(j) With respect to the Borrowings of the Final Order Amount, the Agent shall have received a Notice of Borrowing three (3) Business Days prior to the requested borrowing date.

(k) The following statements shall be true and correct: (i) the representations and warranties contained in the Financing Documents are true and correct in all material respects (unless otherwise qualified by materiality in which case such representations and warranties shall be true and correct in all respects) on and as of such date, as though made on and as of such date, except to the extent that any such representation or warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (unless otherwise qualified by materiality in which case such representations and warranties shall be true and correct in all respects) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on such date, or would result from the making of such borrowing or withdrawal on such date.

(l) Each Financing Document in respect of the Project for which funds are being requested, duly executed by the intended parties thereto with no Default or Event of Default thereunder.

(m) Insurance.

(i) Insurance Policies. Certificates of insurance evidencing the existence of all insurance required to be maintained by one or more of the

Obligors pursuant to Section 8.05 and the designation of the Collateral Agent as the sole loss payee and additional named insured, as the case may be, thereunder to the extent required by Section 8.05, such certificates to be in such form and contain such information as is specified in Section 8.05, including one or more certificates from Acceptable Insurance Brokers. In addition, each Obligor shall have delivered a certificate of an Authorized Officer of such Obligor setting forth the insurance obtained by such Person in accordance with the requirements of Section 8.05 and stating that such insurance required to be obtained or caused to be obtained (A) has been obtained and in each case is in full force and effect, (B) that such insurance materially complies with Section 8.05 and Schedule 8.05 and (C) that all premiums then due and payable on all insurance required to be obtained by such Obligor have been paid or that the Borrower is not in arrears on any premium due.

(n) Filings, Registration and Recordings; Fees and Taxes.

(i) Filings, Registrations and Recordings. Copies of each UCC-1 financing statement filed under the Uniform Commercial Code with respect to each applicable Obligor, in the relevant jurisdictions and any other jurisdiction in which financing statements are necessary or, in the opinion of the Majority Lenders, desirable to perfect the Liens created under the Security Documents and copies of Uniform Commercial Code search reports and tax lien, judgment and litigation search reports, if requested, with respect to each Obligor, and all other instruments to be recorded or filed or delivered in connection with the Security Documents (including with respect to all credit support instruments issued in support of Project Documents, acknowledgments required to perfect such Liens and possession of such instruments and with respect to instruments evidencing Indebtedness, possession of such instruments).

(ii) Fees and Taxes. Evidence that all filing, recordation, subscription and inscription fees and all recording and other similar fees, and all recording, stamp and other taxes and other expenses related to such filings, registrations and recordings necessary for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents have been paid in full by or on behalf of the Obligors.

(o) A certified copy of each Material Project Document listed on Schedule 6.02(o), each duly executed and delivered by the intended parties thereto, as well as a certificate of an Authorized Officer of the Borrower certifying that:

(i) such Material Project Documents remain in full force and effect and no default or event of force majeure exists thereunder; and

(ii) no event or condition having a Material Adverse Effect has occurred and is continuing between the execution of such Material Project Documents and the date of the relevant credit extension.

6.03 Conditions to each Payment Date. In addition to the conditions set forth in Sections 6.01, the Borrower's right to make a Payment on each Payment Date are subject to the satisfaction of each of the conditions precedent set forth below, each of which shall be satisfactory to each of the Lenders in their sole discretion, unless in each case waived by each of the Lenders:

(a) The Obligors shall be in compliance with the DIP Order.

(b) The Obligors shall be in compliance with each Cash Management Order.

(c) No Default or Event of Default shall have occurred and be continuing, or would result from the making of such Payment on such date, as certified to by the Obligors.

(d) The Depositary shall have received a Payment Instruction at least one (1) Business Day prior to the Payment Date.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES.

Each of the Obligors (as the context requires) represents and warrants to the Lenders that:

7.01 Existence. It is a limited liability company, limited partnership or a corporation (as applicable) duly formed, validly existing and in good standing under the laws of the State of its formation and is duly qualified to do business as a foreign corporation in all other places where necessary in light of the business it conducts and the Property it owns and intends to conduct and own and in light of the transactions contemplated by the Transaction Documents, except for where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. No filing, recording, publishing or other act by the Obligor that has not been made or done is necessary in connection with the existence or good standing of the Obligor.

7.02 Financial Condition. The financial statements of the Borrower furnished to the Agent pursuant to Section 8.01 (as applicable), are in each case true, complete and correct and fairly present in all material respects the financial condition of the Borrower and the Borrower Subsidiaries (on a consolidating and a consolidated basis) as of the date thereof, all in accordance with GAAP (subject to normal year-end adjustments). As of such date of such financial statements, the Borrower has no material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in such financial statements or as arising solely from the execution and delivery of the Transaction Documents (as set forth on Section 7.15 below). There has been no material adverse change in the financial condition, operations or business of the Borrower from that set forth in such financial statements as of the date thereof.

7.03 Action. Subject to the entry and terms of the DIP Order, it has full power, authority and legal right to execute and deliver, and to perform its obligations under, the Transaction Documents to which it is or is intended to be a party. The execution, delivery and performance by each Obligor of each of the Transaction Documents to which it is or is intended

to be a party have been, subject to the entry and terms of the DIP Order, duly authorized by all necessary action on the part of such Obligor, as applicable. Each of the Transaction Documents to which each Obligor is a party has been duly executed and delivered by such Person and subject to the entry of the DIP Order, is in full force and effect and constitutes the legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency and similar laws.

7.04 No Breach. The execution, delivery and performance by such Obligor of each of the Transaction Documents to which it is or is intended to be a party do not and will not: (a) require any consent or approval of any Person that has not been obtained and remains in full force and effect, (b) violate any provision of any Government Rule or Government Approval applicable to any Obligor or either Project, (c) violate, result in a breach of or constitute a default under any Transaction Document (other than this Agreement) to which any Obligor is a party or by which it or its Property may be bound or affected or (d) result in, or create any Lien (other than a Permitted Lien or DIP Lien) upon or with respect to any of the Properties now owned or hereafter acquired by any Obligor, except, in the case of clauses (b) and (c) above, where any such violation, breach or default could not reasonably be expected to have a Material Adverse Effect, with respect to such Project.

7.05 Government Approvals; Government Rules.

(a) All material Government Approvals necessary to conduct its business and to own, lease and operate its properties for each Project have been obtained by an Obligor or for the benefit of such Project by third parties. Subject to the entry of the DIP Order, , all such Government Approvals have been duly obtained, were validly issued, are in full force and effect, and are not the subject of any pending appeal and all applicable appeal periods have expired (except Government Approvals which do not have limits on appeal periods under Government Rules or appeals which could not reasonably be expected to have a Material Adverse Effect, with respect to such Project), are held in the name of an Obligor or a third party and are free from conditions or requirements which could reasonably be expected to have a Material Adverse Effect, with respect to such Project. No Material Adverse Effect, with respect to such Project could reasonably be expected to result from any such Government Approvals being held by or in the name of Persons other than an Obligor.

(b) No Obligor is in violation of, and not in compliance with, any Government Rule or Government Approval the violation of or the non-compliance with which could reasonably be expected to result in a Material Adverse Effect.

7.06 Proceedings. Except for actions, suits, proceedings, investigations, claims or disputes stayed by 11 U.S.C. § 362, there is (a) no action, suit, proceeding, investigations, claims or disputes at law or in equity or by or before any Government Authority or arbitral tribunal now pending or, to the Borrower's Knowledge, threatened against any Obligor or the Projects or with respect to any Material Project Document or Government Approval related to the Projects and (b) no existing default by the Obligors under any applicable order, writ, injunction or decree of any Government Authority or arbitral tribunal, which in the case of clause (a) or (b) could reasonably be expected to have a Material Adverse Effect.

7.07 Environmental Matters Except as otherwise specified on Schedule 7.07 to this Agreement:

(a) The Projects comply with all Environmental Laws and Governmental Approvals required for the Project under any Environmental Laws and have not violated any Environmental Laws or Governmental Approvals required for the Projects under any Environmental Laws, except for any such non-compliance or violation that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) The Projects have obtained and maintain in full force and effect all Governmental Approvals required for the Projects under Environmental Laws, including all environmental credits, benefits, offsets and allowances under any applicable emission budget programs or any other state, regional or federal emission trading program, and there are no pending or to the Borrower's Knowledge, threatened, actions to challenge, revoke, cancel, terminate, limit or modify any such Governmental Approvals, except for any failure to obtain or maintain in full force and effect or actions to challenge, revoke, cancel, terminate, limit or modify that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect with respect to the relevant Project.

(c) There are no facts, circumstances, conditions or occurrences regarding the past or present operations or conditions of either Project or any Environmental Party that reasonably could (i) form the basis of a material Environmental Claim with respect to any Project, or (ii) cause the Projects to be subject to any restrictions arising under any Environmental Law that would materially hinder or restrict any Obligor or, to the Borrower's Knowledge, any other Person from occupying or operating the Projects as intended under the Material Project Documents (excluding restrictions on the transferability of Government Approvals upon the transfer of ownership of assets subject to such Government Approval).

(d) There are (i) no past Environmental Claims, (ii) no pending Environmental Claims, and (iii) to the Borrower's Knowledge, no threatened Environmental Claims, in each case against the Projects, any Obligor or, to the Borrower's Knowledge, any other Environmental Party and arising with respect to either Project, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) To the Borrower's Knowledge, no Hazardous Materials have at any time been Released at, on, under or from either Project in a manner (i) that does not comply, in all material respects, with applicable Environmental Laws or (ii) as could otherwise reasonably be expected to have a Material Adverse Effect.

(f) Neither the Obligors nor, to the Borrower's Knowledge, any other Environmental Party, has transported or arranged for the transportation or disposal of Hazardous Materials (i) in a manner that could give rise to a material Environmental Claim with respect to any Project, or (ii) from either Project to any location which is listed, or formally proposed for listing, on the NPL or on any similar state or local list of sites requiring investigation or remediation.

(g) There have been no material environmental investigations, studies, audits, reviews or other analyses relating to environmental site conditions that have been conducted by, or which are in the possession of, any Obligor in relation to either Project, which have not been provided to the Agent and the Lenders.

7.08 Taxes. Each Person that owns or has owned an interest in the Borrower that is treated as equity for federal income tax purposes is a "United States person" within the meaning of Code Section 7701(a)(30). Each Obligor has timely filed or caused to be filed all Tax returns and reports required to have been filed (or has obtained a lawful extension of the deadline therefor). As of the Closing Date and as of the date of each extension of credit under each Loan, subject to the approval of the Bankruptcy Court and the Budget, each Obligor has timely paid and discharged all Taxes imposed on or payable by the Obligor or any Subsidiary of an Obligor (other than Taxes being Contested or those that have been excused or prohibited from being paid pursuant to an order of the Bankruptcy Court or pursuant to the Bankruptcy Code), including, but not limited to, Taxes on income or profits or on any of the Obligor's or any Subsidiary's Property and Taxes required to be withheld and paid with respect to payments or allocations to employees, independent contractors, equity holders or otherwise. There are no Liens for Taxes on any asset of any Obligor or any Subsidiary of an Obligor other than any Permitted Liens. No Obligor nor any Subsidiary of an Obligor is liable for Taxes of any other Person, whether by contract, by operation of law (including as a successor) or otherwise.

7.09 Tax Status. For federal income tax purposes, as of the Closing Date the Borrower is, and since its inception has been, a limited liability company that is disregarded for federal income tax purposes, and as of the Closing Date each Borrower Subsidiary is, and since its inception has been, an entity that is disregarded for federal income tax purposes. Neither the execution and delivery of this Agreement or the other Transaction Documents nor the consummation of any of the transactions contemplated hereby or thereby shall affect such status.

7.10 ERISA; ERISA Event; Labor Relations.

(a) Except as set forth on Schedule 7.10, neither the Borrower nor, to the Borrower's Knowledge, any ERISA Affiliate sponsors, maintains, administers, contributes to, participates in, or has any obligation to contribute to, or any liability under, any Plan or Multiemployer Plan nor has the Borrower or, to the Borrower's Knowledge, any ERISA Affiliate established, sponsored, maintained, administered, contributed to, participated in, or had any obligation to contribute to or liability under any Plan or Multiemployer Plan.

(b) Other than as a result of the Chapter 11 Cases and except as set forth on Schedule 7.10, no ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to

occur, could reasonably be expected to result in a Material Adverse Effect, with respect to such Project.

(c) The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $2,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $2,000,000 the fair market value of the assets of all such underfunded Plans.

(d) Except as set forth on Schedule 7.10, no Obligor is party to or has any obligations under any labor, collective bargaining agreement or other employment agreement that provides for W-2 compensation in excess of $2,000,000 per year.

7.11 Nature of Business; Property. No Obligor has engaged in any business other than the Projects as contemplated by the Project Documents. Other than as a result of the Chapter 11 Cases, each Obligor has legal, valid title to all its Property and such Property is not subject to any Liens other than Permitted Liens described in Section 8.13.

7.12 Security Documents. On and after (i) the Closing Date in respect of the DIP Order and (ii) the date of each subsequent extension of credit under each Loan in respect of the other Security Documents, the provisions of the Security Documents then delivered are effective to create, in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on and security interest in all of the Collateral purported to be covered thereby, and all necessary recordings and filings have been made, or will be made on the Closing Date or the date of each subsequent extension of credit under each Loan, as applicable, in all necessary public offices, and all other necessary and appropriate action has been taken, so that each such Security Document creates a perfected Lien on and security interest in all right, title and interest of each Obligor in the Collateral covered thereby, prior and superior to all other Liens other than Permitted Liens described in Section 8.13 other than clause (g) and all necessary and appropriate consents to the creation, perfection and enforcement of such Liens have been obtained from each of the parties to the Material Project Documents.

7.13 Subsidiaries The Borrower has no Subsidiaries other than the Borrower Subsidiaries.

7.14 Status; Investment Company Regulation. The Borrower is not an "investment company" or a company "Controlled" by an "investment company" within the meaning of the Investment Company Act of 1940 or an "investment advisor" within the meaning of the Investment Company Act of 1940.

7.15 Contracts; Material Project Documents; Licenses.

(a) All Material Project Documents are in full force and effect.

(b) The Material Project Documents in effect on the Closing Date and on the date of each extension of credit under each Loan and the Additional Project Documents entered into in accordance with this Agreement, constitute and include all contracts and agreements relating to the Projects other than Non-Material Project Documents and, other than the Financing Documents, no Obligor is and will be a party to any contract or agreement that is not a Project Document. The Agent has received a certified copy of each Material Project Document (other than those that are not required to be delivered as of the date of the making of this representation) as in effect on the date of its delivery to the Agent and each amendment, modification or supplement to each such Material Project Document. None of the Material Project Documents has been amended, modified or supplemented or has been materially Impaired, and all of the Material Project Documents (other than those that are not required to be entered into pursuant to this Agreement as of the date of the making of this representation or that have been cancelled or terminated as permitted under this Agreement) are in full force and effect. All conditions precedent to the obligations of the Borrower under the Material Project Documents have been satisfied or waived. No Material Project Party is in default in any material respect of any material covenant or material obligation set forth in any Material Project Document and no condition has occurred that would become such a default with the giving of notice or lapse of time.

(c) No undischarged Liens have been filed in connection with any work performed or any Material Project Document, except as permitted under Section 8.13.

(d) The Borrower has not received any notices of Liens (other than Permitted Liens) in connection with any Material Project Document.

(e) No Obligor has entered into or intends to enter into, directly or indirectly, any transaction that is otherwise permitted hereunder with or for the benefit of an Affiliate of such Obligor (including guarantees and assumptions of obligations of an Affiliate of such Obligor) except upon fair and reasonable terms no less favorable to the Obligor than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of such Obligor, and except as permitted under the Financing Documents.

