DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of July [●], 2009

among

NOVA BIOFUELS SENECA, LLC,
NOVA BIOSOURCE FUELS, INC.,
BIOSOURCE AMERICA, INC.,
NOVA BIOSOURCE TECHNOLOGIES, LLC,
NOVA BIOFUELS CLINTON COUNTY, LLC and
NOVA BIOFUELS TRADE GROUP, LLC
as Borrowers,

NOVA BIOSOURCE FUELS, INC.,
as Loan Party Agent,

NOVA HOLDING SENECA, LLC,
NBF OPERATIONS, LLC,
NOVA HOLDING TRADE GROUP, LLC, and
NOVA HOLDING CLINTON COUNTY LLC
as Guarantors,

THE LENDERS REFERRED TO HEREIN,

WESTLB AG, NEW YORK BRANCH,
as Administrative Agent for the Lenders,

WESTLB AG, NEW YORK BRANCH,
as Collateral Agent for the Senior Secured Parties,

and

STERLING BANK,
as Accounts Bank

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SCHEDULES

EXHIBITS

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), dated as of July [●], 2009, is by and among NOVA BIOFUELS SENECA, LLC, a Delaware limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code (as defined below) ("Seneca"), NOVA BIOSOURCE FUELS, INC., a Nevada corporation and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Biosource Fuels"), BIOSOURCE AMERICA, INC., a Texas corporation and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Biosource America"), NOVA BIOSOURCE TECHNOLOGIES, LLC, a Texas limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Technologies"), NOVA BIOFUELS CLINTON COUNTY, LLC, a Delaware limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Clinton") and NOVA BIOFUELS TRADE GROUP, LLC, a Delaware limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Biofuels Trade" and, together with Biosource Fuels, Biosource America, Technologies and Clinton, the "Subject Debtors" and, the Subject Debtors together with Seneca, the "Borrowers"), Biosource Fuels, as Loan Party Agent, NOVA HOLDING SENECA, LLC, a Delaware limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Holding Seneca"), NBF OPERATIONS, LLC, a Delaware limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("NBF Operations"), NOVA HOLDING CLINTON COUNTY LLC, a Delaware limited liability company and debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Holding Clinton"), NOVA HOLDING TRADE GROUP, LLC, a Delaware limited liability company and a debtor-in-possession under Chapter 11 of the Bankruptcy Code ("Holding Trade" and, together with Holding Seneca, NBF Operations and Holding Clinton, the "Guarantors"), each of the Lenders from time to time party hereto, WESTLB AG, NEW YORK BRANCH, as administrative agent for the Lenders, WESTLB AG, NEW YORK BRANCH, as collateral agent for the Senior Secured Parties and STERLING BANK, a Texas banking corporation, as accounts bank.

RECITALS

WHEREAS, on March 30, 2009 (the "Petition Date"), each Borrower and each Guarantor (collectively, the "Debtors") commenced Chapter 11 Case Nos. [●] through [●] jointly administered under Chapter 11 Case No. 09-11081 (each a "Chapter 11 Case" or a "Case" and collectively, the "Chapter 11 Cases" or the "Cases") by filing voluntary petitions for reorganization under the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Each of the Borrowers and each of the Guarantors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, certain Lenders provided financing to Seneca pursuant to the Credit Agreement, dated as of December 26, 2007, among Seneca, each of the lenders referred to therein, WestLB, New York Branch as administrative agent and collateral agent and Sterling Bank as accounts bank (as amended, modified or supplemented through the Petition Date, the "Pre-Petition Credit Agreement");

WHEREAS, prior to the Petition Date, Biosource Fuels issued its 10% Convertible Senior Secured Notes Due 2012 in an aggregate principal amount of $55,000,000 pursuant to an

Indenture (the "Indenture") dated as of September 28, 2007 among Biosource Fuels, the guarantors listed therein (being Holding Clinton, Clinton and any other subsidiary of Biosource Fuels executing a Note Guarantee in accordance with the terms of the Indenture), Holding Seneca (solely for the limited purposes set forth therein) and The Bank of New York Trust Company, N.A., as Indenture Trustee (the "Indenture Trustee") (as amended, modified or supplemented through the date hereof, the "Pre-Petition Notes");

WHEREAS, each Borrower has requested that the Lenders provide a senior secured, super-priority credit facility to the Borrowers of up to Two Million Thirty Thousand Dollars ($2,030,000) in the aggregate to fund the working capital requirements of the Borrowers and for other purposes permitted under this Agreement during the pendency of the Chapter 11 Cases;

WHEREAS, each Lender is willing to make certain Post-Petition (as defined below) loans to each Borrower upon and subject to the terms and conditions hereinafter set forth;

WHEREAS, each Guarantor is willing to guarantee, and, in the case of NBF Operations, also to cause Holding Trade to guarantee, all the Obligations (as defined below);

WHEREAS, each Debtor has agreed to secure all the Obligations by granting to the Collateral Agent a security interest in and Lien upon substantially all its existing and after acquired personal and real property; and

WHEREAS, each Borrower and each Guarantor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrowers as provided in this Agreement;

NOW, **THEREFORE**, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Defined Terms. Capitalized terms used in this Agreement, including its preamble and recitals, shall, except as otherwise defined herein or where the context otherwise requires, have the meanings provided in Exhibit A.

Section 1.02 Principles of Interpretation. (a) Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have the same meanings when used in each other Financing Document and each other notice or other communication delivered from time to time in connection with any Financing Document.

(b) Any reference in this Agreement to any Transaction Document shall mean such Transaction Document and all schedules, exhibits and attachments thereto.

(c) All agreements, contracts or documents defined or referred to herein shall mean such agreements, contracts or documents as the same may from time to time be supplemented, amended or replaced or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof and this Agreement, and shall disregard

any supplement, amendment, replacement, waiver or modification made in violation of this Agreement.

(d) Any reference in any Financing Document relating to a Default or an Event of Default that has occurred and is continuing (or words of similar effect) shall be understood to mean that such Default or Event of Default, as the case may be, has not been cured or remedied to the satisfaction of, or has not been waived by, the Required Lenders.

(e) Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular.

(f) The words "herein," "hereof" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement and all references to Articles, Sections, Exhibits and Schedules shall be references to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified.

(g) The words "include," "includes" and "including" are not limiting.

(h) The word "or" is not exclusive.

(i) Any reference to any Person shall include its permitted successors and permitted assigns in the capacity indicated, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

Section 1.03 UCC Terms. Unless otherwise defined herein, terms used herein that are defined in the UCC shall have the respective meanings given to those terms in the UCC.

Section 1.04 Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used in any Financing Document shall be interpreted, all accounting determinations and computations hereunder or thereunder shall be made, and all financial statements required to be delivered hereunder or thereunder shall be prepared, in accordance with GAAP.

Section 1.05 Joint and Several. The (i) Obligations of each Borrower under this Agreement and each other Financing Document to which any Borrower is a party shall constitute the joint and several obligations of all Borrowers, (ii) the Obligations of each Guarantor under this Agreement and each other Financing Document to which any Guarantor is a party shall constitute the joint and several obligations of all Guarantors, (iii) all representations, warranties, undertakings, agreements and obligations of each Borrower expressed or implied in this Agreement or any other Financing Document shall, unless the context requires otherwise, be deemed to be made, given or assumed by the Borrowers jointly and severally and (iv) all representations, warranties, undertakings, agreements and obligations of each Guarantor expressed or implied in this Agreement or any other Financing Document shall, unless the context requires otherwise, be deemed to be made, given or assumed by the Guarantors jointly and severally.

ARTICLE II

COMMITMENTS AND FUNDING

On the terms, subject to the conditions and relying upon the representations and warranties herein set forth:

Section 2.01 Loans. (a) Each Lender agrees, severally and not jointly, on the terms and conditions of this Agreement, to make term loans (each such loan, a "Loan") to the Borrowers, from time to time but not more frequently than [one] ([1]) time each calendar week and not more than [twelve] ([12]) times in aggregate until the Maturity Date, in an aggregate principal amount not in excess of the Commitment of such Lender; provided, however, that the aggregate principal amount of the Loans shall not exceed the Aggregate Commitment.

(b) Each Funding of Loans shall be in the minimum amount of [●] Dollars ($[●]) and in integral multiples of [●] Dollars ($[●]) in excess thereof.

(c) Proceeds of the Loans shall be deposited into the Revenue Account, shall be applied solely in accordance with this Agreement and shall be used solely in accordance with the then current Seneca Budget and Non-Seneca Budget.

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

Section 2.02 Notice of Fundings. (a) From time to time, but not more frequently than [one] [1] time each calendar week, the Borrowers may propose a Funding by delivering to the Administrative Agent a properly completed Funding Notice not later than 12:00 noon, New York City time, three (3) Business Days prior to the proposed Funding Date. Each Funding Notice delivered pursuant to this Section 2.02 shall be irrevocable and shall refer to this Agreement and specify (x) whether such Funding is requested to be of Eurodollar Loans and/or Base Rate Loans, (y) the requested Funding Date (which shall be a Business Day), and (z) the amount of such requested Funding. Each Funding Notice delivered pursuant to this Section 2.02 shall constitute a representation and warranty by each of the Borrowers that the conditions precedent to the making of such Funding set forth in Section 6.02 (*Conditions to All Fundings*) have been satisfied.

(b) The Administrative Agent shall promptly advise each Lender of any Funding Notice given pursuant to this Section 2.02, together with each such Lender's portion of the requested Funding.

Section 2.03 Funding of Loans. (a) Subject to Section 2.03(d), each Funding shall consist of Loans made by the Lenders ratably in accordance with their respective applicable Commitment Percentages and shall consist of Eurodollar Loans or Base Rate Loans as the Borrowers may request or as otherwise provided pursuant to Section 2.02 (*Notice of Fundings*); provided, however, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender).

(b) Subject to Section 4.04 (*Obligation to Mitigate*), each Lender may (without relieving any Borrower of its obligation to repay a Loan in accordance with the terms of this Agreement and the Notes) at its option fulfill its Commitment with respect to any such Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan.

(c) Subject to Section 2.03(d), each Lender shall make a Loan in the amount of its applicable Commitment Percentage of each Funding hereunder on the proposed Funding Date by wire transfer of immediately available funds to the Administrative Agent, not later than 12:00 noon, New York City time, and the Administrative Agent shall deposit the amounts so received into the Revenue Account; provided, that if a Funding does not occur on the proposed Funding Date because any condition precedent to such requested Funding herein specified has not been met, the Administrative Agent shall return the amounts so received to the respective Lenders without interest.

(d) Unless the Administrative Agent has been notified in writing by any Lender prior to a proposed Funding Date that such Lender will not make available to the Administrative Agent its portion of the Funding proposed to be made on such date, the Administrative Agent may assume that such Lender has made such amounts available to the Administrative Agent on such date and the Administrative Agent in its sole discretion may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made such amount available to the Borrowers, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender and, if such Lender pays such amount (together with the interest noted below), then the amount so paid shall constitute such Lender's Loan included in such Funding. If such Lender does not pay such corresponding amount upon the Administrative Agent's demand or within two (2) Business Days from the date of such Funding, the Administrative Agent shall promptly notify the Borrowers and the Borrowers shall repay such corresponding amount to the Administrative Agent within two (2) Business Days from the Administrative Agent's request. The Administrative Agent shall also be entitled to recover from such Lender or the Borrowers, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrowers to the date such corresponding amount is recovered by the Administrative Agent, at an interest rate *per annum* equal to (i) in the case of a payment made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment made by the Borrowers, the Base Rate plus the Applicable Margin. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its commitment hereunder. A notice by the Administrative Agent to any Lender or the Borrowers with respect to any amounts owing under this Section 2.03(d) shall be conclusive, absent manifest error.

Section 2.04 Evidence of Indebtedness. (a) Each Loan made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business, including the Register for the recordation of the Loans maintained by the Administrative Agent in accordance with the provisions of Section 11.03(c) (*Assignments*). The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive evidence, absent manifest error, of the

amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control, absent manifest error.

(b) The Borrowers agree that in addition to the Register and any other accounts and records maintained pursuant to Section 2.04, the Loans made by each Lender may, if requested by the Lenders, be evidenced by a Note or Notes duly executed on behalf of each Borrower. The Notes shall be dated the Closing Date (or, if later, the date of any request therefor by a Lender) and payable to the order of such Lender in a principal amount equal to such Lender's Commitment. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loan and payments with respect thereto.

Section 2.05 Termination or Reduction of Commitments. (a) Any unused Commitments shall be automatically and permanently terminated on the Maturity Date.

(b) Any unused Commitments shall be terminated upon the occurrence of an Event of Default if and to the extent required pursuant to Section 9.02 (*Action Upon Event of Default*) in accordance with the terms thereof.

(c) Unless otherwise agreed by the Lenders, the Aggregate Commitment shall be automatically reduced to the extent of, and in the amount of, any prepayment of the Loans pursuant to Section 3.07 (*Optional Prepayment*) or Section 3.08 (*Mandatory Prepayment*).

Section 2.06 Security Interest. (a) In order to supplement the Orders without in any way diminishing or limiting the effect of the Orders or the security interest, pledge, Lien, mortgage or deed of trust granted thereunder, to secure the timely payment in full when due (whether at stated maturity, upon acceleration or optional or mandatory prepayment) in cash and performance in full of all the Obligations, each Debtor does hereby collaterally assign, grant and pledge to the Collateral Agent, for the benefit of the Collateral Agent, each other Agent and each Lender, all the estate, right, title and interest of such Debtor in, to and under, whether now owned or hereafter existing or acquired, and howsoever its interest therein may arise or appear (whether by ownership, security interest, Lien, claim or otherwise), the Collateral.

(b) The Liens and security interests granted hereunder shall continue to be valid and perfected and with the specified priority without the necessity that financing statements be filed or that any other action be taken or document or instrument registered or delivered, under applicable non-bankruptcy law.

(c) Notwithstanding any failure on the part of any Debtor or the Collateral Agent to perfect, maintain, protect or enforce the Liens and security interests in the Collateral granted hereunder, the Orders shall automatically, and without further action by any Person, perfect such Liens and security interests against the Collateral.

Section 2.07 Super-Priority Nature of Obligations. (a) As provided for in the Final Order, all Obligations shall constitute administrative expenses of the Borrowers and the

Guarantors in the Chapter 11 Cases, with administrative priority and senior secured status under Sections 364(c) and 364(d) of the Bankruptcy Code. Subject to the Carve-Out, such administrative claim shall enjoy superpriority administrative expense status under Section 364(c)(1) with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code or otherwise, and shall at all times be senior to the rights of the Borrowers and the Guarantors, the estates of the Borrowers and the Guarantors, and any successor trustee or estate representative in the Chapter 11 Cases or any subsequent proceeding or case under the Bankruptcy Code.

(b) As provided for in the Final Order, all Obligations shall at all times, subject to the Carve-Out, (i) pursuant to Section 364(d)(1) of the Bankruptcy Code, be secured by fully perfected first priority, valid, binding, enforceable, non-avoidable and automatically perfected priming security interest in and Liens (the "Priming Liens") upon (1) the Pre-Petition Collateral and (2) the Clinton Collateral up to the amount of any Clinton Priming Expenditures; (ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, be secured by fully perfected first priority, valid, binding, enforceable, non-avoidable and automatically perfected security interest in and Liens upon the Collateral (other than Collateral referenced in clause (i) and clause (iii)) whether created, existing or acquired prior or subsequent to the commencement of the Cases (the "First Liens") and (iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, be secured by fully perfected second priority, valid, binding, enforceable, non-avoidable and automatically perfected security interest in and Liens upon the Collateral securing any Senior Permitted Lien including the amount of any Clinton Lien in excess of the Clinton Priming Expenditures (the security interests and Liens granted under this clause (iii) are referred to as the "Second Liens" and together with the Priming Liens and First Liens, as the "DIP Liens"). The DIP Liens, and the priorities accorded to the Obligations, shall have the priority and secured status afforded by Sections 364(c) and 364(d)(l) of the Bankruptcy Code, all as more fully set forth in the Final Order.

(c) As provided for in the Final Order, the DIP Liens and the administrative claims under Sections 364(c)(l) and 364(d) of the Bankruptcy Code afforded the Obligations shall also have priority over any claims arising under Section 506(c) of the Bankruptcy Code subject and subordinate only to the Carve-Out.

Section 2.08 Payment of Obligations. As provided for in the Final Order, on the Maturity Date, the Senior Secured Parties shall be entitled to immediate payment of all outstanding Obligations without further application to or order of the Bankruptcy Court.

Section 2.09 Liens. (a) The Debtors covenant and agree that the DIP Facility and all Obligations will at all times be secured by the DIP Liens as set forth in the Final Order.

(b) The DIP Liens on Collateral will not be subject to challenge and attached and became valid and perfected upon entry of the Final Order without any requirement of any further action by the Collateral Agent. Other than the DIP Liens, the Collateral will be free and clear of all Liens, claims and encumbrances other than the Permitted Liens.

(c) The Orders are sufficient and conclusive evidence of the creation, validity, perfection and priority of the DIP Liens without the necessity of filing, recording or delivering any financing statement or other instrument or document that may otherwise be required under the Law of any jurisdiction or the taking of any action (including entering into any deposit control agreement or delivering original certificates representing pledged Equity Interests that constitute "Certificated Securities" under the UCC) to validate or perfect the DIP Liens or to entitle the Collateral Agent to the priorities granted by or pursuant to this Agreement, any Financing Document or any of the Orders. Notwithstanding the foregoing, the Collateral Agent may take any and all actions without further order of the Bankruptcy Court, and shall be granted relief from the automatic stay, to evidence, confirm, validate or perfect or to insure the contemplated priority of, the DIP Liens granted to the Collateral Agent for the benefit of the Senior Secured Parties and each Debtor shall execute and deliver to the Collateral Agent all such financing statements, mortgages, notices or other documents and instruments as the Collateral Agent may request in connection therewith.

Section 2.10 No Discharge; Survival of Claims. The Borrowers and the Guarantors agree that, as provided for in the Final Order, (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in any Chapter 11 Case (and the Borrowers and the Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waive any such discharge) and (b) the super-priority administrative claim granted pursuant to the Final Order and described in Section 2.07 (*Super-Priority Nature of Obligations*) and the Liens granted to the Collateral Agent pursuant to the Final Order and described in Section 2.07 (*Super-Priority Nature of Obligations*) shall not be affected in any manner by the entry of an order confirming a plan of reorganization in any Chapter 11 Case.

Section 2.11 Release. The Borrowers and the Guarantors hereby acknowledge, subject to the terms of the Final Order, that the Borrowers and the Guarantors have no defense, counterclaim, offset, recoupment, cross complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Borrowers' or Guarantors' liability to repay the Senior Secured Parties as provided in this Agreement or any other Financing Document or to seek affirmative relief or damages of any kind or nature from any Senior Secured Party. Subject to the Orders and the Lenders' obligations to the Borrowers and the Guarantors thereunder, hereunder and under the other Financing Documents, the Borrowers and the Guarantors, each in their own right on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the "Releasing Parties"), hereby fully, finally and forever release and discharge each Senior Secured Party, its Affiliates, and their respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them (collectively, the "Released Parties") of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever (the "Released Claims"), whether in law, equity or otherwise (including those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages, including those payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted

or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, hereafter existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, any other Financing Document, the Final Order or the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing.

Section 2.12 Waiver of Priming Rights. Upon the Closing Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Borrowers and the Guarantors hereby irrevocably waive any right, pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations, other than with respect to adequate protection Liens approved by order of the Bankruptcy Court in the Final Order.

Section 2.13 Priority of Claim. The Debtors covenant and agree that the Obligations at all times will constitute DIP Administrative Claims, subject only to the Carve-Out.

ARTICLE III

REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

Section 3.01 Repayment of Loans. (a) The Borrowers unconditionally and irrevocably promise to pay to the Administrative Agent for the ratable account of each Lender the aggregate outstanding principal amount of the Loans on the Maturity Date.

Section 3.02 Interest Payment Dates. (a) Interest accrued on each Loan shall be payable, without duplication:

(i) on the Maturity Date;

(ii) on each Interest Payment Date; and

(iii) on any date when such Loan is prepaid hereunder.

(b) Interest accrued on the Loans or other monetary Obligations after the date such amount is due and payable (whether on the Maturity Date for such Loan, any Interest Payment Date, upon acceleration or otherwise) shall be payable upon demand.

(c) Interest hereunder shall be due and payable in accordance with the terms hereof, before and after judgment, regardless of whether an Insolvency or Liquidation Proceeding exists in respect of any Borrower and, to the fullest extent permitted by Law, the Lenders shall be entitled to receive post-petition interest during the pendency of an Insolvency or Liquidation Proceeding.

Section 3.03 Interest Rates. (a) Pursuant to each properly delivered Funding Notice, (i) each Eurodollar Loan shall accrue interest at a rate *per annum* during each Interest Period applicable thereto equal to the sum of the Eurodollar Rate for such Interest Period plus the Applicable Margin and (ii) each Base Rate Loan shall accrue interest at a rate *per annum* during each Monthly Period equal to the sum of the Base Rate for such Monthly Period plus the Applicable Margin.

(b) On or before 12:00 p.m., New York City time, at least three (3) Business Days prior to the end of each Interest Period for each Eurodollar Loan, and at least one (1) Business Day prior to the end of any Monthly Period for any Base Rate Loans, the Loan Party Agent shall deliver to the Administrative Agent an Interest Period Notice setting forth the Borrowers' election (i) to continue any such Eurodollar Loan as (or convert any such Base Rate Loan to) a Eurodollar Loan or (ii) to convert any such Eurodollar Loan to a Base Rate Loan at the end of the then-current Interest Period; provided, that if an Event of Default has occurred and is continuing, all Eurodollar Loans shall automatically convert into Base Rate Loans at the end of the then-current Interest Periods. Upon the waiver or cure of such Event of Default, the Borrowers shall have the option to continue such Loans as Base Rate Loans and/or to convert such Loans to Eurodollar Loans (by delivery of an Interest Period Notice), subject to the notice periods set forth above. Notwithstanding anything to the contrary, any portion of the Loans maturing in less than one month may not be continued as, or converted to, Eurodollar Loans and will automatically convert to Base Rate Loans at the end of the then-current Interest Period.

(c) If the Loan Party Agent fails to deliver an Interest Period Notice in accordance with Section 3.03(b), (i) with respect to any Eurodollar Loan, such Eurodollar Loan shall automatically continue as a Eurodollar Loan or (ii) with respect to any Base Rate Loan, such Base Rate Loan shall automatically continue as a Base Rate Loan.

(d) All Eurodollar Loans shall bear interest from and including the first day of the applicable Interest Period to (and excluding) the last day of such Interest Period at the interest rate determined as applicable to such Eurodollar Loan.

(e) Notwithstanding anything to the contrary, the Borrowers shall have, in the aggregate, no more than [●] ([●]) separate Eurodollar Loans outstanding at any one time.

(f) All Base Rate Loans shall bear interest from and including the first day of each Monthly Period (or the day on which Eurodollar Loans are converted to Base Rate Loans as required under Section 3.03(b) or under ARTICLE IV (*Eurodollar Rate and Tax Provisions*)) to (and including) the next succeeding Monthly Payment Date at the interest rate determined as applicable to such Base Rate Loan.

Section 3.04 Default Interest Rate. (a) If all or a portion of (i) the principal amount of any Loan is not paid when due (whether on the Maturity Date, by acceleration or otherwise), such overdue amount shall bear interest at a rate *per annum* equal to the rate that would otherwise be applicable thereto plus two percent (2%), or (ii) any Obligation (other than principal on the Loans) is not paid when due (whether on the Maturity Date, by acceleration or otherwise), such overdue amount shall bear interest at a rate *per annum* equal to the Base Rate

plus two percent (2%), in each case, with respect to clauses (i) and (ii) above, from the date of such non-payment until such amount is paid in full (before as well as after judgment).

(b) Upon the occurrence and during the continuance of any Event of Default, the Loan Parties shall pay interest (before as well as after judgment) on the Loans at a rate *per annum* equal to the rate otherwise then in effect plus two percent (2%) (the "Default Rate") until such Event of Default is cured or waived.

Section 3.05 Interest Rate Determination. The Administrative Agent shall determine the interest rate applicable to the Loans in accordance with the terms of this Agreement, and shall give prompt notice to the Borrowers and the Lenders of such determination, and its determination thereof shall be conclusive, absent manifest error.

Section 3.06 Computation of Interest and Fees. (a) All computations of interest calculated based on the Base Rate shall be made (i) on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed when the Base Rate is determined by WestLB's "prime rate", and (ii) shall be made on the basis of a 360-day year and actual days elapsed when the Base Rate is determined by the Federal Funds Effective Rate. All computations of interest based on the Eurodollar Rate shall be made on the basis of a 360-day year and actual days elapsed.

(b) Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided, that any Loan or portion thereof that is repaid on the same day on which it is made shall bear interest for one (1) day.

(c) Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 3.07 Optional Prepayment. (a) The Borrowers shall have the right at any time, and from time to time, to prepay the Loans, in whole or in part, upon not fewer than five (5) Business Days' prior written notice to the Administrative Agent.

(b) Each notice of prepayment given by the Borrowers under this Section 3.07 shall specify the prepayment date and the portion of the principal amount of the Loans to be prepaid. All prepayments under this Section 3.07 shall be made by the Borrowers to the Administrative Agent for the account of the Lenders and shall be accompanied by accrued interest on the principal amount being prepaid to but excluding the date of payment and by any additional amounts required to be paid under Section 4.05 (*Funding Losses*).

(c) Amounts of principal prepaid under this Section 3.07 shall be applied by the Administrative Agent:

(i) first, to the payment of all costs, fees, expenses and indemnities then due and payable to the Senior Secured Parties, including fees and expenses of attorneys and Consultants reimbursable hereunder;

(ii) second, to the payment of all accrued and unpaid interest then due and payable on the Loans *pro rata* among the Lenders based on their respective outstanding principal amounts on the date of such prepayment; and

(iii) third, to the payment of principal of Loans *pro rata* among the Lenders based on their respective outstanding principal amounts on the date of such prepayment.

(d) Amounts prepaid pursuant to this Section 3.07 may not be reborrowed.

Section 3.08 Mandatory Prepayments; Other Applications of Proceeds.

(a) The Borrowers shall be required to make the prepayments and other applications of proceeds set forth below upon receipt by any Loan Party of any Net Cash Proceeds of (i) any Disposition of Collateral (other than Clinton Collateral) outside the ordinary course of business or (ii) Insurance Proceeds or Condemnation Proceeds from Collateral (other than Clinton Collateral), in each case, in an amount equal to such Net Cash Proceeds. All prepayments under this Section 3.08(a) pursuant to Level One, Level Two, Level Three and Level Four shall be made by the Borrowers to the Administrative Agent for the account of the Lenders and pursuant to any other provision shall be applied in accordance with the terms of such provision.

(b) Amounts prepaid and applied, respectively, under Section 3.08(a) shall be allocated in accordance with the following waterfall of payments on a serial basis such that distributions provided in subsequent clauses of such waterfall shall only be made with excess proceeds after the satisfaction in full of the distribution requirements of the preceding clauses (the "General Waterfall"):

(i) first, to the payment of all costs, fees, expenses and indemnities then due and payable to the Senior Secured Parties, including fees and expenses of attorneys and Consultants reimbursable hereunder ("Level One");

(ii) second, to the payment of all accrued and unpaid interest then due and payable on the Loans *pro rata* among the Lenders based on their respective outstanding principal amounts on the date of such prepayment ("Level Two");

(iii) third, to the payment of principal of Loans *pro rata* among the Lenders based on their respective outstanding principal amounts on the date of such prepayment ("Level Three");

(iv) fourth, to pay any other Obligations until paid in full ("Level Four");

(v) fifth[1], (A) to the payment of all allowed administrative expenses in the Chapter 11 Cases in respect of the Carve-Out provided for in the DIP Budgets

[1] CRO success fee to be discussed

and (B) to the extent the amount in subclause (A) is less then the Carve-Out, such excess shall be used to provide appropriate reserves for anticipated allowed administration expenses; provided that the aggregate amount under subclauses (A) and (B) shall not exceed the Carve-Out ("Level Five");

(vi) sixth, to prepay the Pre-Petition Agent an amount equal to the amount of Cash Collateral used by any of the Debtors from and after May 22, 2009 through the date of such prepayment (which prepayment shall reduce the Pre-Petition Obligations by a corresponding amount) ("Level Six");

(vii) seventh, to the extent that there are Net Cash Proceeds remaining after payment of the items above that are allocated (either by order of the Bankruptcy Court or by the agreement of the Debtors, the Committee, the Administrative Agent and the Pre-Petition Administrative Agent) exclusively to Collateral that is not also Pre-Petition Collateral, then such amounts shall be retained by the applicable Debtors to be used in accordance with the Bankruptcy Code and the orders of the Bankruptcy Court; and

(viii) eighth, to pay (or reserve for if the secured claim has not yet been allowed) any allowed secured claim made pursuant to Section 3.10(e) of the Pre-Petition Credit Agreement (the allowance of the secured claim, except to the extent of a timely challenge pursuant to Paragraph 30 of the First Interim Cash Collateral Order (as such Paragraph 30 was amended pursuant to Paragraph __ of the Final Order), shall be limited to a determination of the allocation of the value of the Pre-Petition Collateral used, sold, leased, license or disposed of in the relevant transaction); and

(ix) ninth, to be retained by the applicable Debtors to be used in accordance with the Bankruptcy Code and the orders of the Bankruptcy Court.

(c) The Borrowers shall be required to make the prepayments and other applications of proceeds set forth below upon receipt by any Loan Party of any Net Cash Proceeds of (i) any Disposition of Clinton Collateral outside the ordinary course of business or (ii) Net Insurance Proceeds or Condemnation Proceeds of Clinton Collateral, in each case in amount equal to such Net Cash Proceeds. All prepayments under this Section 3.08(c) pursuant to Level (d)(i) shall be made by the Borrowers to the Administrative Agent for the account of the Lenders and pursuant to any other provision shall be applied in accordance with the terms of such provision.

(d) Amounts prepaid and applied, respectively, under Section 3.08(c) shall be allocated in accordance with the following waterfall of payments on a serial basis such that distributions provided in subsequent clause of such waterfall shall only be made with excess proceeds after the satisfaction in full of the distribution requirements of the preceding clauses (the "Clinton Waterfall"):

(i) first, an amount equal to the Clinton Priming Expenditures shall be applied in order to Level One, Level Two, Level Three and Level Four of the General Waterfall ("Level (d)(i)");

(ii) second, to Level Five of the General Waterfall;

(iii) third, an amount equal to the Clinton Priming Expenditures less any amounts applied pursuant to Level (d)(i) shall be applied to Level Six of the General Waterfall;

(iv) fourth, to pay or reserve for allowed secured claims under the Pre-Petition Notes; and

(v) fifth, to be retained by the applicable Debtors to be used in accordance with the Bankruptcy Code and the orders of the Bankruptcy Court.

(e) If there are net cash proceeds available for distribution under both the General Waterfall and the Clinton Waterfall on a reasonably contemporaneous basis, then the net cash proceeds available for distribution pursuant to the Clinton Waterfall shall be distributed first. If there are net cash proceeds available for distribution under the General Waterfall from the proceeds of Collateral that is not also Pre-Petition Collateral, then the proceeds of such Collateral shall be distributed first.

(f) Amounts prepaid pursuant to this Section 3.08 may not be reborrowed.

(g) Until the Obligations have been irrevocably satisfied in full, all revenues, reimbursements and receipts of the Borrowers, of any kind and from time to time (other than those referred to in Sections 3.08(a) and (c)) shall be held in the Borrowers' Accounts and disbursed solely pursuant to the Seneca Budget and the Non-Seneca Budget.

Section 3.09 Time and Place of Payments. (a) The Borrowers shall make each payment (including any payment of principal of or interest on any Loan or any Facility Fee or other Obligations) hereunder and under any other Financing Document without setoff, deduction or counterclaim not later than 12:00 noon, New York City time on the date when due in Dollars in immediately available funds to the Administrative Agent at the following account: JPMorgan Chase Bank (Swift ID: CHASUS33XXX), Account Number: 920-1-060663, for the Account of WestLB AG NY Branch, ABA #021-000-021, Ref: Nova Biofuels Seneca DIP Loan, Attention: Andrea Bailey, or at such other office or account as may from time to time be specified by the Administrative Agent to the Borrowers. Funds received after 12:00 noon New York City time shall be deemed to have been received by the Administrative Agent on the next succeeding Business Day. [[Subject to confirmation by WestLB.]]

(b) The Administrative Agent shall promptly (but in no event later than 5:00 p.m. New York City time on the date such payment is received or deemed to be received) remit in immediately available funds to each Senior Secured Party its share, if any, of any payments received by the Administrative Agent for the account of such Senior Secured Party.

(c) Whenever any payment (including any payment of principal of or interest on any Loan or any Facility Fee or other Obligations) hereunder or under any other Financing Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment shall (except as otherwise required by the proviso to the definition of "Interest Period" with respect to Loans) be made on the immediately succeeding Business Day, and such increase of time shall in such case be included in the computation of interest or Facility Fee, if applicable.

Section 3.10 Fundings and Payments Generally. (a) Unless the Administrative Agent has received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance with this Agreement and may, in reliance upon such assumption, distribute to the Lenders the amount due. If the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice by the Administrative Agent to any Lender with respect to any amount owing under this Section 3.10 shall be conclusive, absent manifest error.

(b) Nothing herein shall be deemed to obligate any Lender to obtain funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain funds for any Loan in any particular place or manner.

(c) The Borrowers hereby authorize each Lender, if and to the extent payment owed to such Lender is not made when due under this Agreement or under any Notes held by such Lender, to charge from time to time against any or all of the Borrowers' accounts with such Lender (other than, in the event that the Accounts Bank or any bank holding a Local Account is also a Lender, any Project Account or Local Account) any amount so due.

Section 3.11 Fees. (a) On the Closing Date, the Borrowers shall pay to the Administrative Agent, for the account of the Lenders, a fee of $160,000.

(b) The Facility Fee shall be paid in immediately available funds. Once paid, the Facility Fee shall not be refundable under any circumstances.

Section 3.12 Pro Rata Treatment. (a) Except as otherwise expressly provided herein (including Section 4.01 (*Eurodollar Rate Lending Unlawful*)), each Funding of Loans and each reduction of commitments of any type shall be allocated by the Administrative Agent *pro rata* among the Lenders in accordance with their respective applicable Commitment Percentages.

(b) Except as required under Section 3.07 (*Optional Prepayment*), Section 3.08 (*Mandatory Prepayment*) or Article IV (*Eurodollar Rate and Tax Provisions*), (i) each payment or prepayment of principal of the Loans shall be allocated by the Administrative Agent *pro rata* among the applicable Lenders in accordance with the respective

principal amounts of their outstanding Loans, (ii) each payment of interest on the Loans shall be allocated by the Administrative Agent *pro rata* among the applicable Lenders in accordance with the respective interest amounts outstanding on their outstanding Loans, and (iii) each payment of fees on the Commitments shall be allocated by the Administrative Agent *pro rata* among the Lenders in accordance with their respective Commitments.

(c) Each Lender agrees that in computing such Lender's portion of any Funding to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Funding to the next higher or lower whole Dollar amount in accordance with market convention.

Section 3.13 Sharing of Payments. (a) If any Lender obtains any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Article IV (*Eurodollar Rate and Tax Provisions*)) in excess of its *pro rata* share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender that has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender's ratable share (according to the proportion of (x) the amount of such selling Lender's required repayment to the purchasing Lender to (y) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 3.13, to the fullest extent permitted by Law, may exercise all of its rights of payment (including pursuant to Section 11.14 (*Right of Setoff*)) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

(b) If under any applicable bankruptcy, insolvency or other similar Law, any Lender receives a secured claim in lieu of a setoff to which this Section 3.13 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 3.13 to share in the benefits of any recovery on such secured claim.

