

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K

Annual report pursuant to section 13 and 15(d)

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FILER

REX AMERICAN RESOURCES Corp

CIK: **744187** | IRS No.: **311095548** | State of Incorporation: **DE** | Fiscal Year End: **0131**
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K
ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED JANUARY 31, 2011

COMMISSION FILE NO. 001-09097

REX AMERICAN RESOURCES CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

31-1095548
(I.R.S. Employer Identification No.)

2875 Needmore Road, Dayton, Ohio
(Address of principal executive offices)

45414
(Zip Code)

Registrant's telephone number, including area code (937) 276-3931

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange
on which registered

Common Stock, \$.01 par value

New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) Yes No

At the close of business on July 31, 2010 the aggregate market value of the registrant's outstanding Common Stock held by non-affiliates of the registrant (for purposes of this calculation, 2,597,047 shares beneficially owned by directors and executive officers of the registrant were treated as being held by affiliates of the registrant), was \$114,184,258.

There were 9,600,056 shares of the registrant's Common Stock outstanding as of April 14, 2011.

Documents Incorporated by Reference

FORWARD-LOOKING STATEMENTS

This Form 10-K contains or may contain forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. Such statements can be identified by use of forward-looking terminology such as "may," "expect," "believe," "estimate," "anticipate" or "continue" or the negative thereof or other variations thereon or comparable terminology. Readers are cautioned that there are risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. These risks and uncertainties include the risk factors set forth from time to time in the Company's filings with the Securities and Exchange Commission and include among other things: the impact of legislative changes, the price volatility and availability of corn, sorghum, distillers grains, ethanol, gasoline and natural gas, ethanol plants operating efficiently and according to forecasts and projections, changes in the national or regional economies, weather, the effects of terrorism or acts of war and changes in real estate market conditions. The Company does not intend to update publicly any forward-looking statements except as required by law. Other factors that could cause actual results to differ materially from those in the forward-looking statements are set forth in Item 1A.

AVAILABLE INFORMATION

REX makes available free of charge on its Internet website its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC. REX's Internet website address is www.rexamerican.com. The contents of the Company's website are not a part of this report.

PART I

Item 1. Business

Overview

REX was incorporated in Delaware in 1984 as a holding company to succeed to the entire ownership of three affiliated corporations, Rex Radio and Television, Inc., Stereo Town, Inc. and Kelly & Cohen Appliances, Inc., which were formed in 1980, 1981 and 1983, respectively. Our principal offices are located at 2875 Needmore Road, Dayton, Ohio 45414. Our telephone number is (937) 276-3931. Historically, we were a specialty retailer in the consumer electronics and appliance industry serving small to medium-sized towns and communities. In addition, we have been an investor in various alternative energy entities beginning with synthetic fuel partnerships in 1998 and later ethanol production facilities beginning in 2006. Recognizing the change in our business, we changed our corporate name from REX Stores Corporation to REX American Resources Corporation in 2010.

In fiscal year 2007, we began to evaluate strategic alternatives for our retail segment with a focus on closing unprofitable or marginally profitable retail stores and monetizing our retail-related real estate assets. We did not believe that we were generating an adequate return from our retail business due to the competitive nature of the consumer electronics and appliance industry and the overall economic conditions in the United States. Reflecting this focus, we sold approximately 60% of our owned retail and vacant stores in fiscal year 2007 and leased back a portion of the stores which had been operating as electronics and appliance retail stores. In fiscal year 2008, we commenced an evaluation of a broad range of alternatives intended to derive value from the remaining retail operations and our remaining real estate portfolio. We engaged an investment banking firm to assist us in analyzing and ultimately marketing our retail operations. As part of those marketing efforts, late in fiscal year 2008, we initially leased 37 owned store locations to an unrelated third party. During fiscal year 2009, the lease agreements were terminated. At January 31, 2011, we had lease agreements for all or parts of eight former retail properties and had 22 vacant former retail properties. We

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also own one former distribution center, which is partially leased, partially occupied by our corporate office personnel and partially vacant. We are marketing these vacant properties to lease or sell. Should our marketing efforts result in additional tenants to whom we lease property, we would expect to execute leases with terms of five to twenty years.

We completed our exit of the retail business as of July 31, 2009. Going forward, our only retail related activities will consist of the administration of extended service plans we previously sold and the payment of related claims. Net sales and expenses related to extended service plans are classified as discontinued operations.

We are currently invested in five ethanol production entities, one of which we have a majority ownership interest in. We may make additional investments in the alternative energy segment during fiscal year 2011.

Our ethanol operations are highly dependent on commodity prices, especially prices for corn, sorghum, ethanol, distillers grains and natural gas. As a result of price volatility for these commodities, our operating results can fluctuate substantially. The price and availability of corn and sorghum are subject to significant fluctuations depending upon a number of factors that affect commodity prices in general, including crop conditions, weather, federal policy and foreign trade. Because the market price of ethanol is not always directly related to corn and sorghum prices, at times ethanol prices may lag movements in corn prices and, in an environment of higher prices, reduce the overall margin structure at the plants. As a result, at times, we may operate our plants at negative or marginally positive operating margins.

We expect our ethanol plants to produce approximately 2.8 gallons of ethanol for each bushel of grain processed in the production cycle. We refer to the difference between the price per gallon of ethanol and the price per bushel of grain (divided by 2.8) as the "crush spread." Should the crush spread decline, it is possible that our ethanol plants will generate operating results that do not provide adequate cash flows for sustained periods of time. In such cases, production at the ethanol plants may be reduced or stopped altogether in order to minimize variable costs at individual plants. This was the case for Levelland Hockley County Ethanol, LLC ("Levelland Hockley") during fiscal year 2010. This plant was unable to source affordable grain supplies, and combined with the lower

than normal industry crush spreads that existed in the latter portions of fiscal year 2010, the plant ceased production operations in January 2011. We expect decisions to be made on an individual plant basis, as there are different market conditions at each of our ethanol plants.

We attempt to manage the risk related to the volatility of grain and ethanol prices by utilizing forward grain purchase and forward ethanol and distillers grain sale contracts. We attempt to match quantities of ethanol and distillers grains sale contracts with an appropriate quantity of grain purchase contracts over a given period of time when we can obtain an adequate gross margin resulting from the crush spread inherent in the contracts we have executed. However, the market for future ethanol sales contracts is not a mature market. Consequently, we generally execute contracts for no more than three months into the future at any given time. As a result of the relatively short period of time our contracts cover, we generally cannot predict the future movements in the crush spread for more than three months; thus, we are unable to predict the likelihood or amounts of future income or loss from the operations of our ethanol facilities.

The crush spread realized in 2010 was subject to significant volatility. For calendar year 2010, the average Chicago Board of Trade (“CBOT”) near-month corn price was approximately \$4.30 per bushel, with highs reaching approximately \$6.25 per bushel in December 2010. We believe corn prices were affected late in the year by global weather conditions, export demand, speculation, currency valuation and global economic conditions. Ethanol prices also had significant fluctuations ranging from approximately \$1.50 per gallon in June to approximately \$2.38 per gallon in December. Ethanol and corn prices have tended to trade in the same direction but with narrowing spreads, particularly late in the year. In 2010, the CBOT crush spread ranged

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from a low of approximately \$0.05 per gallon in December to a high of approximately \$0.55 per gallon in February. We believe ethanol demand late in 2010 was also impacted by the uncertainty of the extension of the Volumetric Ethanol Tax Credit Blender Credit. Crush spreads have continued to decline in 2011 and have at times, become negative (absent the consideration of distillers grains). Prices for distillers grains we sell generally trend with grain prices. These prices have partially offset the decline in the crush spread.

We reported segment profit (before income taxes and noncontrolling interests) from our alternative energy segment of approximately \$13.4 million in fiscal year 2010 compared to approximately \$17.8 million in fiscal year 2009. The decline in profitability primarily resulted from impairment charges and loss on deconsolidation of Levelland Hockley. Levelland Hockley reported a loss from operations during fiscal year 2010, and ceased production in January 2011. These losses were partially offset as One Earth Energy, LLC (“One Earth”) was in production for a full year during fiscal year 2010. We expect that future operating results will be based upon annual production of between 100 and 115 million gallons of ethanol, which assumes that One Earth will operate at or near nameplate capacity. However, due to the inherent volatility of the crush spread, we cannot predict the likelihood of future operating results being similar to the fiscal year 2010 results.

We plan to seek and evaluate various investment opportunities including energy related, agricultural or other ventures we believe fit our investment criteria. We can make no assurances that we will be successful in our efforts to find such opportunities.

Additional information regarding our business segments is presented below and in Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) in this Form 10-K. See Note 18 of the Notes to the Consolidated Financial Statements for information regarding the net sales and revenues and operating results for each of our business segments for the fiscal years ended January 31, 2011, 2010 and 2009.

Fiscal Year

All references in this report to a particular fiscal year are to REX’s fiscal year ended January 31. For example, “fiscal year 2010” means the period February 1, 2010 to January 31, 2011. We refer to our fiscal year by reference to the year immediately preceding the January 31 fiscal year end date.

Alternative Energy Overview

As part of our ongoing efforts to diversify and increase our earnings, we began investing in the ethanol industry during fiscal year 2006. Our business strategy focuses on partnering with farmer groups, local groups, or farmer-controlled cooperatives to develop and operate ethanol production plants. We seek to identify quality ethanol plant opportunities characterized by strong plant construction partners and plant management, located near adequate feedstock supply with good transportation capabilities or other economically beneficial attributes, and that utilize leading ethanol production technology. Our partnership model generally enables farmer groups to retain local management of the project, while we provide capital and additional business administration experience.

We follow a flexible model for our investments in ethanol plants, taking both minority and majority ownership positions. The form and structure of our investments is tailored to the specific needs and goals of each project and the local farmer group or investor with whom we are partnering. We generally participate in the management of our projects through our membership on the board of managers of the limited liability companies that own the plants.

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Ethanol Investments

We have invested in five entities as of January 31, 2011, utilizing both equity and debt investments. As of January 31, 2011, all of the entities we are invested in are operating except for Levelland Hockley. The following table is a summary of our ethanol investments at January 31, 2011:

| Entity | Nameplate Production Capacity Million Gallons Per Year | Effective Ownership Percentage | Effective Nameplate Capacity Owned Million gallons Per Year |
|------------------------------|---|---|--|
| One Earth Energy, LLC | 100 | 74% | 74.0 |
| NuGen Energy, LLC | 100 | 48% | 48.0 |
| Patriot Renewable Fuels, LLC | 100 | 23% | 23.0 |

| | | | |
|---------------------------------------|-----|-----|-------|
| Big River Resources, LLC-W Burlington | 92 | 10% | 9.2 |
| Big River Resources, LLC-Galva | 100 | 10% | 10.0 |
| Big River United Energy, LLC | 100 | 5% | 5.0 |
| Levelland Hockley County Ethanol, LLC | 40 | 49% | 19.6 |
| <hr/> | | | |
| Total | 632 | | 188.8 |

One Earth Energy, LLC

On October 30, 2007, we acquired 74% of the outstanding membership units of One Earth Energy, LLC, or One Earth, for \$50.8 million. We consolidate One Earth with our financial results and include them in our alternative energy segment. One Earth completed construction in the second quarter of fiscal year 2009 of its ethanol production facility in Gibson City, Illinois. The plant has a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of dried distillers grains (“DDG”) per year.

One Earth commenced production operations late in the second quarter of fiscal year 2009 and began generating revenue in the third quarter of fiscal year 2009.

NuGen Energy, LLC

Effective July 1, 2010, we acquired a 48% equity interest in NuGen Energy, LLC, or NuGen, which operates an ethanol producing facility in Marion, South Dakota with an annual nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG. Our investment included \$2,410,000 paid at closing to the then sole shareholder of NuGen and \$6,805,000 contributed directly to NuGen. An additional \$6,451,000 is due based upon cash distributions from NuGen that we are entitled to until such balance is paid (“Contingent Consideration”). We determined that the fair value of the Contingent Consideration, at the acquisition date, was \$4,611,000.

We have an option to purchase for \$1,138,000, (which is payable in cash, partially based upon cash distributions from NuGen that we are entitled to) additional ownership units from NuGen’s majority shareholder, which, if exercised, would result in us owning 51% of the total outstanding voting and economic interests of NuGen on a fully diluted basis.

Patriot Renewable Fuels, LLC

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On December 4, 2006, we acquired a 23% ownership interest in Patriot Renewable Fuels, LLC, or Patriot, for \$16 million. Patriot commenced production operations in the second quarter of fiscal year 2008. The plant is located in Annawan, Illinois and has a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG per year.

Big River Resources, LLC

We have invested \$20 million in Big River Resources, LLC, or Big River, for a 10% ownership interest. Big River is a holding company for several entities including Big River Resources West Burlington, LLC which operates an ethanol plant with a nameplate capacity of 92 million gallons of ethanol and 294,000 tons of DDG per year. This plant is located in West Burlington, Iowa. The facility has been in operation since 2004.

Big River completed construction in the second quarter of fiscal year 2009 of its second plant which has a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG per year. This plant is located in Galva, Illinois.

In August 2009, Big River acquired a 50.5% interest in an ethanol production facility which has a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG per year. The plant is located in Dyersville, Iowa. Reflecting REX’s 10% ownership interest in Big River, REX has an effective 5% ownership interest in this entity.

Big River also operates five agricultural elevators with a storage capacity of 10 million bushels.

Levelland Hockley County Ethanol, LLC

On September 30, 2006, we acquired 47% of the outstanding membership units of Levelland Hockley for \$11.5 million. On December 29, 2006, we purchased a \$5.0 million convertible secured promissory note from Levelland Hockley. On July 1, 2007, we converted the note into equity and increased our ownership percentage to approximately 56%. On February 20, 2008, we purchased an additional \$5.0 million convertible secured promissory note from Levelland Hockley. The balance of this note at January 31, 2011 was \$5.2 million, including accrued interest. On January 29, 2009, we agreed to fund up to \$2.0 million in the form of a subordinated revolving line of credit with Levelland Hockley and to issue a \$1.0 million letter of credit for the benefit of Levelland Hockley. On September 1, 2010, we agreed to increase our line of credit to \$4.0 million, inclusive of the \$1.0 million letter of credit. We were issued warrants in the amount of 1,298,700 at \$3.08 per share in conjunction with the issuance of the line of credit. At January 31, 2011, there was \$3.8 million outstanding under the subordinated revolving line of credit.

Levelland Hockley, which is located in Levelland, Texas, commenced production operations in the first quarter of fiscal year 2008. The plant has a nameplate capacity of 40 million gallons of ethanol and 135,000 tons of dried distillers grains (“DDG”) per year.

The plant was shut down in early January 2011 as a result of industry wide low crush margins and the plant’s inability to source grain at affordable prices. On January 31, 2011 we sold 814,000 of our membership units to Levelland Hockley for \$1, reducing our ownership interest in Levelland Hockley to 49%. As a result, we no longer have a controlling financial interest in Levelland Hockley, and, therefore, effective January 31, 2011, we deconsolidated Levelland Hockley and began using the equity method of accounting to account for the results of Levelland Hockley. In connection with the deconsolidation, we recorded our remaining non controlling equity interest and our debt investments at fair value. Our estimate of fair value for all of our investments in Levelland Hockley was \$0 at January 31, 2011. We recorded a pretax charge of

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approximately \$18.4 million as a result of deconsolidating Levelland Hockley and writing our remaining investments in Levelland Hockley to \$0 at January 31, 2011.

Ethanol Industry

Ethanol is a renewable fuel source produced by processing corn and other biomass through a fermentation process that creates combustible alcohol that can be used as an additive or replacement to fossil fuel based gasoline. The majority of ethanol produced in the United States is made from corn because of its wide availability and ease of convertibility from large amounts of carbohydrates into glucose, the key ingredient in producing alcohol that is used in the fermentation process. Ethanol production can also use feedstocks such as grain sorghum, switchgrass, wheat, barley, potatoes and sugarcane as carbohydrate sources. Most ethanol plants have been located near large corn production areas, such as Illinois, Indiana, Iowa, Minnesota, Nebraska, Ohio and South Dakota. Railway access and interstate access are vital for ethanol facilities due to the large amount of demand in the east- and west-coast markets, primarily as a result of the stricter air quality requirements in large parts of those markets, and the limited ethanol production facilities.

According to the Renewable Fuels Association, or RFA, the United States fuel ethanol industry experienced record production of an estimated 13 billion gallons in 2010. As of January 2011, the number of operating ethanol plants increased to 204, up from 54 in 2000 and are located in 29 states with a total capacity of 13.5 billion gallons annually.

On December 19, 2007, the Energy Independence and Security Act of 2007 (the "Energy Act of 2007") was enacted. The Energy Act of 2007 established new levels of renewable fuel mandates, including two different categories of renewable fuels: conventional biofuels and advanced biofuels. Corn-based ethanol is considered conventional biofuels which was subject to a renewable fuel standard ("RFS") of at least 12.0 billion gallons per year in 2010, with an expected increase to at least 15.0 billion gallons per year by 2015. Advanced biofuels include ethanol derived from cellulose, hemicellulose or other non-corn starch sources; biodiesel; and other fuels derived from non-corn starch sources. Advanced biofuels RFS levels are set to reach at least 21.0 billion gallons per year, resulting in a total RFS from conventional and advanced biofuels of at least 36.0 billion gallons per year by 2022.

Ethanol Production

The plants we have invested in are designed to use the dry milling method of producing ethanol. In the dry milling process, the entire corn kernel is first ground into flour, which is referred to as "meal," and processed without separating out the various component parts of the grain. The meal is processed with enzymes, ammonia and water, and then placed in a high-temperature cooker. It is then transferred to fermenters where yeast is added and the conversion of sugar to ethanol begins. After fermentation, the resulting liquid is transferred to distillation columns where the ethanol is separated from the remaining "stillage" for fuel uses. The anhydrous ethanol is then blended with denaturant, such as natural gasoline, to render it undrinkable and thus not subject to beverage alcohol tax. With the starch elements of the corn consumed in the above described process, the principal co-product produced by the dry milling process is dry distillers grains with solubles, or DDGS. DDGS is sold as a protein used in animal feed and recovers a significant portion of the total corn cost.

The Primary Uses of Ethanol

Blend component. Today, much of the ethanol blending in the U.S. is done for the purpose of extending the volume of fuel sold at the gas pump. Blending ethanol allows refiners to produce more fuel from a given

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barrel of oil. Currently, ethanol is blended into approximately 90% of the gasoline sold in the United States, the majority as E10 (a blend of 10% ethanol and 90% gasoline), according to the RFA. Going forward, the industry is attempting to expand the E-85 market, as well as to raise the federal cap on ethanol blend above the current 10% for most vehicles in use. The U.S. Environmental Protection Agency approved the use of 15% ethanol in gasoline for cars and light duty trucks made in 2007 and later. In January 2011, the EPA expanded this to include cars, pickups and SUV's made in model years 2001 through 2006. This covers approximately 62% of light duty vehicles on the road. Despite this, it will take time for this measure to be implemented and currently several lawsuits have been filed to stop the expanded measure from moving forward.

Clean air additive. Ethanol is employed by the refining industry as a fuel oxygenate, which when blended with gasoline, allows engines to combust fuel more completely and reduce emissions from motor vehicles. Ethanol contains 35% oxygen, approximately twice that of Methyl Tertiary Butyl Ether, or MTBE, an alternative oxygenate to ethanol, the use of which is being phased out because of environmental and health concerns. The additional oxygen in ethanol results in more complete combustion of the fuel in the engine cylinder. Ethanol is non-toxic, water soluble and quickly biodegradable.

Octane enhancer. Ethanol increases the octane rating of gasoline with which it is blended. As such, ethanol is used by gasoline suppliers as an octane enhancer both for producing regular grade gasoline from lower octane blending stocks and for upgrading regular gasoline to premium grades.

Legislation

The United States ethanol industry is highly dependent upon federal and state legislation. See Item 1A. Risk Factors for a discussion of legislation affecting the U.S. ethanol industry.

Synthetic Fuel Partnerships

We had invested in three limited partnerships which owned facilities producing synthetic fuel. The partnerships earned federal income tax credits under Section 29/45K of the Internal Revenue Code based upon the tonnage and content of solid synthetic fuel produced and sold to unrelated parties. The Section 29/45K tax credit program expired on December 31, 2007. As such, we do not expect to receive additional income from these investments except for the possibility of an additional payment on a facility formerly located in Gillette, Wyoming. Based upon the modified terms of a sales agreement we are currently not able to predict the likelihood and timing of payments for production from September 30, 2006 to December 31, 2007 for this facility. We expect the payments, if any, to be made within the next year. We have not recognized this income and will recognize income, if any, upon receipt of payment or upon our ability to reasonably assure ourselves of the timing and collectability of payment.

See Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations and Notes 4 and 17 of the Notes to the Consolidated Financial Statements for further discussions.

Real Estate Operations

At January 31, 2011, we had lease agreements, as landlord, for all or parts of eight owned former retail stores (88,000 square feet leased and 10,000 square feet vacant). We have 22 owned former retail stores (281,000 square feet), that are vacant at January 31, 2011. We are marketing these vacant properties to lease or sell. In addition, one former distribution center is partially leased (266,000 square feet), partially occupied by our corporate office personnel (10,000 square feet) and partially vacant (190,000 square feet).

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A typical lease agreement has an initial term of five to twenty years with renewal options. Most of our lessees are responsible for a portion of maintenance, taxes and other executory costs. We require our lessees to maintain adequate levels of insurance. We recognized lease revenue of approximately \$1,285,000 and \$913,000 during fiscal years 2010 and 2009, respectively.

Retail

When we operated retail stores, we offered extended service contracts to our customers which typically provided, inclusive of manufacturers' warranties, one to five years of warranty coverage. We plan to manage and administer these contracts and to recognize the associated income and expenses, including the cost to repair or replace covered products, over the remaining life of the contracts. We have classified as discontinued operations all retail related activities, including those activities associated with extended service plans, in the Consolidated Statements of Operations for all periods presented.

Facilities

At January 31, 2011, we owned eight former retail store properties that were leased to outside, unrelated parties. Of the eight leased properties, one of the properties is only partially leased. There were also 22 vacant former retail store properties that we were attempting to either lease or sell. In addition, we have one former distribution center that is partially leased, partially occupied by our corporate office and partially vacant.

Employees

At January 31, 2011, we had eight employees supporting our corporate functions. None of our employees are represented by a labor union. We expect this employment to remain relatively stable at its current level as we have completed our exit from the retail business.

At January 31, 2011, One Earth had 50 employees.

We consider our relationship with our employees to be good.

Service Marks

We have registered our service mark "REX", and we own an application to register the mark "Farmers Energy", with the United States Patent and Trademark Office. We are not aware of any adverse claims concerning our service marks.

Item 1A. Risk Factors

We encourage you to carefully consider the risks described below and other information contained in this report when considering an investment decision in REX common stock. Any of the events discussed in the risk factors below may occur. If one or more of these events do occur, our results of operations, financial condition or cash flows could be materially adversely affected. In this instance, the trading price of REX stock could decline, and investors might lose all or part of their investment.

We have concentrations of cash deposits at financial institutions that exceed federal insurance limits.

We generally have cash deposits that exceed federal insurance limits. Should the financial institutions we deposit our cash at experience insolvency or other financial difficulty, our access to cash deposits could be limited. In extreme cases, we could lose our cash deposits entirely. This would negatively impact our liquidity and results of operations.

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The current interest rate environment has resulted in lower yields on our excess cash.

We have experienced lower yields on our excess cash compared to historical yields. Should the present economic conditions result in a sustained period of historically low interest rates, our interest income would be negatively impacted.

Risks Related to our Synthetic Fuel Investments and Income Tax Benefits

We face synthetic fuel risks as future IRS audits may result in the disallowance of previously recognized tax credits.

We have recognized investment income of approximately \$53.9 million from the sales of our partnership interests from years that the partnerships have not been audited by the Internal Revenue Service (IRS). Should the tax credits be denied on any future audit and we fail to prevail through the IRS or the legal process, there could be significant refunds of previously recognized income with a significant adverse impact on earnings and cash flows.

The production and sale of synthetic fuel qualified for Section 29/45K tax credits if certain requirements were satisfied, including a requirement that the synthetic fuel differs significantly in chemical composition from the coal used to produce the synthetic fuel and that the fuel was produced from a facility placed in service before July 1, 1998.

We may not be able to generate sufficient taxable income to realize our deferred tax assets.

We have approximately \$11.0 million of net deferred tax assets recorded on our consolidated financial statements. Should future results of operations or other factors cause us to determine that it is unlikely that we will generate sufficient taxable income to fully utilize our deferred tax assets; we would then be required to establish a valuation allowance against such deferred tax assets. We would increase our income tax expense by the amount of the tax benefit we do not expect to realize. This would reduce our net income and could have a material adverse effect on our results of operations and our financial position.

Risks Related to our Alternative Energy Business

Certain of our ethanol investments are subject to the risks of a development stage business which could adversely affect returns on our ethanol investment and our results of operations.

We do not have long term experience investing in the ethanol industry. We entered into our first agreement to invest in an ethanol plant in November 2005. At January 31, 2011, we were invested in five entities that own and operate seven ethanol production facilities. One facility has been in production since 2004, but the remaining facilities all became operational or were acquired in fiscal year 2008 or later. Our ethanol investments have been managed by our Chief Executive Officer, our Chief Operating Officer and our Chief Financial Officer. We do not otherwise have a dedicated ethanol development or management staff. As a consequence, our ethanol investments are subject to many of the risks associated with a development stage company, including an unproven business model, a lack of operating history and an undeveloped operating structure. These development stage risks could result in our making investments in ethanol plants that perform substantially below our expectations, which would adversely affect our results of operations and financial condition.

If cash flow from operations of our ethanol plants is not sufficient to service debt, the plants could fail and we could lose our entire investment.

Our ethanol plants financed approximately 60% of plant construction cost with debt. The debt typically has a balloon payment due after five years. The ability of each company owning the plant to repay borrowings incurred will depend upon the plant's financial and operating performance. The cash flows and capital resources of an ethanol plant may be insufficient to repay its debt obligations. If a plant cannot service its debt, it may be forced to reduce or delay capital expenditures, sell assets, restructure its indebtedness or seek additional capital. If unable to do so, the value of our investment could decline significantly.

The institutional senior lenders to the companies which own and operate our ethanol plants hold liens on the plant's assets. If a company fails to make its debt service payments, the senior lender will have the right to repossess the plant's assets in addition to other remedies, which are superior to our rights as an equity investor or subordinated lender. Such action could have a material adverse impact on our investment in the ethanol plant.

We operate in a capital intensive industry. Limitations to external financing could adversely affect our financial performance.

In general, continued volatility in the capital markets has resulted in reduced availability of capital for the ethanol industry. We may need to incur additional financing to fund growth of our business or in times of increasing liquidity requirements (such as increases in raw material costs). Any delays to obtain additional financing, or our inability to do so, could have a material adverse impact on our financial results.

The financial returns on our ethanol investments are highly dependent on commodity prices, which are subject to significant volatility and uncertainty, and the availability of supplies, so our results could fluctuate substantially.

The financial returns on our ethanol investments are substantially dependent on commodity prices, especially prices for corn or other feedstock, natural gas, ethanol and unleaded gasoline. As a result of the volatility of the prices for these items, the returns may fluctuate substantially and our investments could experience periods of declining prices for their products and increasing costs for their raw materials, which could result in operating losses at our ethanol plants.

Our returns on ethanol investments are highly sensitive to grain prices. Corn or sorghum are the principal raw materials our ethanol plants use to produce ethanol and co-products. As a result, changes in the price of corn or sorghum can significantly affect their businesses. Rising corn or sorghum prices result in higher costs of ethanol and co-products. Because ethanol competes with non-corn-based fuels, our ethanol plants generally will be unable to pass along increased grain costs to their customers. At certain levels, grain prices may make ethanol uneconomical to produce.

The price of corn and sorghum is influenced by weather conditions and other factors affecting crop yields, transportation costs, farmer planting decisions, exports, the value of the U.S. dollar and general economic, market and regulatory factors. These factors include government policies and subsidies with respect to agriculture and international trade, and global and local demand and supply. The significance and relative effect of these factors on the price of corn and sorghum is difficult to predict. Any event that tends to negatively affect the supply of corn or sorghum, such as adverse weather or crop disease, could increase corn and sorghum prices and potentially harm the business of our ethanol plants. Increasing domestic ethanol capacity could boost the demand for corn and sorghum and result in increased corn or sorghum prices. Our ethanol plants may also have difficulty, from time to time, in physically sourcing corn or sorghum on

economical terms due to supply shortages. Such a shortage could require our ethanol plants to suspend operations which would have a material adverse effect on the financial returns on our ethanol investments.

The spread between ethanol and corn and sorghum prices can vary significantly. The gross margin at our ethanol plants depends principally on the spread between ethanol and corn or sorghum prices. Fluctuations in the spread are likely to continue to occur. A sustained narrow spread or any further reduction in the spread between ethanol and corn prices, whether as a result of sustained high or increased corn prices or sustained low or decreased ethanol prices, would adversely affect the results of operations at our ethanol plants.

The market for natural gas is subject to market conditions that create uncertainty in the price and availability of the natural gas that our ethanol plants use in their manufacturing process. Our ethanol plants rely upon third parties for their supply of natural gas, which is consumed as fuel in the manufacture of ethanol. The prices for and availability of natural gas are subject to volatile market conditions. These market conditions often are affected by factors beyond the ethanol plants' control, such as weather conditions, overall economic conditions and foreign and domestic governmental regulation and relations. Significant disruptions in the supply of natural gas could impair the ethanol plants' ability to economically manufacture ethanol for their customers. Furthermore, increases in natural gas prices or changes in our natural gas costs relative to natural gas costs paid by competitors may adversely affect results of operations and financial position at our ethanol plants.

Fluctuations in the selling price and production costs of gasoline may reduce profit margins at our ethanol plants. Ethanol is marketed as a fuel additive to reduce vehicle emissions from gasoline, as an octane enhancer to improve the octane rating of gasoline with which it is blended and, to a lesser extent, as a gasoline substitute. As a result, ethanol prices are influenced by the supply and demand for gasoline and our ethanol plants' results of operations and financial position may be materially adversely affected if gasoline demand or price decreases.

New plants under construction or decreases in demand for ethanol may result in excess production capacity in the ethanol industry, which may cause the price of ethanol and/or distillers grains to decrease.

According to the Renewable Fuels Association, or RFA, domestic ethanol production nameplate capacity has increased to approximately 14.1 billion gallons per year at January 2011. The RFA estimates that, as of January 2011, approximately 560 million gallons per year of additional production capacity is under construction. Excess capacity in the ethanol industry would have an adverse effect on the results of our ethanol investments. In a manufacturing industry with excess capacity, producers have an incentive to manufacture additional products for so long as the price exceeds the marginal cost of production (i.e., the cost of producing only the next unit, without regard for interest, overhead or fixed costs). This incentive could result in the reduction of the market price of ethanol to a level that is inadequate to generate sufficient cash flow to cover costs.

Excess capacity may also result from decreases in the demand for ethanol, which could result from a number of factors, including, but not limited to, regulatory developments and reduced U.S. gasoline consumption. Reduced gasoline consumption could occur as a result of increased prices for gasoline or crude oil, which could cause businesses and consumers to reduce driving or acquire vehicles with more favorable gasoline mileage or acquire hybrid vehicles.

In addition, because ethanol production produces distillers grains as a co-product, increased ethanol production will also lead to increased supplies of distillers grains. An increase in the supply of distillers

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grains, without corresponding increases in demand, could lead to lower prices or an inability to sell our ethanol plants' distillers grains production. A decline in the price of distillers grains or the distillers grains market generally could have a material adverse effect on the results of our ethanol investments.

We depend on our partners to operate our ethanol investments.

Our investments currently represent both majority and minority equity positions, and day-to-day operating control of each plant generally remains with the local farmers' cooperative or investor group that has promoted the plant. We may not have the ability to directly modify the operations of the plants in response to changes in the business environment or in response to any deficiencies in local operations of the plants. In addition, local plant operators, who also represent the primary suppliers of corn and other crops to the plants, may have interests, such as the price and sourcing of corn and other crops, that may differ from our interest, which is based solely on the operating profit of the plant. The limitations on our ability to control day-to-day plant operations could adversely affect plant results of operations.

We may not successfully acquire or develop additional ethanol investments.

The growth of our ethanol business depends on our ability to identify and develop new ethanol investments. Our ethanol development strategy depends on referrals, and introductions, to new investment opportunities from industry participants, such as ethanol plant builders, financial institutions, marketing agents and others. We must continue to maintain favorable relationships with these industry participants, and a material disruption in these sources of referrals would adversely affect our ability to expand our ethanol investments.

Any expansion strategy will depend on prevailing market conditions for the price of ethanol and the costs of corn and natural gas and the expectations of future market conditions. There is increasing competition for suitable sites for ethanol plants. Even if suitable sites or opportunities are identified, we may not be able to secure the services and products from contractors, engineering firms, construction firms and equipment suppliers necessary to build or expand ethanol plants on a timely basis or on acceptable economic terms. Construction costs associated with expansion may increase to levels that would make a new plant too expensive to complete or unprofitable to operate. Additional financing may also be necessary to implement any expansion strategy, which may not be accessible or available on acceptable terms.

Our ethanol plants may be adversely affected by technological advances and efforts to anticipate and employ such technological advances may prove unsuccessful.

The development and implementation of new technologies may result in a significant reduction in the costs of ethanol production. For instance, any technological advances in the efficiency or cost to produce ethanol from inexpensive, cellulosic sources such as wheat, oat or barley straw could have an adverse effect on our ethanol plants, because those facilities are designed to produce ethanol from corn, which is, by comparison, a raw material with other high value uses. We cannot predict when new technologies may become available, the rate of acceptance of new technologies by competitors or the costs associated with new technologies. In addition, advances in the development of alternatives to ethanol could significantly reduce demand for or eliminate the need for ethanol.

Any advances in technology which require significant unanticipated capital expenditures to remain competitive or which reduce demand or prices for ethanol would have a material adverse effect on the results of our ethanol investments.

In addition, alternative fuels, additives and oxygenates are continually under development. Alternative fuel additives that can replace ethanol may be developed, which may decrease the demand for ethanol. It is also

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possible that technological advances in engine and exhaust system design and performance could reduce the use of oxygenates, which would lower the demand for ethanol, and the results of our ethanol investments may be materially adversely affected.

The U.S. ethanol industry is highly dependent upon a myriad of federal and state legislation and regulation and any changes in legislation or regulation could materially and adversely affect our results of operations and financial position.

The elimination or significant reduction of the blender's credit could have a material adverse effect on the results of our ethanol investments. The cost of production of ethanol is made significantly more competitive with regular gasoline by federal tax incentives. The American Jobs Creation Act of 2004 created the Volumetric Ethanol Tax Credit, referred to as the "blender's credit." This credit currently allows gasoline distributors who blend ethanol with gasoline to receive a federal excise tax credit of \$0.45 per gallon of pure ethanol, or \$0.045 per gallon if blended with 10% ethanol (E10), and \$0.3825 per gallon if blended with 85% ethanol (E85). The \$0.45 per gallon incentive for ethanol was scheduled to expire on December 31, 2010 but was extended to

December 31, 2011. The blender's credit could be eliminated or reduced at any time through an act of Congress and may not be renewed in 2011 or may be renewed on different terms. In addition, the blender's credit, as well as other federal and state programs benefiting ethanol (such as tariffs), generally are subject to U.S. government obligations under international trade agreements, including those under the World Trade Organization Agreement on Subsidies and Countervailing Measures, and might be the subject of challenges thereunder, in whole or in part.

Ethanol can be imported into the U.S. duty-free from some countries, which may undermine the ethanol industry in the U.S. Imported ethanol is generally subject to a \$0.54 per gallon tariff that was designed to offset the \$0.45 per gallon ethanol incentive that is available under the federal excise tax incentive program for refineries that blend ethanol in their fuel. A special exemption from the tariff, known as the Caribbean Basin Initiative, exists for ethanol imported from 24 countries in Central America and the Caribbean Islands, which is limited to a total of 7% of U.S. production per year. Imports from the exempted countries may increase as a result of new plants under development. Since production costs for ethanol in these countries are estimated to be significantly less than what they are in the U.S., the duty-free import of ethanol through the countries exempted from the tariff may negatively affect the demand for domestic ethanol and the price at which our ethanol plants sell ethanol. Any changes in the tariff or exemption from the tariff could have a material adverse effect on the results of our ethanol investments. In addition, the North America Free Trade Agreement, or NAFTA, allows Canada and Mexico to export ethanol to the United States duty-free.

The effect of the renewable fuel standard ("RFS") program in the Energy Independence and Security Act of 2007 (the "2007 Act") is uncertain. The mandated minimum level of use of renewable fuels in the RFS under the 2007 Act will increase from 12.95 billion gallons per year in 2010 to 36 billion gallons per year in 2022. The RFS mandate level for conventional biofuels, which includes corn-based ethanol, for 2011 is 12.6 billion gallons. This requirement progressively increases to 15 billion gallons by 2015 and remains at that level through 2022. The 2007 Act also requires the increased use of "advanced" biofuels, which are alternative biofuels produced without using corn starch such as cellulosic ethanol and biomass-based diesel, with 21 billion gallons of the mandated 36 billion gallons of renewable fuel required to come from advanced biofuels by 2022. Required RFS volumes for both general and advanced renewable fuels in years to follow 2022 will be determined by a governmental administrator, in coordination with the U.S. Department of Energy and U.S. Department of Agriculture. Increased competition from other types of biofuels could have a material adverse effect on the results of our ethanol investments. The RFS program and the 2007 Act also include provisions allowing "credits" to be granted to fuel producers who blend in their fuel more than the required percentage of renewable fuels in a given year.

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These credits may be used in subsequent years to satisfy RFS production percentage and volume standards and may be traded to other parties. The accumulation of excess credits could further reduce the impact of the RFS mandate schedule and result in a lower ethanol price or could result in greater fluctuations in demand for ethanol from year to year, both of which could have a material adverse effect on the results of our ethanol investments.

Waivers of the RFS minimum levels of renewable fuels included in gasoline could have a material adverse effect on the results of our ethanol investments.

Under the RFS as passed as part of the Energy Policy Act of 2005, the U.S. Environmental Protection Agency, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the renewable fuels mandate with respect to one or more states if the Administrator of the U.S. Environmental Protection Agency, or EPA, determines upon the petition of one or more states that implementing the requirements would severely harm the economy or the environment of a state, a region or the U.S., or that there is inadequate supply to meet the requirement. In addition, the 2007 Act allows any other person subject to the requirements of the RFS or the EPA Administrator to file a petition for such a waiver. Any waiver of the RFS with respect to one or more states could adversely offset demand for ethanol and could have a material adverse effect on the results of our ethanol investments.

Changes in corporate average fuel economy standards could adversely impact ethanol prices. Flexible fuel vehicles receive preferential treatment in meeting federally mandated corporate average fuel economy ("CAFE") standards for automobiles manufactured by car makers. High blend ethanol fuels such as E85 result in lower fuel efficiencies. Absent the CAFE preferences, car makers would not likely build flexible-fuel vehicles. Any change in CAFE preferences could reduce the growth of E85 markets and result in lower ethanol prices.

Various studies have criticized the efficiency of ethanol, in general, and corn-based ethanol in particular, which could lead to the reduction or repeal of incentives and tariffs that promote the use and domestic production of ethanol or otherwise negatively impact public perception and acceptance of ethanol as an alternative fuel.

Although many trade groups, academics and governmental agencies have supported ethanol as a fuel additive that promotes a cleaner environment, others have criticized ethanol production as consuming considerably more energy and emitting more greenhouse gases than other biofuels and as potentially depleting water resources. Other studies have suggested that corn-based ethanol is less efficient than ethanol produced from switchgrass or wheat grain and that it negatively impacts consumers by causing prices for dairy, meat and other foodstuffs from livestock that consume corn to increase. If these views gain acceptance, support for existing measures promoting use and domestic production of corn-based ethanol could decline, leading to reduction or repeal of these measures. These views could also negatively impact public perception of the ethanol industry and acceptance of ethanol as an alternative fuel.

Federal support of cellulosic ethanol may result in reduced incentives to corn-derived ethanol producers.

The American Recovery and Reinvestment Act of 2009 and the Energy Independence and Security Act of 2007 provide funding opportunities in support of cellulosic ethanol obtained from biomass sources such as switchgrass and poplar trees. The amended RFS mandates an increasing level of production of non-corn derived biofuels. These federal policies may suggest a long-term political preference for cellulosic processes using alternative feedstocks such as switchgrass, silage or wood chips. Cellulosic ethanol has a smaller carbon footprint and is unlikely to divert foodstuff from the market. Several cellulosic ethanol plants are under development and there is a risk that cellulosic ethanol could displace corn ethanol. Our plants are

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designed as single-feedstock facilities, located in corn production areas with limited alternative feedstock nearby, and would require significant additional investment to convert to the production of cellulosic ethanol. The adoption of cellulosic ethanol as the preferred form of ethanol could have a significant adverse effect on our ethanol business.

Our ethanol business is affected by environmental and other regulations which could impede or prohibit our ability to successfully operate our plants.

Our ethanol production facilities are subject to extensive air, water and other environmental regulations. We have had to obtain numerous permits to construct and operate our plants. Regulatory agencies could impose conditions or other restrictions in the permits that are detrimental or which increase our costs. More stringent federal or state environmental regulations could be adopted which could significantly increase our operating costs or require us to expend considerable resources.

Our ethanol plants emit various airborne pollutants as by-products of the ethanol production process, including carbon dioxide. In 2007, the U.S. Supreme Court classified carbon dioxide as an air pollutant under the Clean Air Act in a case seeking to require the EPA to regulate carbon dioxide in vehicle emissions. In February 2010, the EPA released its final regulations on the Renewable Fuel Standard program (RFS2). We believe our plants are grandfathered at their current operating capacity, but plant expansion will need to meet a 20% threshold reduction in greenhouse gas (GHG) emissions from a 2005 baseline measurement to produce ethanol eligible for the RFS2 mandate. Additionally, legislation is pending in Congress on a comprehensive carbon dioxide regulatory scheme, such as a carbon tax or cap-and-trade system. To expand our plant capacity, we may be required to obtain additional permits, install advanced technology such as corn oil extraction, or reduce drying of certain amounts of distillers grains.

The California Air Resources Board has adopted a Low Carbon Fuel Standard requiring a 10% reduction in GHG emissions from transportation fuels by 2020. An Indirect Land Use Charge is included in this lifecycle GHG emission calculation. While this standard is being challenged by lawsuits, implementation of such a standard could have an adverse impact on our market for corn-based ethanol if determined that in California corn-based ethanol fails to achieve lifecycle GHG emission reductions.

Our revenue from the sale of distillers grains depends upon its continued market acceptance as an animal feed.

Distillers grains is a co-product from the fermentation of corn to produce ethanol. Antibiotics may be used during the fermentation process to control bacterial contamination; therefore antibiotics may be present in small quantities in distillers grains marketed as animal feed. The U. S. Food and Drug Administration' s, or FDA' s, Center for Veterinary Medicine has expressed concern about potential animal and human health hazards from the use of distillers grains as an animal feed due to the possibility of antibiotic residues. If the public became concerned about the impact of distillers grains in the food supply or as an acceptable animal feed, the market for distillers grains could be negatively impacted, which would have a negative impact on our results of operations.

The price of distillers grains may decline as a result of China' s antidumping investigation of distillers grains originating in the United States.

Estimates indicate that as much as 10 to 15 percent of the distiller grains produced in the United States will be exported to China in the coming year. However, this export market may be jeopardized if the Chinese government imposes trade barriers in response to the outcome of an antidumping investigation currently being conducted by the Chinese Ministry of Commerce. If producers and exporters of distiller grains are

subjected to trade barriers when selling distiller grains to Chinese customers, there may be a reduction in the price of distillers grains in the United States. Declines in the price we receive for our distillers grains could lead to decreased revenues and may result in our inability to operate the ethanol plant profitably.

We face significant competition in the ethanol industry.

We face significant competition for new ethanol investment opportunities. There are varied enterprises seeking to participate in the ethanol industry. Some enterprises provide financial and management support similar to our business model. Other enterprises seek to acquire or develop plants which they will directly own and operate. Many of our competitors are larger and have greater financial resources and name recognition than we do. We must compete for investment opportunities based on our strategy of supporting and enhancing local development of ethanol plant opportunities. We may not be successful in competing for investment opportunities based on our strategy.

The ethanol industry is primarily comprised of smaller entities that engage exclusively in ethanol production and large integrated grain companies that produce ethanol along with their base grain business. Recently, several large oil companies have entered the ethanol production market. If these companies increase their ethanol plant ownership or other oil companies seek to engage in direct ethanol production, there would be less of a need to purchase ethanol from independent producers like our ethanol plants.