7.16 Use of Proceeds. The proceeds of each Loan will be used solely in accordance with and solely for the purposes contemplated by Section 8.09. No part of the proceeds of any Loan will be used for the purpose, whether immediate, incidental or ultimate, of buying or carrying any Margin Stock or to extend credit to others for such purpose.

7.17 Disclosure.

(a) Each Obligor has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect with respect to the Project to which such agreements and other matters relate. Neither this Agreement nor any Financing Document nor any reports, financial statements, certificates or other written information furnished to the Lenders by or on behalf of the Borrower in connection with the negotiation of, and the extension of credit under, this Agreement and the other Financing Documents and the transactions contemplated by the

Material Project Documents or delivered to the Agent or the Lenders hereunder or thereunder (as modified or supplemented by other information so furnished) contains any untrue statement of a material fact or omits to state a material fact in each case, necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading; provided, that with respect to any projected financial information, forecasts, estimates, or forward-looking information, each Obligor represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and is subject to the uncertainties that are inherent in any projections, and the Borrower makes no representation as to the actual attainability of any projections set forth in.

7.18 Fees. No Obligor has any obligation to any Person in respect of any finder's, advisory, broker's or investment banking fee other than fees payable under this Agreement and the Fee Letter, or fees and expenses payable to the Borrower's legal counsel or its financial advisor or investment bank retained in connection with the Transaction.

7.19 Insurance. All insurance required to be obtained by each Obligor has been obtained and is in full force and effect and materially complies with Section 8.05 and Schedule 8.05, and all premiums then due and payable on all such insurance have been paid, and to the Borrower's Knowledge, all insurance required to be obtained by a Material Project Party pursuant to a Material Project Document has been obtained and is in full force and effect and materially complies with Section 8.05 and Schedule 8.05.

7.20 Investments. The Borrower has neither made, nor instructed any relevant Person to make, any Investments except Permitted Investments.

7.21 No Material Adverse Effect. To the Borrower's Knowledge, there are no facts or circumstances which, individually or in the aggregate, have resulted or could reasonably be expected to result in a Material Adverse Effect.

7.22 Absence of Default. No Default or Event of Default has occurred and is continuing.

7.23 Event of Loss. No Event of Loss has occurred and is continuing that could reasonably be expected to have a Material Adverse Effect.

7.24 Title. (i) ProjectCo 1 has good title to and is the holder of a valid and existing fee simple or leasehold interest in the Project 1 Facility Site and any Easement Properties required for operation of Project 1 and (ii) ProjectCo 2 has good title to and is the holder of a valid and existing fee simple or leasehold interest in the Project 2 Facility Site and any Easement Properties required for operation of Project 2, and in each case free and clear of all Liens other than any Permitted Liens. With respect to the Easement Properties, ProjectCo 1 or ProjectCo 2, as applicable, will have obtained all necessary licenses, easements and access rights required for the applicable Project and the applicable Obligor will enjoy peaceful and undisturbed possession of, all of the Collateral that is necessary for the operation of such Project.

7.25 Property Rights, Utilities, Supplies; Etc.

(a) All material property interests, utility services, means of transportation, facilities and other materials necessary for the operation of the Project (including, as necessary, gas, roads, rail transport, electrical, water and sewage services and facilities) are, or will be when needed, available to such Project and arrangements in respect thereof have been made.

(b) There are no material materials, supplies or equipment necessary for operation or maintenance of each Project, that are not expected to be available at the relevant Project on commercially reasonable terms consistent with the Budget for the respective Project.

7.26 Separateness.

Each Obligor maintains separate bank accounts and separate books of account from each other Obligor and from the Pledgor (other than accounts maintained in accordance with this Agreement and the Cash Management Order). The separate liabilities of each Obligor are readily distinguishable from the liabilities of each Affiliate of the Obligors, including the Pledgor (except to the extent otherwise contemplated by the Transaction Documents).

7.27 Patriot Act

(a) Neither the Borrower's Borrowing of the Loans nor its use of the proceeds thereof will violate in any material respect (i) the United States Trading with the Enemy Act of October 6, 1917, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (iii) Executive Order No. 13224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the "Terrorism Order") or (iv) the anti-money laundering provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001) amending the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq.. No part of the proceeds from the Loans hereunder will be used, directly or, to the Borrower's Knowledge, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in material violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) Neither the Borrower nor any other Obligor (i) is or will become a "blocked person" or entity described in Schedule 1 of the Terrorism Order or described in such Department of the Treasury Rule or (ii) engages or will engage in any dealings or transactions, nor is any such Person otherwise associated, with any such blocked person or entity.

7.28 OFAC.

No Obligor, nor, to the knowledge of any Obligor, any Related Party, (i) is currently the subject of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, or (iii) is or has been (within the previous five (5) years) engaged in any transaction

with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender or the Administrative Agent) of Sanctions

7.29 Other Debt Documents. Except for the Prepetition Obligations and the Indebtedness permitted under Section 8.17(a)(iii) below, the Obligors do not have any other Indebtedness for borrowed money outstanding on the date hereof.

7.30 Budget.

The Budget was prepared in good faith by the management of the Borrower in consultation with its advisors, based on assumptions believed by the management of the Borrower to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of Borrower at the time such Budget was furnished. On and after the date of delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct and fairly represent in all material respects the results of operations of the Borrower and Borrower Subsidiaries for the period covered thereby and in the detail to be covered thereby.

ARTICLE VIII

COVENANTS

Each Obligor (to the extent applicable) covenants and agrees with the Lenders and the Agent that until the Termination Date:

8.01 Reporting Requirements. The Borrower shall deliver to the Agent (and in the case of paragraphs (i) and (j) below, to the financial advisor to the Lenders) (in sufficient numbers for the Agent and each of the Lenders), commencing after the Closing Date (except in the case of paragraphs (b) through (d) below, which notices shall be delivered as stated therein):

(a) as soon as available and in any event within 60 days after the end of each of the first three quarterly fiscal periods of each fiscal year of the Borrower, (i) unaudited statements of income and cash flows of the Borrower (on a consolidating and a consolidated basis) for such period and for the period from the beginning of the respective fiscal year to the end of such period and (ii) the related balance sheet as at the end of such period, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, each accompanied by a certificate of an Authorized Officer of the Borrower, which certificate shall state that such financial statements fairly present in all material respects the financial condition and results of operations of the Borrower (on a consolidating and a consolidated basis), in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);

(b) promptly after an Authorized Officer of the Borrower knows or has reason to believe that a Default or Event of Default has occurred, a notice of such event describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that the Borrower has taken or proposes to take with respect to such event giving rise to such Default or Event of Default;

(c) promptly after an Authorized Officer of the Borrower knows or has reason to believe that such event has occurred, a notice of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(d) promptly after an Authorized Officer of the Borrower or other Obligor knows or has reason to believe that such an event has occurred, a notice of the occurrence of any margin call, Commodity Hedging Provider default under a Commodity Hedging Agreement or any other event under or in relation to Commodity Hedging Agreement that, along with any other event that has occurred under or in relation to such agreements, could be expected to result in a Material Adverse Effect;

(e) promptly upon (i) delivery to another Material Project Party pursuant to a Material Project Document, copies of all material notices or other material documents delivered to such Material Project Party by any Obligor and (ii) such documents becoming available, copies of all material notices or other material documents received by any Obligor pursuant to any Material Project Document (such as any notice or other document relating to a failure by any Obligor to perform any of its covenants or obligations under such Material Project Document, termination of a Material Project Document or a force majeure event under a Material Project Document, but excluding any notice provided in the ordinary course of business);

(f) at the time it furnishes each set of financial statements pursuant to paragraph (a) or (b) above, a certificate of an Authorized Officer of the Borrower to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail and describing the action that the Borrower has taken and proposes to take with respect to such Default);

(g) promptly after the filing thereof, copies of all pleadings, motions, applications, financial information and other papers and documents filed by any Obligor in the Chapter 11 Cases, which papers and documents shall also be given or served on the Agent's counsel;

(h) promptly after the sending thereof, copies of all written reports given by any Obligor to the Official Committee or any unofficial creditors' committee in the Chapter 11 Cases related to the operations, business, assets, properties or financial condition of the Obligors (including, without limitation, audits, appraisals, valuations, projections and other financial reports) containing information not otherwise already available to the Agent and the Lenders other than any written reports subject to privilege, provided that such Person may redact any confidential information contained in any such written report if it provides a summary of the nature of the information redacted to the Agent;

(i) on the Wednesday of each week after the Closing Date, updated 13-week projections for the subsequent 13-week period in the same form as Exhibit C hereto (which in each case must be satisfactory to the sole discretion of Lenders) (each, a "Supplemental Budget") provided that (A) for each Supplemental Budget delivered pursuant to this Section 8.01(i), the Lenders shall have the right to approve and dispute such Supplement Budget and any line item contained therein and (B) if the Lenders dispute any Supplemental Budget or any line item within the Supplemental Budget they shall provide specific notice thereof to the Obligors within three Business Days of such delivery; provided further that in the case of a disputed receipt or disbursement contained in a specific line item, such receipt or disbursement (or the amount of such receipt or disbursement that is in dispute as determined by the Lenders) shall be deemed excluded and disregarded in such line item, until in each case the Lenders and the Borrower reach agreement as to any revision thereof; and

(j) on the Wednesday of each calendar week after the Closing Date commencing on the first Wednesday after the Closing Date (each such day, a "Variance Report Date"), a budget variance report/reconciliation (the "Variance Report"), certified by a Financial Officer, in form acceptable to the Lenders, setting forth the actual cash receipts and disbursements of the Obligors on a cumulative basis, for the rolling 4-week period ending on the Friday immediately preceding such Variance Report Date (the "Budget Testing Period"), in each case showing the variance in dollar amounts of the actual disbursements for each Budget Testing Period from those budgeted amounts for the corresponding Budget Testing Period reflected in the Initial Budget and the variance of the actual cash receipts for the Budget Testing Period from those budgeted amounts for the corresponding Budget Testing Period reflected in the Initial Budget. Promptly following the delivery of the Variance Reports, a Financial Officer of the Obligors shall host a telephone conference call for the Agent and its advisors and the Lenders and their advisors to review the Variance Reports.

8.02 Maintenance of Existence; Etc. Each Obligor shall preserve and maintain (a) its legal existence in the corporate form of such Obligor as of the Closing Date, as certified by an Authorized Officer of each such Obligor as of such date, and (b) all of its licenses, rights, privileges and franchises necessary for the Projects.

8.03 Compliance with Government Rules; Etc.

(a) Each Obligor shall comply in all material respects with all applicable Government Rules and shall from time to time obtain and renew, and shall comply in all material respects with, Government Approvals as is or in the future shall be necessary for the Projects under applicable Government Rules (except any such Government Rules and Government Approvals the non-compliance with which could not reasonably be expected to result in a Material Adverse Effect, with respect to such Project); provided that with prior written notice to the Agent the Borrower shall be permitted to contest the applicability to it of any such Government Rule or the need for any such Government Approval.

(b) Except as provided in paragraph (c) below, no Obligor shall petition, request or take any legal or administrative action that seeks to amend, supplement or modify any Government Approval in any material respect unless (i) such Obligor shall have furnished to the Agent a copy (certified by an Authorized Officer of such Obligor) of the proposed

amendment, supplement or modification and a description of the actions that such Obligor proposes to take and (ii) such amendment, supplement or modification could not reasonably be expected to result in a Material Adverse Effect with respect to the Project to which such Government Approval applies. Such Obligor shall promptly upon receipt or publication furnish a copy (certified by an Authorized Officer of such Obligor) of each such amendment, supplement or modification to any such Government Approval to the Agent.

(c) If any Impairment of any Government Approval of any Obligor or related to a Project which could reasonably be expected to have a Material Adverse Effect with respect to such Project shall occur, then such Obligor shall either (i) within 60 days obtain a replacement Government Approval on terms and conditions that are in all material respects no less beneficial to such Obligor than those of such Impaired Government Approval or (ii) within 60 days, take such lawful action as shall be necessary so that (A) such Impairment does not become final and non-appealable or otherwise irrevocable, (B) the effectiveness of such Impairment is postponed or (C) such Impairment is revoked, amended or modified so as to eliminate the reasonable possibility of such Material Adverse Effect with respect to such Project.

8.04 Environmental Compliance.

(a) Each Obligor and the Projects shall (i) at all times comply in all material respects with all Environmental Laws and obtain and at all times comply in all material respects with any Governmental Approvals required under any Environmental Laws for the operation and maintenance of the Projects, (ii) conduct and complete any investigation, study, sampling and testing, and undertake any corrective, cleanup, removal, response, remedial or other action necessary to identify, report, remove and clean up any Releases or threatened Releases of Hazardous Materials at, on, in, under or from the Projects, to the extent required by and in material compliance with the requirements of all applicable Environmental Laws and (iii) maintain adequate financial assurance or guarantees as required under Environmental Laws with respect to either Project; and

(b) The Borrower shall deliver to the Agent (with sufficient copies for each Lender) (i) notice of (A) any pending or threatened material Environmental Claim with respect to either Project or any of the Obligors, including any actions to challenge, revoke, cancel, terminate, limit or modify any Governmental Approval and (B) information that could reasonably be expected to lead to a material Environmental Claim, in either case promptly upon obtaining knowledge thereof, describing the same in reasonable detail, together with such notice, or as soon thereafter as possible, a description of the action that the Borrower or the Borrower Subsidiary has taken or proposes to take with respect thereto and, thereafter, from time to time, such detailed reports with respect thereto as the Agent or any Lender may reasonably request and (ii) promptly upon their becoming available, copies of written communications with any Government Authority relating to any such material Environmental Claim and any such other matter as is reported to the Agent or the Lenders pursuant to this Section 8.04(b).

8.05 Insurance; Events of Loss

(a) Compliance with Insurance Requirements. The Borrower shall, and shall cause the Borrower Subsidiaries to (i) at all times comply with all insurance requirements set forth in any Material Project Document, except to the extent that failure to so comply could not reasonably be expected to result in a Material Adverse Effect, with respect to such Project, and (ii) enforce the obligations of all Material Project Parties with respect to insurance requirements applicable to such Material Project Parties under the respective Material Project Documents.

(b) [Intentionally Omitted]

(c) Insurance Maintained During Operations. The Borrower shall, and shall cause the Borrower Subsidiaries to, to the extent commercially available at reasonable terms, maintain or cause to be maintained (for, among others, its benefit and for the benefit of the Collateral Agent on behalf of the Secured Parties) the insurance policies specified on Schedule 8.05.

(d) Insurance Maintained by the Borrower. The Borrower shall, and shall cause the Borrower Subsidiaries to, procure at its own expense and maintain in full force and effect, the insurance of types and amounts, including but not limited to casualty and business interruption, as set forth on Schedule 8.05 to this Agreement.

(e) Additional Insureds and Loss Payee. The Agent for the benefit of the Lenders shall be named as additional insured under policies of general liability insurance, and the Collateral Agent for the benefit of the Secured Parties shall be named as sole loss payee, under all business interruption insurance procured and maintained for the Projects.

(f) Copies of Insurance Certificates. The Borrower shall furnish the Agent with approved certificates of all such required insurance. Such certificates shall be executed by each insurer or by an authorized representative of each insurer. Such certificates shall identify underwriters, the type of insurance, the insurance limits and the policy term and shall specifically list the special provisions enumerated for such insurance required by this Section 8.05. Concurrently with the furnishing of any such certificate, the Borrower shall furnish the Agent with a certificate of an Acceptable Insurance Broker of the Borrower to the effect that the insurance then carried or to be renewed is in accordance with the terms of this Section 8.05, such insurance is in full force and effect and all premiums then due and payable have been paid, or, in the event the Acceptable Insurance Broker will not provide such a representation, the Borrower is to provide written representation and copies of all Binders and Policies.