ARTICLE IV

EURODOLLAR RATE AND TAX PROVISIONS

Section 4.01 Eurodollar Rate Lending Unlawful. (a) If any Lender reasonably determines (which determination shall, upon notice thereof to the Borrowers and the Administrative Agent, be conclusive and binding on the Borrowers absent manifest error), but only if such Lender has complied with its obligations under Section 4.04 (*Obligation to Mitigate*) that the introduction of or any change in or in the interpretation of any Law after the date hereof makes it unlawful, or any central bank or other Governmental Authority asserts after the date hereof that it is unlawful, for such Lender to make, maintain or fund any Loan as a Eurodollar

Loan, the obligations of such Lender to make, maintain or fund any such Loan as a Eurodollar Loan shall, upon such determination, forthwith be suspended until such Lender notifies the Administrative Agent that the circumstances causing such suspension no longer exist, and all Eurodollar Loans of such Lender shall automatically convert into Base Rate Loans at the end of the then-current Interest Periods with respect thereto or sooner, if required by such Law or assertion. Upon any such conversion the Borrowers shall pay any accrued interest on the amount so converted and, if such conversion occurs on a day other than the last day of the then-current Interest Period for such affected Eurodollar Loans, such Lender shall be entitled to make a request for, and the Borrowers shall in such case pay, compensation for breakage costs under Section 4.05 (*Funding Losses*).

(b) If such Lender notifies the Borrowers that the circumstances giving rise to the suspension described in Section 4.01 no longer apply, the Borrowers may elect (by delivering written notice thereof to the Administrative Agent and each of the Lenders) to convert the principal amount of any such Base Rate Loan to a Eurodollar Loan on the first day of the next following Interest Period.

Section 4.02 Inability to Determine Eurodollar Rates. (a) In the event, and on each occasion, that the Administrative Agent shall have determined in good faith that for any Loan (i) Dollar deposits in the amount of such Loan and with an Interest Period similar to such Interest Period are not generally available in the London interbank market, or (ii) the rate at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to any Lender of making, maintaining or funding the principal amount of such Loan during such Interest Period, or (iii) adequate and reasonable means do not exist for ascertaining LIBOR, the Administrative Agent shall promptly notify the Borrowers and the Lenders of such determination, whereupon each such Eurodollar Loan will automatically, on the last day of the then-existing Interest Period for such Eurodollar Loan, convert into a Base Rate Loan. In the event of any such determination pursuant to Section 4.02(i) or (iii), any Funding Notice delivered by the Borrowers shall be deemed to be a request for a Base Rate Loan until the Administrative Agent determines that the circumstances giving rise to such notice no longer exist. In the event of any determination pursuant to Section 4.02(ii), each affected Lender shall, and is hereby authorized by the Borrowers to, fund its portion of the Loans as a Base Rate Loan. Each determination by the Administrative Agent hereunder shall be conclusive, absent manifest error.

(b) Upon the Administrative Agent's determination that the condition that was the subject of a notice under Section 4.02 has ceased, the Administrative Agent shall promptly notify the Borrowers and the Lenders of such determination, whereupon the Borrowers may elect (by delivering written notice thereof to the Administrative Agent and each of the Lenders) to convert any such Base Rate Loan to a Eurodollar Loan on the last day of the then current Monthly Period.

Section 4.03 Increased Eurodollar Loan Costs. If, after the date hereof, the adoption of any applicable Law or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) with any request or directive (whether or not having the force of law) of any Governmental Authority increases the cost (other than with respect to Taxes, which are addressed in Section 4.07 (*Taxes*)) to such Lender of, or results in

any reduction in the amount of any sum receivable by such Lender (whether of principal, interest or any other amount) in respect of, making, maintaining or funding (or of its obligation to make, maintain or fund) the Loans, then the Borrowers agree to pay to the Administrative Agent for the account of such Lender the amount of any such increase or reduction. Such Lender shall promptly notify the Administrative Agent and the Borrowers in writing of the occurrence of any such event, such notice to state, with accompanying support, the additional amount required to compensate fully such Lender for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrowers directly to such Lender within five (5) Business Days of delivery of such notice, and such notice and determination shall be binding on the Borrowers, absent manifest error.

Section 4.04 Obligation to Mitigate. (a) Each Lender agrees that, after it becomes aware of the occurrence of an event that would entitle it to give notice pursuant to Section 4.01 (*Eurodollar Rate Lending Unlawful*), Section 4.03 (*Increased Eurodollar Loan Costs*) or Section 4.06 (*Increased Capital Costs*) or to receive additional amounts pursuant to Section 4.07 (*Taxes*), such Lender shall use reasonable efforts to make, fund or maintain its affected Loan through another lending office (i) if as a result thereof the increased costs would be avoided or materially reduced or the illegality would thereby cease to exist and (ii) if, in the opinion of such Lender, the making, funding or maintaining of such Loan through such other lending office would not be disadvantageous to such Lender, contrary to such Lender's normal banking practices or violate any applicable Law.

(b) No change by a Lender in its Lending Office made for such Lender's convenience shall result in any increased cost to the Borrowers.

(c) If any Lender demands compensation pursuant to Section 4.03 (*Increased Eurodollar Loan Costs*) or Section 4.06 (*Increased Capital Costs*) with respect to any Loan, the Borrowers may, at any time upon at least three (3) Business Days' prior notice to such Lender through the Administrative Agent, elect to convert such Loan to a Base Rate Loan. Thereafter, unless and until such Lender notifies the Borrowers that the circumstances giving rise to such notice no longer apply, all Loans by such Lender shall bear interest as Base Rate Loans. If such Lender notifies the Borrowers that the circumstances giving rise to such notice no longer apply, the Borrowers may elect (by delivering written notice thereof to the Administrative Agent and each of the Lenders) to convert the principal amount of each such Base Rate Loan to a Eurodollar Loan on the first day of the next following Interest Period.

Section 4.05 Funding Losses. In the event that any Lender incurs any loss or expense (including any loss or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Loan as a Eurodollar Loan, and any customary administrative fees charged by such Lender in connection with the foregoing) as a result of (a) any conversion or repayment or prepayment of the principal amount of any Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.07 (*Optional Prepayment*), Section 3.08 (*Mandatory Prepayment*), Section 4.01 (*Eurodollar Rate Lending Unlawful*) or otherwise, or (b) the Borrowers failing to borrow a Loan in accordance with any Funding Notice; then, upon the written notice of such Lender to the Borrowers (with a copy to the Administrative Agent), together with accompanying support of the amounts owing,

the Borrowers shall, within five (5) Business Days of receipt thereof, pay to the Administrative Agent for the account of such Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice and determination shall be binding on the Borrowers, absent manifest error.

Section 4.06 Increased Capital Costs. If after the date hereof any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any applicable Law, guideline or request (whether or not having the force of law) of any Governmental Authority, affects the amount of capital required to be maintained by any Lender, and such Lender reasonably determines that the rate of return on its capital as a consequence of its Loan is reduced to a level below that which such Lender could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by such Lender to the Borrowers (with accompanying support for the amount required to compensate such Lender for such reduction in rate of return), the Borrowers shall pay, within five (5) Business Days after such demand, directly to such Lender additional amounts sufficient to compensate such Lender for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts shall be binding on the Borrowers, absent manifest error.

Section 4.07 Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any Obligations shall be made free and clear of, and without deduction for, any Taxes, unless required by Law; provided, that if any Borrower shall be required to deduct any Indemnified Taxes from any such payment, 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 4.07) the Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions and (iii) the Borrowers shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrowers. In addition, the Borrowers shall timely pay any Indemnified Taxes arising from any payment made under any Financing Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Financing Document and not collected by withholding at the source as contemplated by Section 4.07 to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Borrowers. The Borrowers shall indemnify each Agent and each Lender, within five (5) Business Days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 4.07) paid by such Agent or Lender, as the case may be, and any penalties, interest, additions to Tax and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or Agent, as the case may be, shall be conclusive, absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Borrower to a Governmental Authority, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Foreign Lenders. Each Lender (including any Participant and any other Person to which any Lender transfers its interests in this Agreement as provided under Section 11.03 (*Assignments*)) that is not a United States Person (a "Non-U.S. Lender") shall deliver to the Borrowers and the Administrative Agent two (2) copies of U.S. Internal Revenue Service Form W-8ECI, Form W-8BEN or Form W-8IMY (with supporting documentation and any other certificate or statements required for exemption from, or reduction of, U.S. federal withholding Tax), or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding Tax on all payments of interest by the Borrowers under the Financing Documents if such Lender is legally entitled to so claim, together with, in the case of a Non-U.S. Lender that is relying on an exemption pursuant to Section 871(h) or 881(c) of the Code, a certificate substantially in the form of Exhibit D certifying that such Lender is not a bank described in Section 881(c)(3)(A) of the Code. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement. In addition, to the extent that it is in a position to legally do so, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrowers and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrowers (or any other form of certification adopted by U.S. taxing authorities for such purpose). The Borrowers shall not be obligated to pay any additional amounts in respect of U.S. federal income Taxes pursuant to this Section 4.07 (or make an indemnification payment pursuant to this Section 4.07) to any Lender (or any Participant or other Person to which any Lender transfers its interests in this Agreement as provided under Section 11.03 (*Assignments*)) if the obligation to pay such additional amounts (or such indemnification) would not have arisen but for a failure by such Lender to comply with this Section 4.07(e).

ARTICLE V

REPRESENTATIONS AND WARRANTIES

In order to induce each Agent, each Lender and each other party hereto (other than the Loan Parties) to enter into this Agreement and to induce each Lender to make the Loans hereunder, each Loan Party represents and warrants to each Senior Secured Party as set forth in this Article V on the date hereof, on the Closing Date, on the date of each Funding Notice and on each Funding Date (except with respect to representations and warranties that expressly refer to an earlier or later date) as follows:

Section 5.01 Organization; Power; Compliance with Law and Contractual Obligations. Each Loan Party (a) is duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization, (b) is duly qualified to do business as is now being conducted and as is proposed to be conducted by such Loan Party and is in good standing in each jurisdiction where the nature of its business requires such qualification (including, in the case of Seneca, Illinois), (c) has all requisite power and authority required as of the date this representation is made or deemed repeated to enter into and perform its obligations under each Transaction

Document to which it is a party and to conduct its business as currently conducted by it, (d) except as set forth on Schedule 5.01(d), is in compliance in all material respects with all Laws and (e) with the exception of the Case or Cases involving such Loan Party and as a result of the Cold Shutdown of each of the Seneca Project and the Clinton Project, is in compliance in all material respects with all Contractual Obligations applicable to it, except to the extent that any non-compliance with clause (b) of this Section 5.01 in any jurisdiction (other than, in the case of Seneca, Illinois) could not reasonably be expected to result in a Material Adverse Effect.

Section 5.02 Due Authorization; Non-Contravention. The execution, delivery and performance by each Loan Party of each Transaction Document to which it is a party are within such Loan Party's organizational powers, have been duly authorized by all necessary action, and:

(a) do not contravene such Loan Party's Organic Documents;

(b) do not contravene in any material respect any Law binding on or affecting such Loan Party;

(c) will not result in any default of any Contractual Obligation binding on or affecting such Loan Party with respect to which enforcement of remedies is not stayed by means of the Chapter 11 Cases;

(d) do not require any consent or approval under such Loan Party's Organic Documents that has not been obtained;

(e) do not require any consent or approval under any Contractual Obligations binding on or affecting such Loan Party other than any approvals or consents which have been obtained; or

(f) do not result in, or require the creation or imposition of, any Lien on any of such Loan Party's properties or Equity Interests other than Permitted Liens.

Section 5.03 Governmental Approvals. (a) All material Governmental Approvals that are required to be obtained by any Loan Party in connection with (i) the due execution, delivery and performance by it of the Financing Documents to which it is a party and (ii) the grant by the Debtors of the DIP Liens and the validity, perfection and enforceability thereof have been obtained, are in full force and effect, are properly in the name of the appropriate Person, and are final and Non-Appealable.

(b) [Except as set forth on Schedule 5.03(b)], all Necessary Project Approvals are in full force and effect, are properly in the name of the appropriate Person, and are final and Non-Appealable except as a result of Cold Shutdown.

(c) The information set forth in each application (including any updates or supplements thereto) submitted by or on behalf of any Loan Party in connection with each Necessary Project Approval was accurate and complete at the time of submission and continues to be accurate and complete, in each case in all material respects and to the extent required for the continued effectiveness of such Necessary Project Approval and none of the Loan Parties has knowledge of any event, act, condition or state of facts inconsistent with such information.

(d) There is no action, suit, investigation or proceeding pending or, to the knowledge of any Loan Party, threatened in writing that would reasonably be expected to result in the material modification, rescission, termination, or suspension of any material Governmental Approval.

Section 5.04 Investment Company Act. None of the Loan Parties is, and after giving effect to the Loans and the application of the proceeds of the Loans as described herein none of the Loan Parties will be, an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

Section 5.05 Validity of Financing Documents. Each Financing Document to which any Loan Party is a party has been duly authorized, validly executed and delivered, and constitutes the legal, valid and binding obligations of such Loan Party enforceable against such Loan Party and, to the Loan Parties' knowledge, enforceable against each other party thereto (other than the Senior Secured Parties), in each case in accordance with its respective terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

Section 5.06 Financial Information. Each of the financial statements of the Loan Parties and their Affiliates delivered pursuant to this Agreement and the other Financing Documents has been prepared in accordance with GAAP, and fairly presents in all material respects the consolidated and consolidating financial condition of the Loan Parties as at the dates thereof and the results of their operations for the period then ended (subject, in the case of unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnotes).

Section 5.07 Project Compliance. (a) Each Project is and will continue to be owned, developed, constructed and maintained, subject to the Cold Shutdown of such Project, (i) in compliance in all material respects with all applicable Laws and (ii) in compliance in all material respects with the requirements of all Necessary Project Approvals then required to have been obtained.

(b) The Project is and will continue to be owned and maintained in compliance in all material respects with all of the Loan Parties' Contractual Obligations (including the Project Documents) except to the extent any failure to comply is a result of the Cases or Cold Shutdown.

Section 5.08 Litigation. (a) [Except as set forth on Schedule 5.08(a)] No material action, suit, proceeding or investigation has been instituted against any Loan Party or the Project (including in connection with any Necessary Project Approval) other than contested matters in the Cases and the filing by third parties of proofs of claim with respect to alleged Pre-Petition obligations of Loan Parties owing to such third parties.

(b) To the knowledge of the Loan Parties, no action, suit, proceeding or investigation has been instituted or threatened against any Major Project Party that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) To the knowledge of the Loan Parties, no material action, suit, proceeding or investigation has been threatened in writing against any of the Loan Parties or the Project (including in connection with any Necessary Project Approval).

Section 5.09 Sole Purpose Nature; Business. None of the Loan Parties has conducted nor is conducting any business or activities other than businesses and activities (i) relating to the ownership, development, testing, financing, construction, operation and maintenance of the Project as contemplated by the Transaction Documents (subject to Cold Shutdown) or (ii) described in the documents filed with the Bankruptcy Court by or on behalf of the Loan Parties.

Section 5.10 Contracts. (a) All contracts, agreements, instruments, letter agreements, or other documents to which any Borrower is a party or by which it or any of its properties is bound as of the date hereof (other than the Financing Documents), including the Project Documents, and all documents amending, supplementing, interpreting or otherwise modifying or clarifying such contracts, agreements, instruments, letter agreements, understandings and other documents are listed in Schedule 5.10(a), other than any such contracts that (i) have a term of less than 1 (one) year, (ii) under which any Borrower could not reasonably be expected to have obligations, liabilities or revenues equal to or in excess of one hundred thousand Dollars ($100,000) per year individually or two hundred fifty thousand Dollars ($250,000) per year in the aggregate and (iii) a termination of which could not reasonably be expected to result in a Material Adverse Effect;

(b) All contracts, agreements, instruments, letter agreements, or other documents that are required to be obtained by any Borrower in connection with the construction and operation of any Project as contemplated by the Financing Documents (subject to Cold Shutdown) (collectively, the "Project Documents") are listed in Schedule 5.10(b), other than any such contracts that (i) have a term of less than 1 (one) year, (ii) under which any Borrower could not reasonably be expected to have obligations, liabilities or revenues equal to or in excess of one hundred thousand Dollars ($100,000) per year individually or two hundred fifty thousand Dollars ($250,000) per year in the aggregate and (iii) a termination of which could not reasonably be expected to result in a Material Adverse Effect;

(c) All Project Documents entered into prior to the date hereof are in full force and effect, except such Project Documents the invalidity of which could not reasonably be expected to have a Material Adverse Effect.

(d) As of any date (after the date hereof), there are no material contracts, agreements, instruments or documents between any Borrower and any other Person relating to any Borrower or the Project other than (i) the Transaction Documents, (ii) the agreements listed in Schedule 5.10(a), and (iii) any other agreements permitted by this Agreement.

Section 5.11 Material Contracts. (a) All Material Contracts to which any Guarantor is a party or by which it or any of its properties is bound as of the date hereof (including all documents amending, supplementing, interpreting or otherwise modifying or clarifying such Material Contracts) are listed in Schedule 5.11.

(b) All Material Contracts are in full force and effect except such Material Contracts the invalidity of which could not reasonably be expected to have a Material Adverse Effect. None of the Guarantors party to any Material Contract is in breach of, or in any default under, such Material Contract that has had or could reasonably be expected to have a Material Adverse Effect with respect to which enforcement of remedies is not stayed by means of the Chapter 11 Cases.

Section 5.12 Collateral. (a) The Collateral includes all of the Equity Interests in, and all of the tangible and intangible assets of, each Debtor (other than the Equity Interests of Biosource Fuel, which are not the property or an asset of any Debtor).

(b) As set forth in the Final Order, the respective Liens and security interests (i) granted to the Collateral Agent (for the benefit of the Senior Secured Parties) pursuant to the Bankruptcy Code constitute, as to personal property included in the Collateral, a valid first-priority security interest in such personal property and (ii) as to the Mortgaged Property, constitute a valid first-priority Lien of record in the Mortgaged Property, in each case subject only to Permitted Liens.

(c) As of and after the Closing Date, the security interest granted to the Collateral Agent (for the benefit of the Senior Secured Parties) in the Collateral consisting of personal property will be perfected (i) with respect to any property that can be perfected by filing, upon the filing of UCC financing statements in the filing offices identified in Schedule 5.12, (ii) with respect to any Account Collateral or any Blocked Account Collateral that can be perfected solely by control, upon execution of this Agreement or a Blocked Account Agreement and (iii) with respect to any property (if any) that can be perfected solely by possession, upon the Collateral Agent receiving possession thereof, and in each case such security interest will be, as to Collateral perfected under the UCC or otherwise as aforesaid, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, Lien, security interest, encumbrance, assignment or otherwise, in each case subject only to Permitted Liens. After giving effect to the filings, registrations and giving of notice referred to in this sentence, all such action as is necessary has been taken to establish and perfect the Collateral Agent's rights in and to the Collateral to the extent the Collateral Agent's security interest can be perfected by filing, including any recordation, filing, registration, giving of notice or other similar action. No filing, recordation, re-filing or re-recording other than those listed on Schedule 5.12 as the same may be updated at the written request of any Borrower with the written agreement of the Administrative Agent (which shall not be unreasonably withheld, conditioned or delayed following any change in applicable Law) is necessary to perfect (or maintain the perfection of) the interest, title or Liens of this Agreement (to the extent the Collateral Agent's security interest can be perfected by filing or recording), and on and as of each relevant date on which this representation and warranty is made or deemed repeated, all such filings or recordings have been made with respect to the Collateral. The Loan Parties have properly delivered or caused to be delivered to the Collateral Agent, or provided the Collateral Agent control of, all Collateral relating to assets of or Equity Interests in the Loan Parties that require perfection of the Liens and security interests described above by possession or control. All or substantially all of the Collateral relating to assets of the Loan Parties (other than the Account Collateral, Blocked Account Collateral, certificates, securities, investments, chattel

paper, books and records and general intangibles), including real property, is or will (when acquired) be located on the Site.

Section 5.13 Ownership of Properties (Seneca). (a) Seneca has a good and valid fee ownership interest in the Seneca Site, subject to Permitted Liens.

(b) Seneca has a good and valid ownership interest, leasehold interest, license interest or other right of use in all other property and assets (tangible and intangible) included in the Collateral owned by it. Such ownership interests, leasehold interest, license interest or other rights of use are and will be sufficient to permit ownership and continuous operation of the Seneca Project in Cold Shutdown, substantially in accordance with the Project Documents. To the knowledge of Seneca, none of said properties or assets are subject to any other claims of any Person, including any easements, rights of way or similar agreements affecting the use or occupancy of the Seneca Project or the Seneca Site, other than Permitted Liens.

(c) All Equity Interests in Seneca are owned by Holding Seneca.

(d) The properties and assets of Seneca are separately identifiable and are not commingled with the properties and assets of any other Person and are readily distinguishable from the property and assets of other Persons.

(e) Seneca does not have any leasehold interest in, and is not lessee of, any real property.

(f) There are no easements, rights of way or similar agreements affecting the use or occupancy of the Project, other than Permitted Liens.

Section 5.14 Ownership of Properties (Loan Parties (Other than Seneca)). (a) Each Loan Party (other than Seneca) has a good and valid ownership interest, leasehold interest, license interest or other right of use in all other property and assets (tangible and intangible) included in the Collateral owned by such Loan Party. Such ownership interests, leasehold interest, license interest or other rights of use are and will be sufficient to permit ownership and continuous operation of the Clinton Project in Cold Shutdown. To the knowledge of such Loan Parties, none of said properties or assets are subject to any other claims of any Person, other than Permitted Liens.

(b) All Equity Interests in Holding Seneca, Holding Clinton and NBF Operations are owned by Biosource Fuels.

(c) All Equity Interests in Holding Trade, Biosource America and Technologies are owned by NBF Operations.

(d) All Equity Interests in Biofuels Trade are owned by Holding Trade.

(e) All Equity Interests in Clinton are owned by Holding Clinton.

(f) The properties and assets of the Loan Parties (other than Seneca) are separately identifiable and are not commingled with the properties and assets of any other Person and are readily distinguishable from the property and assets of other Persons.

(g) All real property leased or owned by the Loan Parties (other than Seneca) is set forth in Schedule 5.14.

Section 5.15 Taxes. (a) [Except as set forth on Schedule 5.15(a)] Each Loan Party has (i) filed all income Tax Returns and all other material Tax Returns required by Law to have been filed by it and (ii) has paid all Taxes thereby shown to be owing, as and when the same are due and payable, other than, in the case of this Section 5.13(ii), Taxes that are subject to a Contest.

(b) None of the Borrowers other than Biosource Fuels and Biosource America is or will be taxable as a corporation for federal Tax purposes, and none of the Borrowers other than Biosource Fuels and Biosource America has or will take any action to cause it to be treated as a corporation for state or local Tax purposes if it would, in the absence of such action, not be taxable as a corporation for state or local purposes.

(c) None of the Loan Parties is a party to any Tax sharing agreement (except the Redevelopment Agreement) with any Person.

(d) None of the Borrowers has agreed to extend the statute of limitations period applicable to the assessment or collection of any Tax.

(e) [Except as set forth on Schedule 5.15(e)] None of the Borrowers is currently under any governmental audit with respect to any Tax for any period, there are no claims for additional Tax being pursued by any Governmental Authority with respect to the business, income or activities of such Borrower, and none of the Borrowers has knowledge of any such claims that have not yet been asserted but are likely to be asserted by a Governmental Authority.

Section 5.16 Patents, Trademarks, Etc.

(a) Seneca has obtained and holds in full force and effect all patents, trademarks, copyrights and other such rights or adequate licenses therein, free from unduly burdensome restrictions, that are necessary for the ownership, construction, operation and maintenance of the Seneca Project.

(b) Each Loan Party (other than Seneca and Technologies) has obtained and holds in full force and effect all patents, trademarks, copyrights and other such rights or adequate licenses therein, free from unduly burdensome restrictions, that are necessary for the ownership and operation of its business.

(c) Technologies is the sole owner of the issued and pending patents set forth on Scheduled 5.16(d). No claims have been made against Technologies with respect to such issued or pending patents or its ownership thereof and the issued and pending patents are not subject to any Liens other than Permitted Liens.

(d) Schedule 5.16(d) sets forth a listing of all registered Intellectual Property and pending applications for registration of Intellectual Property owned or used by Technologies.

(e) Schedule 5.16(e) sets forth all written licenses (excluding off-the-shelf Software and end-user licenses for mass market Software) to which Technologies is a party either as a licensee or licensor and any other material contracts under which Technologies grants or receives any rights to Intellectual Property. Each such license or contract is valid and enforceable against Technologies and the other parties thereto in accordance with its terms. Neither Technologies nor, to the knowledge of any Loan Party, any other party thereto is in default in the performance, observance or fulfillment of any obligation, covenant or conditions contained in any such license or contract.

(f) Technologies owns and possesses all, right, title and interest in and to, or has a valid and enforceable right or license to use, the Intellectual Property owned or used by Technologies ("Technologies Intellectual Property") as currently being used. The Technologies Intellectual Property constitutes all Intellectual Property necessary to permit Technologies to conduct its business as currently conducted. The execution, delivery and performance of this Agreement and the other Financing Documents and the transactions contemplated hereby and thereby will not constitute a breach or default under any license or contract under which Technologies grants or receives any rights to Intellectual Property (except for any such license or contract the breach or default of which is not reasonably likely to result in a Material Adverse Effect), and will not cause the forfeiture, termination, license, transfer or diminution of Technologies' rights in the Technologies Intellectual Property.

(g) Other than Permitted Liens, the owned Technologies Intellectual Property is not subject to any Liens and is not subject to any restrictions or limitations regarding use or disclosure other than pursuant to the written license agreements disclosed on Schedule 5.16(g). Except for Intellectual Property owned by third parties and licensed to Technologies pursuant to a license identified on Schedule 5.16(g) and for the licenses with respect to its Intellectual Property to which Technologies is party as licensor as identified on Schedule 5.16(g), no Person other than Technologies has any right or interest of any kind in or to the Technologies Intellectual Property, including any rights to use, license, transfer or otherwise exploit the Technologies Intellectual Property.

(h) Except as set forth on Schedule 5.16(h), the Technologies Intellectual Property owned or used by Technologies is valid, subsisting, in full force and effect, and has not been cancelled, expired or abandoned.

(i) Technologies has not infringed, misappropriated or otherwise conflicted with any Intellectual Property of any third party. Technologies has not received any notice regarding any of the foregoing including any demands or offers to license any Intellectual Property from any third party. No litigation has been instituted or brought, and none is pending, has been asserted, or, to the knowledge of Technologies, is threatened by any Person that the current use by Technologies of any Intellectual Property infringes any Intellectual Property of any third party.

(j) Except as set forth on Schedule 5.16(j), no third party is infringing or has infringed, misappropriated or otherwise violated any Technologies Intellectual Property. No such claims have been brought or threatened in writing against any third party by Technologies.

(k) As used herein, "Intellectual Property" means any of the following in any jurisdiction throughout the world: (A) patents, patent applications, patent disclosures and inventions, including any continuations, divisionals, continuations-in-part, renewals and reissues for any of the foregoing; (B) Internet domain names, trademarks, service marks, trade dress, trade names, logos, slogans and corporate names and registrations and applications for registration thereof together with all of the goodwill associated therewith; (C) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof; (D) mask works and registrations and applications for registration thereof; (E) computer Software, data, data bases and documentation thereof; (F) trade secrets and other confidential information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information) (collectively, "Trade Secrets"); and (G) copies and tangible embodiments thereof (in whatever form or medium). As used herein, "Software" means computer software programs, including all source code, object code, specifications, databases, designs and documentation related to such programs, in each case as they exist anywhere in the world.

Section 5.17 ERISA Plans. None of the Loan Parties nor any ERISA Affiliate has (or within the five year period immediately preceding the date hereof had) any liability in respect of any Plan or Multiemployer Plan. None of the Loan Parties has any contingent liability with respect to any post-retirement benefit under any "welfare plan" (as defined in Section 3(1) of ERISA) except to the extent required by Code Section 4980B, Section 601 through 609 of ERISA or comparable state statutes which provide for continuing health care coverage.

Section 5.18 Property Rights, Utilities, Supplies Etc. (a) All material property interests, utility services, means of transportation, facilities and other materials necessary for the use and operation of each 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 or will be made on commercially reasonable terms.

(b) There are no material supplies, materials or equipment necessary for construction, operation or maintenance of the Clinton Project or Seneca Project in Cold Shutdown that are not expected to be available at the Clinton Site or Seneca Site (as applicable) on commercially reasonable terms consistent with the DIP Budgets.

Section 5.19 No Defaults. (a) No Default or Event of Default has occurred and is continuing.

(b) None of the Borrowers is in breach of, or in default under, any of such Borrower's Contractual Obligations (other than a breach resulting from the events giving rise to the Cases or Cold Shutdown) that has had or could reasonably be expected to have a Material

Adverse Effect with respect to such Borrower, in each case with respect to which enforcement of remedies is not stayed by means of the Chapter 11 Cases.

Section 5.20 Environmental Warranties. (a) (i) Each Loan Party and its Environmental Affiliates are in compliance in all material respects with all applicable Environmental Laws, (ii) each Loan Party and its Environmental Affiliates have all Environmental Approvals required to operate their businesses as presently conducted or as reasonably anticipated to be conducted and are in compliance in all material respects with the terms and conditions thereof, (iii) none of the Loan Parties nor any of their respective Environmental Affiliates has received any written communication (other than a communication that the Administrative Agent has agreed in writing is not materially adverse) from a Governmental Authority that alleges that any Loan Party or any Environmental Affiliate is not in compliance in all material respects with all Environmental Laws and Environmental Approvals, and (iv) there are no circumstances that could reasonably be expected to prevent or interfere in the future with any Loan Party's compliance in all material respects with all applicable Environmental Laws and Environmental Approvals.

(b) [Except as set forth on Schedule 5.20(b)] There is no Environmental Claim pending or, to the knowledge of any Loan Party, threatened against any Loan Party or the Project. To the knowledge of each Loan Party, there is no Environmental Claim pending or threatened against any Environmental Affiliate.

(c) [Except as set forth on Schedule 5.20(c)]There are no present or past actions, activities, circumstances, conditions, events or incidents, including the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that could reasonably be expected to form the basis of any Environmental Claim against any Loan Party or any Environmental Affiliate or that could otherwise reasonably be expected to interfere with the operation of the Project.

(d) [Except as set forth on Schedule 5.20(d)]Without in any way limiting the generality of the foregoing, (i) there are no on-site or off-site locations in which any Loan Party or, to the knowledge of any Loan Party, any Environmental Affiliate has stored, disposed or arranged for the disposal of Materials of Environmental Concern that could reasonably be expected to form the basis of an Environmental Claim or that is not in compliance with applicable Environmental Laws, (ii) there are no underground storage tanks located or to be located on property owned or leased by any Loan Party, (iii) there is no asbestos or lead paint contained in or forming part of any building, building component, structure or office space owned or leased by the any Loan Party, and (iv) no polychlorinated biphenyls (PCBs) are or will be used or stored at any property owned or leased by any Loan Party.

(e) None of the Loan Parties has received any letter or request for information under Section 104 of the CERCLA, or comparable state laws, and to the knowledge of the each Loan Party, none of the business or operations of any Loan Party is the subject of any investigation by a Governmental Authority evaluating whether any remedial action is needed to respond to a release or threatened release of any Material of Environmental Concern at the Project or at any other location, including any location to which any Loan Party has transported, or arranged for the transportation of, any Material of Environmental Concern.

Section 5.21 Regulations T, U and X. None of the Borrowers is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Loan will be used for any purpose that violates, or would be inconsistent with, F.R.S. Board Regulation T, U or X. Terms for which meanings are provided in F.R.S. Board Regulation T, U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section 5.21 with such meanings.

Section 5.22 Accuracy of Information. (a) All factual information heretofore or contemporaneously furnished by or on behalf of any Loan Party in this Agreement, in any other Financing Document or otherwise in writing to any Senior Secured Party, any Consultant, or counsel for purposes of or in connection with this Agreement and the other Financing Documents or any transaction contemplated hereby or thereby (other than projections, budgets and other "forward-looking" information that have been prepared on a reasonable basis and in good faith by or on behalf of any Loan Party) is, when taken as a whole, after giving effect to any supplemental information, and as of the date furnished, true and accurate in every material respect and such information is not, when taken as a whole, after giving effect to any supplemental information, as of the date furnished, incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect.

(b) The assumptions constituting the basis on which the Loan Parties prepared the DIP Budgets that are in effect on each date this representation is made or deemed repeated, and the numbers set forth therein, were developed and consistently utilized in good faith and are reasonable and represent each Loan Party's reasonable judgment as of the date prepared as to the matters contained therein, based on all information known to the Loan Parties.

(c) Each of the Loan Parties reasonably believes that the use, ownership, operation and maintenance of the Project is technically feasible.

Section 5.23 Indebtedness. The Obligations are, after giving effect to the Financing Documents and the transactions contemplated thereby, the only outstanding Indebtedness of the Loan Parties other than Permitted Indebtedness. As set forth in the Final Order, the Obligations have the ranking given to them in Section 2.07 (*Super-Priority Nature of Obligations*).

Section 5.24 Required LLC Provisions. The Equity Interests in Seneca, Biosource America, Biofuels Trade, Holding Seneca and Holding Trade are securities governed by Article 8 of the Uniform Commercial Code and are evidenced by a certificate. Such certificated Equity Interests are in registered form within the meaning of Article 8 of the Uniform Commercial Code. No other Equity Interests constituting Collateral are evidenced by a certificate.

Section 5.25 Subsidiaries. Neither Seneca, Clinton, Biosource America, Technologies nor Biofuels Trade have any Subsidiaries. Holding Seneca has no Subsidiaries other than Seneca. Holding Trade has no Subsidiaries other than Biofuels Trade. Holding Clinton has no Subsidiaries other than Clinton. NBF Operations has no Subsidiaries other than those listed in Schedule 5.25. Biosource Fuels has no direct Subsidiaries other than NBF Operations, Holding Seneca and Holding Clinton.

Section 5.26 Foreign Assets Control Regulations, Etc. (a) The use of the proceeds of the Loan by the Borrowers will not violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

(b) None of the Loan Parties:

(i) is or will become a Person or entity described by Section 1 of Executive Order 13224 of September 24, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (12 C.F.R. 595), and none of the Loan Parties engages in dealings or transactions with any such Persons or entities; or

(ii) is in violation of the Patriot Act.

Section 5.27 Legal Name and Place of Business. (a) The exact legal name, the jurisdiction of formation, the places of business and chief executive office of each of each Loan Party and is set forth in Schedule 5.27 and, except as set forth in Schedule 5.27, none of the Loan Parties has had any other legal names in the previous five (5) years.

Section 5.28 No Brokers. None of the Loan Parties has any obligation to pay any finder's, advisory, broker's or investment banking fee in connection with the Financing Documents, except for the fees payable pursuant to Section 3.11 (*Fees*) .

Section 5.29 Insurance. All insurance required to be obtained and maintained by Seneca and Clinton in accordance with the insurance requirements set forth on Schedule 7.01(h) is in full force and effect. The insurance certificates set forth as Schedule 5.29 hereof describe all insurance coverage maintained by all Loan Parties other than Seneca and Clinton as of the date hereof and such insurance is consistent with prudent practices in the industries of such other Loan Parties. All such insurance coverage described in the preceding sentences of this paragraph is in full force and effect as of each date this representation is made or deemed repeated. All premiums then due and payable on all such insurance described in the preceding sentences of this paragraph have been paid. To the knowledge of each Loan Party, all insurance required to be obtained and maintained by any Major Project Party with respect to a Project to protect, directly or indirectly, against loss or liability to Seneca, the Seneca Project or any Senior Secured Party, as of the date this representation is made or deemed repeated, pursuant to any Project Document has been obtained, is in full force and effect and complies with the insurance requirements set forth on Schedule 7.01(h) and is otherwise in all material respects in accordance with such Project Document.