There is a consolidation trend in the ethanol industry, partly a result of companies recently seeking protection under the United States Bankruptcy Code. As a result, firms are growing in size and scope. Larger firms offer efficiencies and economies of scale, resulting in lower costs of production. In addition, plants currently being or recently sold as part of a bankruptcy proceeding may have significantly lower costs than our ethanol plants. Absent significant growth and diversification, our ethanol plants may not be able to operate profitably in a more competitive environment. No assurance can be given that our ethanol plants will be able to compete successfully or that competition from larger companies with greater financial resources will not have a materially adverse affect on the results of our ethanol investments.

We are exposed to credit risk from our sales of ethanol and distillers grains to customers.

The inability of a customer to make payments to us for our accounts receivable may cause us to experience losses and may adversely impact our liquidity and our ability to make our payments when due.

We may not be able to hire and retain qualified personnel to operate our ethanol plants.

Our ability to attract and retain competent personnel has a significant impact on operating efficiencies and plant profitability. Competition for key plant employees in the ethanol industry can be intense, and we may not be able to attract and retain qualified employees. Failure to do so could have a negative impact on our financial results at individual plants.

Our plants depend on an uninterrupted supply of energy and water to operate. Unforeseen plant shutdowns could harm our business.

Our plants require a significant and uninterrupted supply of natural gas, electricity and water to operate. We generally rely on third parties to provide these resources. If there is an interruption in the supply of energy or water for any reason, such as supply, delivery or mechanical problems and we are unable to secure an adequate alternative supply to sustain plant operations, we may be required to stop production. A production halt for an extended period of time could result in material losses.

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Potential business disruption from factors outside our control, including natural disasters, severe weather conditions, accidents, strikes, unexpected equipment failures and unforeseen plant shutdowns, could adversely affect our cash flow and operating results.

The debt agreements for the ethanol plants contain restrictive financial and performance covenants.

Our subsidiaries that operate ethanol plants (“Ethanol subsidiaries”) have debt agreements that contain covenants with several financial and performance restrictions. A breach of any of these covenants could result in a default under the applicable agreement. If a default were to occur, the Ethanol subsidiary would likely seek a waiver of that default, attempt to reset the covenant, or refinance the instrument and accompanying obligations. If the Ethanol subsidiary was unable to obtain this relief, the default could result in the acceleration of the total due related to that debt obligation. If a default were to occur, the Ethanol subsidiary may not be able to pay its debts or borrow sufficient funds to refinance them. In addition, certain lease agreements could also be in default if a default of the debt agreement occurs. Any of these events, if they occur, could materially adversely affect our results of operations, financial condition, and cash flows.

The debt agreements for the ethanol plants limit, or otherwise restrict the amount of dividends and other payments the ethanol operating subsidiaries can transfer to their members.

We are dependent on dividends from our ethanol subsidiaries to generate cash flow. Presently, all of our ethanol subsidiaries have debt agreements that limit payments to members. Therefore, these companies cannot distribute all of the cash they generate to their members. Furthermore, we may not be able to use the excess cash flow from one subsidiary to fund corporate needs or needs of another operating ethanol subsidiary.

Changes in interest rates could have a material adverse effect on the results of our ethanol investments.

One Earth and Patriot have interest rate swaps at January 31, 2011 that, in essence, fix the interest rate on a portion of their variable rate debt. During fiscal years 2010, 2009 and 2008, we recognized losses on these swaps. Further reductions in interest rates could increase the liability position of the interest rate swaps, requiring us to record additional expense which could be material. The liability for these interest rate swaps could also result in a default of the term loan agreements’ restrictive financial covenants.

In addition, increases in interest rates could have a negative impact on results of operations as all of the debt our ethanol plants have is variable rate debt. Furthermore, the interest rate swaps do not fix the interest rate on the entire portion of the related debt.

Risks Related to the Wind Down and Exit of our Retail business and Risks Related to our Real Estate Segment.

Our future costs associated with administering extended product service contracts may result in higher than expected costs.

We will continue to administer extended product service contracts that have contractual maturities over the next three years. To the extent we do not have products or an adequate repair service network to satisfy warranty claims, we may incur material costs as we would be required to refund cash to customers for warranted products.

We have a significant amount of vacant warehouse and retail space after the completion of the wind down of our retail business.

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At January 31, 2011, we own one distribution facility and 23 former retail store properties comprising approximately 492,000 square feet that are completely or partially vacant. We are currently marketing these facilities for lease or sale. We may not be able to successfully lease or sell these properties which could result in lost opportunities for revenue or future impairment charges related to the carrying value of the associated assets. We also have costs related to the vacant properties such as property taxes and utilities that we would have to bear without any revenue from such properties.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

The information required by this Item 2 is set forth in Item 1 of this report under “Ethanol Investments”, “Real Estate Operations” and “Facilities” and is incorporated herein by reference.

Item 3. Legal Proceedings

We are involved in various legal proceedings incidental to the conduct of our business. We believe that these proceedings will not have a material adverse effect on our financial condition or results of operations.

Executive Officers of the Company

Set forth below is certain information about each of our executive officers.

| <u>Name</u> | <u>Age</u> | <u>Position</u> |
|-------------|------------|-----------------|
|-------------|------------|-----------------|

| | | |
|-------------------|----|---|
| Stuart Rose | 56 | Chairman of the Board and Chief Executive Officer* |
| Douglas Bruggeman | 50 | Vice President-Finance, Chief Financial Officer and Treasurer |
| Edward Kress | 61 | Secretary* |
| Zafar Rizvi | 61 | President and Chief Operating Officer |

*Also serves as a director.

Stuart Rose has been our Chairman of the Board and Chief Executive Officer since our incorporation in 1984 as a holding company to succeed to the ownership of Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc. and Stereo Town, Inc. Prior to 1984, Mr. Rose was Chairman of the Board and Chief Executive Officer of Rex Radio and Television, Inc., which he founded in 1980 to acquire the stock of a corporation which operated four retail stores.

Douglas Bruggeman has been our Vice President- Finance and Treasurer since 1989 and was elected Chief Financial Officer in 2003. From 1987 to 1989, Mr. Bruggeman was our Manager of Corporate Accounting. Mr. Bruggeman was employed with the accounting firm of Ernst & Young prior to joining us in 1986.

Edward Kress has been our Secretary since 1984 and a director since 1985. Mr. Kress has been a partner of the law firm of Dinsmore & Shohl LLP (formerly Chernesky, Heyman & Kress P.L.L.), our legal counsel, since 1988. Mr. Kress has practiced law in Dayton, Ohio since 1974.

Zafar Rizvi was elected President and Chief Operating Officer in 2010. Previously, he had been our Vice President, and has been President of Farmers Energy Incorporated, our alternative energy investment

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subsidiary, since 2006. From 1991 to 2006, Mr. Rizvi was our Vice President - Loss Prevention. From 1986 to 1991, Mr. Rizvi was employed in the video retailing industry in a variety of management positions.

Item 4. Removed and Reserved

PART II

Item 5. Market for Registrant' s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

SHAREHOLDER INFORMATION

Common Share Information and Quarterly Share Prices

Our common stock is traded on the New York Stock Exchange under the symbol REX.

| Fiscal Quarter ended | High | Low |
|----------------------|----------|----------|
| April 30, 2009 | \$ 13.50 | \$ 5.52 |
| July 31, 2009 | 12.99 | 9.36 |
| October 31, 2009 | 13.02 | 9.75 |
| January 31, 2010 | 15.41 | 11.89 |
| April 30, 2010 | \$ 18.40 | \$ 14.87 |
| July 31, 2010 | 19.30 | 15.19 |
| October 31, 2010 | 16.83 | 12.96 |
| January 31, 2011 | 17.23 | 14.84 |

As of April 14, 2011, there were 119 holders of record of our common stock, including shares held in nominee or street name by brokers.

Dividend Policy

We did not pay dividends in the current or prior years. We currently have no restrictions on the payment of dividends. Our ethanol subsidiaries have certain restrictions on their ability to pay us dividends.

Issuer Purchases of Equity Securities

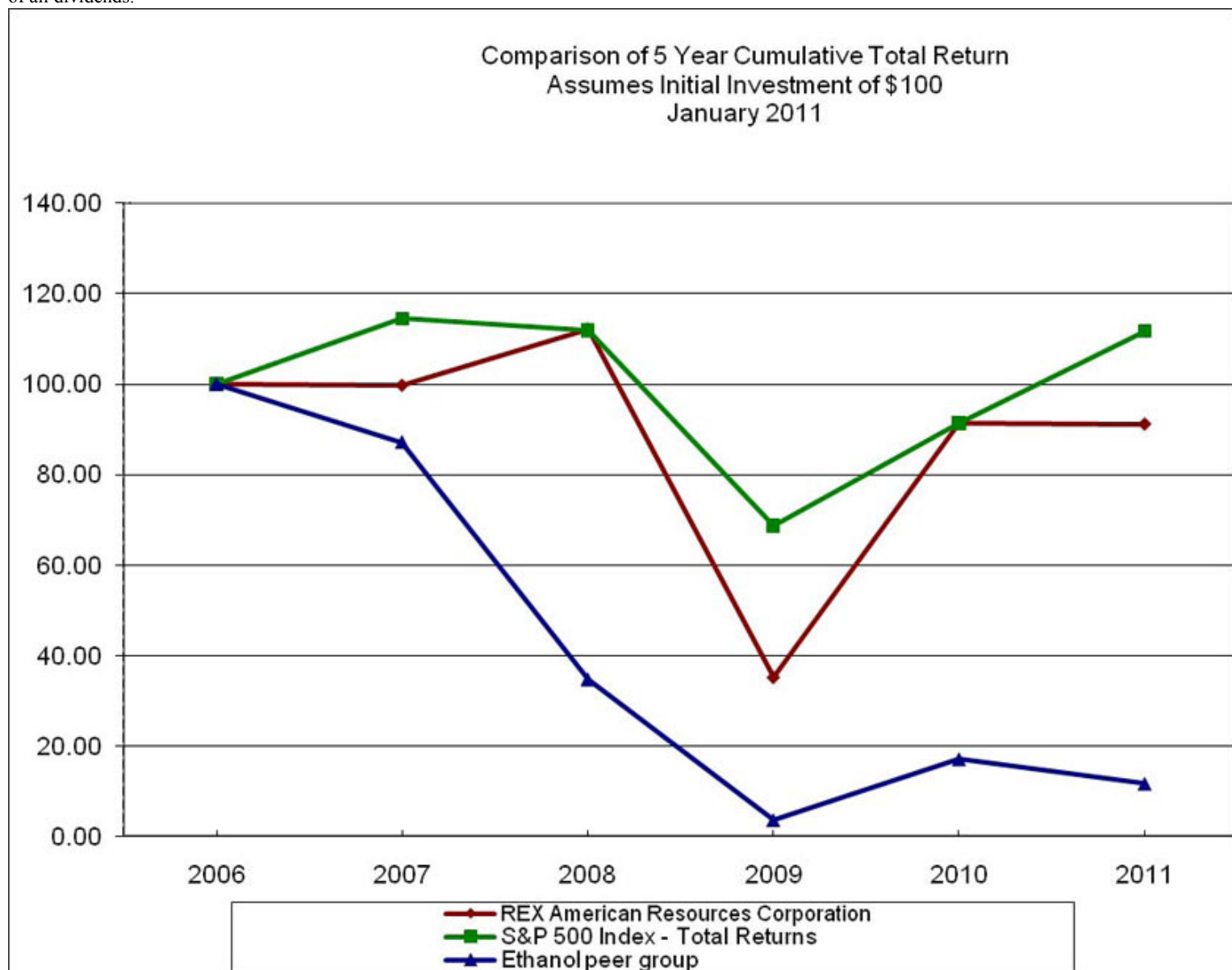
| Period | Total Number of Shares Purchased | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1) | Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs (1) |
|---------------------|--|------------------------------------|--|--|
| November 1-30, 2010 | – | \$ – | – | 568,044 |
| December 1-31, 2010 | 100,000 | \$ 15.63 | 100,000 | 468,044 |
| January 1-31, 2011 | – | \$ – | – | 468,044 |
| Total | 100,000 | \$ 15.63 | 100,000 | 468,044 |

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- (1) On October 7, 2010, our Board of Directors increased our share repurchase authorization by an additional 500,000 shares. At January 31, 2011, a total of 468,044 shares remained available to purchase under this authorization.

Performance Graph

The following graph compares the yearly percentage change in the cumulative total shareholder return on our Common Stock against the cumulative total return of the S&P 500 Stock Index and a peer group comprised of selected publicly traded consumer ethanol producers (*) for the period commencing January 31, 2006 and ended January 31, 2011. The graph assumes an investment of \$100 in our Common Stock and each index on January 31, 2006 and reinvestment of all dividends.



* The peer group (and the month the companies went public) is comprised of Pacific Ethanol, Inc. (March 2005), BioFuel Energy Corp. (June 2007) and Green Plains Renewable Energy, Inc. (March 2006). Returns for the peer group are included upon a full year's return being available as of January 31.

Item 6. Selected Financial Data

The following statements of operations and balance sheet data have been derived from our consolidated financial statements and should be read in conjunction with Management's Discussion and Analysis of

Financial Condition and Results of Operations and the Consolidated Financial Statements and related Notes. Prior period amounts applicable to the statement of operations have been adjusted to recognize the reclassification of the results of our former retail segment and certain real estate assets to discontinued operations as a result of our exit of the retail business and real estate sales. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations for a discussion of income from ethanol investments, derivative financial instruments, gain on sale of real estate, loss and impairment charges related to deconsolidation and long-term debt. These items have fluctuated significantly in recent years and may affect comparability of years.

Five Year Financial Summary

(In Thousands, Except Per Share Amounts)

| Years Ended January 31, | 2011 | 2010 | 2009 | 2008 | 2007 |
|--|------------|------------|------------|------------|------------|
| Net sales and revenue | \$ 301,674 | \$ 170,088 | \$ 68,587 | \$ 322 | \$ 257 |
| Net (income) loss attributable to noncontrolling interests | \$ (3,673) | \$ (3,900) | \$ 3,156 | \$ 841 | \$ - |
| Income (loss) from continuing operations attributable to REX common shareholders (a) (b) | \$ 3,097 | \$ 6,051 | \$ (2,861) | \$ 20,032 | \$ 6,778 |
| Net income (loss) attributable to REX common shareholders (b) | \$ 5,069 | \$ 8,652 | \$ (3,297) | \$ 33,867 | \$ 11,351 |
| Basic income (loss) per share from continuing operations attributable to REX common shareholders (a) | \$ 0.32 | \$ 0.65 | \$ (0.28) | \$ 1.92 | \$ 0.66 |
| Diluted income (loss) per share from continuing operations attributable to REX common shareholders (a) | \$ 0.32 | \$ 0.63 | \$ (0.28) | \$ 1.71 | \$ 0.59 |
| Basic net income (loss) per share | \$ 0.53 | \$ 0.93 | \$ (0.32) | \$ 3.25 | \$ 1.10 |
| Diluted net income (loss) per share | \$ 0.52 | \$ 0.91 | \$ (0.32) | \$ 2.89 | \$ 0.98 |
| Total assets | \$ 375,722 | \$ 451,505 | \$ 451,288 | \$ 408,978 | \$ 345,442 |
| Long-term debt and capital lease obligations, net of current maturities | \$ 70,973 | \$ 126,689 | \$ 103,939 | \$ 35,224 | \$ 31,236 |
| Long-term derivative financial instrument liability | \$ 3,688 | \$ 4,055 | \$ 4,032 | \$ 2,308 | \$ - |

- Amounts differ from those previously reported as the results of our former retail segment and certain real estate assets have been reclassified into discontinued operations. See Note 16 of the Notes to the Consolidated Financial Statements for further discussion and analysis of discontinued operations.
- a) discontinued operations. See Note 16 of the Notes to the Consolidated Financial Statements for further discussion and analysis of discontinued operations.
- b) The results for the years ended January 31, 2008 and 2007 include significant amounts of income from synthetic fuel investments. The results for the year ended January 31, 2008 also includes a realized gain from the sale of our interest in Millennium Ethanol, LLC.

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Quarterly Financial Data (Unaudited)

Quarters Ended (In Thousands, Except Per Share Amounts)

| | April 30, 2010 | July 31, 2010 | October 31, 2010 | January 31, 2011 |
|---|-------------------|------------------|---------------------|---------------------|
| Net sales and revenue (a) | \$ 71,554 | \$ 65,516 | \$ 70,718 | \$ 93,886 |
| Gross profit (a) | 8,405 | 5,962 | 7,198 | 8,809 |
| Net income (loss) | 4,188 | 1,234 | 4,250 | (4,603) |
| Basic net income (loss) per share attributable to REX common shareholders (b) | \$ 0.43 | \$ 0.13 | \$ 0.45 | \$ (0.49) |
| Diluted net income (loss) per share attributable to REX common shareholders (b) | \$ 0.42 | \$ 0.12 | \$ 0.44 | \$ (0.49) |

Quarters Ended (In Thousands, Except Per Share Amounts)

| | April 30, 2009 | July 31, 2009 | October 31, 2009 | January 31, 2010 |
|---|-------------------|------------------|---------------------|---------------------|
| Net sales and revenue (a) | \$ 14,324 | \$ 17,076 | \$ 61,613 | \$ 77,075 |
| Gross profit (a) | 325 | 1,189 | 5,799 | 13,395 |
| Net (loss) income | (1,731) | 837 | 2,273 | 7,273 |
| Basic net (loss) income per share attributable to REX common shareholders (b) | \$ (0.19) | \$ 0.09 | \$ 0.25 | \$ 0.78 |
| Diluted net (loss) income per share attributable to REX common shareholders (b) | \$ (0.19) | \$ 0.09 | \$ 0.24 | \$ 0.75 |

- a) Amounts differ from those previously reported as the results of our former retail segment and certain real estate assets have been reclassified as discontinued operations and certain other reclassifications. See Note 16 of the Notes to the Consolidated Financial Statements for further discussion and analysis of discontinued operations.

- b) The total of the quarterly net income (loss) per share amounts do not equal the annual net loss or income per share amount due to the impact of varying amounts of shares and options outstanding during the year. In addition, basic net loss per share equals diluted net loss per share in periods where a net loss is reported.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

Historically, we were a specialty retailer in the consumer electronics and appliance industry serving small to medium-sized towns and communities. In addition, we have been an investor in various alternative energy entities beginning with synthetic fuel partnerships in 1998 and later ethanol production facilities beginning in 2006.

In fiscal year 2007, we began to evaluate strategic alternatives for our retail segment with a focus on closing unprofitable or marginally profitable retail stores and monetizing our retail-related real estate assets. We did not believe that we were generating an adequate return from our retail business due to the competitive nature of the consumer electronics and appliance industry and the overall economic conditions in the United States. Reflecting this focus, we sold approximately 60% of our owned retail and vacant stores in fiscal year 2007 and leased back a portion of the stores which had been operating as electronics and appliance retail stores. In fiscal year 2008, we commenced an evaluation of a broad range of alternatives intended to derive value from the remaining retail operations and our remaining real estate portfolio. We engaged an investment banking

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firm to assist us in analyzing and ultimately marketing our retail operations. As part of those marketing efforts, late in fiscal year 2008, we initially leased 37 owned store locations to an unrelated third party. During fiscal year 2009, the lease agreements were terminated. At January 31, 2011, we had lease agreements for all or parts of eight former retail properties and had 22 vacant former retail properties. We also own one former distribution center, which is partially leased, partially occupied by our corporate office personnel and partially vacant. We are marketing the vacant properties to lease or sell. Should our marketing efforts result in additional tenants to whom we lease property, we would expect to execute leases with a term of five to twenty years.

We completed our exit of the retail business as of July 31, 2009. Going forward, our only retail related activities will consist of the administration of extended service plans we previously sold and the payment of related claims. All activities related to extended service plans will be classified as discontinued operations. We currently have equity and debt investments in five ethanol production entities, one of which we have a majority ownership interest in. We may make additional investments in the alternative energy segment during fiscal year 2011.

Our ethanol operations are highly dependent on commodity prices, especially prices for corn, sorghum, ethanol, distillers grains and natural gas. As a result of price volatility for these commodities, our operating results can fluctuate substantially. The price and availability of corn and sorghum are subject to significant fluctuations depending upon a number of factors that affect commodity prices in general, including crop conditions, weather, federal policy and foreign trade. Because the market price of ethanol is not always directly related to corn and sorghum prices, at times ethanol prices may lag movements in corn prices and, in an environment of higher prices, reduce the overall margin structure at the plants. As a result, at times, we may operate our plants at negative or marginally positive operating margins.

We expect our ethanol plants to produce approximately 2.8 gallons of ethanol for each bushel of grain processed in the production cycle. We refer to the difference between the price per gallon of ethanol and the price per bushel of grain (divided by 2.8) as the "crush spread." Should the crush spread decline, our ethanol plants are likely to generate operating results that do not provide adequate cash flows for sustained periods of time. In such cases, production at the ethanol plants may be reduced or stopped altogether in order to minimize variable costs at individual plants. We expect these decisions to be made on an individual plant basis, as there are different market conditions at each of our ethanol plants.

We attempt to manage the risk related to the volatility of grain and ethanol prices by utilizing forward grain purchase and forward ethanol and distillers grain sale contracts. We attempt to match quantities of ethanol and distillers grains sale contracts with an appropriate quantity of grain purchase contracts over a given period of time when we can obtain an adequate gross margin resulting from the crush spread inherent in the contracts we have executed. However, the market for future ethanol sales contracts is not a mature market. Consequently, we generally execute contracts for no more than three months into the future at any given time. As a result of the relatively short period of time our contracts cover, we generally cannot predict the future movements in the crush spread for more than three months; we are unable to predict the likelihood or amounts of future income or loss from the operations of our ethanol facilities.

The crush spread realized in 2010 was subject to significant volatility. For calendar year 2010, the average Chicago Board of Trade ("CBOT") near-month corn price was approximately \$4.30 per bushel, with highs reaching approximately \$6.25 per bushel in December 2010. We believe corn prices were affected late in the year by global weather conditions, export demand, speculation, currency valuation and global economic conditions. Ethanol prices also had significant fluctuations ranging from approximately \$1.50 per gallon in June to approximately \$2.38 per gallon in December. Ethanol and corn prices have tended to trade in the same direction but with narrowing spreads, particularly late in the year. In 2010, the CBOT crush spread ranged

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from a low of approximately \$0.05 per gallon in December to a high of approximately \$0.55 per gallon in February. We believe ethanol demand late in 2010 was also impacted by the uncertainty of the extension of the VEETC Blender Credit. Crush spreads have continued to decline in 2011 and have at times,

become negative (absent the consideration of distillers grains). Prices for distillers grains we sell have generally trended with grain prices. These prices have partially offset the decline in the crush spread.

We reported segment profit (before income taxes and noncontrolling interests) from our alternative energy segment of approximately \$13.4 million in fiscal year 2010 compared to approximately \$17.8 million in fiscal year 2009. The decline in profitability primarily resulted from impairment charges and loss on deconsolidation of Levelland Hockley. Levelland Hockley reported a loss from operations and as a result of narrowing crush spreads was shut down in January 2011. These losses were partially offset as One Earth was in production for a full year during fiscal year 2010 and operated profitably.

We expect that future operating results will be based upon annual production of between 100 and 115 million gallons of ethanol, which assumes that One Earth will operate at or near nameplate capacity. However, due to the inherent volatility of the crush spread, we cannot predict the likelihood of future operating results being similar to the 2010 results.

Ethanol Investments

In fiscal year 2006, we entered the alternative energy industry by investing in several entities organized to construct and, subsequently operate, ethanol producing plants. We have invested in six entities, five of which we remain invested in as of January 31, 2011, utilizing both equity and debt investments. We sold our investment in Millennium during fiscal year 2007.

The following table is a summary of our ethanol investments at January 31, 2011:

| Entity | Nameplate Production Capacity Million Gallons Per Year | Effective Ownership Percentage | Effective Nameplate Capacity Owned Million gallons Per Year |
|---------------------------------------|--|--------------------------------------|---|
| One Earth Energy, LLC | 100 | 74% | 74.0 |
| NuGen Energy, LLC | 100 | 48% | 48.0 |
| Patriot Renewable Fuels, LLC | 100 | 23% | 23.0 |
| Big River Resources, LLC-W Burlington | 92 | 10% | 9.2 |
| Big River Resources, LLC-Galva | 100 | 10% | 10.0 |
| Big River United Energy, LLC | 100 | 5% | 5.0 |
| Levelland Hockley County Ethanol, LLC | 40 | 49% | 19.6 |
| Total | 632 | | 188.8 |

One Earth commenced production operations late in the second quarter of fiscal year 2009 and began generating revenue in the third quarter of fiscal year 2009.

Effective July 1, 2010, we acquired a 48% equity interest in NuGen which operates an ethanol producing facility in Marion, South Dakota with a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG per year.

Patriot commenced production operations in the second quarter of fiscal year 2008.

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Big River completed construction in the second quarter of fiscal year 2009 of its second plant which has a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG per year. The plant is located in Galva, Illinois.

In August 2009, Big River acquired a 50.5% interest in an ethanol production facility which has a nameplate capacity of 100 million gallons of ethanol and 320,000 tons of DDG per year. The plant is located in Dyersville, Iowa.

The Levelland Hockley plant was shut down in early January 2011 as a result of industry wide low crush spread margins and the plant's inability to source grain at affordable prices. On January 31, 2011 we sold 814,000 of our membership units to Levelland Hockley for \$1, reducing our ownership interest in Levelland Hockley to 49%. As a result, we no longer have a controlling financial interest in Levelland Hockley, and, therefore, effective January 31, 2011, we deconsolidated Levelland Hockley and began using the equity method of accounting to account for the results of Levelland Hockley. In connection with the deconsolidation, we recorded our remaining non controlling equity interest and our debt investments at fair value. Our estimate of fair value for all of our investments in Levelland Hockley was \$0 at January 31, 2011. We recorded a pretax charge of approximately \$18.4 million as a result of deconsolidating Levelland Hockley and writing our remaining investments in Levelland Hockley to \$0 at January 31, 2011.

Investment in Synthetic Fuel Partnerships

We had invested in three limited partnerships which owned facilities producing synthetic fuel. The partnerships earned federal income tax credits under Section 29/45K of the Internal Revenue Code based upon the tonnage and content of solid synthetic fuel produced and sold to unrelated parties. The Section 29/45K tax credit program expired on December 31, 2007. As such we do not expect to receive additional income from these investments except for the possibility of an additional payment on a facility formerly located in Gillette, Wyoming. Based upon the modified terms of a sales agreement, we are currently not able to predict the likelihood and timing of payments for production from September 30, 2006 to December 31, 2007 for this facility. We expect the payments, if any, to be made within the next year. We have not recognized this income and will recognize income, if any, upon receipt of payment or upon our ability to reasonably assure ourselves of the timing and collectability of payment.

See Notes 4 and 17 of the Notes to the Consolidated Financial Statements for further discussions.

See Item 1A Risk Factors for further discussion of the risks involved with our synthetic fuel investments.

Real Estate Operations

At January 31, 2011, we had lease agreements, as landlord, for all or parts of eight owned former retail stores (88,000 square feet leased and 10,000 square feet vacant). We have 22 owned former retail stores (281,000 square feet) that are vacant at January 31, 2011. We are marketing these vacant properties to lease or sell. In addition, one former distribution center is partially leased (266,000 square feet), partially occupied by our corporate office personnel (10,000 square feet) and partially vacant (190,000 square feet).

Retail

We completed the exit of our retail business during the second quarter of fiscal year 2009. We offered extended service contracts to our customers which typically provide, inclusive of manufacturers' warranties, one to five years of warranty coverage. We plan to manage and administer these contracts over the life of the contracts. Service contract repair costs are charged to operations as incurred. We expect to continue recognizing extended service contract revenues and expenses (as discontinued operations) through January

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2014, although the revenues will decline annually as we are no longer selling new contracts. We typically service a warranty claim through a network of third party repair and service providers. Warranty repair costs have been in the range of 17% to 25% of extended service contract revenue over the last three years; we expect these costs to average approximately 20% of extended service contract revenue in future years. Future expected amortization of deferred revenue and commission expense are as follows (amounts in thousands):

| Years Ended January 31, | Deferred Revenue | Deferred Commission Expense |
|----------------------------|---------------------|-----------------------------------|
| 2012 | 3,982 | 1,195 |
| 2013 | 1,864 | 565 |
| 2014 | 552 | 164 |
| Total | \$ 6,398 | \$ 1,924 |

Results of Operations

For a detailed analysis of period to period changes, see the segment discussion that follows this section as this is how management views and monitors our business.

Comparison of Fiscal Years Ended January 31, 2011 and 2010

Net Sales and Revenue - Net sales and revenue in fiscal year 2010 were \$301.7 million, a 77.4% increase from \$170.1 million in fiscal year 2009. Net sales and revenue do not include sales from retail and real estate operations classified in discontinued operations. The increase was primarily caused by higher sales in our alternative energy segment of \$131.2 million and a full year of production at our consolidated subsidiary, One Earth. Net sales and revenue from our real estate segment increased \$0.4 million over the prior year to \$1.3 million.

The following table reflects the approximate percent of net sales and revenue for each product and service group for the periods presented:

| Product or Service Category | Fiscal Year | | |
|-----------------------------|-------------|------|------|
| | 2010 | 2009 | 2008 |
| Ethanol | 83% | 82% | 82% |
| Distiller grains | 16 | 17 | 17 |
| Leasing | 1 | 1 | 1 |
| Total | 100% | 100% | 100% |

Gross Profit - Gross profit was \$30.4 million in fiscal year 2010, or 10.1% of net sales and revenue, versus \$20.7 million in fiscal year 2009 or 12.2% of net sales and revenue. This represents an increase of \$9.7 million. Gross profit for fiscal year 2010 increased by \$9.3 million over the prior year as a result of operations in the alternative energy segment. Gross loss for fiscal year 2010 decreased by \$0.4 million compared to the prior year from our real estate segment.

Selling, General and Administrative Expenses - Selling, general and administrative expenses for fiscal year 2010 were \$9.7 million (3.2% of net sales and revenue), an increase of \$3.5 million or 56.5% from \$6.2

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million (3.6% of net sales and revenue) for fiscal year 2009. Compared to the prior year, these expenses increased approximately \$2.6 million and \$0.9 million in the alternative energy segment and the corporate and other category, respectively.

Impairment Charges and Loss on Deconsolidation - During fiscal year 2010, we recognized losses totaling approximately \$18.4 million related to the impairment of notes receivable from Levelland Hockley and the deconsolidation of Levelland Hockley. Effective January 31, 2011, we sold a portion of our equity interest in Levelland Hockley. As a result we no longer have a controlling financial interest in Levelland Hockley, and, therefore, effective January 31, 2011, we deconsolidated Levelland Hockley and recorded our retained investment in Levelland Hockley at fair value as of January 31, 2011. We recognized an impairment loss related to the notes receivable of approximately \$8.9 million during fiscal year 2010. We also recognized a loss on deconsolidation of approximately \$9.5 million during fiscal year 2010.

Interest Income - Interest income of \$0.4 million for fiscal year 2010 was consistent with fiscal year 2009.

Interest Expense - Interest expense increased to \$5.6 million for fiscal year 2010 from \$4.7 million for fiscal year 2009. The increase in interest expense was primarily attributable to the alternative energy segment as we had higher amounts of average debt outstanding upon the completion of One Earth's ethanol plant and that we are no longer capitalizing interest costs.

Loss on Early Termination of Debt - During fiscal years 2010 and 2009, we completed the early payoff of \$0.4 million and \$8.0 million, respectively, of mortgage debt prior to maturity. As a result, we expensed certain unamortized financing costs and prepayment penalties of approximately \$48,000 and \$89,000 during fiscal years 2010 and 2009, respectively, as loss on early termination of debt.

Equity in Income of Unconsolidated Ethanol Affiliates - During fiscal years 2010 and 2009, we recognized income of approximately \$14.6 million and \$6.0 million, respectively from our equity investments in Big River, Patriot and NuGen. Big River has a 92 million gallon plant which has been in operation since 2004. Big River opened an additional 100 million gallon plant during the second quarter of fiscal year 2009 and acquired a 50.5% ownership in a 100 million gallon plant in August 2009. Patriot has an ethanol facility with a nameplate capacity of 100 million gallons which has been in operation since the second quarter of fiscal year 2008. Effective July 1, 2010, we acquired a 48% equity interest in NuGen which operates an ethanol producing facility in Marion, South Dakota with an annual nameplate capacity of 100 million gallons.

Income from Big River was approximately \$5.4 million and \$2.5 million in fiscal years 2010 and 2009, respectively. Although our proportionate 10% share of income from Big River has been consistent over the prior two years, Big River benefited in the current year from a full year of production at its Big River Galva and Big River United Energy facilities during fiscal year 2010.

We recorded income of approximately \$5.2 million and \$3.5 million from Patriot in fiscal years 2010 and 2009, respectively. Patriot experienced a decline in interest expense of approximately \$2.2 million, as its term debt is variable rate debt, and interest rates declined in fiscal year 2010. Patriot also recognized a gain on the early extinguishment of debt of approximately \$1.9 million.

We recognized approximately \$4.0 million of income from NuGen in the current year. This was the first year we reported income from NuGen given that the acquisition of our interest in NuGen was effective July 1, 2010.

Overall, we expect the trends in crush spread margins described in the "Overview" section to be generally consistent with the operating experience of Big River, Patriot and NuGen as their results are dependent on the same key drivers (corn and natural gas pricing as well ethanol pricing, all of which are commodities).

Due to the inherent volatility of the crush spread, we cannot predict the likelihood of future operating results from Big River, Patriot and NuGen being similar to the fiscal year 2010 results.

Other Income - During fiscal year 2009, Levelland Hockley received notification from the United States Department of Agriculture that they had been approved to receive funds under the Advanced Biofuel Producer Program. As a result, approximately \$0.3 million was recognized as other income during fiscal year 2010. We recognized approximately \$0.5 million of other income from this grant during fiscal year 2009.

During fiscal year 2009, Levelland Hockley entered into an agreement to settle litigation and received \$1.5 million as a condition of the settlement. Of the proceeds received, approximately \$0.3 million was recognized as other income during fiscal year 2009.

We do not expect other income to be significant in future periods.

Losses on Derivative Financial Instruments - We recognized losses of approximately \$2.1 million and \$2.5 million during fiscal years 2010 and 2009, respectively, related to forward interest rate swaps that Levelland Hockley and One Earth entered into during fiscal year 2007. During fiscal year 2010, Levelland Hockley's loss was insignificant and One Earth's loss was \$2.1 million. Levelland Hockley's swap expired in April 2010 while One Earth's swaps expire in July 2011 and July 2014. In general, declining interest rates have a negative effect on our interest rate swaps as our swaps fixed the interest rate of variable rate debt. As interest rates declined during fiscal years 2010 and 2009, we incurred large losses on the interest rate swaps. Should interest rates continue to decline, we would expect to experience continued losses on the interest rate swaps. We would expect to incur gains on the interest rate swaps should interest rates increase. We cannot predict the future movements in interest rates; thus, we are unable to predict the likelihood or amounts of future gains or losses related to interest rate swaps.

Income Taxes - Our effective tax rate was 30.8% and 31.1% for fiscal years 2010 and 2009, respectively. Our effective rate is impacted by the non controlling interests of the companies we consolidate, as we recognize 100% of their income or loss in continuing operations before income taxes and non controlling interests. However, we only provide an income tax provision or benefit for our portion of subsidiaries' income or loss with a non controlling interest.

Income from Continuing Operations Including Noncontrolling Interests - As a result of the foregoing, income from continuing operations including noncontrolling interests was \$6.8 million for fiscal year 2010 versus \$10.0 million for fiscal year 2009.

Discontinued Operations - During fiscal year 2009, we closed our remaining retail store and warehouse operations and reclassified all retail related results as discontinued operations. As a result of these closings and certain other retail store and real estate property closings from prior years, we had income from

discontinued operations, net of taxes, of \$1.8 million in fiscal year 2010 compared to \$1.4 million in fiscal year 2009. Ten properties classified as discontinued operations were sold during fiscal year 2010, resulting in a gain, net of taxes, of \$0.2 million. We sold or disposed of five former retail store locations classified as discontinued operations in fiscal year 2009; as a result, we had a gain from disposal of discontinued operations, net of taxes, of \$1.2 million in fiscal year 2009. We expect income from discontinued operations to decline in future periods as our extended service plan activities wind down.

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Noncontrolling Interests– Income or (loss) related to noncontrolling interests was \$3.7 million and \$3.9 million during fiscal years 2010 and 2009, respectively, and represents the owners’ (other than us) share of the income or loss of Levelland Hockley and One Earth. Noncontrolling interests of Levelland Hockley and One Earth was \$(3.2) million and \$6.9 million, respectively during fiscal year 2010 and \$1.4 million and \$2.5 million, respectively during fiscal year 2009.

Net Income Attributable to REX Common Shareholders – As a result of the foregoing, net income attributable to REX common shareholders was \$5.1 million for fiscal year 2010 compared to \$8.7 million for fiscal year 2009.

Business Segment Results

During fiscal year 2009, we realigned our reportable business segments to be consistent with changes to our management structure and reporting. We now have two segments: alternative energy and real estate. The real estate segment was formerly included in the retail segment. For former retail stores and warehouses closed which we have a retained interest in the related real estate, operations are now presented in the real estate segment based upon when retail operations ceased. Historical results from retail store operations have been reclassified as discontinued operations for all periods presented.

The following sections discuss the results of operations for each of our business segments and corporate and other. As discussed in Note 18, our chief operating decision maker (as defined by Accounting Standards Codification (“ASC”) 280 “*Segment Reporting*”) evaluates the operating performance of our business segments using a measure we call segment profit. Segment profit excludes income taxes, interest expense, discontinued operations, indirect interest income and certain other items that are included in net income determined in accordance with accounting principles generally accepted in the United States of America. Management believes these are useful financial measures; however, they should not be construed as being more important than other comparable GAAP measures.

Items excluded from segment profit generally result from decisions made by corporate executives. Financing, divestiture and tax structure decisions are generally made by corporate executives. Excluding these items from our business segment performance measure enables us to evaluate business segment operating performance based upon current economic conditions. Amounts in the corporate category below include business activities that are not separately reportable and income from synthetic fuel investments.

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(amounts in thousands):

| | Years Ended January 31, | | |
|--|-------------------------|-------------------|------------------|
| | 2011 | 2010 | 2009 |
| Net sales and revenues: | | | |
| Alternative energy | \$ 300,389 | \$ 169,175 | \$ 68,223 |
| Real estate | 1,285 | 913 | 364 |
| Total net sales and revenues | <u>\$ 301,674</u> | <u>\$ 170,088</u> | <u>\$ 68,587</u> |
| Segment gross profit (loss): | | | |
| Alternative energy | \$ 31,173 | \$ 21,923 | \$ 807 |
| Real estate | (799) | (1,215) | 228 |
| Total gross profit | <u>\$ 30,374</u> | <u>\$ 20,708</u> | <u>\$ 1,035</u> |
| Segment profit (loss): | | | |
| Alternative energy segment | \$ 13,403 | \$ 17,811 | \$ (8,992) |
| Real estate | (1,022) | (1,398) | 228 |
| Corporate expenses | (2,724) | (1,870) | (2,020) |
| Interest expense | (240) | (358) | (428) |
| Interest income | 372 | 263 | 1,788 |
| Income from synthetic fuel investments | – | – | 691 |

| | | | | | | |
|---|----|-------|----|--------|----|---------|
| Income (loss) from continuing operations before income taxes and noncontrolling interests | \$ | 9,789 | \$ | 14,448 | \$ | (8,733) |
|---|----|-------|----|--------|----|---------|

Alternative Energy

The alternative energy segment includes the consolidated financial results of Levelland Hockley and One Earth, our other investments in ethanol facilities, the income or loss related to those investments and certain administrative expenses. One Earth began limited production operations late in the second quarter of fiscal year 2009 and became fully operational during the third quarter of fiscal year 2009. Effective January 31, 2011, we sold a portion of our ownership interest in Levelland Hockley. As a result, we no longer have a controlling financial interest in Levelland Hockley, and therefore, we deconsolidated Levelland Hockley effective January 31, 2011 and we will use the equity method of accounting on a prospective basis. The results of Levelland Hockley are consolidated in the accompanying Consolidated Statements of Operations and Consolidated Statements of Cash Flows during fiscal years 2010, 2009 and 2008. However, the assets, liabilities and equity of Levelland Hockley are deconsolidated in the accompanying Consolidated Balance Sheet as of January 31, 2011.

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The following table summarizes sales from Levelland Hockley and One Earth by product group (amounts in thousands):

| | Years Ended January 31, | |
|------------------------|-------------------------|-------------------|
| | 2011 | 2010 |
| Ethanol | \$ 250,818 | \$ 140,443 |
| Dried distiller grains | 41,625 | 20,223 |
| Wet distiller grains | 7,514 | 7,953 |
| Other | 432 | 556 |
| Total | \$ 300,389 | \$ 169,175 |

The following table summarizes selected operating data from Levelland Hockley and One Earth:

| | Years Ended January 31, | |
|---|-------------------------|-----------|
| | 2011 | 2010 |
| Average selling price per gallon of ethanol | \$ 1.81 | \$ 1.68 |
| Average selling price per ton of dried distiller grains | \$ 126.25 | \$ 112.29 |
| Average selling price per ton of wet distiller grains | \$ 35.08 | \$ 41.53 |
| Average cost per bushel of grain | \$ 4.10 | \$ 3.58 |
| Average cost of natural gas (per mmbtu) | \$ 4.80 | \$ 4.28 |

Net sales and revenue for the current year increased approximately \$131.2 million over the prior year to approximately \$300.4 million, primarily as a result of One Earth becoming fully operational during the third quarter of fiscal year 2009. Ethanol sales increased from approximately \$140.4 million in the prior year to approximately \$250.8 million in the current year. The average selling price per gallon of ethanol increased from \$1.68 in the prior year to \$1.81 in the current year. Our ethanol sales were based upon approximately 138.3 million gallons in the current year compared to approximately 83.6 million gallons in the prior year. Dried distiller grains sales increased from approximately \$20.2 million in the prior year to approximately \$41.6 million in the current year. The average selling price per ton of dried distiller grains increased from \$112.29 in the prior year to \$126.25 in the current year. Our dried distiller grains sales were based upon approximately 327,000 tons in the current year compared to approximately 180,000 tons in the prior year. Wet distiller grains sales decreased from approximately \$8.0 million in the prior year to approximately \$7.5 million in the current year. The average selling price per ton of wet distiller grains decreased from \$41.53 in the prior year to \$35.08 in the current year. Our wet distiller grains sales were based upon approximately 214,000 tons in the current year compared to approximately 192,000 tons in the prior year.

We expect that sales in future periods will be based upon the following (One Earth Energy only):

| Product | Annual Sales Quantity |
|------------------------|------------------------------------|
| Ethanol | 100 million to 115 million gallons |
| Dried distiller grains | 300,000 to 320,000 tons |
| Wet distiller grains | 5,000 to 10,000 tons |

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This expectation assumes that One Earth will continue to operate at or near nameplate capacity, which is dependent upon the crush spread realized. This expectation also assumes that we will not consolidate any other ethanol plants.

Gross profit from alternative energy segment sales was approximately \$31.2 million during the current year compared to approximately \$21.9 million during the prior year. Gross profit improved primarily because of the volume increases in ethanol and distillers grains sold discussed above which was offset slightly by a less favorable spread between ethanol and grain prices in the current year compared to the prior year. Grain accounted for approximately 76.8% (\$206.9 million) of our cost of sales during the current year compared to 74.4% (\$109.6 million) during the prior year. Natural gas accounted for approximately 7.0% (\$19.0 million) of our cost of sales during the current year compared to 7.1% (\$10.4 million) during the prior year. Given the inherent volatility in ethanol and grain prices, we cannot predict the trend of the spread between ethanol and grain prices in future periods compared to historical periods.

We attempt to match quantities of ethanol and distillers grains sale contracts with an appropriate quantity of grain purchase contracts over a given period of time when we can obtain an adequate gross margin resulting from the crush spread inherent in the contracts we have executed. However, the market for future ethanol sales contracts is not a mature market. Consequently, we generally execute contracts for no more than three months into the future at any given time. As a result of the relatively short period of time our contracts cover, we generally cannot predict the future movements in the crush spread for more than three months. Approximately 1% of our forecasted ethanol and distillers grain production during the next 12 months has been sold under fixed-price contracts. As a result of these positions, the effect of a 10% adverse change in the price of ethanol from the current pricing would result in a decrease in revenues of approximately \$23.9 million. Similarly, approximately 1% of our estimated corn usage for the next 12 months was subject to fixed-price contracts. As a result of these positions, the effect of a 10% adverse change in the price of corn from current pricing would result in an increase in cost of goods of approximately \$21.6 million.