(g) Copies of Insurance Policies. Promptly after the Closing Date or the first Borrowing of Loans, promptly upon receipt of each such policy, the Borrower shall deliver to the Agent a duplicate, certified by an Authorized Officer of the Borrower of each policy of insurance required to be in effect under this Agreement or any other Material Project Document then in effect. Not less than 30 days prior to the expiration date of any policy of insurance required to be in effect under this Agreement or any other Material Project

Document then in effect, the Borrower shall notify the Agent of its intention to renew each expiring policy. The Borrower shall promptly inform the Agent, prior to this period, if any policy shall not be renewed.

(h) Compromise, Adjustment or Settlement. The Agent shall be entitled to participate in any compromise, adjustment or settlement in connection with any Event of Loss under any policy or policies of insurance or any proceeding with respect to any Event of Taking of Property of any Obligor or otherwise in excess of $2,000,000 and the Borrower shall within five Business Days after the Agent's request reimburse the Agent for all out-of-pocket expenses (including reasonable attorneys' and experts' fees) incurred by the Agent in connection with such participation. The Borrower shall not make any compromise, adjustment or settlement in connection with any such claim without (i) the approval of the Agent (acting at the direction of the Majority Lenders) (A) in the case of amounts in excess of $2,000,000 or (B) upon and during the continuance of an Event of Default and (ii) the approval of the Majority Lenders, in the case of amounts in excess of $5,000,000.

(i) Notice of Event of Loss or Change in Insurance Coverage. The Borrower shall promptly notify the Agent of any Event of Loss which it believes will exceed $1,000,000, individually or in the aggregate. The Borrower shall promptly notify the Agent of (i) each written notice received by it with respect to the cancellation of, adverse change in, or default under, any insurance policy required to be maintained in accordance with this Section 8.05 and (ii) any event specified in Schedule 8.05.

(j) No Duty of Secured Parties to Verify. No provision of this Section 8.05 nor any other provision of the Credit Agreement or any Material Project Document shall impose on the Secured Parties any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Borrower, nor shall the Secured Parties be responsible for any representations or warranties made by or on behalf of the Borrower to any insurance company or underwriter.

(k) Loss Proceeds.

(i) Deposits to Revenue Account. In the event that any Obligor or the Agent receives any amount of proceeds of Loss Proceeds, business interruption insurance, delay in startup insurance and other payments received for interruption of operations in respect of any Event of Loss, such amounts shall be deposited in in the Revenue Account, the Project 2 Revenue Account or the Project 1 Revenue Account as applicable.

(ii) Corrections. In the event the Borrower receives any amount specified in paragraph (i) above and fails to deposit such amount in the correct account pursuant to paragraph (i) above, the Borrower shall correct any such error within two Business Days of receipt of such amounts.

(l) Restoration. Amounts to be made available to the applicable Obligor from the Revenue Account for Restoration following any Event of Loss shall be remitted to the applicable Obligor by the Agent, in the event that the Net Available Amount is less than or

equal to $500,000. All Net Available Amount received in excess of $500,000 shall be applied in accordance with Section 3.04(a).

8.06 Proceedings. The Borrower shall (a) promptly upon obtaining knowledge of each action, suit or proceeding at law or in equity by or before any Government Authority, arbitral tribunal or other body pending or threatened against any Obligor involving (i) claims against any Obligor or either Project in excess of $500,000 individually or (ii) injunctive or declaratory relief and (b) promptly upon becoming aware of or other circumstance, act or condition (including the adoption, amendment or repeal of any Government Rule or the Impairment of any Government Approval or written notice of the failure to comply with the terms and conditions of any Government Approval) which could reasonably be expected to result in a Material Adverse Effect, with respect to the Obligors, taken as a whole or any Project, in each event described in clauses (a) and (b) above, furnish to the Agent a notice of such event describing it in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that any Obligor has taken and proposes to take with respect to such event.

8.07 Taxes. Each Obligor shall timely file all required Tax returns and shall pay and discharge all Taxes imposed on each Obligor or on its income or profits or on any of its Property prior to the date on which any penalties may attach; provided, that each Obligor shall have the right to Contest the validity or amount of any such Tax. Each Obligor shall promptly pay any valid, final judgment rendered upon the conclusion of the relevant Contest, if any, enforcing any such Tax and cause it to be satisfied of record. Each Obligor shall preserve and maintain its status as an entity that is disregarded for U.S. federal income tax purposes or, if such Obligor has more than one equity owner, an entity treated as a partnership for U.S. federal income tax purposes. Without the prior written consent of the Agent (acting at the direction of and on behalf of the Majority Lenders, each Obligor will (i) refrain from taking any action and (ii) ensure that no other party takes any action, in each case, that would cause any Obligor to be treated as other than a disregarded entity or partnership for U.S. federal income tax purposes. No Obligor will admit an investor or approve or recognize a transfer of any equity interests in such Obligor if doing so would subject any Obligor to the requirements of Code Section 1446 or any similar provisions of state or local law.

8.08 Books and Records; Inspection Rights. The Borrower shall keep proper books of record in accordance with GAAP and permit representatives and advisors of the Agent or any Lender, upon reasonable notice to the Borrower and upon reasonable intervals, to visit and inspect its and the Obligors' properties, to examine, copy or make excerpts from its books, records and documents (at the expense of the Borrower) and to discuss its affairs, finances and accounts with its principal officers, engineers and independent accountants, all at such times during normal business hours as such representatives may reasonably request.

8.09 Use of Proceeds

(a) Subject to the terms and conditions herein, the proceeds of the DIP Facility will be used in accordance with the terms of the Budget (as defined below), including, without limitation to provide for payment of (i) fees and other expenses due and payable under

the DIP Facility and/or the DIP Order, (ii) administration costs of the Chapter 11 Cases and (iii) other amounts in accordance with the Budget.

(b) No portion of the Borrower's Cash Collateral, the Loans or the Collateral may be used to investigate, commence or prosecute any action, proceeding or objection with respect to or related to (1) the claims, liens or security interests of the Secured Parties, the Prepetition Agent, or the Prepetition Lenders, (2) any claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness or obligations that are subjects of the Release or (3) certain stipulations to be made by the Obligors and approved by the Interim Order (as defined below); provided that, advisors to the official unsecured creditors' committee, if one is appointed with regard to the Chapter 11 Cases, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Facility at an aggregate expense for such investigation not to exceed $50,000, provided further, that no portion of such amount may be used to prosecute any claims.

8.10 Maintenance of Lien. The Borrower shall take, or cause its Borrower Subsidiaries to take, all action required or reasonably desirable to maintain and preserve the Liens created by the Security Documents to which it is a party and the priority of such Liens. Each Obligor shall from time to time execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any Security Document) reasonably requested by the Agent (acting at the direction of the Majority Lenders) for such purposes. The Obligors shall promptly discharge at the Borrower's cost and expense, any Lien (other than Permitted Liens) on the Collateral; provided, that the Borrower may Contest any such Lien.

8.11 Prohibition of Fundamental Changes.

(a) Each Obligor shall not change its legal form, amend its operating agreement or any other organizational document, merge into or consolidate with, or acquire all or any substantial part of the assets or any class of stock of (or other equity interest in), any other Person and shall not liquidate or dissolve. Each Obligor shall not convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, any assets except: (i) sales of assets no longer used or useful in the Obligor's business or in the ordinary course of the Obligor's business in an amount not exceeding $500,000 in the aggregate in any calendar year, unless otherwise approved by the Agent (acting at the direction of the Majority Lenders, (ii) sales, transfers or other dispositions of Permitted Investments and (iii) sales of Ethanol, Distilled Grain and carbon dioxide and other inventory in the ordinary course of business.

(b) No Obligor shall purchase or acquire any assets other than: (ii) the purchase of assets reasonably required in connection with Restorations in accordance with Section 8.05(l), (ii) the purchase of assets in the ordinary course of business reasonably required in connection with the operation of the Projects contemplated by the then-effective Budget, (iii) the purchase of assets reasonably required in connection with Permitted Capital Expenditures and (iv) Permitted Investments.

8.12 Restricted Payments; Prepayments.

(a) The Borrower shall not make, or agree to pay or make, directly or indirectly, any Restricted Payment.

(b) No Obligor nor any Subsidiary shall pay, prepay, redeem, purchase, defease or otherwise satisfy in any manner (i) any Indebtedness entered into on or prior to the Petition Date and (ii) any Claim, other than payments contemplated by and in compliance with the Budget and any other payments agreed to in writing by the Majority Lenders and, if necessary, authorized by the Bankruptcy Court.

8.13 Liens. Each Obligor shall preserve and maintain good and valid title to, or rights in, the Collateral and its Property and shall not create, incur, assume or suffer to exist any Lien on any of the Collateral or any of its other Property, whether now owned or hereafter acquired, except:

(a) Liens, pledges or deposits under worker's compensation, unemployment insurance or other social security legislation (other than ERISA),

(b) Liens imposed by any Government Authority for Taxes that are not yet due or that are being Contested,

(c) Mechanics' Liens arising in the ordinary course of business in respect of obligations that are not yet due or that are being Contested and that do not have a Material Adverse Effect,

(d) defects, easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business and encumbrances, licenses, restrictions on the use of property or imperfections in title that, in each case, do not materially impair the property affected thereby for the purpose for which title was acquired or interfere with the operation of the Projects and that individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect,

(e) Liens created pursuant to this Agreement and the Security Documents,

(f) Liens that secure the Prepetition Facilities;

(g) Liens incurred in connection with Indebtedness permitted under clause (iii) of Section 8.17(a),

(h) cash deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business, and utility deposits and payments in accordance with section 366 of the Bankruptcy Code and other related Chapter 11 Orders;

(i) Liens arising by virtue of any statutory or common law provisions relating to banker's liens, rights of set-off or similar rights arising in connection with repurchase agreements and deposit accounts that are Permitted Investments, and

(j) Liens in favor of the Prepetition Lenders and Prepetition Agent as adequate protection granted pursuant to the DIP Order.

8.14 Investments. The Borrower shall not make, and shall not instruct any relevant Person to make, any Investments except:

(a) direct obligations of the United States, or of any agency of the United States, or obligations guaranteed as to principal and interest by the United States or any agency of the United States, maturing in not more than 90 days from the date of acquisition by the Borrower,

(b) certificates of deposit issued by any Acceptable Bank maturing in not more than 90 days from the date of acquisition by the Borrower,

(c) commercial paper rated (on the date of acquisition by the Borrower) A-1 or P-1 by S&P or Moody's, respectively, maturing in not more than 90 days from the date of acquisition by the Borrower,

(d) repurchase agreements fully secured by obligations described in paragraph (a) above with any Acceptable Bank with maturities not in excess of 90 days,

(e) shares in money-market mutual funds having assets of $1,000,000,000 or more that invest solely in securities described in paragraphs (a) through (d) above that have a maximum maturity of one year or less and an average maturity of six months or less at the time of purchase,

(f) the Commodity Hedging Agreements,

(g) trust accounts with the Collateral Agent,

(h) investments in connection with Indebtedness permitted under Section 8.17(a)(vi), and

(i) deposits with, or advances, loans or other extensions of credit to, any other Person with respect to Capital Expenditures otherwise permitted hereunder.

8.15 Commodity Hedging Arrangements. The Obligors shall not enter into any Commodity Hedging Agreements that (i) are not approved by the Majority Lenders or (ii) are for speculative purposes.

8.16 [Intentionally Omitted]

8.17 Indebtedness.

(a) No Obligor shall directly or indirectly create, incur, assume, suffer to exist or otherwise be or become liable with respect to any Indebtedness except:

(i) Indebtedness under this Agreement,

(ii) accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such accounts payable that are over $75,000 individually or $500,000 in the aggregate, are payable within 180 days of the date the respective goods are delivered or the respective services are rendered and (unless such accounts payable are being contested in good faith and by appropriate legal, administrative or other proceedings diligently conducted and so long as adequate reserves have been established with respect thereto in accordance with GAAP, and only if the failure to pay such accounts payable could not reasonably be expected to have a Material Adverse Effect) are not more than 180 days past due,

(iii) purchase money or lease obligations (other than capitalized lease obligations) to the extent incurred in the ordinary course of business to finance the acquisition or licensing of intellectual property or items of equipment (and Indebtedness incurred to finance any such obligations); provided, that (A) if such obligations are secured, they are secured only by Liens upon the equipment or intellectual property being financed, (B) equipment purchased shall not become fixtures to or be considered "spare parts" for the Projects and (C) the aggregate principal amount of such obligations do not, without prior approval by the Agent (acting at the direction of the Majority Lenders), at any time exceed $3,000,000 in the aggregate;

(iv) Indebtedness in respect of the Commodity Hedging Agreements, and

(vi) Indebtedness under the Prepetition Facilities.

(b) Subject to the approval of the Bankruptcy Court (where applicable) and the Budget and except to the extent prohibited by Article VIII, each of the Obligors will pay and discharge, as the same shall become due and payable, all its other obligations and liabilities, including all lawful claims which, if unpaid, would by law become a Lien that is not a Permitted Lien upon its property or otherwise would reasonably be expected to result in a Material Adverse Effect

8.18 Nature of Business.

(a) No Obligor shall engage in any business other than the operation of the Projects as contemplated by the Transaction Documents. The Borrower's sole business is to hold equity in the Borrower Subsidiaries.

(b) No Obligor shall create, acquire or permit to exist any Subsidiary of such Obligor, except, in the case of the Borrower, the Borrower Subsidiaries.

(c) Except for the arrangements set forth on Schedule 7.10, the Borrower shall not have any employees nor enter into any contractual or other arrangements with any Person that would require the Borrower to be subject to or to comply with ERISA or any other Government Rule concerning labor, employment, wages or worker benefits.

8.19 Maintenance of Properties.

(a) The Borrower and, respectively, ProjectCo 1 and ProjectCo 2, shall maintain and preserve Project 1 and Project 2 and all of their respective other material Properties necessary or useful in the proper conduct of its business in good working order and condition (ordinary wear and tear excepted), in accordance with generally accepted prudent U.S. ethanol production industry practices, the Material Project Documents and the operating manuals. Each Obligor shall operate (or cause to be operated) the Projects in accordance with generally accepted prudent U.S. ethanol production industry practices, the Material Project Documents, the Budget and the operating manuals. In the event of any conflict, the more stringent shall govern.

(b) No Obligor shall make any Capital Expenditures on or after the Closing Date except Permitted Capital Expenditures.

(c) Each Obligor shall maintain and preserve its rights and interests in Easement Properties with the applicable Government Authority.

8.20 [Intentionally Omitted]

8.21 Project Documents; Etc.

(a) Other than (a) the Project Documents, (b) the Financing Documents and (c) other documents evidencing Permitted Indebtedness, the Obligors shall not enter into any other contracts, agreements, instruments, letters, undertakings or other documentation without the prior written consent of the Agent (acting at the direction of the Majority Lenders).

(b) Each Obligor, subject to the application of the Bankruptcy Code, shall (i) perform and observe all of its material covenants and material obligations contained in each of the Project Documents, (ii) take all reasonable and necessary action to prevent the termination, suspension or cancellation of any Material Project Document in accordance with the terms of such Material Project Documents or otherwise (except for the expiration of any Material Project Document in accordance with its terms and not as a result of a breach or default thereunder) and (iii) enforce against the relevant Project Party each material covenant or material obligation of each Project Document to which such Person is a party in accordance with such Agreement's terms.