Section 5.30 Accounts. The Project Accounts exist at the Account Bank in accordance with the terms of the Pre-Petition Credit Agreement. No Loan Party has, nor is the beneficiary of, any bank account other than (a) the Project Accounts and (b) a Local Account set forth on Schedule 5.30 with respect to which a Blocked Account Agreement has been duly executed and delivered.

Section 5.31 Use of Proceeds. The proceeds of the Loans have been used solely in accordance with the terms of this Agreement.

Section 5.32 SEC Compliance. Prior to the commencement of the Cases, Biosource Fuels had made all filings required to be made by Biosource Fuels pursuant to the Securities Exchange Act of 1934, except as set forth on Schedule 5.32. Subsequent to the commencement of the Cases, Biosource Fuels has made certain 8-K filings and other filings pursuant to the Securities Exchange Act of 1934 which Biosource Fuels has reasonably deemed appropriate in light of the pendency of the Cases and the Cold Shutdown of the Projects. Except as set forth on Schedule 5.32, all factual information furnished by Biosource Fuels in any such filing described in the preceding sentences of this paragraph (other than projections, budgets and other "forward-looking" information all of which has been prepared on a reasonable basis and in good faith by Biosource Fuels) is, when taken as a whole (and after giving effect to any supplement of such information) and as of the date furnished, true and accurate in every material respect and such information is not, when taken as a whole (and after giving effect to any supplement of such information) as of the date furnished, incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect.

Section 5.33 Reorganization Matters. (a) The Cases were commenced, and the motion seeking approval of the Financing Documents and entry of the Final Order was filed with the Bankruptcy Court, in each case in accordance with the Bankruptcy Code and the Bankruptcy Rules, and proper notice thereof and proper notice of the hearings for the approval of the Final Order has been given.

(b) Pursuant to and solely to the extent permitted in the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrowers and the Guarantors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(l) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out.

(c) Pursuant to and solely to the extent permitted in the Final Order, the Obligations will be secured by a valid and perfected Lien having the priority described in the Final Order.

(d) The Final Order is in full force and effect and has not been modified or amended without the consent of the Administrative Agent and the Required Lenders, or reversed or stayed.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.01 Conditions to Closing and Initial Funding. The Closing Date shall be a date on or after the entry of the Final Order and the Closing Date and the initial Funding shall be subject to the satisfaction of each of the following conditions precedent:

(a) Delivery of Financing Documents and Final Order. The Administrative Agent shall have received each of the following fully executed documents, each of which shall be originals, portable document format ("pdf") or facsimiles (followed promptly by originals), duly executed and delivered by each party thereto and in form and substance satisfactory to each Lender in its sole and absolute discretion:

(i) this Agreement;

(ii) the Mortgages;

(iii) the Sterling Blocked Accounts Agreement;

(iv) if requested by any Lenders, the original Notes, duly executed and delivered by an Authorized Officer of each Borrower in favor of each such requesting Lender;

(v) the Final Order; and

(vi) documentation evidencing a cash management system consistent with the existing cash management system of the Debtors and subject to tripartite account control agreements.

(b) Delivery of Other Documents. (i) The Administrative Agent shall have received true, correct and complete copies of each contract, agreement, instrument, letter agreement or other document identified on Schedule 5.11 or Schedule 5.12 reasonably requested by the Administrative Agent.

(c) Officer's Certificates. The Administrative Agent shall have received a duly executed certificate of an Authorized Officer of the Loan Party Agent, dated as of the Closing Date, upon which the Administrative Agent and each Lender may conclusively rely, certifying that (A) all conditions set forth in this Section 6.01 have been satisfied on and as of the Closing Date and (B) all representations and warranties made by any Loan Party in this Agreement and each other Financing Document to which any Loan Party is a party are true and correct on and as of the Closing Date (except with respect to representations and warranties that expressly refer to an earlier date);

(d) Resolutions, Incumbency, Organic Documents. The Administrative Agent shall have received from each Loan Party a certificate of an Authorized Officer, dated as of the Closing Date, upon which the Administrative Agent and each Senior Secured Party may conclusively rely, as to:

(i) satisfactory resolutions of its members, managers or directors, as the case may be, then in full force and effect authorizing the execution, delivery and performance of each Financing Document to which it is party and the consummation of the transactions contemplated therein (including the appointment of the Loan Party Agent);

(ii) the incumbency and signatures of those of its officers and representatives duly authorized to execute and otherwise act with respect to each Financing Document to which it is party; and

(iii) such Person's Organic Documents, which shall be in form and substance reasonably satisfactory to the Administrative Agent, and in every case certifying that (A) such documents are in full force and effect and no term or condition thereof has been amended from the form thereof delivered to the Administrative Agent and (B) no material breach, material default or material violation thereunder has occurred and is continuing.

(e) Legal and Collateral Due Diligence. All legal and collateral due diligence shall have been completed to the satisfaction of the Administrative Agent and each of the Lenders. All required Bankruptcy Court approvals for the DIP Facility shall have been obtained by the Debtors.

(f) Authority to Conduct Business. The Administrative Agent shall have received satisfactory evidence, including certificates of good standing from the Secretaries of State of each relevant jurisdiction, dated no more than five (5) Business Days (or such other time period reasonably acceptable to the Administrative Agent) prior to the Closing Date, that each Loan Party is duly authorized to carry on its business, and is duly formed, validly existing and in good standing in each jurisdiction in which it is required to be so authorized.

(g) Lien Search; Perfection of Security. The Administrative Agent shall have received satisfactory copies or evidence, as the case may be, of the following actions in connection with the perfection of the DIP Liens:

(i) completed requests for information or Lien search reports, dated no more than five (5) Business Days (or such other, longer time period reasonably acceptable to the Administrative Agent) before the Closing Date, listing all effective UCC financing statements, fixture filings or other filings evidencing a security interest filed in such jurisdictions reasonably requested by the Administrative Agent that name any Loan Party as a debtor, together with copies of each such UCC financing statement, fixture filing or other filings, which shall show no Liens other than Permitted Liens;

(ii) acknowledgement copies or stamped receipt copies or confirmation of submission for filing of proper UCC financing statements and other filings and recordations (including fixture filings), each in form and substance satisfactory to the Administrative Agent and the Collateral Agent, duly filed in all jurisdictions that the Administrative Agent and the Collateral Agent

may deem necessary or desirable, or that are reasonably requested by the Administrative Agent or the Collateral Agent, in order to perfect and protect the DIP Liens created hereunder and pursuant to the Orders and the priority thereof; and

(iii) the original certificates representing all Equity Interests of each Debtor or each direct Subsidiary of a Debtor that has issued certificates to evidence its Equity Interests forming part of the Collateral shall have been delivered to the Collateral Agent, in each case together with a duly executed irrevocable proxy and a duly executed transfer power signed by the Debtor that is the holder of such Equity Interests, each in form and substance satisfactory to the Administrative Agent and the Collateral Agent, and as to each other Debtor or direct Subsidiary of a Debtor whose Equity Interests form part of the Collateral, a duly executed irrevocable proxy signed by the Debtor that is the holder of such Equity Interests shall have been delivered to the Collateral Agent.

(h) Third Party Approvals. The Administrative Agent shall have received reasonably satisfactory documentation of any approval by any Person required in connection with any transaction contemplated by this Agreement or any other Financing Document that the Administrative Agent has reasonably requested in connection herewith.

(i) Fees; Expenses. The Administrative Agent shall have received for its own account, or for the account of each Senior Secured Party entitled thereto, all fees due and payable on the Closing Date pursuant to Section 3.11 (*Fees*), and all costs and expenses (including costs, fees and expenses of legal counsel and Consultants) for which invoices have been presented. The Pre-Petition Administrative Agent shall have received all fees due and payable to it pursuant to the Pre-Petition Credit Agreement and all costs and expenses (including costs, fees and expenses of legal counsel and Consultants) for which invoices have been presented, in each case, required to be paid on or before the Closing Date.

(j) Insurance. The Administrative Agent shall have received satisfactory evidence that the insurance requirements set forth on Schedule 7.01(h) with respect to the Borrowers and the Project have been satisfied, including binders or certificates evidencing the commitment of insurers to provide each insurance policy required by Schedule 7.01(h), evidence of the payment of all premiums then due and owing in respect of such insurance policies and a certificate of the Insurance Consultant and the Borrowers' insurance broker (or insurance carrier) certifying that all such insurance policies are in full force and effect.

(k) Bank Regulatory Requirements. The Administrative Agent shall have received at least four (4) Business Days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act.

(l) DIP Budgets. The Seneca Budget and the Non-Seneca Budget shall have been approved by the Required Lenders and shall have been attached to the Final Order entered by the Bankruptcy Court.

(m) Final Order. The Final Order shall have been entered by the Bankruptcy Court, after notice given and a hearing conducted in accordance with Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (and any applicable local bankruptcy rules).

(n) No Litigation. No litigation shall have been commenced which has not been stayed by the Bankruptcy Court and which, if successful, would have a Material Adverse Effect on any Debtor, the business activities of such Debtor or the ability of such Debtor to repay the Loans, or would challenge the transactions contemplated by this Agreement.

(o) Other Information. The Lenders shall have received all other information reasonably requested from the Loan Parties.

Notwithstanding anything to the contrary contained in this Section 6.01, the Closing Date shall not occur after July __, 2009, unless otherwise consented to in writing by the Administrative Agent and the Required Lenders.

Section 6.02 Conditions to All Fundings. The obligation of each Lender to make available each Funding of its Loans shall be subject to the fulfillment of the following conditions precedent:

(a) Funding Notice. The Administrative Agent shall have received a duly executed Funding Notice, as required by and in accordance with Section 2.02 (*Notice of Fundings*);

(b) Loan Parties' Certifications. The Administrative Agent shall have received a duly executed certificate of an Authorized Officer of the Loan Party Agent certifying that:

(i) the Loan Parties are in compliance with all conditions set forth in this Section 6.02 and all other applicable conditions in this Article VI on and as of the proposed Funding Date before and after giving effect to such Funding and to the application of the proceeds therefrom;

(ii) all representations and warranties made by each Loan Party in this Agreement and each of the Financing Documents to which it is a party are true and correct in all material respects (other than representations and warranties that are qualified Material Adverse Effect or materiality, which shall be true and correct in all respects) on and as of such Funding Date (except with respect to representations and warranties that expressly refer to an earlier date), before and after giving effect to such Funding and to the application of the proceeds therefrom; and

(iii) no Default or Event of Default has occurred and is continuing, or would result from such Funding.

(c) Government Approvals. Each Loan Party shall have all Necessary Project Approvals required as of the date of such requested Funding, and the Administrative Agent shall have received a duly executed certificate of an Authorized Officer of the Loan Party Agent

certifying that each such Necessary Project Approval is in full force and effect and is final and Non-Appealable.

(d) No Default or Event of Default. No Default or Event of Default has occurred and is continuing, or would result from, such Funding.

(e) No Litigation.

(i) No action, suit, proceeding or investigation shall have been instituted and not stayed pursuant to the Bankruptcy Code or, to the knowledge of any Loan Party, threatened in writing against any Loan Party or the Project that, if adversely determined, individually or in aggregate, has had or could reasonably be expected to have a Material Adverse Effect; and

(ii) no action, suit, proceeding or investigation shall have been instituted or threatened in writing against any Major Project Party that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(f) Abandonment, Taking, Total Loss. (i) No Event of Abandonment or Event of Total Loss shall have occurred and be continuing with respect to the Project, (ii) no Event of Taking relating to any Equity Interests forming part of the Collateral shall have occurred and be continuing, or (iii) no Event of Taking with respect to a material part of the Project shall have occurred.

(g) Representations and Warranties. Each representation and warranty made by each Loan Party in this Agreement and each of the Financing Documents to which it is a party shall be true and correct in all material respects (except with respect to representations and warranties that expressly refer to an earlier date) before and after giving effect to such Funding and to the application of the proceeds therefrom.

(h) Fees; Expenses. The Administrative Agent shall have received for its own account, or for the account of each Senior Secured Party entitled thereto, all fees due and payable as of the date of such Funding pursuant to Section 3.11 (*Fees*), and all costs and expenses (including costs, fees and expenses of legal counsel) for which invoices have been presented. The Pre-Petition Administrative Agent shall have received all fees due and payable to it pursuant to the Pre-Petition Credit Agreement and all costs and expenses (including costs, fees and expenses of legal counsel and Consultants) for which invoices have been presented, in each case, required to be paid on or before the date of such Funding.

(i) Liens. There shall be no Liens encumbering the Collateral (other than Permitted Liens).

(j) Final Order. The Final Order, in form and substance satisfactory to the Administrative Agent and the Required Lenders, shall be entered and in full force and effect and shall not have been appealed, stayed, reversed, vacated or otherwise modified without the consent of the Administrative Agent and the Required Lenders.

(k) Closing Date. The Closing Date shall have occurred.

(l) Cash Collateral. The Borrowers shall have fully exhausted all Cash Collateral (including any proceeds thereof) solely for the purposes set forth in Section 7.01(g)(i).

(m) Additional Information. The Lenders shall have received all information reasonably requested in writing from the Loan Party Agent.

ARTICLE VII

COVENANTS

Section 7.01 Affirmative Covenants. The Loan Party agrees with each Senior Secured Party that, until the Discharge Date, each Loan Party will perform the obligations set forth in this Section 7.01 applicable to such Loan Party.

(a) Compliance with Laws. Each Loan Party shall comply in all material respects with all Laws (other than Environmental Laws, which are addressed in Section 7.01(b)) applicable to it or to its business or property.

(b) Environmental Matters.

(i) The Loan Parties shall (A) comply in all material respects with all Environmental Laws, (B) keep the Project free of any Lien imposed pursuant to any Environmental Law, (C) pay or cause to be paid when due and payable by any Loan Party any and all costs required in connection with any Environmental Laws, including the cost of identifying the nature and extent of the presence of any Materials of Environmental Concern in, on or about the Projects or on any real property owned or leased by any Loan Party, and the cost of delineation, management, remediation, removal, treatment and disposal of any such Materials of Environmental Concern, and (D) use their best efforts to ensure that no Environmental Affiliate takes any action or violates any Environmental Law that could reasonably be expected to result in an Environmental Claim.

(ii) Without limiting the provisions of Section 7.01(b)(i), the Loan Parties shall not use or allow the Projects to generate, manufacture, refine, produce, treat, store, handle, dispose of, transfer, process or transport Materials of Environmental Concern other than in compliance in all material respects with Environmental Laws.

(c) Operations and Maintenance; Conduct of Business. (i) Seneca shall own, operate and maintain (or cause to be operated and maintained) the Seneca Project in all material respects in accordance with (A) the terms and provisions of the Financing Documents and the Project Documents relating to the Seneca Project or to which Seneca is a party (except as a result of the Cases and Cold Shutdown of the Seneca Project), (B) all applicable Governmental Approvals and Laws and (C) Prudent Biodiesel Operating Practice, (ii) Clinton shall own, operate and maintain (or cause to be operated and maintained) the Clinton Project in all material respects in accordance with (A) the terms and provisions of the Financing Documents and the

Project Documents relating to the Clinton Project or to which Clinton is a party (except as a result of the Cases and Cold Shutdown of the Clinton Project), (B) all applicable Governmental Approvals and Laws and (C) Prudent Biodiesel Operating Practice and (iii) each other Loan Party shall conduct its business in all material respects in accordance with (A) the terms and provisions of the Material Contracts to which it is a party (except as a result of the Cases) and (B) all applicable Governmental Approvals and Laws.

(d) Maintenance of Properties.

(i) Each Loan Party (subject, in the case of Seneca and Clinton, to Cold Shutdown) shall keep, or cause to be kept, in good working order and condition, ordinary wear and tear excepted, all of its properties and equipment that are necessary or useful in the proper conduct of its business.

(ii) The Loan Parties shall not permit the Projects or any material portion of either of them to be removed, demolished or materially altered, unless such material portion that has been removed, demolished or materially altered has been replaced or repaired as permitted under this Agreement.

(iii) Each Loan Party shall continue to engage in business of the same type as now conducted by it and do or cause to be done all things necessary to preserve and keep in full force and effect (A) its existence and (B) its material patents, trademarks, trade names, copyrights, franchises and similar rights.

(e) Payment of Obligations. Each Loan Party shall pay and discharge as the same shall become due and payable all its Post-Petition obligations and liabilities of whatever nature, including all Post-Petition lawful claims that, if unpaid, would by Law become a Lien upon its properties (other than Permitted Liens), unless the same are subject to a Contest, except (i) where such payment, discharge or satisfaction is prohibited by the Bankruptcy Code, the Bankruptcy Rules or an order of the Bankruptcy Court, or by this Agreement or the then-current DIP Budgets, and (ii) where any such failure could not reasonably be expected to have a Material Adverse Effect and would not otherwise result in an Event of Default.

(f) Governmental Approvals. Seneca shall maintain in full force and effect, in its name, all Necessary Project Approvals (other than any such failure to maintain that could not reasonably be expected to have a Material Adverse Effect on Seneca or the Project). Each other Loan Party shall maintain in full force and effect, in the name of such Loan Party, all Governmental Approvals required in connection with the conduct of its business (other than any such failure to maintain that could not reasonably be expected to have a Material Adverse Effect on such Loan Party).

(g) Use of Proceeds.

(i) All proceeds of the Loans shall be used solely to fund (A) with respect to Seneca, in each case only to the extent specified in the Seneca Budget for the Budget Period, (1) operating expenses, limited capital expenditures and other amounts for general and ordinary course purposes of Seneca, (2) current interest and fees payable pursuant to the Financing Documents, and (3) such other

administrative payments, including the budgeted professional fees, as have been or may be authorized and approved by the Administrative Agent and the Required Lenders under the Final Order or any subsequent order of the Bankruptcy Court, and (B) with respect to the Subject Debtors, in each case only to the extent specified in the Non-Seneca Budget for the Budget Period, (1) operating expenses, limited capital expenditures and other amounts for general and ordinary course purposes of the Subject Debtors, (2) current interest and fees payable pursuant to the Financing Documents, and (3) such other administrative payments, including the budgeted professional fees, as have been or may be authorized and approved by the Administrative Agent and the Required Lenders under the Final Order or any subsequent order of the Bankruptcy Court.

(ii) Prior to the Carve-Out Date, subject to entry of an appropriate order of the Bankruptcy Court (in form and substance acceptable to the Administrative Agent and the Required Lenders), the Debtors shall be permitted to use proceeds of the Loans to pay compensation and for reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code in accordance with the Seneca Budget or the Non-Seneca Budget, as applicable, to the extent allowed by the Bankruptcy Court.

(iii) On and after the Carve-Out Date, any amounts paid in respect of any of the items set forth under clauses (i), (ii) and (iii) of the definition of "Carve Out" will reduce the Carve-Out on a dollar-for-dollar basis; provided, that nothing herein contained shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement, or compensation sought by the professionals retained by any Debtors or the Committee.

(h) Insurance. Without cost to any Senior Secured Party, Seneca and Clinton shall at all times obtain and maintain, or cause to be obtained and maintained, the types and amounts of insurance listed and described on Schedule 7.01(h), in accordance with the terms and provisions set forth therein. The Lenders shall be additional named insureds on all policies except workers compensation/employers liability policies, and the Administrative Agent shall be the loss payee, under casualty, business interruption and builders risk coverage. Seneca and Clinton shall cause such insurance to be in place no less than ten (10) days prior to the date required, and each required insurance policy shall be renewed or replaced no less than thirty (30) days prior to the expiration thereof. The Loan Parties other than Seneca and Clinton shall at all times obtain and maintain, or cause to be obtained or maintained, the types and amounts of insurance listed and described in Schedule 5.29. In the event the Loan Parties fails to take out or maintain the full insurance coverage required by this Section 7.01(h), the Administrative Agent may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same. All amounts so advanced by the Administrative Agent shall become an Obligation, and the Loan Parties shall forthwith pay such amounts to the Administrative Agent, together with interest from the date of payment by the Administrative Agent at the Default Rate.

(i) Books and Records; Inspections. Each Loan Party shall keep proper books of record and account, separate from the books and records of any other Person (including any Affiliates of such Loan Party), in which complete, true and accurate entries in conformity

with GAAP and all requirements of Law shall be made of all financial transactions and matters involving the assets and business of such Loan Party, and shall maintain such books of record and account in material conformity with applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party. Each Loan Party shall keep books and records that accurately reflect all of its business affairs, transactions and the documents and other instruments that underlie or authorize all of its actions. Each Loan Party shall permit officers and designated representatives of the Agents or the Consultant to visit and inspect any of the properties of such Loan Party (including the Project), to examine its financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its members, managers, directors, officers and independent public accountants, all at the expense of such Loan Party at any time during normal business hours and without advance notice.

(j) Project Documents. Each Borrower shall use its reasonable best efforts to preserve, protect and defend its rights under each Project Document to which it is a party except where the failure to do so results from the Cases or Cold Shutdown. Each Borrower shall use its reasonable best efforts to exercise all material rights, discretion and remedies under each Project Document in accordance with its terms and in a manner consistent with and subject to such Borrower's obligations under the Financing Documents to which it is a party except where the failure to do so exercise such rights, discretion or remedies results from the Cases or Cold Shutdown.

(k) Maintenance of Existence. Each Loan party will continue to preserve, renew and keep in full force and effect its entity status in its jurisdiction of organization and take all actions to maintain its business rights, privileges and franchises necessary or desirable in the normal course of its business.

(l) DIP Budgets.

(i) Except as provided in Section 3.07 (*Optional Prepayments*), Section 3.08 (*Mandatory Prepayments*), Section 9.02 (*Action Upon Event of Default*) and Section 9.12 (*Application of Proceeds*), until the Obligations shall have been satisfied in full, all revenues, reimbursements and receipts of the Debtors, of any kind and from time to time, shall be held in the Debtor's accounts and disbursed solely in accordance with the Seneca Budget and the Non-Seneca Budget.

(ii) For each Monthly Budget Period during the Budget Period (A) the aggregate actual disbursements by Seneca shall not exceed 110% of the corresponding aggregate amount of projected disbursements for such Monthly Budget Period as set forth in the Seneca Budget and (B) the aggregate actual cash receipts collected by Seneca shall not be less than 90% of the aggregate amount of projected cash receipts for such Monthly Budget Period as set forth in the Seneca Budget; provided, however that during such Monthly Budget Period, Seneca may carry-forward positive variances and balances within line items of the Seneca Budget and reallocate such variances and balances between other line items and other Monthly Budget Periods in the Seneca Budget. Notwithstanding the

foregoing, line items for professional fees and expenses may be carried forward by Seneca to any week within the Budget Period under the Seneca Budget.

(iii) For each Monthly Budget Period during the Budget Period (A) the aggregate actual disbursements by the Subject Debtors shall not exceed 110% of the corresponding aggregate amount of projected disbursements for such Monthly Budget Period as set forth in the Non-Seneca Budget and (B) the aggregate actual cash receipts collected by the Subject Debtors shall not be less than 90% of the aggregate amount of projected cash receipts for such Monthly Budget Period as set forth in the Non-Seneca Budget; provided, however that during such Monthly Budget Period, the Subject Debtors may carry-forward positive variances and balances within line items of the Non-Seneca Budget and reallocate such variances and balances between other line items and other Monthly Budget Periods in the Non-Seneca Budget. Notwithstanding the foregoing, line items for professional fees and expenses may be carried forward by the Subject Debtors to any week within the Budget Period under the Non-Seneca Budget.

(m) Preservation of Title; Acquisition of Additional Property.

(i) (A) Seneca shall preserve and maintain (1) good, marketable and insurable fee interest in the Seneca Site and valid easement interest in its easement interest in the Seneca Site, and (2) good, legal and valid title to all of its other respective material properties and assets, in each case free and clear of all Liens other than Permitted Liens, (B) Clinton shall preserve and maintain (1) good, marketable and insurable fee interest in the Clinton Site and valid easement interest in its easement interest in the Clinton Site, and (2) good, legal and valid title to all of its other respective material properties and assets, in each case free and clear of all Liens other than Permitted Liens and (C) each other Loan Party shall preserve and maintain (1) good, marketable and insurable fee or valid leasehold interest in the property of such Loan Party set forth on Schedule 5.14, and (2) good, legal and valid title to all of its other respective material properties and assets, in each case free and clear of all Liens other than Permitted Liens.

(ii) No Loan Party shall acquire or commence to lease any real property interests without the prior written consent of the Required Lenders and the Administrative Agent.

(n) Maintenance of Liens; Creation of Liens.

(i) The Loan Parties shall take or cause to be taken all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to maintain and preserve the DIP Liens and the priority thereof.

(ii) The Loan Parties shall take promptly all actions reasonably requested by the Administrative Agent to cause each Additional Project Document and each Material Contract to become subject to the DIP Liens, shall

deliver certified copies of such Additional Project Document or Material Contract, as applicable, to the Administrative Agent and, if requested by the Administrative Agent, shall deliver any Ancillary Documents related thereto.

(o) Reorganization Matters. The Borrowers and the Guarantors shall comply with the Final Order including the sale procedures set forth in Paragraph __ of the Final Order. The Borrowers and the Guarantors shall provide to or serve upon the Administrative Agent copies of all pleadings, motions, applications and other documents or information (i) filed by or on behalf of any Borrower or any Guarantor with the Bankruptcy Court or (ii) provided to any creditors' committee appointed in the Chapter 11 Cases. The Borrowers and the Guarantors shall provide the Administrative Agent with drafts of all material pleadings, motions, claims objections and complaints, and any plan of reorganization or liquidation, to be filed by or on behalf of any Borrower or any Guarantor in advance of such filing.

(p) Professional Fees. Promptly following receipt thereof, the Borrowers shall deliver to the Administrative Agent all monthly fee statements detailing the fees of all its professionals (including counsel and financial advisors) for such month delivered in accordance with the interim compensation procedures approved by the Bankruptcy Court.

(q) Bank Accounts. Each bank account of a Loan Party shall at all times be (i) held as Collateral to secure the repayment and/or performance of the Obligations, (ii) held at a financial institution at which such Loan Party maintains its bank accounts on the Petition Date under the terms of the Pre-Petition Financing Documents, or otherwise as selected by such Loan Party from a list of approved financial institutions approved by the Required Lenders, and (iii) subject to a perfected Priming Lien in favor of the Collateral Agent on behalf of the Senior Secured Parties, with all rights and remedies in respect thereto as set forth in the Orders and the other Financing Documents. No Loan Party may open a new bank account or any other account at a financial institution without the prior written consent of the Required Lenders, which approval may be withheld in their sole discretion.

(r) Monthly Meetings. At least once per calendar month, upon request of the Administrative Agent, at mutually acceptable times (and with telephonic conferences being acceptable), the Loan Party Agent shall, and shall procure that representatives of the Loan Parties' professionals (including counsel and financial advisors) as may be requested by the Administrative Agent, meet together with the Administrative Agent to update the Administrative Agent on the status of the Cases and to discuss any other issues in connection therewith as may be requested by the Administrative Agent.

(s) Further Assurances. Upon written request of the Administrative Agent, each Loan Party shall promptly perform or cause to be performed any and all acts and execute or cause to be executed any and all documents (including UCC financing statements and UCC continuation statements) reasonably requested by the Administrative Agent for the purposes of ensuring the validity and legality of this Agreement or any other Financing Document and the rights of the Lenders and the Agents hereunder or thereunder and facilitating the proper exercise of rights and powers granted to the Lenders or the Agents under this Agreement or any other Financing Document.

Section 7.02 Negative Covenants. Each Loan Party agrees with each Senior Secured Party that, until the Discharge Date, each Loan Party will perform the obligations set forth in this Section 7.02 applicable to it.

(a) Restrictions on Indebtedness. The Loan Parties will not create, incur, assume or suffer to exist any Indebtedness except:

(i) the Obligations;

(ii) the Pre-Petition Obligations;

(iii) Pre-Petition Indebtedness existing on the Petition Date permitted by the Pre-Petition Credit Agreement;

(iv) [other Pre-Petition Indebtedness of Debtors other than Seneca listed on Schedule 7.02(a);][2]

(v) [Pre-Petition and Post-Petition unsecured intercompany loans from Nova Biofuels Midwest, LLC and Nova Biofuels Oklahoma, LLC, indirect Subsidiaries of Biosource Fuels, to any one or more of the Debtors in an aggregate amount not to exceed $1,200,000];

(vi) the Pre-Petition Notes and any Guarantee obligations of Clinton and Holding Clinton in respect thereof;

(vii) Post-Petition accounts payable to trade creditors incurred n the ordinary course of business and (A) not more than sixty (60) days past due or (B) subject to a Contest not more than six (6) months past due and not exceeding amounts contemplated by the DIP Budgets;

(viii) Pre-Petition accounts payable to trade creditors to the extent such trade creditors are prevented under the Bankruptcy Code from exercising any rights or remedies with respect to the payment of such Pre-Petition accounts payable; and

(ix) obligations as lessee under operating leases or leases for the rental of any real or personal property which are required by GAAP to be capitalized where all such leases under this Section 7.02(a) do not require the Loan Parties to make scheduled payments to the lessors during the Budget Period in excess of the amounts allocated thereto in the DIP Budgets.

(b) Liens. No Loan Party shall create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets or its Equity Interests, whether now owned or hereafter acquired, except:

[2] Subject to review of schedule.

(i) Liens in favor, or for the benefit, of the Collateral Agent and the Senior Secured Parties;

(ii) Liens in favor, or for the benefit, of the Pre-Petition Collateral Agent (including any Liens in favor, or for the benefit, of the Pre-Petition Collateral Agent securing the Adequate Protection Obligations);

(iii) Liens for Taxes, assessments and other governmental charges that are not yet due or the payment of which is the subject of a Contest or for Taxes as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court;

(iv) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is the subject of a Contest or for amounts as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court;

(v) Liens of no more than two hundred fifty thousand Dollars ($250,000) in the aggregate securing judgments for the payment of money not constituting an Event of Default, provided that each such Lien is subject to a Contest and any appropriate legal proceedings which may have been initiated for the review shall not have been terminated or the period within such proceedings may have been initiated shall not have expired;

(vi) rights of setoff and other similar Liens of banks holding Local Accounts, solely to the extent permitted by, and in accordance with, the Blocked Accounts Agreement applicable to such Local Account;

(vii) any Liens on the Seneca Project or the Clinton Project that are: (i) with respect to the Seneca Project, reflected on the title insurance policy issued in favor of the Pre-Petition Collateral Agent in connection with the closing on the Pre-Petition Credit Agreement (and/or any title continuation or bring down endorsement issued to the Pre-Petition Collateral Agent in connection with such title insurance policy) or (ii) with respect to the Clinton Project, reflected on the title insurance policy issued in favor of the Indenture Trustee in connection with the closing on the Indenture (and/or any title continuation or bring down endorsement issued to the Indenture Trustee in connection with such title insurance policy); and

(viii) Clinton Liens.

(c) Permitted Investments. The Loan Parties shall not make any investments, loans or advances (whether by purchase of stocks, bonds, notes or other securities, loans, extensions of credit, advances or otherwise) except for investments (i) in Cash Equivalents, (ii) in connection with the bankruptcy of suppliers or customers of the Loan Parties (provided, that such investments are subject to a first priority perfected Lien in favor of the Collateral Agent) and (iii) existing on the date hereof in Subsidiaries. The Borrowers shall select Cash

Equivalents having such maturities as shall cause the Project Accounts to have a cash balance as of any day sufficient to cover the transfers made from the Project Accounts on such day in accordance with this Agreement, the other Financing Documents, the Project Documents and any Additional Project Documents.

(d) Change in Business. Seneca shall not (i) enter into or engage in any business other than the ownership, operation, maintenance, development, start-up, testing, use and financing of the Seneca Project and all activities reasonably related thereto or (ii) change in any material respect the scope of the Seneca Project from that which is contemplated as of the date hereof. Clinton shall not (i) enter into or engage in any business other than the ownership, operation, maintenance, development, start-up, testing, use and financing of the Clinton Project and all activities reasonably related thereto or (ii) change in any material respect the scope of the Clinton Project from that which is contemplated as of the date hereof. None of the other Loan Parties shall change in any material respect the scope of its business from that which exists as of the date hereof. For the avoidance of doubt, (x) the presently existing condition of Cold Shutdown in respect of the Seneca and Clinton Projects is not a change in business and (y) each Loan Party may conduct as a part of its business the marketing of its assets for sale consistent with and as contemplated by the Orders.

(e) Equity Issuances. None of the Loan Parties shall issue any Equity Interests unless such Equity Interests are immediately pledged to the Collateral Agent (for the benefit of the Senior Secured Parties) on a first priority perfected basis.

(f) Asset Dispositions.

(i) None of the Loan Parties shall Dispose of any Property (other than Products, work in process and un-needed chemicals), whether now owned or hereafter acquired, outside the ordinary course of business without (i) a Bankruptcy Court order in form and substance acceptable to the affected Borrowers and Guarantors and the Administrative Agent, the Lenders, the Pre-Petition Agent and the Pre-Petition Lender and (ii) the prior written consent of the Collateral Agent, the Required Lenders, the Pre-Petition Administrative Agent and the Pre-Petition Lenders which consent may be withheld in their sole discretion, except: to the extent that such assets are uneconomical, obsolete or no longer useful or no longer usable in connection with the operation or maintenance of the Project;

(ii) It is contemplated that the Debtors will seek to dispose of the Seneca Project, the Clinton Project and the Technologies Intellectual Property and certain related collateral. The Debtors agree that any such disposition shall be in accordance with the timetable and procedures set forth in the Final Order with such modifications as may be approved by the Administrative Agent, the Lenders, the Pre-Petition Administrative Agent and the Pre-Petition Lenders in each case in their sole discretion.

(g) Consolidation, Merger. None of the Loan Parties will (i) directly or indirectly liquidate, wind up, terminate, reorganize or dissolve itself (or suffer any liquidation,

winding up, termination, reorganization or dissolution); or (ii) acquire (in one transaction or a series of related transactions) all or any substantial part of the assets, property or business of, or any assets that constitute a division or operating unit of, the business of any Person or otherwise merge or consolidate with or into any other Person. Notwithstanding the foregoing, the Loan Parties may propose a plan of reorganization or liquidation, which contemplates the consolidation or dissolution of Loan Parties with the prior written consent of the Administrative Agent.

(h) Transactions with Affiliates. None of the Loan Parties shall enter into or cause, suffer or permit to exist any arrangement or contract with any of its Affiliates or any other Person that owns, directly or indirectly, any Equity Interest in such Loan Party except pursuant to an order of the Bankruptcy Court or as otherwise expressly contemplated and/or permitted under the Financing Documents.

(i) Accounts.

(i) The Loan Parties shall not maintain, establish or use any deposit account, securities account (as each such term is defined in the UCC) or other banking account other than the Project Accounts or a Local Account set forth on Schedule 5.30 with respect to which a Blocked Account Agreement has been entered into.

(ii) None of the Loan Parties shall change the name or account number of any of the Project Accounts or Local Accounts without the prior written consent of the Administrative Agent, which will not be unreasonable delayed, conditioned or withheld.

(j) Subsidiaries. Seneca shall not create or acquire any Subsidiary or enter into any partnership or joint venture. Biosource Fuels shall not create or acquire any Subsidiary (other than Holding Seneca, NBF Operations and Holding Clinton) or enter into any partnership or joint venture. NBF Operations shall not create or acquire any Subsidiary (other than Nova Holding Seneca SIP, LLC, Nova Holding Lincoln, LLC, Nova Holding Oklahoma, LLC, Nova Holding Midwest, LLC, Holding Trade, Biosource America, Technologies and Nova Biosource Services, LLC and the existing indirect subsidiaries of NBF Operations listed on Schedule 5.25) or enter into any partnership or joint venture. Holding Trade shall not create or acquire any Subsidiary (other than Biofuels Trade) or enter into any partnership or joint venture.