Selling, general and administrative expenses were approximately \$6.8 million in fiscal year 2010, a \$2.7 million increase from approximately \$4.1 million in fiscal year 2009. We recognized higher selling expenses of approximately \$1.5 million at One Earth as One Earth was in production for the full year in fiscal year 2010. We also recognized a charge of approximately \$0.7 million related to adjusting the estimated fair value of the contingent consideration liability associated with the NuGen acquisition. We expect selling, general and administrative expenses in future periods to remain consistent with comparable historical periods.

Interest expense increased approximately \$0.9 million in the current year over the prior year to approximately \$5.4 million, as we no longer capitalize interest on the One Earth credit facility subsequent to the completion of construction and commencement of operations at the plant. In addition, One Earth borrowed approximately \$49.0 million during fiscal year 2009; the resulting higher outstanding debt amount also contributed to the increase in interest expense. Based on current interest rates, we expect interest expense to be in the range of \$2.0 million to \$2.5 million in fiscal year 2011 based on current debt levels and that we do not anticipate capitalizing significant amounts of interest now that all facilities are in operation.

Income from equity method investments in Big River, Patriot and NuGen increased from approximately \$6.0 million in the prior year to approximately \$14.6 million in the current year.

We recognized approximately \$5.4 million of income from Big River in fiscal year 2010 which is approximately \$2.9 million above the prior year amount of approximately \$2.5 million. Big River benefited in the current year from a full year of production at its Big River Galva and Big River United Energy facilities during fiscal year 2010.

We recognized approximately \$5.2 million of income from Patriot in fiscal year 2010, which is approximately \$1.7 million higher than the approximately \$3.5 million in the prior year. Patriot experienced a decline in interest expense of approximately \$2.2 million, as its term debt is variable rate debt, and interest rates declined in fiscal year 2010. Patriot also recognized a gain on the early extinguishment of debt of approximately \$1.9 million.

We recognized approximately \$4.0 million of income from NuGen in the current year. This was the first year we reported income from NuGen given that the acquisition of our interest in NuGen was effective July 1, 2010.

Given the inherent volatility in the factors that affect the crush spread, we cannot predict the likelihood that the trend with respect to income from equity method investments will continue in future periods.

Losses on derivative financial instruments held by One Earth and Levelland were approximately \$2.1 million in the current year compared to approximately \$2.5 million in the prior year. Since the gains or losses on these derivative financial instruments are primarily a function of the movement in interest rates, we cannot predict the likelihood that such gains or losses in future periods will be consistent with current year results.

As a result of the factors discussed above, segment profit decreased to \$13.4 million in the current year from \$17.8 million in the prior year.

Real Estate

The real estate segment includes all owned and sub-leased real estate including those previously used as retail store and distribution center operations, our real estate leasing activities and certain administrative expenses. It excludes results from discontinued operations.

At January 31, 2011, we had lease agreements, as landlord, for all or parts of eight owned former retail stores (88,000 square feet leased and 10,000 square feet vacant). We have 22 owned former retail stores (281,000 square feet), that are vacant at January 31, 2011. We are marketing these vacant properties to lease or sell. In addition, one former distribution center is partially leased (266,000 square feet), partially occupied by our corporate office personnel (10,000 square feet) and partially vacant (190,000 square feet).

Net sales and revenue for the current year increased approximately \$0.4 million over the prior year to approximately \$1.3 million. The increase in revenue is primarily a result of a lease for a portion of a distribution center that was executed during the fourth quarter of fiscal year 2009. Gross loss from this segment was approximately \$0.8 million during the current year compared to approximately \$1.2 million during the prior year. Gross loss improved as a result of the increase in revenue discussed above. We expect lease revenue in fiscal year 2011 to be consistent with fiscal year 2010 based upon leases currently executed.

Selling, general and administrative expenses were approximately \$229,000 in fiscal year 2010, consistent with the \$183,000 in fiscal year 2009. We expect selling, general and administrative expenses in future periods to remain consistent with comparable historical periods.

As a result of the factors discussed above, segment loss was approximately \$1.0 million in the current year compared to approximately \$1.4 million in the prior year. Excluding any property sales that may occur in fiscal year 2011, we expect to generate another segment loss in fiscal year 2011 based upon the current number of vacant properties.

Corporate and Other

Corporate and other includes certain administrative expenses of the corporate headquarters, interest expense and interest income not directly allocated to the alternative energy or real estate segments and income from synthetic fuel investments.

Selling, general and administrative expenses were approximately \$2.7 million in the current year compared to approximately \$1.9 million in the prior year. Professional fees increased approximately \$0.3 million over the prior year. The remainder of the fluctuation results from increases in most general and administrative categories. We expect selling, general and administrative expenses in future periods to be consistent with current year levels.

Interest expense of approximately \$0.2 million in the current year is consistent with prior year expense.

Interest income of approximately \$0.4 million in the current year is consistent with prior year income.

Comparison of Fiscal Years Ended January 31, 2010 and 2009

Net Sales and Revenue - Net sales and revenue in fiscal year 2009 were approximately \$170.1 million, a \$101.5 million increase from approximately \$68.6 million in fiscal year 2008. Net sales and revenue do not include sales from retail and real estate operations classified in discontinued operations. The increase was primarily caused by higher sales in our alternative energy segment of approximately \$101.0 million. Net sales and revenue from our real estate segment of approximately \$913,000 were consistent with the prior year amount of approximately \$364,000.

Gross Profit - Gross profit was approximately \$20.7 million in fiscal year 2009 versus approximately \$1.0 million for fiscal year 2008. This represents an increase of approximately \$19.7 million. Gross profit for fiscal year 2009 increased by approximately \$21.1 million over the prior year as a result of operations in the alternative energy segment. Our real estate segment had gross loss for fiscal year 2009 of approximately \$1.2 million compared to gross profit of approximately \$0.2 million in the prior year.

Selling, General and Administrative Expenses- Selling, general and administrative expenses for fiscal year 2009 were approximately \$6.2 million, consistent with the approximately \$6.4 million for fiscal year 2008.

Interest Income - Interest income decreased to approximately \$0.4 million for fiscal year 2009 from approximately \$2.0 million for fiscal year 2008. The decline generally results from lower yields earned on our excess cash in the current year compared to the prior year. The lower yields are a result of the overall macroeconomic environment and not a result of a shift to investments with less risk.

Interest Expense - Interest expense increased to approximately \$4.7 million for fiscal year 2009 from approximately \$3.2 million for fiscal year 2008. The increase in interest expense was primarily attributable to the alternative energy segment as we had higher amounts of average debt outstanding upon the completion of One Earth's ethanol plant.

Loss on Early Termination of Debt - During fiscal year 2009, we completed the early payoff of approximately \$8.0 million of mortgage debt prior to maturity. As a result, we expensed certain unamortized financing costs and prepayment penalties of approximately \$89,000 as loss on early termination of debt.

Equity in Income of Unconsolidated Ethanol Affiliates - During fiscal years 2009 and 2008, we recognized income of approximately \$6.0 million and approximately \$0.8 million, respectively from our equity

investments in Big River and Patriot. Big River operates an ethanol facility with a nameplate capacity of 92 million gallons. Patriot completed construction of its ethanol facility with a nameplate capacity of 100 million gallons during the second quarter of fiscal year 2008. Income from Big River was approximately \$2.5 million and approximately \$2.4 million in fiscal years 2009 and 2008, respectively. We recorded income of approximately \$3.5 million and a loss of approximately \$1.5 million from Patriot in fiscal years 2009 and 2008, respectively. Patriot benefited in fiscal year 2009 from a full year of production and favorable crush spreads, particularly during the latter half of calendar year 2009.

Income from Synthetic Fuel Investments - Results for fiscal year 2008 reflect the impact of our equity investment in two limited partnerships, Colona and Somerset, which produced synthetic fuels. We recognized income from the sales of our interests in Colona and Somerset subject to certain annual limitations and production levels. The Section 29/45K tax credit program expired on December 31, 2007. The income recognized in fiscal year 2008 represents the final settlements related to Colona and Somerset as all synthetic fuel production ceased during fiscal year 2007. We do not anticipate additional income or loss from the sales of our Colona and Somerset partnership interests.

We also sold our membership interest in the limited liability company that owned a synthetic fuel facility in Gillette, Wyoming. The plant was subsequently sold and during the third quarter of fiscal year 2006, we modified our agreement with the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, we currently are not able to predict the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, we cannot currently predict the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006.

Other Income - During fiscal year 2009, Levelland Hockley entered into an agreement to settle litigation and received \$1.5 million as a condition of the settlement. Of the proceeds received, approximately \$0.3 million was recognized as other income during fiscal year 2009.

During fiscal year 2009, Levelland Hockley received notification from the United States Department of Agriculture that Levelland Hockley had been approved to receive funds under the Advanced Biofuel Producer Program. As a result, approximately \$0.5 million was recognized as other income during fiscal year 2009.

Losses on Derivative Financial Instruments - We recognized losses of \$2.5 million and \$3.8 million during fiscal years 2009 and 2008, respectively, related to forward interest rate swaps that Levelland Hockley and One Earth entered into during fiscal year 2007. During fiscal year 2009, Levelland Hockley's loss was \$0.5 million and One Earth's loss was \$2.0 million. During fiscal year 2008, Levelland Hockley's loss was \$0.8 million and One Earth's loss was \$3.0 million.

Income Taxes- Our effective tax rate was a provision of 31.1% and a benefit of 31.1% for fiscal years 2009 and 2008, respectively. Our effective tax rate was lower than the statutory rate in fiscal years 2009 and 2008, as the noncontrolling interests in the income or loss of consolidated subsidiaries is presented in the statement of operations after income tax benefit or provision.

Loss/Income from Continuing Operations Including Noncontrolling Interests- As a result of the foregoing, income from continuing operations including noncontrolling interests was approximately \$10.0 million for fiscal year 2009 versus a loss of approximately \$6.0 million for fiscal year 2008.

Discontinued Operations -During fiscal year 2009, we closed our remaining retail store and warehouse operations and reclassified them as discontinued operations. As a result of these closings and certain other retail store and real estate property closings from prior years, we had income from discontinued operations, net of tax benefit, of approximately \$1.4 million in fiscal year 2009 compared to a loss of approximately

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\$2.2 million in fiscal year 2008. We sold or abandoned five properties classified as discontinued operations in fiscal year 2009 compared to selling 6 properties in fiscal year 2008. As a result, we had a gain from disposal of discontinued operations, net of a tax provision, of approximately \$1.2 million in fiscal year 2009 compared to approximately \$1.8 million in fiscal year 2008.

Noncontrolling Interests - (Income) loss related to noncontrolling interests of approximately \$(3.9) million and approximately \$3.2 million for fiscal years 2009 and 2008, respectively, represents the owners' (other than us) share of the income or loss of Levelland Hockley and One Earth. Noncontrolling interests of Levelland Hockley and One Earth was approximately \$(1.4) million and approximately \$(2.5) million, respectively during fiscal year 2009 and approximately \$2.4 million and approximately \$0.8 million, respectively during fiscal year 2008.

Net Loss/Income Attributable to REX Common Shareholders- As a result of the foregoing, net income attributable to REX common shareholders was approximately \$8.7 million for fiscal year 2009 versus net loss of approximately \$3.3 million for fiscal year 2008.

In addition to the information discussed above, the following sections discuss the results of operations for each of our business segments and corporate and other.

Alternative Energy

The alternative energy segment includes the consolidated financial statements of Levelland Hockley and One Earth, our other investments in ethanol facilities, the income related to those investments and certain administrative expenses. Fiscal year 2008 was the first year that this segment had sales as Levelland Hockley commenced production operations during the second quarter of fiscal year 2008. One Earth began limited production operations late in the second quarter of fiscal year 2009 and became fully operational during the third quarter of fiscal year 2009.

The following table summarizes sales from Levelland Hockley and One Earth by product group (amounts in thousands):

| | Years Ended January 31, | |
|------------------------|-------------------------|------------------|
| | 2010 | 2009 |
| Ethanol | \$ 140,443 | \$ 55,989 |
| Dried distiller grains | 20,223 | 6,478 |
| Wet distiller grains | 7,953 | 5,449 |
| Other | 556 | 307 |
| Total | \$ 169,175 | \$ 68,223 |

The following table summarizes selected operating data from Levelland Hockley and One Earth:

| | Years Ended January 31, | |
|---|-------------------------|-----------|
| | 2010 | 2009 |
| Average selling price per gallon of ethanol | \$ 1.68 | \$ 2.14 |
| Average selling price per ton of dried distiller grains | \$ 112.29 | \$ 180.42 |
| Average selling price per ton of wet distiller grains | \$ 41.53 | \$ 51.74 |
| Average cost per bushel of grain | \$ 3.58 | \$ 4.82 |
| Average cost of natural gas (per mmbtu) | \$ 4.28 | \$ 9.01 |

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Net sales and revenue for the current year increased by \$101.0 million over the prior year to \$169.2 million, primarily a result of One Earth becoming fully operational during the third quarter of fiscal year 2009. The average selling price per gallon of ethanol declined from \$2.14 in the prior year to \$1.68 in the current year. Our sales were based upon 83.6 million gallons of ethanol in the current year compared to 26.2 million gallons in the prior year.

Gross profit from these sales was approximately \$21.9 million during fiscal year 2009 compared to approximately \$0.8 million during the fiscal year 2008. Gross profit improved primarily as a result of One Earth beginning operations in fiscal year 2009. The crush spread realized improved during the third and fourth quarters of fiscal year 2009, which is when One Earth began operations.

Selling, general and administrative expenses were approximately \$4.1 million in fiscal year 2009, a \$0.2 million decrease from approximately \$4.3 million in fiscal year 2008. We incurred a non cash impairment charge of \$1.3 million in fiscal year 2008 related to the write off of goodwill associated with Levelland Hockley. We also incurred approximately \$0.7 million in increased expenses during fiscal year 2009 related to the start of operations at One Earth.

Interest expense increased approximately \$1.7 million in fiscal year 2009 compared to fiscal year 2008 to approximately \$4.5 million, as we no longer capitalize interest on the One Earth credit facility subsequent to the commencement of operations at the plant. In addition, One Earth borrowed approximately \$49.0 million during fiscal year 2009; the resulting higher outstanding debt amount also contributed to the increase in interest expense.

Other income increased approximately \$0.8 million in fiscal year 2009 compared to fiscal year 2008. The increase is a result of Levelland Hockley recognizing a legal settlement of approximately \$0.3 million and grant income of approximately \$0.5 million in fiscal year 2009.

Income from equity method investments in Big River and Patriot increased from approximately \$0.8 million in fiscal year 2008 to approximately \$6.0 million in fiscal year 2009. We recognized approximately \$2.5 million of income from our investment in Big River in fiscal year 2009 which is consistent with the fiscal year 2008 amount of approximately \$2.4 million. We recognized approximately \$3.5 million of income from our investment in Patriot in fiscal year 2009, which is approximately \$5.0 million higher than the loss of approximately \$1.5 million in fiscal year 2008. The fluctuation related to income from Patriot is primarily a result of the start up of production in fiscal year 2008. Patriot was in production for approximately four months during fiscal year 2008.

Losses on derivative financial instruments held by One Earth and Levelland were \$2.5 million in fiscal year 2009 compared to \$3.8 million in fiscal year 2008. As a result of the factors discussed above, segment profit increased to approximately \$17.8 million in fiscal year 2009 from a loss of approximately \$9.0 million in fiscal year 2008.

Real Estate

The real estate segment includes all owned and sub-leased real estate including those previously used as retail store and distribution center operations, our real estate leasing activities and certain administrative expenses. It excludes results from discontinued operations.

At January 31, 2010, we had lease or sub-lease agreements, as landlord, for all or parts of ten former retail stores (108,000 square feet leased and 35,000 square feet vacant). We own nine of these properties and are the tenant/sub landlord for one of the properties. We have 31 owned former retail stores (385,000 square

feet), and one former distribution center (180,000 square feet), that are vacant at January 31, 2010. We are marketing these vacant properties to lease or sell. In addition, one former distribution center is partially leased (156,000 square feet), partially occupied by our corporate office personnel (10,000 square feet) and partially vacant (300,000 square feet).

Net sales and revenue for fiscal year 2009 of approximately \$0.9 million increased approximately \$0.5 million over the fiscal year 2008 amount of approximately \$0.4 million. The increase in revenue is primarily a result of 15 properties leased to Appliance Direct for a portion of fiscal year 2009.

Gross loss from this segment was approximately \$1.2 million during fiscal year 2009 compared to gross profit of approximately \$0.2 million during fiscal year 2008. Gross loss increased as a result of the higher levels of vacant properties.

Selling, general and administrative expenses were approximately \$183,000 in fiscal year 2009, consistent with the approximately \$289,000 in fiscal year 2008.

As a result of the factors discussed above, segment loss increased to a loss of approximately \$1.4 million in fiscal year 2009 from segment profit of approximately \$0.2 million in fiscal year 2008.

Corporate and Other

There was no income from synthetic fuel investments in fiscal year 2009, compared to approximately \$0.7 million in fiscal year 2008. The income recognized in fiscal year 2008 represents the estimated final settlements related to Colona and Somerset as all synthetic fuel production ceased during fiscal year 2007. We do not expect additional income or loss from the Colona and Somerset partnership sales.

Selling, general and administrative expenses were approximately \$1.9 million in fiscal year 2009, consistent with the approximately \$2.0 million of expenses in fiscal year 2008.

Interest expense of approximately \$0.4 million in fiscal year 2009 is consistent with the expense in fiscal year 2008.

Interest income was approximately \$0.3 million in fiscal year 2009 compared to approximately \$1.8 million in fiscal year 2008. The decrease generally results from lower yields earned on our excess cash. The lower yields are a result of the overall macroeconomic environment and not a result of shift to investments with less risk.

Liquidity and Capital Resources

Our primary sources of financing have been income from operations, sales of real estate and debt financing. Our primary uses of cash have been equity and debt investments in ethanol entities, construction of ethanol plants, long term debt repayments and stock repurchases.

Outlook- Our cash balance of approximately \$91.0 million includes approximately \$18.4 million held by One Earth. Pursuant to its debt agreement, One Earth is limited with respect to paying dividends. Thus, we expect that One Earth will use a majority of its cash for working capital needs. All of our ethanol investments have significant amounts of long term debt and we expect these organizations to limit the payment of dividends based upon working capital needs, debt service requirements and the requirements of their respective loan agreements.

We continue to investigate investment opportunities in various companies and industries. Other possible uses of our excess cash are to pay down long term mortgage debt and repurchase our common stock. In general, we will pay down long term debt when the interest rate environment is unfavorable as it relates

to the type of debt (fixed rate versus variable rate) and if the specific debt does not contain significant prepayment penalties. Such pay downs are carried out at levels that do not impede on other cash requirements we may have, such as investments in prospective entities we are investigating. We typically repurchase our common stock when our stock price is trading at prices we deem to be a discount to the underlying value of our net assets. Such purchases are carried out at levels that do not impede on other cash requirements we may have, such as prospective investments in entities we are investigating. Historically, we have not incurred additional borrowings under our debt agreements to fund repurchases of our common stock. We also plan to seek and evaluate other various investment opportunities including energy related, agricultural or other ventures we believe fit our investment criteria. We can make no assurances that we will be successful in our efforts to find such opportunities.

During the first quarter of fiscal year 2011, we are expecting our financial performance from our ethanol plants to decline compared to the fourth quarter of fiscal year 2010 (excluding the impairment charges and loss on deconsolidation related to Levelland Hockley) as the crush spread has decreased from 2010 levels. The near month crush spread (determined by information on CBOT) averaged approximately \$0.02 per gallon of ethanol during the first quarter of fiscal year 2011 compared to approximately \$0.29 per gallon of ethanol during calendar year 2010. However, this trend has been partially offset by increases in the selling price of distillers grains.

Operating Activities - Net cash provided by operating activities was approximately \$27.9 million for fiscal year 2010 compared to \$11.0 million in fiscal year 2009. For fiscal year 2010, operating cash flow was provided by net income of approximately \$8.7 million including the impact of Levelland Hockley related impairment charges and the loss on deconsolidation of approximately \$16.1 million, real estate impairment charges of approximately \$1.0 million and non-cash items of approximately \$(0.9) million, which consist of deferred income, the deferred income tax provision, gain on disposal of real estate and property and equipment, income from ethanol investments, and depreciation and amortization. Cash was provided by dividends received from our equity method investees (as returns on investment) of approximately \$5.0 million, primarily a result of increased profitability at these entities. Additionally, cash was provided by a refund on income taxes of approximately \$4.3 million resulting from net operating losses carried back to prior years. Accounts receivable increased approximately \$2.5 million, primarily a result of the timing of products shipped and the receipt of customer payments at One Earth. Prepaid expense and other assets increased approximately \$1.1 million, primarily as a result of an increase in property taxes receivable that One Earth pays and then receives a partial rebate from various taxing authorities in connection with a tax increment financing district. Other liabilities decreased approximately \$1.7 million, primarily a result of payments we made related to our contingent consideration liability associated with the NuGen acquisition.

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Other long term assets increased approximately \$0.9 million, primarily a result of an increase in property taxes receivable that One Earth pays and then receives a partial rebate from various taxing authorities in connection with a tax increment financing district and an increase in various deposits One Earth is required to maintain with utility vendors.

Net cash provided by operating activities was approximately \$11.0 million for fiscal year 2009. For fiscal year 2009, operating cash flow was provided by net income of approximately \$12.6 million adjusted for the impact of impairment charges of \$1.5 million and non-cash items of \$(0.9) million, which consist of deferred income, the deferred income tax provision, gain on disposal of real estate and property and equipment, income from ethanol investments, and depreciation and amortization. Cash was provided by a decrease in inventory of approximately \$15.7 million, primarily due to our exit of the retail business. Additionally, cash was provided by a decrease in other assets of approximately \$1.9 million, primarily a result of prepaid commissions related to extended service contracts decreasing, reflecting our lower sales of this service. Accounts payable decreased approximately \$8.5 million, primarily a result of our exit of the retail business. Income taxes refundable increased approximately \$4.9 million as a result of an income tax loss carryback created during fiscal year 2009. Other liabilities decreased approximately \$2.1 million, as accruals for costs associated with our exit of the retail business were paid in fiscal year 2009. Accounts receivable increased approximately \$4.9 million; this was primarily a result of One Earth commencing production operations in fiscal year 2009.

Investing Activities - Net cash used in investing activities was approximately \$5.8 million for fiscal year 2010 compared to approximately \$30.7 million for fiscal year 2009. Capital expenditures in fiscal year 2010 totaled approximately \$6.0 million, the majority of which was for the construction of additional corn storage at One Earth's ethanol plant. We used cash of approximately \$9.2 million for our acquisition of NuGen. Cash of approximately \$8.0 million was provided by proceeds from the sale of real estate and property and equipment. We received cash of approximately \$1.0 million as Patriot repaid the remaining balance on their note payable to us.

Net cash used in investing activities was \$30.7 million for fiscal year 2009. Capital expenditures in fiscal year 2009 totaled \$35.7 million, the majority of which was for the construction of One Earth's ethanol plant. Cash of \$4.8 million was provided by proceeds from the sale of real estate and property and equipment.

Financing Activities - Net cash used in financing activities was approximately \$31.5 million for fiscal year 2010 compared to cash provided of approximately \$28.2 million for fiscal year 2009. During fiscal year 2010, repayments of debt totaled approximately \$24.8 million. Stock option exercises in fiscal year 2010 generated cash of approximately \$1.5 million. During fiscal year 2010, we purchased approximately 0.5 million shares of our common stock for approximately \$8.2 million in open market transactions.

Cash provided by financing activities was \$28.2 million for fiscal year 2009. During fiscal year 2009, we borrowed \$49.0 million in long term debt. One Earth accounted for all of the borrowing as One Earth used loan proceeds to complete construction of its ethanol plant. Repayments of debt totaled \$20.4 million during fiscal year 2009. Stock option exercises in fiscal year 2009 generated cash of \$6.0 million. During fiscal year 2009, we purchased approximately 0.6 million shares of our common stock for \$6.5 million in open market transactions.

At January 31, 2011, we had a remaining authorization from our Board of Directors to purchase 468,044 shares of our common stock. We plan to hold all acquired shares in treasury for possible future use.

At January 31, 2011, we had approximately \$81.0 million of debt outstanding at a weighted average interest rate of 3.38%, with maturities from August 2011 to November 2015. During fiscal year 2010, we paid off approximately \$24.8 million of long-term mortgage debt from scheduled repayments and early payoffs.

During fiscal year 2009, we paid off approximately \$20.4 million of long-term mortgage debt from scheduled repayments and early payoffs.

One Earth Subsidiary Level Debt

In September 2007, One Earth entered into a \$111,000,000 financing agreement consisting of a construction loan agreement for \$100,000,000 together with a \$10,000,000 revolving loan and a \$1,000,000 letter of credit with First National Bank of Omaha. The construction loan was converted into a term loan on July 31, 2009. The term loan bears interest at variable interest rates ranging from LIBOR plus 300 basis points to LIBOR plus 310 basis points (3.1% to 3.3% at January 31, 2011). Beginning with the first quarterly payment on October 8, 2009, payments are due in 20 quarterly payments of principal plus accrued interest with the principal portion calculated based on a 120 month amortization schedule. One final installment will be required on the maturity date (July 31, 2014) for the remaining unpaid principal balance with accrued interest. This debt is recourse only to One Earth and not to REX American Resources Corporation or any of its other subsidiaries.

Borrowings are secured by all property of One Earth. As of January 31, 2011, approximately \$78.7 million was outstanding on the term loan. One Earth is also subject to certain financial covenants under the loan agreement, including required levels of EBITDA, debt service coverage ratio requirements, net worth requirements and other common covenants. One Earth was in compliance with all covenants at January 31, 2011. One Earth paid approximately \$1,364,000 in costs related to obtaining its financing arrangement. These costs are recorded as prepaid loan fees and are being amortized over the loan term. At January 31, 2011, our proportionate share of restricted assets related to One Earth was approximately \$59.8 million. One Earth's restricted assets total approximately \$81.2 million. Such assets may not be paid in the form of dividends or advances to the parent company or other members of One Earth per the terms of the loan agreement with First National Bank of Omaha.

One Earth has no outstanding borrowings on the \$10,000,000 revolving loan as of January 31, 2011. One Earth also has access to a secondary line of credit of up to \$10,000,000 with First National Bank of Omaha, established as part of the original \$100,000,000 term loan and made accessible as a revolving line of credit as term loan payments were made. The amount available is reduced by \$250,000 on a quarterly basis. At January 31, 2011 and 2010, One Earth had \$8,750,000 and \$10,000,000, respectively, on the secondary line of credit available on this revolving line of credit. One Earth does not have any borrowings on the secondary line of credit at January 31, 2011 or 2010.

One Earth has issued letters of credit that total approximately \$0.3 million at January 31, 2011.

On a consolidated basis, approximately 45.8% of our net assets (including equity method investees) are restricted as of January 31, 2011. Including only our consolidated subsidiaries, approximately 24.4% of our net assets are restricted as of January 31, 2011.

Tabular Disclosure of Contractual Obligations

In the ordinary course of business, we enter into agreements under which we are obligated to make legally enforceable future cash payments. These agreements include obligations related to purchasing inventory, long term debt and interest rate management.

The following table summarizes by category expected future cash outflows associated with contractual

obligations in effect as of January 31, 2011 (amounts in thousands):

| Contractual Obligations | Payment due by period | | | | |
|------------------------------------|-----------------------|------------------|-----------|-----------|-------------------|
| | Total | Less than 1 Year | 1-3 Years | 3-5 Years | More than 5 Years |
| Lease obligations | \$ 172 | \$ 172 | \$ - | \$ - | \$ - |
| Long-term debt obligations | 80,987 | 10,014 | 22,835 | 48,138 | - |
| Interest on variable rate debt (a) | 8,049 | 2,549 | 4,239 | 1,261 | - |
| Interest on fixed rate debt | 366 | 129 | 180 | 57 | - |
| Other (b) | 4,298 | 1,186 | 3,112 | - | - |
| Total (c) | \$ 93,872 | \$ 14,050 | \$ 30,366 | \$ 49,456 | \$ - |

(a) The interest rates effective as of January 31, 2011 for variable rate loans were used to calculate future payments of interest on variable rate debt.

(b) Amounts represent primarily payment due for rail car usage contracts at One Earth Energy.

- We are not able to determine the likely settlement period for uncertain tax positions, accordingly approximately \$3.0 million of uncertain tax positions and related interest and penalties have been excluded from the table above. We are not able to determine the likely settlement period, if any, for interest rate swaps, accordingly approximately \$5.5 million of liabilities for derivative financial instruments have been excluded from the table above.
- (c)

Seasonality and Quarterly Fluctuations

The impact of seasonal and quarterly fluctuations has not been material to our results of operations for the past three fiscal years.

Impact of Inflation

The impact of inflation has not been material to our results of operations for the past three fiscal years.

Critical Accounting Policies

We believe the application of the following accounting policies, which are important to our financial position and results of operations, require significant assumptions, judgments and estimates on the part of management. We base our assumptions, judgments, and estimates on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, management reviews the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented in accordance with generally accepted accounting principles (GAAP). However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material. Further, if different assumptions, judgments and estimates had been used, the results could have been different and such differences could be material. For a summary of all of our accounting policies, including the accounting policies discussed below, see Note 1 of the Notes to the Consolidated Financial Statements. Management believes that the following accounting policies are the most critical to aid in fully understanding and evaluating our reported financial results, and they require management's most difficult,

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subjective or complex judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain.

Revenue Recognition - We recognize sales from ethanol and distillers grains when title transfers to customers, upon shipment from our plant. Shipping and handling charges to ethanol customers are included in net sales and revenue.

We include income from our real estate leasing activities in net sales and revenue. We account for these leases as operating leases. Accordingly, minimum rental revenue is recognized on a straight-line basis over the term of the lease.

We sold retail product service contracts covering periods beyond the normal manufacturers' warranty periods, usually with terms of coverage (including manufacturers' warranty periods) of between 12 to 60 months. Contract revenues and sales commissions are deferred and amortized on a straight-line basis over the life of the contracts after the expiration of applicable manufacturers' warranty periods. We retain the obligation to perform warranty service and such costs are charged to operations as incurred. All related revenue and expense is classified in discontinued operations.

We recognized income from synthetic fuel partnership sales as the synthetic fuel was produced and sold except for operations at the Gillette facility as we do not believe that collection of our proceeds for production occurring subsequent to September 30, 2006 is reasonably assured from that plant. See Note 4 of the Notes to the Consolidated Financial Statements for a further discussion of synthetic fuel partnership sales.

Investments - The method of accounting applied to long-term investments, whether consolidated, equity or cost, involves an evaluation of the significant terms of each investment that explicitly grant or suggest evidence of control or influence over the operations of the investee and also includes the identification of any variable interests in which we are the primary beneficiary. The evaluation of consolidation under ASC 810 "Consolidation" is complex and requires judgments to be made. We consolidated the results of two majority owned subsidiaries, Levelland Hockley and One Earth, on a one month lag during fiscal year 2010. As a result of losing control of Levelland Hockley at the end of fiscal year 2010, we deconsolidated the subsidiary's balance sheet and will apply the equity method of accounting prospectively. Investments in businesses that we do not control, or maintain a majority voting interest or maintain a primary beneficial interest, but for which we have the ability to exercise significant influence over operating and financial matters, are accounted for using the equity method. Investments in which we do not have the ability to exercise significant influence over operating and financial matters are accounted for using the cost method.

Investments in debt securities are considered "held to maturity", "available for sale", or "trading securities" under ASC 320, "*Investments-Debt and Equity Securities*". Under ASC 320, held to maturity securities are required to be carried at their cost; while available-for-sale securities are required to be carried at their fair value, with unrealized gains and losses, net of income taxes, that are considered temporary in nature recorded in accumulated other comprehensive income (loss) in the accompanying Consolidated Balance Sheets. The fair values of our investments in debt securities are determined based upon market quotations and various valuation techniques, including discounted cash flow analysis.

We periodically evaluate our investments for impairment due to declines in market value considered to be other than temporary. Such impairment evaluations include, in addition to persistent, declining market prices, general economic and company-specific evaluations. If we determine that a decline in market value is other than temporary, then a charge to earnings is recorded in the accompanying Consolidated Statements of Operations for all or a portion of the unrealized loss, and a new cost basis in the investment is established.

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Inventory Reserves - Inventory is recorded at the lower of cost or market. The market value of inventory is often dependent upon fluctuating commodity prices. If these estimates are inaccurate, we may be exposed to market conditions that require an additional reduction in the value of certain inventories affected. We provide an inventory reserve, which is treated as a permanent write down of inventory, for inventory items that have a cost greater than net realizable value. No inventory reserve was recorded at January 31, 2011 and approximately \$0.6 million was recorded at January 31, 2010. Fluctuations in the inventory reserve generally relate to the levels and composition of such inventory at a given point in time. Assumptions we use to estimate the necessary

reserve have not significantly changed over the last three fiscal years other than we no longer provide a reserve for obsolete retail inventory as this inventory was liquidated during fiscal year 2009. The assumptions we currently use include our estimates of the selling prices of ethanol and distillers grains.

Financial Instruments - Forward grain purchase and ethanol sale contracts are accounted for under the “normal purchases and normal sales” scope exemption of ASC 815, “*Derivatives and Hedging*” because these arrangements are for purchases of grain and sales of ethanol that will be delivered in quantities expected to be used by us over a reasonable period of time in the normal course of business. We use derivative financial instruments to manage our balance of fixed and variable rate debt. We do not hold or issue derivative financial instruments for trading or speculative purposes. Interest rate swap agreements involve the exchange of fixed and variable rate interest payments and do not represent an actual exchange of the notional amounts between the parties. Our swap agreements were not designated for hedge accounting pursuant to ASC 815. The interest rate swaps are recorded at their fair values and the changes in fair values are recorded as gain or loss on derivative financial instruments in the accompanying Consolidated Statements of Operations.

Income Taxes - Income taxes are recorded based on the current year amounts payable or refundable, as well as the consequences of events that give rise to deferred tax assets and liabilities based on differences in how those events are treated for tax purposes, net of valuation allowances. We base our estimate of deferred tax assets and liabilities on current tax laws and rates and other expectations about future outcomes. Changes in existing regulatory tax laws and rates and future business results may affect the amount of deferred tax liabilities or the valuation of deferred tax assets over time. We have established valuation allowances for certain state net operating loss carryforwards and other deferred tax assets. We determined that it is more likely than not that we will be able to generate sufficient taxable income in future years to allow for the full utilization of the federal AMT credit carryforward and other deferred tax assets other than those reserved. In determining the need for a valuation allowance, we have assumed that our ethanol plants and real estate assets will begin generating taxable income by fiscal year 2012. We are projecting that the operations of One Earth that began in fiscal year 2009 will continue to be profitable. We are assuming that we will be relatively successful in our real estate marketing efforts. In addition, we have considered the fact that our AMT credit carryforward has an indefinite life. In general, we have used approximately \$14.0 million as the assumed average of future years’ pre-tax income. We believe our assumed target level of earnings is reasonable based upon expectations of real estate rental income and ethanol plant operating income. In addition, we considered other positive factors in our assessment. Although during fiscal years 2008, 2009 and 2010 we realized a taxable loss, historically, we have generated cumulative profitability over the past several years and expect to begin producing taxable income by fiscal year 2012 through our ethanol and real estate operations. Furthermore, the taxable loss is attributable, in large part, to accelerated depreciation deductions for income tax purposes. Such deductions are not expected to continue at levels we have seen in the last three years. In addition, we have significant financial resources to deploy in future income producing activities. The valuation allowance was approximately \$1.2 million and approximately \$0.6 million at January 31, 2011 and January 31, 2010, respectively. Should estimates of future income differ significantly from our prior estimates, we could be required to make a material change to our deferred tax valuation allowance. The

primary assumption used to estimate the valuation allowance has been estimates of future state taxable income. Such estimates can have material variations from year to year based upon expected levels of income from our ethanol plants, leasing income and gains on real estate sales. Factors that could negatively affect future taxable income include adverse changes in the commercial real estate market and the ethanol crush spread. Our accounting for deferred tax consequences represents management’ s best estimate of future events that can be appropriately reflected in the accounting estimates.

We adopted the provisions of ASC 740-10-25-5 for uncertain tax positions on February 1, 2007. As a result of the adoption of this accounting standard, we recorded a \$0.3 million decrease to retained earnings. As of January 31, 2011, total unrecognized tax benefits were approximately \$2.7 million, and accrued penalties and interest were approximately \$0.2 million. If we were to prevail on all unrecognized tax benefits recorded, approximately \$0.1 million of the reserve would benefit the effective tax rate. In addition, the impact of penalties and interest would also benefit the effective tax rate. Interest and penalties associated with unrecognized tax benefits are recorded within income tax expense.

It is reasonably possible that the amount of the unrecognized tax benefit with respect to certain unrecognized tax positions will increase or decrease during the next 12 months; however, we do not expect the change to have a material effect on results of operations or financial position.

On a quarterly and annual basis, we accrue for the effects of open uncertain tax positions and the related potential penalties and interest. Should future estimates of open uncertain tax positions differ from our current estimates, we could be required to make a material change to our accrual for uncertain tax positions. In addition, new income tax audit findings could also require us to make a material change to our accrual for uncertain tax positions.

Recoverability of Long-Lived Assets - Given the nature of our business, each income producing property must be evaluated separately when events and circumstances indicate that the value of that asset may not be recoverable. We recognize an impairment loss when the fair value of the asset is less than its carrying amount. We generally use expected future cash flows on a discounted basis and appraisals of specific properties to estimate fair value. Changes in the real estate market for particular locations could result in changes to our estimates of the property’ s value upon disposal. In addition, changes in expected future cash flows from our ethanol plants could result in additional impairment charges. Any adverse change in the spread between ethanol and grain prices could result in additional impairment charges.

Costs Associated with Exit Activities and Restructuring Costs- Restructuring charges included severance and associated employee termination costs, lease termination fees and other costs associated with the exit of our retail business. We recorded severance and associated employee termination costs pursuant to ASC 712, ASC 715 and ASC 420. ASC 420 requires that lease termination fees, net of expected sublease rental income, be recorded once the leased facility is no longer actively used in a revenue producing manner. Future changes to our estimates of employee layoffs or leased stores abandoned are unlikely to have a material impact on our restructuring accrual.

At January 31, 2011, we have an accrual of approximately \$0.1 million for costs related to restructuring.

New Accounting Pronouncements

Effective February 1, 2011, we will be required to adopt the second phase of the amended guidance in ASC Topic 820, "Fair Value Measurements and Disclosures", which will require us to disclose information in the reconciliation of recurring Level 3 measurements about purchases, sales, issuances and settlements on a gross basis, separately for assets and liabilities. The adoption of this amended guidance will require expanded disclosure in the consolidated financial statements but will not impact financial results.

There were no other new accounting standards issued during fiscal year 2010 that had or are expected to have a material impact on our financial position, results of operations, or cash flows.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to the impact of market fluctuations associated with interest rates and commodity prices as discussed below.

Interest Rate Risk

We are exposed to market risk from changes in interest rates. Exposure to interest rate risk results primarily from holding term and revolving loans that bear variable interest rates. Specifically, we have approximately \$79 million in variable-rate debt as of January 31, 2011. Interest rates on our variable-rate debt are determined based upon the market interest rate of LIBOR plus 300 to 400 basis points. A 10% adverse change (for example from 4.0% to 4.4%) in market interest rates would affect our interest cost on such debt by approximately \$0.3 million per year in the aggregate.

One Earth entered into two forward interest rate swaps in the notional amounts of \$50.0 million and \$25.0 million with the First National Bank of Omaha during fiscal years 2008 and 2007. The \$50.0 million swap fixed the variable interest rate of a portion of One Earth's term loan at 7.9%, while the \$25.0 million swap fixed the variable interest rate of a portion of One Earth's term loan at 5.49%. The swap settlements commenced on July 31, 2009; the \$50.0 million swap terminates on July 8, 2014 and the \$25.0 million swap terminates on July 31, 2011. A hypothetical 10% change (for example, from 4.0% to 3.6%) in market interest rates at January 31, 2011 would change the fair value of the interest rate swaps by approximately \$0.6 million.

Commodity Price Risk

We manage a portion of our risk with respect to the volatility of commodity prices inherent in the ethanol industry by using forward purchase and sale contracts. One Earth has purchase commitments for approximately 4.9 million bushels of corn, the principal raw material for its ethanol plant. One Earth expects to take delivery of the corn by April 2011. One Earth has sales commitments for approximately 6.3 million gallons of ethanol and 29,200 tons of distillers grains. One Earth expects to deliver the ethanol and distillers grains by April 2011. Approximately 1% of our forecasted ethanol production during the next 12 months has been sold under fixed-price contracts. As a result, the effect of a 10% adverse move in the price of ethanol from the current pricing would result in a decrease in annual revenues of approximately \$23.9 million for the remaining 99% of forecasted ethanol production. Similarly, approximately 1% of our estimated corn usage for the next 12 month was subject to fixed-price contracts. As a result, the effect of a 10% adverse move in the price of corn for current pricing would result in an increase in annual cost of goods sold of approximately \$21.6 million for the remaining 99% of forecasted corn usage.

Item 8. Financial Statements and Supplementary Data

**REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS**

(Amounts in Thousands)

| | January 31, | |
|----------------------------|-------------|------------|
| | 2011 | 2010 |
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | \$ 91,019 | \$ 100,398 |
| Accounts receivable-net | 9,619 | 9,123 |
| Inventory- net | 7,819 | 8,698 |
| Refundable income taxes | 8,503 | 12,813 |
| Prepaid expenses and other | 3,055 | 2,691 |
| Deferred taxes-net | 5,834 | 6,375 |
| Total current assets | 125,849 | 140,098 |
| Property and equipment-net | 169,811 | 246,874 |
| Other assets | 5,907 | 8,880 |
| Deferred taxes-net | 5,206 | 8,468 |
| Equity method investments | 67,349 | 44,071 |

| | | |
|-------------------------------------|------------|------------|
| Investments in debt instruments | – | 1,014 |
| Restricted investments and deposits | 1,600 | 2,100 |
| | <hr/> | <hr/> |
| TOTAL ASSETS | \$ 375,722 | \$ 451,505 |
| | <hr/> | <hr/> |

See notes to consolidated financial statements.

REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS (continued)
(Amounts in Thousands)

| | January 31, | |
|--|-------------|------------|
| | 2011 | 2010 |
| | <hr/> | <hr/> |
| LIABILITIES AND SHAREHOLDERS' EQUITY | | |
| CURRENT LIABILITIES: | | |
| Current portion of long term debt and capital lease obligations - alternative energy | \$ 9,672 | \$ 12,935 |
| Current portion of long term debt - other | 342 | 371 |
| Accounts payable - trade | 2,557 | 6,976 |
| Deferred income | 3,982 | 7,818 |
| Accrued restructuring charges | 146 | 511 |
| Accrued real estate taxes | 2,393 | 2,968 |
| Derivative financial instruments | 1,835 | 1,829 |
| Other current liabilities | 3,640 | 5,442 |
| | <hr/> | <hr/> |
| Total current liabilities | 24,567 | 38,850 |
| | <hr/> | <hr/> |
| LONG TERM LIABILITIES: | | |
| Long term debt and capital lease obligations - alternative energy | 69,049 | 124,093 |
| Long term debt - other | 1,924 | 2,596 |
| Deferred income | 2,416 | 6,396 |
| Derivative financial instruments | 3,688 | 4,055 |
| Other long term liabilities | 4,114 | 419 |
| | <hr/> | <hr/> |
| Total long term liabilities | 81,191 | 137,559 |
| | <hr/> | <hr/> |
| COMMITMENTS AND CONTINGENCIES | | |
| EQUITY: | | |
| REX shareholders' equity: | | |
| Common stock, 45,000 shares authorized, 29,853 shares issued at par | 299 | 299 |
| Paid in capital | 142,293 | 141,698 |
| Retained earnings | 296,053 | 290,984 |
| Treasury stock, 20,461 and 20,045 shares | (193,713) | (186,407) |
| Accumulated other comprehensive income, net of tax | – | 49 |
| | <hr/> | <hr/> |
| Total REX shareholders' equity | 244,932 | 246,623 |
| Noncontrolling interests | 25,032 | 28,473 |
| | <hr/> | <hr/> |
| Total equity | 269,964 | 275,096 |
| | <hr/> | <hr/> |
| TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY | \$ 375,722 | \$ 451,505 |
| | <hr/> | <hr/> |

REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF OPERATIONS****(Amounts in Thousands, Except Per Share Amounts)**

| | Years Ended January 31, | | |
|---|--------------------------------|-------------|-------------|
| | 2011 | 2010 | 2009 |
| Net sales and revenue | \$ 301,674 | \$ 170,088 | \$ 68,587 |
| Cost of sales | 271,300 | 149,380 | 67,552 |
| Gross profit | 30,374 | 20,708 | 1,035 |
| Selling, general and administrative expenses | (9,719) | (6,163) | (6,363) |
| Impairment charges and loss on deconsolidation | (18,424) | - | - |
| Interest income | 447 | 445 | 2,044 |
| Interest expense | (5,593) | (4,741) | (3,183) |
| Loss on early termination of debt | (48) | (89) | (9) |
| Equity in income of unconsolidated ethanol affiliates | 14,558 | 6,027 | 849 |
| Income from synthetic fuel investments | - | - | 691 |
| Other income | 310 | 748 | - |
| Losses on derivative financial instruments | (2,116) | (2,487) | (3,797) |
| Income (loss) from continuing operations before income taxes and noncontrolling interests | 9,789 | 14,448 | (8,733) |
| (Provision) benefit for income taxes | (3,019) | (4,497) | 2,716 |
| Income (loss) from continuing operations including noncontrolling interests | 6,770 | 9,951 | (6,017) |
| Income (loss) from discontinued operations, net of tax | 1,800 | 1,389 | (2,241) |
| Gain on disposal of discontinued operations, net of tax | 172 | 1,212 | 1,805 |
| Net income (loss) including noncontrolling interests | 8,742 | 12,552 | (6,453) |
| Net (income) loss attributable to noncontrolling interests | (3,673) | (3,900) | 3,156 |
| Net income (loss) attributable to REX common shareholders | \$ 5,069 | \$ 8,652 | \$ (3,297) |
| Weighted average shares outstanding - basic | 9,651 | 9,254 | 10,170 |
| Basic income (loss) per share from continuing operations attributable to REX common shareholders | \$ 0.32 | \$ 0.65 | \$ (0.28) |
| Basic income (loss) per share from discontinued operations attributable to REX common shareholders | 0.19 | 0.15 | (0.22) |
| Basic income per share on disposal of discontinued operations attributable to REX | 0.02 | 0.13 | 0.18 |
| Basic net income (loss) per share attributable to REX common shareholders | \$ 0.53 | \$ 0.93 | \$ (0.32) |
| Weighted average shares outstanding - diluted | 9,825 | 9,551 | 10,170 |
| Diluted income (loss) per share from continuing operations attributable to REX common shareholders | \$ 0.32 | \$ 0.63 | \$ (0.28) |
| Diluted income (loss) per share from discontinued operations attributable to REX common shareholders | 0.18 | 0.15 | (0.22) |
| Diluted gain per share on disposal of discontinued operations attributable to REX common shareholders | 0.02 | 0.13 | 0.18 |

| | | | |
|---|----------|----------|------------|
| Diluted net income (loss) per share attributable to REX common shareholders | \$ 0.52 | \$ 0.91 | \$ (0.32) |
| Amounts attributable to REX common shareholders: | | | |
| Income (loss) from continuing operations, net of tax | \$ 3,097 | \$ 6,051 | \$ (2,861) |
| Income (loss) from discontinued operations, net of tax | 1,972 | 2,601 | (436) |
| Net income (loss) | \$ 5,069 | \$ 8,652 | \$ (3,297) |

See notes to consolidated financial statements.

REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY FOR THE YEARS ENDED JANUARY 31, 2011, 2010 AND 2009

(Amounts in Thousands)

| | REX Shareholders | | | | | | | | Total Equity |
|---------------------------------------|-------------------------|--------|----------|--------------|--------------------|----------------------|---|----------------------------|-----------------|
| | Common Shares Issued | | Treasury | | Paid-in Capital | Retained Earnings | Accumulated Other Comprehensive Income | Noncontrolling Interest | |
| | Shares | Amount | Shares | Amount | | | | | |
| Balance at January 31, 2008 | 29,813 | \$ 298 | 19,094 | \$ (170,693) | \$ 141,357 | \$ 285,629 | \$ - | \$ 27,729 | \$ 284,320 |
| Net loss | | | | | | (3,297) | | (3,156) | (6,453) |
| Treasury stock acquired | | | 1,636 | (17,708) | | | | | (17,708) |
| Stock based compensation | | | | | 1,143 | | | | 1,143 |
| Stock options and related tax effects | 40 | 1 | (259) | 2,344 | (14) | - | - | - | 2,331 |
| Balance at January 31, 2009 | 29,853 | 299 | 20,471 | (186,057) | 142,486 | 282,332 | - | 24,573 | 263,633 |
| Net income | | | | | | 8,652 | | 3,900 | 12,552 |
| Treasury stock acquired | | | 1,257 | (15,694) | | | | | (15,694) |
| Stock based compensation | | | | | 234 | | | | 234 |
| Stock options and related tax effects | | | (1,683) | 15,344 | (1,022) | | | | 14,322 |
| Unrealized holding gains, net of tax | - | - | - | - | - | - | 49 | - | 49 |
| Balance at January 31, 2010 | 29,853 | \$ 299 | 20,045 | \$ (186,407) | \$ 141,698 | \$ 290,984 | \$ 49 | \$ 28,473 | \$ 275,096 |
| Net income | | | | | | 5,069 | | 3,673 | 8,742 |

| | | | | | | | | | | |
|--|--------|--------|--------|--------------|------------|------------|----|------|-----------|------------|
| Treasury stock acquired | | | 515 | (8,229) | | | | | | (8,229) |
| Reclassification adjustment for net gains included in net income, net of tax | | | | | | | | (49) | | (49) |
| Deconsolidation of subsidiary | | | | | | | | | (7,114) | (7,114) |
| Stock options and related tax effects | | | | | | | | | | 1,518 |
| | | | | | | | | | | |
| Balance at January 31, 2011 | 29,853 | \$ 299 | 20,461 | \$ (193,713) | \$ 142,293 | \$ 296,053 | \$ | | \$ 25,032 | \$ 269,964 |

See notes to consolidated financial statements.

REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in Thousands)

| | Years Ended January 31, | | |
|--|-------------------------|-----------|------------|
| | 2011 | 2010 | 2009 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | | |
| Net income (loss) including noncontrolling interests | \$ 8,742 | \$ 12,552 | \$ (6,453) |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: | | | |
| Depreciation and amortization | 17,943 | 10,603 | 5,061 |
| Impairment charges and loss on deconsolidation, net of cash divested of \$2,304 | 16,120 | – | – |
| Stock based compensation expense | – | 234 | 1,143 |
| Impairment charges on real estate | 1,021 | 1,533 | 1,961 |
| Income from equity method investments | (14,558) | (6,027) | (849) |
| Dividends received from equity method investments | 4,965 | 702 | 900 |
| Income from synthetic fuel investments | – | – | (691) |
| Derivative financial instruments | (361) | (144) | 3,427 |
| Gain on disposal of real estate and property and equipment | (293) | (2,003) | (3,410) |
| Deferred income | (7,816) | (16,559) | (6,776) |
| Excess tax benefits from stock option exercises | – | – | (12) |
| Deferred income tax | 3,803 | 12,958 | 601 |
| Changes in assets and liabilities, net of deconsolidation: | | | |
| Accounts receivable | (2,472) | (4,926) | (2,320) |
| Inventory | (554) | 15,676 | 25,559 |
| Prepaid expenses and other current assets | (1,124) | (1,628) | (93) |
| Income taxes refundable | 4,310 | (4,924) | (5,390) |
| Other long term assets | (898) | 3,534 | 2,481 |
| Accounts payable-trade | 761 | (8,457) | (8,560) |
| Other liabilities | (1,668) | (2,146) | (3,656) |
| Net cash provided by operating activities | 27,921 | 10,978 | 2,923 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | | |
| Capital expenditures | (6,033) | (35,652) | (101,271) |
| Proceeds from sale of synthetic fuel investments | – | – | 1,264 |

| | | | |
|--|-----------|------------|-----------|
| Purchase of investments | (9,214) | (25) | (933) |
| Proceeds of note receivable | 965 | - | - |
| Proceeds from sale of real estate and property and equipment | 7,986 | 4,756 | 9,172 |
| Restricted investments | 500 | 184 | 197 |
| | | | |
| Net cash used in investing activities | (5,796) | (30,737) | (91,571) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | | |
| Proceeds from long term debt | - | 48,958 | 75,890 |
| Payments of long term debt | (24,793) | (20,376) | (6,724) |
| Stock options exercised | 1,518 | 6,038 | 1,453 |
| Excess tax benefits from stock option exercises | - | - | 12 |
| Treasury stock acquired | (8,229) | (6,454) | (17,708) |
| | | | |
| Net cash (used in) provided by financing activities | (31,504) | 28,166 | 52,923 |
| | | | |
| NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS | (9,379) | 8,407 | (35,725) |
| CASH AND CASH EQUIVALENTS-Beginning of year | 100,398 | 91,991 | 127,716 |
| | | | |
| CASH AND CASH EQUIVALENTS-End of year | \$ 91,019 | \$ 100,398 | \$ 91,991 |
| | | | |
| Non cash activities- Accrued capital expenditures | \$ 102 | \$ 265 | \$ 6,474 |
| Non cash activities- Assets acquired by capital leases | \$ - | \$ - | \$ 2,922 |
| Non cash activities-Payable related to plant construction refinanced to long term debt | \$ - | \$ 9,749 | \$ - |

See notes to consolidated financial statements.

REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation - The accompanying financial statements consolidate the operating results and financial position of Rex American Resources Corporation and its wholly-owned and majority owned subsidiaries (the "Company" or "REX"). All intercompany balances and transactions have been eliminated. As of January 31, 2011, the Company maintains ownership interests in five ethanol entities and manages a portfolio of real estate located in 15 states. The Company operates in two reportable segments, alternative energy and real estate. The Company completed the exit of its retail business during fiscal year 2009 although it will continue to recognize, in discontinued operations, revenue and expense associated with administering extended service policies.

Fiscal Year - All references in these consolidated financial statements to a particular fiscal year are to the Company's fiscal year ended January 31. For example, "fiscal year 2010" means the period February 1, 2010 to January 31, 2011.

Use of Estimates - The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash Equivalents - Cash equivalents are principally short-term investments with original maturities of less than three months. The carrying amount of cash equivalents approximates fair value.

Concentrations of Risk -The Company maintains cash and cash equivalents in accounts with financial institutions which, at times, exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company does not believe there is significant credit risk on its cash

and cash equivalents. During fiscal years 2010 and 2009, two customers accounted for approximately 45% and 64%, respectively of the Company's net sales and revenue. At January 31, 2011, these customers represented approximately 68% of the Company's accounts receivable balance.

Inventory - Inventories are carried at the lower of cost or market on a first-in, first-out basis. Alternative energy segment inventory includes direct production costs and certain overhead costs such as depreciation, property taxes and utilities related to producing ethanol and related by products. Reserves are established for estimated net realizable value based primarily upon commodity prices. The market value of inventory is often dependent upon changes in commodity prices. These reserves totaled \$0 and \$591,000 at January 31, 2011 and 2010, respectively.

The components of inventory at January 31, 2011, and January 31, 2010 are as follows (amounts in thousands):

| | <u>2011</u> | <u>2010</u> |
|---------------------------------------|-------------------|-------------------|
| Retail merchandise, net | \$ - | \$ 190 |
| Ethanol and other finished goods, net | 2,347 | 1,784 |
| Work in process, net | 1,705 | 1,577 |
| Grain and other raw materials | 3,767 | 5,147 |
| | <u> </u> | <u> </u> |
| Total | <u>\$ 7,819</u> | <u>\$ 8,698</u> |

Property and Equipment - Property and equipment is recorded at cost. Assets under capital leases are capitalized at the lower of the net present value of minimum lease payments or the fair market value of the leased asset. Depreciation is computed using the straight-line method. Estimated useful lives are 15 to 40 years for buildings and improvements, and 3 to 20 years for fixtures and equipment. The components of property and equipment at January 31, 2011 and 2010 are as follows (amounts in thousands):

| | <u>2011</u> | <u>2010</u> |
|-----------------------------------|-------------------|-------------------|
| Land and improvements | \$ 21,899 | \$ 26,405 |
| Buildings and improvements | 44,297 | 59,024 |
| Machinery, equipment and fixtures | 124,439 | 187,526 |
| Leasehold improvements | 440 | 569 |
| Construction in progress | 4,578 | 127 |
| | <u> </u> | <u> </u> |
| | 195,653 | 273,651 |
| Less: accumulated depreciation | <u>(25,842)</u> | <u>(26,777)</u> |
| | <u> </u> | <u> </u> |
| | <u>\$ 169,811</u> | <u>\$ 246,874</u> |

In accordance with ASC 360-05 "Impairment or Disposal of Long-Lived Assets", the carrying value of long-lived assets is assessed for recoverability by management when changes in circumstances indicate that the carrying amount may not be recoverable, based on an analysis of undiscounted future expected cash flows from the use and ultimate disposition of the asset. The Company recorded an impairment charge of \$1,021,000 in fiscal year 2010, of which \$424,000 is included in selling, general and administrative expenses and \$597,000 is classified as discontinued operations in the consolidated statements of operations. The Company recorded an impairment charge of \$1,533,000 in fiscal year 2009, of which \$1,039,000 is included in selling, general and administrative expenses and \$494,000 is classified as discontinued operations in the consolidated statements of operations. The

Company recorded an impairment charge classified as discontinued operations of \$639,000 in fiscal year 2008. The impairment charges classified as selling, general and administrative expenses in fiscal years 2010 and 2009 relate to individual properties in the Company's real estate segment. The impairment charges in fiscal year 2008 classified as discontinued operations relate to individual stores in the Company's former retail segment or individual properties that have been sold that were previously included in the Company's real estate segment. These impairment charges are primarily related to increased competition and/or unfavorable changes in real estate conditions in local markets. Impairment charges result from the Company's management performing cash flow analysis and represent management's estimate of the excess of net book value over fair value. Fair value is estimated using expected future cash flows on a discounted basis or appraisals of specific properties as appropriate. Long-lived assets

are tested for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. Generally, declining cash flows from an ethanol plant or deterioration in local real estate market conditions are indicators of possible impairment.

Investments and Deposits- Restricted investments, which are principally money market mutual funds and cash deposits, are stated at cost plus accrued interest, which approximates market. Restricted investments at January 31, 2011 and 2010 are required by two states to cover possible future claims under extended service policies over the remaining live of the service policy contract. In accordance with ASC 320, "*Investments-Debt and Equity Securities*" the Company has classified these investments as held-to-maturity. The investments had maturity dates of less than one year at January 31, 2011 and 2010. The Company has the intent and ability to hold these securities to maturity.

The method of accounting applied to long-term investments, whether consolidated, equity or cost, involves an evaluation of the significant terms of each investment that explicitly grant or suggest evidence of control or influence over the operations of the investee and also includes the identification of any variable interests in which the Company is the primary beneficiary. The Company consolidates the results of one majority owned subsidiary, One Earth, with a one month lag. The Company accounts for investments in limited liability companies in which it may have a less than 20% ownership interest, using the equity method of accounting when the factors discussed in ASC 323 "*Investments-Equity Method and Joint Ventures*" are met. The excess of the carrying value over the underlying equity in the net assets of equity method investees is allocated to specific assets and liabilities. Any unallocated excess is treated as goodwill and is recorded as a component of the carrying value of the equity method investee. Investments in businesses that the Company does not control but for which it has the ability to exercise significant influence over operating and financial matters are accounted for using the equity method. Investments in which the Company does not have the ability to exercise significant influence over operating and financial matters are accounted for using the cost method.

Investments in debt securities are considered "held to maturity", "available for sale", or "trading securities" under ASC 320, "*Investments-Debt and Equity Securities*". Under ASC 320, held to maturity securities are required to be carried at their cost; while available-for-sale securities are required to be carried at their fair value, with unrealized gains and losses, net of income taxes, that are considered temporary in nature recorded in accumulated other comprehensive income (loss) in the Consolidated Balance Sheets. The fair values of investments in debt securities are determined based upon market quotations and various valuation techniques, including discounted cash flow analysis.

The Company periodically evaluates its investments for impairment due to declines in market value considered to be other than temporary. Such impairment evaluations include, in addition to persistent, declining market prices, general economic and company-specific evaluations. If the Company determines that a decline in market value is other than temporary, then a charge to earnings is recorded in the Consolidated Statements of Operations and a new cost basis in the investment is established.

Revenue Recognition - The Company recognizes sales from the production of ethanol and distillers grains when title transfers to customers, upon shipment from the ethanol plant. Shipping and handling charges to ethanol customers are included in net sales and revenue.

The Company includes income from its real estate leasing activities in net sales and revenue. The Company accounts for these leases as operating leases. Accordingly, minimum rental revenue is recognized on a straight-line basis over the term of the lease.

The Company sold, prior to its exit of the retail business, extended service policies covering periods beyond the normal manufacturers' warranty periods, usually with terms of coverage (including

manufacturers' warranty periods) of between 12 to 60 months. Contract revenues and sales commissions are deferred and amortized on a straight-line basis over the life of the contracts after the expiration of applicable manufacturers' warranty periods. The Company retains the obligation to perform warranty service and such costs are charged to operations as incurred. All related revenue and expense is classified as discontinued operations.

The Company recognized income from synthetic fuel partnership sales as production was completed and collectability of receipts was reasonably assured. The Company was paid for actual tax credits earned as the synthetic fuel was produced with the exception of production at the Pine Mountain (Gillette) facility. See Note 4 for a further discussion of synthetic fuel partnership sales.

Costs of Sales - Ethanol cost of sales includes depreciation, costs of raw materials, inbound freight charges, purchasing and receiving costs, inspection costs, shipping costs, other distribution expenses, warehousing costs, plant management, certain compensation costs, and general facility overhead charges.

Real estate cost of sales includes depreciation, real estate taxes, insurance, repairs and maintenance and other costs directly associated with operating the Company's portfolio of real property.

Selling, General and Administrative Expenses - The Company includes non-production related costs from its alternative energy segment such as utilities, property taxes, professional fees and certain payroll in selling, general and administrative expenses.

The Company includes costs not directly related to operating its portfolio of real property from its real estate segment such as certain payroll and related costs, professional fees and other general expenses in selling, general and administrative expenses.

Interest Cost - Interest expense of approximately \$5,593,000, \$4,741,000 and \$3,183,000 for fiscal years 2010, 2009 and 2008, respectively, is net of approximately \$0, \$1,651,000 and \$3,167,000 of interest capitalized related to equity investments, real estate improvements, ethanol plant or warehouse construction. Cash paid for interest in fiscal years 2010, 2009 and 2008 was approximately \$4,701,000, \$2,886,000 and \$2,592,000, respectively.

Deferred Financing Costs - Direct expenses and fees associated with obtaining long-term debt are capitalized and amortized to interest expense over the life of the loan using the effective interest method.

Financial Instruments - The Company uses derivative financial instruments to manage its balance of fixed and variable rate debt. The Company does not hold or issue derivative financial instruments for trading or speculative purposes. Interest rate swap agreements involve the exchange of fixed and variable rate interest payments and do not represent an actual exchange of the notional amounts between the parties. The swap agreements were not designated for hedge accounting pursuant to ASC 815. The interest rate swaps are recorded at their fair values and the changes in fair values are recorded as gain or loss on derivative financial instruments in the statements of consolidated operations. The Company paid settlements of interest rate swaps of approximately \$2,477,000, \$2,510,000 and \$369,000 in fiscal years 2010, 2009 and 2008, respectively.

Forward grain purchase and ethanol and distillers grain sale contracts are accounted for under the "normal purchases and normal sales" scope exemption of ASC 815, "*Derivatives and Hedging*" because these arrangements are for purchases of grain that will be delivered in quantities expected to be

used and sales of ethanol quantities expected to be produced over a reasonable period of time in the normal course of business.

Restructuring Costs - Restructuring charges include severance and associated employee termination costs, lease termination fees and other costs associated with the exit of the Company's retail business. The Company recorded severance and associated employee termination costs pursuant to ASC 712, ASC 715 and ASC 420. ASC 420 requires that lease termination fees, net of expected sublease rental income, be recorded once the leased facility is no longer actively used in a revenue producing manner. Future changes to the Company's estimates of employee layoffs or leased stores abandoned are unlikely to have a material impact on the Company's restructuring accrual.

Stock Compensation - The Company has stock-based compensation plans under which stock options have been granted to directors, officers and key employees at the market price on the date of the grant. The Company adopted ASC 718 "*Compensation-Stock Compensation*", on February 1, 2006. The Company chose the Modified Prospective Application ("MPA") method for implementing this accounting standard. Under the MPA method, new awards, if any, are valued and accounted for prospectively upon adoption. Outstanding prior awards that were unvested as of February 1, 2006 are recognized as compensation cost over the remaining requisite service period. ASC 718 also required the Company to establish the beginning balance of the additional paid in capital pool ("APIC pool") related to actual tax deductions from the exercise of stock options. This APIC pool is available to absorb tax shortfalls (actual tax deductions less than recognized compensation expense) recognized subsequent to the adoption of ASC 718. On November 10, 2005, the FASB issued FASB Staff Position No. FAS 123R-3, "*Transition Election Related to Accounting for Tax Effects of Share-Based Payment Awards*." This FASB Staff Position provided companies with the option to use either the transition method prescribed by ASC 718 or a simplified alternative method described in the staff position. The Company chose to utilize the transition method prescribed by ASC 718, which requires the calculation of the APIC pool as if the Company had adopted ASC 718 for fiscal years beginning after December 15, 1994.

No options were granted in the fiscal years ended January 31, 2011, January 31, 2010 or January 31, 2009. The following table summarizes options granted, exercised and canceled or expired during the fiscal year ended January 31, 2011:

| | Shares (000' s) | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term (in years) | Aggregate Intrinsic Value (000' s) |
|---|--------------------|--|---|---|
| Outstanding–Beginning of year | 824 | \$ 10.14 | | |
| Granted | – | – | | |
| Exercised | (98) | 10.00 | | |
| Canceled or expired | – | – | | |
| Outstanding and exercisable–End of year | 726 | \$ 10.16 | 1.1 | \$ 3,566 |

The total intrinsic value of options exercised in the fiscal years ended January 31, 2011, 2010 and 2009, was approximately \$0.7 million, \$7.2 million and \$2.2 million, respectively, resulting in tax deductions to realize benefits of approximately \$0.3 million, \$0.5 million and \$0.9 million, respectively. At January 31, 2011, there was no unrecognized compensation cost related to nonvested stock options. See Note 11 for a further discussion of stock options.

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Income Taxes - The Company provides for deferred tax liabilities and assets for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. The Company provides for a valuation allowance if, based on the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

Discontinued Operations- The Company classifies sold real estate assets and operations from its former retail segment in discontinued operations when the operations and cash flows of the store or real estate assets have been (or will be) eliminated from ongoing operations and when the Company will not have any significant continuing involvement in the operation of the store or real estate assets after disposal. To determine if cash flows had been or would be eliminated from ongoing operations, the Company evaluates a number of qualitative and quantitative factors. For purposes of reporting the operations of stores or real estate assets meeting the criteria for discontinued operations, the Company reports net sales and revenue, gross profit and related selling, general and administrative expenses that are specifically identifiable to those stores operations or real estate assets as discontinued operations. For stores and warehouses closed for which the Company has a retained interest in the related real estate, operations are presented in the real estate segment when retail operations cease. Certain corporate level charges, such as general office expense, certain interest expense, and other “fixed” expenses are not allocated to discontinued operations because the Company believes that these expenses were not specific to components’ operations.

New Accounting Pronouncements - Effective February 1, 2011, the Company will be required to adopt the second phase of the amended guidance in ASC Topic 820, “Fair Value Measurements and Disclosures”, which will require the Company to disclose information in the reconciliation of recurring Level 3 measurements about purchases, sales, issuances and settlements on a gross basis, separately for assets and liabilities. The adoption of this amended guidance will require expanded disclosure in the consolidated financial statements but will not impact financial results.

There were no other new accounting standards issued during fiscal year 2010 that had or are expected to have a material impact on the Company’ s consolidated financial statements.

2. INVESTMENTS AND DEPOSITS

The Company has debt and equity investments. The debt investments are accounted for under ASC 320, “Investments-Debt and Equity Securities”, while the equity investments are accounted for under ASC 323 “Investments-Equity Method and Joint Ventures”. The following table summarizes

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investments at January 31, 2010 (amounts in thousands):

Debt Securities January 31, 2010

| Investment | Coupon Rate | Maturity | Classification | Fair Market Value | Initial Investment |
|--|-------------|------------|--------------------|-------------------|--------------------|
| Patriot Renewable Fuels, LLC Convertible Note | 16.00% | 11/25/2011 | Available for Sale | \$ 1,014 | \$ 933 |

Unrealized holding gains were \$81,000 (\$49,000 net of income taxes) at January 31, 2010. There were no unrealized holding gains at January 31, 2011. Patriot repaid the outstanding principal balance on the convertible note to the Company during fiscal year 2010.

The Company has \$743,000 at January 31, 2011 and 2010 on deposit with the Florida Department of Financial Services to secure its obligation to fulfill future obligations related to extended warranty contracts sold in the state of Florida. The deposits earned 2.3% and 2.7% at January 31, 2011 and 2010, respectively.

In addition to the deposit with the Florida Department of Financial Services, the Company has \$857,000 and \$1,357,000 at January 31, 2011 and 2010, respectively, invested in a money market mutual fund to satisfy Florida Department of Financial Services regulations. This investment earned 0.1% at January 31, 2011 and 2010.

Equity Method Investments January 31, 2011 and 2010

| Entity | Ownership Percentage | Carrying Amount January 31, 2011 | Carrying Amount January 31, 2010 |
|---------------------------------------|----------------------|----------------------------------|----------------------------------|
| Big River Resources, LLC | 10% | \$ 29,443 | \$ 25,660 |
| Patriot Renewable Fuels, LLC | 23% | 21,829 | 18,411 |
| Levelland Hockley County Ethanol, LLC | 49% | – | – |
| NuGen Energy, LLC | 48% | 16,077 | – |
| Total Equity Securities | | \$ 67,349 | \$ 44,071 |

On October 1, 2006, the Company entered into an agreement to invest \$20 million in Big River, an Iowa limited liability company and holding company for several entities. The Company funded this investment in exchange for a 10% ownership interest. Big River Resources West Burlington, LLC, a wholly owned subsidiary of Big River, presently operates a 92 million gallon ethanol manufacturing facility. Big River Resources Galva, LLC, a wholly owned subsidiary of Big River, presently operates a 100 million gallon ethanol manufacturing facility. Big River Resources United Energy, LLC, a 50.5% owned subsidiary of Big River, presently operates a 100 million gallon ethanol manufacturing facility. The Company recorded income of approximately \$5,387,000, \$2,487,000 and \$2,397,000 as its share of earnings from Big River during fiscal years 2010, 2009 and 2008, respectively. At January 31, 2011, the carrying value of the investment in Big River is approximately \$29.4 million; the amount of underlying equity in the net assets

of Big River is approximately \$27.8 million. The excess of the carrying value of the investment over the underlying equity in the net assets is accounted for as goodwill and is recorded within equity method investments on the accompanying Consolidated Balance Sheets.

On June 8, 2006, the Company entered into an agreement to invest approximately \$16 million in Patriot which commenced production operations during fiscal year 2008. The Company funded this investment on December 4, 2006 in exchange for a 23% ownership interest. The facility has a nameplate capacity of 100 million gallons annually and began operations during the second quarter of fiscal year 2008. The Company recorded income of approximately \$5,159,000, \$3,540,000 and a loss of \$1,548,000 as its share of earnings or loss from Patriot during fiscal years 2010, 2009 and 2008, respectively. At January 31, 2011, the carrying value of the investment in Patriot is approximately \$21.8 million; the amount of underlying equity in the net assets of Patriot is approximately \$18.6 million. The excess of the carrying value of the investment over the underlying equity in the net assets is accounted for as goodwill and capitalized interest and is recorded within equity method investments on the accompanying Consolidated Balance Sheets.

Effective July 1, 2010, the Company purchased a 48% equity interest in NuGen Energy, LLC ("NuGen") which operates an ethanol producing facility in Marion, South Dakota with an annual nameplate capacity of 100 million gallons. The Company's investment included approximately \$2,410,000 paid at closing to the then sole shareholder of NuGen and \$6,805,000 contributed directly to NuGen. An additional \$6,451,000 is due based upon cash distributions from NuGen that REX is entitled to until such balance is paid ("Contingent Consideration"). The Company determined that the fair value of the Contingent Consideration, at January 31, 2011, was approximately \$3,578,000, of which \$62,000 is included in other current liabilities and \$3,516,000 is included in other long-term liabilities on the Consolidated Balance Sheet. During fiscal year 2010, the Company recorded income of approximately \$4,011,000 as its share of earnings from NuGen. At January 31, 2011, the carrying value of the investment in NuGen is approximately \$16.1 million; the amount of underlying equity in the net assets of NuGen is approximately \$10.4 million. The excess of the carrying value of the investment over the underlying equity in the net assets is accounted for as a basis difference in long lived assets and is recorded within equity method investments on the accompanying Consolidated Balance Sheets.

The Company has an option to acquire for a purchase price of \$1,138,000, (which is payable in cash, partially based upon cash distributions from NuGen that the Company is entitled to) additional ownership units from NuGen's majority shareholder, which, if exercised, would result in the Company owning 51% of the total outstanding voting and economic interests of NuGen on a fully diluted basis.

On September 30, 2006, the Company acquired 47% of the outstanding membership units of Levelland Hockley County Ethanol, LLC, or Levelland Hockley, for \$11.5 million. On December 29, 2006, the

Company purchased a \$5.0 million convertible secured promissory note from Levelland Hockley. On July 1, 2007, the Company converted the note into equity and increased its ownership percentage to approximately 56%. On February 20, 2008, the Company purchased an additional \$5.0 million convertible secured promissory note from Levelland Hockley. The balance of this note at January 31, 2011 was \$5.2 million, including accrued interest. On January 29, 2009, the Company agreed to fund up to \$2.0 million in the form of a subordinated revolving line of credit with Levelland Hockley and to issue a \$1.0 million letter of credit for the benefit of Levelland Hockley. On September 1, 2010, the Company agreed to increase the line of credit to \$4.0 million, inclusive of the \$1.0 million letter of credit. The Company was issued warrants in the amount of 1,298,700 at \$3.08 per share in conjunction with the issuance of the line of credit. At January 31, 2011, there was approximately \$3.8 million outstanding under the subordinated revolving line of credit.

Levelland Hockley, which is located in Levelland, Texas, commenced production operations in the first quarter of fiscal year 2008. The plant has a nameplate capacity of 40 million gallons of ethanol and 135,000 tons of dried distillers grains ("DDG") per year.

The plant was shut down in early January 2011 as a result of industry wide low crush spread margins and the plant's inability to source grain at affordable prices. On January 31, 2011, the Company sold 814,000 of its membership units to Levelland Hockley for \$1, reducing the ownership interest in Levelland Hockley to 49%. As a result, the Company no longer has a controlling financial interest in Levelland Hockley, and, therefore, effective January 31, 2011, the Company deconsolidated Levelland Hockley and began using the equity method of accounting. In connection with the deconsolidation, the Company recorded its remaining non controlling equity interest and debt investments at fair value. The Company's estimate of fair value for all of its investments in Levelland Hockley was \$0 at January 31, 2011. The Company recorded a pretax charge of approximately \$18.4 million as a result of deconsolidating Levelland Hockley and writing its remaining investments in Levelland Hockley to \$0 at January 31, 2011. The deconsolidation loss was computed as the difference between the sales proceeds and fair value of the retained investment and the Company's carrying value of the investment prior to the transaction. The Company's continuing involvement as an equity method investor precludes classification of this transaction as discontinued operations. The Company also recorded a pretax loss from the operating results of Levelland Hockley (prior to deconsolidation) of approximately \$5.9 million. At January 31, 2011, the carrying value of the investment in Levelland Hockley is \$0; the amount of underlying equity in the net assets of Levelland Hockley is approximately \$8.6 million. The excess of the underlying equity in the net assets over

the carrying value of the investment results from the Company recording the non controlling investment in Levelland Hockley at fair value upon deconsolidation.

Undistributed earnings of equity method investees totaled approximately \$18.4 million and \$6.8 million at January 31, 2011 and 2010, respectively.

Summarized financial information for each of the Company's equity method investees, as of their fiscal year end (except for NuGen) is presented in the following table. NuGen's fiscal year end is July 31 (amounts in thousands):

As of December 31, 2010

| | <u>Patriot</u> | <u>Big River</u> | <u>NuGen</u> | <u>Levelland Hockley</u> |
|--------------------------|-------------------|-------------------|-------------------|------------------------------|
| Current assets | \$ 20,648 | \$ 149,690 | \$ 35,521 | \$ 6,473 |
| Non current assets | 174,087 | 358,155 | 87,487 | 60,829 |
| Total assets | \$ 194,735 | \$ 507,845 | \$ 123,008 | \$ 67,302 |
| Current liabilities | \$ 19,105 | \$ 78,694 | \$ 14,720 | \$ 16,413 |
| Long-term liabilities | 94,963 | 129,936 | 86,563 | 33,400 |
| Total liabilities | \$ 114,068 | \$ 208,630 | \$ 101,283 | \$ 49,813 |
| Noncontrolling interests | \$ - | \$ 21,515 | \$ - | \$ - |

As of December 31, 2009

| | <u>Patriot</u> | <u>Big River</u> |
|--------------------------|-------------------|-------------------|
| Current assets | \$ 24,767 | \$ 101,710 |
| Non current assets | 179,954 | 371,669 |
| Total assets | \$ 204,721 | \$ 473,379 |
| Current liabilities | \$ 13,941 | \$ 46,162 |
| Long-term liabilities | 120,636 | 176,755 |
| Total liabilities | \$ 134,577 | \$ 222,917 |

| | | | | |
|--------------------------|----|---|----|--------|
| Noncontrolling interests | \$ | - | \$ | 11,530 |
|--------------------------|----|---|----|--------|

Summarized financial information for each of the Company's equity method investees except for NuGen is presented in the following table for the years ended December 31, 2010, 2009 and 2008. The

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summarized financial information for NuGen is presented for the five months ended December 31, 2010 (amounts in thousands):

Period Ended December 31, 2010

| | <u>Patriot</u> | <u>Big River</u> | <u>NuGen</u> |
|-----------------------------------|----------------|------------------|--------------|
| Net sales and revenue | \$ 261,117 | \$ 742,163 | \$ 121,871 |
| Gross profit | \$ 26,936 | \$ 83,671 | \$ 12,977 |
| Income from continuing operations | \$ 21,385 | \$ 52,478 | \$ 9,772 |
| Net income | \$ 21,385 | \$ 52,478 | \$ 9,772 |

Period Ended December 31, 2009

| | <u>Patriot</u> | <u>Big River</u> |
|-----------------------------------|----------------|------------------|
| Net sales and revenue | \$ 231,077 | \$ 448,145 |
| Gross profit | \$ 25,711 | \$ 43,317 |
| Income from continuing operations | \$ 17,288 | \$ 25,225 |
| Net income | \$ 17,288 | \$ 25,225 |

Period Ended December 31, 2008

| | <u>Patriot</u> | <u>Big River</u> |
|--|----------------|------------------|
| Net sales and revenue | \$ 63,534 | \$ 343,698 |
| Gross (loss) profit | \$ (2,029) | \$ 34,735 |
| (Loss) income from continuing operations | \$ (9,103) | \$ 24,540 |
| Net (loss) income | \$ (9,103) | \$ 24,540 |

Patriot, Big River, NuGen and Levelland Hockley have debt agreements that limit and restrict amounts the entities can pay in the form of dividends or advances to owners. The restricted net assets of Patriot, Big River, NuGen and Levelland Hockley combined at January 31, 2011 are approximately

3. FAIR VALUE

The Company applies ASC 820 "*Fair Value Measurements and Disclosures*", which defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Effective February 1, 2008, the Company determined the fair market values of its financial instruments based on the fair value hierarchy established by ASC 820, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair values which are provided below. The Company carries certain cash equivalents, restricted investments, derivative and contingent consideration liabilities at fair value.

Level 1 - Quoted prices in active markets for identical assets or liabilities. Level 1 assets and liabilities include debt and equity securities and derivative contracts that are traded in an active exchange market, as well as certain U.S. Treasury securities that are highly liquid and are actively traded in over-the-counter markets.

Level 2 - Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Level 2 assets and liabilities include derivative contracts whose value is determined using a pricing model with inputs that are observable in the market or can be derived principally or corroborated by observable market data.

Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methods, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation. Unobservable inputs shall be developed based on the best information available, which may include the Company's own data.

The fair values of derivative assets and liabilities traded in the over-the-counter market are determined using quantitative models that require the use of multiple market inputs including interest rates, prices and indices to generate pricing and volatility factors, which are used to value the position. The predominance of market inputs are actively quoted and can be validated through external sources, including brokers, market transactions and third-party pricing services. Estimation risk is greater for derivative asset and liability positions that are either option-based or have longer maturity dates where observable market inputs are less readily available or are unobservable, in which case interest rate, price or index scenarios are extrapolated in order to determine the fair value. The fair values of derivative assets and liabilities include adjustments for market liquidity, counterparty credit quality, the Company's own credit standing and other specific factors, where appropriate. To ensure the prudent application of estimates and management judgment in determining the fair value of derivative assets and liabilities, various processes and controls have been adopted, which include: model validation that requires a review and approval for pricing, financial statement fair value determination and risk quantification; periodic review and substantiation of profit and loss reporting for all derivative instruments. Financial assets and liabilities measured at fair value at January 31, 2011 on a recurring

basis are summarized below (amounts in thousands):

| | Level 1 | Level 2 | Level 3 | Total Fair Value |
|--------------------------|---------|----------|---------|------------------|
| | _____ | _____ | _____ | _____ |
| Cash Equivalents | \$ 2 | \$ - | \$ - | \$ 2 |
| Restricted Investments | 857 | - | - | 857 |
| | _____ | _____ | _____ | _____ |
| Total Assets | \$ 859 | \$ - | \$ - | \$ 859 |
| | _____ | _____ | _____ | _____ |
| Derivative Liabilities | \$ - | \$ 5,523 | \$ - | \$ 5,523 |
| Contingent Consideration | - | - | 3,578 | 3,578 |

| | | | | | |
|-------------------|----|---|----------|----------|----------|
| Total Liabilities | \$ | - | \$ 5,523 | \$ 3,578 | \$ 9,101 |
|-------------------|----|---|----------|----------|----------|

Financial assets and liabilities measured at fair value at January 31, 2010 on a recurring basis are summarized below (amounts in thousands):

| | Level 1 | Level 2 | Level 3 | Total Fair Value |
|--------------------------------|-----------|----------|---------|------------------|
| Cash Equivalents | \$ 81,625 | \$ - | \$ - | \$ 81,625 |
| Investments in Debt Securities | - | 1,014 | - | 1,014 |
| Restricted Investments | 1,357 | - | - | 1,357 |
| Total Assets | \$ 82,982 | \$ 1,014 | \$ - | \$ 83,996 |
| Derivative Liabilities | \$ - | \$ 5,884 | \$ - | \$ 5,884 |
| Total Liabilities | \$ - | \$ 5,884 | \$ - | \$ 5,884 |

No financial instruments were elected to be measured at fair value in accordance with ASC 470-20-25-21.

The Company reviews its long-lived assets for impairment on at least an annual basis based on the carrying value of these assets. As a result of vacancies at owned real estate locations, the Company tested certain long-lived assets for impairment using a fair value measurement approach. The fair value measurement approach utilizes a number of significant unobservable inputs or Level 3 assumptions. These assumptions include, among others, the implied fair value of these assets using an income approach by preparing a discounted cash flow analysis and the implied fair value of these assets using recent sales data of comparable properties, and other subjective assumptions. Upon completion of its impairment analysis, which was performed at various times throughout fiscal year 2010, the Company determined that the carrying value of certain long-lived assets exceeded the fair value of these assets. Accordingly, the Company recorded long-lived asset impairment charges of approximately \$1,021,000 to properly reflect the carrying value of these assets.

On January 31, 2011 the Company sold 814,000 of its membership units to Levelland Hockley for \$1, reducing the ownership interest in Levelland Hockley to 49%. As a result, the Company no longer has a controlling financial interest in Levelland Hockley, and, therefore, effective January 31, 2011, the Company deconsolidated Levelland Hockley and began using the equity method of accounting. In connection with the deconsolidation process, the Company recorded its remaining non controlling equity interest and debt investments at fair value. The Company's estimate of fair value for all of its investments in Levelland Hockley was \$0 at January 31, 2011. The Company recorded a pretax charge of approximately \$18.4 million.

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Assets measured at fair value at January 31, 2011 on a non-recurring basis are summarized below (amounts in thousands):

| | Year Ended January 31, 2011 | Level 1 | Level 2 | Level 3 | Total Losses |
|--|-----------------------------------|---------|---------|----------|-----------------|
| Property and equipment, net | \$ 4,568 | \$ - | \$ - | \$ 4,568 | \$ 424 |
| Non controlling equity investment in Levelland Hockley | \$ - | \$ - | \$ - | \$ - | \$ 9,487 |
| Notes receivable from Levelland Hockley | \$ - | \$ - | \$ - | \$ - | \$ 8,937 |

Excluded from the table is information for losses on property and equipment, net that are now classified as discontinuing operations. Such losses totaled \$597,000 in fiscal year 2010.

Assets measured at fair value at January 31, 2010 on a non-recurring basis are summarized below (amounts in thousands):

| | Year Ended January 31, 2010 | Level 1 | Level 2 | Level 3 | Total Losses |
|--|-----------------------------------|---------|---------|---------|-----------------|
|--|-----------------------------------|---------|---------|---------|-----------------|

Property and equipment, net \$ 5,821 \$ - \$ - \$ 5,821 \$ 1,039

Excluded from the table is information for losses on property and equipment, net that are now classified as discontinuing operations. Such losses totaled \$494,000 in fiscal year 2009.

4. SYNTHETIC FUEL LIMITED PARTNERSHIPS

During fiscal year 1998, the Company invested in two limited partnerships that produced synthetic fuels. The limited partnerships earned federal income tax credits under Section 29/45K of the Internal Revenue Code based upon the quantity and content of synthetic fuel production and sales. Credits under Section 29/45K are available for qualified fuels sold before January 1, 2008 (see Note 17).

Through a series of sales, the Company sold its ownership interest in Colona Synfuel Limited Partnership L.L.P. (Colona), a limited partnership that owned a synthetic fuel facility, and generally received cash payments from the sales on a quarterly basis through fiscal year 2007. The Company earned and reported as income approximately \$0.5 million for fiscal year 2008. No income was reported for fiscal years 2010 or 2009.

The Company sold its entire ownership interest in Somerset Synfuel, L.P., (Somerset), a limited partnership that owned two synthetic fuel facilities, and generally received cash payments from the sales on a quarterly basis through fiscal year 2007. The Company earned and reported as income approximately \$0.2 million for fiscal year 2008. No income was reported for fiscal years 2010 or 2009.

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The Section 29/45K tax credit program expired, under current law, at the end of 2007. Thus, the Company does not expect to recognize any income or loss from the Colona and Somerset sales beyond fiscal year 2008.

The Company also sold its membership interest in the limited liability company that owned a synthetic fuel facility in Gillette, Wyoming. In addition to certain other payments, the Company was eligible to receive \$1.50 per ton of "qualified production" produced by the facility and sold through 2007. The plant was subsequently sold and during the third quarter of fiscal year 2006, the Company modified its agreement with the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, the Company currently is not able to determine the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, the Company cannot currently determine the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006. The Company did not recognize any income from this sale during fiscal years 2010, 2009 or 2008.