(c) No Obligor, subject to the application of the Bankruptcy Code, shall, without the prior written consent of the Agent, (i) suspend, cancel or terminate any Material Project Document or consent to, allow to subsist, or accept any suspension, cancellation or termination thereof, (ii) sell, transfer, assign (other than pursuant to the Security Documents) or otherwise dispose of (by operation of law, capacity release or otherwise) or consent to any such sale, transfer, assignment or disposition of any part of its interest in any Material Project Document, (iii) waive any material default under, or material breach of, any Material Project Document or waive, fail to enforce, forgive, compromise, settle, adjust or release (or consent to any of the foregoing in respect of) any material right, interest or entitlement, howsoever arising, under, or in respect of, any Material Project Document, (iv) initiate or settle a material arbitration claim or proceeding under any Material Project Document, (v) agree to or petition,

request or take any other material legal or administrative action that seeks, or may reasonably be expected, to Impair any Material Project Document, (vi) amend, supplement or modify or in any way vary, or agree to the variation of, any material provision of a Material Project Document or of the performance of any material covenant or obligation by any other Person under any Material Project Document or (vii) enter into any Additional Project Document.

(d) Each Obligor shall cause all Project Revenues received from any Project Party or any other Person to be deposited in the Revenue Account, the Project 1 Revenue Account or the Project 2 Revenue Account, as applicable.

(e) Each Obligor shall furnish the Agent (with copies sufficient for the Agent and the Lenders) with certified copies of (A) all amendments, supplements or modifications of any Material Project Documents, (B) all Additional Project Documents and (C) if reasonably requested by the Agent (acting at the direction of a Lender), Non-Material Project Documents and amendments, supplements or modifications thereto.

8.22 [Intentionally Omitted]

8.23 [Intentionally Omitted]

8.24 Transactions with Affiliates. No Obligor shall directly or indirectly enter into any transaction that is otherwise permitted hereunder with or for the benefit of an Affiliate of such Obligor (including guarantees and assumptions of obligations of an Affiliate of such Obligor) except upon fair and reasonable terms no less favorable to the Obligor than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of such Obligor, and in no case without prior approval of the Majority Lenders, provided, however, that contracts with Affiliates relating to the provision of human resource services and information technology support services to any of the Obligors or the Project (the "Affiliate HR/IT Contracts") shall not require prior approval by the Agent or delivery of any Ancillary Documents in connection therewith to the extent that the terms of such contracts are in compliance with the Budget and in form and substance substantially similar to the Affiliate HR/IT Contracts in place on the Petition Date. Prior to entering into any agreement with its Affiliate after the Closing Date, each Obligor shall deliver to the Agent a certificate of an Authorized Officer of the Obligor describing such transaction in reasonable detail and certifying as to the satisfaction of conditions set forth in this Section 8.24. Each Project Document entered into with an Affiliate has been represented by the Borrower to comply with the requirements of this Section 8.24.

8.25 [Intentionally Omitted]

8.26 Other Documents and Information. The Borrower shall furnish the Agent (with sufficient copies for each Lender):

(a) promptly after the filing thereof, a copy of each filing, certification, waiver, exemption, claim, declaration, or registration made with respect to Government Approvals to be obtained or filed by the Borrower with any Government Authority, other than such filings, certifications, waivers, exemptions, claims, declarations, or registrations that are routine or ministerial in nature and in respect of which a failure (individually or on an aggregate basis) to file could not reasonably be expected to have a Material Adverse Effect;

(b) promptly after receipt or publication thereof, a copy of each Government Approval obtained by the Borrower (other than such Government Approvals obtained by the Borrower in the ordinary course of its business);

(c) promptly upon obtaining knowledge thereof, a description of each material change in the status of any Government Approval; and

(d) promptly after the delivery thereof to the addressee, a copy of each material notice, demand or other communication delivered by the Borrower pursuant to any Financing Document.

8.27 Cooperation. Each Obligor shall perform such acts as are reasonably requested by the Agent (acting at the direction of a Lender) to carry out the intent of, and transactions contemplated by, this Agreement and the other Transaction Documents.

8.28 [Intentionally Omitted]

8.29 [Intentionally Omitted]

8.30 Suspension or Abandonment. The applicable Obligors shall not (i) permit or suffer to exist an Event of Abandonment or (ii) order, allow to subsist or consent to any suspension of work in excess of 30 days under any Project Document relating to such Project, other than a suspension of work due to a force majeure event under such Project Document, in each such case without the prior written approval of the Majority Lenders.

8.31 Sale Proceeds. All proceeds of the Transaction shall be deposited in the Agent Account and used solely in accordance with the documents governing the Transaction, the DIP Order, the Sale Order and other related orders issued by the Bankruptcy Court.

8.32 Chapter 11 Cases.

(a) Each Obligor shall comply with each Chapter 11 Order in all material respects.

(b) The Obligors shall promptly provide to and discuss with the Agent and each Lender any and all information and developments in connection with (i) any proposed conveyance, sale, assignment, transfer or other disposition of all or any substantial part of the assets of the Obligors, (ii) the sale or other disposition or issuance of any equity interests of the Obligors or (iii) Change in Control, including, without limitation, any letters of intent, commitment letters or engagement letters received by the Obligors, and any other event or condition which is reasonably likely to have a material effect on the Obligors, the Loans or the Chapter 11 Cases.

8.33 Transaction Milestones. The Transaction will be consummated in accordance with the transaction milestones as follows:

(a) on the Petition Date, the Obligors shall file with the Bankruptcy Court a motion seeking entry of the Interim Order and the Final Order;

(b) on the Petition Date, or within three (3) Business Days after the Petition Date, the Obligors shall file with the Bankruptcy Court a bidding procedures motion (the "Bidding Procedures") that (i) fixes the time, date and location for an auction of the assets of the Obligors (the "Auction"); (ii) approves bidding procedures for participating in the sale process, (iii) approves a break-up fee, and (iv) schedules a hearing to consider and approve the sale of the assets, including the Projects, to the party submitting the highest or otherwise best bid at the Auction. The bidding procedures will include competitive bidding and sale procedures customary for a transaction of this type, including (x) initial minimum bid requirements; and (y) bidding by "qualified bidders" only;

(c) no later than ten (10) days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order;

(d) no later than twenty (20) days after the Petition Date, the Bankruptcy Court shall have entered the order granting the bidding procedures motion;

(e) no later than thirty (30) after the Petition Date, the Bankruptcy Court shall have entered the Final Order;

(f) no later than seventy (70) after the Petition Date, the Obligors shall conduct the Auction;

(g) no later than three (3) days after the Auction, but not later than August 25, 2016, the Bankruptcy Court shall have entered an order approving the sale (such order shall be in form and substance satisfactory to the Majority Lenders) (the "Bankruptcy Court Approval"); and

(h) no later than fifteen (15) days after the Bankruptcy Court Approval, but not later than September 15, 2016, the Obligors shall consummate the Transaction with respect to the Projects, fully repay all aggregate amounts outstanding under the Prepetition Facility and the DIP Facility.

8.34 Compliance with the Budget. The Obligors shall not, as of any Variance Report Date, permit:

(a) Cumulative Net Cash Flows of the Obligors for the relevant Budget Testing Period to be less than the Cumulative Net Cash Flows for the corresponding Budget Testing Period set forth in the Initial Budget (the "Budgeted Net Cash Flows") by more than 10% of such Budgeted Net Cash Flows (such shortfall, the "Net Cash Flow Permitted Deviation"); and

(b) operating disbursements (excluding operating disbursements for the purchase of corn) of the Obligors for the Budget Testing Period to exceed the operating disbursements (excluding operating disbursements for the purchase of corn) for the corresponding Budget Testing Period set forth in the Initial Budget (the "Budgeted Operating Disbursements") by more than 10% of such Budgeted Operating Disbursements (such excess, the "Operating Disbursement Permitted Deviation").

8.35 Budget. Other than as required pursuant to Section 8.01(i), the Borrower shall not amend, modify or waive any provisions of the Budget or any subsequent approved Budget.

8.36 Chapter 11 Claims; Adequate Protection. No Obligor shall incur, create, assume, suffer to exist or permit (i) any administrative expense, unsecured claim, or other super-priority claim or Lien that is pari passu with or senior to the claims of the Secured Parties against the Obligors hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Permitted Prior Liens and the Carve-Out or (ii) any obligation to make adequate protection payments, or otherwise provide adequate protection, other than Permitted Adequate Protection Payments.

8.37 Chapter 11 Orders. No Obligor shall make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to any Chapter 11 Order without the prior written consent of the Majority Lenders.

ARTICLE IX

EVENTS OF DEFAULT

9.01 Events of Default; Remedies. If one or more of the following events (the "Events of Default") shall occur and be continuing:

(a) The Borrower shall (i) default in the payment when due of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise or (ii) default in the payment when due of any interest on any Loan or any fee or any other amount payable by it under this Agreement or under any other Financing Document and the default described in this clause (ii) shall continue unremedied for a period of three Business Days after the occurrence of such default; or

(b) Any Obligor shall fail to pay at maturity, or within any applicable period of grace, any obligation for Indebtedness in excess of $500,000, or fail to observe or perform any material term, covenant or agreement (other than (i) in connection with or as a result of the Chapter 11 Cases or (ii) any such obligation with respect to which the Bankruptcy Code prohibits the Obligors from complying with such obligation or permits the Obligors not to comply with such obligation) contained in any agreement by which it is bound, evidencing or securing Indebtedness in excess of $500,000 for such period of time as would permit (assuming the lapse of time and/or giving of appropriate notice if required and assuming such breach has not been cured within the applicable grace period thereunder) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof, unless permitted by a Chapter 11 Order.

(c) (i) Any representation or warranty made or deemed made by any Obligor in this Agreement or any other Financing Document or (ii) any representation, warranty or statement in any certificate or financial statement furnished to the Agent or any Lender by or on behalf of the Borrower or (iii) any representation or warranty made or deemed

made by any Material Project Party in connection with any Transaction Document or (iv) any representation, warranty or statement in any certificate, financial statement or other document furnished to the Agent or any Lender by or on behalf of any Material Project Party shall prove to have been false or misleading in any material respect as of the time made or deemed made, confirmed or furnished; provided, that such misrepresentation or such false statement shall not constitute an Event of Default if such condition or circumstance is (A) subject to cure, as determined by the Majority Lenders in their reasonable judgment and (B) remedied within 30 days after written notice of such default from the Agent; or

(d) (i) Any Obligor shall fail to observe or perform any covenant or agreement contained in Section 8.01(b), 8.01(e) (solely with respect to material notices or material documents relating to the failure of an Obligor to perform any of its covenants or obligations under a Material Project Documents or termination of a Material Project Document), 8.01(i), 8.01(j), 8.02, 8.03, 8.04(b), 8.05(a), 8.05(c), 8.05(d), 8.05(k), 8.05(l), 8.09, 8.10, 8.11, 8.12, 8.13, 8.14, 8.17(a), 8.18(a), 8.18(b), 8.29, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36 or 8.37 or shall default in the performance of any of its obligations contained in any Security Document and shall fail to cure such default within the grace period specified therein, if any or (ii) the Pledgor shall fail to observe or perform any covenant or agreement contained in the Pledge Agreement and shall fail to cure such default within the grace period specified therein, if any; or

(e) Any Obligor shall default in the performance of any of its covenants or obligations to be performed or observed by it under this Agreement or any other Financing Document (not otherwise addressed in this Section 9.01, including, for the avoidance of doubt, Sections 9.01(s) and (t)) and such default shall continue unremedied for a period of 30 days after written notice of such default (specifying such default and requiring remedy thereof) from the Agent or the Majority Lenders; or

(f) (i) The Liens in favor of the Secured Parties under the Security Documents shall at any time cease to constitute valid and perfected Liens granting a first priority (other than the Liens granted under section 364(c)(3) of the Bankruptcy Code) security interest in the Collateral (subject to Permitted Liens) to the Secured Parties, (ii) except for expiration in accordance with its terms, any of the Security Documents shall at any time for any reason cease to be valid and binding or in full force and effect or (iii) the enforceability of any Security Document shall be contested by any Person other than a Secured Party, and in the case of clause (i) or (ii) (unless the event set forth in clause (ii) is the result of a declaration as set forth in clause (i) below), such circumstance continues unremedied for more than five Business Days after notice of such circumstance from the Agent; or

(g) Except as otherwise addressed in this Section 9.01, any Obligor under a Security Document shall default in the performance of any of its obligations (other than a payment obligation, which is governed by other provisions of Section 9.01) under such Security Document and such default shall continue unremedied for more than 30 days after the occurrence thereof; provided, that if such default constitutes a contest or repudiation of the enforceability of such Security Document against such Obligor, such event shall be governed by either paragraph (h) or (n) of this Section 9.01; or

(h) A final judgment or judgments for the payment of money in excess of, $500,000 in the aggregate, in excess of the maximum amount covered by insurance required to be maintained pursuant to Section 8.05, shall be rendered by one or more Government Authorities, arbitral tribunals or other bodies having jurisdiction against any Obligor and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution shall not be procured, within 30 days from the date of entry of such judgment or judgments provided, that any judgments that shall have been cash collateralized through additional contributions of equity to the Borrower shall not be a Default or Event of Default under this clause (j); or

(i) An ERISA Event that is not stayed shall have occurred that, in the opinion of the Majority Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(j) Any Obligor shall default in the performance of its obligation to maintain in full force and effect the insurance required under paragraph (a), (c) or (d) of Section 8.05; or

(k) Any Government Approval shall be materially Impaired; or

(l) This Agreement or any other Financing Document shall have been declared in a final non-appealable judgment to be unenforceable, (ii) any Financing Document, except for any Security Document, shall otherwise cease to be valid and binding or in full force and effect or shall be materially Impaired (in each case, except in connection with its expiration in accordance with its terms in the ordinary course (and not related to any default hereunder)) or (iii) any party to a Financing Document shall have expressly repudiated its obligations thereunder; or

(m) (i) Any Material Project Document shall at any time for any reason be terminated or cease to be valid and binding or in full force and effect or shall be materially Impaired (in each case, except in connection with its expiration in accordance with its terms in the ordinary course (and not related to any default thereunder)) or (ii) any Material Project Party shall be in material default (after any applicable notice, grace period or both) under any Material Project Document; or

(n) An Event of Abandonment shall have occurred; or

(o) An Environmental Claim that is not stayed shall have been brought against an Obligor, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; or

(p) An Event of Taking shall have occurred with respect to all or substantially all of either Project, or otherwise could reasonably be expected to have a Material Adverse Effect, or an Event of Total Loss occurs; or

(q) A Change in Control shall have occurred.