(k) ERISA. None of the Loan Parties will engage in any nonexempt prohibited transactions under Section 406 of ERISA or under Section 4975 of the Code that could reasonably be expected to result in a material liability. None of the Loan Parties will incur any obligation or liability in respect of any Plan, Multiemployer Plan or employee welfare benefit plan providing post-retirement welfare benefits (other than a plan providing continuation coverage under Part 6 of Title I of ERISA, Section 4980B of the Code, or any comparable state statute requiring continuing health care coverage) that could reasonably be expected to result in a material liability and each Loan Party shall obtain the prior written approval of the Administrative Agent before incurring any such obligation or liability.

(l) Taxes. None of the Borrowers (other than Biosource Fuels and Biosource America) shall make any election to be treated as an association taxable as a corporation for federal, state or local Tax purposes.

(m) Project Documents. Other than changes that individually and in the aggregate are not material, none of the Loan Parties shall direct or consent or agree to any amendment, modification, supplement, or waiver to any Project Document or Material Contract to which it is a party without the prior written consent of the Required Lenders. None of the Loan Parties shall direct or consent or agree to any termination, repudiation, cancellation or rejection of, any Project Document or Material Contract to which it is a party and that is contemplated by the then-current DIP Budgets without prior consultation with the Required Lenders. Except for collateral assignments to the Collateral Agent, none of the Loan Parties shall assign any of its rights under any Project Document or Material Contract to which it is a party to any Person, or consent to the assignment of any obligations under any such Project Document or Material Contract by any other party thereto.

(n) Additional Project Documents; Material Contracts. None of the Borrowers shall enter into any Additional Project Document that is not contemplated by the then-current Seneca DIP Budget except with the prior written approval of the Administrative Agent. No other Loan Party shall enter into any Material Contract that is not contemplated by the then-current DIP Budgets except with the prior written approval of the Administrative Agent.

(o) Suspension or Abandonment. No Loan Property shall (i) permit or suffer to exist an Event of Abandonment without the prior written approval of the Required Lenders or (ii) except to the extent contemplated by Cold Shutdown, order or consent to any suspension of work under any Project Document or any Material Contract with respect to a Project without the prior written approval of the Administrative Agent.

(p) Use of Proceeds; Margin Regulations. None of the Borrowers shall use any proceeds of any Loan other than in accordance with the provisions of Article II (*Commitments and Funding*) and Section 7.01(g) (*Affirmative Covenants – Use of Proceeds*). None of the Borrowers shall use any part of the proceeds of any Loan to purchase or carry any Margin Stock (as defined in Regulation U) or to extend credit to others for the purpose of purchasing or carrying any Margin Stock. None of the Borrowers shall use the proceeds of any Loan in a manner that could violate or be inconsistent with the provisions of Regulations T, U or X.

(q) Environmental Matters. [Except as set forth on Schedule 7.02(q)] None of the Loan Parties shall permit (i) any underground storage tanks to be located on any property owned or leased by any Loan Party, (ii) any asbestos to be contained in or form part of any building, building component, structure or office space owned or leased by any Loan Party, (iii) any polychlorinated biphenyls (PCBs) to be used or stored at any property owned or leased by any Loan Party or (iv) any other Materials of Environmental Concern to be used, stored or otherwise be present at any property owned or leased by any Loan Party, other than Materials of Environmental Concern necessary for the construction or operation of the Project and used in accordance with all Laws and Prudent Biodiesel Operating Practice.

(r) Restricted Payments; Administrative Expenses.

(i) The Loan Parties shall not make any Restricted Payments.

(ii) No portion of the Collateral (including any Cash Collateral generated after the Petition Date) shall (A) be used by the Debtors to satisfy administrative expenses in any Chapter 11 Case other than as provided for in the Seneca Budget or the Non-Seneca Budget, or (B) be distributed by any Debtor to any Person other than in accordance with the DIP Budgets or consistent with the Final Order.

(s) Commodity Hedging Arrangements. The Loan Parties shall not enter into any Commodity Hedging Arrangements.

(t) Accounting Changes. None of the Loan Parties shall make any change in (i) its accounting policies or reporting practices, except as required by GAAP or as otherwise notified to the Administrative Agent in writing (provided, that the Loan Parties shall provide an historical reconciliation for the prior period addressing any such change in accounting practices) or (ii) its Fiscal Year without the prior written consent of the Administrative Agent.

(u) Chapter 11 Claims. Except for the Carve-Out and as set forth in the Final Order, no Debtor shall incur, create, assume, suffer to exist or permit any super-priority administrative claim against such Debtor which is *pari passu* with or senior to the claims of the Senior Secured Parties against the Debtors, except as set forth in Section 2.07 *(Super-Priority Nature of Obligations)*.

(v) DIP Budgets. None of the Loan Parties shall amend the DIP Budget without the prior written consent of the Administrative Agent and the Required Lenders.

(w) Use of Proceeds. Subject to the rights set forth in Paragraph ___ of the Final Order, no portion of the proceeds of the Loans, the Collateral (including the Cash Collateral) or the Carve-Out shall be used to (A) challenge the amount, validity, perfection, priority, extent or enforceability of, or assert any defense, counterclaim or offset to the DIP Facility, the Pre-Petition Obligations, or the Liens on the assets of the Debtors securing the Obligations or the Pre-Petition Obligations or otherwise bring any action against or assert any claim against the Agents, the Lenders or the Pre-Petition Agent or Pre-Petition Lenders, or (B) as otherwise prohibited by Paragraph __ of the Final Order.

Section 7.03 Reporting Requirements. The Borrowers will furnish to the Administrative Agent, who shall distribute copies of the following to each Lender:

(a) Weekly Cash Flow Forecast; Variance Reports. (i) Not later than the fifth Business Day of each week, an updated rolling cash flow forecast ending on the earlier of (i) (A) the last day of the Budget Period for each of Seneca and the other Debtors and (B) the scheduled Maturity Date (each such forecast, a "Weekly Cash Flow Forecast"), in the same form and with the same level of detail as the then-current applicable DIP Budgets (it being understood, however, that approval of the DIP Budgets by the Required Lenders shall only be required once a month in accordance with Section 7.01(l) (*Affirmative Covenants – DIP Budgets*)).

(ii) Not later than the third Business Day of each week, a draft weekly line-by-line variance report for the immediately preceding weekly period and on a cumulative basis from the Petition Date to the date of such report for each of Seneca (with respect to the Seneca Budget) and the other Debtors (with respect to the Non-Seneca Budget) comparing actual cash receipts and actual cash disbursements to cash receipts and cash disbursements forecasted in the applicable Seneca Budget or Non-Seneca Budget with a explanation of such variance.

(iii) Not later than the fifth Business Day of such week, a final version of such variance report.

(b) Monthly Financial Statements. Commencing not later than August 7, 2009 with respect to the report for the month of June 2009 (the "Initial Report") and thereafter as soon as available and in any event within twenty (20) days after the end of each calendar month, a report (each a "Subsequent Report") setting forth, in each case in a form and in sufficient detail satisfactory to the Administrative Agent, (x) consolidated and consolidating balance sheets of Biosource Fuels and balance sheets of each other Loan Party as of the end of such month, (y) consolidated and consolidating statements of income and cash flows of Biosource Fuels and statements of income and cash flows of each other Loan Party for such month, and for the period commencing at the end of the previous Fiscal Year and ending with the end of such month and (z) consolidated and consolidating profit and loss statements of Biosource Fuels and profit and loss statements of each other Loan Party for such month and for the period commencing at the end of the previous Fiscal Year and ending with the end of such month, in each case, prepared in accordance with GAAP (subject to the absence of footnote disclosures and to normal year-end adjustments). An Authorized Officer of the Loan Party Agent shall certify that such Authorized Officer is not aware of any fact or circumstance that would make the Initial Report inaccurate in any material respect. Each Subsequent Report shall be certified as complete and correct by an Authorized Officer of the Loan Party Agent.

(c) Auditor's Letters. Promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to any Loan Party (or the audit or finance committee of any Loan Party) by the Auditors in connection with the accounts or books of any Loan Party, or any audit of any Loan Party.

(d) Notice of Default or Event of Default. As soon as possible and in any event within two (2) days after the occurrence of any Default or Event of Default, a statement of an Authorized Officer of the Loan Party Agent setting forth details of such Default or Event of Default and the action that the Loan Parties have taken and propose to take with respect thereto.

(e) Notice of Other Events. Within three (3) Business Days after any Loan Party obtains knowledge thereof, a statement of an Authorized Officer of the Loan Party Agent setting forth details of:

(i) any litigation or governmental proceeding except contested matters in the Cases pending or threatened in writing against any Loan Party or any Project;

(ii) any litigation or governmental proceeding pending or threatened in writing against any Major Project Party or counterparty to a Material Contract that has or could reasonably be expected to have a Material Adverse Effect;

(iii) any other event, act or condition that has or could reasonably be expected to have a Material Adverse Effect; or

(iv) notification of any event of force majeure or similar event under a Project Document or a Material Contract.

(f) Project Document or Additional Project Document Notice. Promptly after delivery or receipt thereof, copies of all material notices or documents given or received by any Loan Party, pursuant to any of the Project Documents or Material Contracts including:

(i) any written notice alleging any breach or default thereunder; and

(ii) any written notice regarding, or request for consent to, any assignment, termination, modification, waiver or variation thereof.

(g) ERISA Event. As soon as possible and in any event within five (5) days after any Loan Party knows, or has reason to know, that any of the events described below has occurred, a duly executed certificate of an Authorized Officer of the Loan Party Agent setting forth the details of each such event and the action that the Loan Parties propose to take with respect thereto, together with a copy of any notice or filing from the PBGC, Internal Revenue Service or Department of Labor or that may be required by the PBGC or other U.S. Governmental Authority with respect to each such event:

(i) any Termination Event with respect to an ERISA Plan or a Multiemployer Plan has occurred or will occur that could reasonably be expected to result in any liability to any Loan Party;

(ii) any condition exists with respect to a Plan that presents a material risk of termination of a Plan (other than a standard termination under Section 4041(b) of ERISA) or imposition of an excise Tax or other material liability on any Loan Party;

(iii) an application has been filed for a waiver of the minimum funding standard under Section 412 of the Code or Section 302 of ERISA under any Plan;

(iv) any Loan Party or any Plan fiduciary has engaged in a "prohibited transaction" as defined in Section 4975 of the Code or as described in Section 406 of ERISA, that is not exempt under Section 4975 of the Code, Section 408 of ERISA or another applicable administrative, regulatory or statutory exemption, that could reasonably be expected to result in material liability to any Loan Party;

(v) there exists any Unfunded Benefit Liabilities under any ERISA Plan;

(vi) any condition exists with respect to a Multiemployer Plan that presents a risk of a partial or complete withdrawal (as described in Section 4203 or 4205 of ERISA) from a Multiemployer Plan that could reasonably be expected to result in any liability to any Loan Party;

(vii) a "default" (as defined in Section 4219(c)(5) of ERISA) occurs with respect to payments to a Multiemployer Plan and such default could reasonably be expected to result in any liability to any Loan Party;

(viii) a Multiemployer Plan is in "reorganization" (as defined in Section 418 of the Code or Section 4241 of ERISA) or is "insolvent" (as defined in Section 4245 of ERISA);

(ix) any Loan Party and/or any ERISA Affiliate has incurred any potential withdrawal liability (as defined in accordance with Title IV of ERISA); or

(x) there is an action brought against any Loan Party or any ERISA Affiliate under Section 502 of ERISA with respect to its failure to comply with Section 515 of ERISA.

(h) Notice of PBGC Demand Letter. As soon as possible and in any event within five (5) days after the receipt by any Loan Party of a demand letter from the PBGC notifying such Loan Party of a final decision finding liability and the date by which such liability must be paid, a copy of such letter, together with a duly executed certificate of the president or chief financial officer of such Loan Party setting forth the action that such Loan Party proposes to take with respect thereto.

(i) Notice of Environmental Event. Promptly and in any event within five (5) days after the existence of any of the following conditions, a duly executed certificate of an Authorized Officer of the Loan Party Agent specifying in detail the nature of such condition and, if applicable, the proposed response of the Loan Parties thereto:

(i) receipt by any Loan Party of any written communication from a Governmental Authority or any written communication from any other Person (other than a privileged communication from legal counsel to such Loan Party) or other source of written information, including reports prepared by any Loan Party, that alleges or indicates that any Loan Party or an Environmental Affiliate is not in compliance in all material respects with applicable Environmental Laws or Environmental Approvals and such alleged noncompliance could reasonably be expected to form the basis of an Environmental Claim against such Loan Party;

(ii) any Loan Party obtains knowledge that there exists any Environmental Claim pending or threatened in writing against any Loan Party or an Environmental Affiliate;

(iii) any Loan Party obtains knowledge of any release, threatened release, emission, discharge or disposal of any Material of Environmental

Concern or obtains knowledge of any material non-compliance with any Environmental Law that, in either case, could reasonably be expected to form the basis of an Environmental Claim against any Loan Party or any Environmental Affiliate; or

(iv) any Removal, Remedial or Response action is taken, or required to be taken, by any Loan Party or any other person in response to any material release, emission, discharge or disposal of any Material of Environmental Concern in, at, on or under a part of or about the properties of any Loan Party or any other property or any notice, claim or other information that any Loan Party might be subject to any Environmental Claim.

(j) Materials of Environmental Concern. The Loan Parties will maintain and make available for inspection by the Administrative Agent, the Consultants and the Lenders, and each of their respective agents and employees, on reasonable notice during regular business hours, accurate and complete records of all material non-privileged correspondence, investigations, studies, sampling and testing conducted, and any and all remedial actions taken, by any Loan Party or, to the best of any Loan Party's knowledge and to the extent obtained by any Loan Party, by any Governmental Authority or other Person in respect of Materials of Environmental Concern that could reasonably be expected to form the basis of an Environmental Claim on or affecting any Loan Party or the Project.

(k) Operating Statements. Each Debtor shall serve the Administrative Agent with a copy of the monthly operating report filed by such Debtor with the Bankruptcy Court each month during the pendency of the Cases pursuant to applicable bankruptcy law concurrently with the submission of each such report to the Bankruptcy Court.

(l) Other Information. Other information reasonably requested by the Administrative Agent or any Lender (through the Administrative Agent).

ARTICLE VIII

GUARANTEE

Section 8.01 Guarantee. Each Guarantor hereby guarantees to the Senior Secured Parties the performance and prompt payment in full when due (whether at stated maturity, upon acceleration, upon any optional or mandatory prepayment or otherwise) of the Guaranteed Obligations in each case strictly in accordance with their terms. Each Guarantor hereby further agrees that if any Borrower fails to pay in full when due (whether at stated maturity, upon acceleration, upon any optional or mandatory prepayment or otherwise) all or any part of the Guaranteed Obligations, such Guarantor will immediately pay the same, without any demand or notice whatsoever, and that, in the case of any extension of time of payment or renewal of all or any part of the Guaranteed Obligations, it will timely pay the same in full when due (whether at extended maturity, upon acceleration, upon any optional or mandatory prepayment or otherwise) in accordance with the terms of that extension or renewal. This guarantee is irrevocable and unconditional in nature and is made with respect to any Guaranteed Obligations now existing or in the future arising. The liability of each Guarantor under this guarantee shall continue until full

satisfaction of all the Guaranteed Obligations. This guarantee is a guarantee of due and punctual payment and performance and is not merely a guarantee of collection.

Section 8.02 Obligations Unconditional. The obligations of each Guarantor under Section 8.01 (*Guarantee*) shall be continuing, irrevocable, primary, absolute and unconditional irrespective of the value, genuineness, validity, regularity or enforceability of any Financing Document or any other agreement or instrument referred to therein, 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 (other than payment in full of the Guaranteed Obligations), it being the intent of this Section 8.02 that the obligations of each Guarantor hereunder shall be absolute and unconditional 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, limit or impair the liability of each Guarantor hereunder, which shall remain absolute and unconditional, as described above, without regard to and not be released, discharged or in any way affected (whether in full or in part) by:

(a) any modification or amendment (including by way of amendment, extension, renewal, novation or waiver), or any acceleration or other change in the time for payment or performance of the terms of all or any part of the Guaranteed Obligations or any Financing Document or any other agreement or instrument whatsoever relating thereto;

(b) any release, termination, waiver, abandonment, lapse or expiration, subordination or enforcement of the liability of such Guarantor made without the prior written consent of each Lender or of any other guarantee of all or any part of the Guaranteed Obligations;

(c) any exchange, substitution, release, non-perfection or impairment of any collateral securing payment of any Guaranteed Obligation;

(d) any release of any other Person (including any other guarantor with respect to the Guaranteed Obligations) from any personal liability with respect to all or any part of the Guaranteed Obligations;

(e) any settlement, compromise, release, liquidation or enforcement, upon such terms and in such manner as applicable Law may dictate, of all or any part of the Guaranteed Obligations or any other guarantee of (including any letter of credit issued with respect to) all or any part of the Guaranteed Obligations;

(f) any agreement not to pursue or enforce or any failure to pursue or enforce (whether voluntarily or involuntarily as a result of operation of law, court order or otherwise) any right or remedy in respect of any Guaranteed Obligation, any guarantee or other liability in respect thereof or any collateral or other security for any of the foregoing; any sale, exchange, release, substitution, compromise or other action in respect of any such collateral or other security; or any failure to create, protect, perfect, secure, insure, continue or maintain any Liens in any such collateral or other security;

(g) the exercise of any right or remedy available under the Financing Documents, at law, in equity or otherwise in respect of any collateral or other security for any Guaranteed Obligation or for any guarantee or other liability in respect thereof, in any order and by any manner thereby permitted, including foreclosure on any such collateral or other security by any manner of sale thereby permitted, whether or not every aspect of such sale is commercially reasonable;

(h) any manner of application of any payments by or amounts received or collected from any Person, by whomsoever paid and howsoever realized, whether in reduction of any Guaranteed Obligations or any other obligations of the Loan Parties or any other Person directly or indirectly liable for any Guaranteed Obligations, regardless of what Guaranteed Obligations may remain unpaid after any such application;

(i) any other circumstance that might otherwise constitute a legal or equitable discharge of, or a defense, set-off or counterclaim available to the Loan Parties, any Guarantor or any surety or guarantor generally, other than irrevocable payment, performance, satisfaction or discharge in full (in accordance with the terms of the applicable Financing Document);

(j) the giving of any consent to the merger or consolidation or, the sale of substantial assets by, or other restructuring or termination of the existence of the Loan Parties or any other Person or any disposition of any shares of any Guarantor; or

(k) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any other Loan Party or its assets or any resulting release or discharge of any Guaranteed Obligation. Each Guarantor acknowledges and agrees that the Guaranteed Obligations include interest on the Guaranteed Obligations at the applicable rate therefor under the Financing Documents, which accrues after the commencement of any such proceeding (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such Guaranteed Obligations include the interest which would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced), since it is the intention of the parties that the amount of the Guaranteed Obligations which is guaranteed by each Guarantor should be determined without regard to any rule of law or order which may relieve a Loan Party of any portion of the Guaranteed Obligations. Each Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Collateral Agent, or allow the claim of the Collateral Agent in respect of, interest which would have accrued after the date on which such proceeding is commenced.

(l) Should any money due or owing hereunder not be recoverable from any Guarantor for any reason, whether by operation of law or otherwise, then, in any such case, such money shall nevertheless be recoverable by the Collateral Agent from each Guarantor as though each Guarantor were the principal debtor in respect thereof and not merely a guarantor and shall be paid by each Guarantor forthwith.

Section 8.03 Waiver.

(a) Each Guarantor hereby expressly waives promptness, diligence, presentment, demand for payment or performance and protest; filing of claims with any court; any proceeding to enforce any provision of the Financing Documents; notice of acceptance of and reliance on this Agreement by the Senior Secured Parties, notice of the creation of any Guaranteed Obligations, and any other notice whatsoever; any requirement that the Collateral Agent exhaust any right, remedy, power or privilege or proceed or take any other action against the Loan Parties under any Financing Document, to which they are parties or any Lien or encumbrance on, or any claim of payment against, any property of the Loan Parties or any other agreement or instrument referred to therein, or any other Person under any other guarantee of, or Lien securing, or claim for payment of, any of the Guaranteed Obligations; any right to require a proceeding by the Collateral Agent first against the Loan Parties whether to marshal any assets or to exhaust any right or take any action against the Loan Parties or any other Person or any collateral or otherwise, any diligence in collection or protection for realization upon any Guaranteed Obligation; any obligation hereunder or any collateral security for any of the foregoing; any right of protest, presentment, notice or demand whatsoever, and any claims of waiver, release, surrender, alteration or compromise and all defenses, set-offs counterclaims, recoupments, reductions, limitations, impairments or terminations, whether arising hereunder or otherwise. Each Guarantor further waives (i) any requirement that the Loan Parties or any other Person be joined as a party to any proceeding for the enforcement by the Collateral Agent of any of the Guaranteed Obligations and (ii) the filing of claims by the Collateral Agent in the event of the receivership or bankruptcy of a Loan Party. The Collateral Agent shall have the right to bring suit directly against each Guarantor with respect to the obligations owed to the Collateral Agent hereunder either prior to or concurrently with any lawsuit against, or without bringing any suit against a Guarantor, the Loan Parties or any other Person.

(b) The enforceability and effectiveness of this Agreement and the liability of each Guarantor, and the rights, remedies, powers and privileges of the Collateral Agent under this Agreement shall not be affected, limited, reduced, discharged or terminated, and each Guarantor hereby expressly waives, to the fullest extent permitted by Law, any defense now or in the future arising, by reason of:

(i) the illegality, invalidity or unenforceability of all or any part of the Guaranteed Obligations, any Financing Document, or any agreement, security document, guarantee or other instrument relating to all or any part of the Guaranteed Obligations;

(ii) any disability or other defense with respect to all or any part of the Guaranteed Obligations, including the effect of any statute of limitations that may bar the enforcement of all or any part of the Guaranteed Obligations;

(iii) the illegality, invalidity or unenforceability of any security or guarantee for all or any part of the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of the priority of any Lien or encumbrance on any collateral for all or any part of the Guaranteed Obligations;

(iv) the cessation, for any cause whatsoever, of the liability of the Guarantor for all or any part of the Guaranteed Obligations (other than by reason of the full payment and performance of all Guaranteed Obligations);

(v) any failure of the Collateral Agent to give notice of sale or other disposition of any collateral (including any notice of any judicial or nonjudicial foreclosure or sale of any interest in real property serving as collateral for all or any part of the Guaranteed Obligations) for all or any part of the Guaranteed Obligations to the Loan Parties, the Guarantor or any other Person or any defect in, or any failure by the Loan Parties, the Guarantor or any other Person to receive, any notice that may be given in connection with any sale or disposition of any collateral;

(vi) any failure of the Collateral Agent to comply with applicable Laws in connection with the sale or other disposition of any collateral for all or any part of the Guaranteed Obligations;

(vii) any judicial or nonjudicial foreclosure or sale of, or other election of remedies with respect to, any interest in real property or other collateral serving as security for all or any part of the Guaranteed Obligations, even though such foreclosure, sale or election of remedies may impair the subrogation rights of either the Loan Parties or a Guarantor or may preclude the Loan Parties or a Guarantor from obtaining reimbursement, contribution, indemnification or other recovery from the other or any other Person and even though the Loan Parties or a Guarantor may not, as a result of such foreclosure, sale or election of remedies, be liable for any deficiency;

(viii) any act or omission of the Collateral Agent or any other Person that directly or indirectly results in or aids the discharge or release of a Loan Party of any part of the Guaranteed Obligations or any security or guarantee (including any letter of credit) for all or any part of the Guaranteed Obligations by operation of law or otherwise;

(ix) any Law which provides that the obligation of a surety or a Guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or a Guarantor's obligation in proportion to the principal obligation;

(x) any counterclaim, set-off or other claim which a Loan Party or any other guarantor of all or any part of the Guaranteed Obligations has or alleges to have with respect to all or any part of the Guaranteed Obligations;

(xi) any failure of the Collateral Agent to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person;

(xii) the election by the Collateral Agent, in any bankruptcy proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code;

(xiii) any extension of credit or the grant of any Lien or encumbrance under Section 364 of the Bankruptcy Code;

(xiv) any use of cash collateral under Section 363 of the Bankruptcy Code;

(xv) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person;

(xvi) the avoidance of any Lien or encumbrance in favor of the Collateral Agent for any reason;

(xvii) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any part of the Guaranteed Obligations (or any interest on all or any part of the Guaranteed Obligations) in or as a result of any such proceeding; or

(xviii) any action taken by the Collateral Agent that is authorized by this Agreement or by any other provision of any Financing Document or any omission to take any such action.

Section 8.04 Reinstatement. The obligations of each Guarantor hereunder shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of such Guarantor 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. Each Guarantor agrees that it will indemnify the Collateral Agent on demand for all reasonable and reasonably documented costs and expenses (including reasonable and reasonably documented fees of counsel) incurred by the Collateral Agent 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.

Section 8.05 Subrogation.

(a) To the extent of any payments made hereunder, each Guarantor shall be subrogated to the rights of the Senior Secured Parties, but each Guarantor covenants and agrees that such right of subrogation shall be subordinate in right of payment to the rights of the Senior Secured Parties under the Financing Documents for which full payment has not been made or provided for and, to that end, each Guarantor agrees not to claim or enforce any such right of subrogation or any right of set-off or any other right which may arise on account of any payment made by such Guarantor in accordance with the provisions of this Agreement unless and until all of the Guaranteed Obligations owned or held by Persons other than such Guarantor and all other sums due or payable under the Financing Documents have been fully, finally and indefeasibly, paid and discharged or payment therefor has been provided.

(b) If any amount shall be paid to a Guarantor on account of such subrogation rights at any time prior to the indefeasible and unconditional payment, discharge or performance in full of the Guaranteed Obligations and all other amounts payable under the Financing Documents, such amount shall be held in trust for the benefit of the Collateral Agent and shall forthwith be paid to the Collateral Agent to be credited and applied upon and against the Guaranteed Obligations, to the extent then matured, in accordance with the terms of the Financing Documents, or, to the extent not then matured or existing, be held by the Collateral Agent as collateral security for the Guaranteed Obligations.

Section 8.06 Remedies. Each Guarantor agrees that, as between such Guarantor and the Collateral Agent, any obligations of the Loan Parties to the Senior Secured Parties under any of the Financing Documents may be declared to be forthwith due and payable in accordance with the terms of this Agreement 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 Loan Parties) shall forthwith become due and payable by each Guarantor for purposes of this Agreement. For the avoidance of doubt, it is understood and agreed that any amount payable by a Guarantor pursuant to the immediately preceding sentence is intended to be applied to the payment or prepayment (as the case may be) of the related obligations of the Loan Parties (whether or not due and payable). Each of the obligations of each Guarantor under this Agreement is separate and independent of the Guaranteed Obligations, and each Guarantor agrees that a separate action or actions may be brought and prosecuted by the Collateral Agent against each Guarantor to enforce this Agreement, irrespective of whether any action is brought by the Collateral Agent against the Loan Parties under any Financing Document or whether a Loan Party is joined in any such action or actions.

Section 8.07 Continuing Guarantee. This guarantee is a continuing, absolute and unconditional guarantee of payment and performance and shall remain in full force and effect until all Guaranteed Obligations whenever arising have been paid in full in cash and all obligations of each Guarantor hereunder shall have been paid in full in cash.

ARTICLE IX

DEFAULT AND ENFORCEMENT

Section 9.01 Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion to, hearing before, or order of the Bankruptcy Court or any notice to any Loan Party, each of the following events or occurrences described in this Section 9.01 shall constitute an Event of Default.

(a) Nonpayment. Any Borrower or any Guarantor fails to pay (i) any amount of principal of any Loan when the same becomes due and payable or (ii) any interest on any Loan or any fee or other Obligation or amount payable hereunder or under any other Financing Document within three (3) Business Days after the same becomes due and payable.

(b) Breach of Warranty. Any representation or warranty of any Loan Party made or deemed to be repeated in any Financing Document is or shall be incorrect or misleading in any material respect when made or deemed made; provided that (i) if such Loan Party was not

aware that such representation or warranty was incorrect or misleading at the time such representation or warranty was made or deemed repeated, (ii) the fact, event or circumstance resulting in such incorrect or misleading representation or warranty is capable of being cured, corrected or otherwise remedied, (iii) such fact, event or circumstance resulting in such incorrect or misleading representation or warranty is cured, corrected or otherwise remedied within thirty (30) days from the date any Loan Party obtains, or should have obtained, knowledge thereof, and (iv) no Material Adverse Effect shall have occurred as a result of such representation or warranty being incorrect or misleading, then such incorrect representation or warranty shall not constitute an Event of Default.

(c) Non-Performance of Certain Covenants and Obligations. (i) Any Loan Party defaults in the due performance and observance of any of its obligations under Section 7.01(g) (*Affirmative Covenants – Use of Proceeds*), Section 7.01(h) (*Affirmative Covenants – Insurance*), Section 7.02 (*Negative Covenants*), or Section 7.03(a)-(k) (*Reporting Requirements*) of this Agreement.

(d) Non-Performance of Other Covenants and Obligations. Any Loan Party defaults in the due performance and observance of any covenant or agreement (other than covenants and agreements referred to in Section 9.01(a) or Section 9.01(c) contained in any Financing Document to which it is a party, and such default continues unremedied for a period of thirty (30) days after any Loan Party obtains, or should have obtained, knowledge thereof.

(e) Cross Defaults. Any one of the following occurs with respect to (x) any Loan Party (with respect to any Indebtedness incurred (x) Pre-Petition and which is assumed after the Petition Date or is not subject to the automatic stay provisions of Section 362 of the Bankruptcy Code or (y) Post-Petition) in an amount greater than $100,000, or (y) any other Major Project Party (with respect to any of its Indebtedness other than the Obligations), which has resulted in or could reasonably be expected to result in a Material Adverse Effect):

(i) a default occurs in the payment when due (subject to any applicable grace period and notice requirements), whether by acceleration or otherwise, of such Indebtedness; or

(ii) such Person fails to observe or perform (subject to any applicable grace periods and notice requirements) any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of any Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded.

(f) Judgments. (i) Any judgment or order that has or could reasonably be expected to have a Material Adverse Effect is rendered against any Loan Party or any other Major Project Party, or (ii) any judgment or order is rendered against any or all of the Loan Parties in an amount in excess of two hundred fifty thousand Dollars ($250,000) in the aggregate. Notwithstanding the foregoing, the allowance or disallowance of Pre-Petition claims against Loan Parties is not covered by this Event of Default.

(g) ERISA Events. (i) Any Termination Event occurs, (ii) any Plan incurs an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), (iii) any Loan Party or an ERISA Affiliate engages in a transaction that is prohibited under Section 4975 of the Code or Section 406 of ERISA for which there is no regulatory, statutory or administrative exemption, (iv) any Loan Party or any ERISA Affiliate fails to pay when due any amount it has become liable to pay to the PBGC, any Plan or a trust established under Title IV of ERISA, (v) a condition exists by reason of which the PBGC would be entitled to obtain a decree adjudicating that an ERISA Plan must be terminated or have a trustee appointed to administer it, (vi) any Loan Party or any ERISA Affiliate suffers a partial or complete withdrawal from a Multiemployer Plan or is in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, (vii) a proceeding is instituted against any Loan Party to enforce Section 515 of ERISA, (viii) the aggregate amount of the then "current liability" (as defined in Section 412(l)(7) of the Code, as amended) of all accrued benefits under such Plan or Plans exceeds the then current value of the assets allocable to such benefits by more than five hundred thousand Dollars ($500,000) at such time, or (ix) any other event or condition occurs or exists with respect to any Plan that would subject any Loan Party to any material Tax, material penalty or other material liability.

(h) Bankruptcy, Insolvency. Any Major Project Party (other than any Affiliate of the Loan Parties):

(i) generally fails to pay, or admits in writing its inability or unwillingness to pay, debts as they become due;

(ii) applies for, consents to, or acquiesces in, the appointment of a trustee, receiver, sequestrator or other custodian for such Person or a substantial portion of its property, or makes a general assignment for the benefit of creditors;

(iii) in the absence of such application, consent or acquiescence, permits or suffers to exist the appointment of a trustee, receiver, sequestrator or other custodian for such Person or for a substantial part of its property, and such trustee, receiver, sequestrator or other custodian is not discharged within sixty (60) days; provided that nothing in the Financing Documents shall prohibit or restrict any right any Senior Secured Party may have under applicable Law to appear in any court conducting any relevant proceeding during such sixty (60) day period to preserve, protect and defend its rights under the Financing Documents (and such Person shall not object to any such appearance);

(iv) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any

bankruptcy or insolvency Law, or any dissolution, winding up or liquidation proceeding, in respect of such Person and, if any such case or proceeding is not commenced by such Person, such case or proceeding is consented to or acquiesced in by such Person or results in the entry of an order for relief or remains for sixty (60) days undismissed; provided that nothing in the Financing Documents shall prohibit or restrict any right any Senior Secured Party may have under applicable Law to appear in any court conducting any such case or proceeding during such sixty (60) day period to preserve, protect and defend its rights under the Financing Documents (and such Person shall not object to any such appearance);

(v) takes any action authorizing, or in furtherance of, any of the foregoing; or

(vi) ceases to be Solvent;

provided, that such occurrence shall not constitute an Event of Default if either such occurrence has not and could not reasonably be expected to result in a Material Adverse Effect or an agreement replacing each Project Document to which such Major Project Party is a party, in form and substance, and with a counterparty, reasonably satisfactory to the Required Lenders, is entered into (together with all applicable Ancillary Documents) within forty-five (45) days thereof.

(i) Certain Project Document Defaults; Termination.

(i) Any Loan Party or any other Major Project Party shall be in material breach of or otherwise in material default under any Project Document set forth on Schedule 9.01(i), and such breach or default has continued beyond any applicable grace period expressly provided for in such Project Document (or, if no such cure period is provided, thirty (30) days); provided, that any such breach or default by any Major Project Party under any such Project Document (other than the License Agreement) shall not constitute an Event of Default if an agreement replacing such Project Document, in form and substance, and with a counterparty, reasonably satisfactory to the Required Lenders, is entered into (together with all applicable Ancillary Documents) within forty-five (45) days thereof.

(ii) Any Project Document set forth on Schedule 9.01(i) ceases to be in full force and effect prior to its scheduled expiration, is repudiated, or its enforceability is challenged or disaffirmed by or on behalf of any Borrower or any Major Project Party thereto; provided, that such occurrence shall not constitute an Event of Default with respect to any such Project Document (other than the License Agreement) if an agreement replacing such Project Document, in form and substance, and with a counterparty, reasonably satisfactory to the Required Lenders, is entered into (together with all applicable Ancillary Documents) within forty-five (45) days thereof.

(j) Governmental Approvals. Any Borrower fails to obtain, renew, maintain or comply in all material respects with any Necessary Project Approval then required to be maintained or any Necessary Project Approval then required to be maintained is revoked, canceled, terminated, withdrawn or otherwise ceases to be in full force and effect, or any Necessary Project Approval then required to be maintained is adversely modified without the consent of the Required Lenders, or a proceeding is commenced which could reasonably produce any such result.