5. OTHER ASSETS

The components of other noncurrent assets at January 31, 2011 and 2010 are as follows (amounts in thousands):

| | January 31, | |
|-------------------------------|--------------------|-----------------|
| | 2011 | 2010 |
| Deferred financing costs, net | \$ 1,006 | \$ 3,633 |
| Prepaid commissions | 1,924 | 4,320 |
| Real estate taxes refundable | 682 | - |
| Other | 2,295 | 927 |
| Total | \$ 5,907 | \$ 8,880 |

Deferred financing costs represent amounts paid to obtain both mortgage debt and borrowings under One Earth's debt arrangements. Such amounts are amortized as interest expense. Future amortization expense is as follows (amounts in thousands):

Years Ended January 31, Amortization

| | | |
|-------|----|-------|
| 2012 | \$ | 317 |
| 2013 | | 283 |
| 2014 | | 245 |
| 2015 | | 161 |
| Total | \$ | 1,006 |

Prepaid commissions represent sales commissions paid in connection with extended warranties sold by the Company's former retail sales staff. Such amounts are capitalized and amortized ratably over the

life of the extended warranty plan sold. Future amortization of prepaid commissions is as follows (amounts in thousands):

| Years Ended January 31, | Amortization |
|-------------------------|--------------|
| 2012 | \$ 1,195 |
| 2013 | 565 |
| 2014 | 164 |
| Total | \$ 1,924 |

Real estate taxes refundable represent amounts due One Earth associated with refunds of previously paid taxes in connection with a tax increment financing arrangement with local taxing authorities.

6. NET INCOME PER SHARE FROM CONTINUING OPERATIONS

The Company reports net income per share in accordance with ASC 260, "Earnings per Share". Basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during the year. Diluted net income per share is computed by dividing net income available to common shareholders by the weighted average number of shares outstanding and dilutive common share equivalents during the year. Common share equivalents for each year include the number of shares issuable upon the exercise of outstanding options, less the shares that could be purchased under the treasury stock method. The following table reconciles the basic and diluted net income per share from continuing operations computations for each year presented for fiscal years 2010, 2009 and 2008 (amounts in thousands, except per-share amounts):

| | 2010 | | |
|---|----------|----------|-----------|
| | Income | Shares | Per Share |
| Basic net income per share from continuing operations attributable to REX common shareholders | \$ 3,097 | 9,651 | \$ 0.32 |
| Effect of stock options | | 174 | |
| Diluted net income per share from continuing operations attributable to REX common shareholders | \$ 3,097 | \$ 9,825 | \$ 0.32 |
| | 2009 | | |

| | <u>Income</u> | <u>Shares</u> | <u>Per Share</u> |
|---|---------------|---------------|------------------|
| Basic net income per share from continuing operations attributable to REX common shareholders | \$ 6,051 | 9,254 | \$ 0.65 |
| Effect of stock options | | 297 | |
| Diluted net income per share from continuing operations attributable to REX common shareholders | \$ 6,051 | 9,551 | \$ 0.63 |

As there was a loss from continuing operations in fiscal year 2008, basic loss per share from continuing operations equals diluted loss per share from continuing operations. For fiscal years 2010, 2009 and 2008, a total of 0, 310,723 and 2,715,001 shares, respectively, subject to outstanding options were not

included in the common equivalent shares outstanding calculation as the effect from these shares is antidilutive.

7. SALE AND LEASEBACK TRANSACTIONS AND OTHER LEASES

On September 16, 2008, the Company completed a transaction for the sale and partial leaseback of its Cheyenne, Wyoming distribution center under a three year lease term. A pre-tax gain, classified as discontinued operations, of approximately \$2.4 million (net of expenses) resulted from this sale. The Company recognized approximately \$0.8 million and \$1.6 million of the gain in fiscal years 2009 and 2008, respectively. None of the gain was recognized in fiscal year 2010. The lease has been accounted for as an operating lease.

On April 30, 2007, the Company completed a transaction for the sale of 86 of its current and former store locations to KLAC REX, LLC ("Klac") for \$74.5 million in cash, before selling expenses. The Company also entered into leases to leaseback 40 of the properties from Klac for initial lease terms expiring January 31, 2010. All of the leases with Klac were terminated by January 31, 2010.

This transaction resulted in a gain (realized and deferred) of \$14.8 million. Of this gain, \$3.9 million and \$1.5 million was recognized, in fiscal years 2009 and 2008, respectively. None of the gain was recognized in fiscal year 2010. The gain recognized in fiscal years 2009 and 2008 was classified in discontinued operations. As a result of the wind down of the Company's retail business, the term over which the deferred gain was being amortized had been shortened and is based upon the Company abandoning, or otherwise ceasing use of the leased property. See Note 12 for a discussion of restructuring related charges. The leases were accounted for as operating leases.

At January 31, 2011, the Company has lease agreements, as landlord, for all or portions of nine owned properties. All of the leases are accounted for as operating leases. The Company recognized lease revenue of approximately \$1,285,000, \$913,000 and \$364,000 in fiscal years 2010, 2009 and 2008, respectively.

As of January 31, 2011, future minimum annual rentals on such leases are as follows (amounts in thousands):

| <u>Years Ended January 31</u> | <u>Minimum Rentals</u> |
|-----------------------------------|----------------------------|
| 2012 | \$ 1,303 |
| 2013 | 1,254 |
| 2014 | 1,161 |
| 2015 | 920 |
| 2016 | 350 |
| Thereafter | 1,613 |
| | <u>\$ 6,601</u> |

8. COMMON STOCK

During fiscal years 2010, 2009 and 2008, the Company purchased 514,657 shares, 1,256,604 shares and 1,636,252 shares, respectively, of its common stock for \$8,229,000, \$15,694,000 and \$17,708,000, respectively. Included in these amounts are shares the Company received totaling 659,957 for the year ended January 31, 2010 as tenders of the exercise price of stock options exercised by the Company's

Chief Executive Officer. The cost of these shares, determined as the fair market value on the date they were tendered, was approximately \$9,239,000 for the year ended January 31, 2010. At January 31, 2011, the Company had prior authorization by its Board of Directors to purchase, in open market transactions, an additional 468,044 shares of its common stock. Information regarding the Company's common stock is as follows (amounts in thousands):

| | January 31, 2011 | January 31, 2010 |
|--------------------|-----------------------------|-----------------------------|
| Authorized shares | 45,000 | 45,000 |
| Issued shares | 29,853 | 29,853 |
| Outstanding shares | 9,392 | 9,808 |

9. LONG-TERM DEBT AND INTEREST RATE SWAPS

Long-term debt consists of notes payable secured by certain land, buildings and equipment. Interest rates ranged from 2.3% to 8.4% in fiscal years 2010 and 2009. Principal and interest are payable periodically over terms that generally range from 5 to 10 years. The following provides information on rates segregated as fixed or variable and by term for fiscal years 2010 and 2009:

| January 31, 2011 | | |
|-------------------------|-------------------------------|---------------------------|
| Interest Rates | Maturity | Balance (in thousands) |
| 3.27% - 3.75% | Variable Within five years | \$ 79,313 |
| 8.40% | Fixed Within five years | \$ 1,674 |

| January 31, 2010 | | |
|-------------------------|-------------------------------|---------------------------|
| Interest Rates | Maturity | Balance (in thousands) |
| 3.38% - 4.25% | Variable Within five years | \$ 135,790 |
| 8.40% | Fixed Five to six years | \$ 2,330 |

Annual expected maturities of long-term debt are as follows (amounts in thousands):

**Year Ending
January 31,**

| | | |
|------|----|---------------|
| 2012 | \$ | 10,014 |
| 2013 | | 11,174 |
| 2014 | | 11,661 |
| 2015 | | 47,810 |
| 2016 | | 328 |
| | \$ | <u>80,987</u> |

In fiscal year 2010, the Company paid off approximately \$0.4 million in mortgage debt prior to maturity. As a result, the Company expensed unamortized deferred financing cost and prepayment penalties of approximately \$48,000 as loss on early termination of debt.

The fair value of the Company's long-term debt at January 31, 2011 and 2010 was approximately \$81.2 million and \$138.4 million, respectively.

One Earth Energy Subsidiary Level Debt

During the third quarter of fiscal year 2009, pursuant to the terms of the loan agreement, One Earth converted their construction loan into a term loan. Beginning with the first quarterly payment on October 8, 2009, payments are due in 20 quarterly payments of principal plus accrued interest with the principal portion calculated based on a 120 month amortization schedule. One final installment will be required on the maturity date (July 31, 2014) for the remaining unpaid principal balance with accrued interest. The term loan bears interest at rates ranging from LIBOR plus 300 basis points to LIBOR plus 310 basis points (3.1% to 3.3% at January 31, 2011). Borrowings are secured by all property of One Earth. This debt is recourse only to One Earth and not to REX American Resources Corporation or any of its other subsidiaries. As of January 31, 2011, approximately \$78.7 million was outstanding on the term loan. One Earth is also subject to certain financial covenants under the loan agreement, including required levels of EBITDA, working capital, debt service coverage ratio requirements, net worth requirements and other common covenants. One Earth was in compliance with all applicable covenants at January 31, 2011.

One Earth has a \$10.0 million revolving loan facility that matures May 31, 2011. Borrowings under this facility bear interest at the greater of 5.1% or LIBOR plus 310 basis points. One Earth has no outstanding borrowings on the revolving loan as of January 31, 2011.

One Earth has issued letters of credit that total approximately \$0.3 million at January 31, 2011. One Earth also has access to a secondary line of credit of up to \$10,000,000 with First National Bank of Omaha (the "Bank"), established as part of the original \$100,000,000 term loan and made accessible as a revolving line of credit as term loan payments were made. The amount available is reduced by \$250,000 on a quarterly basis. At January 31, 2011 and 2010, One Earth had \$8,750,000 and \$10,000,000, respectively, on the secondary line of credit available on this revolving line of credit. One Earth did not have any borrowings on the secondary line of credit at January 31, 2011 or 2010.

One Earth has paid approximately \$1.4 million in financing costs. These costs are recorded as deferred financing costs and are being amortized ratably over the term of the loan. At January 31, 2011, the Company's proportionate share of restricted assets related to One Earth was approximately \$59.8

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million. One Earth's restricted assets total approximately \$81.2 million. Such assets may not be paid in the form of dividends or advances to the parent company or other members of One Earth per the terms of the loan agreement with First National Bank of Omaha.

One Earth entered into two forward interest rate swaps in the notional amounts of \$50.0 million and \$25.0 million with the Bank. The swap settlements commenced as of July 31, 2009; the \$50.0 million swap terminates on July 8, 2014 and the \$25.0 million swap terminates on July 31, 2011. The \$50.0 million swap fixed a portion of the variable interest rate of the term loan subsequent to the plant completion date at 7.9% while the \$25.0 million swap fixed the rate at 5.49%. At January 31, 2011 and 2010, One Earth recorded a liability of approximately \$5.5 million and \$5.6 million, respectively related to the fair value of the swaps. The change in fair value was recorded in the Consolidated Statements of Operations.

10. FINANCIAL INSTRUMENTS

The Company uses interest rate swaps to manage its interest rate exposure at One Earth by fixing the interest rate on a portion of the variable rate debt. The Company does not engage in trading activities involving derivative contracts for which a lack of marketplace quotations would necessitate the use of fair value estimation techniques. As of January 31, 2011, the notional value of the interest rate swaps was approximately \$68.1 million. At January 31, 2011, the Company has recorded a liability of approximately \$5.5 million related to the fair value of the swaps. The change in fair value was recorded in the Consolidated Statements of Operations. The notional amounts and fair values of derivatives, all of which are not designated as cash flow hedges at January 31, 2011 are summarized in the table below (amounts in thousands):

| | Notional Amount | Fair Value Liability |
|---------------------|--------------------|-------------------------|
| Interest rate swaps | \$ 68,138 | \$ 5,523 |

The notional amounts and fair values of derivatives, all of which are not designated as cash flow hedges at January 31, 2010 are summarized in the table below (amounts in thousands):

| | Notional Amount | Fair Value Liability |
|---------------------|--------------------|-------------------------|
| Interest rate swaps | \$ 108,238 | \$ 5,884 |

As the interest rate swaps are not designated as cash flow hedges, the unrealized gain and loss on the derivatives is reported in current earnings. The Company reported losses of approximately \$2,116,000 \$2,487,000 and \$3,797,000, in fiscal years 2010, 2009 and 2008, respectively.

Swap settlement payments to the counterparty totaled approximately \$2,477,000, \$2,510,000 and \$369,000 in fiscal years 2010, 2009 and 2008, respectively.

11. EMPLOYEE BENEFITS

Stock Option Plans - The Company maintains the REX American Resources Corporation 1995 Omnibus Stock Incentive Plan and the REX American Resources Corporation 1999 Omnibus Stock Incentive Plan (the "Omnibus Plans"). Under the Omnibus Plans, the Company may grant to officers

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and key employees awards in the form of non-qualified stock options, stock appreciation rights, restricted stock, other stock-based awards and cash incentive awards. The Omnibus Plans also provide for yearly grants of non-qualified stock options to directors who are not employees of the Company. The exercise price of each option must be at least 100% of the fair market value of the Company's common stock on the date of grant. A maximum of 4,500,000 shares of common stock are authorized for issuance under each of the Omnibus Plans. On January 31, 2011, 108,011 and 2,302,425 shares remain available for issuance under the 1995 and 1999 Plans, respectively.

On April 17, 2001, the Company's Board of Directors approved a grant of non-qualified stock options to two key executives for 1,462,500 shares at an exercise price of \$8.01, which represented the market price on the date of grant. These became fully vested as of December 31, 2005. As of January 31, 2011, 337,500 of these options remained outstanding.

The following summarizes stock option activity for fiscal years 2010, 2009 and 2008 (amounts in thousands, except per-share amounts):

| | 2010 | | 2009 | | 2008 | |
|-------------------------------|--------------------|--|--------------------|--|--------------------|--|
| | Shares (000' s) | Weighted Average Exercise Price | Shares (000' s) | Weighted Average Exercise Price | Shares (000' s) | Weighted Average Exercise Price |
| Outstanding—Beginning of year | 824 | \$ 10.14 | 2,715 | \$ 9.63 | 3,016 | \$ 9.16 |
| Exercised | (98) | 10.00 | (1,683) | 8.87 | (299) | 4.86 |
| Canceled or expired | — | — | (208) | 13.75 | (2) | 12.64 |

| | | | | | | |
|-------------------------|-----|----------|-----|----------|-------|---------|
| Outstanding–End of year | 726 | \$ 10.16 | 824 | \$ 10.14 | 2,715 | \$ 9.63 |
| Exercisable–End of year | 726 | \$ 10.16 | 824 | \$ 10.14 | 2,661 | \$ 9.57 |

Price ranges and other information for stock options outstanding as of January 31, 2011 were as follows (amounts in thousands, except per share amounts):

| Range of Exercise Prices | Outstanding and Exercisable | | |
|--------------------------|-----------------------------|---------------------------------|---------------------------------|
| | Shares (000' s) | Weighted Average Exercise Price | Weighted Average Remaining Life |
| \$8.01 to \$10.37 | 437 | \$ 8.11 | 0.21 |
| \$12.04 to \$16.04 | 289 | 13.26 | 2.46 |
| | 726 | \$ 10.16 | 1.11 |

Profit Sharing Plan - The Company has a qualified, noncontributory profit sharing plan (the “Plan”) covering full-time employees who meet certain eligibility requirements. The Plan also allows for additional 401(k) saving contributions by participants, along with certain company matching contributions. Aggregate contributions to the Plan are determined annually by the Board of Directors

and are not to exceed 15% of total compensation paid to all participants during such year. The Company contributed approximately \$1,000, \$1,800 and \$15,000 for fiscal years 2010, 2009 and 2008, respectively, under the Plan.

12. RESTRUCTURING AND OTHER

During the fourth quarter of fiscal year 2008, the Company entered into an agreement with Appliance Direct, Inc. (“Appliance Direct”) pursuant to which (i) the Company agreed to sell certain appliance inventory, furniture, fixtures and equipment at the store locations to be taken over by Appliance Direct and (ii) subsidiaries of Appliance Direct leased 37 retail store locations owned by the Company.

The Company agreed to pay Appliance Direct, as of the implementation date defined in the agreement, an amount equal to the adjusted book value liability of the Company’s customer extended service plans for certain appliances previously sold at locations that Appliance Direct took over from the Company (the “ESP Credit”).

During the fourth quarter of fiscal year 2008, the Company recorded a restructuring charge of approximately \$4.2 million related to (i) a workforce reduction of a majority of employees located at its corporate headquarters, retail stores and distribution facilities and (ii) certain costs associated with the transition of the Company’s retail business to Appliance Direct.

On July 31, 2009, the Company entered into a Third Amendment to Agreement and a Second Global Amendment to Multiple Leases (together, the “Amendments”) with Appliance Direct. The Amendments (i) eliminated the right of Appliance Direct to purchase stores it leased from the Company (ii) eliminated the right of Appliance Direct to terminate certain leases in the future and (iii) eliminated the obligation of Appliance Direct to lease 22 properties from the Company. The terms of the 15 leases and one sub-lease under which the Company leased property to Appliance Direct remained in full force except as modified by the Amendments. As a result of these Amendments, the Company reduced the accruals for employee severance and

bonus costs by approximately \$0.7 million, for investment banker fees by approximately \$0.3 million and for the ESP Credit by approximately \$0.3 million during the second quarter of fiscal year 2009.

On September 30, 2009, the Company entered into a letter agreement with Appliance Direct pursuant to which (i) Appliance Direct agreed to vacate all properties leased from the Company and turn over possession of the leased premises to the Company and (ii) the Company and Appliance Direct agreed to release and discharge each other from all claims or causes of action whatsoever.

The Company completed its exit of the retail business as of July 31, 2009. The following is a summary

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of restructuring charges and payments (in thousands):

| | Employee Severance and Bonus Costs | Lease Termination Costs | Investment Banker Fees | ESP Credit | Total Restructuring Accrual |
|---------------------------------------|---|--|-----------------------------------|-----------------------|--|
| Balance, January 31, 2008 | \$ - | \$ - | \$ - | \$ - | \$ - |
| Restructuring charges | 2,839 | - | 834 | 498 | 4,171 |
| Balance, January 31, 2009 | 2,839 | - | 834 | 498 | 4,171 |
| Restructuring charges | 85 | 2,951 | - | - | 3,036 |
| Reversal of restructuring charges | (706) | (41) | (325) | (287) | (1,359) |
| Payments of restructuring liabilities | (1,999) | (2,471) | (509) | (211) | (5,190) |
| Balance, January 31, 2010 | 219 | 439 | - | - | 658 |
| Restructuring charges | 63 | - | - | - | 63 |
| Payments of restructuring liabilities | (282) | (293) | - | - | (575) |
| Balance, January 31, 2011 | \$ - | \$ 146 | \$ - | \$ - | \$ 146 |

All of the accrual balance of \$146,000 is classified within current liabilities. The restructuring charges are all classified as discontinued operations. The accrued balance at January 31, 2011 is management's best estimate of the amount to be incurred for the related categories.

13. COMMITMENTS

One Earth has forward purchase contracts for 4.9 million bushels of corn, the principal raw material for its ethanol plant. The Company expects to take delivery of the corn by April 2011.

One Earth has sales commitments for 6,282,000 gallons of ethanol and 29,200 tons of distillers grains. One Earth expects to deliver the ethanol and the distillers grains by April 2011.

Forward grain purchase, ethanol and distillers grains sale contracts are accounted for under the "normal purchases and normal sales" scope exemption of the accounting standards because these arrangements are for purchases of grain and sales of ethanol and distillers grains that will be delivered in quantities expected to be used by One Earth over a reasonable period of time in the normal course of business.

One Earth has entered into an agreement with an unrelated party for the use of a portion of the party's natural gas pipeline. The term of the agreement is 10 years, and the amount is \$4,380,000, which is spread over 120 equal payments of \$36,500. Payments began in February 2009.

One Earth has entered into an agreement with an unrelated party for the lease of railcars that will be used to ship ethanol. The lease is set to expire on May 31, 2012, with an automatic 36-month extension, unless either party notifies the other in writing 60 days prior to the initial expiration date. One

Earth pays a monthly lease amount per railcar. One Earth paid approximately \$662,000 and \$344,000 pursuant to the lease in fiscal years 2010 and 2009, respectively.

One Earth has a nonexclusive contract with an unrelated party (“Ethanol Marketer”) for ethanol marketing services. Under the terms of the contract, the Ethanol Marketer will purchase some of the Company’s ethanol production during the term of the contract. Additionally, One Earth is also required to share with the Ethanol Marketer the additional profits derived from the Ethanol Marketer’s gains on swaps and exchanges. The contract matures December 1, 2012, with automatic renewals for one year, unless One Earth provides written notice of at least 90 days prior to the end of the initial term.

One Earth has a contract with an unrelated party (“Distillers Grains Marketer”) for distillers grains marketing services. Under the terms of the contract, the Distillers Grains Marketer will purchase all of One Earth’s distillers grains production during the term of the contract. The contract called for One Earth to pay a fee per ton of distillers grains for the Distillers Grains Marketer’s services. The contract was amended on December 6, 2010, to reduce the fee for DDGS, and the termination date was extended to July 1, 2014. One Earth paid approximately \$905,000 and \$408,000 in fiscal years 2010 and 2009, respectively, for these marketing services.

One Earth has a grain origination agreement with Alliance Grain, under which it purchased 100% of its grain during 2010. One Earth pays to Alliance Grain a certain amount per bushel for procurement fees. The term of the agreement is for two years from the first grind date, and shall renew automatically for additional one year terms, unless either party sends notice to the other party of its intent to terminate the agreement at least sixty days prior to the expiration of the then current term of the agreement.

14. INCOME TAXES

The provision (benefit) for income taxes from continuing operations for fiscal years 2010, 2009 and 2008 consists of the following (amounts in thousands):

| | <u>2010</u> | <u>2009</u> | <u>2008</u> |
|------------------|-----------------|-----------------|-------------------|
| Federal: | | | |
| Current | \$ – | \$ (7,552) | \$ (3,386) |
| Deferred | 2,881 | 11,296 | 489 |
| | <u>2,881</u> | <u>3,744</u> | <u>(2,897)</u> |
| State and Local: | | | |
| Current | – | 426 | 69 |
| Deferred | 138 | 327 | 112 |
| | <u>138</u> | <u>753</u> | <u>181</u> |
| | <u>\$ 3,019</u> | <u>\$ 4,497</u> | <u>\$ (2,716)</u> |

The tax effects of significant temporary differences representing deferred tax assets and liabilities are as follows as of January 31, 2011 and 2010 (amounts in thousands):

| <u>2011</u> | <u>2010</u> |
|-------------|-------------|
|-------------|-------------|

| | | |
|---|-----------|-----------|
| Assets: | | |
| Deferral of service contract income | \$ 1,566 | \$ 3,463 |
| Accrued liabilities | 249 | 504 |
| Inventory accounting | – | 215 |
| Installment sales of limited partnerships | 1,297 | 1,297 |
| Derivative accounting | 1,259 | 1,729 |
| Stock based compensation | 406 | 464 |
| Federal net operating loss carryforward | 2,192 | 156 |
| AMT credit carryforward | 23,373 | 23,449 |
| State net operating loss carryforward | 2,407 | 1,473 |
| Valuation allowance | (1,242) | (578) |
| Other items | 1,246 | 2,358 |
| | | |
| Total | 32,753 | 34,530 |
| | | |
| Liabilities: | | |
| Basis in pass through entities | (4,314) | (6,201) |
| Depreciation | (17,399) | (12,106) |
| Other | – | (1,380) |
| | | |
| Total | (21,713) | (19,687) |
| | | |
| Net deferred tax asset | \$ 11,040 | \$ 14,843 |
| | | |

The Company has approximately \$23.4 million of alternative minimum tax (“AMT”) credit carryforwards as of January 31, 2011 and 2010. The AMT credit carryforwards can be used to offset future regular income tax liabilities subject to certain limitations. The AMT credit carryforwards have no expiration date. The Company must generate approximately \$156 million in future taxable income to fully utilize the AMT credit carryforward. If the Company is not able to generate sufficient taxable income in subsequent years to allow for the utilization of the deferred tax assets, the Company would need to provide a valuation allowance for such deferred tax assets, thus increasing income tax expense.

The Company has federal net operating loss carryforwards of approximately \$13.7 million, which will begin to expire in fiscal year 2019.

The Company has state net operating loss carryforwards of approximately \$32.7 million, net of the federal benefit, which will begin to expire in fiscal year 2011.

The Company has a valuation allowance of approximately \$1,242,000 at January 31, 2011. The Company increased the valuation allowance by \$664,000 in fiscal year 2010. The Company reduced the valuation allowance by \$231,000 in fiscal year 2008. These adjustments to the valuation allowance are a result of estimates of realizing certain future state tax benefits. No adjustment was made in fiscal year 2009.

The Company paid income taxes of \$1,310,000, \$14,000 and \$732,000 in fiscal years 2010, 2009 and 2008, respectively. The Company received refunds of income taxes of \$5,691,000, \$1,105,000 and \$1,280,000 in fiscal years 2010, 2009 and 2008, respectively.

The effective income tax rate on consolidated pre-tax loss or income differs from the federal income tax statutory rate for fiscal years 2010, 2009 and 2008 as follows:

| 2010 | 2009 | 2008 |
|-------|-------|-------|
| _____ | _____ | _____ |

| | | | |
|---|--------|-------|---------|
| Federal income tax at statutory rate | 35.0% | 35.0% | (35.0)% |
| Ethanol small producer credit | – | – | (14.7) |
| State and local taxes, net of federal tax benefit | 4.1 | 3.9 | 6.5 |
| Net provision (reduction) in valuation allowance | 9.8 | – | (6.3) |
| Uncertain tax positions | 1.5 | (0.3) | (9.0) |
| Noncontrolling interest | (17.7) | (8.0) | 29.2 |
| Other | (1.9) | 0.5 | (1.8) |
| | | | |
| Total | 30.8% | 31.1% | (31.1)% |

The Company files a U.S. federal income tax return and income tax returns in various states. In general, the Company is no longer subject to U.S. federal, state or local income tax examinations by tax authorities for fiscal years ended January 31, 2007 and prior.

The Company adopted the provisions of ASC 740-10-25-5 on February 1, 2007. As a result of the adoption of this accounting standard, the Company recorded a \$287,000 decrease to retained earnings. As of January 31, 2011, total unrecognized tax benefits were \$2,733,000, and accrued penalties and interest were \$243,000. If the Company were to prevail on all unrecognized tax benefits recorded, approximately \$129,000 of the reserve would benefit the effective tax rate. In addition, the impact of penalties and interest would also benefit the effective tax rate. Interest and penalties associated with unrecognized tax benefits are recorded within income tax expense.

On a quarterly and annual basis, the Company accrues for the effects of open uncertain tax positions and the related potential penalties and interest. The Company increased the liability for uncertain tax positions by \$534,000 during fiscal year 2010 related to current year uncertain tax positions.

It is reasonably possible that the amount of the unrecognized tax benefit with respect to certain unrecognized tax positions will increase or decrease during the next 12 months; however, the Company does not expect the change to have a material effect on results of operations or financial position. A reconciliation of the beginning and ending amount of unrecognized tax benefits, including interest and penalties, is as follows (dollars in thousands):

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| | Years Ended | |
|--|-------------|----------|
| | 2011 | 2010 |
| Unrecognized tax benefits, beginning of year | \$ 2,338 | \$ 4,160 |
| Changes for tax positions for prior years | 104 | (2,978) |
| Changes for tax positions for current year | 534 | 1,156 |
| | | |
| Unrecognized tax benefits, end of year | \$ 2,976 | \$ 2,338 |

15. COMPREHENSIVE INCOME (LOSS)

Comprehensive income includes net income (loss) and unrealized gains on securities classified as available for sale (net of the related tax effects), and are reported separately in shareholders' equity. The components of comprehensive income (loss) in fiscal years 2010, 2009 and 2008 are as follows (amounts in thousands):

| | 2010 | 2009 | 2008 |
|---|----------|----------|------------|
| Net income (loss) attributable to REX common shareholders | \$ 5,069 | \$ 8,652 | \$ (3,297) |

| | | | |
|--|-------------------|-------------------|-------------------|
| Reclassification adjustment for net gains included in net income | (49) | - | - |
| Unrealized holding gains on available for sale securities, net | - | 49 | - |
| | <u> </u> | <u> </u> | <u> </u> |
| Total comprehensive income (loss) | \$ 5,020 | \$ 8,701 | \$ (3,297) |
| | <u> </u> | <u> </u> | <u> </u> |

16. DISCONTINUED OPERATIONS

During fiscal year 2009, the Company completed the exit of its retail business. Accordingly, all operations of the Company's former retail segment and certain sold properties have been classified as discontinued operations for all periods presented. Once real estate property has been sold, and no continuing involvement is expected, the Company classifies the results of the operations as discontinued operations. The results of operations were previously reported in the Company's retail or real estate segment, depending on when the store ceased operations. Below is a table reflecting certain items of the Consolidated Statements of Operations that were reclassified as

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discontinued operations for fiscal years 2010, 2009 and 2008 (amounts in thousands):

| | <u>2010</u> | <u>2009</u> | <u>2008</u> |
|---|-------------------|-------------------|-------------------|
| Net sales and revenue | \$ 7,869 | \$ 35,192 | \$ 185,159 |
| | <u> </u> | <u> </u> | <u> </u> |
| Cost of merchandise sold | \$ 1,573 | \$ 23,243 | \$ 134,542 |
| | <u> </u> | <u> </u> | <u> </u> |
| Income (loss) before income taxes | \$ 3,018 | \$ 2,446 | \$ (3,474) |
| (Provision) benefit for income taxes | (1,218) | (1,057) | 1,233 |
| | <u> </u> | <u> </u> | <u> </u> |
| Income (loss) from discontinued operations, net of tax | \$ 1,800 | \$ 1,389 | \$ (2,241) |
| | <u> </u> | <u> </u> | <u> </u> |
| Gain on disposal before provision for income taxes | \$ 288 | \$ 2,131 | \$ 2,797 |
| Provision for income taxes | (116) | (919) | (992) |
| | <u> </u> | <u> </u> | <u> </u> |
| Gain on disposal of discontinued operations, net of tax | \$ 172 | \$ 1,212 | \$ 1,805 |
| | <u> </u> | <u> </u> | <u> </u> |

17. CONTINGENCIES

The Company sold its entire interest, through a series of transactions, in three partnerships (Colona, Somerset and Gillette) that owned synthetic fuel facilities. As such, the Company was no longer allocated Section 29/45K tax credits after fiscal year 2005. In connection with the Colona and Somerset sales, the Company received contingent payments based upon percentages of qualified Section 29/45K credits generated. In connection with the sale of the Gillette partnership, the Company was eligible to receive contingent payments based upon the amount of "qualified production." The Company has recognized \$53.9 million of income from these sales from years the partnerships have open tax years with the IRS. In the event that the synthetic fuel tax credits are reduced as a result of IRS audits, the amount of proceeds realized from the sales could be significantly impacted.

The Company is involved in various legal actions arising in the normal course of business. After taking into consideration legal counsels' evaluation of such actions, management is of the opinion that their outcome will not have a material effect on the Company's consolidated financial statements.

18. SEGMENT REPORTING

Beginning in the second quarter of fiscal year 2009, the Company realigned its reportable business segments to be consistent with changes to its management structure and reporting. The Company has two segments: alternative energy and real estate. In prior years, the real estate segment was formerly included in the retail segment and historical amounts have been reclassified to conform to the current year segment reporting presentation. For stores and warehouses closed for which the Company has a retained interest in the related real estate, operations are presented in the real estate segment when retail operations cease. The Company evaluates the performance of each reportable segment based on segment profit. Segment profit excludes income taxes, indirect interest expense, discontinued operations, indirect interest income and certain other items that are included in net income determined in accordance with accounting principles generally accepted in the United States of America. Amounts below include corporate activities that are not separately reportable and income from synthetic fuel

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investments (amounts in thousands):

| | Years Ended January 31, | | |
|------------------------------|-------------------------|-------------------|------------------|
| | 2011 | 2010 | 2009 |
| Net sales and revenues: | | | |
| Alternative energy | \$ 300,389 | \$ 169,175 | \$ 68,223 |
| Real estate | 1,285 | 913 | 364 |
| Total net sales and revenues | <u>\$ 301,674</u> | <u>\$ 170,088</u> | <u>\$ 68,587</u> |

| | | | |
|------------------------------|------------------|------------------|-----------------|
| Segment gross profit (loss): | | | |
| Alternative energy | \$ 31,173 | \$ 21,923 | \$ 807 |
| Real estate | (799) | (1,215) | 228 |
| Total gross profit | <u>\$ 30,374</u> | <u>\$ 20,708</u> | <u>\$ 1,035</u> |

| | Years Ended January 31, | | |
|---|-------------------------|------------------|-------------------|
| | 2011 | 2010 | 2009 |
| Segment profit (loss): | | | |
| Alternative energy segment profit (loss) | \$ 13,403 | \$ 17,811 | \$ (8,992) |
| Real estate segment (loss) profit | (1,022) | (1,398) | 228 |
| Corporate expenses | (2,724) | (1,870) | (2,020) |
| Interest expense | (240) | (358) | (428) |
| Interest income | 372 | 263 | 1,788 |
| Income from synthetic fuel investments | - | - | 691 |
| Income (loss) from continuing operations before income taxes and noncontrolling interests | <u>\$ 9,789</u> | <u>\$ 14,448</u> | <u>\$ (8,733)</u> |

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| | Years Ended January 31, | | |
|---|-------------------------|------|------|
| | 2011 | 2010 | 2009 |
| Sales of products alternative energy segment: | | | |

| | | | |
|--|-------------------|-------------------|-------------------|
| Ethanol | 84% | 83% | 82% |
| Distillers grains | 16% | 17% | 18% |
| | <u> </u> | <u> </u> | <u> </u> |
| Total | 100% | 100% | 100% |
| | <u> </u> | <u> </u> | <u> </u> |
| Sales of services real estate segment: | | | |
| Leasing | 100% | 100% | 100% |
| | <u> </u> | <u> </u> | <u> </u> |
| Interest income: | | | |
| Alternative energy | \$ 75 | \$ 182 | \$ 256 |
| Real estate | - | - | - |
| Unallocated | 372 | 263 | 1,788 |
| | <u> </u> | <u> </u> | <u> </u> |
| Total interest income | \$ 447 | \$ 445 | \$ 2,044 |
| | <u> </u> | <u> </u> | <u> </u> |
| Depreciation and amortization expense: | | | |
| Alternative energy | \$ 17,354 | \$ 9,643 | \$ 3,543 |
| Real estate | 407 | 195 | 49 |
| Unallocated | 182 | - | - |
| | <u> </u> | <u> </u> | <u> </u> |
| Total depreciation and amortization expense | \$ 17,943 | \$ 9,838 | \$ 3,592 |
| | <u> </u> | <u> </u> | <u> </u> |
| Equity in income of unconsolidated affiliates: | | | |
| Alternative energy | \$ 14,558 | \$ 6,027 | \$ 849 |
| Real estate | - | - | - |
| | <u> </u> | <u> </u> | <u> </u> |
| Total equity in income of unconsolidated affiliates: | \$ 14,558 | \$ 6,027 | \$ 849 |
| | <u> </u> | <u> </u> | <u> </u> |

| | Years Ended January 31, | | |
|--|-------------------------|-------------------|-------------------|
| | 2011 | 2010 | 2009 |
| | <u> </u> | <u> </u> | <u> </u> |
| Additions to property and equipment: | | | |
| Alternative energy | \$ 5,677 | \$ 35,320 | \$ 107,575 |
| Real estate | 356 | 332 | - |
| | <u> </u> | <u> </u> | <u> </u> |
| Total additions to property and equipment | \$ 6,033 | \$ 35,652 | \$ 107,575 |
| | <u> </u> | <u> </u> | <u> </u> |
| Assets: | | | |
| Alternative energy | \$ 257,202 | \$ 302,228 | \$ 249,422 |
| Real estate | 22,235 | 31,796 | 3,149 |
| Corporate and other | 96,285 | 117,481 | 198,717 |
| | <u> </u> | <u> </u> | <u> </u> |
| Total assets | \$ 375,722 | \$ 451,505 | \$ 451,288 |
| | <u> </u> | <u> </u> | <u> </u> |
| Additions to other long lived assets: | | | |
| Alternative energy | \$ 10,112 | \$ 25 | \$ 284 |
| Real estate | - | - | - |
| | <u> </u> | <u> </u> | <u> </u> |
| Total additions to other long lived assets | \$ 10,112 | \$ 25 | \$ 284 |
| | <u> </u> | <u> </u> | <u> </u> |

| | | | |
|--|-----------|------------|------------|
| Long term debt and capital lease obligations | | | |
| Alternative energy | \$ 69,049 | \$ 124,093 | \$ 94,003 |
| Real estate | – | – | – |
| Corporate and other | 1,924 | 2,596 | 9,936 |
| Total long term debt and capital lease obligations | \$ 70,973 | \$ 126,689 | \$ 103,939 |

Additions to other long lived assets represent primarily equity method investments and long term refundable real estate taxes.

Certain corporate costs and expenses, including information technology, employee benefits, and other shared services, are allocated to the business segments. The allocations are generally amounts agreed upon by management, which may differ from amounts that would be incurred if such services were purchased separately by the business segment. Corporate assets are primarily cash and equivalents, and deferred income tax benefits.

Cash, except for cash held by One Earth, is considered to be fungible and available for both corporate and segment use depending on liquidity requirements. Cash of approximately \$18.4 million held by One Earth will be used primarily to fund working capital needs for the subsidiary.

19. QUARTERLY UNAUDITED INFORMATION

The following tables set forth the Company's net sales and revenue, gross profit, net income (loss) and net income (loss) per share (basic and diluted) for each quarter during the last two fiscal years. The unaudited financial information has been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included.

| | Quarters Ended | | | |
|---|--|------------------|---------------------|---------------------|
| | (In Thousands, Except Per Share Amounts) | | | |
| | April 30, 2010 | July 31, 2010 | October 31, 2010 | January 31, 2011 |
| Net sales and revenue (a) | \$ 71,554 | \$ 65,516 | \$ 70,718 | \$ 93,886 |
| Gross profit (a) | 8,405 | 5,962 | 7,198 | 8,809 |
| Net income (loss) attributable to REX common shareholders | 4,188 | 1,234 | 4,250 | (4,603) |
| Basic net income (loss) per share attributable to REX common shareholders (b) | \$ 0.43 | \$ 0.13 | \$ 0.45 | \$ (0.49) |
| Diluted net income (loss) per share attributable to REX common shareholders (b) | \$ 0.42 | \$ 0.12 | \$ 0.44 | \$ (0.49) |

| | Quarters Ended | | | |
|---|--|------------------|---------------------|---------------------|
| | (In Thousands, Except Per Share Amounts) | | | |
| | April 30, 2009 | July 31, 2009 | October 31, 2009 | January 31, 2010 |
| Net sales and revenue (a) | \$ 14,324 | \$ 17,076 | \$ 61,613 | \$ 77,075 |
| Gross profit (a) | 325 | 1,189 | 5,799 | 13,395 |
| Net (loss) income attributable to REX common shareholders | (1,731) | 837 | 2,273 | 7,273 |

| | | | | | | | | |
|---|----|--------|----|------|----|------|----|------|
| Basic net (loss) income per share attributable to REX common shareholders (b) | \$ | (0.19) | \$ | 0.09 | \$ | 0.25 | \$ | 0.78 |
| Diluted net (loss) income per share attributable to REX common shareholders (b) | \$ | (0.19) | \$ | 0.09 | \$ | 0.24 | \$ | 0.75 |

- a) Amounts differ from those previously reported as a result of retail operations and certain real estate assets sold being reclassified as discontinued operations and other reclassifications.
- The total of the quarterly net income (loss) per share amounts do not equal the annual net loss or income per share amount due to the impact of
- b) varying amounts of shares and options outstanding during the year. In addition, basic net loss per share equals diluted net loss per share in periods where a net loss is reported.

20. RELATED PARTIES

One Earth entered into a design-build contract with Fagen, an equity investor in One Earth, for the design and construction of the ethanol plant. One Earth paid approximately \$120.2 million through January 31, 2010 to Fagen for the design-build contract. Additionally, One Earth paid Fagen

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approximately \$7.9 million for the year ended January 31, 2010 for additional projects related to the construction of the plant.

During fiscal years 2010 and 2009, One Earth purchased approximately \$157.4 million and \$69.2 million, respectively, of corn from the Alliance Grain Elevator, an equity investor.

During fiscal years 2010 and 2009, One Earth used the services of the Bloomer Line to move railcars to ship ethanol. An officer of the One Earth is the acting general manager of the Bloomer Line. One Earth paid the Bloomer Line approximately \$340,000 and approximately \$104,000 for such services in fiscal years 2010, and 2009, respectively.

* * * * *

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of
Rex American Resources Corporation

We have audited the accompanying consolidated balance sheets of Rex American Resources Corporation and subsidiaries (the "Company") as of January 31, 2011 and 2010, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three years in the period ended January 31, 2011. Our audits also included the consolidated financial statement schedule listed in the Index at Item 15. These consolidated financial statements and consolidated financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the consolidated financial statements and consolidated financial statement schedule based on our audits. We did not audit the financial statements of Patriot Renewable Fuels, LLC, an equity method investment. The Company's equity method investment of \$21,829,000 and \$18,411,000 as of January 31, 2011 and 2010, respectively, and equity in income (loss) of unconsolidated affiliates of \$5,159,000, \$3,540,000 and (\$1,548,000) for the years ended January 31, 2011, 2010, and 2009, respectively, are included in the accompanying consolidated financial statements. Those statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for Patriot Renewable Fuels, LLC, is based solely on the report of the other auditors.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits and the report of other auditors provide a reasonable basis for our opinion.

In our opinion, based on our audits and the report of other auditors, such consolidated financial statements present fairly, in all material respects, the financial position of Rex American Resources Corporation and subsidiaries as of January 31, 2011 and 2010, and the results of their operations and their cash flows for each of the three years in the period ended January 31, 2011, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such consolidated financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As disclosed in Note 1 and Note 16, the consolidated financial statements have been adjusted for the retrospective application of Accounting Standards Codification (ASC) 810, Consolidation, for non-controlling interests, which became effective February 1, 2009, and the retrospective presentation of the Company's retail business as discontinued operations. Additionally, as discussed in Note 2 to the consolidated financial statements, the Company deconsolidated the assets and liabilities of a significant subsidiary as of January 31, 2011.

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We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of January 31, 2011, based on the criteria established in Internal Control-Integrated Framework issued by the Committee of

REX AMERICAN RESOURCES CORPORATION AND SUBSIDIARIES

Schedule II - VALUATION AND QUALIFYING ACCOUNTS FOR THE YEARS ENDED JANUARY 31, 2011, 2010 AND 2009 (Amounts in thousands)

| | Balance Beginning of Year | Additions Charged to Cost and Expenses | Deductions Charges for Which Reserves Were Created | Balance End of Year |
|----------------------------------|---------------------------------|---|---|---------------------------|
| 2011: | | | | |
| Allowance for doubtful accounts | \$ 168 | \$ - | \$ 158 | \$ 10 |
| 2010: | | | | |
| Allowance for doubtful accounts | \$ 447 | \$ - | \$ 279 | \$ 168 |
| 2009: | | | | |
| Allowance for doubtful accounts | \$ 84 | \$ 499 | \$ 136 | \$ 447 |
| 2011: | | | | |
| Deferred tax valuation allowance | \$ 578 | \$ 664 | \$ - | \$ 1,242 |
| 2010: | | | | |
| Deferred tax valuation allowance | \$ 578 | \$ - | \$ - | \$ 578 |
| 2009: | | | | |
| Deferred tax valuation allowance | \$ 809 | \$ - | \$ 231 | \$ 578 |

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934

is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Our officers concluded that our disclosure controls and procedures are also effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

Material Changes to Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems deemed to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Under the supervision and with the participation of our senior management, including our Chief Executive Officer and Chief Financial Officer, we assessed the effectiveness of our internal control over financial reporting as of January 31, 2011 based on the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based upon this assessment, our management concluded that our internal control over financial reporting was effective as of January 31, 2011 based on those criteria.

The effectiveness of our internal control over financial reporting as of January 31, 2011 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which is included herein.

| | | |
|--|---|----------------|
| STUART A. ROSE Stuart A. Rose | Chairman of the Board and Chief Executive Officer (principal executive officer) | April 15, 2011 |
| DOUGLAS L. BRUGGEMAN Douglas L. Bruggeman | Vice President-Finance, Chief Financial Officer and Treasurer (principal financial and accounting officer) | April 15, 2011 |

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of
Rex American Resources Corporation

We have audited the internal control over financial reporting of Rex American Resources Corporation and subsidiaries (the "Company") as of January 31, 2011, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and

directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

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In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 31, 2011, based on the criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and consolidated financial statement schedule as of and for the year ended January 31, 2011 of the Company and our report dated April 15, 2011 expressed an unqualified opinion on those consolidated financial statements and consolidated financial statement schedule and included an explanatory paragraph regarding the Company's retrospective application of Accounting Standards Codification (ASC) 810, Consolidation, for non-controlling interests, which became effective February 1, 2009, the retrospective presentation of the Company's retail business as discontinued operations, and the deconsolidation of the assets and liabilities of a significant subsidiary as of January 31, 2011.