(r) Other than with respect to all professional fees which have been allowed by the Bankruptcy Court in the Chapter 11 Cases and interest and fees accrued with respect to the DIP Facility, (i) the proceeds of any Loan shall have been expended in a manner, or a payment from the Revenue Account shall be for a purpose (notwithstanding the delivery of a Payment Instruction), which is not in accordance with the Budget, or (ii) any disbursement is made by any Obligor that is not set forth in a line item on the Budget; or

(s) The Interim Order and the Final Order, as applicable, shall have ceased to create a valid and perfected lien with such priority required by the Financing Documents, subject to Permitted Liens, on a material portion of the Collateral purported to be covered thereby; or

(t) An order with respect to any of the Chapter 11 Cases shall have been entered by the Bankruptcy Court converting such Chapter 11 Case to a Chapter 7 case; or

(u) Any Obligor shall have filed a motion in the Chapter 11 Cases without the express written consent of Majority Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code or to use Cash Collateral of a Lender under Section 363(c) of the Bankruptcy Code; or

(v) Any Obligor shall have filed a motion seeking, or the Bankruptcy Court shall have entered, an order (i) approving payment of any prepetition claim other than (x) as provided for in the "first-day orders" and included in the Budget or (y) otherwise consented to by the Majority Lenders in writing, (ii) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of $2,000,000 in the aggregate or to permit other actions that would have a material adverse effect on the Obligors or their estates, or (iii) except with respect to the obligations under the Prepetition Facility as provided in the Interim Order and the Final Order, as applicable, approving any settlement or other stipulation not approved by the Majority Lenders and not included in the Budget with any secured creditor of any Obligor providing for payments as adequate protection or otherwise to such secured creditor; or

(w) An order with respect to any of the Chapter 11 Cases shall have been entered by the Bankruptcy Court appointing, or any Obligor, any subsidiary of a Obligor, or any affiliate of a Obligor shall have filed an application for an order with respect to any Chapter 11 Cases seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; or

(x) An order shall have been entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the Commitment, and payment in full of all obligations of the Obligors under the DIP Facility; or

(y) An order with respect to any of the Chapter 11 Cases shall have been entered by the Bankruptcy Court without the express prior written consent of the Majority Lenders (and with respect to any provisions that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be), (i) to revoke,

reverse, stay, modify, supplement or amend any of the Interim Order and the Final Order, as applicable, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Obligors equal or superior to the priority of the Chapter 11 Cases or (iii) to grant or permit the grant of a lien on the Collateral (other than permitted liens); or

(z) (i) Any Obligor shall have attempted to invalidate, reduce or otherwise impair the liens or security interests of the Agent and/or the Lenders, claims or rights against such person or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) any lien or security interest created by Security Documents or the Bankruptcy Court Orders with respect to Collateral shall, for any reason, have ceased to be valid or (iii) a judgment on any action shall have been entered against the Obligors contesting the validity, perfection or enforceability of any of the liens and security interests of the Agent and/or the Lenders created by any of the Interim Order, the Final Order, or the DIP Loan Documents; or

(aa) An application for any of the orders described in clauses (w) through (z) above shall have been made by a Person other than the Obligors and such application is not contested by the Obligors in good faith or the relief requested is not withdrawn, dismissed or denied within 30 days after filing or any person obtains a final order under Section 506(c) of the Bankruptcy Code against the Agent or obtains a final order adverse to the Agent or the Lenders or any of their respective rights and remedies under the DIP Loan Documents or in the Collateral; or

(bb) Any Obligor shall have sought to, or shall have supported (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Obligor) any other person's motion to, disallow in whole or in part (i) the Lenders' claim in respect of the obligations or contest any material provision of any DIP Loan Document or (ii) the Prepetition Lenders' claim in respect of the obligations or contest any material provision of any Prepetition Facility Document, or any material provision of any DIP Loan Document or any Prepetition Facility Document shall have ceased to be effective; or

(cc) Any Obligor shall have violated of any term, provision or condition in the Interim Order or the Final Order; or

(dd) The Interim Order or the Final Order shall have been amended, supplemented, reversed, vacated or otherwise modified without the prior written consent of the Majority Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Agent and/or the Collateral Agent, the Agent or the Collateral Agent, as the case may be); or

(ee) Any Obligor or any of Maple Debtors, other than the "first day" motions shall have filed a motion seeking the entry of, or the Bankruptcy Court shall have entered, an order approving a payment to any Person that would be materially inconsistent with the treatment of any such Person under the Interim Order or the Final Order, as applicable, without the prior written consent of the Majority Lenders;

THEREUPON: (1) in the case of an Event of Default, the Agent may, and, upon request of the Majority Lenders, shall, by written notice to the Borrower, take either or both of the following actions, at the same or different times, (x) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (y) declare the principal amount then outstanding of, and the accrued interest on, the Loans and all other amounts payable by the Borrower hereunder (including any amounts payable under Section 5.03 or 5.04) to be forthwith due and payable (or both), whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrower and (z) terminate the DIP Facility as to any future liability or obligation of the Agent and the Lenders, but without affecting any of the obligations under the DIP Facility, the liens under the DIP Facility, or post-petition administrative superpriority claim status; and (2) declare a termination, reduction or restriction on the ability of the Obligors to use any cash collateral derived solely from the proceeds of Collateral (any such declaration shall be made to the Obligors, the official committee of creditors of the Obligors (if applicable) and the United States Trustee (if applicable). In the case of any Event of Default, in addition to the exercise of remedies set forth above, the Collateral Agent shall have the right, upon the consent or at the request of the Majority Lenders, to exercise any and all rights of a secured creditor with respect to the Collateral.

In addition, subject solely to the giving of five (5) Business Days' written notice as set forth below, the automatic stay provided in Section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court and the Agent and the Lenders shall be entitled to exercise all of their respective rights and remedies under the Financing Documents, including all rights and remedies with respect to the Collateral and the Guarantors. In addition to the remedies set forth above, the Agent may exercise any other remedies provided for by this Agreement and the Financing Documents in accordance with and subject to the terms hereof and thereof or any other remedies provided by applicable law. Notwithstanding the foregoing, any exercise of remedies is subject to the requirement of the giving of five (5) Business Days' prior written notice to counsel for the Borrower, the Office of the U.S. Trustee and counsel for the Official Committee in accordance with the terms of the Chapter 11 Orders, during which period the Obligors and/or the Official Committee may seek an emergency hearing before the Bankruptcy Court for the purpose of determining whether an Event of Default has occurred (but in any such hearing the only issue that may be raised in opposition to any exercise of remedies shall be whether, in fact, an Event of Default has occurred and is continuing). During the five (5) Business Day notice period, the Obligors may use proceeds of the Loans or cash collateral of the Lenders to (i) fund operations in accordance with the Budget or (ii) fund the Carve-Out.

ARTICLE X

THE AGENT

10.01 Appointment, Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes the Agent to act as its agent under this Agreement and the other Financing Documents with such powers as are specifically delegated to the Agent by the terms of the Financing Documents, together with such other powers as are reasonably incidental to such powers. The Agent (which term as used in this sentence and in Section 10.05 and the first

sentence of Section 10.06 shall include reference to its affiliates and its own and its affiliates' officers, directors, employees, representatives and agents): (a) shall have no duties or responsibilities except those expressly set forth in the Financing Documents, and shall not by reason of any Financing Document be a trustee for any Lender; (b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in any Financing Document, or in any certificate or other document referred to or provided for in, or received by any of them under, any Financing Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Financing Document or any other document referred to or provided for in any Financing Document or for any failure by the Borrower or any other Person to perform any of its obligations under any Financing Document; (c) shall not be required to initiate or conduct any litigation or collection proceedings under any Financing Document and (d) shall not be responsible for any action taken or omitted to be taken by it under any Financing Document or under any other document or instrument referred to or provided for in any Financing Document or in connection with any Financing Document, except for its own gross negligence or willful misconduct. The Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact reasonably selected by it in good faith.

10.02 Reliance by Agent. The Agent shall be entitled to rely upon any certification, notice or other communication (including any made by telephone, telecopy, telex, telegram or cable) reasonably believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Agent. As to any matters not expressly provided for by any Financing Document, the Agent shall in all cases be fully protected in acting, or in refraining from acting, under any Financing Document in accordance with instructions given by the Majority Lenders or, if provided in this Agreement, in accordance with the instructions given by the all of the Lenders as is required in such circumstance, and such instructions of such Majority Lenders and/or such Lenders, as the case may be, and any action taken or failure to act pursuant to such instructions shall be binding on all of the Lenders.

10.03 Defaults. The Agent shall not be deemed to have knowledge or notice of the occurrence of a Default (other than the nonpayment of principal of or interest on Loans or of fees payable hereunder) unless a Responsible Officer of the Agent has received notice from a Lender or the Borrower specifying such Default and stating that such notice is a "Notice of Default". In the event that the Agent receives such a notice of the occurrence of a Default, the Agent shall give prompt notice of such receipt to the Lenders (and shall give each Lender prompt notice of each such nonpayment). The Agent shall (subject to Section 10.07) take such action with respect to such Default as shall be directed by the Majority Lenders or all of the Lenders; provided, that unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Majority Lenders or all of the Lenders.

10.04 Agent's Right to Lend. Deutsche Bank Trust Company Americas (and any successor acting as Agent or Collateral Agent, as applicable) and its affiliates may (without having to account for the same to any Lender) accept deposits from, lend money to, make

investments in and generally engage in any kind of banking, trust or other business with the Borrower (and any of Borrower's Subsidiaries or Affiliates) as if it were not acting as the Agent or the Collateral Agent, and Deutsche Bank Trust Company Americas and its affiliates may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

10.05 Indemnification. The Lenders agree to indemnify the Agent and the Collateral Agent (to the extent not reimbursed under Section 13.03, but without limiting the obligations of the Borrower under such Section 13.03), in each case ratably in accordance with the aggregate principal amount of the Loans held by the Lenders (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against such Person (including by any Lender) arising out of or by reason of any investigation or any way relating to or arising out of this Agreement or any other Transaction Document or any other documents contemplated by or referred to in this Agreement or in the other Transaction Documents or the transactions contemplated by this Agreement under Section 13.03; provided, that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Person to be indemnified.

10.06 Non-Reliance on Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on the Agent, the Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and decision to enter into this Agreement and that it will, independently and without reliance upon the Agent, the Collateral Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Transaction Document. Neither the Agent nor the Collateral Agent shall be required to keep itself informed as to the performance or observance by the Borrower or any other Person of this Agreement or any other Transaction Document or any other document referred to or provided for in this Agreement or in any other Transaction Document or to inspect the Properties or books of the Borrower or such other Person. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Agent or the Collateral Agent under this Agreement, neither the Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of its Affiliates) which may come into the possession of the Agent, the Collateral Agent or any of their Affiliates.

10.07 Failure to Act. Except for action expressly required of the Agent and/or the Collateral Agent, as the case may be, under this Agreement and under the other Transaction Documents to which the Agent and/or the Collateral Agent is a party, the Agent and/or the Collateral Agent, as the case may be, shall in all cases be fully justified in failing or refusing to act under this Agreement and under the other Transaction Documents unless it shall receive further assurances to its reasonable satisfaction from the Lenders of their indemnification obligations under Section 10.05 against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

10.08 Resignation or Removal of Agent and/or Collateral Agent. Subject to the appointment and acceptance of a successor Agent as provided below, the Agent or the Collateral Agent, as applicable, may resign at any time by notice to the Lenders and the Borrower, and the Agent or the Collateral Agent, as the case may be, may be removed at any time with or without cause by the Majority Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a successor Agent or Collateral Agent, as applicable, which shall (so long as no Event of Default has occurred and is continuing) be reasonably acceptable to the Borrower. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Agent's or Collateral Agent's giving of notice of resignation or the Majority Lenders' removal thereof, then the retiring Agent or the Collateral Agent, as the case may be, may, (1) on behalf of the Lenders, appoint its own successor, which shall be an Acceptable Bank which has an office in New York, New York, which successor shall (so long as no Event of Default has occurred and is continuing) be reasonably acceptable to the Borrower, or (2) petition a court of competent jurisdiction for the appointment of a successor, at the sole expense of the Borrower. Upon the acceptance of any appointment as Agent or Collateral Agent, as applicable, by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent or Collateral Agent, and the retiring Agent or Collateral Agent, as the case may be, shall be discharged from its duties and obligations under this Agreement and the other Transaction Documents to which it is intended to be a party. After any retiring Agent's or Collateral Agent's resignation or removal, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent or the Collateral Agent, as the case may be.

10.09 Consents under Transaction Documents. Except as otherwise provided in Section 13.04 with respect to any modification, supplement or waiver under this Agreement, the Agent shall, upon the prior consent and direction of the Majority Lenders (except to the extent otherwise provided in this Agreement), consent to (and shall direct the Collateral Agent, if applicable, to enter into) any modification, supplement or waiver under any other such Transaction Document to which the Agent or the Collateral Agent is intended to be a party; provided, that without the prior consent of each Lender, the Agent (and the Collateral Agent, if applicable) shall not (except as contemplated in this Agreement or in the Security Documents) release any Collateral or otherwise terminate any Lien under any Security Document, or agree to additional obligations being secured by the Collateral, except that no such consent shall be required, and the Agent is hereby authorized, to release (and to direct the Collateral Agent to release) any Lien covering Property of the Borrower or any other Person which is the subject of a disposition of Property of the Borrower or such other Person which is permitted or contemplated under this Agreement or under the relevant Security Document or to which the Lenders have otherwise so consented and directed.

10.10 Appointment of Collateral Agent. (a) Each Lender hereby designates and appoints the Collateral Agent to act as the collateral agent under the Security Documents, and directs the Collateral Agent to enter into this Agreement and each of the other Security Documents, take such actions on its and their behalf under the provisions of the Security Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of the Security Documents. Notwithstanding any provision to the contrary elsewhere in the Financing Documents, the Collateral Agent shall not have any

duties, responsibilities or fiduciary relationship with any Secured Party, and no implied covenants, functions, obligations or responsibilities, fiduciary or otherwise, shall be read into this Agreement or any other Security Document or otherwise exist against the Collateral Agent, and any such implied duties that may exist under any applicable Government Rule are hereby waived to the fullest extent permitted under such applicable Government Rule.

(b) Notwithstanding anything to the contrary in any Security Document, the Collateral Agent shall not be required to exercise any discretionary rights or remedies under any of the Security Documents or give any consent under any of the Security Documents or enter into any agreement amending, modifying, supplementing or waiving any provision of any Security Document unless it shall have been expressly directed in writing to do so by the Lenders; provided, that the Agent shall obtain the consent of the Lenders or the Majority Lenders, as required under this Agreement, before giving any such direction to the Collateral Agent.

10.11 Rights of Collateral Agent.

(a) The Collateral Agent may execute any of its duties under the Security Documents by or through agents or attorneys in fact and shall not be liable for any acts or omissions of any such agent appointed with due care by it hereunder. The Collateral Agent shall be entitled to seek the advice of its independent counsel concerning all matters pertaining to such duties and shall not be liable for any action or inaction based in good faith on such advice.

(b) Neither the Collateral Agent nor any of its officers, directors, employees, agents, attorneys in fact or affiliates shall be (i) liable to any of the Secured Parties for any action lawfully taken or omitted to be taken by it under or in connection with any Security Document (except for its own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Secured Parties for any recitals, statements, representations or warranties made by the Borrower, any Borrower Subsidiary or any other party to a Financing Document or any Authorized Officer of any thereof contained in any Financing Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, any Financing Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the Financing Documents or for any failure of the Borrower, any Borrower Subsidiary or any other party to a Financing Document to perform its obligations thereunder. The Collateral Agent shall not be under any obligation to any Secured Party to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, any Financing Document, or to inspect the properties, books or records of the Borrower, any Borrower Subsidiary or any other party to a Financing Document.

(c) The Collateral Agent shall be entitled to rely and shall be fully protected in relying upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, electronic mail message, telex or teletype message, statement, order or other document (whether in original or facsimile form) reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel, independent accountants and other experts selected by the Collateral Agent.

(d) Neither the Collateral Agent nor any of its officers, directors, employees, agents, or attorneys in fact shall be liable to the Borrower, any Borrower Subsidiary or any of the Secured Parties or any other Person for any act or omission on its part except for any such act or omission which is the result of its own gross negligence or willful misconduct. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of the Collateral in its possession and the accounting for monies actually received by it hereunder, the Collateral Agent shall have no other duty as to the Collateral, whether or not the Collateral Agent or any of the other Secured Parties has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property.

(e) The Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Financing Document unless it shall first receive instruction from the Lenders or the Majority Lenders, as applicable, as it reasonably deems appropriate or it shall first be indemnified and/or secured to its reasonable satisfaction by the Secured Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Parties. The Collateral Agent shall affirmatively act under this Agreement and the other Financing Documents in accordance with any instructions by the Agent made pursuant to and not in contravention of this Agreement. The Collateral Agent shall not incur any liability for any determination made or instruction given by the Agent. In no event shall the Collateral Agent be required to take any action that exposes it to personal liability or that is contrary to this Agreement or any applicable Government Rule.