(k) Unenforceability of Pre-Petition Documentation. Except as a result of an Effect of Bankruptcy and as set forth in the terms of the Interim Cash Collateral Order and the Final Order: :

(i) any material provision of any Pre-Petition Financing Document shall cease to be in full force and effect;

(ii) any Pre-Petition Financing Document is revoked or terminated, becomes unlawful or is declared null and void by a Governmental Authority of competent jurisdiction; or

(iii) any Pre-Petition Financing Document becomes unenforceable, is repudiated or the enforceability thereof is contested or disaffirmed by or on behalf of any party thereto other than the Pre-Petition Senior Secured Parties.

(l) Unenforceability of Documentation. At any time after the execution and delivery thereof:

(i) any material provision of any Financing Document shall cease to be in full force and effect;

(ii) any Financing Document is revoked or terminated, becomes unlawful or is declared null and void by a Governmental Authority of competent jurisdiction;

(iii) any Financing Document becomes unenforceable, is repudiated or the enforceability thereof is contested or disaffirmed by or on behalf of any party thereto other than the Senior Secured Parties; and

(iv) any Liens against any of the Collateral cease to be a perfected security interest in favor of the Collateral Agent with the priority set forth in this Agreement, or the enforceability thereof is contested by any Loan Party or any of this Agreement or the Orders ceases to provide the security intended to be created thereby with the priority purported to be created thereby.

(m) Environmental Matters. (i) Any Environmental Claim has occurred with respect to Any Loan Party, the Project or any Environmental Affiliate, (ii) any release, Threat of Release, emission, discharge or disposal of any Material of Environmental Concern occurs, and such event would reasonably be expected to form the basis of an Environmental Claim against any Loan Party, the Project or any Environmental Affiliate, or (iii) any violation or alleged

violation of any Environmental Law or Environmental Approval occurs that could reasonably result in an Environmental Claim against any Loan Party or the Project or, to the extent any Loan Party may have liability, any Environmental Affiliate that, in the case of any of Section 9.01(n)(i), (ii) or (iii), could reasonably be expected to result in liability for any Loan Party (or the Loan Parties on an aggregate basis) in an amount greater than two hundred thousand Dollars ($200,000) for any single claim or two hundred fifty thousand Dollars ($250,000) for all such claims during any twelve (12) month period or could otherwise reasonably be expected to result in a Material Adverse Effect.

(n) Loss of Collateral. Any portion of the Collateral (other than a portion that is immaterial) is damaged, seized or appropriated; provided, that such an occurrence shall not constitute an Event of Default if the applicable Loan Parties repair, replace, rebuild or refurbish such damaged, seized or appropriated Collateral within sixty (60) days of such occurrence in a manner reasonably satisfactory to Required Lenders (who may consult with any Consultant retained by them in connection with such event and/or this Agreement generally).

(o) Event of Abandonment. An Event of Abandonment occurs.

(p) Taking or Total Loss. An Event of Taking with respect to all or a material portion of the Project or any Equity Interests forming part of the Collateral occurs, or an Event of Total Loss occurs.

(q) Change of Control. A Change of Control occurs.

(r) Reorganization Matters. Any of the following occurs in any Chapter 11 Case:

(i) the use of proceeds of the Loans or the Cash Collateral in a manner inconsistent with the DIP Budgets, the Orders or the Financing Documents; or

(ii) the payment of claims existing prior to the Petition Date other than (A) as set forth in a DIP Budget or (B) after approval by the Administrative Agent and authorization by an order of the Bankruptcy Court; or

(iii) the dismissal or conversion to Chapter 7 of any of the Chapter 11 Cases; or

(iv) the appointment of a trustee or examiner in any of the Chapter 11 Cases; or

(v) the entry of an order that, in the sole determination of the Administrative Agent and the Required Lenders, in any way modifies, stays, reverses, or vacates the Final Order, in a manner adverse to the Agents, the Lenders, the Pre-Petition Agents or the Pre-Petition Lenders without their respective written consent which may be withheld in their sole discretion or the Final Order ceases to be in full force and effect; or

(vi) the entry of the Final Order shall not have occurred prior to or concurrently with the expiration of the authority to use Cash Collateral under the Interim Cash Collateral Order; or

(vii) any Debtor petitions the Bankruptcy Court to obtain additional financing *pari passu* or senior to the Obligations; or

(viii) except as expressly set forth in this Agreement or the Final Order, the entry of an order granting any super-priority claim or Lien equal or superior to that granted to the Collateral Agent, for the benefit of the Senior Secured Parties, on the assets of the Debtors; or

(ix) the entry of an order granting relief from the automatic stay so as to allow a third party to proceed against any material assets of the Debtors; provided that, solely for purposes of this clause (ix) and as a safe harbor and not an exclusive determination or definition of materiality, relief as to assets having a fair market value, in the aggregate as to one or more orders, not to exceed $250,000 shall not be deemed material; or

(x) the entry of any order of the Bankruptcy Court confirming any plan of liquidation or reorganization that does not contain a provision for termination of the DIP Facility and repayment in full in cash of all of the Obligations and the Adequate Protection Priority Claims on or before the effective date of such plan; or

(xi) any Debtor violates or breaches the Final Order or files any pleadings seeking, joining in, or otherwise consenting to any alteration, violation or breach of the Final Order, in each case in a manner adverse to the Agents, the Lenders the Pre-Petition Agents or the Pre-Petition Lenders, in each case in the sole determination of such party; or

(xii) any third party shall file any pleading seeking or joining in any attempt to alter, violate or breach the Final Order in a manner adverse to the Agents, the Lenders, the Pre-Petition Agents or the Pre-Petition Lenders in each case in the sole determination of such party; or

(xiii) any Debtor or any Affiliate thereof fails to comply with the provisions of Paragraph 20 of the First Interim Cash Collateral Order as incorporated into any other Order; or

(xiv) (A) any Debtor engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of the Obligations or the Pre-Petition Obligations or the Liens on or security interests in the assets of the Debtors securing the Obligations or the Pre-Petition Obligations, including seeking to equitably subordinate or avoid the Liens securing the Obligations or the Pre-Petition Obligations, or (B) any Debtor engages in or supports any investigation or assertion of any claims or causes of action (or supporting the assertion of the same) against the Administrative Agent, the Lenders, the

Pre-Petition Administrative Agent or the Pre-Petition Lenders; provided, that it shall not constitute an Event of Default if the Debtors provide written information with respect to the Pre-Petition Obligations to a party-in-interest or are compelled to provide information by an order of the Bankruptcy Court and provide prior written notice to the Administrative Agent and the Lenders of the intention or requirement to do so; furthermore, it shall not constitute an Event of Default if the Borrowers and Guarantors engage in oral communication to neutrally assist a party in understanding the Pre-Petition Financing Documents or other publicly available information with respect to the Pre-Petition Obligations; or

(xv) any person shall seek a Section 506(a) Determination with respect to the Pre-Petition Obligations that is unacceptable to the Pre-Petition Administrative Agent and the Pre-Petition Lenders; provided, however, it shall not constitute an Event of Default if the Section 506(a) Determination is sought either (i) pursuant to the challenge period provided for in Paragraph 30 of the First Interim Cash Collateral Order, or (ii) to determine the value of the Pre-Petition Administrative Agent's and the Pre-Petition Lender's interest in the estate's interest in the Pre-Petition Collateral to the extent such valuation is related to the use, sale, lease, license or disposition of the Collateral, and does not involve a determination of the validity, extent, perfection, priority, or enforceability of such interest; or

(xvi) the allowance of any claim or claims under Section 506(c), 552(b) or 726 of the Bankruptcy Code against the Administrative Agent, the Lenders, the Pre-Petition Administrative Agent or the Pre-Petition Lenders with respect to any of the Collateral securing the Obligations or the collateral securing the Pre-Petition Obligations; or

(xvii) [RESERVED]

(xviii) the use of Cash Collateral or other assets of a Debtor other than as expressly contemplated by the Orders and the DIP Budgets prior to (i) the indefeasible payment in full of the Obligations and the Adequate Protection Priority Claims or (ii) the termination of the Aggregate Commitment and the ability of the Debtors to use Cash Collateral; or

(xix) the consummation of the sale of any material portion of any Debtor's assets unless consented to by the Collateral Agent and the Lenders which consent may be withheld in their sole discretion, and authorized by the Bankruptcy Court pursuant to an order, which is in form and substance reasonably acceptable to the Borrowers, the Guarantors, the Collateral Agent and the Lenders; or

(xx) the breach of any covenants or representations and warranties in the Final Order.

None of the foregoing Events of Default may be waived, except with the prior written consent of the Administrative Agent, the Lenders and the Pre-Petition Administrative Agent and the Pre-Petition Lenders.

Section 9.02 Action Upon Event of Default.

(a) Subject to Paragraph 43(c) of the Final Order, if any Event of Default has occurred and is continuing, the Administrative Agent shall, upon the direction of the Required Lenders, notwithstanding the provisions of Section 362 of the Bankruptcy Code (the automatic stay of Section 362 of the Bankruptcy Code shall be deemed modified and vacated to permit the Senior Secured Parties to exercise their remedies under this Agreement and the Financing Documents), without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court: (i) terminate the DIP Facility; (ii) reduce the Aggregate Commitment from time to time; (iii) declare all or any portion of the Obligations due and payable; (iv) increase the rate of interest applicable to the Obligations to the Default Rate; (v) direct any or all of the Debtors to sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Administrative Agent and the Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Debtor to assume and assign any lease or executory contract included in the Collateral to the Collateral Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code), (vi) enter onto the premises of any Debtor in connection with an orderly liquidation of the Collateral, and (vii) exercise any rights and remedies provided to the Senior Secured Parties under the Financing Documents or at law or equity, including all remedies provided under the UCC and pursuant to the Orders.

(b) Notwithstanding anything to the contrary contained herein, the Senior Secured Parties shall not be permitted to exercise any remedy (other than those described in clauses (i), (ii), (iii) and (iv) of Section 9.02(a) *(Action Upon Event of Default)*) unless the Administrative Agent shall have given five (5) Business Days written notice (the "Notice Period") to counsel to the Debtors, counsel to the Committee and the Office of the U.S. Trustee during which Notice Period the Debtors and the Committee may seek relief from the Bankruptcy Court to re-impose or continue the automatic stay with respect to any remedy other than those described in clauses (i), (ii), (iii) and (iv) of Section 9.02(a) *(Action Upon Event of Default)*; provided, that in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto is whether, in fact, an Event of Default has occurred and is continuing.

Section 9.03 Remedies. Upon the occurrence and during the continuation of an Event of Default, subject to Section 9.02, the Collateral Agent shall have the right, but not the obligation, subject to the Orders, to do any of the following:

(a) vote or exercise any and all of any Loan Party's rights or powers incident to its ownership of Equity Interests in any Loan Party, including any rights or powers to manage or control such Loan Party;

(b) demand, sue for, collect or receive any money or property at any time payable to or receivable by any Loan Party on account of or in exchange for all or part of the Equity Interests pledged by it pursuant to the Orders;

(c) amend, terminate, supplement or modify all or any of the Organic Documents of the Loan Parties;

(d) proceed to protect and enforce the rights vested in it hereunder and under the UCC;

(e) cause all revenues and all other moneys and other property forming part of the Collateral to be paid and/or delivered directly to it, and demand, sue for, collect and receive any such moneys and property;

(f) cause any action at law or in equity or other proceeding to be instituted and prosecuted to collect or enforce any of the Obligations, or rights hereunder or included in the Collateral, or for specific enforcement of any covenant or agreement contained herein or in any Project Documents, Material Contracts or other agreements forming part of the Collateral, or in aid of the exercise of any power herein or therein granted, or for any foreclosure hereunder and sale under a judgment or decree in any judicial proceeding, or to enforce any other legal or equitable right vested in it by this Agreement or by Law;

(g) foreclose or enforce any other agreement or other instrument by or under or pursuant to which the Obligations are issued or secured;

(h) incur expenses, including attorneys' fees, consultants' fees, and other costs in connection with the exercise of any right or power under this Agreement or any other Financing Document;

(i) perform any obligation of any Loan Party hereunder or under any other Financing Document or any Project Document, Material Contract or other agreement forming part of the Collateral, submit renewal notices or exercise any purchase options under leases, and make payments, purchase, contest or compromise any encumbrance, charge, or Lien, and pay Taxes and expenses and insure, process and preserve the Collateral without, however, any obligation to do so;

(j) take possession of the Collateral and of any and all books of account and records of the Loan Parties relating to any of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon, or authorize its designated agent to enter upon, any location where the same may be located for that purpose (including the right of the Collateral Agent to exclude the Loan Parties and all Persons claiming access through any of the Loan Parties from any access to the Collateral or to any part thereof) and the Collateral Agent and its representatives are hereby granted an irrevocable license to enter upon such premises for such purpose, control, manage, operate, rent and lease the Collateral, either separately or in conjunction with the Project, collect all rents and income from the Collateral and apply the same to reimburse the Senior Secured Parties for any reasonable cost or expenses incurred hereunder or under any of the Financing Documents and to the payment or

performance of any of the Obligations, and apply the balance to the Obligations as provided herein and any remaining excess balance to whomsoever is legally entitled thereto;

(k) make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and extend the time of payment, arrange for payment installments, or otherwise modify the terms of, any Collateral;

(l) secure the appointment of a receiver of the Collateral or any part thereof, whether incidental to a proposed sale of the Collateral or otherwise, and all disbursements made by such receiver and the expenses of such receivership shall be added to and be made a part of the Obligations and, whether or not said principal sum, including such disbursements and expenses, exceeds the indebtedness originally intended to be secured hereby, the entire amount of said sum, including such disbursements and expenses, shall be secured by the DIP Liens and shall be due and payable upon demand therefor and thereafter shall bear interest at the Default Rate or the maximum rate permitted by applicable Law, whichever is less;

(m) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for, the Collateral or any part thereof;

(n) transfer the Collateral or any part thereof to the name of the Collateral Agent or to the name of a Collateral Agent's nominee;

(o) take possession of and endorse in the name of any Loan Party or in the name of the Collateral Agent, for the account of any Loan Party, any bills of exchange, checks, drafts, money orders, notes or any other chattel paper, documents or instruments constituting all or any part of the Collateral or received as interest, rent or other payment on or on account of the Collateral or any part thereof or on account of its sale or lease;

(p) appoint another Person (who may be an employee, officer or other representative of the Collateral Agent) to do any of the foregoing, or take any other action permitted hereunder, on behalf of the Collateral Agent;

(q) execute (in the name, place and stead of any Loan Party) endorsements, assignments and other instruments of conveyance or transfer with respect to all or any of the Collateral;

(r) take any other action which the Collateral Agent deems necessary or desirable to protect or realize upon its security interest in the Collateral or any part thereof;

(s) require each Loan Party to assemble the Collateral or any part thereof and to make the same (to the extent the same is reasonably moveable) available to the Collateral Agent at a place to be designated by the Collateral Agent which is reasonably convenient to the Loan Parties and the Collateral Agent;

(t) make formal application for the transfer of all or any Governmental Approvals of any Loan Party to the Collateral Agent or to any assignee of the Collateral Agent or

to any purchaser of any of the Collateral to the extent the same are assignable in accordance with their terms and applicable Laws;

(u) bring an action or proceeding to foreclose or proceed to sell any real property pursuant to a power of sale; and/or

(v) exercise any other or additional rights or remedies granted to the Collateral Agent under any other provision of this Agreement or any other Financing Document, or exercisable by a secured party under the UCC or under any other applicable Law and without limiting the generality of the foregoing and without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or elsewhere, at such price or prices and on such other terms as the Collateral Agent may deem commercially reasonable in accordance with the UCC.

Section 9.04 Minimum Notice Period. If, pursuant to applicable Laws, prior notice of any action described in Section 9.03 (*Remedies*) is required to be given to any Loan Party, each Loan Party hereby acknowledges that the minimum time required by such applicable Laws, or, if no minimum time is specified, ten (10) days shall be deemed a reasonable notice period.

Section 9.05 Sale of Collateral. In addition to exercising the foregoing rights, the Collateral Agent may, to the extent permitted by applicable Laws and subject to the Orders, arrange for and conduct the sale of the Collateral at a public or private sale (as the Collateral Agent may elect) which sale may be conducted by an employee or representative of the Collateral Agent, and any such sale shall be conducted in a commercially reasonable manner. The Collateral Agent may release, temporarily or otherwise, to the applicable Loan Party any item of Collateral of which the Collateral Agent has taken possession pursuant to any right granted to the Collateral Agent by this Agreement without waiving any rights granted to the Collateral Agent under this Agreement, the other Financing Documents or any other agreement related hereto or thereto. Each Loan Party, in dealing with or disposing of the Collateral or any part thereof, hereby waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require, upon foreclosure, sales of assets in a particular order. Each successor of any Loan Party under the Financing Documents agrees that it shall be bound by the above waiver, to the same extent as if such successor gave the waiver itself. Each Loan Party also hereby waives, to the full extent it may lawfully do so, the benefit of all Laws providing for rights of appraisal, valuation, stay, extension or redemption after foreclosure now or hereafter in force. If the Collateral Agent sells any of the Collateral upon credit, the Loan Party in respect of such Collateral will be credited only with payments actually made by the purchaser and received by the Collateral Agent. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and the relevant Loan Party shall be credited with the proceeds of the sale in excess of the amounts required to pay the Obligations in full. In the event the Collateral Agent bids at any foreclosure or trustee's sale or at any private sale permitted by Law and this Agreement or any other Financing Document, the Collateral Agent may bid all or less than the amount of the Obligations. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of whether or not notice of sale has been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Loan Party further acknowledges and agrees that any offer to sell any

part of the Collateral that has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation or (ii) made privately in the manner described herein to not less than fifteen (15) bona fide offerees shall be deemed to involve a "public disposition" for the purposes of Section 9-610(c) of the UCC.

Section 9.06 Actions Taken by Collateral Agent. Any action or proceeding to enforce this Agreement or any Project Document, Material Contract or other agreement forming part of the Collateral may be taken by the Collateral Agent either in the name of the applicable Loan Party or in the Collateral Agent's name, as the Collateral Agent may deem necessary.

Section 9.07 Private Sales. The Collateral Agent shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale made in good faith by Collateral Agent pursuant to Section 9.03 (*Remedies*) or Section 9.05 (*Sale of Collateral*) conducted in a commercially reasonable manner and in accordance with the requirements of applicable Laws. Each Loan Party hereby waives any claims against the Collateral Agent and the other Senior Secured Parties arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, provided that such private sale is conducted in a commercially reasonable manner and in accordance with applicable Laws.

Section 9.08 Access to Land. In exercising its right to take possession of the Collateral upon the occurrence and during the continuation of an Event of Default hereunder, the Collateral Agent, personally or by its agents or attorneys, and subject to the rights of any tenant under any lease or sublease of the Collateral and subject to the Orders, to the fullest extent permitted by Law, may enter upon any land owned or leased by any Loan Party without being guilty of trespass or any wrongdoing, and without liability to such Loan Party for damages thereby occasioned.

Section 9.09 Compliance With Limitations and Restrictions. Each Loan Party hereby agrees that in respect of any sale of any of the Collateral pursuant to the terms hereof, the Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable Laws, or in order to obtain any required approval of the sale or of the purchaser by any Governmental Authority or official, and each Loan Party further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to such Loan Party for any discount allowed by reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

Section 9.10 No Impairment of Remedies. If, in the exercise of any of its rights and remedies hereunder, the Collateral Agent forfeits any of its rights or remedies, including any right to enter a deficiency judgment against any Loan Party or any other Person, whether because of any applicable Law pertaining to "election of remedies" or otherwise, each Loan Party hereby consents to such action by the Collateral Agent and, to the extent permitted by applicable Law, waives any claim based upon such action, even if such action by the Collateral Agent would

result in a full or partial loss of any rights of subrogation, indemnification or reimbursement which such Loan Party might otherwise have had but for such action by the Collateral Agent or the terms herein. Any election of remedies which results in the denial or impairment of the right of the Collateral Agent to seek a deficiency judgment against any of the parties to any of the Financing Documents shall not, to the extent permitted by applicable Laws, impair any Loan Party's obligations hereunder.

Section 9.11 Attorney-In-Fact.

(a) Each Loan Party hereby constitutes and appoints the Collateral Agent, acting for and on behalf of itself and the other Senior Secured Parties and each successor or permitted assign of the Collateral Agent and the other Senior Secured Parties, the true and lawful attorney-in-fact of such Loan Party, with full power and authority in the place and stead of such Loan Party and in the name of such Loan Party, the Collateral Agent or otherwise to enforce all rights, interests and remedies of such Loan Party with respect to the Collateral or enforce all rights, interests and remedies of the Collateral Agent under this Agreement (including the rights set forth in this Article IX); provided, however, that the Collateral Agent shall not exercise any of the aforementioned rights unless an Event of Default has occurred and is continuing and has not been waived or cured in accordance with this Agreement and the other Financing Documents and delivery of notice as set forth in Section 9.02(a) and the Orders has been made and the provisions of Section 9.02(b) have been complied with. This power of attorney is a power coupled with an interest and shall be irrevocable; provided, further, however, that nothing in this Agreement shall prevent any Loan Party from, prior to the exercise by the Collateral Agent of any of the aforementioned rights, undertaking such Loan Party's operations in the ordinary course of business in accordance with the Collateral and the Financing Documents.

(b) If any Loan Party fails to perform any agreement or obligation contained herein, and such failure continues for ten (10) days following delivery of written notice by the Collateral Agent to such Loan Party, and subject to the Orders, the Collateral Agent itself may perform, or cause performance of, such agreement or obligation, and the reasonable expenses of the Collateral Agent incurred in connection therewith shall be payable by such Loan Party and shall be secured by the Collateral.

Section 9.12 Application of Proceeds. Any moneys received by the Collateral Agent after the occurrence and during the continuance of an Event of Default may be held by the Collateral Agent as Collateral and/or, at the direction of the Administrative Agent, may be applied in full or in part by the Collateral Agent against the Obligations in the order of priority set forth in Section 3.08 (but without prejudice to the right of the Collateral Agent to recover any shortfall from the Borrowers or the Guarantors).

ARTICLE X

THE AGENTS

Section 10.01 Appointment and Authority.

(a) Each Lender hereby irrevocably appoints, designates and authorizes each Agent to take such action on its behalf under the provisions of this Agreement and each other Financing Document and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement or any other Financing Document, together with such actions as are reasonably incidental thereto. The provisions of this Article X are solely for the benefit of the Agents and the Lenders, and neither the Loan Parties nor any other Person shall have rights as a third-party beneficiary of any of such provisions.

(b) Each Lender hereby appoints WestLB as its Administrative Agent under and for purposes of each Financing Document to which it is a party. WestLB hereby accepts this appointment and agrees to act as the Administrative Agent for the Lenders in accordance with the terms of this Agreement. Each Lender appoints and authorizes the Administrative Agent to act on behalf of such Lender under each Financing Document to which it is a party and, in the absence of other written instructions from the Required Lenders received from time to time by the Administrative Agent (with respect to which the Administrative Agent agrees that it will comply, except as otherwise provided in this Section 10.01 or as otherwise advised by counsel), to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof, together with such powers as may be reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in any Financing Document, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into any Financing Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(c) Each Lender hereby appoints WestLB as its Collateral Agent under and for purposes of each Financing Document to which it is a party. WestLB hereby accepts this appointment and agrees to act as the Collateral Agent for the Senior Secured Parties in accordance with the terms of this Agreement. Each of the Lenders hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any Loan Party to the Collateral Agent in order to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 10.05 (*Delegation of Duties*) for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof), or for exercising any rights and remedies thereunder at the direction of the Collateral Agent, as the case may be, shall be entitled to the benefits of all provisions of this Article X and Article XI (*Miscellaneous Provisions*) (including Section 11.08 (*Indemnification by the Loan Parties*), as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent under the Financing Documents. Notwithstanding any provision to the contrary contained elsewhere in any Financing Document, the Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein or in the other Financing Documents to which the Collateral

Agent is party, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with any Loan Party or any Senior Secured Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into any Financing Document or otherwise exist against the Collateral Agent. Each of the Collateral Agent and the Administrative Agent shall have the right at any time to seek instructions from the Required Lenders or, in the case of the Collateral Agent, the Administrative Agent as to any discretionary actions contemplated hereby or in any other Financing Document or if this Agreement or any other Financing Document is silent as to any matter requiring action by the Collateral Agent and shall be fully protected in accordance with Section 10.03 (*Exculpatory Provisions*) and Section 10.04 (*Reliance by Agents*) when acting upon such instructions. Any action taken by the Collateral Agent or the Administrative Agent under or in relation to this Agreement and any other Financing Document to which it is party with requisite authority or on the basis of appropriate instructions received from the Lenders (other otherwise as duly authorized) shall be binding on each Lender. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(d) Each Lender hereby appoints and authorizes the Accounts Bank to act as depository for the Collateral Agent, on behalf of the Senior Secured Parties, and as the securities intermediary or bank with respect to the Project Accounts for the benefit of the Collateral Agent, on behalf of the Senior Secured Parties, with such powers as are expressly delegated to the Accounts Bank by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. The Accounts Bank hereby accepts this appointment and agrees to act as the depository for the Collateral Agent, on behalf of the Senior Secured Parties, and as the securities intermediary or bank with respect to the Project Accounts, for the benefit of the Collateral Agent, on behalf of the Senior Secured Parties, in accordance with the terms of this Agreement. The Accounts Bank further agrees to accept and hold, as securities intermediary or as a bank, in its custody and in accordance with the terms of this Agreement, for the Collateral Agent, on behalf of the Senior Secured Parties, the Project Accounts and the Accounts Property. Each Lender also appoints and authorizes the Accounts Bank to act on its behalf for the purpose of the creation and perfection of a security interest in favor of the Collateral Agent, on behalf of the Senior Secured Parties, in the Project Accounts to the extent that they are deemed under applicable Law not to constitute securities accounts or deposit accounts and in any Accounts Property that is deemed under applicable Law not to constitute a Financial Asset. The Accounts Bank accepts this appointment and agrees to act as the Accounts Bank for the Collateral Agent, on behalf and for the benefit of the Senior Secured Parties, for such purpose and to hold and maintain exclusive dominion and control over the Project Accounts and any such Accounts Property on behalf of the Collateral Agent, acting on behalf of the Senior Secured Parties. Notwithstanding any provision to the contrary contained elsewhere in any Financing Document, the Accounts Bank shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Accounts Bank have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into any Financing Document or otherwise exist against the Accounts Bank. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to the Accounts Bank is not intended to connote any fiduciary or other

implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 10.02 Rights as a Lender. Each Person serving as Agent hereunder or under any other Financing Document shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent. Each such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor for or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders or any other Agent.

Section 10.03 Exculpatory Provisions. (a) No Agent nor any of its respective directors, officers, employees or agents shall have any duties or obligations except those expressly set forth herein and in the other Financing Documents to which it is party. Without limiting the generality of the foregoing, no Agent shall:

(i) be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) have any duty to take any discretionary action or exercise any discretionary powers except discretionary rights and powers expressly contemplated hereby or by the other Financing Documents to which it is party that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in such other Financing Documents); provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Financing Document or applicable Law; and provided, further that no such direction given to such Agent that in the sole judgment of such Agent imposes, or purports to impose, or might reasonably be expected to impose upon such Agent any obligation or liability not set forth in this Agreement or arising under this Agreement or other Financing Documents to which it is party shall be binding upon such Agent unless such Agent, in its sole discretion, accepts such direction;

(iii) except as expressly set forth herein and in the other Financing Documents to which it is party, have any duty to disclose, or be liable for any failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as an Agent or any of its Affiliates in any capacity; or

(iv) be required to institute any legal proceedings arising out of or in connection with, or otherwise take steps to enforce, this Agreement or any other Financing Document other than on the instructions of the Required Lenders.

(b) No Agent nor any of its respective directors, officers, employees or agents shall be liable for any action taken or not taken by it (i) with the prior written consent or at the

request of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, or as such Agent may reasonably believe in good faith to be necessary, under the circumstances as provided in Section 10.01 (*Appointment and Authority*)), (ii) in connection with any amendment, consent, approval or waiver which it is permitted under the Financing Documents to enter into, agree to or grant or (iii) in the absence of its own gross negligence or willful misconduct. Each Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to such Agent in writing by a Loan Party or a Lender.

(c) No Agent nor any of its respective directors, officers, employees or agents shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Financing Document, (ii) the contents of any certificate, report, opinion or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein (including the use of proceeds) or the occurrence or continuance of any Default or Event of Default, (iv) the execution, validity, enforceability, effectiveness, genuineness or admissibility into evidence of this Agreement, any other Financing Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien or security interest created or purported to be created by any this Agreement (or title to or rights in any Collateral), or (v) the satisfaction of any condition set forth in Article VI (*Conditions Precedent*) or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to any such Agent.

(d) Each Agent may, unless and until it shall have received directions from the Lenders, take such action or refrain from taking such action in respect of a Default or Event of Default of which such Agent has been advised in writing by the Lenders as it shall reasonably deem advisable in the best interests of the Lenders (but shall not be obligated to do so).

(e) The Collateral Agent may refrain from acting in accordance with any instructions of the Lenders to institute any legal proceedings arising out of or in connection with this Agreement or any other Financing Document until it has been indemnified and/or secured to its satisfaction against any and all costs, expenses or liabilities (including legal fees and expenses) which it would or might reasonably be expected to incur as a result.

(f) No Agent shall be required to advance or expend any funds or otherwise incur any financial liability in the performance of its duties or the exercise of its powers or rights hereunder or under any Financing Document to which it is party unless it has been provided with security or indemnity reasonably satisfactory to it against any and all liability or expense which may be incurred by it by reason of taking or continuing to take such action.

Section 10.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not (nor shall any of its directors, officers, employees or agents) incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) reasonably believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by

telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. Each Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts reasonably selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each Agent may at any time and from time to time solicit written instructions in the form of directions from the Required Lenders or an order of a court of competent jurisdiction as to any action that it may be requested or required to take, or that it may propose to take, in the performance of any of its obligations under this Agreement or any other Financing Document to which it is party.

Section 10.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise any and all its rights and powers hereunder or under any other Financing Document by or through any one or more sub-agents appointed by such Agent. Absent gross negligence or willful misconduct in selecting a sub-agent, no Agent shall be responsible for any action of, or failure to act by, any sub-agent that has been approved by the Required Lenders. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article X shall apply to any such sub-agent and to the Related Parties of such Agent and any such sub-agent, and shall apply to their respective activities in connection with their acting as Agent.

Section 10.06 Resignation or Removal of Agent. (a) Any Agent may resign from the performance of all its functions and duties hereunder and/or under the other Financing Documents at any time by giving thirty (30) days' prior notice to the Loan Parties and the Lenders. Any Agent may be removed at any time by the Required Lenders. Such resignation or removal shall take effect upon the appointment of a successor Agent, in accordance with this Section 10.06.

(b) Upon any notice of resignation by any Agent or upon the removal of any Agent by the Required Lenders, the Required Lenders shall appoint a successor Agent hereunder and under each other Financing Document who shall be a commercial bank having a combined capital and surplus of at least two hundred fifty million Dollars ($250,000,000).

(c) If no successor Agent has been appointed by the Required Lenders within thirty (30) days after the date such notice of resignation was given by such Agent or the Required Lenders elected to remove such Agent, any Senior Secured Party may petition any court of competent jurisdiction for the appointment of a successor Agent. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor Agent, as applicable, who shall serve as Agent hereunder and under each other Financing Document until such time, if any, as the Required Lenders appoint a successor Agent, as provided above.

(d) Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent, and the retiring (or removed) Agent shall be

discharged from all of its duties and obligations hereunder and under the other Financing Documents. After the retirement or removal of any Agent hereunder and under the other Financing Documents, the provisions of this Article X shall continue in effect for the benefit of such retiring (or removed) Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while such Agent was acting as Agent.

(e) If a retiring (or removed) Agent is the Collateral Agent, such Collateral Agent will promptly transfer any Collateral in the possession or control of such Collateral Agent to the successor Collateral Agent and will, subject to payment of its reasonable costs and expenses (including counsel fees and expenses), execute and deliver such notices, instructions and assignments as may be reasonably necessary or desirable to transfer the rights of the Collateral Agent with respect to such Collateral property to the successor Collateral Agent.

(f) If a retiring or removed Agent is the Accounts Bank, such Accounts Bank will promptly transfer all of the Project Accounts and the Accounts Property to the possession or control of the successor Accounts Bank and will execute and deliver such notices, instructions and assignments as may be reasonably necessary or desirable to transfer the rights of the Accounts Bank with respect to the Project Accounts and the Accounts Property to the successor Accounts Bank.

Section 10.07 No Amendment to Duties of Agent Without Consent. No Agent shall be bound by any waiver, amendment, supplement or modification of this Agreement or any other Financing Document that affects its rights or duties hereunder or thereunder unless such Agent shall have given its prior written consent, in its capacity as Agent, thereto.

Section 10.08 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and make its Loans. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Financing Document or any related agreement or any document furnished hereunder or thereunder.

Section 10.09 Collateral Agent May File Proofs of Claim. (a) In case of the pendency of any Insolvency or Liquidation Proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral Agent or any other Senior Secured Party shall have made any demand on any Loan Party) shall be entitled and empowered, but shall not be obligated, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Senior Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of

the Senior Secured Parties and their respective agents and counsel and all other amounts due the Senior Secured Parties under Section 3.11 (*Fees*), Section 11.06 (*Costs and Expenses*) and Section 11.08 (*Indemnification by the Loan Parties*)) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Collateral Agent and, in the event that the Collateral Agent consents to the making of such payments directly to the Lenders, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Agents under Section 3.11 (*Fees*), Section 11.06 (*Costs and Expenses*) and Section 11.08 (*Indemnification by the Loan Parties*).

(c) Nothing contained herein shall be deemed to authorize the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Collateral Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10.10 Collateral Matters. (a) The Lenders irrevocably authorize the Collateral Agent to release any Lien on any property granted to or held by the Collateral Agent under any Financing Document for the benefit of the Senior Secured Parties (i) upon the occurrence of the Discharge Date, (ii) if approved, authorized or ratified in writing in accordance with Section 11.01 (*Amendments, Etc.*) or (iii) as permitted pursuant to the terms of the Financing Documents (including as contemplated by Section 7.02(f) (*Negative Covenants – Asset Dispositions*)).

(b) Upon request by the Collateral Agent at any time and from time to time, the Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property pursuant to this Section 10.10. In each case as specified in this Section 10.10, the Collateral Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Person may reasonably request to evidence the release of such item of Collateral in accordance with the terms of the Financing Documents and this Section 10.10.

(c) Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder or under any of the other Financing Documents to which it is party, the Collateral Agent shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not the Collateral Agent is deemed to have knowledge of such matters, or as to taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral (including the filing of UCC continuation statements). The Collateral Agent shall be deemed to have exercised appropriate and due care in

the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which other collateral agents accord similar property.

Section 10.11 Copies. Each Agent shall give prompt notice to each Lender of each material notice or request required or permitted to be given to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Financing Document (other than instructions for the transfer of funds from Project Accounts or if otherwise concurrently delivered to the Lenders by the Loan Parties) and copies of all other communications received by such Agent from the Loan Parties for distribution to the Lenders by such Agent in accordance with the terms of this Agreement or any other Financing Document.