/s/ Deloitte & Touche LLP

Cincinnati, Ohio

April 15, 2011

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Item 9B. Other Information

None

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this Item 10 is incorporated herein by reference to the Proxy Statement for our Annual Meeting of Shareholders on June 7, 2011, except for certain information concerning our executive officers which is set forth in Part I of this report.

Item 11. Executive Compensation

The information required by this Item 11 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on June 7, 2011 and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item 12 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on June 7, 2011 and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions and Director Independence

The information required by this Item 13 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on June 7, 2011 and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

The information required by this Item 14 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on June 7, 2011 and is incorporated herein by reference.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a)(1) Financial Statements

The following consolidated financial statements of REX American Resources Corporation and subsidiaries are filed as a part of this report at Item 8 hereof.

Consolidated Balance Sheets as of January 31, 2011 and 2010

Consolidated Statements of Operations for the years ended January 31, 2011, 2010 and 2009

Report of Independent Registered Public Accounting Firm

(a)(2)(i) Financial Statement Schedules

The following financial statement schedule is filed as a part of this report at Item 8 hereof.

Schedule II -Valuation and Qualifying Accounts

All other schedules are omitted because they are not applicable or not required, or because the required information is included in the consolidated financial statements or notes thereto.

a)(2)(ii) Separate Financial Statements of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons

Separate consolidated financial statements of Big River Resources, LLC, Patriot Renewable Fuels, LLC and NuGen Energy, LLC required pursuant to Rule 3-09 of Regulation S-X are filed as Exhibits 99(a), 99(b) and 99(c) to this report.

(a)(3) Exhibits

See Exhibit Index at page 95 of this report.

Management contracts and compensatory plans and arrangements filed as exhibits to this report are identified by an asterisk in the exhibit index.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

REX AMERICAN RESOURCES CORPORATION

By: STUART A. ROSE
Stuart A. Rose
Chairman of the Board and
Chief Executive Officer

Date: April 15, 2011

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Capacity</u> | <u>Date</u> |
|--|---|----------------|
| STUART A. ROSE Stuart A. Rose | Chairman of the Board and Chief Executive Officer (principal executive officer) | April 15, 2011 |
| DOUGLAS L. BRUGGEMAN Douglas L. Bruggeman | Vice President-Finance, Chief Financial Officer and Treasurer (principal financial and accounting officer) | April 15, 2011 |

| | | |
|--|----------|----------------|
| LAWRENCE TOMCHIN Lawrence Tomchin | Director | April 15, 2011 |
| EDWARD M. KRESS Edward M. Kress | Director | April 15, 2011 |
| ROBERT DAVIDOFF Robert Davidoff | Director | April 15, 2011 |
| CHARLES A. ELCAN Charles A. Elcan | Director | April 15, 2011 |
| DAVID S. HARRIS David S. Harris | Director | April 15, 2011 |
| MERVYN L. ALPHONSO Mervin L. Alphonso | Director | April 15, 2011 |

EXHIBIT INDEX

(3) *Articles of incorporation and by-laws:*

- 3(a) Certificate of Incorporation, as amended (incorporated by reference to Exhibit 3(a) to Form 10-Q for quarter ended July 31, 2010, File No. 001- 09097)
- 3(b)(1) By-Laws, as amended (incorporated by reference to Registration Statement No. 2-95738, Exhibit 3(b), filed February 8, 1985)
- 3(b)(2) Amendment to By-Laws adopted June 29, 1987 (incorporated by reference to Exhibit 4.5 to Form 10-Q for quarter ended July 31, 1987, File No. 0-13283)

(4) *Instruments defining the rights of security holders, including indentures:*

- 4(a) Construction and Term Loan Agreement dated as of September 27, 2006 among Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., as Administrative Agent, the Lenders party thereto and Levelland Hockley County Ethanol, LLC (incorporated by reference to Exhibit 4(f) to Form 10-K for fiscal year ended January 31, 2007, File No. 001-09097)
- 4(b) First Amendment to Construction and Term Loan Agreement and Other Loan Documents dated as of August 10, 2007 among Levelland Hockley County Ethanol, LLC, the Lenders party thereto, and Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., as Administrative Agent (incorporated by reference to Exhibit 4(i) to Form 10-K for fiscal year ended January 31, 2008, File No. 001-09097)
- 4(c) Second Amendment to Construction and Term Loan Agreement and Other Loan Documents dated as of February 15, 2008 among Levelland Hockley County Ethanol, LLC, the Lenders party thereto, and Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., as Administrative Agent (incorporated by reference to Exhibit 4(j) to Form 10-K for fiscal year ended January 31, 2008, File No. 001-09097)
- 4(d) Third Amendment to Construction and Term Loan Agreement and Other Loan Documents dated as of February 19, 2008 among Levelland Hockley County Ethanol, LLC, the Lenders party thereto, and Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., as Administrative Agent (incorporated by reference to Exhibit 4(k) to Form 10-K for fiscal year ended January 31, 2008, File No. 001-09097)

- 4(e) Fourth Amendment to Construction and Term Loan Agreement dated as of May 31, 2008 among Levelland/Hockley County Ethanol, LLC, the Lenders party thereto, and GE Business Financial Services Inc. (f/k/a Merrill Lynch Business Financial Services Inc.), as Administrative Agent (incorporated by reference to Exhibit 4(m) to Form 10-K for fiscal year ended January 31, 2009, File No. 001-09097)

- 4(f) Fifth Amendment to Construction and Term Loan Agreement dated as of May 31, 2008 among Levelland/Hockley County Ethanol, LLC, the Lenders party thereto, and GE Business Financial Services Inc. (f/k/a Merrill Lynch Business Financial Services Inc.), as Administrative Agent (incorporated by reference to Exhibit 4(n) to Form 10-K for fiscal year ended January 31, 2009, File No. 001-09097)
- 4(g) Sixth Amendment to Construction and Term Loan Agreement dated as of January 29, 2009 among Levelland/Hockley County Ethanol, LLC, the Lenders party thereto, and GE Business Financial Services Inc. (f/k/a Merrill Lynch Business Financial Services Inc.), as Administrative Agent (incorporated by reference to Exhibit 4(o) to Form 10-K for fiscal year ended January 31, 2009, File No. 001-09097)
- 4(h) Seventh Amendment to Construction and Term Loan Agreement dated as of September 4, 2009 among Levelland/Hockley County Ethanol, LLC, the Lenders party thereto, and GE Business Financial Services Inc., as Administrative Agent (incorporated by reference to Exhibit 4(a) to Form 10-Q for quarter ended July 31, 2009, File No. 001-09097)
- 4(i) Eighth Amendment to Construction and Term Loan Agreement dated as of September 1, 2010 among Levelland/Hockley County Ethanol, LLC, the Lenders party thereto, and GE Business Financial Services Inc., as Administrative Agent (incorporated by reference to Exhibit 4(a) to Form 10-Q for quarter ended July 31, 2010, File No. 001-09097)
- 4(j) Construction Loan Agreement dated as of September 20, 2007 among One Earth Energy, LLC, First National Bank of Omaha, as a Bank and as Administrative Agent, Accounts Bank and Collateral Agent, and the other Banks party thereto (incorporated by reference to Exhibit 4(l) to Form 10-K for fiscal year ended January 31, 2008, File No. 001-09097)
- 4(k) First Amendment of Construction Loan Agreement dated September 19, 2008 among One Earth Energy, LLC, First National Bank of Omaha, as a Bank and as Administrative Agent, Accounts Bank and Collateral Agent, and the other Banks party thereto (incorporated by reference to Exhibit 4(j) to Form 10-K for fiscal year ended January 31, 2010, File No. 001-09097)
- 4(l) Second Amendment of Construction Loan Agreement dated January 30, 2009 among One Earth Energy, LLC, First National Bank of Omaha, as a Bank and as Administrative Agent, Accounts Bank and Collateral Agent, and the other Banks party thereto (incorporated by reference to Exhibit 4(k) to Form 10-K for fiscal year ended January 31, 2010, File No. 001-09097)

- 4(m) Third Amendment of Construction Loan Agreement dated September 18, 2009 among One Earth Energy, LLC, First National Bank of Omaha, as a Bank and as Administrative Agent, Accounts Bank and Collateral Agent, and the other Banks party thereto (incorporated by reference to Exhibit 4(l) to Form 10-K for fiscal year ended January 31, 2010, File No. 001-09097)
- 4(n) Fourth Amendment of Construction Loan Agreement dated June 1, 2010 among One Earth Energy, LLC, First National Bank of Omaha, as a Bank and as Administrative Agent, Accounts Bank and Collateral Agent, and the other Banks party thereto (incorporated by reference to Exhibit 4(a) to Form 10-Q for quarter ended October 31, 2010, File No. 001-09097)
- 4(o) Loan and Security Agreement dated as of July 23, 2009 between NuGen Energy, LLC and Dougherty Funding LLC
- 4(p) Revolving Credit and Security Agreement dated as of July 23, 2009 between NuGen Energy, LLC and Dougherty Funding LLC

Pursuant to Item 601(b)(4)(iii)(A) of Regulation S-K, the registrant has not filed as an exhibit to this Form 10-K certain instruments with respect to long-term debt where the total amount of securities authorized thereunder does not exceed 10% of the total assets of the registrant and its subsidiaries on a consolidated basis. The registrant agrees to furnish a copy of such instruments to the Commission upon request.

(10) *Material contracts:*

- 10(a)* Employment Agreement dated November 29, 2005 between Rex Radio and Television, Inc. and Stuart Rose (incorporated by reference to Exhibit 10(a) to Form 8-K filed November 30, 2005, File No. 001-09097)
- 10(b)* Amended and Restated Amendment No. 1 to Employment Agreement dated December 10, 2007 between Rex Radio and Television, Inc. and Stuart A. Rose (incorporated by reference to Exhibit 10(b) to Form 8-K filed November 30, 2008, File No. 001-09097)

- 10(c)* Amendment No. 2 to Employment Agreement dated December 10, 2007 between Rex Radio and Television, Inc. and Stuart A. Rose (incorporated by reference to Exhibit 10(c) to Form 8-K filed November 30, 2005, File No. 001-09097)
- 10(d)* Employment Agreement dated October 11, 2005 between Rex Radio and Television, Inc. and David L. Bearden (incorporated by reference to Exhibit 10(a) to Form 8-K filed October 12, 2005, File No. 001-09097)
- 10(e)* Amendment No. 1 to Employment Agreement dated December 10, 2007 between Rex Radio and Television, Inc. and David L. Bearden (incorporated by reference to Exhibit 10(e) to Form 8-K filed November 30, 2005, File No. 001-09097)

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- 10(f)* Amendment No. 2 to Employment Agreement dated March 6, 2008 between Rex Radio and Television, Inc. and David L. Bearden (incorporated by reference to Exhibit 10(f) to Form 8-K filed November 30, 2005, File No. 001-09097)
- 10(g)* Amendment No. 3 to Employment Agreement dated February 19, 2009 between Rex Radio and Television, Inc. and David L. Bearden (incorporated by reference to Exhibit 10(a) to Form 8-K filed February 20, 2009, File No. 001-09097)
- 10(h)* Amendment No. 4 to Employment Agreement dated September 30, 2009 between Rex Radio and Television, Inc. and David L. Bearden (incorporated by reference to Exhibit 10(b) to Form 8-K filed October 6, 2009, File No. 001-09097)
- 10(i)* Executive Stock Option dated April 17, 2001 granting Lawrence Tomchin an option to purchase 150,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 10(h) to Form 10-K for fiscal year ended January 31, 2002, File No. 001-09097)
- 10(j)* Subscription Agreement dated December 1, 1989 from Stuart Rose to purchase 300,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 6.5 to Form 10-Q for quarter ended October 31, 1989, File No. 0-13283)
- 10(k)* Subscription Agreement dated December 1, 1989 from Lawrence Tomchin to purchase 140,308 shares of registrant's Common Stock (incorporated by reference to Exhibit 6.6 to Form 10-Q for quarter ended October 31, 1989, File No. 0-13283)
- 10(l)* 1995 Omnibus Stock Incentive Plan, as amended and restated effective June 2, 1995 (incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 1 to Form S-8 Registration Statement No. 33-81706)
- 10(m)* 1999 Omnibus Stock Incentive Plan (incorporated by reference to Exhibit 10(a) to Form 10-Q for quarter ended April 30, 2000, File No. 001-09097)
- 10(n)* Form of Stock Option Agreement under 1999 Omnibus Stock Incentive Plan (Nonqualified Stock Option) (incorporated by reference to Exhibit 10(a) to Form 10-Q for quarter ended October 31, 2004, File No. 001-09097)
- 10(o)* Form of Stock Option Agreement under 1999 Omnibus Stock Incentive Plan (Nonemployee Director Stock Option) (incorporated by reference to Exhibit 10(b) to Form 10-Q for quarter ended October 31, 2004, File No. 001-09097)
- 10(p) Lease dated December 12, 1994 between Stuart Rose/Beavercreek, Inc. and Rex Radio and Television, Inc. (incorporated by reference to Exhibit 10(q) to Form 10-K for fiscal year ended January 31, 1995, File No. 0-13283)
- 10(q) Purchase and Sale Agreement dated February 8, 2007 among Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc., Stereo Town, Inc., REX Stores Corporation and Coventry Real Estate Investments, LLC (incorporated by reference to Exhibit 10(o) to Form 10-K for fiscal year ended January 31, 2007, File No. 001-09097)

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- 10(r) Agreement dated January 29, 2009 between Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc., Stereo Town, Inc., Rex Alabama, Inc., REX Stores Corporation and Appliance Direct, Inc. (incorporated by reference to Exhibit 10(a) to Form 8-K filed February 2, 2009, File No. 001-09097)

10 (s) Third Amendment to Agreement dated July 31, 2009 between Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc., Stereo Town, Inc., Rex Alabama, Inc., REX Stores Corporation and Appliance Direct, Inc. (incorporated by reference to Exhibit 10(a) to Form 8-K filed July 31, 2009, File No. 001-09097)

10(t) Second Global Amendment to Multiple Leases dated July 31, 2009 between Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc., Stereo Town, Inc., Appliance Direct, Inc. and the Tenants (incorporated by reference to Exhibit 10(b) to Form 8-K filed July 31, 2009, File No. 001-09097)

10 (u) Letter Agreement dated September 30, 2009 between Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc., Stereo Town, Inc. and Appliance Direct, Inc. (incorporated by reference to Exhibit 10(a) to Form 8-K filed October 6, 2009, File No. 001-09097)

10 (v) Unit Purchase and Option Agreement dated June 30, 2010 among REX NuGen, LLC and Central Farmers Cooperative (incorporated by reference to Exhibit 10(a) to Form 8-K filed July 16, 2010, File No. 001-09097)

(14) *Code of Ethics:*

14(a) Code of Business Conduct and Ethics (incorporated by reference to Exhibit 14 (a) to Form 10-K for fiscal year ended January 31, 2004, File No. 001-09097)

(21) *Subsidiaries of the registrant:*

21(a) Subsidiaries of registrant

(23) *Consents of experts and counsel:*

23(a) Consent of Deloitte & Touche LLP to use its reports dated April 15, 2011 included in this annual report on Form 10-K into registrant's Registration Statements on Form S-8 (Registration Nos. 33-81706, 33-62645, 333-35118 and 333-69690)

23(b) Consent of Christianson & Associates, PLLP to use its reports dated February 8, 2011 and February 18, 2010, relating to the financial statements of Big River Resources, LLC included in this annual report on Form 10-K into the Registration Statements

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23(c) Consent of Christianson & Associates, PLLP to use its report dated September 22, 2010 relating to the financial statements of NuGen Energy, LLC included in this annual report on Form 10-K into the Registration Statements

23(d) Consent of Boulay, Heutmaker, Zibell & Co, P.L.L.P. to use its reports dated March 14, 2011 and April 12, 2010 relating to the financial statements of Patriot Renewable Fuels, LLC included in this annual report on Form 10-K into the Registration Statements

23(e) Consent of Deloitte & Touche LLP to use its report dated November 24, 2009 relating to the financial statements of Patriot Renewable Fuels, LLC included in this annual report on Form 10-K into the Registration Statements

(31) Rule 13a-14(a)/15d-14(a) Certifications:

31 Certifications

(32) *Section 1350 Certifications:*

32 Certifications

(99) *Additional Exhibits*

99(a) Consolidated financial statements of Big River Resources, LLC for the years ended December 31, 2010, 2009 and 2008

99(b) and
(b)1 Financial statements of Patriot Renewable Fuels, LLC for the years ended December 31, 2010, 2009, 2008 and 2007

99(c) Financial statements of NuGen Energy, LLC for the year ended July 31, 2010

Copies of the Exhibits not contained herein may be obtained by writing to Edward M. Kress, Secretary, REX American Resources Corporation, 2875 Needmore Road, Dayton, Ohio 45414.

Those exhibits marked with an asterisk (*) above are management contracts or compensatory plans or arrangements for directors or executive officers of the registrant.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (“Agreement”), made and entered into as of the 23rd day of July, 2009, by and between NUGEN ENERGY, LLC, a South Dakota limited liability company (“Borrower”), whose address is 27283 447th Avenue, Marion, South Dakota 57043, and DOUGHERTY FUNDING LLC, a Delaware limited liability company (“Lender”), whose address is Suite 4300, 90 South Seventh Street, Minneapolis, Minnesota 55402.

PRELIMINARY RECITALS:

A. Borrower is acquiring from Marion Energy Investments, LLC, a Delaware limited liability company (“Seller”), certain real property located in the County of Turner, State of South Dakota, together with a plant and other facilities that are ancillary, incidental, necessary or related to the marketing, management, servicing, ownership or operation of a 100 MGY anhydrous ethanol refinery and production facility located on said real property, all as more fully defined herein as the “Project”.

B. Borrower is simultaneously entering into a revolving line of credit facility (“Revolving Loan”) to finance the working capital needs of the Borrower as evidenced by the Revolving Promissory Note in a maximum principal amount of Twenty Million and 00/100 Dollars (\$20,000,000.00) (“Revolving Note”).

C. Borrower and Lender seek to enter into a term loan in the aggregate amount of Eighty-Seven Million Eight Hundred Seventy-Four Thousand Five Hundred Forty-seven and 39/100 Dollars (\$87,874,547.39) to finance the acquisition of the Project by Borrower from Seller on a term basis pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby covenant, agree, represent and warrant as follows:

1.

DEFINITIONS

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

“Accounts” shall mean all of the Borrower’s accounts, as such term is defined in the UCC, including each and every right of the Borrower to the payment of money, whether such right to payment now exists or hereafter arises, whether such right to payment arises out of a sale, lease or other disposition of goods or other property, out of a rendering of services, out of a loan, out of the overpayment of taxes or other liabilities, or otherwise arises under any contract or agreement, whether such right to payment is created, generated or earned by the Borrower or by some other person who subsequently transfers such person’s interest to the Borrower, whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together

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

“Account Debtor” shall have the meaning given it under the UCC.

“Accumulated Excess Cash Flow” shall mean the aggregate of Excess Cash Flow commencing on the date of this Agreement and continuing until the date of measurement (provided, however, there shall be no negative numbers taken into account, i.e. no reduction in the aggregate total if at any point no Excess Cash Flow is generated).

“Adjustment Date” shall mean the 30th day following the end of each Calendar Quarter.

“Advance” shall mean any advance of funds under the Loan.

“Affiliate” of any Person shall mean (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person, and (c) with respect to a Lender, any entity administered or managed

by such Lender, or an Affiliate or investment advisor thereof and which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be “controlled by” any other Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract, ownership of voting securities, membership interests or otherwise.

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

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

“Archeological Conditions” shall mean all significant structures, artifacts or features resulting from historic or prehistoric occupation or use of a location to the extent that such structures, artifacts or features may reasonably be protected as valued cultural resources pursuant to an applicable federal law, including the National Historic Preservation Act of 1966 (16 U.S.C. § 470), the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. § 469 et seq.) and the General Regulatory Policies of the U.S. Army Corps of Engineers (33 C.F.R. Part 320), or pursuant to an applicable state law.

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“Asset Purchase Agreement” shall mean that certain Asset Purchase Agreement, dated as of even date herewith, entered into by and between Seller and Borrower.

“Assignment of Contract Rights, Intangibles and Proprietary Rights” shall mean the assignment and pledge by the Borrower to the Lender of all Contract Documents, Intellectual Property Rights, and other documents and intangibles benefiting the Project, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Assignments of Incentive Payments” shall mean collectively the Assignment of Ethanol Production Incentive Payments (SD) and the Assignment of Ethanol Production Incentive Payments (C.C.C.), each as executed and delivered by the Borrower to the Lender, assigning the Incentive Payments to the Lender and directing payment to be made directly to the Lender, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future. The Assignments of Incentive Payments may also include any federally mandated forms required by the Commodity Credit Corporation.

“Assignment of Operating, Service Contracts, Permits and Regulatory Approvals” shall mean the assignment and pledge by the Borrower to the Lender of all Operating Agreements, Service Agreements, Permits, Regulatory Approvals, and other documents and intangibles benefiting the Project in the form prescribed and approved by Lender, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Assignment of Rail Car Leases” shall mean the assignment and pledge by the Borrower to the Lender of Borrower’s interests as lessee in all equipment leased in connection with the Project, including rail road rolling stock in the form prescribed and approved by Lender, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Assignment of Rents and Leases” shall mean the Assignment of Rents and Leases of even date given by the Borrower in favor of the Lender and evidencing a first priority lien on and security interest in the Rents (as defined in the Assignment of Rents and Leases) and the Leases (as defined in the Assignment of Rents and Leases), and as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“ATF” shall mean the United States Alcohol, Tobacco and Firearms Agency of the Department of the Treasury.”

“Bankruptcy Code” shall mean the Bankruptcy Reform Act of 1978 as heretofore and hereafter amended, and codified as 11 U.S.C. §101 *et seq.*

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

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“Borrower Equity” shall mean cash of Borrower in the sum of Three Million and 00/100 Dollars (\$3,000,000.00) subject to reduction for payment of the Resolution Amount as provided in the LOC Agreement.

“BP” shall mean BP Canada Energy Marketing Corp.

“BP Agreement” shall mean the agreement for the purchase of natural gas to be entered into between Borrower and BP pursuant to which Borrower shall purchase natural gas from BP.

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

“Business Day” shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Minneapolis, Minnesota.

“Calendar Quarter” shall mean any three-month period commencing on January 1, April 1, July 1 and October 1.

“Capital Expenditures” shall mean all expenditures (including Capitalized Lease Obligations) which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Borrower, but excluding expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

“Capital Lease” shall mean, as to any Person, a lease of any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, by such Person, as lessee, that is, or should be, in accordance with GAAP, recorded as a “capital lease” on the financial statements of such Person.

“Capitalized Lease Obligations” shall mean, as to any Person, all rental obligations of such Person, as lessee under a Capital Lease which are or will be required to be capitalized on the books of such Person.

“Cash Consideration” shall have the meaning ascribed to it in the Asset Purchase Agreement.

“Central Farmers Cooperative” shall mean Central Farmers Cooperative, a cooperative organized under the laws of South Dakota.

“Change of Control” means the occurrence of any of the following events:

a) Central Farmers Cooperative ceases to elect or appoint a majority of the members of the Board of Managers of the Borrower.

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b) Central Farmers Cooperative ceases to own 51% of the voting member interests of the Borrower.

- c) Steven Domm fails to hold the position and perform the duties of the Borrower's Chief Executive Officer unless any replacement Chief Executive Officer is reasonably acceptable to Lender and Lender so states in writing.

“Chattel Paper” shall have the meaning given it under the UCC.

“City” shall mean the City of Marion, South Dakota.

“Closing Date” shall mean unless extended in writing by the parties, the date that each of the conditions in Section 3.1 of the LOC Agreement have been satisfied, which may not occur later than thirty (30) days after the date of this Agreement unless a Repair Event occurs which requires a repair that cannot be completed in time to complete the performance test before thirty (30) days after the date of this Agreement in which the Closing Date will be not later than forty-five (45) days after the date of this Agreement.

“CO₂” shall mean the carbon dioxide co-product of the Ethanol production process cleaned of residual alcohol and compressed for storage, if produced at the Plant.

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

“Collateral” shall mean those items listed in Section 4.1 including but not limited to all of the Plant, the Premises, Accounts, Chattel Paper, Deposit Accounts, Documents, Equipment, General Intangibles, Goods, Instruments, Inventory, Investment Property, Intellectual Property, Intellectual Property Rights, Letter-of-Credit Rights, any Letters of Credit, the Plant Logo, the Water Rights, all sums on deposit in any collateral account, any items in any lockbox, all monies whether or not in the possession or control of Lender including any cash collateral, all real property pledged pursuant to mortgages and deeds of trust granted pursuant hereto or granted hereafter; together with (i) all substitutions and replacements for and products of any of the foregoing; (ii) all accessions, substitutions for, replacements, accessories, attachments, parts, equipment and repairs, and products with respect to the foregoing; (iii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering the foregoing; (iv) all collateral subject to the lien of any Loan Document; (v) any money, or other assets of the Borrower that now or hereafter come into the possession, custody, or control of the Lender; (vi) all cash and non-cash proceeds of any and all of the foregoing; and (vii) all books and records (including customer lists, files, correspondence, tapes, computer programs, printouts, and computer records) with respect to the foregoing.

“Collateral Assignment of License Agreement” shall mean the assignment and pledge by the Borrower to the Lender of the ICM License Agreement, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Collection Account” shall mean an account maintained with Collection Bank which shall be in Lender's name and into which shall be deposited all Proceeds of Collateral.

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“Collection Bank” shall mean Farmers State Bank of Marion.

“Construction Contracts” shall mean any contract entered into between a Contractor and the Borrower for the design, construction, renovation or equipping of any portion of the Project.

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

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

“Control Agreement” shall mean a control agreement in form and substance acceptable to Lender and executed by Lender, the Borrower and Collection Bank or such other banks as Lender may approve in its sole discretion pursuant to which, among other things, the Lender is granted “control” (as that term is defined in the UCC with respect to deposit accounts) for purposes of perfection over any and all deposit accounts with the Collection Bank or such other bank.

“Corn Agency Agreement” shall mean the Agency Agreement between Borrower and Fremar, LLC dated June 25, 2009 and/or any other agreement providing for the supply to the Borrower of grain sufficient to achieve 100 MGY output of Ethanol, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

“County” shall mean the County of Turner, South Dakota.

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

“DDGS Purchaser” shall mean any purchaser of DDGS as approved by Lender.

“DDGS Receivables” shall mean those Accounts payable to the Borrower for the sale of dry DDGS arising from investment grade Account Debtors in connection with the purchase of dry DDGS by such Account Debtors.

“DDGS Sale and Purchase Agreement” shall mean that certain Distiller’s Grain Marketing Agreement dated June 16, 2009 between Borrower and CHS, Inc., and any and all other agreements wherein DDGS Purchaser(s) agree to purchase the dry DDGS produced from the Project, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

“Debt” shall mean all items of indebtedness or liability that in accordance with GAAP would be included in determining total liabilities as shown on the liabilities side of the balance sheet for Borrower and shall also include the aggregate payments required to be made by Borrower at any time under any lease that is considered a Capital Lease under

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GAAP, the indebtedness due the Lender under the Loan, including principal and interest due under the LOC.

“Debt Service” shall mean as to any applicable period cash interest payments, principal payments, premiums and charges with respect to all Debt required to be paid during such period.

“Deposit Accounts” shall have the meaning given it under the UCC.

“Design Build Agreement” shall mean the Lump Sum Design-Build Agreement dated May 5, 2006 originally between Fagen and Millennium Ethanol, LLC (“Millennium”).

“Design Professionals” shall mean, collectively, the architects, engineers, consultants and professionals that perform services related to the design of any Work at the Project or portions thereof, or otherwise involved on the Project to review and test performance of various Project elements or confirm compliance thereof with any Plan Documents, or otherwise to provide recommendations or advice relating to the design of any portion of the Project.

“Distribution” by any Person shall mean (a) with respect to any stock issued by such Person or any partnership, membership or other equity interest of such Person, the retirement, redemption, purchase, or other acquisition for value of any such stock or partnership, membership or other equity interest, (b) the declaration or payment of any dividend or other distribution on or with respect to any stock or any partnership, membership or other equity interest of any Person, and (c) any other payment by such Person with respect to such stock or partnership, membership or other equity interest.

“Documents” shall have the meaning given it under the UCC.

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

“Electrical Supply Agreements” shall mean those agreements with Utility Providers to provide the Electrical Supply System to the Plant including without limitation the Electric Service Agreement dated July 14, 2006 originally between Millennium and Southeastern Electric Cooperative, Inc., as amended by Service Provider Consent and Amendment to Electric Service Agreement dated May 24, 2007, and further amended by Amendment to Electric Service Agreement II dated May 21, 2009, provided all such agreements and amendments thereto must be pre-approved by Lender in writing.

“Electrical Supply System” shall mean the Electrical Facilities pursuant to which electrical energy is transferred from the Utility Providers’ main lines and down converted for use in the Plant and which Borrower shall purchase under the Electrical Supply Agreements.

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“Employee Benefit Plan” shall mean an employee benefit plan as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a plan as defined in Section 4975(e)(1) of the IRC.

“Energy Management Consulting Services Agreement” shall mean those agreements with third party service provider in connection with the provision of energy management consultation services, including without limitation the Energy Management Agreement originally between Millennium and Energy Management & Consulting Services, LLC dated October 4, 2006, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

“Environmental Indemnity” shall mean the agreement executed by the Borrower indemnifying and holding the Lender harmless from any Hazardous Substances and the violation of any Environmental Laws, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

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

“Equipment” shall mean all of Borrower’ s equipment, as defined in the UCC, including all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal property (other than Inventory), and all parts, accessories and special tools therefor, and accessions thereto and, in any event, including all machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture,

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materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

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

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

“Escrow Agent” shall mean Wells Fargo Bank, National Association.

“Escrow Agreement” shall mean the Escrow Agreement dated of even date herewith by and among Borrower, Lender, Seller, Central Farmers Cooperative, and Escrow Agent.

“Escrow Closing Date” shall mean the date on which this Agreement and the Loan Documents are executed and delivered to the Escrow Agent.

“Ethanol” shall mean anhydrous denatured fuel grade ethanol alcohol meeting all applicable ASTM Standards and the ethanol standards established by the Williams Pipeline Test and ethanol standards established by all other standards ethanol industry tests.

“Ethanol Purchaser” shall mean any purchaser of Ethanol as approved by Lender.

“Ethanol Receivables” shall mean those Accounts payable to the Borrower for the sale of Ethanol.

“Ethanol Sales and Purchase Agreement” shall mean shall mean that certain Ethanol Sales and Marketing Agreement dated June 16, 2009 between Borrower and CHS, Inc., and any and all other agreements any and all agreements wherein Ethanol Purchaser(s) agree to purchase the nameplate capacity of the Ethanol produced from the Project, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

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

“Excess Cash Flow” shall be as defined in the LOC Agreement.

“Fagen” shall mean Fagen, Inc.

“FB&T” shall mean First Bank & Trust in Brookings, South Dakota.

“FF&E Reserve” shall mean the reserve account established pursuant to Section 3.1.

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“Final Make-Up Payment Adjustment Date” shall mean the Adjustment Date immediately following the Calendar Quarter in which 15% of Accumulated Excess Cash Flow first equals 50% of Make-Up Consideration.

“Financial Institution” shall mean a money center national bank or European Community bank doing business in the United States and whose assets and business are subject to regulation by either the Comptroller of the Currency or the Federal Deposit Insurance Corporation

and whose long term unsecured debt obligations are rated at least "A-" by Standard & Poors or "A3" by Moody's Investors Services, Inc.

"Financing Statements" shall mean one or more financing statements given or authorized by the Borrower under the provisions of the UCC to Lender perfecting a security interest in the Collateral, as the same has been amended and assigned, and as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

"Fixed Charges" shall mean for any described fiscal period, the sum of: (a) interest expense for such period; (b) payments under Capitalized Lease Obligations not otherwise included in interest expense for such period; plus (c) any scheduled principal payments for borrowed money made during such period.

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

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

"General Intangibles" shall mean all "general intangibles," as that term is defined in the UCC, now or hereafter owned by Borrower, including without limitation equipment leases, partnership interests, limited liability company interests, member interests, joint venture interests, all patent rights, trademarks, copyrights, trade names, goodwill, registrations, license rights, rights in intellectual property, licenses, permits, business records, customer and subscriber lists, computer programs, tapes, disks and related data processing software owned by or in which such Person has an interest, rights to refunds or indemnification, the right to receive any insurance proceeds and all other intangible personal property of every kind and nature.

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

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

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

"Gross Overadvance Amount" shall have the meaning ascribed to it in the LOC Agreement.

"Hazardous Substance" shall mean any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined, prohibited, limited or regulated under any statute, law, ordinance, rule or regulation of any local, state, regional or Federal authority having jurisdiction over the property of the Borrower, or its use, including but not limited to any material, substance or waste which is (a) defined, listed or otherwise classified as a hazardous substance, hazardous material, hazardous waste or other words of similar meaning under any Environmental Laws; (b) petroleum, petroleum hydrocarbons, and all petroleum products; (c) polychlorinated biphenols; (d) lead; (e) urea formaldehyde; (f) asbestos and asbestos containing materials; (g) flammables and explosives; (h) infectious materials; (i) atmospheric radon at levels over 4 picocuries per cubic liter, (j) radioactive materials; or (k) defined, prohibited, limited or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any of the foregoing Environmental Laws.

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

“ICM” shall mean ICM, Inc., a Kansas corporation, specializing in process consulting, engineering, equipment fabrication, field installation, plant startup and, through related companies, commodity trading.

“ICM License Agreement” shall mean the ICM License Agreement dated May 5, 2006 originally between Millennium and ICM.

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

“Improvements” shall mean the Plant, all buildings, structures, Equipment, improvements, betterments and Personalty located on or in the Premises, together with related on site improvements and Off Site Improvements and including the Rail Spur.

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

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

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

“Indemnified Party” and “Indemnified Parties” shall mean, respectively, the Lender and any parent corporation, Affiliate or subsidiary of the Lender, and each of their respective officers, directors, employees, attorneys and agents, and all of such parties and entities.

“Initial Loan Fee” shall have the meaning ascribed to it in Section 2.17.

“Initial Repair Costs” shall mean the costs paid for by the Borrower up to a maximum of One Million and 00/100 Dollars (\$1,000,000.00) to make repairs or otherwise modify the Plant and Equipment as identified by ICM pursuant to the report prepared by ICM in connection with the Start-Up and Testing Phase as described in the Asset Purchase Agreement.

“Inspecting Engineer” shall mean HDR Engineering, Minneapolis, Minnesota or such other engineer/architect engaged by Lender.

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

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

“Intellectual Property” shall mean all “Intellectual Property” (as that term is defined in the UCC) now owned or hereafter acquired, including, but not limited to all proprietary information made available to the Borrower under the Design Build Agreement and License Agreement and all Copyrights, Trademarks, Patents, trade secrets, customer lists, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, recipes, experience, processes, models, drawings, materials and records, or any interest therein, now owned or licensed to or hereafter acquired by Borrower.

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

“Intercreditor Agreement” shall mean an Intercreditor and Collateral Priority Agreement by and among Lender (in its capacity as lender under this Agreement) and Lender (in its

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capacity as the lender under the LOC Agreement), as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Interest Adjustment Date” shall mean the first day of each Calendar Quarter in a year, i.e., January 1, April 1, July 1 and October 1.

“Interest Expense”: For any period, the aggregate interest expense (including capitalized interest) of the Borrower for such period including, without limitation, the interest portion of any Capital Lease; provided, however, that the foregoing shall be adjusted to reflect only the net effect of any interest rate swap, interest hedging transaction, or other similar arrangement entered into by the Borrower in order to reduce or eliminate variations in its interest expenses.

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

“Inventory” shall mean “inventory,” as that term is defined in the UCC, now or hereafter owned by Borrower, including without limitation (a) all products, goods, materials and supplies produced, purchased or acquired by Borrower for the purpose of sale in the ordinary course of its business including corn and grain supplies, ethanol, distillers grains and carbon dioxide byproduct, (b) maintenance materials inventory and (c) goods in which Borrower has an interest in mass or a joint or other interest or right of any kind.

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

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

“Judgments and Awards” shall mean all awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Project, including any awards for damages sustained to the Project, for a temporary taking, change of grade of streets or taking of access.

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

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

“Legal Requirements” shall mean all laws, ordinances, rules, regulations and requirements of all Governmental Authorities including but not limited Environmental Laws applicable to all or part of the Premises or the Project or the construction,

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development, improvement, repair, renovation, lease, sale, encumbering or transfer of all any part of the Premises.

“LIBOR” shall mean the daily rate of interest as published in the Money Rates section of The Wall Street Journal as London Interbank Offered Rates (Libor) with a term of three (3) months. If The Wall Street Journal ceases to publish the London Interbank Offered Rates (Libor), the Lender may select a substitute publication or service that publishes the London Interbank Offered Rates (Libor), or its equivalent, and if such London Interbank Offered Rates (Libor) is no longer published, then the LIBOR Rate will be determined by the Lender computing the arithmetic mean rates of interest per annum notified to the Lender by at least two (2) major banks in the London interbank market as the rate of interest at which U.S. dollar deposits in the approximate amount of the Loan would be offered to major banks in the London interbank market at their request on the second Libor Business Day prior to the Interest Adjustment Date. If the LIBOR Rate is not published or announced on the Interest Adjustment Date, then the LIBOR Rate published or announced on the immediate last day prior to the Interest Adjustment Date shall be substituted.

“Libor Business Day” shall mean any day on which banks in London, England and New York, New York are open for conducting transactions in foreign currency and exchange.

“Lien” shall mean, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person (including an interest in respect of a Capital Lease) which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, title retention lien, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

“Loan” shall mean the Eighty-Seven Million Eight Hundred Seventy-Four Thousand Five Hundred Forty-Seven and 39/100 Dollars (\$87,874,547.39) loan evidenced by the Note and described in Article 2 of this Agreement.

“Loan Amount” shall mean Eighty-Seven Million Eight Hundred Seventy-Four Thousand Five Hundred Forty-Seven and 39/100 Dollars (\$87,874,547.39).

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

- (i) Note
- (ii) Mortgage
- (iii) Assignment of Rents and Leases
- (iv) Financing Statement(s)
- (v) Assignment of Contract Rights, Intangibles and Proprietary Rights
- (vi) Assignment of Rail Car Leases

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- (vii) Assignment of Operating, Service Contracts, Permits and Regulatory Approvals
- (viii) Control Agreement
- (ix) Collateral Assignment of License Agreement
- (x) Assignments of Incentive Payments
- (xi) Environmental Indemnity

(xii) Intercreditor Agreement

and such other documents as Lender may require from time to time to evidence and secure the Loan together with all amendments, restatements, supplements and other modifications thereto.

“Loan Fee” shall mean the sum of \$659,062.50.

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

“Loan Year” shall mean any 12 month period during the term of this Agreement commencing on the Closing Date or any anniversary of the Closing Date.

“LOC” shall mean the revolving line of credit furnished to the Borrower by the LOC Lender pursuant to the LOC Agreement in the aggregate revolving amount of not greater than \$20,000,000.00 (as determined in accordance with the LOC Agreement) the proceeds of which will be available to the Borrower for working capital needs including financing the acquisition of corn input for processing into Ethanol.

“LOC Agreement” shall mean the Revolving Credit and Loan Agreement of even date between the Borrower and LOC Lender providing for the borrowing of the LOC, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“LOC Collateral” shall mean all Inventory (including all raw, unprocessed inventory, work in process, and finished inventory products, bi-products and co-products), DDGS Receivables and Ethanol Receivables.

“LOC Documents” shall mean the documents required by the LOC Agreement consummating the LOC including the Intercreditor Agreement.

“LOC Lender” shall mean Lender (in its capacity as Lender under the LOC Agreement).

“Logo” shall mean all right and interest in and to any and all trademarks, tradenames, corporate names, franchised names, business names, fictitious names, trade styles, logos, service marks, business identifiers used in the operation of the Project.

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“Major Project Documents” shall mean the Ethanol Sales and Purchase Agreement, the DDGS Sales and Purchase Agreement, the Management Agreement, the ICM License Agreement, the Corn Agency Agreement, the Energy Management Consulting Services Agreement, the Water Supply Agreements, the Electrical Supply Agreements, the Natural Gas Supply Agreements, the Rail Agreements, the Rail Car Leases, and the Operating Plan and Budget.

“Make-Up Consideration” shall mean the total consideration not to exceed the total amount set forth on Exhibit B-1 attached hereto (which exhibit shall be updated as agreed by Borrower and Lender as of the Closing Date), which is the aggregate amount the Borrower is offering to provide to Make-Up Sellers under Make-Up Contracts, and 50% of which amount may be paid in the form of Make-Up Payments and 50% of such amount may be paid in the form of Make-Up Equity, as more particularly described in this Agreement.

“Make-Up Contracts” shall mean collectively the contracts between a Make-Up Seller and Borrower in a form acceptable to Lender for the purchase by Borrower of corn from such Make-Up Seller provided that the Borrower has agreed to provide Make-Up Consideration to such Make-Up Seller in an amount not to exceed the amount by which the purchase price for corn under such Make-Up Seller's corn supply contract with U.S. Bio exceeds the corresponding base price for corn related to such Make-Up Seller's corn supply contract as listed on Exhibit B-2 attached hereto (which exhibit shall be updated as agreed by Borrower and Lender as of the Closing Date).

“Make-Up Payments” shall mean, to the extent Excess Cash Flow is payable to Borrower in accordance with the terms of this Agreement, an amount equal to 15% of Excess Cash Flow payable quarterly which may be used by Borrower to pay Make-Up Sellers not more than 50% of the Make-Up Consideration pursuant to the Make-Up Contracts.

“Make-Up Equity” shall mean permitted issuances of member equity interests in Borrower that Borrower may provide to Make-Up Sellers for up to fifty percent (50%) of the Make-Up Consideration pursuant to the Make-Up Contracts; provided, however, that issuance of such equity interests may never dilute the percentage interests that the Lender is entitled to receive pursuant to the Warrant.

“Make-Up Sellers” shall mean the sellers under Make-Up Contracts.

“Management Agreement” shall mean the Management Agreement dated June 25, 2009, between Borrower and Central Farmers Cooperative and/or any other agreement providing for the management of the operations of Borrower by Central Farmers Cooperative in form satisfactory to the Lender, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

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

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“Material Adverse Effect” shall mean a material adverse effect on the business, operations, property, assets, liabilities or financial condition taken as a whole, or a material adverse effect on the ability of any Person to perform its obligations.

“Materials” shall mean all materials and goods furnished to the Premises.

“Maturity Date” shall mean August 1, 2015.

“Mechanic” shall mean any architect, engineer, surveyor, Contractor, laborer, materialman, subcontractor, supplier, worker or Person or Persons performing Labor on the Premises and/or installing, delivering or supplying Materials in or to the Premises.

“Mechanics Lien” shall mean any lien that may be claimed by a Mechanic for the payment of its labor, services or materials provided in the construction of such improvement including without limitation all rights under applicable law, and any so-called “mechanic lien laws” whether available by constitution, statute, code or case law, or any rules or regulations promulgated thereunder.

“Mechanics Lien Rights” shall mean any rights available at law for a Mechanic providing labor, services or materials to an improvement on real estate to claim a Mechanics Lien.

“Mechanics Lien Waiver” shall mean a waiver of lien in format and content sufficient under controlling law to waive and relinquish any right to assert a Mechanics Lien against the Premises.

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

“Mortgage” shall mean the Mortgage and Security Agreement and Fixture Financing Statement of even date given by the Borrower in favor of the Lender and evidencing a first priority lien on and security interest in the Premises, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

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

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

“Natural Gas Supply Agreements” shall mean those agreements with Utility Providers to provide natural gas to the Plant, either directly or from the mainlines of such Utility Provider to a distribution point of another Utility Provider for eventual distribution to the Plant by such other Utility Provider, including without limitation the following agreements, provided all such agreements and amendments thereto must be pre-approved by Lender in writing:

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NNG Agreement
Northwestern Agreement

“Natural Gas Supply System” shall mean the Natural Gas Facilities pursuant to which natural gas is transferred from the Utility Providers’ main pipe lines and ultimately piped to the Plant for use in the Plant and which Borrower shall purchase under the Natural Gas Supply Agreements.

“Net Income” shall mean with respect to the Borrower for any period, the net income (or loss) of the Borrower for such period as determined in accordance with GAAP, excluding gains or losses on the sale of assets other than Inventory.

“NNG” shall mean Northern Natural Gas Company.