(f) For the purposes of this Agreement and all other Financing Documents, the Collateral Agent shall not be deemed to have knowledge of, or have any duty to ascertain or inquire into, (i) the occurrence of any Default or Event of Default unless and until it has received written notice informing the Collateral Agent of an Event of Default or (ii) the existence, the content, or the terms and conditions of, any other agreement, instrument or document, in each case, to which it is not a party or beneficiary, whether or not referenced herein. The Collateral Agent may take such action with respect to such Default or Event of Default as is required or permitted to be taken by it pursuant to each Security Document following an Event of Default. Without prejudice to the foregoing, none of the knowledge or information that any department or division of the Collateral Agent or any of its affiliates may have from time to time shall be attributed to the Collateral Agent, and the Collateral Agent shall have no duty to disclose nor shall the Collateral Agent be liable for the failure to disclose, any information relating to the Borrower that is communicated to or obtained by the Collateral Agent or any of its affiliates in any capacity.

(g) The Collateral Agent shall not be deemed to have knowledge of facts and circumstances unless it has received written notice of such facts and circumstances, nor shall the Collateral Agent have any obligation to perform any actions or respond to any matters without express authorization to do so.

10.12 Remedies; Application of Proceeds.

(a) The Collateral Agent, acting at the direction of the Majority Lenders, shall have the right to enforce rights, exercise remedies (including set-off and the right to credit bid their Indebtedness) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral, may enforce the provisions of the Security Documents and exercise remedies thereunder, all in such order and in such manner as the Majority Lenders may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of the Collateral Agent to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and the Security Documents and of a secured creditor under the Bankruptcy Code of any Government Authority; provided that unless and until the Collateral Agent shall have received such direction, the Collateral Agent may (but shall not be obligated to) also take such action, or refrain from taking such action, in order to preserve or protect its Liens on the Collateral and preserve the value of the Collateral, with respect to any Default or Event of Default as it shall deem advisable in the best interests of the Secured Parties.

(b) Any money collected or to be applied by the Collateral Agent pursuant to this Agreement and the other Security Documents (other than monies for its own account), whether upon disposition of Collateral in accordance with the terms of this Agreement and the other Security Documents or pursuant to direction from the Majority Lenders, together with any other monies which may then be held by, or under the control of, the Collateral Agent under any of the Collateral Accounts shall be applied pursuant to Section 4.08 of this Agreement.

10.13 Release of Collateral.

(a) If in connection with the exercise of any of the Secured Parties' remedies under the Security Documents or in connection with any conveyance, sale, lease, transfer or other disposition permitted under the Financing Documents the Collateral Agent disposes of any part of the Collateral, then the Liens, if any, of the Collateral Agent for the benefit of any of the Secured Parties on such Collateral shall be automatically, unconditionally and simultaneously released. The Collateral Agent (on behalf of the Secured Parties) shall promptly execute and deliver such termination statements, releases and other documents (which, in each case, shall be prepared by the Borrower) as reasonably required or requested to effectively confirm such release.

(b) To the extent that the Collateral Agent or any of the Secured Parties (i) have released any Lien on Collateral and any such Liens are later reinstated or (ii) obtain any new Liens, then each such reinstated Lien or new Liens shall be subject to the provisions of this Agreement.

10.14 Further Assurances. Each Obligor hereby agrees that, at any time and from time to time, at its sole cost and expense, it shall promptly execute and deliver all further agreements, instruments, documents and certificates and take all further action that may be necessary in order to fully effect the purposes of this Agreement and the other Financing Documents (including, to the extent required by any Financing Document, the delivery of possession of any Collateral represented by certificated securities that hereafter comes into

existence or is acquired in the future by the Collateral Agent as pledgee for the benefit of the Secured Parties) and to enable the Collateral Agent to exercise and enforce its rights and remedies under the Security Documents with respect to the Collateral or any part thereof.

10.15 Exculpatory Provisions. The Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Collateral Agent, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of each of the Borrower, ProjectCo 1 and ProjectCo 2 to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

10.16 Reports; Etc.. The Agent shall deliver to each Lender a copy of each budget, financial statement and other report delivered by the Borrower to it pursuant to the terms of this Agreement promptly following receipt of such information.

10.17 Filings. The Collateral Agent shall not be responsible for and makes no representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any liens securing the Notes. For the avoidance of doubt, nothing herein shall require the Collateral Agent to file financing statements or continuation statements, or be responsible for maintaining the security interests purported to be created as described herein (except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder) and such responsibility shall be solely that of the Borrower.

10.18 Force Majeure. Neither the Agent nor the Collateral Agent shall incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of such Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

10.19 No Implied Duties. The duties, responsibilities and obligations of the Agent and the Collateral Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied against the Agent or the Collateral Agent, as the case may be.

10.20 No Discretion. As to any matters not expressly provided for by this Agreement, and in giving or withholding any and all requests, consents, waivers and approvals and where the judgment or discretion of the Agent or the Collateral Agent, as the case may be, is

required under this Agreement or a Security Agreement, the Agent or Collateral Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Lenders.

10.21 No Risk of Funds. Neither the Agent nor the Collateral Agent shall be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or under any other document, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

10.22 Not a Fiduciary. The duties of the Agent and the Collateral Agent shall be mechanical and administrative in nature, without any fiduciary relationship being created with or owed to any Person, and nothing herein (or implied in) any of the Security Agreements, is intended to or shall be so construed as to impose upon the Agent and/or the Collateral Agent any such fiduciary duties, responsibilities or obligations in respect hereof or of any of the Security Agreements.

10.23 Compliance with Applicable Anti-Terrorism and Money Laundering Regulations. In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States, the Agent and/or the Collateral Agent are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the such Person, respectively. Accordingly, each of the parties agree to provide to the Agent and/or the Collateral Agent, upon request from time to time such identifying information and documentation as may be available for such party in order to enable compliance with the PATRIOT Act.

10.24 Agents. The Agent and/or the Collateral Agent, as the case may be, may employ agents or attorneys to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Agent and/or the Collateral Agent, as the case may be and shall not be responsible for the misconduct or negligence of any such agent appointed with due care.

10.25 Special, Consequential and Indirect Damages. In no event shall the Agent and/or the Collateral Agent, as the case may be, be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether such Person has been advised of the likelihood of such loss or damage and regardless of the form of action.

10.26 Not Bound to Make Investigations. Neither the Agent nor the Collateral Agent shall be bound to make any investigation into the facts or matters stated in any certificate, statement, instrument, opinion, report, notice, request, direction, instruction, consent, order or other paper or document.

10.27 Appointment of Counsel. The Lenders hereby instruct the Agent to retain Milbank, Tweed, Hadley & McCloy LLP as counsel to the Agent on behalf of the Lenders and Moses & Singer LLP as counsel to the Agent and the Collateral Agent.

ARTICLE XI

GUARANTEE

11.01 The Guarantee. The Borrower Subsidiaries (the "Subsidiary Guarantors") hereby jointly and severally guarantee to each of the Secured Parties and their respective successors and assigns the prompt performance and payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans made by the Lenders to the Borrower and all fees, indemnification payments and other amounts whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Lenders or the Agent by the Borrower under this Agreement and by any Subsidiary Guarantor under any of the Financing Documents, in each case strictly in accordance with the terms thereof and including all interest and expenses accrued or incurred subsequent to the Petition Date, whether or not such interest or expenses are allowed as a claim in the Chapter 11 Cases (such obligations being herein collectively called the "Guaranteed Obligations"). The Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower shall fail to perform or pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly perform or pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly performed or paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

11.02 Obligations Unconditional. Obligations of the Subsidiary Guarantors under Section 11.01 are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Borrower under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 11.02 that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any Lien or security interest granted to, or in favor of, any Secured Party as security for any of the Guaranteed Obligations shall fail to be perfected.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

11.03 Reinstatement. The obligations of the Subsidiary Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Secured Parties in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

11.04 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that until the payment and satisfaction in full of all Guaranteed Obligations and the expiration or termination of the Commitments of the Lenders under this Agreement they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other guarantor of any of the Guaranteed Obligations, or any security for any of the Guaranteed Obligations.

11.05 Remedies The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors and the Lenders, the obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Article IX of this Agreement (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article IX) for purposes of Section 11.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of Section 11.01.

11.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of

money, and consents and agrees that any Secured Party, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to bring motion-action under New York CPLR Section 3213.

11.07 Continuing Guarantee. The guarantee in this Article XI is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

11.08 Rights of Contribution The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, then each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this Section 11.08 shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Subsidiary Guarantor under the other provisions of this Article XI and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this Section 11.08, (i) "Excess Funding Guarantor" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (ii) "Excess Payment" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (iii) "Pro Rata Share" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock or other equity interest of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such Subsidiary Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of the Borrower and all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including, without duplication, contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Subsidiary Guarantors hereunder and under the other Financing Documents) of all of the Subsidiary Guarantors, determined as of the Closing Date.

11.09 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state or Federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise, taking into account the provisions of Section 11.08, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Secured Party or any other Person,

be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

11.10 Additional Subsidiary Guarantors. Subsidiaries of the Borrower formed or acquired after the date hereof may be required to become a "Subsidiary Guarantor" under this Agreement as provided in Section 8.18(b). Upon becoming a Subsidiary Guarantor, the new Subsidiary Guarantor makes the representations and warranties set forth in Article VII of this Agreement.

ARTICLE XII SECURITY AND ADMINISTRATIVE PRIORITY

12.01 Prepetition Obligations. Each of the Obligors hereby acknowledges, confirms and agrees that the Obligors are each indebted to the Prepetition Agent and the Prepetition Lenders for the Prepetition Obligations, as of the date hereof, in an aggregate principal amount of not less than $150,000,000 plus accrued and unpaid interest thereon, fees, costs, expenses, charges and disbursements incurred in connection therewith (including attorneys' fees), indemnities, reimbursement obligations and other charges now or hereafter owed by the Borrower to the Prepetition Agent and the Prepetition Lenders pursuant to the terms of the Prepetition Facility, all of which are unconditionally owing by the Borrower to the Prepetition Agent and the Prepetition Lenders, without offset, defense or counterclaim of any kind, nature and description whatsoever.

12.02 Acknowledgment of Security Interests. As of Petition Date, each of the Obligors hereby acknowledges, confirms and agrees (and hereby agrees that it will not dispute, challenge or otherwise contest) that (i) the Prepetition Agent and the Prepetition Lenders have valid, enforceable and perfected first priority and senior liens (subject only to "Permitted Liens" (as defined in the Prepetition Documents)) upon and security interests in all of the Collateral (as defined in the Prepetition Documents) granted pursuant to the Prepetition Documents and the other "Security Documents" (as defined in the Prepetition Documents) as in effect on the Petition Date to secure all of the Prepetition Obligations and (ii) such Liens are not subject to avoidance, set off, counterclaim, recharacterization, reduction, disallowance, impairment or subordination (whether contractual, equitable or otherwise) or other challenge pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

12.03 Binding Effect of Documents. Each of the Obligors hereby acknowledges, confirms and agrees (and hereby agrees that it will not dispute, challenge or otherwise contest) that (i) each of the Prepetition Documents and the other "Security Documents" (as defined in the Prepetition Documents) to which it is a party is in full force and effect as of the date hereof, (ii) the agreements and obligations of the Obligors contained in the Prepetition Documents and the other "Security Documents" (as defined in the Prepetition Documents) constitute the legal, valid and binding obligations of each of the Obligors enforceable against each of them in accordance with their respective terms and no Obligor has any valid defense, offset or counterclaim to the enforcement of such obligations and (iii) the Prepetition Agent and the Prepetition Lenders are and shall be entitled to all of the rights, remedies and benefits provided for in the Prepetition Documents and the other "Security Documents" (as defined in the Prepetition Documents), except to the extent clauses (ii) and (iii) above are subject to the automatic stay under the Bankruptcy Code upon commencement of the Chapter 11 Cases.

12.04 Collateral; Grant of Lien and Security Interest.

(a) Pursuant to the DIP Order and in accordance with the terms thereof, as security for the full and timely payment and performance of all of the Obligations, the Obligors hereby, assign, pledge and grant to the Agent, for the benefit of the Secured Parties, a security interest in and to and, subject to Section 12.05, a Lien on all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Agent and the Lenders from the Collateral subject to the Liens granted in Section 12.04(a) and in each other Financing Document and by the Chapter 11 Orders shall be subject to the Carve-Out, and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to dispose of any Collateral, and without limiting such Person's right to receive proceeds of a sale or other disposition of Collateral up to the amount of the Carve-Out owed to such Person, such Person shall not seek or object to the sale or other disposition, of any Collateral.

(c) Any funding or payment of the Carve Out shall be added to, and made a part of, the secured obligations secured by the Collateral (subject in the case of the "Carve-Out Account" (as defined in the DIP Order) to the DIP Order) and shall be otherwise entitled to the protections granted under the DIP Order, the Financing Documents, the Bankruptcy Code, and applicable Law.

12.05 Priority and Liens Applicable to Obligors.

(a) Upon entry of the Interim Order or Final Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Agent, for the benefit of the Secured Parties, referred to in Section 12.04(a) hereof shall, subject to the Carve Out, at all times:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, be entitled to joint and several super-priority administrative expense claim status in the Chapter 11 Cases, which claims in respect of the DIP Facility shall be superior to all other claims;

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, have a first priority lien on all unencumbered assets of the Obligors (now or hereafter acquired and all proceeds thereof);

(iii) pursuant to Section 364(c)(2) of the Bankruptcy Code, have a first priority lien on cash in the Agent Account and the Revenue Account (and all proceeds thereof);

(iv) pursuant to Section 364(d) of the Bankruptcy Code, have a first priority priming lien (the "Priming Liens") on all assets of the Obligors (now or hereafter acquired and all proceeds thereof) that were subject to a lien of the Prepetition Agent as of the Petition Date;

(v) pursuant to section 364(c)(3) of the Bankruptcy Code, have a junior lien on all other encumbered assets of the Obligors (now or hereafter acquired and all proceeds thereof).

(b) The Priming Liens shall prime the Prepetition Liens (the "Existing Primed Secured Facilities"), but the liens so created as described in clauses (a) (ii), (iii), (iv) and (v) above shall be subject to "Permitted Liens" (as such term is defined under the Prepetition Facility) as of the Petition Date, except those securing the Existing Primed Secured Facilities.

(c) Subject to the Carve-Out, the Liens to be granted by the Bankruptcy Court in favor of the Agent, for the benefit of the Secured Parties, shall cover all property of the Obligors (now or hereafter acquired and all proceeds thereof), including property or assets that do not secure the Prepetition Facilities, except (i) any leasehold interest (or any of rights or interests thereunder) the grant of a Lien on which, notwithstanding the Bankruptcy Code, shall constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of the obligor under any lease governing such leasehold interest or a breach or termination pursuant to the terms of, or a default under, any such lease, provided that the proceeds of the leasehold interests so excluded from the Collateral shall constitute Collateral and be subject to such Liens, and (ii) until entry of the Final Order, claims and causes of action under the Avoidance Actions.

(d) All of the liens described herein with respect to the assets of the Obligors shall be effective and perfected as of the Interim Order Entry Date and without the necessity of the execution or filing of mortgages, security agreements, pledge agreements, financing statements or other agreements.

(e) Except to the extent expressly set forth in this Agreement, the DIP Order shall contain provisions prohibiting the Obligors from incurring any Indebtedness which (x) ranks pari passu with or senior to the loans under the Financing Documents or (y) benefits from a first priority lien under Section 364 of the Bankruptcy Code.