Section 10.12 No Liability for Clean-up of Hazardous Materials. If the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any duty or obligation for the benefit of another, which in the Collateral Agent's sole discretion may cause the Collateral Agent to be considered an "owner or operator" under any Environmental Laws or otherwise cause the Collateral Agent to incur, or be exposed to, any Environmental Liabilities or any liability under any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, either to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Collateral Agent will not be liable to any Person for any Environmental Liabilities or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's action and conduct as authorized, empowered or directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any Hazardous Materials into the environment.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Financing Document, and no consent to any departure by any Borrower, the Loan Party Agent of any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or, if expressly contemplated hereby, the Administrative Agent) and, in the case of an amendment, the Borrowers, the Loan Party Agent or, as the case may be, the applicable Loan Party, and in each such case acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 6.01 (*Conditions to Closing*) without the prior written consent of all of the Required Lenders;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02(a) (*Action Upon Event of Default*) without the prior written consent of such Lender (other than any Non-Voting Lender or extend or increase the Aggregate Commitment);

(c) postpone any date scheduled for any payment of principal or interest under Section 3.01 (*Repayment of Loans*) or Section 3.02 (*Interest Payment Dates*), or any date fixed by the Administrative Agent for the payment of fees or other amounts due to the Lenders (or any of them) hereunder or under any other Financing Document without the prior written consent of each Lender affected thereby (other than any Non-Voting Lender);

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or any Fees or other amounts (including any mandatory prepayments under Section 3.08 (*Mandatory Prepayment*)) payable hereunder or under any other Financing Document to any Lender without the prior written consent of each Lender directly affected thereby (other than any Non-Voting Lender); provided, that only the prior written consent of the Required Lenders shall be necessary to amend the definition of Default Rate or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(e) change the order of application of any reduction in the Commitments or any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 2.05 (*Termination or Reduction of Commitment*), Section 3.07 (*Optional Prepayment*) or Section 3.08 (*Mandatory Prepayment*) in any manner without the prior written consent of each Lender affected thereby (other than any Non-Voting Lender);

(f) change any provision of this Section 11.01, the definition of Required Lenders or any other provision of any Financing Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights under any Financing Document (including any such provision specifying the number or percentage of Lenders required to waive any Event of Default or forbear from taking any action or pursuing any remedy with respect to any Event of Default), or make any determination or grant any consent under any Financing Document, without the prior written consent of each Lender (other than any Non-Voting Lender); or

(g) release (i) any Loan Party from all or substantially all of its obligations (except for obligations that are expressly covered in clauses (a)-(f)) under any Financing Document, or (ii) all or substantially all of the Collateral in any transaction or series of related transactions, without the prior written consent of each Lender (other than any Non-Voting Lender); and provided, further that (A) no amendment, waiver or consent shall, unless in writing and signed by an Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, such Agent under this Agreement or any other Financing Document; and (B) Section 11.03(h) (*Assignments*) may not be amended, waived or otherwise modified without the prior written consent of each Granting Lender all or any part of whose Loan is being funded by an SPV at the time of such amendment, waiver or other modification.

Notwithstanding the other provisions of this Section 11.01, the Borrowers, the Loan Party Agent, the Collateral Agent and the Administrative Agent may (but shall have no obligation to) amend or supplement the Financing Documents without the consent of any Lender solely: (i) to cure any ambiguity, defect or inconsistency; (ii) to make any change that would provide any additional rights or benefits to the Lenders; or (iii) to make, complete or confirm any grant of

Collateral permitted or required by this Agreement or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Orders.

Section 11.02 Applicable Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) SUBMISSION TO JURISDICTION.

(i) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY BORROWER, ANY GUARANTOR OR THE LOAN PARTY AGENT ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT, OR ANY OBLIGATIONS HEREUNDER OR THEREUNDER, MUST BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, SUCH PROCEEDING MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK AND APPELLATE COURT OF ANY THEREOF.

(ii) EACH LOAN PARTY AND THE LOAN PARTY AGENT IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN EACH LOAN PARTY AND THE LOAN PARTY AGENT, ON THE ONE HAND, AND EACH LENDER AND EACH AGENT, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS; PROVIDED, THAT EACH LOAN PARTY AND THE LOAN PARTY AGENT ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY BE REQUIRED TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT, SUBJECT TO RECEIVING PRIOR APPROVAL FROM THE BANKRUPTCY COURT AUTHORIZING SUCH ACTION, NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE EACH LENDER AND EACH AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER.

(c) WAIVER OF VENUE. EACH LOAN PARTY AND THE LOAN PARTY AGENT IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT

MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT IN ANY COURT REFERRED TO IN SECTION 11.02(b). EACH OF THE LOAN PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Immunity. To the extent that any Loan Party or the Loan Party Agent 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, execution or otherwise) with respect to itself or its property, each Loan Party and the Loan Party Agent hereby irrevocably and unconditionally waives such immunity in respect of its obligations under the Financing Documents and, without limiting the generality of the foregoing, agrees that the waivers set forth in this Section 11.02(d) shall have the fullest scope permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

(e) WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.02.

Section 11.03 Assignments. (a) 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 neither any Loan Party nor the Loan Party Agent may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Agent and the Required Lenders, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with Section 11.03(b), (ii) by way of participation in accordance with Section 11.03(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.03(f), or (iv) to an SPV in accordance with the provisions of Section 11.03(h) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, express or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in this Section 11.03 and, to the extent expressly contemplated hereby, the Related Parties of each

Agent and Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time after the date hereof assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the Commitment (which for this purpose includes the Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Lender Assignment Agreement with respect to such assignment is delivered to the Administrative Agent or, if "*Trade Date*" is specified in the Lender Assignment Agreement, as of the Trade Date, shall not be less than two hundred thousand Dollars ($200,000) and such Lender's entire Commitment, unless the Administrative Agent otherwise consents in writing; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned; (iii) the parties to each assignment shall execute and deliver to the Administrative Agent a Lender Assignment Agreement, together with a processing and recordation fee of two thousand five hundred Dollars ($2,500); provided that (A) no such fee shall be payable in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender and (B) in the case of contemporaneous assignments by a Lender to one or more Approved Funds managed by the same investment advisor (which Approved Funds are not then Lenders hereunder), only a single such two thousand five hundred Dollar ($2,500) fee shall be payable for all such contemporaneous assignments; (iv) the Eligible Assignee, if it is not a Lender prior to such assignment, shall deliver to the Administrative Agent an administrative questionnaire; and (v) the assignor shall provide notice of such assignment to the Loan Party Agent. Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.03(c), on and after the effective date specified in each Lender Assignment Agreement, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Lender Assignment Agreement, 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 Lender Assignment Agreement, be released from its obligations under this Agreement (and, in the case of a Lender Assignment Agreement 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 Section 4.01 (*Eurodollar Rate Lending Unlawful*), Section 4.03 (*Increased Eurodollar Loan Costs*), Section 4.05 (*Funding Losses*), Section 11.06 (*Costs and Expenses*) and Section 11.08 (*Indemnification by the Loan Parties*) with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.03(b) 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 Section 11.03(d).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's office a copy of each Lender

Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Loan Parties, the Agents and the Lenders may 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 Loan Parties at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Financing Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Any Lender may at any time, without the consent of, or notice to, the Loan Parties, the Loan Party Agent or any Agent, sell participations to any Person (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Loan Party Agent, the Agents 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. 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 to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 (*Amendments, Etc.*) that directly affects such Participant. Subject to Section 11.03(e), the Loan Parties agree that each Participant shall be entitled to the benefits of Section 4.01 (*Eurodollar Rate Lending Unlawful*), Section 4.03 (*Increased Eurodollar Loan Costs*) and Section 4.05 (*Funding Losses*), to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.03(b). To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 11.14 (*Right of Setoff*) as though it were a Lender; provided, such Participant agrees to be subject to Section 3.13 (*Sharing of Payments*) as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under Section 4.01 (*Eurodollar Rate Lending Unlawful*) or Section 4.03 (*Increased Eurodollar Loan Costs*) 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 prior written consent of the Loan Party Agent.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) The words "*execution*," "*signed*," "*signature*," and words of like import in any Lender Assignment Agreement 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.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Loan Parties (an "SPV") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided, that (i) nothing herein shall constitute a commitment by any SPV to fund any Loan, and (ii) if an SPV elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent as is required under Section 3.13 (*Sharing of Payments*). Each party hereto hereby agrees that (A) neither the grant to any SPV nor the exercise by any SPV of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Loan Parties under this Agreement (including their obligations under Section 4.03 (*Increased Eurodollar Loan Costs*), (B) no SPV shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (C) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Financing Document, remain the lender of record hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one (1) year and one (1) day after the payment in full of all outstanding commercial paper or other senior debt of any SPV, it will not institute against, or join any other Person in instituting against, such SPV in any Insolvency or Liquidation Proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPV may (1) with notice to, but without prior consent of the Loan Parties and the Administrative Agent and without paying any processing fee therefor, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (2) disclose on a confidential basis any non-public information relating to its funding of any Loan to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPV.

Section 11.04 Benefits of Agreement. Nothing in this Agreement or any other Financing Document, express or implied, shall give to any Person, other than the parties hereto and thereto, and each of their successors and permitted assigns under this Agreement or any other Financing Document, any benefit or any legal or equitable right or remedy under this Agreement.

Section 11.05 Consultants. (a) The Required Lenders acting jointly or the Administrative Agent may, in their sole discretion, appoint any Consultant for the purposes

specified herein. If any of the Consultants is removed or resigns and thereby ceases to act for purposes of this Agreement and the other Financing Documents, the Required Lenders acting jointly or the Administrative Agent, as the case may be, shall designate a Consultant in replacement.

(b) The Borrowers shall reimburse each Consultant appointed hereunder for the reasonable fees and documented expenses of such Consultant retained on behalf of the Lenders pursuant to this Section 11.05.

(c) In all cases in which this Agreement provides for any Consultant to "*agree*," "*approve*," "*certify*" or "*confirm*" any report or other document or any fact or circumstance, such Consultant may make the determinations and evaluations required in connection therewith based upon information provided by the Loan Parties, the Loan Party Agent or other sources reasonably believed by such Consultant to be knowledgeable and responsible, without independently verifying such information; provided, that, notwithstanding the foregoing, such Consultant shall engage in such independent investigations or findings as it may from time to time deem necessary in its reasonable discretion to support the determinations and evaluations required of it.

Section 11.06 Costs and Expenses. Each Loan Party shall promptly pay (a) all reasonable and documented out-of-pocket expenses incurred by the Lenders and the Agents (including all reasonable fees, costs and expenses of counsel for any Agent, counsel for any Lender and a financial advisor for the Administrative Agent), in connection with (i) the preparation, negotiation, syndication, execution and delivery of this Agreement and the other Financing Documents (whether or not the transactions contemplated hereby or thereby are consummated), and (ii) the negotiation, preparation and entry of the Final Order; (b) all reasonable out-of-pocket expenses incurred by the Lenders and the Agents (including all reasonable fees, costs and expenses of counsel for any Agent or any Lender), in connection with any amendments, modifications or waivers of the provisions of this Agreement and the other Financing Documents (whether or not the transactions contemplated hereby or thereby are consummated) and the Final Order; (c) all reasonable out-of-pocket expenses incurred by the Agents (including all reasonable fees, costs and expenses of counsel for any Agent), in connection with the administration of this Agreement and the other Financing Documents (whether or not the transactions contemplated hereby or thereby are consummated) and the Final Order; (d) all reasonable out-of-pocket expenses incurred by the Lenders and the Agents (including all reasonable fees, costs and expenses of counsel for any Agent or any Lender), in connection with (i) the obtaining of approval of the Financing Documents by the Bankruptcy Court, (ii) the preparation and review of pleadings, documents and reports related to any Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to any Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code, and (iii) general monitoring of any Chapter 11 Case or any subsequent case under Chapter 7 of the Bankruptcy Code; and (e) all out-of-pocket expenses incurred by the Agents or any Lender (including all fees, costs and expenses of counsel for any Senior Secured Party), in connection with the enforcement or protection of its rights in connection with this Agreement, the other Financing Documents and the Final Order, including its rights under this Section 11.06, including in connection with any workout, restructuring or

negotiations in respect of the Obligations. All such fees, costs, expenses and other amounts shall be payable on demand by the Agents and the Lenders.

Section 11.07 Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or portable document format ("pdf") shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.08 Indemnification by the Loan Parties. (a) In addition to the indemnity by the Loan Parties set forth in Section 11.11(f) (*Notices and Other Communications*) and except for Taxes (which are addressed in Section 4.07 (*Taxes*)), each Loan Party hereby agrees to indemnify each Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including all reasonable fees, costs and expenses of counsel for any Indemnitee), incurred by any Indemnitee or asserted or awarded against any Indemnitee (including in connection with any investigation, litigation or proceeding or the preparation of a defense in connection therewith) by any third party or by any Loan Party arising out of, in connection with, or as a result of:

(i) the execution or delivery of this Agreement, any other Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby;

(ii) any Loan or the use or proposed use of the proceeds therefrom;

(iii) any actual or alleged presence, release or threatened release of Materials of Environmental Concern on or from the Project or any property owned, leased or operated by any Loan Party, or any liability pursuant to an Environmental Law related in any way to the Project, the Site or the Loan Parties;

(iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third-party or by any Loan Party or any of its shareholders, members, managers, or creditors, and regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Financing Documents is consummated, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; and/or

(v) any claim, demand or liability for broker's or finder's or placement fees or similar commissions, whether or not payable by any Loan Party, alleged to have been incurred in connection with such transactions, other than any broker's or finder's fees payable to Persons engaged by the Lenders or the Agents without the knowledge of the Loan Parties;

provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and Non-Appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(b) In the case of an investigation, litigation or other proceeding to which the indemnity in Section 11.08(a) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any of their respective Related Parties or creditors, any Indemnitee or any other Person or any Indemnitee is otherwise a party thereto and whether or not the transactions contemplated this Agreement and the other Financing Documents are consummated. Notwithstanding the foregoing, (i) any payment obligations owed by the Loan Parties pursuant to Section 11.08(a) shall be made upon Bankruptcy Court approval and (ii) Section 11.08(a) shall not apply to: (A) Indemnitee acts that occurred prior to the Petition Date or (B) Indemnitee omissions prior to the Petition Date.

(c) To the extent that any Loan Party for any reason fails to indefeasibly pay any amount required under Section 11.08(a) to be paid by it to any Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), or such Related Party, as the case may be, such Lender's ratable share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent (or any sub-agent thereof) in its capacity as such, or against any Related Party of any of the foregoing acting for such Agent (or any sub-agent thereof) in connection with such capacity. The obligations of the Lenders to make payments pursuant to this Section 11.08(b) are several and not joint and shall survive the payment in full of the Obligations and the termination of this Agreement. The failure of any Lender to make payments on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to do so.

(d) Except as otherwise provided in Article VI (*Conditions Precedent*), all amounts due under this Section 11.08 shall be payable not later than ten (10) Business Days after demand therefor.

Section 11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Financing Document, the interest paid or agreed to be paid under the Financing Documents shall not exceed the maximum rate of Non-Usurious interest permitted by applicable Law (the "Maximum Rate"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by any Agent or any Lender exceeds the Maximum

Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 11.10 No Waiver; Cumulative Remedies. No failure by any Senior Secured Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Financing Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Financing Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 11.11 Notices and Other Communications. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 11.11(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party, the Loan Party Agent or any Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.11; and

(ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its administrative questionnaire.

(b) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 11.11(d) shall be effective as provided in Section 11.11(d). Any notice sent to the Loan Party Agent shall be deemed to have been given to each Loan Party.

(c) Notices and other communications to the Lenders or any Agent hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent, and in the case of notices to the Collateral Agent, by the Collateral Agent as well; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II (*Commitments and Funding*) if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II (*Commitments and Funding*) by electronic communication. Each of the Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved

by it; provided, that approval of such procedures may be limited to particular notices or communications.

(d) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address 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 e-mail or other written acknowledgement); provided, that if such notice or other communication is not received during the normal business hours of the recipient, such notice or communication shall be deemed to have been received at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in Section 11.11(d)(i) of notification that such notice or communication is available and identifying the website address therefor.

(e) Each of each Loan Party, the Loan Party Agent and the Agents may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to each Loan Party, the Loan Party Agent and each Agent.

(f) The Agents and the Lenders shall be entitled to rely and act upon any written notices purportedly given by or on behalf of any Loan Party and the Loan Party Agent even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Loan Party shall indemnify each Lender and Agent and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Loan Party or the Loan Party Agent. All telephonic notices to and other telephonic communications with any Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

(g) So long as WestLB is the Administrative Agent, each Loan Party and the Loan Party Agent hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Financing Documents, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the Funding, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default or (iv) is required to be delivered to satisfy any condition precedent to Funding (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Administrative Agent to ny_agency_services@westlb.com. In addition, each Loan Party and the Loan Party Agent agrees to continue to provide the Communications to the Administrative Agent in the manner specified in the Financing Documents but only to the extent requested by the Administrative Agent.

(h) So long as WestLB is the Administrative Agent, each Loan Party and the Loan Party Agent further agrees that the Administrative Agent may make the Communications available to the Lenders by posting the Communications on http://www.intralinks.com (or any replacement or successor thereto) or a substantially similar electronic transmission systems (the "Platform").

(i) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENTS DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENTS IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, "AGENT PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, THE LOAN PARTY AGENT, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE LOAN PARTIES', THE LOAN PARTY AGENT'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(j) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth in Schedule 11.11(a) shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Financing Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Financing Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

(k) Notwithstanding clauses (g) to (j) above, nothing herein shall prejudice the right of any Agent or Lender to give any notice or other communication pursuant to any Financing Document in any other manner specified in such Financing Document.

Section 11.12 Patriot Act Notice. Each Senior Secured Party (for itself and not on behalf of any other) hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrowers, which

information includes the name and address of the Borrowers and other information that will allow such Senior Secured Party, to identify the Borrowers in accordance with the Patriot Act.

Section 11.13 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all the Obligations. To the extent that any payment by or on behalf of any Loan Party is made to any Agent or Lender, or any Agent or Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency or Liquidation Proceeding or otherwise, then (a) to the extent of such recovery, the Obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to each Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by such Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate *per annum* equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under Section 11.13(b) shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 11.14 Right of Setoff. Each Lender and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of each Loan Party now or hereafter existing under this Agreement or any other Financing Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Financing Document and although such obligations of the Loan Parties may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section 11.14 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Loan Party Agent and the Administrative Agent promptly after any such setoff and application; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

Section 11.15 Severability. If any provision of this Agreement or any other Financing Document is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Financing Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.16 Survival. Notwithstanding anything in this Agreement to the contrary, Section 11.06 (*Costs and Expenses*) and Section 11.08 *(Indemnification by the Loan Parties)* shall survive any termination of this Agreement. In addition, each representation and warranty made hereunder and in any other Financing Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of the Funding, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder or under any other Financing Document shall remain unpaid or unsatisfied.

Section 11.17 Treatment of Certain Information; Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its Affiliates' respective partners, directors, officers, employees, agents, advisors (including legal counsel and financial advisors) and representatives (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); (b) to the extent requested or required by any regulatory authority purporting to have jurisdiction over it; (c) to the extent required by applicable Law or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder (including any actual or prospective purchaser of Collateral); (f) subject to an agreement containing provisions substantially the same as those of this Section 11.17, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of Loan Parties or (iii) any Person (and any of its officers, directors, employees, agents or advisors) that may enter into or support, directly or indirectly, or that may be considering entering into or supporting, directly or indirectly, either (A) contractual arrangements with such Agent or Lender, or any Affiliates thereof, pursuant to which all or any portion of the risks, rights, benefits or obligations under or with respect to any Loan or Financing Document is transferred to such Person or (B) an actual or proposed securitization or collateralization of, or similar transaction relating to, all or a part of any amounts payable to or for the benefit of any Lender under any Financing Document (including any rating agency); (g) with the consent of any Loan Party; (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 11.17 or (ii) becomes available to any Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than any Loan Party; (i) to any state, federal or foreign authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; or (j) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to any Loan Party received by it from such Lender). In addition, any Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and

management of this Agreement, the other Financing Documents, the Commitments, and the Funding. For the purposes of this Section 11.17, "Information" means written information that any Loan Party furnishes to any Agent or Lender after the date hereof (and designated at the time of delivery thereof in writing as confidential) pursuant to or in connection with any Financing Document, relating to the assets and business of such Loan Party, but does not include any such information that (i) is or becomes generally available to the public other than as a result of a breach by such Agent or Lender of its obligations hereunder, (ii) is or becomes available to such Agent or Lender from a source other than any Loan Party that is not, to the knowledge of such Agent or Lender, acting in violation of a confidentiality obligation with such Loan Party or (iii) is independently compiled by any Agent or Lender, as evidenced by their records, without the use of the Information. Any Person required to maintain the confidentiality of Information as provided in this Section 11.17 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.

Section 11.18 Waiver of Consequential Damages, Etc. Except as otherwise provided in Section 11.08 (*Indemnification by the Loan Parties*) for the benefit of any Indemnitee, to the fullest extent permitted by applicable Law, none of the Loan Parties or the Loan Party Agent shall assert, and each of the Loan Parties and the Loan Party Agent hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Financing Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 11.19 Loan Party Agent. Each Loan Party hereby appoints and authorizes Biosource Fuels, and Biosource Fuels hereby accepts such appointment, as such Loan Party's Loan Party Agent to act as agent on such Loan Party's behalf and to make any representations or certifications, deliver and receive any notices or other communications, and otherwise represent and act on behalf of such Loan Party under the Financing Documents, and to comply with all covenants, conditions and other provisions of the Financing Documents required to be satisfied by the Loan Party Agent. Each Loan Party hereby acknowledges and agrees that it will be bound by any action or inaction taken by the Loan Party Agent as if such action or inaction had been taken by such Loan Party.

Section 11.20 Reservation of Rights Regarding Clinton. Notwithstanding anything to the contrary contained in this Agreement, all references to the Clinton Liens on the Clinton Collateral and the validity, extent, amount, perfection, priority, or enforceability thereof are premised upon the non-binding assumptions by the Debtors that the Clinton Liens on the Clinton Collateral are valid, perfected and enforceable. Such assumptions are made by the Debtors for their convenience in structuring the liens, claims and distributions provided for herein and are not made for the benefit of the Indenture Trustee or the holders of the Pre-Petition Notes. Nothing in this Agreement shall constitute or be construed by the Bankruptcy Court or any other person under any circumstance as an admission by the Debtors, their estates or any other person

regarding the validity, extent, amount, perfection, priority, or enforceability of the Clinton Liens on the Clinton Collateral. Each of the Debtors and their respective estates as well as all other persons reserve all of their respective rights to investigate and challenge any and all aspects of the Clinton Liens.

ARTICLE XII

PROJECT ACCOUNTS

Section 12.01 Deposits into and Withdrawals from Revenue Account. (a) Amounts shall be deposited into and withdrawn from the Revenue Account in strict accordance with this Article XII.

(b) The Accounts Bank will only be required to transfer funds hereunder on a "same day" basis if it has received written notice of such proposed transfer, together with all certificates, notices, directions and other documents required under this Agreement to be delivered to the Accounts Bank relating thereto, not later than 2:00 p.m. New York City time on the Business Day of such transfer and, if such notice or any such related document is received by the Accounts Bank after such time, such transfer will be undertaken prior to 12:00 noon New York City time on the next Business Day succeeding the date of receipt by the Accounts Bank of all such documentation.

(c) If any transfer, withdrawal, deposit, investment or payment of any funds by the Accounts Bank or any other action to be taken by the Accounts Bank under this Agreement is to be made or taken on a day other than a Business Day, such transfer, withdrawal, deposit, investment, payment or other action will be made or taken on the next succeeding Business Day (or, if required to be made on any specified date without receipt of instructions from the Borrower or the Collateral Agent, and such specified date is not a Business Day, on the immediately preceding Business Day).

(d) Any instruction, direction, notice, certificate, request or requisition given to the Accounts Bank by a Borrower with respect to the transfer, withdrawal, deposit, investment or payment of any funds under this Agreement or with respect to any other obligations to be performed by the Accounts Bank under this Agreement (i) must be in writing and signed by an Authorized Officer of such Borrower, (ii) in referencing the Revenue Account, must refer to the Revenue Account name and number, (iii) must set forth the exact amount to be transferred and explicit instructions, if necessary, as to the recipient of the funds (including, without limitation, name, style of receiving account, routing number and any other information reasonably requested by the Accounts Bank, (iv) shall constitute a representation by such Borrower that all conditions set forth in this Agreement for such withdrawal have been satisfied, whether or not those conditions are explicitly stated to be so satisfied and (v) shall be copied to the Administrative Agent and the Collateral Agent. Any instruction, direction, notice, certificate, request or requisition given to the Accounts Bank by the Collateral Agent or the Administrative Agent with respect to the transfer, withdrawal, deposit, investment or payment of any funds under this Agreement (x) in referencing any of the Project Accounts, must refer to the specific Project Account name and number and (y) must set forth the exact amount to be transferred and explicit instructions, if necessary, as to the recipient of the funds (including, without limitation, name,

style of receiving account, routing number and any other information reasonably requested by the Accounts Bank. Notwithstanding anything contained in this Agreement or any other Financing Document to the contrary, the Accounts Bank may rely and shall be protected in acting or refraining from acting upon any instruction, direction, notice, certificate, request or requisition of a Borrower, the Administrative Agent or the Collateral Agent.

(e) None of the Project Accounts may go into overdraft, and the Accounts Bank shall not comply with any request or direction (whether from a Borrower, the Administrative Agent or the Collateral Agent) to the extent that it would cause any of the Project Accounts to do so.

(f) The Accounts Bank shall not be charged with knowledge of any Notice of Suspension, Default or Event of Default unless the Accounts Bank has received such Notice of Suspension or other written notice of such Default or Event of Default from the Administrative Agent, the Collateral Agent or an Authorized Officer of a Borrower.

(g) The Accounts Bank shall not be charged with the knowledge that any transfer or withdrawal from any Project Account would result in the occurrence of a Default or Event of Default, unless it has received written notice thereof from the Administrative Agent, the Collateral Agent or an Authorized Officer of a Borrower.

(h) Notwithstanding anything contained in this Agreement or any other Financing Document to the contrary, the Accounts Bank shall have no obligation to (i) make any payment, transfer or withdrawal from the Revenue Account until it has received written direction to make such payment, transfer or withdrawal from the Collateral Agent, the Administrative Agent or, if this Agreement explicitly provides that any such direction may be made by a Borrower, such Borrower or (ii) determine whether any payment, transfer or withdrawal from the Revenue Account made in accordance with any written direction from the Collateral Agent, the Administrative Agent or a Borrower complies with the terms of this Agreement. The Accounts Bank shall have no liability for, nor any responsibility or obligation to confirm, the use or application by a Borrower, Administrative Agent, Collateral Agent or any other recipient of amounts withdrawn or transferred from the Revenue Account. The Accounts Bank shall have no liability for, or obligation or liability to determine, the amount to be transferred or paid in connection with any request.

Section 12.02 Revenue Account.

(a) The Borrower shall, from and after the Closing Date, cause the proceeds of the Loans to be paid into the Revenue Account.

(b) Unless a Notice of Suspension is in effect or a Default or Event of Default would occur after giving effect to any application of funds contemplated hereby, upon receipt of a Revenue Account Withdrawal Certificate duly executed by a Financial Officer of a Borrower [and the Financial Advisor], the Accounts Bank shall cause funds held in the Revenue Account to be withdrawn or transferred in accordance with the directions set forth therein. The Accounts Bank shall be permitted to deduct from the Revenue Account an amount equal to ____ per month in respect of its fee for serving as Accounts Bank.

Section 12.03 Representations, Warranties and Covenants of Accounts Bank. The Accounts Bank hereby represents and warrants, covenants and agrees with the Senior Secured Parties and each Debtor (and the other parties hereto agree, to the extent set forth below) as follows:

(a) it will act as depositary agent, as "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC) with respect to each of the Project Accounts that is a "securities account" (within the meaning of Section 8-501 of the UCC) and the Financial Assets credited to such Project Accounts, and as "bank" (within the meaning of 9-102(a)(8) of the UCC) with respect to each of the Project Accounts as described in Section 12.05 (*Project Accounts as Deposit Account*) and credit balances not constituting Financial Assets credited thereto and to accept all cash, payments, other amounts and Cash Equivalents to be delivered to or held by the Accounts Bank pursuant to the terms of this Agreement. Each Debtor, the Senior Secured Parties and the Accounts Bank agree that, for purposes of Articles 8 and 9 of the UCC, notwithstanding anything to the contrary contained in any other agreement relating to the establishment and operation of the Project Accounts, the jurisdiction of the Accounts Bank (in its capacity as the securities intermediary and bank) is the State of New York;

(b) the Accounts Bank hereby agrees and confirms that it has established and maintains the Project Accounts as set forth and defined in this Agreement. The Accounts Bank agrees that (i) each such Project Account established by the Accounts Bank is and will be maintained as a "securities account" (within the meaning of Section 8-501 of the UCC); (ii) the Debtor in whose name such Project Account has been established is the "entitlement holder" (within the meaning of Section 8-102(a)(7) of the UCC) in respect of the "financial assets" (within the meaning of Section 8-102(a)(9) of the UCC, the "Financial Assets") credited to such Project Accounts that are "securities accounts"; (iii) all Financial Assets in registered form or payable to or to the order of and credited to any such Project Account shall be registered in the name of, payable to or to the order of, or specially endorsed to, the Accounts Bank or in blank, or credited to another securities account maintained in the name of the Accounts Bank; and (iv) in no case will any Financial Asset credited to any such Project Account be registered in the name of, payable to or to the order of, or endorsed to, such Debtor except to the extent the foregoing have been subsequently endorsed by such Person to the Accounts Bank or in blank. Each item of property (including a security, security entitlement, investment property, instrument or obligation, share, participation, interest or other property whatsoever) credited to any Project Account shall to the fullest extent permitted by law be treated as a Financial Asset. Until the Discharge Date, this Agreement is intended to provide the Collateral Agent with "control" (within the meaning of Section 8-106(d)(2) or Section 9-104(a) (as applicable) of the UCC) of the Project Accounts and each Debtor's "security entitlements" (within the meaning of Section 8-102(a)(17) of the UCC) with respect to the Financial Assets credited to the Project Accounts. Each Debtor hereby irrevocably directs, and the Accounts Bank (in its capacity as securities intermediary) hereby agrees, that the Accounts Bank will comply with all instructions and orders (including entitlement orders within the meaning of Section 8-102(a)(8) of the UCC) regarding each Project Account and any Financial Asset therein originated by the Collateral Agent without the further consent of any Debtor or any other Person. In the case of a conflict between any instruction or order originated by the Collateral Agent and any instruction or order originated by a Debtor or any other Person other than a court of competent jurisdiction, the instruction or order originated by the Collateral Agent shall prevail. The Accounts Bank shall

not change the name or account number of any Project Account without the prior written consent of the Collateral Agent and at least five (5) Business Days' prior notice to each Debtor, and shall not change the entitlement holder;

(c) it shall promptly perform all duties imposed upon a securities intermediary and a bank under the UCC and this Agreement. In this regard, (i) if the Accounts Bank has knowledge that an issuer of any Financial Asset is required to make a payment or distribution in respect of such Financial Asset, the Accounts Bank shall have fulfilled its duty under applicable Law to take action to obtain such payment or distribution if (A) it credits such payment or distribution to the Project Accounts in accordance with this Agreement if such payment or distribution is made or (B) it notifies each Debtor, the Collateral Agent and the Administrative Agent that such payment or distribution has not been made, and (ii) if the Accounts Bank is required by applicable Law or this Agreement to credit to any Project Account any Financial Asset purported to be transferred or credited to the Accounts Bank pursuant to applicable Law, the Accounts Bank shall have fulfilled its duty to so credit any Project Account if it credits as a security entitlement to the applicable party whatever rights the Accounts Bank purportedly has, in its capacity as Accounts Bank, in the Financial Asset transferred or credited to the Accounts Bank, in its capacity as Accounts Bank, and the Accounts Bank shall have no duty to ensure that applicable Law has been complied with in respect of the transfer of the Financial Asset or to create a security interest in or Lien on any Financial Asset purported to be transferred or credited to the Accounts Bank and subsequently credited to any Project Account;

(d) all Financial Assets acquired by or delivered to the Accounts Bank shall be held by the Accounts Bank and credited by book entry to the relevant Project Account or otherwise accepted by the Accounts Bank for credit to the relevant Project Account;

(e) each item of property (including any cash, security, general intangible, document, instrument or obligation, share, participation, interest or other property whatsoever) deposited in or credited to any Project Account shall be treated as a Financial Asset for the purposes of Section 8-102(a)(9)(iii) of the UCC. Notwithstanding any provision herein contained to the contrary, any property contained in the Project Accounts that is not deemed to be a Financial Asset under applicable Law, to the extent permitted by applicable Law, will be deemed to be deposited in a deposit account and subject to Section 12.05 (*Project Accounts as Deposit Account*);

(f) The Collateral Agent shall have control of the security entitlements carried in the Project Accounts and of the Financial Assets carried in the Project Accounts, and each Debtor hereby disclaims any entitlement to claim control of such security entitlements;

(g) all property delivered to the Accounts Bank pursuant to this Agreement or the other Financing Documents will be promptly deposited in or credited to the Revenue Account by an appropriate entry in its records in accordance with this Agreement;

(h) if any Person (other than the Collateral Agent, on behalf and for the benefit of the Senior Secured Parties) asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Project Account or in any Financial Asset or other property deposited therein or credited

thereto of which the Accounts Bank has actual knowledge, the Accounts Bank may comply with such order, without authorization from any Debtor or the Collateral Agent; provided, that the Accounts Bank reasonably believes that as a matter of law the Accounts Bank is obligated to comply with such order and provided that the Accounts Bank promptly notifies the Collateral Agent, the Administrative Agent and each Debtor in writing thereof; and

(i) the Accounts Bank has not entered into and will not enter into any agreement with respect to the Project Accounts or any Financial Assets or other property deposited in or credited to any Project Account other than this Agreement and the Pre-Petition Credit Agreement. The Accounts Bank has not entered into and will not enter into any agreement with a Debtor or any other Person purporting to limit or condition the obligation of the Accounts Bank to comply with entitlement orders or any other order originated by the Collateral Agent in accordance with Sections 12.03(b) (*Representations, Warranties and Covenants of Accounts Bank*) or Sections 12.05(b) or (c) (*Project Accounts as Deposit Account*).

Section 12.04 Project Accounts. (a) The Accounts Property will not constitute repayment of the Obligations until so applied as payments in accordance with the terms of this Agreement and the other Financing Documents.

(b) The Accounts Bank shall not have title to the funds on deposit in the Project Accounts, and shall credit the Project Accounts with all receipts of interest, dividends and other income received on the property held in the Project Accounts. The Accounts Bank shall administer and manage the Project Accounts in strict compliance with its duties with respect to the Project Accounts pursuant to this Agreement, and shall be subject to and comply with all of the obligations that the Accounts Bank owes to each Debtor and the Collateral Agent, on behalf of the Senior Secured Parties, with respect to the Project Accounts, including all subordination obligations set forth in Section 12.07 (*Subordination*) with respect to the Accounts Bank's right of set-off or recoupment or right to obtain a Lien, pursuant to the terms of this Agreement. The Accounts Bank hereby agrees to comply with (i) any and all instructions originated by the Collateral Agent directing the disbursement, deposit and/or transfer of any funds and all other property held in the Project Accounts without any further consent of any Debtor or any other Person and (ii) any and all instructions originated by the Debtor in whose name a Project Account has been established directing the disbursement, deposit and/or transfer of any funds and all other property held in such Project Account in accordance with this Agreement without any further consent of the Collateral Agent, the Administrative Agent or any other Person, except to the extent such consent is required pursuant to this Agreement.

Section 12.05 Project Accounts as Deposit Account. (a) To the extent that the Project Accounts are not considered securities accounts, the Project Accounts shall be deemed to be deposit accounts in respect of any property deposited in or credited to the Project Accounts that is not deemed to be a Financial Asset under applicable Law. Such deposit accounts and such property shall be maintained with the Accounts Bank acting not as a securities intermediary, but as a bank.

(b) The Debtor in whose name a Project Account has been established shall be deemed the customer of the Accounts Bank for purposes of such Project Account and, as such, shall be entitled to all of the rights that customers of banks have under applicable Law with

respect to deposit accounts, including the right to withdraw funds from, or close, such Project Accounts, in each such case subject to, and in accordance with, the terms of this Agreement.