“NNG Agreement” shall mean collectively (i) the Firm Throughput Service Agreement dated June 9, 2006 originally between NNG and Millennium, as amended; (ii) the Amendment to TFX Throughput Service Agreement dated November 1, 2007 originally between Millennium and NNG; (iii) Affirmation of Obligations Relating to Facilities dated June 8, 2009 originally between NNG and Seller, as amended by First Amendment to Affirmation of Obligation Relating to Facilities Contract No. 600979 dated June 11, 2009 originally between NNG and Seller; and (iv) Agreement to Provide Security dated June 8, 2009 originally between NNG and Seller.

“NNG Letter of Credit” means the letter of credit issued by FB&T as issuer for the benefit of NNG in the original face amount of \$1,975,918.00 or any letter of credit issued by any entity in replacement thereof.

“Northwestern” shall mean NorthWestern Corporation d/b/a NorthWestern Energy.

“Northwestern Agreement” shall mean Letter Agreement for Request for Gas Distribution Service dated June 15, 2009 between Seller and NorthWestern.

“Note” shall mean the Senior Promissory Note of even date given by the Borrower and payable to the Lender in the Loan Amount, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Off Site Improvements” shall mean those improvements off the Premises required by any Governmental Authority.

“Obligations” shall mean any and all of the obligations of the Borrower under this Agreement or any other of the Loan Documents including but not limited to payment of the Loan and performance of the terms and conditions of this Agreement.

“Operating Account” means an account in the Borrower’ s name at a bank reasonably acceptable to the Lender (but not FB&T) subject to a Control Agreement in favor of the Lender which shall be used as the Borrower’ s principal operating account.

“Operating Agreements” shall mean the following agreements entered into by the Borrower for the operation of the Project:

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Corn Agency Agreement
Ethanol Sales and Purchase Agreement
DDGS Sales and Purchase Agreement

Energy Management Consulting Services Agreement
Rail Agreements
Rail Car Leases
Electrical Supply Agreements
Natural Gas Supply Agreements
Water Supply Agreements
ICM License Agreement
Management Agreement
Risk Management Agreement

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

“Operating Plan and Budget” shall mean, for any period, an operating plan and budget for the Project with respect to such period prepared by Borrower in good faith and with due care that sets forth in reasonable detail (i) the projected levels of operation of the Project on a monthly basis, (ii) the projected revenues and expenses (including all scheduled payments of principal and interest on all Debt) of the Project on a monthly basis, (iii) the overhaul, maintenance and repair schedule for the Project, (iv) the amount and timing of expected Capital Expenditures, (v) cash flow projections and working capital needs and (vi) such other information as the Lender may reasonably request prior to the adoption thereof.

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

“Overadvance Adjustment Date” shall mean the Adjustment Date immediately following the first Calendar Quarter in which the Accumulated Excess Cash Flow is sufficient to cause the Overadvance Amount to be reduced to zero.

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“Overadvance Amount” shall have the meaning ascribed to it in the LOC Agreement.

“Owner” shall mean the Borrower.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

“Payment in Full” or “Paid in Full” or any similar term(s) with respect to each Loan shall mean the satisfaction and final payment in full of the Loan at issue in cash or cash equivalents reasonably acceptable to the Lender and the termination of any obligation on the part of the Lender to make any further Advances or to afford any financial accommodation to Borrower with respect to the Loan at issue and the full and timely performance of all other obligations to Lender arising out of this Agreement and the Loan Documents for a period of time of one hundred and twenty (120) days.

“Pay Rate” is the interest rate described in Section 2.2(a).

“Pension Plan” shall mean an employee pension benefit plan that is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the IRC, and that is maintained by Borrower or an ERISA Affiliate for employees.

“Performance Guarantee Criteria” shall mean the criteria listed in Exhibit A to the Design Build Agreement.

“Permit” shall mean any valid waiver, exemption, variance, franchise, permit, authorization, approval, acknowledgement, confirmation, license or similar order of or from any federal, commonwealth, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project and/or operation and including without limitation the following:

South Dakota Storm Water Discharge Permits
South Dakota Risk Management Plan (Denaturant/Ammonia Products)
ATF Ethanol Producer License
NPDES Permit
South Dakota Spill Prevention Control and Countermeasure Plan
South Dakota Alcohol Producers License
South Dakota Storage Tank Permit

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Turner County Highway Access Permits
South Dakota Department of Environment and Natural Resources Title V Air Quality
Operating Permit
Effective Fuel Additive Manufacturer’ s Notification with the U.S. Environmental
Protection Agency
EPA Facility Identification Number and Company Identification Number as a RIN
Generator
Commercial feed license or permits

“Permitted Exceptions” shall mean the exceptions to insured coverage set forth in Schedule B to the Title Policy.

“Permitted Liens” shall mean those Liens permitted under Section 9.2(a).

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

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

“Plant” shall mean the dry mill grain processing plant capable of grinding approximately 36,000,000 bushels of corn per year to produce a name-plate capacity of 100,000,000 gallons of fuel grade Ethanol per year and with approximately 321,000 tons of dried distillers grains with solubles per year located on the Real Property.

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

“Principal” shall mean the sum of Eighty-Seven Million Eight Hundred Seventy-Four Thousand Five Hundred Forty-Seven and 39/100 Dollars (\$87,874,547.39), which has been fully disbursed by Lender and is evidenced by the Note.

“Products” shall mean Ethanol, WDGS, DDGS, CO₂, if produced, and any other co-product or by-product produced in connection with the production of Ethanol at the Project and all whole and processed grains handled by Borrower (or by any third party grain operator on behalf of Borrower).

“Project” shall mean the Real Property, Plant, the Water Rights, plant facilities, infrastructure, Intellectual Property, Intellectual Property Rights, machinery, Equipment, Inventory, vehicles, Goods, intangibles, Accounts, Instruments, revenues, Documents, Major Project Documents, management contracts, ethanol and distillers marketing contracts, grains marketing contracts, grain origination contracts, risk management contracts, transportation contracts, spur line and railroad access agreements, energy contracts, Permits, operating permits and licenses located at, originating from or used by the Plant in the production of fuel grade Ethanol.

“Project Documents” shall mean the agreements and documents to which Borrower is or becomes a party during the term of the Loan, relating to the development, engineering, design, ownership, construction and operation of the Project, including Major Project Documents, all agreements relating to the Site, all agreements relating to the supply of water, natural gas, corn and electricity to the Project, all other agreements relating to the operations and maintenance of the Project.

“Quarterly Excess Cash Flow” with respect to any Calendar Quarter, means the Excess Cash Flow for such Calendar Quarter.

“Rail Access Agreement” shall mean the Industry Track Agreement originally between the BNSF Railway Company and Millennium dated May 25, 2006, providing for access of unit trains from the Project to the Class I Mainline tracks of the BNSF Railway Company.

“Rail Agreements” shall mean any agreements with rail companies to provide rights to access and/or use railroad tracks in connection with the Plant, including without limitation the following agreements and agreements ancillary thereto, provided all such agreements and amendments thereto must be pre-approved by Lender in writing:

Rail Access Agreement

Rail Lease

2. “Rail Car Leases” shall mean any and all leases between Borrower and any Rail Car Lessor pursuant to which Borrower leases rail cars or other rail road rolling stock to be used in connection with the operation of the Plant, including without limitation (i) the Railroad Car Lease Agreement, dated June 24, 2009 originally between Trinity Industries Leasing Company (“Trinity”) and Seller, as amended by Rider One (1) to Railroad Car Lease Agreement, dated June 24, 2009 originally between Trinity and Seller, as further amended by Rider Two (2) to Railroad Car Lease Agreement, dated July 13, 2009 originally between Trinity and Seller; and (ii) the GATX Rail Car Service Contract, dated July 1, 2009, originally between GATX Corporation and Seller (Contract No. 9431), as amended by Amendment No. 1 to Contract No. 9431, dated July 1, 2009, originally between GATX Corporation and Seller, as further

amended by Rider No. 1 to Car Service Contract No. 9431, dated July 1, 2009, originally between GATX Corporation and Seller; provided all such agreements and amendments thereto must be pre-approved by Lender in writing.

“Rail Car Lessor” shall mean any company leasing rail cars, locomotives or other rail road rolling stock to Borrower.

“Rail Car Lessor’s Consent” shall mean that certain consent being delivered by the Rail Car Lessor to Lender in a form prescribed by and approved by Lender.

“Rail Lease” shall mean the Lease of Land For Construction/Rehabilitation of Track originally between Millennium and BNSF Railway Company dated May 25, 2006 permitting the Borrower to occupy the leased premises for the performance of certain activities related to the Rail Spur.

“Rail Spur” shall mean the connection between the Industry Track and the Class I Mainline Tracks of the BNSF Railway Company.

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

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

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

“Required Insurance” or “Insurance” shall mean those policies of insurance required pursuant to the Article entitled Required Insurance.

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

“Resolution Amount” shall have the meaning ascribed to it in the LOC Agreement.

“Revolving Note” shall mean the Revolving Promissory Note in favor of Lender in a maximum principal amount of Twenty Million and 00/100 Dollars (\$20,000,000.00), as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

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“Risk Management Agreement” shall mean any and all agreements providing for risk management services for grain procurement and byproduct marketing, provided all such agreements and amendments thereto must be pre-approved by Lender in writing.

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

“Sale Documents” shall mean the documents required by the Asset Purchase Agreement to consummate the sale of assets thereunder.

“SDENR” shall mean the South Dakota Department of Environment and Natural Resources.

“Seller” shall have the meaning given in the preliminary recitals herein.

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

“Service Provider’ s Consent” shall mean a document in the form and content attached as Exhibit C.

“Soil Stabilization Requirements” shall mean the requirements imposed by the SDENR to complete the requirements set out in that certain Surface Water Discharge Permit No. SD0028380, Construction Storm Water Discharge Permit No. SDR10D739, and Industrial Storm Water Discharge Permit No. SDR00B429.

“Solvent” shall mean as to any Person, such Person (a) owns Property whose Fair Salable Value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present Fair Salable Value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. “Fair Salable Value” shall mean the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

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

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“Start-Up and Testing Phase” shall have the meaning ascribed to it in the Asset Purchase Agreement.

“Subcontractor” shall mean a person, firm or corporation and all of his or its employees who has a Construction Contract or engagement with a Contractor to perform any of the Work, including a Supplier, and anyone supplying equipment or any other item required in connection with the Work as well as anyone involved with the Work at the instance or request of the Subcontractor (sub-tiers).

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

“Tax Escrows” shall mean amounts to be deposited on a monthly basis into an escrow account maintained with the Lender in an amount equal to the estimated annual Impositions.

“Tax Distribution” or “Tax Distributions” shall mean quarterly Distributions to Members for the purpose of paying the quarterly estimated federal and state income tax payments required to be made by each Member of Borrower based upon the operations of the Borrower and the resulting federal and state tax liability of such Member attributable to Borrower’s operations in the assumed amount of 35%.

“Title” shall mean Chicago Title Insurance Company, the title insurer issuing the mortgagee’s title insurance policy through its agent Commercial Partners Title, LLC.

“Title Policy” shall mean an extended coverage ALTA Mortgagee’s Policy of Title Insurance issued by Title (Form 1970 or Form 1992 Revised 10-23-92 with the exclusion for creditors rights and arbitration requirements deleted) and containing such endorsements as Lender may require and setting forth as exceptions to title those exceptions as may be approved by Lender.

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

“Turner County” shall mean Turner County, South Dakota.

“UCC” shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of South Dakota, provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Secured

Party's security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of South Dakota, the term shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"U.S. Bio" shall mean U.S. Bio Marion, LLC, a South Dakota limited liability company.

"USEPA" shall mean the United States Environmental Protection Agency.

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"Utility Agreements" shall mean one or more of the Electrical Supply Agreement, Natural Gas Supply Agreements or Water Supply Agreements as the case may be.

"Utility Providers" shall mean those regulated providers of specific utility services to the Project, i.e. natural gas, water, electricity and other power and energy suppliers.

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

"Warrant" shall mean the warrant issued by Borrower in the form attached as Exhibit C to the LOC Agreement.

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

"Water Rights" shall mean all water rights, contract rights for the supply of potable and process water, irrigation rights, ditch and ditch rights, reservoir and reservoir rights, stock or interest in water, irrigation or ditch companies owned by the Borrower or accruing to the Project.

"Water Supply Agreements" shall mean those agreements with Utility Providers to provide the Water Supply System to the Plant including but not limited to the following agreements, provided all such agreements and amendments thereto must be pre-approved by Lender in writing:

Application for Transfer of Water Service dated as of December 26, 2007, originally between US Bio Marion, LLC and TM Rural Water District

Water Use Agreement dated as of June 14, 2006 originally between TM Rural Water District and Millennium, as amended by Addendum and Consent to Assignment originally between TM Rural Water District and Seller dated May 13, 2009

Water Treatment Plant Financing Agreement dated June 14, 2006 originally between TM Rural Water District and Millennium

"Water Supply Provider" shall mean TM Rural Water District, the entity providing the water to the Project.

"Water Supply System" shall mean all Water Facilities, including the pumping stations and pipelines, pursuant to which water is transferred from the Utility Providers' main pipe lines and piped to the Plant for use in the Plant and which Borrower shall purchase under the Water Supply Agreements.

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"WDGS" shall mean wet distiller's grain solubles, which may or may not be a product of the Project.

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

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

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

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

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

2.

THE LOAN

2.1 Loan. As of the Closing Date, the Loan has been fully advanced. Advances made to Borrower to date equal the Loan Amount.

2.2 Interest Rate. The Loan will bear interest during its term at the following rates of interest:

(a) Pay Rate. During the term of the Loan at a fluctuating per annum interest rate equal to 300 Basis Points plus LIBOR as it adjusts on each Interest Adjustment Date.

(b) Default Rate. If an Event of Default occurs, then, at the option of the Lender, during the entire period during which such Event of Default shall occur and be continuing, interest shall be payable on the Principal Balance remaining on the Loan at a per annum rate of interest equal to the lesser of (i) the maximum lawful rate of interest permitted to be paid on the Loan at issue or (ii) 800 Basis Points plus LIBOR as it adjusts from time to time (“Default Rate”) whether or not the

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Lender has exercised its option to accelerate the maturity of the Loan and declare the entire Principal Balance of the Loan due and payable.

2.3 Calculation of Interest. Interest shall be calculated on the basis of a 360 day year and will be payable on a 30/360 day basis.

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

2.5 Payment of Loan. The Loan shall be payable as follows:

(a) Interest-only Payments. From the Closing Date through the last day of the 24th calendar month thereafter, Borrower shall make payments on the first day of each month in the amount of accrued interest. Borrower shall be entitled to a credit against payments due hereunder in an amount equal to the draw on the LOC used by Borrower to fund Initial Repair Costs up to a maximum amount of One Million and 00/100 Dollars (\$1,000,000.00).

(b) Amortized Payments. Commencing on the first day of the 25th calendar month after the Closing Date and on the first day of each month thereafter, Borrower shall make monthly amortized payments of principal and interest sufficient to amortize the remaining unpaid principal balance at the Pay Rate as it may adjust from time to time based on an amortization schedule of fifteen (15) years.

(c) Maturity Date. On the Maturity Date the entire unpaid balance plus accrued interest shall be due and payable in full.

2.6 Voluntary Prepayment. The Loan may be prepaid on sixty (60) days notice in multiples of not less than \$500,000.00 accompanied by accrued interest.

2.7 Involuntary Prepayment. At the option of the Lender the entire unpaid principal balance together with accrued interest shall be due and payable in the event of an insured casualty or condemnation by public authority of the Project.

2.8 Mandatory Prepayments.

(a) Mandatory Prepayments and Application of Excess Cash Flow.

Commencing on the first Adjustment Date following the Closing Date and continuing on each Adjustment Date thereafter until and including the earlier of the Final Make-Up Payment Adjustment Date and the Overadvance Adjustment Date, Quarterly Excess Cash Flow for the Calendar Quarter just ended will be paid or applied as follows:

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- A. an amount equal to 25% of such Quarterly Excess Cash Flow will be paid to the Lender for application to the Obligations;
- B. up to 15% of such Quarterly Excess Cash Flow may be paid to Make-Up Sellers as Make-Up Payments;
- C. an amount equal to 40% of such Quarterly Excess Cash Flow will be paid to the LOC Lender to reduce and pay down the Overadvance Amount; and
- D. an amount equal to 20% of such Quarterly Excess Cash Flow may be retained by the Borrower.

Commencing on the first Adjustment Date following the Final Make-Up Payment Adjustment Date and continuing on each Adjustment Date thereafter, the portion of Quarterly Excess Cash Flow previously to be paid to Make-Up Sellers for Make-Up Payments pursuant to Section 2.8(a)(i)(B) shall be paid to the Lender for application to the Obligations. In the event in any Calendar Quarter that the amount of Make-Up Payments to be paid to Make-Up Sellers is less than 15% of the Quarterly Excess Cash Flow for such Calendar Quarter, the difference between 15% of such Quarterly Excess Cash Flow and the Make-Up Payments to be paid to Make-Up Sellers for that Calendar Quarter will be paid to the Lender for application to the Obligations.

Commencing on the first Adjustment Date following the Overadvance Adjustment Date and continuing on each Adjustment Date thereafter, the portion of Quarterly Excess Cash Flow previously to be paid to the LOC Lender pursuant to Section 2.8(a)(i)(C) shall be paid to the Lender for application to the Obligations. In the event in any Calendar Quarter that the amount of the then remaining Overadvance Amount is less than 40% of the Quarterly Excess Cash Flow for such Calendar Quarter, the difference between 40% of such Quarterly Excess Cash Flow and the then outstanding Overadvance Amount will be paid to the Lender for application to the Obligations.

Commencing on the first Adjustment Date following the last to occur of the Final Make-Up Payment Adjustment Date and the Overadvance Adjustment Date and continuing on each Adjustment Date thereafter, Quarterly Excess Cash Flow for the Calendar Quarter just ended shall be paid or applied as follows:

- A. an amount equal to 80% of such Quarterly Excess Cash Flow will be paid to the Lender for application to the Obligations; and
- B. an amount equal to 20% of such Quarterly Excess Cash Flow may be retained by the Borrower.

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- Mandatory Prepayments of Investment Cash. The Borrower shall pay to the Lender for application to the Obligations all amounts of Investment Cash up to \$3,000,000 that, pursuant to the terms of the LOC Agreement, are required to be paid to the Lender which Investment Cash shall be paid to the Lender on the date received by the Borrower.

2.9 Application of Payments. Any payments received by the Lender shall be applied (i) to any costs of collection, (ii) to Late Charges, (iii) to Interest, (iv) to Principal Balance and (v) if any Advance has been made by the Lender under the terms of this Agreement or any Loan Documents to repay such Advances plus interest thereon, all in such order and priority as the Lender shall determine. Upon an Event of Default any monies received shall, at the option and direction of the Lender, be applied to any sums due hereunder and any Loan Documents in such order and priority as the Lender shall determine. All payments made by the Borrower hereunder or under any of the Loan Documents shall be made without setoff, counterclaim, or other defense.

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

2.11 Costs of Collection. The Borrower agrees to pay the costs of collection including reasonable attorney's fees and costs incurred, all other costs and fees incurred in litigation, mediation, bankruptcy and administrative proceedings and all appeals therefrom and all other costs and expenses incurred in the collection of the amounts due under this Agreement.

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

2.13 Savings Clause. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than permitted under state law) and that this section shall control every other covenant and agreement in this Agreement and any other Loan Documents delivered in connection herewith. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Agreement or under any other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Agreement ("Indebtedness"), or if Lender's exercise of the option to accelerate the maturity of this Agreement, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the Principal Balance (or, if the Principal Balance has been or would thereby be paid in full, refunded to Borrower),

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and the provisions of this Agreement and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

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

2.15 Note. The Advances shall be evidenced by the Note. At the time of any Advance hereunder, a notation thereof shall be made on the books and records of the Lender. Borrower acknowledges and agrees that as of the date of this Agreement, Principal in an amount equal to the entire Loan Amount has been fully advanced by Lender. All amounts recorded by Lender shall be, absent manifest error, conclusive and binding evidence of (i) the Principal amount of the Advances hereunder, (ii) any accrued and unpaid interest owing on the Advances, and (iii) all amounts repaid on the Advances. The failure to record any such amount or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of the Borrower under the Note to repay the Principal amount of the Advances, together with all interest accruing thereon.

2.16 Amount of Advances. In no event shall the Lender be obligated to advance more than the Loan Amount.

2.17 Loan Fee. The Borrower agrees to pay to the Lender the Loan Fee which shall be paid in the following installments: a) \$439,375 payable on the Closing Date ("Initial Loan Fee"); and b) the sum of \$219,687.50 paid in 24 equally monthly installments of \$9,153.65 each commencing on the first of day of the month following the date in which the Closing Date occurs and continuing on the first day of each month thereafter until the Lender has received the sum of \$219,687.50.

3.

RESERVES

3.1 FF&E Reserve. Commencing on the first day of the month following the Closing Date, the monthly sum of \$50,000.00 shall be funded into an interest-bearing reserve account in Lender's name (said interest to be for the account of Borrower) the proceeds of which are to be available for Capital Expenditures in the replacement of machinery and equipment in the Project.

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3.2 Tax Escrows. Borrower shall deposit with the Lender, or at Lender's request, with its servicing agent, on the first day of each and every month as a deposit to pay Impositions accruing against the Project:

(a) Initially a sum such that the amounts to be deposited pursuant to (b) next and such initial sum shall equal the estimated Impositions for the next due payment; and

(b) Thereafter, monthly an amount equal to one-twelfth (1/12th) of the estimated annual Taxes due on the Premises.

Lender will, upon the presentation to the Lender by the Borrower of the bills therefor, pay the Taxes from such deposits or will upon presentation of receipted bills therefor, reimburse the Borrower for such payments made by the Borrower. In the event the deposits on hand shall not be sufficient to pay all of the estimated Impositions when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then the Borrower shall pay to the Lender on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited to subsequent payments to be made for such items. If an Event of Default shall occur, the Lender may, at its option, without being required so to do, apply any deposits on hand to the prepayment of the Principal Balance of the Loan, in such order and manner as the Lender may elect. When the Loan has been fully paid any remaining deposits shall be returned to the Borrower as its interest may appear. All deposits are hereby pledged as additional security for the Loan, shall be held for the purposes for which made as herein provided, may be held by Lender or its servicing agent and may be commingled with other funds of the Lender, or its servicing agent, shall be held in an interest bearing account of Lender's choice and shall not be subject to the decision or control of the Borrower. Neither Lender nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Lender or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, then the amounts escrowed shall be based on the entire tax bill and Borrower shall have no right to require an apportionment and Lender or its servicing agent may pay the entire tax bill notwithstanding that such taxes pertain in part to other property and the Lender shall be under no duty to seek a tax division or apportionment of the tax bill.

4.

SECURITY INTEREST

4.1 Grant of Security Interest. To secure the prompt payment and performance of the Loan and the Obligations of the Borrower hereunder the Borrower hereby grants a continuing security interest in and lien upon all assets of Borrower, including all of the following Collateral, whether now owned or hereafter acquired, and wherever located:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Commercial Tort Claims;

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(iv) the Collection Account;

(v) the Operating Account;

- (vi) the FF&E Reserve;
- (vii) the Tax Escrows;
- (viii) all Fixtures;
- (ix) all Deposit Accounts;
- (x) all Documents;
- (xi) all Equipment;
- (xii) all General Intangibles;
- (xiii) all Goods;
- (xiv) all Instruments;
- (xv) all Intellectual Property;
- (xvi) all Intellectual Property Rights;
- (xvii) all Inventory;
- (xviii) all Investment Property;
- (xix) all Letter-of-Credit Rights;
- (xx) all Supporting Obligations
- (xxi) Premises;
- (xxii) Plant;
- (xxiii) all monies, whether or not in the possession or under the control of Lender, or a bailee of Lender, including any Cash Collateral;
- (xxiv) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (xxv) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

4.2 Lien on Deposit Accounts; Cash Collateral.

- Deposit Accounts. To further secure the prompt payment of the Loan and performance of all obligations hereunder, Borrower hereby grants to Lender a continuing security interest in and lien upon all of such Borrower' s right, title and interest in and to each Deposit
- (a) Account of Borrower and any deposits or other sums at any time credited to any such Deposit Account, including any sums in any blocked accounts or in any accounts into which such sums are swept. Lender' s security interest under this Section 4.2(a) shall be subordinate to the security interest of the LOC Lender in all such Deposit Accounts, excepting the Tax Escrows and FF&E Reserve.

Lender shall have a first priority security interest in the Tax Escrows and FF&E Reserve. Prior to the occurrence of an Event of Default, Borrower shall direct each bank or other depository to deliver to the account of Borrower, on a daily basis, all balances in each Deposit Account maintained by Borrower with such depository. At all times after the occurrence of an Event of Default, the Lender may direct each bank or other depository to deliver to Lender, on a daily basis, for application to the Obligations then outstanding, all available balances in each Deposit Account maintained by Borrower with such depository. Borrower irrevocably appoints, at all times after the occurrence of an Event of Default, Lender as Borrower's attorney in fact to collect such balances to the extent any such delivery is not so made. Borrower waives the right at all times after the occurrence of an Event of Default to direct the application of any payments or Collateral proceeds, and agrees that Lender shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Lender deems advisable.

- Certain After-Acquired Collateral. Borrower shall promptly notify Lender in writing if, after the Closing Date, Borrower obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Lender's request, shall promptly execute such documents and take such actions as Lender deems appropriate to effect Lender's duly perfected lien upon such Collateral and to establish and perfect the priority
- (b) provided therein pursuant to this Agreement, including obtaining any appropriate possession, control agreement or lien waivers. If any Collateral is in the possession of a third party, at Lender's request, Borrower shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Lender. All of Borrower's funds including but not limited to proceeds of Accounts, the Borrower's share of Excess Cash Flow and any equity investments in the Borrower including but not limited to Investment Cash and Borrower Equity will be deposited and maintained in a Deposit Account subject to a Control Agreement in favor of the Lender.

4.3 Administration of Inventory.

- Records and Reports of Inventory. Borrower shall keep accurate and complete records of its Inventory, including costs and daily
- (a) withdrawals and additions, and shall submit to Lender inventory reports in form reasonably satisfactory to Lender, on such periodic basis as Lender may request. Borrower shall conduct a

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physical inventory at least once per calendar year (and on a more frequent basis if requested by Lender when an Event of Default exists) and periodic cycle counts consistent with historical practices, and shall provide to Lender a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as Lender may request. Lender may participate in and observe each inventory or physical count.

- Records and Schedules of Equipment. Borrower shall keep accurate and complete records of its Equipment, including kind, quality, quantity, cost, acquisitions and dispositions thereof, and shall submit to Lender, on such periodic basis as Lender may request, a current schedule thereof, in form satisfactory to Lender. Promptly upon request, Borrower shall deliver to Lender evidence of its ownership or interests in any Equipment.
- (b)

- Dispositions of Equipment. Borrower shall not sell, lease or otherwise dispose of any Equipment, without the prior written consent
- (c) of Lender, other than replacement of Equipment that is worn, damaged or obsolete with Equipment of like function and value, if the replacement Equipment is acquired substantially contemporaneously with such disposition and is free of Liens.

4.4 Business Purpose. Any Collateral installed in or used in the Premises are to be used by the Borrower solely for Borrower's business purposes and such Collateral will be kept on the Premises and will not be removed therefrom without the consent of the Lender and may be affixed to such buildings but will not be affixed to any other real estate excepting in the case of Inventory those Goods which are securely stored off site with a bailee or supplier with appropriate collateral access agreements/warehouse receipts issued in the Borrower's name with scheduled insurance against loss, theft or damage and for which title rests in Borrower free of Liens and claims.

4.5 Remedies Not Cumulative. The exercise of any one or more of the remedies provided for under the UCC shall not be construed as a waiver of any of the other rights of the Lender including having any Collateral deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are

known to Lender. Neither the grant of a security interest pursuant to this Agreement nor the filing of a financing statement pursuant to the UCC shall ever impair the stated intention of this Agreement that all Collateral at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged under the Mortgage irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement. Borrower will on demand deliver all financing statements that may from time to time be required by Lender to establish, perfect and continue the priority of Lender's security interest in the Collateral and shall pay all expenses incurred by Lender in connection with the renewal, continuation or extensions of any financing statements executed in connection with the Premises; and shall give advance written notice of any proposed change in Borrower's name, identity or structure and will execute and deliver to Lender prior to or concurrently with such change all

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additional financing statements that Lender may require to establish and perfect the priority of Lender's security interest.

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

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

4.8 License. Without limiting the generality of any other Loan Document, the Borrower hereby grants to the Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property Rights of the Borrower for the purpose of: (a) producing Ethanol, DDGS and CO₂ from the Plant and (b) selling, leasing or otherwise disposing of any or all Collateral.

4.9 Financing Statements. The Borrower authorizes the Lender to file from time to time where permitted by law, such financing statements against collateral described as "all assets" or describing specific items of collateral including commercial tort claims as the Lender deems necessary or useful to perfect the Security Interest. Specifically, Borrower hereby authorizes the filing of the UCC-3s listing Borrower as "Debtor" and Lender as "Secured Party" dated of even date herewith pertaining to Initial Filing No. 20061880810032. A carbon, photographic, or other reproduction of this Agreement or of any financing statements signed by the Borrower is sufficient as a financing statement and may be filed as a financing statement in any state to perfect the security interests granted hereby. For this purpose, the following information is set forth:

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Name and address of Debtor:

NuGen Energy, LLC
27283 - 447th Avenue
Marion, SD 57043

Name and address of Secured Party:

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

4.10 Collateral. This Agreement does not contemplate a sale of Accounts, Contract Rights or Chattel Paper, and, as provided by law, the Borrower is entitled to any surplus and shall remain liable for any deficiency. The Lender's duty of care with respect to Collateral in its

possession (as imposed by law) shall be deemed fulfilled if it exercises reasonable care in physically keeping such Collateral, or in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and the Lender need not otherwise preserve, protect, insure or care for any Collateral. The Lender shall not be obligated to preserve any rights the Borrower may have against prior parties, to realize on the Collateral at all or in any particular manner or order or to apply any cash proceeds of the Collateral in any particular order of application. The Lender has no obligation to clean-up or otherwise prepare the Collateral for sale. The Borrower waives any right it may have to require the Lender to pursue any third person for any of the Obligations.

5.

INSURANCE AND BONDS

5.1 Insurance. Borrower shall obtain and shall continuously maintain thereafter, the following Required Insurance in forms of coverage and with insurers/sureties acceptable to Lender:

(a) Property/Casualty. Insurance providing the following coverages:

(i) All risk/open perils special form property insurance with extended coverages including any building contents, sprinkler coverage, Contingent Operations of Building Laws/Ordinance or Law Endorsement (including demolition cost, loss to undamaged portions of any buildings and increased cost of construction) with limits of 100% replacement cost;

(ii) Insurance against loss or damage from i) leakage of sprinkler systems and ii) explosion of steam boilers, ethanol production equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any improvements on the Premises and including broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery and equipment (including electrical equipment, sprinkler

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systems, heating and air conditioning equipment, refrigeration equipment and piping) located in, on or about the Premises and any improvements thereon in an amount at least equal to the full replacement cost of such equipment and the building or buildings housing the same;

(iii) Flood insurance if any part of the Premises now (or subsequently determined to be) is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and amendment or successor act thereto);

(iv) Blanket Business Income insurance written on an Agreed Amount Valuation equal to (i) the greater of 12 months loss of income or (ii) \$25,000,000.00; and

(v) "All Risks" coverage for personal property of Borrower, including coverage for raw material and Inventory including loss to stored Ethanol, DDGS and WDDGS and other raw material at replacement cost valuation. In addition, coverage is to be provided for the property of others for which Borrower is responsible for full replacement cost valuation without depreciation.

(b) Owner's GCL Liability. Owner's Commercial General Liability Insurance including blanket contractual liability, employees as additional insured, completed operations - products liability, contingent liability operations, operations of subcontractors, property damage liability including broad form property damage, personal injury liability, comprehensive automobile liability insurance applicable to any owned, non-owned or hired vehicle and with the deletion of any exclusion pertaining to explosion, collapse and underground property damage hazards, and with the following limits of coverage:

(i) \$1,000,000.00 Bodily Injury and/or Property Damage for each occurrence and \$2,000,000.00 general aggregate.

(ii) bb. \$1,000,000.00 combined single limit Automobile Liability for each occurrence.

(iii) cc. \$500,000.00 but not less than statutory minimums Worker's Compensation Coverage.

(c) Employee Benefit Liability. Employee Benefit Liability Coverage with the following limits of coverage:

- (i) \$500,000.00 Employee' s Benefit Liability - each claim.
- (ii) \$500,000.00 Employee' s Benefit Liability - Aggregate.

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(d) Combination Crime. Combination Crime coverage for employee dishonesty.

- (i) \$500,000.00 Loss of Money, Securities and Other Property.
- (ii) \$500,000.00 Forgery, Alteration of Checks, Drafts, Note.
- (iii) \$500,000.00 Computer Fraud resulting in loss of money.

(e) Excess Liability in Umbrella Form. Excess Liability/Umbrella Coverage with respect to the CGL Coverage and Automobile Liability Coverage with the following limits of coverage:

- (i) \$5,000,000.00 for Bodily Injury and Property Damage - Each Occurrence.
- (ii) \$5,000,000.00 for Bodily Injury and Property Damage - Aggregate.

(f) Construction. During the period of any construction activity on the Premises, Borrower shall maintain the following insurance coverage:

- (i) Builder' s Risk Insurance - Builder' s Risk Insurance covering all risk of direct physical loss or damage including but not limited to flood and earth movement written on a completed value basis, non-reporting form, to cover the loss of or damage to property incident to any construction activity, naming Borrower, each Contractor and Subcontractors of all tiers as co-insureds. Such Builder' s Risk Insurance shall insure Lender, Borrower, Borrower' s Engineer, the Lender, the Lender' s Independent Engineer, each Contractor and Subcontractors of all tiers, against physical loss of or damage to the construction work and to all Equipment and other tangible materials and property incorporated or to be incorporated into the Plant on an all-risk/replacement value basis. The Builder' s Risk Insurance shall also cover on an all-risk basis, at not less than replacement value, all Equipment not at the Plant Site and in transit. Prior to any Work being conducted on the Premises, Borrower shall provide Lender with a copy of the Builder' s Risk Insurance policy with a mortgagee loss payee waiving subrogation and providing that such Builder' s Risk Insurance shall not be cancelled or materially changed without thirty (30) days' written notice to Lender.

- (ii) Contractor' s Liability. Contractor' s Commercial General Liability Insurance including blanket contractual liability, employees as additional insured, completed operations - products liability, contingent liability operations, operations of subcontractors, property damage liability including broad form property damage, personal injury liability, comprehensive automobile liability insurance applicable to any owned, non-owned or hired vehicle and with the deletion of any exclusion

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pertaining to explosion, collapse and underground property damage hazards, and with the following limits of coverage:

- A. \$2,000,000.00 general aggregate - Bodily Injury and/or Property Damage for each occurrence.
- B. \$2,000,000.00 general aggregate - Products and Completed Operations Aggregate for each occurrence.
- C. \$1,000,000.00 combined single limit - Automobile Liability for each occurrence.
- D. \$1,000,000.00 but not less than statutory minimums - Worker' s Compensation Coverage.

(iii) Excess Liability in Umbrella Form. Excess Liability/Umbrella Coverage with respect to the CGL Coverage and Automobile Liability Coverage with the following limits of coverage:

- A. \$5,000,000.00 General Aggregate
- B. \$5,000,000.00 Products/Completed Operations Aggregate
- C. \$5,000,000.00 Each Occurrence

(g) Other Coverages. Such other or additional insurance (as to risks covered, policy amounts, policy provisions or otherwise) as, under prudent ethanol production practices, are from time to time insured against for property and facilities similar in nature, use and location to the Project which the Lender may reasonably require and which is obtainable at commercially reasonable rates

(h) Environmental Insurance. Pollution Legal Liability Insurance with the following limits of coverage:

- A. \$10,000,000 Incident
- B. \$10,000,000 Aggregate.

Such policies shall include pollution and contamination coverage for bodily injury and property damage arising from the ownership, operation, transportation, handling, storage, disposal, dumping, processing and treatment of waste and will provide for control, monitoring, remediation and clean up costs due to seepage, pollution, contamination of environmental liabilities of any kind whether on land or water. Time Element Pollution Coverage is also to be provided.

5.2 Performance and Payment Bonds. Prior to any Work being conducted on the Premises, Borrower shall provide a performance bond and payment bond each in the full amount of the Construction Contract, fully paid for and in form and content acceptable to Lender and written by a surety acceptable to Lender and naming the Lender as a dual obligee under an acceptable dual obligee rider with evidence of payment in full of the premium for the bond furnished to Lender.

5.3 Insurance Policy Requirements. Maximum deductible on all coverages and policies shall be no greater than \$100,000.00. The insurance carrier must be rated A, Class X, or

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better, by Best's Rating Service. Such insurance policies shall be written on forms and with insurance companies satisfactory to Lender, with the exception of Professional Liability Coverage, shall be written on an "occurrence basis," shall be in amounts sufficient to prevent the Borrower from becoming a co-insurer of any loss thereunder, shall insure the Lender as a first mortgagee under a standard mortgagee clause and shall name Lender as an "additional insured" on all required liability coverages and policies. The Borrower shall, within thirty (30) days prior to the expiration of any such policy, deliver other original policies of the insurer evidencing the renewal of such insurance together with evidence of the payment of current premiums therefor. Any vacancy, change of title, tenant occupancy or use, physical damage, additional improvements or other factors affecting any insurance contract must be reported to the Lender immediately. An original or certified copy of each policy is required upon renewal. If no such copy is available, Lender will accept a binder for a period not to exceed ninety (90) days. All binders, certificates of insurance, and original or certified copies of policies must name Borrower as a named insured, or as an additional insured, must include the complete and accurate property address and must bear the original signature of the issuing insurance agent.

5.4 Waiver of Subrogation. All Required Insurance will provide for waivers of subrogation in favor of Borrower and the Lender, will not be cancelable without at least sixty (60) days' prior written notice to Lender (except for 10 days' notice for non-payment of premium), and all third party liability policies will name Borrower and the Lender as additional insureds (except in the case of worker's compensation insurance). Insurance protecting Project assets and revenues (property, equipment, business interruption, etc.) will name the Lender as the first loss payee/mortgagee. All liability insurance maintained by any Contractor will provide a severability of interest or cross-liability clause and will be primary and not excess to or contributing with any insurance or self-insurance maintained by Borrower or the Lender.

5.5 Annual Certificates. On each anniversary of the Closing Date, Borrower will furnish to Lender evidence of insurance, in the form of binders, cover notes or certificates of insurance evidencing all coverages in place and certify (A) that all premiums are paid or current to date and (B) that Borrower is in compliance with all provisions in this Agreement relating to Required Insurance. Borrower will provide the Lender with copies of all insurance policies and certificates and other information that the Lender may reasonably request in writing with respect to the Required Insurance or the providers thereof and, without any requirement of request by the Lender, will provide the Lender with copies of all replacement policies within 15 days of receipt of such policies by Borrower.

5.6 Collection of Proceeds. Borrower shall give the Lender prompt notice of any damage to or destruction of the Premises and in case of any covered loss, the Lender is hereby authorized at its option to settle and adjust any claim arising out of such coverage and collect and receipt

for the proceeds payable therefrom ("Proceeds"), provided, that the Borrower may itself adjust and collect for any losses payable under an insurance policy and arising out of a single occurrence aggregating not in excess of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). Any expense incurred by the Lender in the adjustment and collection of Proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Lender) shall be reimbursed to the Lender first out of any Proceeds. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any coverage or other Proceeds payable to it and shall pay all reasonable expenses of Lender in participating in any loss adjustments (including the payment

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

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

5.8 Lender to Make Proceeds Available Under Certain Circumstances. In the event of an insured casualty to the Project which results in a destruction of not more than twenty-five percent (25%) of the Project ("Casualty") and provided no Event of Default shall have occurred which has not been cured to Lender's satisfaction, the Lender agrees to make the insurance proceeds payable from such event, as the case may be ("Proceeds"), available to the reconstruction and restoration of the Project ("Restoration") under the following conditions:

- (a) The Project can be restored to a functioning ethanol production Project capable of producing to the minimum performance criteria and the same value after Restoration (as determined by an appraisal acceptable to Lender) as that prior to the Casualty.
- (b) The projected ratio of Debt Service to Net Income after Restoration is at least equal to that which existed immediately prior to the Casualty.
- (c) The Proceeds are sufficient to complete such Restoration or the Borrower deposits with Lender in cash prior to commencing Restoration the difference between the approved cost of Restoration and the Proceeds.

- Lender shall be provided with (i) complete Plan Documents for the Restoration prepared by a licensed architect in the jurisdiction where the Project is situated which shall be acceptable to Lender in the exercise of its reasonable business judgment; (ii) a project budget itemizing the total cost to be incurred in completing the Restoration; (iii) a fixed cost contract at an agreed stipulated sum with an acceptable contractor agreeing to furnish all Work necessary to complete the Restoration; (iv) a sworn construction statement of the Contractor at issue
- (d)

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with schedule of values attached itemizing the work to be done by line item, subcontractor or materialman and dollar value of the line item on AIA Form G701 or equivalent; and (v) assignments of the architect's and contractor's contracts to Lender together with their consent to assignment to the Lender.

- Requests for disbursement of Proceeds shall be made not more frequently than once a month pursuant to AIA Form G702/703 for Restoration work completed and in place and in accordance with prudent construction lending requirements including (i) a retainage
- (e) by Lender from each disbursement of ten (10%) percent of the disbursement requested, (ii) itemized draw requests approved by the Design Professional and an inspector acceptable to Lender and (iii) unconditional Mechanics Lien Waivers for the work done. At Lender's election the Proceeds shall be disbursed through the title insurer having issued the Lender's Title Policy who shall act

as disbursing agent under an acceptable disbursing arrangement which among other things shall require a downdate endorsement through each disbursement downdating coverage on the Lender's Title Policy to date of disbursement with no additional exceptions including Mechanics Liens.

(f) The Proceeds shall be held by Lender in an interest-bearing account of its choice.

(g) No Event of Default shall exist at the time of each disbursement. If such Event of Default exists, then at the election of the Lender the Proceeds may be applied to the prepayment of the Loan, in Lender's sole discretion.

(h) The Borrower shall pay any actual expenses Lender incurs including attorney's fees, fees of any other professionals retained including its inspecting architect/engineer, any escrow expenses and any costs and expenses for title insurance and Title's disbursement charges.

(i) The Business Interruption insurance policy remains in full force and effect and the insurer is making payments sufficient to pay (aa) all Debt Service, (bb) Taxes, (cc) payroll expenses, and (dd) extra expenses incurred.

(j) Any Restoration must in the opinion of Lender's retained Inspecting Engineer be susceptible of being completed within six (6) months prior to the Maturity Date and Lender is presented with a Construction Contract with completion date of not later than said date.

Any surplus which may remain after payment of all costs of Restoration or repair may at the option of the Lender be applied on account of the Principal Balance of the Loan then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Borrower as its interest may appear, the choice of application to be solely at the discretion of Lender.

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6.

CONDEMNATION

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

6.2 Disbursement of Condemnation Proceeds. Any restoration or repair shall be done under the supervision of an architect acceptable to Lender and pursuant to plans and specifications approved by the Lender. In any case where Lender may elect to apply the proceeds to repair or restoration or permit the Borrower to so apply the proceeds they shall be held by Lender in an interest bearing account of its choice for such purposes and will from time to time be disbursed by Lender to defray the costs of such restoration or repair under the same procedures as use of casualty insurance provides for Restoration. Borrower shall on demand deposit with Lender any sums necessary to make up any deficits between the actual cost of the Work and the proceeds and provide such Mechanics Lien Waivers and completion bonds as Lender may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Lender be applied on account of the Loan then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Borrower as its interest may appear, the choice of application to be solely at the discretion of Lender.

7.

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

7.1 Validity of Loan Documents. The Loan Documents grant to Lender a valid and enforceable first lien and security interest in the Project.

7.2 Priority of Lien on Equipment. No chattel mortgage, bill of sale, security agreement, financing statement, or other title retention agreement (except those executed in favor of Lender or to the extent permitted under this Agreement, in favor of LOC Lender) has or will be executed with respect to any Equipment used in conjunction with the operation or maintenance of the improvements.

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

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Organizational Documents, any mortgage, lease, bank loan or credit agreement, or other instrument to which Borrower is a party or by which it may be bound or affected.