12.06 Administrative Priority. Each Borrower agrees that its Obligations shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, subject only to prior payment of the Carve-Out and the terms and conditions of the Chapter 11 Orders.

12.07 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 12.04(a) hereof and the administrative priority and lien priority granted pursuant to Section 12.05 hereof may be independently granted by the Financing Documents and by other Financing Documents hereafter entered into. This Agreement, the DIP Order and such other Financing Documents supplement each other, and the grants, priorities, rights and remedies of the Agent and the Lenders hereunder and thereunder are cumulative.

12.08 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Order or the Final Order, as the case may be, and entry of the Interim Order shall have occurred on or before the date of each Loan. The Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any

Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim Order or the Final Order, as the case may be, or any other Financing Document.

12.09 Survival. The Liens, lien priority, administrative priorities and other rights and remedies granted to the Agent and the Lenders pursuant to this Agreement, the DIP Order and the other Financing Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Obligors (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) except to the extent of the Carve-Out, no fees, charges, disbursements, costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the Agent and the Lenders against the Obligors in respect of any Obligation. For the avoidance of doubt, no fees, costs, expenses, charges and disbursements shall be payable by the Obligors to their attorneys, accountants or other professionals or to attorneys, accountants or other professionals of the Official Committee except as provided in the Carve-Out;

(b) the Liens in favor of the Agent and the Lenders set forth in Section 12.04(a) shall constitute valid and perfected first priority Liens and security interests, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever subject to the Carve-Out; and

(c) the Liens in favor of the Agent and the Lenders set forth in Section 12.04(a) and in the other Financing Documents shall continue to be valid and perfected without the necessity that the Agent file financing statements or mortgages, take possession or control of any Collateral, or otherwise perfect its Lien under applicable non-bankruptcy law.

ARTICLE XIII

MISCELLANEOUS

13.01 Waiver. No failure on the part of the Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power or privilege under this Agreement or any other Financing Document shall operate as a waiver of such right, remedy, power or privilege, and no single or partial exercise of any right, remedy, power or privilege under this Agreement or any other Financing Document shall preclude any other or further exercise of such right, remedy, power or privilege, or the exercise of any other right, power or privilege. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. All covenants of the Obligors set forth in this Agreement and the other Financing Documents and all Events of Default set forth in

Section 9.01 shall be given independent effect so that, in the event that a particular action or condition is not permitted by the terms of any such covenant or would result in a Default, the fact that such event or condition could be permitted by an exception to, or be otherwise within the limitations of, another covenant or another Event of Default shall not avoid the occurrence of a Default or an Event of Default in the event that such action is taken or condition exists.

13.02 Notices. All notices, requests and other communications provided for in this Agreement and under the other Financing Documents (including any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including by facsimile) delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages of this Agreement or in the relevant section as specified in other Financing Documents, or as to any party, at such other address as shall be designated by such party in a notice to each other party.

Notices and other communications hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent, Collateral Agent and Borrower; provided that the foregoing shall not apply to notices delivered or furnished pursuant to Article II if the party to receive the notice has notified the Agent that it is incapable of receiving notice under such Article II by electronic communication. Each of Borrower and each Lender may, in its discretion, agree to accept notices and other communications delivered or furnished to it hereunder by electronic communication pursuant to procedures approved by them, respectively, provided that approval of such procedures may be limited to particular notices or communications. Any such notices and other communications furnished by electronic communication shall be in the form of attachments in .pdf format

Notices and communication delivered in person or by overnight courier service, or mailed by registered or certified mail, shall be effective when received by the addressee thereof during business hours on a Business Day in such Person's location as indicated by such Person's "Address for Notices" specified below its name on the signature pages of this Agreement, or at such other address as is designated by such Person in a written notice to the other parties hereto. All notices and communications transmitted by facsimile shall be deemed to have been given when transmitted, if confirmation of a successful transmission has been received (except that, in all instances, if not given during normal business hours on a Business Day for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Unless the Agent otherwise prescribes, (A) notices and other communication delivered through electronic communications as provided in this Section 9.01 shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement); provided that if such notice or other communication is not given during normal business hours on a Business Day for the recipient, it shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (B) notices or communication posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor.

13.03 Expenses; Indemnification; Etc.

The Obligors jointly and severally agree to pay or reimburse each of the Lenders, the Collateral Agent, and the Agent for: (a) all reasonable out-of-pocket costs and expenses of the Agent (including the reasonable fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, and Moses & Singer LLP, counsel to the Agent (or such other counsel that the Agent may select from time to time which, so long as no Default has occurred and is continuing, shall be reasonably satisfactory to the Borrower)) and experts engaged by the Agent and/or the Collateral Agent or by the Agent on behalf of the Lenders from time to time, in connection with (i) the negotiation, preparation, execution, delivery and administration of this Agreement and the other Transaction Documents and the extension of credit under this Agreement, (ii) any amendment, modification or waiver of any of the terms of this Agreement or any other Transaction Document and (iii) the syndication of Commitments or Loans, (b) all reasonable costs and expenses of the Lenders, the Agent and the Collateral Agent (including reasonable counsels' fees and expenses and reasonable experts' fees and expenses incurred by or on behalf of the Agent and the Collateral Agent, as applicable) in connection with (i) any Default and any enforcement or collection proceedings resulting from such Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Borrower under this Agreement or the obligations of any Project Party under any Project Document and (ii) the enforcement of this Section 13.03(b), and (c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any Government Authority in respect of this Agreement or any other Transaction Document or any other document referred to in this Agreement or in any such other Transaction Document and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any Lien contemplated by this Agreement or any other Transaction Document to which the Agent and/or the Collateral Agent is intended to be a party or any other document referred to in this Agreement or in any such other Transaction Document. Any amounts for fees and expenses outstanding to the Prepetition Lenders under this Agreement shall be paid by the Obligors from the Interim Loan.

The Obligors hereby agree to jointly and severally indemnify the Agent, the Collateral Agent and each Lender and their respective officers, directors, employees, representatives, attorneys and agents (each, an "Indemnitee") from, and shall hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including the reasonable fees and expenses of counsel for each Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party to any such proceeding) that may at any time (including at any time following the Termination Date) be imposed on, asserted against or incurred by an Indemnitee by any Person (including any Obligor or the Official Committee) as a result of, or arising out of, or in any way related to or by reason of any claim with respect to (a) any of the transactions contemplated by this Agreement or by any other Transaction Document or the execution, delivery or performance of this Agreement or any other Transaction Document, (b) the extensions of credit under this Agreement or the actual or proposed use by the Borrower of any of the extensions of credit under this Agreement or the grant to the Agent and/or the Collateral Agent for the benefit of, or to any of, the Secured Parties of any Lien on the Collateral or in any other Property of the Borrower or any other Person or any membership, partnership or

equity interest in the Borrower or any other Person, (c) the exercise by the Agent and/or the Collateral Agent (or the other Secured Parties) of their rights and remedies (including foreclosure) under any Security Document and (d) any investigation, litigation or proceeding, or the preparation of any defense with respect thereto, arising out of or relating to the DIP Facility or the transactions contemplated in this Agreement (but excluding, as to any Indemnitee, any Excluded Taxes, any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements incurred by reason of the gross negligence or willful misconduct of such Indemnitee as finally determined by a court of competent jurisdiction or attributable to actions or events occurring after the Borrower is divested of the applicable Collateral). Without limiting the generality of the foregoing, the Borrower hereby agrees to indemnify each Indemnitee from, and shall hold each Indemnitee harmless against, any losses, liabilities, claims, damages, reasonable expenses, obligations, penalties, actions, judgments, suits, costs or disbursements described in the preceding sentence (including any Lien filed against the Project by any Government Authority but excluding, as provided in the preceding sentence, any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements incurred by reason of the gross negligence or willful misconduct of such Indemnitee) (collectively, "Losses") arising under any Environmental Law or relating to any Environmental Claim as a result of the past, present or future facilities or operations of the Borrower or any predecessors to Borrower, or the past, present or future condition or operation of the Project, or any Release, threatened Release or Use of any Hazardous Materials with respect to the Project (including any such Release, threatened Release or Use which occurs during any period when such Indemnitee shall be in possession of any such site or facility following the exercise by the Agent, the Collateral Agent or any other Secured Party of any of its rights and remedies under this Agreement or under any Financing Document or any other Transaction Document where such Release, threatened Release or Use commenced or occurred prior to such period); provided, however, that the Borrower shall have no such obligation to indemnify any Indemnitee to the extent that any such Losses are directly and primarily caused by such Indemnitee's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction.

Without duplication with this Section 13.03, the Obligors shall jointly and severally pay or reimburse, as applicable, all professional fees and other reasonable and documented out-of-pocket expenses of the Agent, the Collateral Agent, the Lenders, the Prepetition Agent and the Prepetition Lenders (including the fees, charges and disbursements of their respective counsel and financial advisors) incurred in connection with the Obligors, the transactions contemplated hereby, including the Transactions, the DIP Order, participation in the Chapter 11 Cases and any refinancing or restructuring of the indebtedness of the Obligors.

13.04 Amendments; Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be amended or modified only by an instrument in writing signed by each of the Obligors, the Agent and the Majority Lenders, or by each of the Obligors and the Agent with the consent (and, in the case of the Agent, the direction) of the Majority Lenders, and any provision of this Agreement may be waived by the Majority Lenders or by the Agent acting at the direction of the Majority Lenders; provided, that (a) no amendment, modification or waiver shall, unless by an instrument signed by all of the Lenders or by the Agent acting at the direction of all of the Lenders (i) increase or extend the term, or extend the time or waive any requirement for the termination of the Commitments, (ii) extend the scheduled

date for the payment of principal of or interest on any Loan or any fee under this Agreement, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable on any such amount or any fee is payable under this Agreement, (v) alter the rights or obligations of the Borrower to prepay Loans, (vi) alter the terms of this Section 13.04, (vii) amend the definition of the terms "Majority Lenders" or modify in any other manner the number or percentage of the Lenders required to give any consent or make any determinations or waive any rights under this Agreement or to modify any provision of this Agreement, (vii) alter the terms of Section 8.35 or (viii) amend, waive or modify the collateral package provided under the DIP Facility, the Interim Order or Final Order, (b) any amendment, modification, waiver or supplement of Article X shall require the consent of the Agent and, only to the extent Section 10.05 or Section 10.06 would be amended, modified or supplemented as a result thereof, the Collateral Agent and (c) any amendment of the definition of the term "Commodity Hedging Provider" or "Secured Party" shall require the consent of each Commodity Hedging Provider that is a Lender hereunder.

Anything in this Agreement to the contrary notwithstanding, if at any time when the conditions precedent set forth in Article VI to any extension of credit under this Agreement are, in the opinion of the Majority Lenders, satisfied, any Lender that fails to fulfill its obligations to make such extension of credit, shall, for so long as such failure shall continue, such Lender shall (unless the Majority Lenders, determined as if such Lender were not a "Lender" under this Agreement, shall otherwise consent in writing) be deemed for all purposes relating to amendments, modifications, waivers or consents under this Agreement (including under this Section 13.04 and under Section 10.09) and any other Financing Document to have no Loans or Commitments, shall not be treated as a "Lender" under this Agreement when performing the computation of Majority Lenders or each Lender, and shall have no rights under the preceding paragraph of this Section 13.04; provided, that any action taken by the other Lenders with respect to the matters referred to in clause (a) of the preceding paragraph shall not be effective as against such Lender.

13.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective permitted successors and assigns.

13.06 Assignments and Participations; Replacement of Lender.

(a) Assignments Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and the Agent (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.06. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); provided that:

(i) except in the case of an assignment to a Lender or an Affiliate or Approved Fund of a Lender, the Agent must give its prior written consent to such assignment (which consent, in each case, shall not be unreasonably withheld or delayed);

(ii) except in the case of an assignment to a Lender or an Affiliate (or Approved Fund) of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment(s) or Loans of any Class, the amount of the Commitment(s) and Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless the Agent and (provided that no Event of Default has occurred or if continuing) the Borrower otherwise consent;

(iii) except in the case of an assignment to a Lender or an Affiliate or Approved Fund of a Lender, the Borrower must give its prior written consent to the assignment (which consent shall not be unreasonably withheld or delayed);

(iv) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption and, except in the case of an assignment to a Lender or an Affiliate or Approved Fund of a Lender, a processing and recordation fee of $3,500; and

(v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

provided further that any consent of the Borrower otherwise required under this paragraph shall not be required if any Event of Default has occurred and is continuing. Upon acceptance and recording pursuant to paragraph (d) of this Section 13.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 5.02, 5.03, 5.04 and 13.03). To the extent any assignment or transfer increases the Borrower's obligation to pay costs, taxes or indemnities pursuant to Section 5.02, 5.04 or 13.03, the Borrower's liability to pay such costs, taxes or indemnities shall be limited to the amounts the Borrower would have been liable if such assignment or transfer had not occurred. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (f) of this Section 13.06.

(c) Maintenance of Register by the Agent. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each

Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans owing to, as well as the stated interest owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Effectiveness of Assignments. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 13.06 and any written consent to such assignment required by paragraph (b) of this Section 13.06, the Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Participations. Any Lender may, without the consent of the Borrower or the Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Financing Documents (including all or a portion of its Commitments and the Loans owing to it); provided that (i) such Lender's obligations under this Agreement and the other Financing Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Financing Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Financing Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Financing Document; provided further that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 13.04 that affects such Participant. Subject to paragraph (f) of this Section 13.06, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.02, 5.03 and 5.04 (subject to the requirements and limitations therein, including the requirements under Section 5.04(e) (it being understood that the documentation required under Section 5.04(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 13.06. Each Lender that grants a participation acting solely for this purpose as an agent of the Borrower shall maintain a register on which it enters the name and address of each Participant and the principal and interest amount of each Participant's interest in the Loans held by it (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other Obligations under any Financing Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other Obligation is in registered form

under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive, absent manifest error and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Sections 5.02, 5.03, 5.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Financing Documents to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank or other central bank (whether in the United States or any other jurisdiction), and this Section 13.06shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

13.07 Marshalling; Recapture. None of the Agent or any Lender shall be under any obligation to marshal any assets in favor of any Obligor or any other party or against or in payment of any or all of the Secured Obligations. To the extent any Lender receives any payment by or on behalf of the Borrower, all or a portion of which payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to the Borrower, any Borrower Subsidiary or its estate, trustee, receiver, custodian or any other party under any bankruptcy or insolvency law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the liabilities of the Borrower to such Lender as of the date such initial payment, reduction or satisfaction occurred.