(c) The parties hereto agree that, to the extent that the Project Accounts are not considered "securities accounts" (within the meaning of Section 8-501(a) of the UCC), the Project Accounts shall be deemed to be "deposit accounts" (as defined in Section 9-102(a)(29) of the UCC) to the extent a security interest can be granted and perfected under the UCC in the Project Accounts as deposit accounts, which each Debtor in whose name a Project Account has been established shall maintain with the Accounts Bank acting not as a securities intermediary but as a "bank" (within the meaning of Section 9-102(a)(8) of the UCC). The Accounts Bank shall not have title to the funds on deposit in the Project Accounts, and shall credit the Project Accounts with all receipts of interest, dividends and other income received on the property held in the Project Accounts. The Accounts Bank shall administer and manage the Project Accounts in strict compliance with all the terms applicable to the Project Accounts pursuant to this Agreement, and shall be subject to and comply with all the obligations that the Accounts Bank owes to the Collateral Agent with respect to the Project Accounts, including all subordination obligations, pursuant to the terms of this Agreement. The Accounts Bank hereby agrees to comply with any and all instructions originated by (i) the Collateral Agent directing disposition of funds and all other property in the Project Accounts without any further consent of any Debtor or any other Person and (ii) the Debtor in whose name a Project Account has been established directing the disbursement, deposit and/or transfer of any funds and all other property held in such Project Account in accordance with this Agreement, without any further consent of the Collateral Agent, the Administrative Agent or any other Person, except to the extent such consent is required pursuant to this Agreement.

Section 12.06 Duties of Accounts Bank. (a) The Accounts Bank will also have those duties and responsibilities expressly set forth in this Agreement, and no additional duties, responsibilities, obligations or liabilities shall be inferred from the provisions of this Agreement or imposed on the Accounts Bank. The Accounts Bank will act at the written direction of the Collateral Agent, the Administrative Agent and, as expressly provided in this Agreement, each Debtor in whose name a Project Account has been established, but will not be required to take any action that is contrary to this Agreement or applicable Law or that, in its reasonable judgment, would involve it in expense or liability, unless it has been furnished with adequate indemnity against such expense or liability. The Accounts Bank will have no responsibility to ensure the performance by any other party of its duties and obligations hereunder. The Accounts Bank will use the same care with respect to the safekeeping and handling of property held in the Project Accounts as the Accounts Bank uses in respect of property held for its own sole benefit. Until otherwise instructed by the Collateral Agent, the Accounts Bank shall not act upon any written direction submitted to the Accounts Bank pursuant to the Pre-Petition Credit Agreement.

(b) In performing its functions and duties under this Agreement, the Accounts Bank will act solely as the depository agent and as securities intermediary or as a bank, as the case may be, with respect to the Project Accounts. None of the Senior Secured Parties or any Debtor will have any rights against the Accounts Bank hereunder, other than for the Accounts Bank's gross negligence or willful misconduct. Except as otherwise expressly provided in this Agreement, no Debtor will have any right to direct the Accounts Bank to distribute or allocate any funds, instruments, securities, Financial Assets or other assets in the Project Accounts or to

withdraw or transfer any funds, instruments, securities, Financial Assets or other assets from the Project Accounts. Except as otherwise expressly provided in this Agreement, the Collateral Agent will have the sole right to issue directions and instructions to the Accounts Bank, acting as securities intermediary or bank, as the case may be, in accordance with this Agreement, and to issue entitlement orders with respect to the Project Accounts. It is expressly understood and agreed that any investment made with funds held in the Project Accounts may be made only in accordance with the express provisions of Section 12.10 (*Interest and Investments*). The Accounts Bank shall not in any way whatsoever be liable for any loss or depreciation in the value of the investments made pursuant to the terms of this Agreement.

Section 12.07 Subordination. (a) The Accounts Bank hereby acknowledges the security interest granted hereby to the Collateral Agent, on behalf and for the benefit of the Senior Secured Parties, by each Debtor. In the event that the Accounts Bank has or subsequently obtains by agreement, operation of applicable Law or otherwise a right of recoupment or set-off or any Lien in any of the Project Accounts or any Financial Asset or other property deposited therein or credited thereto or any security entitlement related thereto, the Accounts Bank hereby agrees that such right of recoupment or set-off and/or any such Lien shall be subordinate to the security interest of the Collateral Agent, on behalf of and for the benefit of the Senior Secured Parties. The Accounts Bank agrees that it shall not assert or enforce any such right of recoupment or set-off and/or any Lien until the Discharge Date.

(b) The Financial Assets and other items deposited in or credited to the Project Accounts and the Accounts Property will not be subject to deduction, set-off, banker's lien or any other right in favor of any Person other than the Collateral Agent, on behalf and for the benefit of the Senior Secured Parties.

Section 12.08 Debtor Acknowledgments. (a) Each Debtor acknowledges that neither any insufficiency of funds in the Project Accounts (or any of them), nor any inability to apply any funds in the Project Accounts (or any of them) against any or all amounts owing under any Financing Document, shall at any time limit, reduce or otherwise affect such Debtor's obligations under any Financing Document.

(b) Each party to this Agreement acknowledges that the Accounts Bank and the Collateral Agent shall not incur any obligation or liability in circumstances where there are insufficient funds deposited in or credited to any Project Account to make a payment in full that would otherwise have been made pursuant to the terms of this Agreement, except (i) in the case of the Accounts Bank to the extent that the loss arises directly from the Accounts Bank's gross negligence or willful misconduct, and (ii) in the case of the Collateral Agent, to the extent that the loss arises directly from the Collateral Agent's gross negligence or willful misconduct.

Section 12.09 Agreement to Hold In Trust. All payments received directly by each Debtor that are required to be deposited into the Revenue Accounts in accordance with the terms of this Agreement or any other Financing Document shall be held by each Debtor in trust for the Collateral Agent, on behalf and for the benefit of the Senior Secured Parties, shall be segregated from other funds of each Debtor and shall, forthwith upon receipt by each Debtor, be turned over to the Collateral Agent or its designee in the same form as received by each Debtor (duly

endorsed by each Debtor to the Collateral Agent or the Accounts Bank, if requested) for deposit and disbursement in accordance with this Agreement.

Section 12.10 Interest and Investments. (a) Each amount deposited in or credited to a Project Account from time to time shall, from the time it is so deposited or credited until the time it is withdrawn from that Project Account (whether for the purpose of making an investment in Cash Equivalents or otherwise applied in accordance with the terms of this Agreement), earn interest at such rates as may be agreed from time to time by the Debtor in whose name such Project Account has been established and the Accounts Bank.

(b) Prior to the receipt by the Accounts Bank of a Notice of Suspension, any amounts held by the Accounts Bank in a Project Account shall be invested by the Accounts Bank from time to time, at the risk and expense of the Debtor in whose name such Project Account has been established, solely in such Cash Equivalents as each Debtor may direct in writing. Each such Debtor shall select Cash Equivalents having such maturities as shall cause the Project Accounts to have a cash balance as of any day sufficient to cover the transfers to be made from the Project Accounts on such day in accordance with this Agreement, the other Financing Documents and the Project Documents. Upon delivery by the Collateral Agent to the Accounts Bank of a Notice of Suspension and until written revocation of such Notice of Suspension is delivered to the Accounts Bank by the Collateral Agent, any amounts held by the Accounts Bank in the Project Accounts shall be invested by the Accounts Bank from time to time, solely in such Cash Equivalents as the Collateral Agent may direct.

(c) In the event that the cash balance in any of the Project Accounts is as of any day insufficient to cover the transfers to be made from such Project Account on such day, the Collateral Agent may direct the Accounts Bank to sell or liquidate the Cash Equivalents standing to the credit of such Project Account (without regard to maturity date) in such manner as the Collateral Agent may deem necessary in order to obtain cash at least sufficient to make such transfers and to pay any expenses and charges incurred in connection with effecting any such sale or liquidation, which expenses and charges the Accounts Bank shall be authorized to pay with cash on deposit in such Project Account. Neither the Accounts Bank nor any Senior Secured Party shall be liable to any Person for any loss suffered because of any such sale or liquidation.

(d) All interest and other investment income earned from Cash Equivalents made from amounts in the Revenue Account shall remain in the Revenue Account until transferred from the Revenue Account in accordance with the terms of this Agreement.

(e) It is acknowledged by the parties hereto that all investment income earned on amounts on deposit in or credited to a Project Account for all Tax purposes shall be attributed to and be income of the Debtor in whose name such Project Account has been established. Each such Debtor shall be responsible for determining any requirements for paying Taxes or reporting or withholding any payments for Tax purposes hereunder. Each such Debtor shall prepare and file all Tax information required with respect to the Project Accounts. Each such Debtor agrees to indemnify and hold each Senior Secured Party harmless against all liability for Tax withholding and/or reporting for any investment income earned on the Project Accounts and payments in respect thereof. Such indemnities shall survive the termination or discharge of this

Agreement or resignation of the Accounts Bank. No Senior Secured Party shall have any obligation with respect to the making of or the reporting of any payments for Tax purposes. From time to time, and as reasonably requested by the Accounts Bank, each Debtor in whose name a Project Account has been established shall provide to the Accounts Bank a United States Department of the Treasury Internal Revenue Service tax Form W-8 or W-8BEN or other appropriate form required with respect to the withholding or exemption from withholding of income tax on any investment income earned on such Project Account.

Section 12.11 Accounts Bank Information. (a) The Accounts Bank will:

(i) within five (5) Business Days after the end of the month in which the first deposit is made into any Project Account and within five (5) Business Days after the end of each month thereafter, provide each Debtor, the Collateral Agent and the Administrative Agent a report with respect to the Project Accounts, setting forth in reasonable detail all deposits to and disbursements from each of the Project Accounts during such month, including the date on which made, and the balances of and any investments in each of the Project Accounts at the end of such month, including information regarding categories, amounts, maturities and issuers of Cash Equivalents; and

(ii) within three (3) Business Days after receipt of any written request by each Debtor, the Collateral Agent or the Administrative Agent, provide to each Debtor, the Collateral Agent or the Administrative Agent, as the case may be, such other information as each Debtor, the Collateral Agent or the Administrative Agent may specify regarding all Cash Equivalents and any other investments made by the Accounts Bank pursuant hereto and regarding amounts available in the Project Accounts.

Notwithstanding the foregoing, the Accounts Bank will provide each Debtor, the Collateral Agent and the Administrative Agent such additional information regarding the Project Accounts and the balances and Cash Equivalents therein as any of them may reasonably request from time to time.

(b) The Accounts Bank will maintain all of the Project Accounts and all books and records with respect thereto as may be necessary to record properly all transactions carried out by it under this Agreement.

(c) If any Cash Equivalent ceases to be a Cash Equivalent, the Accounts Bank will, as soon as reasonably practicable after becoming aware of such cessation, notify the Collateral Agent and each Debtor in writing of such cessation and, upon the written direction of a Debtor or the Collateral Agent, as the case may be, will cause the relevant investment to be replaced by a Cash Equivalent or by cash; provided that this Section 12.11(c) will not oblige the Accounts Bank to liquidate any investment earlier than its normal maturity date unless:

(i) directed to do so under Section 12.10 (*Interest and Investments*); or

(ii) the maturity date of the relevant investment exceeds the maturity date that would enable it to continue to qualify as a Cash Equivalent.

Section 12.12 Notices of Suspension of Accounts. (a) The Collateral Agent may, but shall not be required to, suspend the right of the Accounts Bank and each Debtor to withdraw or otherwise deal with any funds deposited in or credited to the Project Accounts at any time during the occurrence and continuance of an Event of Default by delivering a notice to the Accounts Bank (with a copy to each Debtor and the Administrative Agent) (a "Notice of Suspension").

(b) Notwithstanding any other provision of the Financing Documents, after the issuance by the Collateral Agent of a Notice of Suspension in accordance with Section 12.12(a) and until such time as the Collateral Agent advises the Accounts Bank and each Debtor (with a copy to the Administrative Agent) that it has withdrawn such Notice of Suspension, (which it shall promptly do if such Event of Default is no longer continuing or has been waived) no amount may be withdrawn by the Accounts Bank from any Project Account, including for investment in Cash Equivalents, without the express prior written consent of the Collateral Agent.

(c) Notwithstanding any other provision of the Financing Documents, without the express prior written consent of the Required Lenders, no amount may be withdrawn from any Project Account if a Default or Event of Default would occur as a result of such withdrawal.

On the date of each withdrawal by the Accounts Bank from a Project Account, each Debtor shall be deemed to represent and warrant that no Notice of Suspension is in effect and that that no Default or Event of Default would occur as a result of such withdrawal, unless the Required Lenders have previously consented in writing to such withdrawal, notwithstanding that a Notice of Suspension is in effect or that a Default or Event of Default would occur as a result of such withdrawal.

[*Remainder of page intentionally blank. Next page is signature page.*]

IN WITNESS WHEREOF, the parties hereto have caused this Debtor-in-Possession Credit Agreement to be executed by their respective officers as of the day and year first above written.

NOVA BIOFUELS SENECA, LLC,
as a Borrower

By: _____
Name:
Title:

NOVA BIOSOURCE FUELS, INC.,
as a Borrower

By: _____
Name:
Title:

BIOSOURCE AMERICA, INC.,
as a Borrower

By: _____
Name:
Title:

NOVA BIOFUELS CLINTON COUNTY, LLC,
as a Borrower

By: _____
Name:
Title:

NOVA BIOSOURCE TECHNOLOGIES, LLC,
as a Borrower

By: _____
Name:
Title:

NOVA BIOFUELS TRADE GROUP, LLC,
as a Borrower

By: _____
Name:
Title:

NOVA BIOFUELS SENECA, LLC,
as Loan Party Agent

By: _____
Name:
Title:

NOVA HOLDING SENECA, LLC,
as a Guarantor

By: _____
Name:
Title:

NOVA HOLDING CLINTON COUNTY LLC,
as a Guarantor

By: _____
Name:
Title:

NBF OPERATIONS, LLC,
as a Guarantor

By: _____
Name:
Title:

NOVA HOLDING TRADE GROUP, LLC,
as a Guarantor

By: _____
Name:
Title:

WESTLB AG, NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

WESTLB AG, NEW YORK BRANCH,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

STERLING BANK,
as Accounts Bank

By: _____
Name:
Title:

By: _____
Name:
Title:

DRAFT July 2

EXHIBIT __
to DIP Credit Agreement

[FORM OF]
REVENUE ACCOUNT WITHDRAWAL CERTIFICATE

Date: [_____]

[STERLING BANK], as Accounts Bank
[_____]
[_____]
Attention: [_____]

Reference is made to Section 12.02 of the Debtor-In-Possession Credit Agreement (the "Credit Agreement"), dated July __, 2009, by and among Nova Biofuels Seneca, LLC, a Delaware limited liability company, Nova Biosource Fuels, Inc., a Nevada corporation, Biosource America, Inc., a Texas corporation, Nova Biosource Technologies, LLC, a Texas limited liability company, Nova Biofuels Clinton County, LLC, a Delaware limited liability company, Nova Biofuels Trade Group, LLC, a Delaware limited liability company, Nova Holding Seneca, LLC, a Delaware limited liability company, NBF Operations, LLC, a Delaware limited liability company, Nova Holding Clinton County LLC, a Delaware limited liability company, Nova Holding Trade Group, LLC, a Delaware limited liability company, each of the Lenders from time to time party thereto, WESTLB AG, NEW YORK BRANCH, as Administrative Agent for the Lenders, WESTLB AG, NEW YORK BRANCH, as Collateral Agent for the Senior Secured Parties, and STERLING BANK, as Accounts Bank. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement.

Seneca hereby directs the Accounts Bank to withdraw and transfer, from the account entitled Revenue Account, No. [_____] (the "Revenue Account"), on [_____], 20[__] (the "Revenue Account Withdrawal Date"), an amount equal to _____ to bank account #101051042 maintained by Seneca under Seneca's name with the Accounts Bank.

In support of such direction, the undersigned, on behalf of Seneca, hereby represents and certifies, as of the date hereof and as of the Revenue Account Withdrawal Date, as follows:

Section 12.13 the undersigned is an Authorized Officer of Seneca;

Section 12.14 this Revenue Account Withdrawal Certificate is being delivered to the Accounts Bank not later than 2:00 p.m., New York City time, on the Revenue Account Withdrawal Date, and the Revenue Account Withdrawal Date is a Business Day;

Section 12.15 all conditions set forth in Section 12.02 of the Credit Agreement for the withdrawals requested hereby have been satisfied; and

Section 12.16 on the date hereof, no Notice of Suspension is in effect and no Default or Event of Default would occur after giving effect to any application of funds contemplated hereby.

The undersigned is executing this Revenue Account Withdrawal Certificate not in an individual capacity but in its capacity as an Authorized Officer of Seneca.

[The remainder of this page is intentionally blank. The next page is the signature page.]

cc: Administrative Agent

IN WITNESS WHEREOF, the undersigned has caused this Revenue Account Withdrawal Certificate to be executed and delivered as of the day and year first above written.

NOVA BIOFUELS SENECA, LLC,
as Borrower

By:_____
Name:
Title:

[COUNTERSIGN BY CAPSTONE?]

EXHIBIT A

DEFINED TERMS

"Account Collateral" means all Collateral relating to the Project Accounts.

"Accounts" means all "accounts" as that term is defined in Section 9-102 of the UCC, now or hereafter owned by the Loan Parties.

"Accounts Bank" means Sterling Bank, a Texas banking corporation, not in its individual capacity, but solely as depositary bank and securities intermediary, and includes each other Person that may, from time to time, be appointed as successor Accounts Bank.

"Accounts Property" means any funds, instruments, securities, financial assets or other assets from time to time held in any of the Project Accounts or credited thereto or otherwise in possession or control of the Accounts Bank pursuant to this Agreement.

"Additional Project Document" means each contract, agreement, letter agreement or other instrument to which any Loan Party becomes a party after the date hereof, other than under which (i) any Loan Party could not reasonably be expected to have obligations or liabilities in the aggregate in excess of five hundred thousand Dollars ($500,000), or be entitled to receive revenues in the aggregate in excess of one million Dollars ($1,000,000), in either case in value in the six-month period following the date hereof and (ii) a termination of which could not reasonably be expected to result in a Material Adverse Effect; provided, that for the purposes of this definition, any series of related transactions (other than transactions, including hedging transactions, relating to the sale of Products or the purchase of feedstock and natural gas) shall be considered as one transaction, and all contracts, agreements, letter agreements or other instruments in respect of such transactions shall be considered as one contract, agreement, letter agreement or other instrument, as applicable.

"Adequate Protection Obligations" has the meaning assigned to such term in the Final Order.

"Adequate Protection Priority Claim" has the meaning assigned to such term in the Final Order.

"Administrative Agent" means WestLB, not in its individual capacity but solely as administrative agent for the Lenders hereunder and under the other Financing Documents, and includes each other Person that may, from time to time, be appointed as successor Administrative Agent pursuant to Section 10.06 (*Resignation or Removal of Agent*).

"Affiliate" of any Person means any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. A Person shall be deemed to be "controlled by" any other Person if such other Person (i) possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise or (ii) owns at least ten percent (10%) of the Equity Interests in such Person.

"Agent Parties" has the meaning provided in Section 11.11(i) (*Notices and Other Communications*).

"Agents" means, collectively, the Administrative Agent, the Collateral Agent and the Accounts Bank.

"Aggregate Commitment" means two million thirty thousand Dollars ($2,030,000), as the same may be reduced in accordance with Section 2.05 (*Termination or Reduction of Commitments*).

"Agreement" has the meaning set forth in the Preamble.

"Ancillary Documents" means, with respect to each Additional Project Document and Material Contract entered into after the date hereof, the following, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent and, in the case of items (i), (ii) and (iv), the Collateral Agent:

(i) each security instrument and agreement necessary or desirable to grant to the Collateral Agent a first priority perfected Lien (subject only to Permitted Liens) in such Additional Project Document or Material Contract and all property interests received by any Loan Party in connection therewith;

(ii) all recorded UCC financing statements and other filings required to perfect such Lien;

(iii) if reasonably requested by the Administrative Agent, opinions of counsel for Loan Parties addressing such matters relating to such document and Lien as the Administrative Agent may reasonably request;

(iv) if reasonably requested by the Administrative Agent, a Consent with respect to such Additional Project Document or Material Contract from each Major Project Party or counterparty thereto and an opinion of counsel to such Major Project Party or counterparty addressing matters relating to such Additional Project Document or Material Contract and such Consent as the Administrative Agent may reasonably request; provided, that if such Consent cannot be obtained, the relevant Additional Project Document or Material Contract shall be freely assignable by the applicable Loan Party to the Collateral Agent and to a transferee in foreclosure, in each such case without any consent or approval of the relevant Major Project Party or counterparty; and

(v) certified evidence of the authorization of such Additional Project Document or Material Contract by each Loan Party which is a party thereto.

"Applicable Margin" means ten percent (10%) per annum.

"Approved Fund" means, with respect to any Lender that is a fund that invests in commercial loans, any other fund that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Auditors" means those nationally recognized independent auditors selected by the Borrowers and approved by the Administrative Agent.

"Authorized Officer" means (i) with respect to any Person that is a corporation, the chief executive officer, the chief operating officer, the president, any vice president, the treasurer, the chief financial officer or chief restructuring officer of such Person, (ii) with respect to any Person that is a partnership, an Authorized Officer of a general partner of such Person, (iii) with respect to any Person that is a limited liability company, any manager, the president, any vice president, the treasurer, the chief financial officer or chief restructuring officer of such Person, or an Authorized Officer of the managing member of such Person, or (iv) with respect to any Person, such other representative of such Person that is approved by the Administrative Agent in writing who, in each such case, has been named as an Authorized Officer on a certificate of incumbency of such Person delivered to the Administrative Agent and the Accounts Bank on or after the date hereof.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy" or any successor statute, and all rules promulgated thereunder.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and local rules of the Bankruptcy Court, each as amended, and applicable to the Cases.

"Base Rate" means, for any day, a fluctuating rate *per annum* equal to the higher of (i) the Federal Funds Effective Rate *plus* one-half of one percent (0.50%) and (ii) the rate of interest in effect for such day as publicly announced from time to time by WestLB as its "prime rate." The "prime rate" is a rate set by WestLB based upon various factors including WestLB's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by WestLB shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan bearing interest at a rate determined by reference to the Base Rate pursuant to Section 4.01 (*Eurodollar Rate Lending Unlawful*), Section 4.02 (*Inability to Determine Eurodollar Rates*), or Section 4.03 (*Increased Eurodollar Loan Costs*).

"Biofuels Trade" has the meaning set forth in the Preamble.

"Biosource America" has the meaning set forth in the Preamble.

"Biosource Fuels" has the meaning set forth in the Preamble.

"Blocked Account Agreement" means the Sterling Blocked Accounts Agreement and any agreement, in substantially the form attached to the Pre-Petition Credit Agreement as

Exhibit M (or, if requested by the Loan Parties, such other form reasonably satisfactory to the Administrative Agent and the Collateral Agent), with respect to a Local Account among the Loan Party in whose name such Local Account has been opened, the bank with whom such Local Account was opened and the Collateral Agent or the Pre-Petition Collateral Agent.

"Blocked Account Collateral" has the meaning set forth in each Blocked Account Agreement.

"Borrowers" has the meaning set forth in the Preamble.

"Budget Period" means the period commencing June 24, 2009 through and including September 18, 2009. [NB: DOES THIS GET EXTENDED TO MATURITY DATE?]

"Business Day" means:

(i) any day that is neither a Saturday or Sunday nor a day on which commercial banks are authorized or required to be closed in New York, New York; and

(ii) relative to the making, continuing, prepaying or repaying of any Eurodollar Loans, any day on which dealings in Dollars are carried on in the London interbank market.

"Capitalized Lease Liabilities" of any Person means all monetary obligations of such Person under any leasing or similar arrangement that, in accordance with GAAP, would be classified as capitalized leases on a balance sheet of such Person or otherwise disclosed as such in a note to such balance sheet and, for purposes of the Financing Documents, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Carve-Out" means the sum, after application of any unencumbered cash of the Borrowers and the Guarantors, of (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930, (ii) the aggregate amount of any budgeted, accrued but unpaid, professional fees and expenses existing as of the Carve-Out Date of the Debtors and the Committee, to the extent such fees are allowed by order of the Bankruptcy Court, and (iii) those fees, costs and expenses incurred by (x) the Debtors' professionals after the Carve-Out Date and subsequently allowed by order of the Bankruptcy Court in an amount not to exceed $160,000 and (y) the Committee's professionals after the Carve-Out Date and subsequently allowed by order of the Bankruptcy Court in an amount not to exceed $50,000 (the amounts provided for in clause (iii) shall not be reduced by any amounts paid to the Debtors' professionals or the Committee's professionals prior to the occurrence of the Carve-Out Date).

"Carve-Out Date" means the date that is the earlier of (i) the date on which any Borrower or Guarantor, the Committee and the Office of the United States Trustee receives a notice of Event of Default, and (ii) the Maturity Date.

"Cash Collateral" has the meaning assigned to such term in the Final Order and shall include all funds in the Sponsor Support Account.

"Cash Equivalents" means:

(i) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations unconditionally guaranteed by the full faith and credit of the government of the United States, in each case maturing within one (1) year from the date of acquisition thereof;

(ii) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than one (1) year from the date of acquisition thereof and, at the time of acquisition, having a rating of AA- or higher from S&P or Aa3 or higher from Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(iii) investments in commercial paper maturing within one hundred eighty (180) days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(iv) investments in certificates of deposit, banker's acceptances and time deposits maturing within two hundred and seventy (270) days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent or any domestic office of any commercial bank organized under the Laws of the United States of America, any State thereof, any country that is a member of the Organisation for Economic Co-Operation and Development or any political subdivision thereof, that has a combined capital and surplus and undivided profits of not less than five hundred million Dollars ($500,000,000);

(v) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (i) above and entered into with a financial institution satisfying the criteria of clause (iv) of this definition; and

(vi) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (i) through (v) of this definition.

"Casualty Event" means an event that causes the Project, or any material portion thereof, to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), as amended, and rules, regulations, standards guidelines and publications issued thereunder.

"Change of Control" means any transaction or series of related transactions (including any merger or consolidation) the result of which is that:

(i) (A) Holding Clinton fails to maintain, directly, legally or beneficially, one hundred percent (100%) of the Equity Interests of Clinton, (B) Holding Seneca fails to maintain, directly, legally or beneficially, one hundred percent (100%) of the Equity Interests of Seneca, (C) Holding Trade fails to maintain, directly, legally or beneficially, one hundred percent (100%) of the Equity Interests of Biofuels Trade, (D) NBF Operations fails to maintain, directly, legally or beneficially, one hundred percent (100%) of the Equity Interests of Holding Trade, Biosource America, Technologies and Biofuels Trade, (E) Biosource Fuels fails to maintain, directly or indirectly, at least fifty-one percent (51%) of the Equity Interests in Holding Clinton, Holding Seneca and NBF Operations, or (F) ten percent (10%) or more of the Equity Interests of any Borrower (other than Biosource Fuels) are indirectly, legally or beneficially owned by, or under common control of, any Person other than those identified in clauses (A) or (E) above;

(ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the equity securities of Biosource Fuels entitled to vote for members of the board of directors or equivalent governing body of Biosource Fuels on a fully-diluted basis (and taking into account all such securities that such "person" or "group" has the right to acquire pursuant to any option right); or

(iii) a majority of the members of the board of directors of Biosource Fuels cease to be composed of individuals (A) who are members of that board on the date hereof, (B) whose election or nomination to that board was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that board or (C) whose election or nomination to that board was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board (excluding, in the

case of both clause (B) and clause (C), any individual whose initial nomination for, or assumption of office as, a member of that board occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(iv) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Biosource Fuels, or control over the equity securities of Biosource Fuels entitled to vote for members of the board of directors of Biosource Fuels on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities.

"Chapter 11 Case" or "Case" has the meaning set forth in the Recitals.

"Chattel Paper" has the meaning set forth in Section 9-102 of the UCC.

"Clinton" has the meaning set forth in the Preamble.

"Clinton Collateral" means the assets of Clinton, Holding Clinton and Biosource Fuels subject to the Clinton Liens.

"Clinton Liens" means the security interests in and liens on the assets of Clinton and Holding Clinton, and the equity interests in Holding Clinton and Holding Seneca held by Biosource Fuels, granted by Clinton, Holding Clinton and Biosource Fuels to the Indenture Trustee. For the avoidance of doubt, Clinton Liens shall not include any purported liens securing the Indenture (i) on the equity of any entities other than Clinton, Holding Clinton or Holding Seneca, (ii) on the assets of any entities other than Clinton and Holding Clinton (other than the assets of Biosource Fuels consisting of the equity interests in Holding Clinton and Holding Seneca), and (iii) on any equity in or assets of any entities directly or indirectly owned or controlled by Biosource Fuels other than Clinton and Holding Clinton.

"Clinton Mortgage" means the Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents and Security Deposits, dated as of _____, by Clinton in favor of the Collateral Agent for the benefit of the Senior Secured Parties.

"Clinton Priming Expenditures" means, at any time, the sum of the amounts set forth in clauses (i) and (ii) below; provided that, notwithstanding anything to the contrary contained herein, if at such time there were prior distributions of cash proceeds of the Clinton Collateral to the Senior Secured Parties pursuant to Section 3.08(d)(i), the amount of the Clinton Priming Expenditures shall be reduced by an amount equal to such prior distributions:

(i) the aggregate amount expended by the Borrowers from May 22, 2009 through the date of such calculation for expenses specifically related to Clinton, including expenses that are designated under the Non-Seneca Budget as Clinton expenses; *plus*

(ii) fifteen percent of the amount expended by the Borrowers from May 22, 2009 through the date of such calculation for all expenses under the Non-Seneca Budget that are not designated as Clinton expenses.

"Clinton Project" means the biodiesel refinery located in Clinton County, Iowa with a nameplate capacity of approximately ten (10) million gallons per year and all auxiliary and other facilities constructed or to be constructed in connection with such refinery by or on behalf of Clinton, together with all fixtures and improvements thereto and the Clinton Site and all other real property, easements and rights-of-way held by or on behalf of Clinton and all rights to use easements and rights-of-way of others.

"Clinton Site" means those certain parcels described on Schedule 5.14 to this Agreement.

"Closing Date" means the date on which all the conditions set forth in Section 6.01 (*Conditions to Closing*) have been satisfied or waived.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all Pre-Petition and Post-Petition assets of any Debtor, including all Accounts, Chattel Paper, Commercial Tort Claims, Documents, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, Investment Property (including Equity Interests in Subsidiaries), Pledged Deposits, Supporting Obligations, and, subject to the entry of the Final Order and the terms thereof, the proceeds of avoidance actions under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code in each of the Chapter 11 Cases, and Other Collateral, wherever located, in which any Debtor now has or hereafter acquires any right or interest, and any and all rents, issues, products, offspring, proceeds (including Stock Rights), insurance proceeds and profits generated by any item thereof, without the necessity of any further action of any kind or nature by any Agent or Lender in order to claim or perfect such rents, issues, products, offspring, proceeds, insurance proceeds and/or profits, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto. Notwithstanding anything to the contrary contained in this definition, Collateral shall not include (i) rights under governmental licenses, authorizations or any other asset of a Debtor to the extent and for so long as the grant of a security interest therein is prohibited by applicable Law, (ii) any intent-to-use trademark or service mark application prior to the filing of a statement or use or amendment to allege use, or any other intellectual property, to the extent that applicable Law prohibits the creation of a security interest or would otherwise result in the loss of rights from the creation of such security interest or from the assignment of such rights upon the occurrence and continuance of an Event of Default, (iii) any causes of action the Debtors' estates may hold against current or former officers and directors of any of the Debtors that are not also avoidance actions under Sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and (iv) following entry of one or more orders of the Bankruptcy Court authorizing the sale of all or

substantially all of the Collateral pursuant to Sections 363 or 1123 of the Bankruptcy Code that do not also include the transfer of all avoidance actions under Sections 502(d), 544, 545, 547, 548, 550, and 553 of the Bankruptcy Code related to the assets sold by the respective Debtor, related avoidance actions that are not sold pursuant to any such order.

"Commercial Tort Claims" means any currently existing commercial tort claims of a Debtor.

"Cold Shutdown" means, in respect of a Project, the cessation of commercial operation of such Project as a biodiesel refinery and the maintenance of such Project in a state in which the Project facilities are not producing biodiesel, biodiesel work in process has been completed, and wherein (i) Project systems and equipment preservation are being managed in accordance with manufacturer recommendations and prudent practices and (ii) Project facilities operate with a reduced headcount. "Cold Shutdown" contemplates minimized usage of a Project's utility systems but does not contemplate any cessation of compliance monitoring with respect to Necessary Project Approvals.

"Collateral Agent" means WestLB, not in its individual capacity but solely in its capacity as collateral agent for the Senior Secured Parties under the Financing Documents, and includes each other Person that may, from time to time, be appointed as successor Collateral Agent pursuant to Section 10.06 (*Resignation or Removal of Agent*).

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Loans, as set forth opposite the name of such Lender in Schedule 2.01, as the same may be reduced in accordance with Section 2.05 (*Termination or Reduction of Commitments*).

"Commitment Percentage" means, as to any Lender at any time, the percentage that such Lender's Commitment then constitutes of the Aggregate Commitment.

"Committee" means the official committee of unsecured creditors formed in the Chapter 11 Cases.

"Commodity Hedging Arrangements" means any arrangement to hedge the price of feedstock purchases, biodiesel sales, glycerin sales or natural gas purchases.

"Communications" has the meaning provided in Section 11.11(g) (*Notices and Other Communications*).

"Condemnation Proceeds" means any Net Cash Proceeds payable in respect of any Event of Taking.

"Consents" means each Consent and Agreement entered into among a Major Project Party, a Debtor, and the Collateral Agent, each in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent.

"Consultants" means the Insurance Consultant, the Financial Advisor and any other consultants appointed by or on behalf of the Required Lenders.

"Contest" means, with respect to any matter or claim involving any Person, that such Person is contesting such matter or claim in good faith and by appropriate proceedings timely instituted; provided, that the following conditions are satisfied: (a) unless waived by the Administrative Agent, such Person has posted a bond or cash collateral for the full amount of such claim or other security reasonably acceptable to the Administrative Agent; (b) during the period of such contest, the enforcement of any contested item is effectively stayed; (c) none of such Person or any of its officers, directors or employees, or any Senior Secured Party or its respective officers, directors or employees, is or would reasonably be expected to become subject to any criminal liability or sanction in connection with such contested items; and (d) such contest and any resultant failure to pay or discharge the claimed or assessed amount during the pendency of such contest does not, and could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) involve a material risk of the sale, forfeiture or loss of, or the creation, existence or imposition of any Lien (other than a Permitted Lien) on, any of the Collateral.

"Contingent Liabilities" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any contingent liabilities shall (subject to any limitation set forth therein) be deemed for purposes of this Agreement to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby; provided, however, that if the maximum amount of the debt, obligation or other liability guaranteed thereby has not been established, the amount of such contingent liability shall be the maximum reasonably anticipated amount of the debt, obligation or other liability; provided, further, that any agreement to limit the maximum amount of such Person's obligation under such contingent liability shall not, of and by itself, be deemed to establish the maximum reasonably anticipated amount of such debt, obligation or other liability.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Debtors" has the meaning set forth in the Recitals.

"Default" means any condition, occurrence or event that, after notice or passage of time or both, would be an Event of Default.

"Default Rate" has the meaning set forth in Section 3.04(b) (*Default Interest Rate*).

"Deposit Accounts" has the meaning set forth in Section 9-102 of the UCC.

"DIP Administrative Claim" means an allowed superpriority administrative expense claim under Section 364(c)(1) of the Bankruptcy Code, having priority over all

administrative expenses of the kind specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 or any other provisions of the Bankruptcy Code and as set forth in the Final Order.