13.08 Confidentiality. The Agent and the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors with a need to know (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any applicable regulatory or self-regulatory authority, by applicable laws or regulations or by any subpoena, oral question posed at any deposition, interrogatory or similar legal process, provided that the party from whom disclosure is being required shall give notice thereof to the Borrower as soon as practicable (unless restricted from doing so or such disclosure is required or requested in the course of routine regulatory reviews or audits or in connection with a pledge or assignment permitted under 13.06(f)), (iii) to any other party to this Agreement, (iv) to the extent the disclosing party determines such disclosure to be necessary or appropriate to exercise any remedies hereunder or under any other Financing Document or in connection with any suit, action or proceeding relating to this Agreement or any other Financing Document or the enforcement of rights hereunder or thereunder, (v) subject to an agreement containing provisions substantially the same as those of this paragraph, to any insurance broker, provider of credit

protection, assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (vi) with the consent of the Borrower or (vii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this paragraph or (B) becomes available to the Agent or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this paragraph, "Information" means all information received from the Borrower relating to the Obligors or their respective businesses, other than any such information that is available to the Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 13.08 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

13.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

13.10 Limitation of Liability. Notwithstanding any other provision of this Agreement or of any of the other Financing Documents there shall be no recourse against any Affiliates of the Obligors or any of their respective stockholders, partners, officers, directors, employees or agents (collectively, the "Nonrecourse Persons"), for any liability to the Lenders arising in connection with any breach or default under this Agreement, and the Lenders shall look solely to the Obligors and the Collateral in exercising the Lenders' rights and remedies and enforcing the obligations of the other parties under and in connection with the Financing Documents; provided, that (a) the foregoing provisions of this Section 13.10 shall not constitute a waiver, release or discharge of any of the Indebtedness or Secured Obligations under, or any terms, covenants, conditions or provisions of, this Agreement or any other Financing Document, and the same shall continue until fully paid, discharged, observed or performed, (b) the foregoing provisions of this Section 13.10 shall not limit or restrict the right of any Secured Party to name the Borrower or any other Person as defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement, any of the Security Documents or any other Financing Document, or for injunction or specific performance, so long as (subject, however, to the last sentence of this Section 13.10), no judgment in the nature of a deficiency judgment shall be enforced against any Nonrecourse Person out of any Property other than the Property of the Borrower or the Collateral, (c) the foregoing provisions of this Section 13.10 shall not in any way limit, reduce, restrict or otherwise affect any right, power, privilege or remedy of the Secured Parties (or any assignee or beneficiary thereof or successor

thereto) with respect to, and each and every Person (including each and every Nonrecourse Person) shall remain fully liable to the extent that such Person would otherwise be liable for its own actions with respect to, any fraud, gross negligence or willful misrepresentation, or misappropriation of Project Revenues or any other earnings, revenues, rents, issues, profits or proceeds from or of any Obligor, the Projects or the Collateral that should or would have been paid as provided in the Financing Documents or paid or delivered to the Agent (or any assignee or beneficiary thereof or successor thereto) for any payment required under this Agreement or any other Financing Document and (d) nothing contained herein shall limit the liability of: (i) any Person who is a party to any Transaction Document or (ii) any Person rendering a legal opinion pursuant to Section 6.01(g) or otherwise, in each case under this clause (d) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Section 13.10 shall survive the termination of this Agreement and the full payment and performance of the Secured Obligations.

13.11 Survival. The obligations of the Borrower under Sections 5.02, 5.03, 5.04,10.05, 13.03, 13.18, 13.19 and 3.20 and the obligations of the Lenders under Section 10.05 shall survive after the Termination Date. In addition, each representation and warranty made, or deemed to be made by a notice of any extension of credit, in this Agreement or pursuant to this Agreement shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any extension of credit under this Agreement, any Default which may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender or the Agent may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such extension of credit was made.

13.12 Captions. The table of contents and captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.13 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. The Financing Documents constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by electronic delivery shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or

enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

13.14 Reinstatement. The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Secured Obligations is rescinded or must be otherwise restored by any holder of any of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

13.15 Severability Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions of this Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

13.16 Remedies. The Borrower agrees that, as between the Borrower and the Lenders, the obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Article IX (and shall be deemed to have become automatically due and payable in the circumstances provided in Article IX), and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations shall forthwith become due and payable by the Borrower.

13.17 **NO THIRD PARTY BENEFICIARIES. THE AGREEMENT OF THE LENDERS TO MAKE THE LOANS TO THE BORROWER, ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, IS SOLELY FOR THE BENEFIT OF THE BORROWER, THE BORROWER SUBSIDIARIES, THE AGENT, THE LENDERS, AND NO OTHER PERSON (INCLUDING ANY OTHER PROJECT PARTY, CONTRACTOR, SUBCONTRACTOR, SUPPLIER, WORKMAN, CARRIER, WAREHOUSEMAN OR MATERIALMAN FURNISHING LABOR, SUPPLIES, GOODS OR SERVICES TO OR FOR THE BENEFIT OF THE PROJECTS) SHALL HAVE ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY OTHER TRANSACTION DOCUMENT AS AGAINST THE AGENT OR ANY LENDER OR WITH RESPECT TO ANY EXTENSION OF CREDIT CONTEMPLATED BY THIS AGREEMENT.**

13.18 **SPECIAL EXCULPATION. TO THE EXTENT PERMITTED BY APPLICABLE GOVERNMENT RULE, NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE**

DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATING TO, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS (OTHER THAN THE RIGHTS OF THE LENDERS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS), AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

13.19 **GOVERNING LAW; JURISDICTION, ETC.. THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT NEW YORK LAW IS SUPERSEDED BY THE BANKRUPTCY CODE.**

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OBLIGOR HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH OBLIGOR HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE OBLIGORS AT THEIR ADDRESS FOR NOTICES AS SET FORTH IN SECTION 11.02. THE OBLIGORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENT, THE COLLATERAL AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY OBLIGOR IN ANY OTHER JURISDICTION. EACH OBLIGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY OBLIGOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT 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 OBLIGOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN

RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS.

(b) EACH OBLIGOR, THE AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OBLIGOR CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF THE AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH OBLIGOR HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWER:

ABENGOA BIOENERGY MAPLE, LLC

By:_____
Name:
Title:

Address for Notices:

Abengoa Bioenergy Maple, LLC
1400 Elbridge Payne, Suite 212
Chesterfield, MO 63017
Attention: Executive Vice President

With a copy to:

Abengoa Bioenergy Maple, LLC
1400 Elbridge Payne, Suite 212
Chesterfield, MO 63017
Attn: Legal Department

BORROWER SUBSIDIARIES:

ABENGOA BIOENERGY OF INDIANA, LLC

By:_____
Name:
Title:

Address for Notices:

Abengoa Bioenergy of Indiana, LLC
1400 Elbridge Payne, Suite 212
Chesterfield, MO 63017
Attention: Executive Vice President

With a copy to:

Abengoa Bioenergy of Indiana, LLC
1400 Elbridge Payne, Suite 212
Chesterfield, MO 63017
Attn: Legal Department

ABENGOA BIOENERGY OF ILLINOIS, LLC

By:_____
Name:
Title:

Address for Notices:

Abengoa Bioenergy of Illinois, LLC
1400 Elbridge Payne, Suite 212
Chesterfield, MO 63017
Attention: Executive Vice President

With a copy to:

Abengoa Bioenergy of Illinois, LLC
1400 Elbridge Payne, Suite 212
Chesterfield, MO 63017
Attn: Legal Department

AGENT:

DEUTSCHE BANK TRUST COMPANY
AMERICAS

By:_____
Name:
Title:

By:_____
Name:
Title:

Address for Notices:

[_]

COLLATERAL AGENT:

DEUTSCHE BANK TRUST COMPANY
AMERICAS

By:_____
Name:
Title:

By:_____
Name:
Title:

Address for Notices:

[_]

LENDERS:

[LENDER]

By:_____
Name:
Title:

By:_____
Name:
Title:

Address for Notices:

[_]

Consolidated Debtors
DIP Loan Budget for Period of 6/12/16 - 9/9/16

Week Ending - USD 000's	Week 1 6/17/2016	Week 2 6/24/2016	Week 3 7/1/2016	Week 4 7/8/2016	Week 5 7/15/2016	Week 6 7/22/2016	Week 7 7/29/2016	Week 8 8/5/2016	Week 9 8/12/2016	Week 10 8/19/2016	Week 11 8/26/2016	Week 12 9/2/2016	Week 13 9/9/2016	13 Week Total
Receipts														
Collections	$ 3,028	$ 5,971	$ 5,971	$ 6,619	$ 7,583	$ 7,274	$ 7,274	$ 7,274	$ 7,213	$ 7,587	$ 7,080	$ 7,920	$ -	$ 80,792
Operating Disbursements														
Vendor Payments	(2,993)	(8,991)	(5,923)	(5,929)	(6,423)	(6,906)	(7,288)	(5,738)	(5,738)	(7,665)	(7,167)	(5,654)	-	(76,415)
Payroll & Benefits	-	(9)	(314)	(19)	(389)	(19)	(304)	(19)	(842)	(100)	(304)	(19)	-	(2,336)
Plant Expenses	(306)	(251)	(251)	(209)	(264)	(209)	(209)	(247)	(281)	(285)	(230)	(256)	-	(2,997)
Office, Administrative, & Other	(275)	(751)	(63)	(39)	(862)	(1,762)	(134)	(62)	(39)	(41)	(39)	(758)	(5)	(4,830)
Total Operating Disbursements	(3,574)	(10,001)	(6,550)	(6,196)	(7,938)	(8,896)	(7,935)	(6,065)	(6,899)	(8,090)	(7,739)	(6,688)	(5)	(86,578)
Net Cash Flow from Operations	(547)	(4,030)	(579)	422	(355)	(1,622)	(662)	1,208	314	(503)	(660)	1,232	(5)	(5,786)
Restructuring & Other Disbursements														
DIP Fees & Interest	(200)	-	(33)	-	-	-	-	(69)	-	-	-	(83)	-	(385)
Collateral & Deposits	-	-	(840)	-	-	-	-	-	-	-	-	-	-	(840)
Other Interest	-	-	-	(158)	(222)	(51)	-	-	(414)	(3)	-	(462)	-	
Total Restructuring & Other Disbursements	(200)	-	(874)	(158)	(222)	(51)	-	(69)	(414)	(3)	-	(545)	-	(1,226)
Net Cash Flow	(747)	(4,030)	(1,452)	264	(577)	(1,673)	(662)	1,139	(100)	(506)	(660)	687	(5)	(8,322)
Cumulative Net Cash Flow	(747)	(4,777)	(6,229)	(5,965)	(6,542)	(8,215)	(8,877)	(7,737)	(7,838)	(8,344)	(9,004)	(8,317)	(8,322)	(8,322)
Professional Fees	(810)	-	-	-	(50)	(834)	(60)	-	-	(722)	-	-	-	(2,476)
Net Cash Flow after Professional Fees	(1,557)	(4,030)	(1,452)	264	(627)	(2,508)	(722)	1,139	(100)	(1,228)	(660)	687	(5)	(10,798)
Cumulative Net Cash Flow after Professional Fees	(1,557)	(5,587)	(7,039)	(6,775)	(7,402)	(9,909)	(10,631)	(9,492)	(9,592)	(10,820)	(11,480)	(10,793)	(10,798)	(10,798)
Balances & Liquidity														
Change in Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Bank Balance	$ 2,943	$ 913	$ 961	$ 1,225	$ 598	$ 1,591	$ 869	$ 2,008	$ 1,908	$ 680	$ 20	$ 707	$ 702	$ 702
Ending DIP Loan Balance	$ 3,000	$ 5,000	$ 6,500	$ 6,500	$ 6,500	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000

Current 13-Week Cash Flow Forecast for the Weeks Ending 6/17/2016 to 9/9/2016

$US in 000"s	Week 1 6/17/2016	Week 2 6/24/2016	Week 3 7/1/2016	Week 4 7/8/2016	Week 5 7/15/2016	Week 6 7/22/2016	Week 7 7/29/2016	Week 8 8/5/2016	Week 9 8/12/2016	Week 10 8/19/2016	Week 11 8/26/2016	Week 12 9/2/2016	Week 13 9/9/2016	13 Week Total
Receipts														
Ethanol	$ 2,026	$ 5,026	$ 5,026	$ 5,609	$ 5,946	$ 5,946	$ 5,946	$ 5,946	$ 5,885	$ 5,861	$ 5,861	$ 5,861	$ -	$ 64,938
Feed	1,002	945	945	1,010	1,370	1,328	1,328	1,328	1,328	1,265	1,218	1,218	-	14,286
Corn Oil COGS & 15% Revenues from ABT	-	-	-	-	268	-	-	-	-	461	-	-	-	728
Other	-	-	-	-	-	-	-	-	-	-	-	840	-	840
Total Receipts	3,028	5,971	5,971	6,619	7,583	7,274	7,274	7,274	7,213	7,587	7,080	7,920	-	80,792
Operating Disbursements														
Raw Materials	2,993	7,518	5,923	5,929	5,929	5,929	5,847	5,738	5,738	5,738	5,738	5,654	-	68,672
Utilities	-	1,473	-	-	-	977	1,441	-	-	1,336	1,429	-	-	6,657
ABO & ABT Services	-	-	-	-	495	-	-	-	-	591	-	-	-	1,086
Freight	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Payroll & Benefits	-	9	314	19	389	19	304	19	842	100	304	19	-	2,336
Repairs, Supplies, & CapEx	251	251	233	209	209	209	209	230	230	230	230	239	-	2,729

Office, Administrative, & Other	275	751	63	39	862	1,762	134	62	39	41	39	758	5	4,830
Leases & Rent	55	-	17	-	55	-	-	17	51	55	-	17	-	268
Total Operating Disbursements	3,574	10,001	6,550	6,196	7,938	8,896	7,935	6,065	6,899	8,090	7,739	6,688	5	86,578
Net Cash Flow from Operations	(547)	(4,030)	(579)	422	(355)	(1,622)	(662)	1,208	314	(503)	(660)	1,232	(5)	(5,786)
Other Disbursements														
DIP Fees & Interest	200	-	33	-	-	-	-	69	-	-	-	83	-	385
Deposits	-	-	840	-	-	-	-	-	-	-	-	-	-	840
Project Financing Interest / Adequate Protection	-	-	-	158	222	51	-	-	414	3	-	462	-	1,310
Total Restructuring & Other Disbursements	200	-	874	158	222	51	-	69	414	3	-	545	-	2,536
Net Cash Flow	(747)	(4,030)	(1,452)	264	(577)	(1,673)	(662)	1,139	(100)	(506)	(660)	687	(5)	(8,322)
Cumulative Net Cash Flow	(747)	(4,777)	(6,229)	(5,965)	(6,542)	(8,215)	(8,877)	(7,737)	(7,838)	(8,344)	(9,004)	(8,317)	(8,322)	(8,322)
Professional Fees	810	-	-	-	50	834	60	-	-	722	-	-	-	2,476
Net Cash Flow after Professional Fees	(1,557)	(4,030)	(1,452)	264	(627)	(2,508)	(722)	1,139	(100)	(1,228)	(660)	687	(5)	(10,798)
Cumulative Net Cash Flow after Prof. Fees	$ (1,557)	$ (5,587)	$ (7,039)	$ (6,775)	$ (7,402)	$ (9,909)	$ (10,631)	$ (9,492)	$ (9,592)	$ (10,820)	$ (11,480)	$ (10,793)	$ (10,798)	$ (10,798)
Balances & Liquidity														
Beginning Bank Balance	$ 1,500	$ 2,943	$ 913	$ 961	$ 1,225	$ 598	$ 1,591	$ 869	$ 2,008	$ 1,908	$ 680	$ 20	$ 707	$ 1,500
Net Receipts & Disbursements	(1,557)	(4,030)	(1,452)	264	(627)	(2,508)	(722)	1,139	(100)	(1,228)	(660)	687	(5)	(10,798)
Change in Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Loan Draw / (Paydown)	3,000	2,000	1,500	-	-	3,500	-	-	-	-	-	-	-	10,000
Ending Bank Balance	2,943	913	961	1,225	598	1,591	869	2,008	1,908	680	20	707	702	702
Beginning DIP Loan Balance	-	3,000	5,000	6,500	6,500	6,500	10,000	10,000	10,000	10,000	10,000	10,000	10,000	-
DIP Loan Draw / (Paydown)	3,000	2,000	1,500	-	-	3,500	-	-	-	-	-	-	-	10,000
Ending DIP Loan Balance	3,000	5,000	6,500	6,500	6,500	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Max DIP Loan	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Remaining Availability	7,000	5,000	3,500	3,500	3,500	-	-	-	-	-	-	-	-	-
Total Liquidity	9,943	5,913	4,461	4,725	4,098	1,591	869	2,008	1,908	680	20	707	702	702

Total Principal Outstanding	$ 3,000	$ 5,000	$ 6,500	$ 6,500	$ 6,500	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000