"DIP Budgets" means, collectively, the Seneca Budget and the Non-Seneca Budget.

"DIP Facility" means the credit facility provided to the Debtors pursuant to the Financing Documents.

"DIP Liens" has the meaning set forth in Section 2.07(b) (*Super-Priority Nature of Obligations*).

"Discharge Date" means the date on which (a) all outstanding Commitments have been terminated and (b) all amounts payable in respect of the Obligations have been irrevocably paid in full in cash (other than obligations under the Financing Documents that by their terms survive and with respect to which no claim has been made by the Senior Secured Parties).

"Disposition" means, with respect to any Property, any use, sale, lease (or sublease), sale and leaseback, assignment, conveyance, transfer or other dispositions thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Documents" has the meaning set forth in Section 9-102 of the UCC.

"Dollar" and the sign "$" mean lawful money of the United States.

"Effect of Bankruptcy" means, with respect to any contractual obligation, contract or agreement to which a Debtor is a party, any default or other legal consequences arising on account of the commencement or the filing of the Chapter 11 Cases, as applicable (including the implementation of any stay), or the rejection of any such contractual obligation, contract or agreement with the approval of the Bankruptcy Court if required under applicable Law.

"Eligible Assignee" means (a) any Lender, (b) an Affiliate of any Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed).

"Environmental Affiliate" means any Person, only to the extent of, and only with respect to matters or actions of such Person for which, any Loan Party could reasonably be expected to have liability as a result of such Loan Party retaining, assuming, accepting or otherwise being subject to liability for Environmental Claims relating to such Person, whether the source of such Loan Party's obligation is by contract or operation of Law.

"Environmental Approvals" means any Governmental Approvals required under applicable Environmental Laws.

"Environmental Claim" means any written notice, claim, demand or similar written communication by any Person alleging potential liability or requiring or demanding remedial or responsive measures (including potential liability for investigatory costs, cleanup,

remediation and mitigation costs, governmental response costs, natural resources damages, property damages, personal injuries, fines or penalties) in each such case (x) either (i) with respect to environmental contamination-related liabilities or obligations with respect to which any Loan Party could reasonably be expected to be responsible that are, or could reasonably be expected to be, in excess of two hundred thousand Dollars ($200,000) in the aggregate or (ii) that has or could reasonably be expected to result in a Material Adverse Effect and (y) arising out of, based on or resulting from (i) the presence, release or threatened release into the environment, of any Materials of Environmental Concern at any location, whether or not owned by such Person; (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Laws or Environmental Approvals; or (iii) exposure to Materials of Environmental Concern.

"Environmental Laws" means all Laws applicable to the Project relating to pollution or protection of human health, safety or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including Laws relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise applicable to the Project relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, management, remediation or handling of Materials of Environmental Concern.

"Equipment" has the meaning set forth in Section 9-102 of the UCC.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination, in each such case including all voting rights and economic rights related thereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"ERISA Affiliate" means any Person, trade or business that, together with any Borrower, is or was treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

"ERISA Plan" means any Plan that is not a Multiemployer Plan.

"Eurodollar Loan" means any Loan bearing interest at a rate determined by reference to the Eurodollar Rate and the provisions of Article II (*Commitments and Funding*) and Article III (*Repayments, Prepayments, Interest and Fees*).

"Eurodollar Rate" means, for any Interest Period with respect to any Eurodollar Loan, an interest rate per annum equal to the greater of (a) four percent (4%) per annum, and (b) the rate per annum obtained by dividing (x) LIBOR for such Interest Period and Eurodollar Loan, by (y) a percentage equal to (i) 100% minus (ii) the Eurodollar Reserve Percentage for such Interest Period.

"Eurodollar Reserve Percentage" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the F.R.S. Board for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities"). The Eurodollar Rate for each outstanding Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Abandonment" means, with respect to a Project, any of the following shall have occurred: (i) the abandonment of the development, operation or maintenance of such Project for a period of more than ten (10) consecutive days (other than as a result of force majeure, an Event of Taking or a Casualty Event), (ii) the suspension of all or substantially all of Seneca's activities with respect to the Seneca Project, other than as the result of a force majeure, Event of Taking or Casualty Event, for a period of more than ten (10) consecutive days, or (iii) any written acknowledgement by any Loan Party of a final decision to take any of the foregoing actions; provided, that Cold Shutdown shall not constitute an Event of Abandonment.

"Event of Default" means any one of the events specified in Section 9.01 (*Events of Default*).

"Event of Taking" means any taking, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action of or proceeding by any Governmental Authority relating to any material part of the Project with, any Equity Interests of any Loan Party, or any other assets thereof.

"Event of Total Loss" means the occurrence of a Casualty Event affecting all or substantially all of the Project or the assets of Seneca or any other Borrower.

"Excluded Taxes" means, with respect to any Agent or any Lender or any other recipient of any payment to be made by or on account of any Obligation of any Borrower hereunder, (a) income or franchise Taxes imposed on (or measured by) such Agent's Lender's or other recipient's net income by the United States, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable office is located, or (b) any branch profits Tax imposed by the United States, or any similar Tax imposed by any other jurisdiction described in clause (a) above, (c) any United States withholding Tax to the extent that it is imposed on amounts payable to such Agent or such Lender at the time such Agent or such Lender becomes a party to this Agreement or to the extent it is imposed on amounts payable to such Agent or such Lender due to a merger, reorganization or acquisition of such Agent or such Lender or (d) in the case of a Participant, any Taxes (including United States withholding Taxes) in excess of the amount of

Taxes to which the Lender selling the participation would have been entitled with respect to the participation if the Lender had not sold the participation to that Participant.

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"Facility Fee" means the fee payable by the Borrowers pursuant to Section 3.11 (*Fees*).

"Federal Funds Effective Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent.

"Final Order" means the Final Order: (i) Authorizing Debtors to Obtain Post-Petition Financing, (ii) Authorizing Debtors to Utilize Cash Collateral, and (iii) Granting Adequate Protection to WestLB AG, Pursuant to Bankruptcy Code Sections 105, 361, 362, 363 and 364 and Bankruptcy Rules 2002, 4001, and 9014 (Docket No. __) (attached hereto as Exhibit G) or otherwise satisfactory in form and substance to the Required Lenders and the Administrative Agent, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal has been stayed, dismissed or denied unless the Lenders and the Administrative Agent waive such requirement, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Required Lenders and the Administrative Agent.

"Financial Asset" has the meaning set forth in Section 8-102(9) of the UCC.

"Financial Advisor" means Capstone Advisory Group, LLC or a replacement appointed by the Required Lenders.

"Financial Officer" means, with respect to any Person, the controller, treasurer, chief restructuring officer or chief financial officer of such Person.

"Financing Documents" means:

(i) this Agreement;

(ii) the Notes;

(iii) the Mortgages;

(iv) the Sterling Blocked Accounts Agreement;

(v) the other financing and security agreements, documents and instruments delivered in connection with this Agreement; and

(vi) each other document designated as a Financing Document by the Administrative Agent in a written notice to the Loan Party Agent.

"First Interim Cash Collateral Order" has the meaning assigned to such term in the Final Order.

"First Liens" has the meaning set forth in Section 2.07(b) (*Super-Priority Nature of Obligations*).

"Fiscal Year" means any period of twelve (12) consecutive calendar months ending on October 31st.

"Fixtures" has the meaning set forth in Section 9-102 of the UCC.

"Funding" means the incurrence of each Loan made by the Lenders on a single date.

"Funding Date" means, with respect to each Funding, the date on which funds are deposited by the Administrative Agent, on behalf of the Lenders, into the Revenue Account in accordance with Section 2.03 (*Funding of Loans*).

"Funding Notice" means each request for Funding of Loans in the form of Exhibit C-1 delivered in accordance with Section 2.02 (*Notice of Fundings*).

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

"General Intangibles" has the meaning set forth in Section 9-102 of the UCC.

"General Waterfall" has the meaning set forth in Section 3.08(b).

"Goods" has the meaning set forth in Section 9-102 of the UCC.

"Governmental Approval" means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, filing for registration by or with any Governmental Authority.

"Governmental Authority" means any nation, state, sovereign, or government, any federal, regional, state, local or political subdivision and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Granting Lender" has the meaning provided in Section 11.03(h) (*Assignments*).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any

manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien).

"Guaranteed Obligations" means the Obligations of each Borrower.

"Guarantors" has the meaning set forth in the Preamble.

"Holding Clinton" has the meaning set forth in the Preamble.

"Holding Seneca" has the meaning set forth in the Preamble.

"Holding Trade" has the meaning set forth in the Preamble.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(i) all obligations of such Person for or in respect of moneys borrowed or raised, whether or not for cash by whatever means (including acceptances, deposits, discounting, letters of credit, factoring, and any other form of financing which is recognized in accordance with GAAP in such Person's financial statements as being in the nature of a borrowing or is treated as "off-balance sheet" financing);

(ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(iii) all obligations of such Person for the deferred purchase price of property or services;

(iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property or are otherwise limited in recourse);

(v) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(vi) all Capitalized Lease Liabilities;

(vii) net obligations of such Person under any Swap Contract;

(viii) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person or any other Person or any warrants, rights or options to acquire such Equity Interests, valued, in the case of redeemable preferred interests, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(ix) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" has the meaning provided in Section 11.08(a) (*Indemnification by the Loan Parties*).

"Indenture" has the meaning set forth in the Recitals.

"Indenture Trustee" has the meaning set forth in the Recitals.

"Independent Engineer" means R.W. Beck, Inc., or any replacement independent engineer appointed by the Administrative Agent.

"Information" has the meaning provided in Section 11.17 (*Treatment of Certain Information; Confidentiality*).

"Insolvency or Liquidation Proceeding" means, with respect to any Person:

(i) any case commenced by or against such Person under the Bankruptcy Code or any similar federal or state Law for the relief of debtors, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of such Person, any receivership or assignment for the benefit of creditors relating to such Person or any

similar case or proceeding relative to such Person or its creditors, as such, in each case whether or not voluntary;

(ii) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to such Person, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(iii) any other proceeding of any type or nature in which substantially all claims of creditors of such Person are determined and any payment or distribution is or may be made on account of such claims.

"Instruments" has the meaning set forth in Section 9-102 of the UCC.

"Insurance Consultant" means Equity Risk Partners, Inc., or any replacement insurance consultant appointed by the Administrative Agent.

"Insurance Proceeds" means all Net Cash Proceeds of any insurance policies required pursuant to this Agreement or otherwise obtained with respect to any Loan Party or the Project that are paid or payable to or for the account of any Loan Party, or the Collateral Agent as loss payee, or additional insured (other than proceeds of insurance policies relating to third party liability).

"Interest Payment Date" means (i) with respect to each Eurodollar Loan, the last day of each Interest Period, or, if applicable, any date on which such Eurodollar Loan is converted to a Base Rate Loan and (ii) with respect to each Base Rate Loan, each Monthly Payment Date or, if applicable, any date on which such Base Rate Loan is converted to a Eurodollar Loan.

"Interest Period" means, with respect to any Loan, the period beginning on (and including) the date on which such Loan is made pursuant to Section 2.03 (*Funding of Loans*) and ending on (but excluding) the day that numerically corresponds to such date one month thereafter, and each succeeding period thereafter beginning on (and including) the last day of the previous Interest Period and ending on (but excluding) the first day of the next succeeding one month period; provided, however, that (i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is in a different calendar month, in which case such Interest Period shall end on the next preceding Business Day), (ii) any Interest Period that begins on the last Business Day of a month (or on a day for which there is no numerically corresponding day in the month at the end of such Interest Period) shall end on the last Business Day of the month at the end of such Interest Period, and (iii) no Interest Period may end later than the Maturity Date.

"Interest Period Notice" means a notice in substantially the form attached hereto as Exhibit C-2, executed by an Authorized Officer of the Loan Party Agent.

"Interim Cash Collateral Order" means, collectively, the Interim Order (i) Authorizing the Use of Cash Collateral of Seneca and the Subject Debtors Pursuant to 11 U.S.C. Section 363, (ii) Granting Adequate Protection to WestLB Pursuant to 11 U.S.C. Sections 361

and 363, and (iii) Scheduling a Final Hearing (Docket No. 17); the Second Interim Order (I) Authorizing the Use of Cash Collateral by Nova Biofuels Seneca, LLC, Nova Biosource Fuels, Inc., Biosource America, Inc., Nova Biosource Technologies, LLC and Nova Biofuels Trade Group, LLC, pursuant to 11 U.S.C. §363, (II) Granting Adequate Protection to WestLB AG pursuant to 11 U.S.C. §§ 361 and 363, and (III) Scheduling a Final Hearing (Docket No. 64); the Third Interim Order (I) Authorizing the Use of Cash Collateral by Nova Biofuels Seneca, LLC, Nova Biosource Fuels, Inc., Biosource America, Inc., Nova Biosource Technologies, LLC and Nova Biofuels Trade Group, LLC, pursuant to 11 U.S.C. §363, (II) Granting Adequate Protection to WestLB AG pursuant to 11 U.S.C. §§ 361 and 363, and (III) Scheduling a Final Hearing (Docket No. 94); and the Fourth Interim Order (I) Authorizing the Use of Cash Collateral by Nova Biofuels Seneca, LLC, Nova Biosource Fuels, Inc., Biosource America, Inc., Nova Biosource Technologies, LLC and Nova Biofuels Trade Group, LLC, pursuant to 11 U.S.C. §363, (II) Granting Adequate Protection to WestLB AG pursuant to 11 U.S.C. §§ 361 and 363, and (III) Scheduling a Final Hearing (Docket No. __).

"Inventory" means inventory, as that term is defined in Section 9-102 of the UCC, now or hereafter owned by the Loan Parties, including all products, goods, materials and supplies produced, purchased or acquired by the Loan Parties for the purpose of sale or use in the Loan Parties' operations in the ordinary course of business.

"Investment Property" has the meaning set forth in Section 9-102 of the UCC.

"Law" means, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, common law, holding, injunction, Governmental Approval or requirement of such Governmental Authority. Unless the context clearly requires otherwise, the term "Law" shall include each of the foregoing (and each provision thereof) as in effect at the time in question, including any amendments, supplements, replacements, or other modifications thereto or thereof, and whether or not in effect as of the date of this Agreement.

"Lender Assignment Agreement" means a Lender Assignment Agreement, substantially in the form of Exhibit F.

"Lenders" means the persons identified as "Lenders" and listed on the signature pages of this Agreement and each other Person that acquires the rights and obligations of a Lender hereunder pursuant to Section 11.03 (*Assignments*).

"Lending Office" means, relative to any Lender, the office of such Lender designated on Schedule 2.01 or designated in the Lender Assignment Agreement pursuant to which such Lender became a Lender hereunder or such other office of a Lender (or any successor or assign of such Lender) as may be designated from time to time by written notice from such Lender, as the case may be, to the Loan Party Agent and the Administrative Agent.

"Level One" has the meaning set forth in Section 3.08(b).

"Level Two" has the meaning set forth in Section 3.08(b).

"Level Three" has the meaning set forth in Section 3.08(b).

"Level Four" has the meaning set forth in Section 3.08(b).

"Level Five" has the meaning set forth in Section 3.08(b).

"Level Six" has the meaning set forth in Section 3.08(b).

"LIBOR" means, for any Interest Period for any Loan:

(i) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association 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) three (3) Business Days prior to the first day of such Interest Period; or

(ii) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service is not available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association 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 (2) Business Days prior to the first day of such Interest Period; or

(iii) if the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest 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 Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by WestLB to major banks in the London interbank eurodollar market at their request at approximately 4:00 p.m. (London time) two (2) Business Days prior to the first day of such Interest Period.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, bailment, conditional sales or title retention agreement, lien (statutory or otherwise), charge against or interest in property, in each case of any kind, to secure payment of a debt or performance of an obligation.

"Loan Parties" means, collectively, each Borrower, each Guarantor and any of their respects Affiliates that is a party to any Financing Document.

"Loan Party Agent" means Biosource Fuels in its capacity as agent for the Loan Parties in accordance with Section 11.19 (*Loan Party Agent*).

"Loans" has the meaning provided in Section 2.01(a) (*Loans*).

"Local Account" means any local bank account (other than the Project Accounts) in the name of any Loan Party.

"Major Project Party" means each Person (other than Clinton or Seneca) who is a party to a Project Document.

"Mandatory Prepayment" means a prepayment in accordance with Section 3.08 (*Mandatory Prepayment*).

"Material Adverse Effect" means any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (i) the business, assets, property, condition (financial or otherwise), prospects, or operations of any Loan Party or the Project, (ii) the ability of Seneca, any Major Project Party or any other Loan Party to perform its material obligations under any Transaction Document to which it is a party, (iii) creation, perfection or priority of the Liens granted, or purported to be granted, in favor, or for the benefit, of the Collateral Agent, or (iv) the rights or remedies of any Senior Secured Party under any Financing Document; provided, that clauses (i) or (ii) of this definition shall not be a Material Adverse Effect with respect to any Loan Party if such event, development or circumstance is an Effect of Bankruptcy or results from Cold Shutdown.

"Material Contract" means, with respect to any Guarantor, each contract (other than the Financing Documents) to which such Person is a party evidencing aggregate consideration payable to or by such Person of $1,000,000 or more in any six-month period, obligations of such Person of $500,000 or more in any six-month period or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

"Materials of Environmental Concern" means chemicals, pollutants, contaminants, wastes, toxic substances and hazardous substances, any toxic mold, radon gas or other naturally occurring toxic or hazardous substance or organism and any material that is regulated in any way, or for which liability is imposed, pursuant to an Environmental Law.

"Maturity Date" means the earliest to occur of the following:

(i) October 2, 2009 if the Sale Order as defined in the Interim Cash Collateral Order is entered by September 14, 2009, and September 14, 2009 if it has not;

(ii) the date of acceleration of all or any portion of the Obligations pursuant to Section 9.02 (*Action Upon Event of Default*);

(iii) the first Business Day on which the Final Order expires by its terms or is terminated;

(iv) the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Administrative Agent and the Required Lenders;

(v) the dismissal of any of the Chapter 11 Cases unless otherwise consented to in writing by the Administrative Agent and the Required Lenders; and

(vi) the effective date of any Debtor's plan of reorganization.

"Maximum Rate" has the meaning provided in Section 11.09 (*Interest Rate Limitation*).

"Monthly Budget Period" means the period of four (4) consecutive weeks starting on the first day of the period covered by the DIP Budgets in effect as of the date hereof, and each successive period of four (4) consecutive weeks thereafter starting on the 2nd week of the initial (4) consecutive week period.

"Monthly Payment Date" means in respect of a calendar month the last day of such calendar month.

"Monthly Period" means each one month period beginning on (and including) the day immediately following a Monthly Payment Date and ending on (and including) the next Monthly Payment Date.

"Moody's" means Moody's Investors Service Inc., and any successor thereto that is a nationally recognized rating agency.

"Mortgages" means the Clinton Mortgage and the Seneca Mortgage.

"Mortgaged Property" means all real property right, title and interest of a Debtor that is subject to a Mortgage in favor of the Collateral Agent.

"Multiemployer Plan" means a Plan that is a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA.

"NBF Operations" has the meaning set forth in the Preamble.

"Necessary Project Approvals" means (i) all material Governmental Approvals that are required under applicable Law to be obtained by any Loan Party in connection with the construction and operation of the Project at its full nameplate capacity as contemplated by the Transaction Documents and (ii) the Governmental Approvals described in Section 5.03(a) (*Governmental Approvals*).

"Net Cash Proceeds" means with respect to any receipt of Insurance Proceeds, Condemnation Proceeds, or Project Document Termination Payments, or any Disposition of any Property or assets, or the incurrence of any Indebtedness pursuant to section 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the terms of the Final Order or this Agreement, as the case may be, the aggregate amount of cash received from time to time (whether as initial consideration or through payment or disposition of deferred consideration) by or on behalf of such Person for its own account in connection with any such transaction, after deducting therefrom only:

(i) related expenses, including reasonable and customary brokerage commissions, underwriting fees and discounts, legal fees, finder's fees and other fees, costs and commissions that, in each case, are actually paid or required to be paid to a Person that is not a Subsidiary or Affiliate of any of the Borrowers or any of their respective Subsidiaries or Affiliates;

(ii) the amount of Taxes payable in connection with or as a result of such transaction that, in each case, are actually paid at the time of receipt of such cash to the applicable taxation authority or other Governmental Authority or, so long as such Person is not otherwise indemnified therefor, are reserved for in accordance with GAAP, as in effect at the time of receipt of such cash, based upon such Person's reasonable estimate of such Taxes payable to the applicable taxation authority or other Governmental Authority; and

(iii) reasonable amounts (without duplication) provided as a reserve, in accordance with GAAP, against (A) any liabilities under any indemnification obligations associated with such transaction or (B) in the case of any Disposition of any Property or asset, any other liabilities retained by any Borrower associated with the Property or assets sold in such Disposition;

provided, that, any and all amounts so deducted by any such Person pursuant to clauses (i) through (ii) of this definition shall be properly attributable to such transaction or to the Property or asset that is the subject thereof; provided, further, that if, at the time any of the amounts referred to in clauses (ii) or (iii) are actually paid or otherwise satisfied, the reserve therefor exceeds the amount paid or otherwise satisfied, then the amount of such excess reserve shall constitute "Net Cash Proceeds" on and as of the date of such payment or other satisfaction for all purposes of this Agreement and, to the extent required under Section 3.08 (*Mandatory Prepayment*), the Borrowers shall forthwith prepay the Loans in accordance with the terms of Section 3.08 (*Mandatory Prepayment*), in an amount equal to the amount of such excess reserve.

"Non-Appealable" means, with respect to any specified time period allowing an appeal of any ruling under any constitutional provision, Law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding or injunction that such specified time period has elapsed without an appeal having been brought.

"Non-Seneca Budget" means the budget for the Debtors (other than Seneca) for the Budget Period showing on a line-item weekly basis anticipated aggregate cash receipts and aggregate necessary and required expenses for the Budget Period as approved in the Final Order and attached hereto as Exhibit [H-1] as such budget may be amended with the consent of the Administrative Agent, the Lenders, the Pre-Petition Administrative Agent and the Pre-Petition Lenders, in each case in such party's sole discretion.

"Non-U.S. Lender" has the meaning set forth in Section 4.07(e) (*Taxes – Foreign Lenders*).

"Non-Voting Lender" means any Lender who (a) is also a Loan Party, a Major Project Party, or any Affiliate or Subsidiary thereof, or (b) has sold a participation in the Loan held by it to any such Person.

"Notes" means the promissory notes of the Borrowers, substantially in the form of Exhibit B, evidencing Loans, including any promissory notes issued by the Borrowers in connection with assignments of any Loan of a Lender, in each case as they may be amended, restated, supplemented or otherwise modified from time to time.

"Obligations" means and includes all loans, advances, debts, liabilities, Indebtedness and obligations, howsoever arising, owed to the Agents, the Lenders or any other Senior Secured Party of every kind and description pursuant to the terms of this Agreement or any of the other Financing Documents (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including all principal, interest, fees, charges, expenses, attorneys' fees, costs and expenses, accountants' fees and Consultants' fees payable by the Loan Parties, interest and fees that accrue after the commencement by or against any Loan Party of any Insolvency or Liquidation Proceeding naming such Loan Party as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Orders" means, collectively, the Interim Cash Collateral Order and the Final Order.

"Organic Documents" means, with respect to any Person that is a corporation, its certificate of incorporation, its by-laws and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized shares of capital stock and, with respect to any Person that is a limited liability company, its certificate of formation or articles of organization and its limited liability agreement.

"Other Collateral" means any property of any Debtor not included within the defined terms Accounts, Chattel Paper, Commercial Tort Claims, Documents, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, Investment Property and Pledged Deposits, including all cash on hand, letter-of-credit rights, letters-of-credit, Stock Rights and Deposit Accounts or other deposits (general or special, time or demand, provisional or final) with any bank or other financial institution, it being intended that the Collateral include all personal property of each Debtor.

"Participant" has the meaning provided in Section 11.03(d) (*Assignments*).

"Patriot Act" means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) of 2001, and the rules and regulations promulgated thereunder from time to time in effect.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Permitted Indebtedness" means Indebtedness identified in clauses (i) through ([vii]) of Section 7.02(a) (*Negative Covenants – Restrictions on Indebtedness*).

"Permitted Liens" means Liens identified in clauses (i) through (ix) of Section 7.02(b) (*Negative Covenants – Liens*).

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

"Petition Date" has the meaning set forth in the Recitals.

"Plan" means an employee pension benefit plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA that is sponsored or maintained by any Borrower or any ERISA Affiliate, or in respect of which any Borrower or any ERISA Affiliate has any obligation to contribute or liability.

"Platform" has the meaning provided in Section 11.11(h) (*Notices and Other Communications*).

"Pledged Deposits" means all time deposits of money (other than Deposit Accounts and Instruments), whether or not evidenced by certificates, pledged by any Debtor as security for any Obligations, and all rights to receive interest on such deposits.

"Post-Petition" means the time period beginning immediately upon the filing of the Chapter 11 Cases.

"Pre-Petition" means the time period ending immediately prior to the filing of the Chapter 11 Cases.

"Pre-Petition Administrative Agent" has the meaning assigned to the term "Administrative Agent" in the Pre-Petition Credit Agreement.

"Pre-Petition Agents" has the meaning assigned to the term "Agents" in the Pre-Petition Credit Agreement.

"Pre-Petition Collateral" has the meaning assigned to the term "Collateral" in the Pre-Petition Credit Agreement.

"Pre-Petition Collateral Agent" has the meaning assigned to the term "Collateral Agent" in the Pre-Petition Credit Agreement.

"Pre-Petition Credit Agreement" has the meaning set forth in the Recitals.

"Pre-Petition Financing Documents" has the meaning assigned to the term "Financing Documents" in the Pre-Petition Credit Agreement.

"Pre-Petition Lenders" has the meaning assigned to the term "Lenders" in the Pre-Petition Credit Agreement.

"Pre-Petition Loans" has the meaning assigned to the term "Loans" in the Pre-Petition Credit Agreement.

"Pre-Petition Notes" has the meaning set forth in the Recitals.

"Pre-Petition Obligations" has the meaning assigned to the term "Obligations" in the Pre-Petition Credit Agreement.

"Pre-Petition Senior Secured Parties" has the meaning assigned to the term "Senior Secured Parties" in the Pre-Petition Credit Agreement.

"Priming Liens" has the meaning set forth in Section 2.07(b) (*Super-Priority Nature of Obligations*).

"Products" means biodiesel, glycerin, and any other co-product or by-product produced in connection with the production of biodiesel at the Project.

"Project" means, collectively, the Seneca Project and the Clinton Project.

"Project Accounts" has the meaning assigned to such term in the Pre-Petition Credit Agreement.

"Project Document Termination Payments" means all Net Cash Proceeds of payments that are required to be paid to or for the account of any Borrower as a result of the termination of any Project Document.

"Project Documents" means the agreements referred to in Section 5.10(b), each Additional Project Document and any replacement agreement for any such agreement.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including Equity Interests.

"Prudent Biodiesel Operating Practice" means those reasonable practices, methods and acts that (i) are commonly used to manage, operate and maintain biodiesel production, distribution, equipment and associated facilities of the size and type that comprise the Project safely, reliably, and efficiently and in compliance with applicable Laws, manufacturers' warranties and manufacturers' and licensor's recommendations and guidelines, and (ii) in the exercise of reasonable judgment, skill, diligence, foresight and care are expected of a biodiesel plant operator, in order to efficiently accomplish the desired result consistent with safety standards, applicable Laws, manufacturers' warranties, manufacturers' recommendations and, in the case of the Project, the Project Documents. Prudent Biodiesel Operating Practice does not necessarily mean one particular practice, method, equipment specifications or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"RCRA" means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended, and all rules, regulations, standards, guidelines, and publications issued thereunder.

"Redevelopment Agreement" means that certain Redevelopment Agreement among the Village of Seneca, LaSalle and Grundy Counties, Illinois, Shipyard Industrial Park, Inc., and Seneca dated as of October 31, 2006.

"Register" has the meaning set forth in Section 11.03(c) (*Assignments*).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, advisors, professionals and representatives of such Person and of such Person's Affiliates.

"Released Claims" has the meaning set forth in Section 2.11(c) (*Release*).

"Released Parties" has the meaning set forth in Section 2.11(c) (*Release*).

"Releasing Parties" has the meaning set forth in Section 2.11(c) (*Release*).

"Removal," "Remedial" and "Response" actions shall include the types of activities covered by CERCLA, RCRA, and other comparable Environmental Laws, and whether the activities are those which might be taken by a Governmental Authority or those which a Governmental Authority or any other Person might seek to require of potentially responsible parties, liable parties, waste generators, handlers, distributors, processors, users, disposers, storers, treaters, owners, operators, transporters, recyclers, reusers, disposers, or other Persons under "removal," "remedial," or other "response" actions.

"Reportable Event" means a "reportable event" within the meaning of Section 4043(c) of ERISA other than an event for which the 30 day notice provision has been waived pursuant to subclause 22, 23, 27 or 28 of the regulations thereunder.

"Required Lenders" means Lenders (excluding all Non-Voting Lenders) holding Loans and Commitments in excess of fifty percent (50.00%) of an amount equal to (a) the then aggregate outstanding principal amount of the Loans plus (b) the undisbursed amount of the Aggregate Commitment (excluding the principal amounts of any Loans made by, and any Commitments of, any Non-Voting Lenders).

"Restricted Payments" means any (a) dividend (whether upstream, downstream or otherwise) or other distribution (whether in cash, securities or other property), or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any Equity Interests of any Loan Party, or on account of any return of capital to any holder of any such Equity Interest in, or any other Affiliate of, any Loan Party, or any option, warrant or other right to acquire any such dividend or other distribution or payment or (b) any payment of any management, consultancy, administrative, services, or other similar payments, to any Person who owns, directly or indirectly, any Equity Interest in any Loan Party,

or any Affiliate of any such Person, except in each case to the extent provided in the then current DIP Budgets.

"Revenue Account" as the meaning assigned to such term in the Pre-Petition Credit Agreement.

"Revenue Account Withdrawal Certificate" means a Revenue Account Withdrawal Certificate substantially in the form of Exhibit __.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., and any successor thereto that is a nationally recognized rating agency.

"Second Liens" has the meaning set forth in Section 2.07(b) (*Super-Priority Nature of Obligations*).

"Section 506(a) Determination" means a determination under Section 506(a) of the Bankruptcy Code.

"Seneca" has the meaning set forth in the Preamble.

"Seneca Budget" means the budget for Seneca for the Budget Period, as approved in the Final Order and attached hereto as Exhibit [H-2] as such budget may be amended with the consent of the Administrative Agent, the Lenders, the Pre-Petition Administrative Agent and the Pre-Petition Lenders, in each case in such party's sole discretion.

"Seneca Mortgage" means the Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents and Security Deposits, dated as of _____, by Seneca in favor of the Collateral Agent for the benefit of the Senior Secured Parties.

"Seneca Project" means, the biodiesel refinery located in Seneca, Illinois, with a nameplate capacity of approximately sixty (60) million gallons per year, and all auxiliary and other facilities constructed or to be constructed by or on behalf of Seneca pursuant to the Project Documents or otherwise, together with all fixtures and improvements thereto and the Seneca Site and all other real property, easements and rights of way held by or on behalf of Seneca and all rights to use easements and rights of way of others.

"Seneca Site" means those certain parcels described on Schedule __ to this Agreement.

"Senior Permitted Liens" means Liens identified in clauses [(iii) through (ix)] of Section 7.02(b) (*Negative Covenants – Liens*).

"Senior Secured Parties" means the Lenders, the Agents, and each of their respective successors, transferees and assigns.

"Solvent" means, with respect to any Person, that as of the date of determination both (i) (A) the then fair saleable value of the property of such Person is (y) greater than the total

amount of liabilities (including Contingent Liabilities but excluding amounts payable under intercompany loans or promissory notes) of such Person and (z) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person; (B) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (C) such Person does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable Laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any Contingent Liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Sponsor Support Account" means the Sponsor Support Account located at Sterling Bank (Account No. 021030167 FCC 1391) or any successor account for a similar purpose.

"SPV" has the meaning provided in Section 11.03(h) (*Assignments*).

"Sterling Blocked Accounts Agreement" means the Blocked Account Agreement dated on or about the date hereof among the Accounts Bank , the Loan Parties party thereto and the Collateral Agent.

"Stock Rights" means any securities, dividends or other distributions and any other right or property which a Debtor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral and any securities, any right to receive securities and any right to receive earnings, in which a Debtor now has or hereafter acquires any right, issued by an issuer of such securities.

"Subject Debtors" has the meaning set forth in the Preamble.

"Subsidiary" of any Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

"Supporting Obligation" has the meaning set forth in Section 9-102 of the UCC.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor

transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such master agreement and (c) for the avoidance of doubt, excludes any contract for the physical sale or purchase of any commodity.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, in accordance with the terms of the applicable Swap Contract, or, if no provision is made therein, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Tax" or "Taxes" means any present or future taxes (including income, gross receipts, license, payroll, employment, excise, severance, stamp, documentary, occupation, premium, windfall profits, environmental, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value-added, ad valorem, alternative or add-on minimum, estimated, or other tax of any kind whatsoever), levies, imposts, duties, fees or charges (including any interest, penalty, or addition thereof) imposed by any government or any governmental agency or instrumentality or any international or multinational agency or commission.

"Tax Return" means all returns, declarations, reports, claims for refund and information returns and statements of any Person required to be filed with respect to, or in respect of, any Taxes, including any schedule or attachment thereto and any amendment thereof.

"Technologies" has the meaning set forth in the Preamble.

"Termination Event" means (i) a Reportable Event with respect to any ERISA Plan, (ii) the initiation of any action by any Loan Party, any ERISA Affiliate or any ERISA Plan fiduciary to terminate an ERISA Plan (other than a standard termination under Section 4041(b) of ERISA) or the treatment of an amendment to an ERISA Plan as a termination under Section 4041(e) of ERISA (other than treatment as a standard termination under Section 4041(b) of ERISA), (iii) the institution of proceedings by the PBGC under Section 4042 of ERISA to terminate an ERISA Plan or to appoint a trustee to administer any ERISA Plan, (iv) the withdrawal of any Loan Party or any ERISA Affiliate from a Multiemployer Plan during a plan year in which such Loan Party or such ERISA Affiliate was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or the cessation of operations which results in the termination of employment of twenty percent (20%) of Multiemployer Plan participants who are employees of

any Loan Party or any ERISA Affiliate, (v) the partial or complete withdrawal of any Loan Party or any ERISA Affiliate from a Multiemployer Plan, or (vi) any Loan Party or any ERISA Affiliate is in default (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

"Threat of Release" shall mean "threat of release" as used in CERCLA.

"Transaction Documents" means, collectively, the Financing Documents and the Project Documents.

"Unfunded Benefit Liabilities" means, with respect to any ERISA Plan at any time, the amount (if any) by which (i) the present value of all accrued benefits calculated on an accumulated benefit obligation basis and based upon the actuarial assumptions used for accounting purposes (i.e., those determined in accordance with FASB statement No. 35 and used in preparing the ERISA Plan's financial statements) exceeds (ii) the fair market value of all ERISA Plan assets allocable to such benefits, determined as of the then most recent actuarial valuation report for such ERISA Plan.

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as in effect from time to time 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 provisions relating to such perfection or priority and for purposes of definitions related to such provisions.

"United States" or "U.S." means the United States of America, its fifty States and the District of Columbia.

"United States Person" means a "United States person" as defined in Section 7701(a)(30) of the Code.

"Weekly Cash Flow Forecast" has the meaning provided in Section 7.03(a) (*Reporting Requirements – Weekly Cash Flow Forecast*).

"WestLB" means WestLB AG, New York Branch.