7.4 Legal Status of Borrower. Borrower is a duly organized limited liability company validly existing and in good standing under the laws of the State of South Dakota and has all power, authority, permits, consents, authorizations and licenses necessary to carry on its business, to equip, own and operate the Project and to execute, deliver and perform this Agreement and the other Loan Documents to which Borrower is a party; all consents required of the ownership of Borrower necessary to authorize the execution, delivery and performance of this Agreement and of the other Loan Documents which have been or are to be executed by and on behalf of Borrower have been duly adopted and are in full force and effect; and this Agreement and such other Loan Documents have been duly authorized, executed and delivered by and on behalf of Borrower and are the valid and binding obligations of Borrower, enforceable in accordance with their respective terms.

7.5 Pending Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting it, or the Premises, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, at law or in equity, or before or by any Governmental Authority, except actions, suits and proceedings which are fully covered by insurance or which, if adversely determined would not substantially impair the ability of Borrower to perform each and every one of its obligations under and by virtue of the Loan Documents; and to the Borrower's knowledge the Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

7.6 Violations of Governmental Law, Ordinances or Regulations. Excepting the Soil Stabilization Requirements, which requirements Borrower will comply with within a reasonable period of time as agreed upon by the SDENR, Borrower has no knowledge of any violations or notices of violations of any federal or state law or municipal ordinance or order or requirement of the State in which the Premises are located or any municipal department or other governmental authority having jurisdiction affecting the Premises, which violations in any way relate to or affect the Premises.

7.7 Compliance with Zoning Ordinances, Regulatory Approvals, Governmental Requirements. The Premises and the use of the Premises comply with all Governmental Requirements, Regulatory Approvals, Archeological Conditions, Environmental Laws, equal employment regulations, any private covenants affecting the Project, and appropriate supervising boards of fire underwriters and similar agencies.

7.8 Availability of Utilities. All utility services necessary for the operation of the Plant including natural gas, electricity, water supply, waste water discharge, energy and communications facilities are available at the Premises at standard utility rates and hook-up charges.

7.9 Permits. All Permits required for the maintenance and operation of the Project have been issued and paid for excepting those permits set forth on the attached Schedule 7.9, which permits have been applied for, are paid for, and are in the process of being issued, and

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Borrower will ensure such permits on the attached Schedule 7.9 will be issued within sixty (60) days from the Closing Date.

7.10 Operating Agreements. All Operating Agreements have been executed and are in full force and effect; provided, however, that the Operating Agreements set forth on the attached (i) Exhibit E remain subject to consent of the other party thereto and (ii) Exhibit G will be entered into within the time period set forth on such exhibit.

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

7.12 Construction Contract(s). During any period of construction activity, Borrower will permit no default to exist under any Construction Contract when issued and the Borrower will perform its obligations under each Construction Contract when issued and cause the Contractor to perform its obligations thereunder. Borrower will cause each Contractor to promptly furnish Lender with the complete list of all Sub-contractors or entities which the Contractor proposes to engage to furnish Labor and/or Materials and will from time to time furnish Lender with true copies of all Construction Contract(s).

7.13 Brokerage Commissions. Borrower may have independently engaged the services of a financial advisor ("Financial Advisor") to obtain the Loan. Borrower agrees to pay the fees and expenses of the Financial Advisor and shall indemnify Lender from any liability, claims or losses arising by reason of the Financial Advisor or any other broker claiming a fee or commission due in connection with the Loan. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists. The Operating Plan and Budget accurately sets forth all amounts due such engaged Financial Advisors and Borrower represents and warrants to the Lender that no other brokerage commissions are due in connection with the transaction contemplated hereby.

7.14 Prior Work. No construction work by or on behalf of the Borrower has been commenced or will be commenced prior to the Closing Date and recording of the Loan Documents unless approved by Title under a "prior start agreement" under which the first lien status of the Mortgage is specifically insured over Mechanics Liens. Except for construction work commenced under such "prior start agreement", no work

or construction has been commenced or will be commenced by or on behalf of Borrower on the Premises, nor has Borrower entered into any contracts or agreements for such work or construction which could result in the imposition of a Mechanics Lien on the Premises or the Project or constitute a “first item of work” to which any subsequent work on the Project may “tack” or which may result in the assertion or perfection of a Lien prior to or on parity with the lien of the Mortgage.

7.15 Environmental Impact Statement. All required environmental impact statements as required by any Governmental Authority have been duly filed and approved.

7.16 Access. The Premises directly front on a publicly maintained road or street and have legal access to the same through governmentally approved curb cut permits. No access permits are required.

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7.17 Hazardous Representations. The Borrower represents that, to the best of its knowledge following due inquiry as a duly diligent property owner, except as disclosed on Schedule 7.17, (i) the Premises has been, now is and will in the future be free from contamination by Hazardous Substances excepting (A) immaterial quantities of Hazardous Substances leaked or spilled inadvertently from the operation of the Plant and which are reported in accordance with all Environmental Laws and remediated in accordance with Environmental Laws and (B) immaterial quantities of substances customarily and prudently used in the operation, cleaning and maintenance of the Premises in accordance with any applicable law), (ii) no release of any such Hazardous Substance has occurred on or about the Premises or into adjoining lands or the environment, (iii) that the Premises currently complies, and will comply based on its current and anticipated use, with all current Environmental Laws, (iv) that, in connection with the ownership, operation, and use of the Premises, all necessary notices have been filed and all required permits, licenses and other authorizations have been obtained, including those relating to the generation, treatment, storage, disposal or use of Hazardous Substances, (v) that there is not presently at this time any non-remediated past or threatened investigation, inquiry or proceeding relating to the environmental condition of, or to the discharge of Hazardous Substances or violation of Environmental Laws on from or about the Premises, and (vi) there are not to the best of Borrower’s knowledge any underground storage tanks currently existing or to the extent such underground storage tanks are existing they are registered under the required Environmental Laws and do not contain any leakages, and (vii) Borrower has not received nor does it have any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning (A) the existence of Hazardous Substances on the Premises or in the immediate vicinity, (B) the transportation, releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Substances onto the Premises or from the Premises into the environment, waters or adjacent lands or (C) violation of Environmental Laws.

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

7.19 Status of Borrower. Neither Borrower nor any controlling interest in Borrower (if an entity) is insolvent (as such term is defined in Section 101(32) of the Bankruptcy Code, as amended) and will not be rendered insolvent (as such term is defined in Section 101(32) of the Bankruptcy Code, as amended) by execution of this Agreement, the Note or any other Loan Documents or consummation of the transactions contemplated thereby.

7.20 Licensing. To the best knowledge of Borrower, ICM holds valid professional licenses as required for performing its duties.

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

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

The term “Prohibited Person” shall mean any person or entity:

- (i) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the “Executive Order”);

- (ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;
- (iv) who commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;

that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury
- (v) Department Office of Foreign Assets Control at its official website, www.ustreas.gov/offices/enforcement/ofac, or at any replacement website or other replacement official publication of such list; or
- (vi) who is an Affiliate of or affiliated with a person or entity listed above; or
- (vii) who is a “disregarded entity” as defined in IRS Regulation 1.1445-2(b)(2)(iii) and whose owner falls within any of subsections (i) through (vi) above.

The term “Affiliate,” as used in this section 7.22, shall mean as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with such person or entity or is a director or officer of such person or entity or of an Affiliate of such person or entity. As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

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7.23 Intellectual Property Rights.

Owned Intellectual Property. Attached as Exhibit D-1 is a complete list of all patents, applications for patents, trademarks, applications for trademarks, service marks, applications for service marks, mask works, trade dress and copyrights for which the Borrower is the registered owner (the “Owned Intellectual Property”). Except as disclosed on Exhibit D-1, (i) the Borrower owns the

- (a) Owned Intellectual Property free and clear of all restrictions (including covenants not to sue a third party), court orders, injunctions, decrees, writs or Liens, whether by written agreement or otherwise, (ii) no Person other than the Borrower owns or has been granted any right in the Owned Intellectual Property, (iii) all Owned Intellectual Property is valid, subsisting and enforceable and (iv) the Borrower has taken all commercially reasonable action necessary to maintain and protect the Owned Intellectual Property.

Intellectual Property Rights Licensed from Others. Exhibit D-2 also contains a complete list of all agreements under which the Borrower has licensed Intellectual Property Rights from another Person (“Licensed Intellectual Property”) other than readily available, non-negotiated licenses of computer software and other intellectual property used solely for performing accounting, word processing and similar administrative tasks (“Off-the-shelf Software”) and a summary of any ongoing payments the Borrower is

- (b) obligated to make with respect thereto. Except as disclosed on Exhibit D-2 and in written agreements copies of which have been given to the Lender, the Borrower’s licenses to use the Licensed Intellectual Property are free and clear of all restrictions, Liens, court orders, injunctions, decrees, or writs, whether by written agreement or otherwise. Except as disclosed on Exhibit D-2, the Borrower is not obligated or under any liability whatsoever to make any payments of a material nature by way of royalties, fees or otherwise to any owner of, licensor of, or other claimant to, any Intellectual Property Rights.

Other Intellectual Property Needed for Business. The Owned Intellectual Property and the Licensed Intellectual Property constitute

- (c) all Intellectual Property Rights used or necessary to conduct the Borrower’s business as it is presently conducted or as the Borrower reasonably foresees conducting it.

Infringement. The Borrower has no knowledge of, and has not received any written claim or notice alleging, any infringement of another Person’s Intellectual Property Rights (including any written claim that the Borrower must license or refrain from using the

Intellectual Property Rights of any third party) nor, to the Borrower's knowledge, is there any threatened claim or any reasonable basis for any such claim.

7.24 Electrical Supply Agreements. The Electrical Supply Agreements are in full force and effect and no default exists thereunder and the Borrower will perform its obligations thereunder and will cause the Utility Provider to perform its obligations thereunder. All obligations on the part of the Utility Provider under the Electrical Supply Agreement have been fully complied with.

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7.25 Water Supply Agreements. The Water Supply Agreements are in full force and effect and no default exists thereunder and the Borrower will perform its obligations thereunder and will cause the Utility Provider to perform its obligations thereunder. All obligations on the part of the Utility Provider under the Water Supply Agreement have been fully complied with.

7.26 Natural Gas Supply Agreements. The Natural Gas Supply Agreements are in full force and effect and no default exists thereunder and the Borrower will perform its obligations thereunder and cause the Utility Providers to perform their respective obligations thereunder. All obligations on the part of the Utility Providers under the Natural Gas Supply Agreements have been fully complied with.

7.27 Project Documents. The Project Documents are in full force and effect and no default exists thereunder; provided, however, that the Project Documents set forth on the attached (i) Exhibit E remain subject to consent of the other party thereto and (ii) Exhibit G will be entered into within the time period set forth on such exhibit. The Borrower will perform its obligations under the Project Documents and will cause the other party to perform its obligations thereunder. The Project Documents include all agreements required for the ownership and operation of the Project, and such Project Documents conform in all material respects with the requirements necessary to maintain and operate the Project and are sufficient to permit the Project to operate in a manner that will not violate the Approvals or the Project's normal operating parameters.

7.28 Approvals. Excepting those Approvals subject to those requirements imposed by SDENR to complete the requirements set out in that certain Surface Water Discharge Permit No. SD0028380, Construction Storm Water Discharge Permit No. SDR10D739, and Industrial Storm Water Discharge Permit No. SDR00B429, which requirements Borrower shall comply with within a reasonable period of time as agreed upon by the SDENR, all Approvals necessary for the operation of the Project and the performance by Borrower and the other parties of all of their obligations under the Project Documents have been obtained, and all obtained Approvals are in full force and effect, not subject to any onerous or unusual condition and are satisfactory to the Lender in its sole discretion.

7.29 Major Project Documents. The Major Project Documents have been duly and validly executed and delivered by the parties thereto, are in full force and effect and have not been amended, modified, supplemented or terminated; provided, however, that the Major Project Documents set forth on the attached Exhibit E remain subject to consent of the other party thereto. The copies of all Major Project Documents provided to the Lender by Borrower are true, correct and complete. Borrower has or will have other enforceable agreements or other satisfactory arrangements that ensure the availability, on commercially reasonable terms, of all feedstock, utilities, transportation, facilities, infrastructure, interconnections, materials and services necessary for the ownership, operation and maintenance of the Project.

7.30 Project Budget. As of the Closing Date, the Operating Plan and Budget prepared by Christianson & Associates, PLLP (i) has been prepared with due care, (ii) is complete in all material respects and fairly presents Borrower's good faith expectations as at the date of such document as to the matters covered thereby and (iii) is based on reasonable assumptions as to the factual and legal matters material to the estimates therein. The Operating Plan and Budget accurately specifies and describes all material Project expenses.

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7.31 Not a Regulated Entity. Borrower is not (a) an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940; (b) a "holding company," a "subsidiary company" of a "holding company," or an "affiliate" of either, within the meaning of the Public Utility Holding Company Act of 1935; or (c) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

7.32 Margin Stock. Borrower is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by Obligors to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

7.33 Plan Assets. Borrower is not an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. §2510.3-101 of any "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA or any "plan" (within the meaning of Section 4975 of the Internal Revenue Code), and neither the execution of this Agreement nor the funding of the Loan gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

7.34 Rail Lease. That the Rail Car Leases will be duly executed and delivered and in full force and effect with no default existing thereunder, and all fees required to be paid under the Rail Car Lease will be paid in full with the exception of fees of an ongoing nature which commence upon completion of the Project. The Borrower represents and warrants (a) Borrower will be the absolute owner of the Rail Car

Leases with full right and title to assign the Rail Car Leases to Lender; (b) that there will be no outstanding assignments or pledges of the same; (c) that there will be no existing defaults under the provisions of the Rail Car Leases on the part of any party to the Rail Car Leases; and (d) that all obligations on the part of the Borrower under the Rail Car Leases will be fully complied with. All commissions due any Broker for procuring the Rail Car Leases shall be paid in full.

8.

COVENANTS OF BORROWER

8.1 Site. Borrower holds marketable fee simple title to the Premises subject only to the Permitted Exceptions and shall execute and deliver or cause to be executed and delivered such instruments as may be required by the Lender and Title to provide Lender with a valid first lien on and security interest in the Premises subject only to the Permitted Exceptions.

8.2 Contest of Impositions, Liens and Levies. Borrower shall keep the Premises free from any Lien and upon the assertion of a claim of Lien or the filing of a Lien against the Premises, the Borrower shall cause the same to be immediately discharged and removed, provided Borrower shall not be required to pay, discharge or remove any Lien so long as the Borrower shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the Lien so contested and the sale of the Premises, or any part thereof, to satisfy the same and the existence of any such Lien shall not

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delay or hinder any construction being undertaken and provided that the Borrower shall have given such reasonable security as may be demanded by the Lender and Title to protect the Premises, and the Lender's interest therein, if any such Lien is determined adverse to such interests. The Borrower shall promptly after final determination of the validity of any such Lien, pay the amount adjudicated due together with all interest and penalties which may be payable in connection therewith. Notwithstanding these provisions Borrower shall (and if Borrower shall fail so to do, Lender, may but shall not be required to) pay any such Lien notwithstanding such contest if in the reasonable opinion of the Lender, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed or any construction being undertaken is delayed or hindered.

8.3 Title Insurance. On the Closing Date, Borrower shall furnish Lender with a fully paid Title Policy written in the full Loan Amount in form and substance satisfactory to Lender and written by Title insuring the Premises are marketable, insuring fee simple title to the Premises vested in Borrower, free from exceptions for Mechanics Liens, naming Lender as an insured and insuring that the Mortgage is a valid first lien in the full amount of the Loan subject only to the Permitted Exceptions. The policy may not contain a so-called "Pending Disbursement" Endorsement.

8.4 Loan Documents. On the Closing Date the Borrower shall have executed all Loan Documents and shall cause the same to be delivered to Lender.

8.5 Other Documents. Borrower shall furnish the Lender with copies of such other documents, instruments or materials as may be reasonably required by Lender, if any.

8.6 Restrictions on Transfer. Borrower may not effect or permit a Transfer.

8.7 Purpose of Loan. The loan represents the Borrower's obligation to the sum of Eighty-Seven Million Eight Hundred Seventy-Four Thousand Five Hundred Forty-Seven and 39/100 Dollars (\$87,874,547.39) to be used as partial consideration for the acquisition of the assets under the Asset Purchase Agreement.

8.8 Expenses. Borrower shall pay all costs of closing the Loan and all reasonable expenses of Lender with respect thereto, including, but not limited to, fees and expenses of Lender's counsel and all other attorney's fees (including fees and costs incurred in connection with disbursement, administration, collection, or closing of the Loan, fees and costs of Lender's Inspecting Engineer, costs of title insurance, transfer taxes, license and permit fees, recording expenses, surveys, intangible taxes, appraisal fees, expenses of collection and foreclosure, including reasonable attorney's fees incurred in a bankruptcy proceeding) and similar items. The Borrower agrees to pay any and all documentary stamps and/or intangible taxes and all interest and penalties associated therewith which may be assessed on account of the Loan. Notwithstanding the foregoing, it is expressly understood and acknowledged by the Lender and the Borrower that any amounts included in the Cash Consideration shall not also be due or payable pursuant to this Agreement and no amounts shall be paid in duplicate by the Borrower.

8.9 Governmental Requirements. Borrower shall comply promptly with any Governmental Requirements, including Regulatory Approvals and appropriate supervising boards of fire underwriters and similar agencies and the requirements of any insurer issuing coverage on the Project.

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8.10 Right of Lender to Inspect Premises. Borrower shall permit Lender and Title and their representatives and agents to enter upon the Premises and to inspect the Project and to cooperate with Lender, Title, and their representatives and agents during such inspections; provided, however, that this provision shall not be deemed to impose upon Lender or Title any duty or obligation whatsoever to undertake such inspections, to correct any defects in the Project or to notify any person with respect thereto. Notwithstanding the foregoing, Borrower shall

be responsible for making inspections as to the Project. Borrower will hold Lender and Title harmless from and Lender and Title shall have no liability or obligation of any kind to Borrower, any third parties or creditors of Borrower in connection with any defective, improper or inadequate workmanship or materials brought in or related to the Premises, or any Mechanics Liens. Such inspections are solely for the purpose of Lender's underwriting requirements and such review shall not be construed as a review of suitability, merchantability, fitness, compliance with Governmental Requirements or otherwise and may not be relied upon by Borrower or any other person or entity.

8.11 Books and Records. Borrower shall set up and maintain accurate and complete books, accounts and records pertaining to the Project including working drawings in a manner reasonably acceptable to Lender. The Lender, Title and Inspecting Engineer shall have the right at all reasonable times to inspect, examine and copy all books and records of Borrower relating to the Project. Any such inspection is solely for the purpose of Lender's underwriting requirements and such review shall not be construed as a review of suitability, merchantability, fitness, compliance with Governmental Requirements or otherwise and may not be relied upon by Borrower or any other person or entity.

8.12 Additional Documents. Borrower shall furnish to Lender all instruments, documents, initial surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, financial statements, title and other insurance reports and agreements and each and every other document and instrument required to be furnished by the Borrower, hereunder, all at Borrower's expense; shall assign and deliver to Lender such documents, instruments, assignments and other writings, and to do such other acts necessary or desirable to preserve and protect the Collateral at any time securing or intended to secure the Note, as Lender may reasonably require; and shall do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the intents and purposes of this Agreement, as Lender shall reasonably require from time to time. Prior to the start of any Equipment installation, Borrower shall provide to Lender at its request copies of all plans and specifications for such Equipment installation.

8.13 Compliance with Governmental Requirements. Borrower shall comply with all Governmental Requirements, Regulatory Agreements, and all rules, regulations, ordinances and laws bearing on the Improvements, including the requirements of any insurer issuing coverage on the Project and the requirements of any supervising boards of fire underwriters or similar agencies.

8.14 Opinions of Counsel. Borrower shall furnish such opinions of counsel as Lender may require in connection with the matters contemplated by this Agreement.

8.15 Material Adverse Effect. Borrower will transmit to Lender, immediately upon receipt thereof, any communication which could have a material adverse affect on Lender's

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security for the Loan or have a Material Adverse Effect on the Project, the financial condition of Borrower and will promptly respond fully to any inquiry of Lender made with respect thereto.

8.16 Intentionally Omitted.

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

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

manufactured on the Premises of a Hazardous Substance; or (iv) arising out of the failure to perform the removal or abatement of or to institute a safe, effective and environmentally approved control plan for any Hazardous Substance or the replacement or removal of any soil, water, surface water, or ground water containing Hazardous Substance in accordance with Environmental Laws; or (v) arising out of the existence of any environmental Lien against the Premises pursuant to any Environmental Laws; or (vi) arising out of any violation or claim of violation of Environmental Laws with respect to the Premises; or (vii) arising out of any administrative proceedings and negotiations of any description with any and all persons, political subdivisions, or governmental agencies in connection with an alleged or actual violation of an

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Environmental Law or presence of Hazardous Substances on the Premises; or (viii) arising out of any breach of any of the representations and covenants contained herein relating to Hazardous Substances and Environmental Laws (collectively the "Indemnified Loss"). Borrower shall bear, pay and discharge such Indemnified Loss as and when the same becomes due and payable. It is understood that Seller is not one of the Indemnified Parties for purposes of this Section 8.18.

8.19 Updated Appraisals. Borrower agrees that the Lender shall have the right to obtain, at Borrower's expense, an updated Appraisal of the Project from an appraiser approved by Lender at any time (a) that an Event of Default shall have occurred hereunder or (b) Lender determines that the security for the Loan has been physically or financially impaired in any material manner. In the event that Lender shall elect to obtain such an Appraisal, Lender may immediately commission an appraiser acceptable to Lender to prepare the Appraisal and Borrower shall fully cooperate with Lender and the appraiser in obtaining the necessary information to prepare such Appraisal. In the event that Borrower fails to cooperate with Lender in obtaining such an Appraisal or in the event that Borrower shall fail to pay for the cost of such Appraisal immediately upon demand, such event shall constitute an Event of Default hereunder and Lender shall be entitled to exercise all remedies available to it hereunder.

8.20 Electrical Supply Agreements. The Borrower will perform its obligations under the Electrical Supply Agreements and cause the Utility Provider to perform its obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Electrical Supply Agreements and use all efforts to enforce or secure the performance of each obligation and undertaking of the Utility Provider under the Electrical Supply Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Electrical Supply Agreements nor execute any mortgage or create or permit a Lien which may be or become superior to the Mortgage and Loan Documents, nor permit a subordination of the Electrical Supply Agreements to any mortgage or Lien. Borrower will not modify or amend the terms of the Electrical Supply Agreements nor excuse or waive any default of the Utility Provider thereunder without the prior written consent of Lender.

8.21 Natural Gas Supply Agreements. The Borrower will perform its obligations under the Natural Gas Supply Agreements and cause the Utility Providers to perform their obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Natural Gas Supply Agreements and use all efforts to enforce or secure the performance of each obligation and undertaking of the Utility Providers under the Natural Gas Supply Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Natural Gas Supply Agreements nor execute any mortgage or create or permit a Lien which may be or become superior to the Mortgage and Loan Documents, nor permit a subordination of the Natural Gas Supply Agreements to any mortgage or Lien. Borrower will not modify or amend the terms of the Natural Gas Supply Agreements nor excuse or waive any default of the Utility Providers thereunder without the prior written consent of Lender.

8.22 Water Supply Agreements. The Borrower will perform its obligations under the Water Supply Agreements and cause the Utility Provider to perform its obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Water Supply Agreements and use all efforts to enforce or secure the performance of each obligation and undertaking of the Utility Provider under the

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Water Supply Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Water Supply Agreements nor execute any mortgage or create or permit a Lien which may be or become superior to the Mortgage and Loan Documents, nor permit a subordination of the Water Supply Agreements to any mortgage or Lien. Borrower will not modify or amend the terms of the Water Supply Agreements nor excuse or waive any default of the Utility Provider thereunder without the prior written consent of Lender.

8.23 LOC. The Borrower and the LOC Lender shall have executed and delivered the LOC Documents and the LOC Lender shall be obligated to disburse the LOC proceeds in accordance with the LOC Documents and the LOC Lender and Lender shall have executed and delivered the Intercreditor Agreement.

8.24 Rail Spur. The Borrower will maintain all of its rights and interest with respect to the Rail Spur. Borrower shall permit no surrender nor assignment of the Borrower's interest in the Rail Spur and Borrower will not modify or amend the terms of any agreement pertaining to the Rail Spur nor excuse or waive any default thereunder without the prior written consent of Lender.

8.25 Rail Agreements. The Borrower will perform its obligations under each Rail Agreement and cause the BNSF Railway Company to perform its obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Rail Agreements and use all efforts to enforce or secure the performance of each obligation and undertaking of the BNSF Railway Company under the Rail Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Rail Agreements and Borrower will not modify or amend the terms of the Rail Agreements nor excuse or waive any default of the BNSF Railway Company thereunder without the prior written consent of Lender.

8.26 Intellectual Property. Borrower will obtain and maintain in full force and effect all patents, trademarks, service marks, licenses, franchises, trade names, tradestyles, copyrights, technology, formulas, know-how and processes to be used in or necessary for the ownership and operation of the Project and for the current and proposed conduct of its business other than that intellectual property for which the failure to so obtain and maintain could not reasonably be expected to have a Material Adverse Effect, and in its use thereof it will obtain all required licenses and consents and not injure or infringe upon the property or rights of any Person in any material respect.

8.27 Make-Up Payments and Other Permitted Debt Payments. Excepting Tax Distributions and excepting payments due under the Corn Agency Agreement and/or Management Agreement, Borrower shall not pay any amounts toward Make-Up Payments, nor pay any other amounts to the Central Farmers Cooperative, unless and until all of the following have occurred: (i) no Event of Default exists; (ii) Lender shall have received its mandatory prepayment under Section 2.8 for such period (i.e. Lender shall have received its appropriate proportionate share of the Excess Cash Flow); and (iii) such payment is not otherwise prohibited under the terms of the Loan Documents and/or the LOC Documents.

8.28 Soil Stabilization Requirements. The Borrower shall timely perform all Soil Stabilization Requirements.

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8.29 Compliance with the Escrow Agreement. The Borrower shall comply with the terms and conditions of the Escrow Agreement.

8.30 Maintenance of Letters of Credit in favor of NNG. If required by the NNG Agreement, the Borrower agrees (a) to maintain the NNG Letter of Credit in full force and effect in its current form and to obtain additional letters of credit satisfactory to NNG that may be requested by NNG from time to time to secure obligations of the Borrower arising under the NNG Agreement and (b) within thirty (30) calendar days prior to the expiration date of the NNG Letter of Credit if the NNG Letter of Credit is not renewed: (A) to obtain a letter of credit to replace the NNG Letter of Credit in a form and substance acceptable to NNG or (B) to deposit with NNG cash or other assets acceptable to NNG to secure obligations of the Borrower arising under the NNG Agreement in an amount acceptable to NNG. Notwithstanding the foregoing, the Borrower shall not be required to provide a replacement letter of credit or cash deposit if FB&T fails to renew the NNG Letter of Credit and the Borrower is not required to provide an additional or replacement letter of credit or cash deposit to NNG to secure the delivery of natural gas to the Plant.

9.

FINANCIAL COVENANTS

9.1 Financial Information. During the term of the Loan the Borrower shall provide to Lender the following financial reports ("Required Financial Reports"):

- (a) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each calendar year of the Borrower, the Borrower will deliver, or cause to be delivered, to the Lender, the Borrower's audited financial statements with the unqualified opinion of independent certified public accountants selected by the Borrower and reasonably acceptable to the Lender, which annual financial statements shall include the Borrower's balance sheet as at the end of such calendar year and the related statements of the Borrower's income, retained earnings and cash flows for the calendar year then ended, all in reasonable detail and prepared in accordance with GAAP, together with (i) copies of all management letters prepared by such accountants; (ii) a report signed by such accountants stating that in making the investigations necessary for said opinion they obtained no knowledge, except as specifically stated, of any Default or Event of Default and all relevant facts in reasonable detail to evidence, and the computations as to, whether or not the Borrower is in compliance with the Financial Covenants; and (iii) a certificate of one of the Borrower's Authorized Officers stating that such financial statements have been prepared in accordance with GAAP, fairly represent the Borrower's financial position and the results of its operations, and whether or not such officer has knowledge of the occurrence of any Default or Event of Default and, if so, stating in reasonable detail the facts with respect thereto.

- (b) Monthly/Quarterly Financial Statements. As soon as available and in any event within 30 days after the end of each calendar month and Calendar Quarter, the Borrower will deliver to the Lender an unaudited/internal balance sheet and statements of income and retained Cash Flow of the Borrower as at the end of and

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for such calendar month, for such Calendar Quarter (if such month is also the last month of a Calendar Quarter) and for the year to date period then ended, including in reasonable detail and stating in comparative form the figures for the corresponding date and periods in the previous year, all prepared in accordance with GAAP (excluding footnotes), subject to year-end audit adjustments and fairly representing the Borrower's financial position and the results of its operations; and accompanied by a certificate of one of the Borrower's Authorized Officers stating (i) that such financial statements have been prepared in accordance with GAAP (excluding footnotes), subject to year-end audit adjustments, (ii) whether or not such officer has knowledge of the occurrence of any Default or Event of Default not theretofore reported and remedied and, if so, stating in reasonable detail the facts with respect thereto, (iii) all relevant facts in reasonable detail to evidence, and the computations as to, whether or not the Borrower is in compliance with the Financial Covenants, and (iv) if such certificate is for a month that is also the last month of a Calendar Quarter, a statement of the Quarterly Excess Cash Flow for such Calendar Quarter.

(c) Collateral Reports. On request within 30 days after the end of each calendar month or more frequently if the Lender so requires, the Borrower will deliver to the Lender agings of the Borrower's accounts receivable and its accounts payable, an inventory certification report, and a calculation of the Borrower's Accounts and Inventory as at the end of such month or shorter time period.

(d) Operating Plan and Budget. Not later than each November 30 Borrower will submit to the Lender for approval a proposed Operating Plan and Budget for the next calendar year.

(e) Litigation. Immediately after the commencement thereof, the Borrower will deliver to the Lender notice in writing of all litigation and of all proceedings before any governmental or regulatory agency affecting the Borrower that seek a monetary recovery against the Borrower in excess of \$250,000.

(f) Defaults. As promptly as practicable (but in any event not later than five business days) after an officer of the Borrower obtains knowledge of the occurrence of any Event of Default, the Borrower will deliver to the Lender notice of such occurrence, together with a detailed statement by a responsible Officer of the Borrower of the steps being taken by the Borrower to cure the effect thereof.

(g) Disputes. Promptly upon knowledge thereof, the Borrower will deliver to the Lender notice of (i) any disputes or claims by the Borrower's customers exceeding \$250,000 individually or \$500,000 in the aggregate during any calendar year; (ii) credit memos; and/or (iii) any goods returned to or recovered by the Borrower to the extent any such good exceeds \$250,000.

(h) Collateral. Promptly upon knowledge thereof, the Borrower will deliver to the Lender notice of any material loss of or material damage to any Collateral or of any substantial adverse change in any Collateral or the prospect of payment thereof.

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(i) Intellectual Property.

The Borrower will give the Lender 30 days prior written notice of its intent to acquire material Intellectual Property Rights; (i) the Borrower will give the Lender 30 days prior written notice of its intent to dispose of material Intellectual Property Rights; and upon request, shall provide the Lender with copies of all applicable documents and agreements.

Promptly upon knowledge thereof, the Borrower will deliver to the Lender notice of (A) any infringement of its Intellectual (ii) Property Rights by others, (B) claims that the Borrower is infringing another Person's Intellectual Property Rights and (C) any threatened cancellation, termination or material limitation of its Intellectual Property Rights.

(iii) Promptly upon receipt, the Borrower will give the Lender copies of all registrations and filings with respect to its Intellectual Property Rights.

(j) Reports to Members. Promptly upon their distribution, the Borrower will deliver to the Lender copies of all financial statements, reports and proxy statements that the Borrower shall have sent to all of its Members.

- (k) Tax Returns. If requested by Lender, Borrower will deliver to Lender copies of the state and federal tax returns and all schedules thereto for the Borrower when filed.

- (l) Violations of Law. Promptly upon knowledge thereof, the Borrower will deliver to the Lender notice of the Borrower's violation of any law, rule, or regulation, the non-compliance with which could materially and adversely affect the Borrower's business or its financial condition.

- (m) Other Reports. From time to time, with reasonable promptness, the Borrower will deliver to the Lender any and all receivables schedules, collection reports, deposit records, equipment schedules, copies of invoices to Account Debtors, shipment documents and delivery receipts for goods sold, and such other material, reports, records or information as the Lender may reasonably request.

- (n) Reports Required Under the LOC Documents. When due to the LOC Lender, the Borrower shall provide the Lender all information, financial statements, certificates, reports and documents that the Borrower is required to provide to the LOC Lender under the LOC Documents.

In the event Borrower fails to furnish any such Required Financial Reports within fifteen (15) days after written request to Borrower, the same shall be an Event of Default and in addition to any other remedies available to Lender, the Lender may cause an audit to be made of the respective books and records at the sole cost and expense of the Borrower. Lender also shall have the right to examine at their place of safekeeping at reasonable times all books, accounts and records relating to the operation of the Premises.

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9.2 Permitted Liens; Financing Statements.

- (a) The Borrower will not create, incur or suffer to exist any Lien upon or of any of its assets, now owned or hereafter acquired, to secure any indebtedness; excluding, however, from the operation of the foregoing, the following (collectively, "Permitted Liens"):
- (i) in the case of any of the Borrower's property that is not Collateral, covenants, restrictions, rights, easements and minor irregularities in title that do not materially interfere with the Borrower's business or operations as presently conducted;
 - (ii) a first priority security interest and lien in the LOC Collateral (other than the FF&E Reserve and Tax Escrows) in favor of the LOC Lender securing the LOC;
 - (iii) a subordinate security interest and lien in all other assets of the Borrower in favor of the LOC Lender securing the LOC and which shall be subject to the provisions of the Intercreditor Agreement;
 - (iv) the security interest and liens created by the Loan Documents; and
 - (v) provided that there is not an Event of Default, Mechanics Liens subject to a bona fide dispute for which the Borrower has caused a bond to be posted satisfactory to Lender.
- (b) The Borrower will not amend any Financing Statements in favor of the Lender. Any authorization by the Lender to any Person to amend financing statements in favor of the Lender shall be in writing.
- (c) Notwithstanding anything contained in this Agreement to the contrary, the Borrower will not create, incur or suffer to exist any Lien upon any of its titled vehicles and any Rolling Stock.

9.3 Indebtedness. The Borrower will not incur, create, assume or permit to exist any indebtedness or liability on account of deposits or advances or any indebtedness for borrowed money or letters of credit issued on the Borrower's behalf, or obligations under any Operating Lease or Capital Lease (except as permitted by Sections 9.15 and 9.23 hereafter) or any other indebtedness or liability evidenced by notes, bonds, debentures, leases or similar obligations, except:

- (a) the indebtedness arising hereunder;
- (b) the LOC of the Borrower to the LOC Lender

(c) the Make-Up Payments to the extent permitted under this Agreement; and

(d) the Impositions due any Governmental Authority.

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

9.5 Member Loan and Distributions. Borrower:

(a) Subordinates all loans, advances, and indebtedness owing from Borrower to Members of Borrower from time to time, whether or not evidenced by promissory notes.

(b) Shall not pay any dividend or distribution, excluding Tax Distributions, whether in cash or otherwise, to any of its Members.

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

9.7 Account Verification. The Lender may at any time and from time to time send or require the Borrower to send requests for verification of accounts and after an Event of Default notices of assignment to Account Debtors and other obligors. The Lender may also at any time and from time to time telephone Account Debtors and other obligors to verify accounts.

9.8 Payment of Impositions and Other Claims. The Borrower will pay or discharge, when due, (a) all Impositions, taxes and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it (including the Collateral) or upon or against the creation, perfection or continuance of the security interests in favor of the Lender, prior to the date on which penalties attach thereto, (b) all federal, state and local taxes required to be withheld by it, and (c) all lawful claims for labor, materials and supplies that, if unpaid, might by law become a Lien upon any properties of the Borrower; provided, that the Borrower shall not be required to pay any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which proper reserves have been made.

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9.9 Maintenance of Properties. The Borrower will keep and maintain the Plant and other Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted) and will from time to time replace or repair any worn, defective or broken parts. The Borrower will defend the Plant and other Collateral against all Liens, claims, or demands of all Persons (other than the Lender and to the extent permitted under this Agreement, the LOC Lender) claiming the Collateral or any interest therein. The Borrower will keep all the same free and clear of all Liens except Permitted Liens. The Borrower will take all commercially reasonable steps necessary to prosecute any Person Infringing its Intellectual Property Rights and to defend itself against any Person accusing it of Infringing any Person's Intellectual Property Rights.

9.10 Preservation of Existence. The Borrower will preserve and maintain its existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business and shall conduct its business in an orderly, efficient and regular manner.

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

9.12 Sale or Transfer of Assets; Suspension of Business Operations. The Borrower will not sell, lease, assign, transfer or otherwise dispose of (i) the Project, (ii) all or a substantial part of its assets, or (iii) any Collateral or any interest therein (whether in one transaction or in a series of transactions) to any other Person other than the sale of Inventory in the ordinary course of business and will not liquidate, dissolve or suspend business operations (other than as permitted in Section 10.1(c)), provided, however, that Borrower may in the ordinary course of

business sell or dispose of Equipment constituting Collateral that is obsolete or otherwise being replaced in the ordinary course of business up to \$500,000 in the aggregate per year. The Borrower will not transfer any part of its ownership interest in any Intellectual Property Rights and will not permit any agreement under which it has licensed Intellectual Property to lapse, except that the Borrower may transfer such rights or permit such agreements to lapse if it shall have reasonably determined that the applicable Intellectual Property Rights are no longer useful in its business. If the Borrower transfers any Intellectual Property Rights for value, the Borrower will pay over the proceeds to the Lender for application to the Obligations. The Borrower will not license any other Person to use any of the Borrower's Intellectual Property Rights, except that the Borrower may grant licenses in the ordinary course of its business in connection with sales of Inventory or provision of services to its customers.

9.13 Consolidation and Merger; Asset Acquisitions. The Borrower will not consolidate with or merge into any Person, or permit any other Person to merge into it, or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all the assets of any other Person.

9.14 Sale and Leaseback. The Borrower will not enter into any arrangement, directly or indirectly, with any other Person whereby the Borrower shall sell or transfer any real or personal property, whether now owned or hereafter acquired, and then or thereafter rent or lease as lessee such property or any part thereof or any other property that the Borrower intends to use for substantially the same purpose or purposes as the property being sold or transferred.

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9.15 Capital Expenditures, etc. With respect to Capital Expenditures and the entry into Capital Leases, the Borrower covenants and agrees as follows:

- (a) Borrower will not enter into any Capital Leases during any Loan Year that in the aggregate exceed \$250,000.00 without the prior written consent of Lender;
- (b) Borrower will not make any Capital Expenditure except those which in the good faith judgment of the Borrower are required to maintain, preserve or keep its plant, properties, and Equipment in good repair, working order, and condition; and
- (c) Borrower shall not expend more than the FF&E Reserve plus the amount necessary to complete the Soil Stabilization Requirements.

9.16 Restrictions on Nature of Business. The Borrower will not engage in any line of business materially different from that presently engaged in by the Borrower and will not purchase, lease or otherwise acquire assets not related to its business.

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

9.18 Discounts, etc. The Borrower will not at any time discount, modify, amend, subordinate, cancel or terminate the obligation of any Account Debtor or other obligor of the Borrower except in the ordinary course of business.

9.19 Place of Business; Name. The Borrower will not transfer its chief executive office or principal place of business, or move, relocate, close or sell any business location. The Borrower will not permit any tangible Collateral or any records pertaining to the Collateral to be located in any state or area in which, in the event of such location, a financing statement covering such Collateral would be required to be, but has not in fact been, filed in order to perfect the Security Interest. The Borrower will not change its name or jurisdiction of organization.

9.20 No Purchase of Perishable Agricultural Commodities. The Borrower will not purchase perishable agricultural products that are subject to the Perishable Agricultural Commodities Act.

9.21 Operating Margin Protection. Borrower will employ long-term hedging and price-management strategies customary and usual in the ethanol production industry for (i) the procurement of feedstocks, energy and fuel for the Project and (ii) the sale of the Products produced by the Project. Such hedging and price management strategies will be employed to minimize any reductions in (i) the Project's operating margin and (ii) the Project's ability to repay the Loan in accordance with this Agreement.

9.22 Transactions with Affiliates and Third Parties. The Borrower shall not, directly or indirectly, enter into or permit to exist any transaction with any of its Affiliates or with any director, officer or employee of the Borrower other than transactions in the ordinary course of,

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and pursuant to the reasonable requirements of, the business of the Borrower and upon fair and reasonable terms which are fully disclosed to the Lender and are no less favorable to the Borrower than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate of the Borrower. Lender acknowledges that the Corn Agency Agreement and Management Agreement each comply with this Section 9.22.

9.23 Operating Leases. Borrower shall not enter into any Operating Leases with annual rental in excess of \$100,000.00 in the aggregate without the prior written consent of the Lender. The Rail Car Leases shall be approved by Lender.

OPERATING COVENANTS10.1 Operating Covenants.

- The Premises shall be used as a production Project for the production of fuel grade, denatured, anhydrous ethanol alcohol, DDGS and CO₂ byproducts and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

- Borrower shall obtain, pay for and continuously keep in full force and effect all Regulatory Approvals, Operating Agreements and other Licenses, Permits and authorizations as are required to maintain and operate the Plant and shall not permit any default, breach or violation to exist thereunder by any party thereto and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by any party thereunder.

- Borrower shall continuously operate the Project for the production of fuel grade, denatured, anhydrous Ethanol and shall continuously meet the Performance Guarantee Criteria as reviewed and certified by the Inspecting Engineer, except (i) for routine maintenance partial shut-downs provided that such partial shut-downs do not, in the aggregate, exceed 288 hours per year, and (ii) if market conditions are reasonably determined by Borrower and Lender to result in negative cash flows and margins from operations, in which case Lender may, in its sole discretion, consent to having Borrower reduce production output temporarily until market conditions improve subject however to such conditions as the Lender may require.

- (d) Borrower further covenants and agrees to:

- (i) cause the Project to be operated pursuant to the Operating Agreements and Major Project Documents.
- (ii) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Major Project Documents and do all things necessary to preserve and to keep unimpaired its material rights thereunder;

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- (iii) promptly notify Lender of any default under the Major Project Documents of which it is aware;
 - (iv) promptly deliver to Lender a copy of each financial statement, business plan, Capital Expenditures plan, notice, report and estimate, received by it under the Major Project Documents, as applicable; and
 - (v) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the parties under the Major Project Documents.
- (e) Borrower consents and agrees that it shall not, without Lender's prior written consent which consent will not be unreasonably withheld, conditioned or delayed:
- (i) surrender, terminate or cancel the Major Project Documents other than pursuant to the express terms thereof;
 - (ii) reduce or consent to the reduction of the term of the Major Project Documents other than pursuant to the express terms thereof;
 - (iii) increase or consent to the increase of the amount of any charges under the Major Project Documents other than pursuant to the express terms thereof; or
 - (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Major Project Documents in any material respect.

- Borrower shall maintain the Major Project Documents for the operation of the Project in full force and effect and timely perform all of Borrower's obligations thereunder and enforce performance of all obligations of the manager thereunder, and not permit the termination or amendment of such Major Project Documents other than pursuant to the express terms thereof unless the prior written consent of Lender is first obtained which consent will not be unreasonably withheld, conditioned or delayed. Upon an Event of Default, Borrower shall at Lender's request made at any time while such Event of Default continues, terminate the Major Project Documents and replace the other party with a party selected by Lender.
- (f)

- Borrower shall, operate and maintain the Project in accordance with all laws, ordinances and regulations of all applicable governmental agencies or entities and in accordance with all requirements of all applicable licenses and permits with respect to
- (g) the Project, including, but not limited to the conditions and requirements relating to the Project's status as a Conditionally Exempt Small Quantity Generator of Hazardous Waste under RCRA (Resource Conservation and Recovery Act) and the requirements and conditions of the Air Quality Operating Permit issued by SDENR and any supplements or replacements thereof.

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

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

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

11.

ERISA

11.1 ERISA Representations.

- Neither the Borrower nor any ERISA Affiliate as of the date hereof (i) maintains, contributes to or has any liability to contribute to any Pension Plan or has within the preceding five years made or accrued such contributions or had such liability, (ii) contributes to or has any liability to contribute to any Multiemployer Plan or has within the preceding five years made or accrued such contributions or had such liability or (iii) provides or has any material liability to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required under Section 601 of ERISA, Section 4980B of the IRC or applicable state law).
- (a)

- Except as disclosed on Schedule 11.1, neither the Borrower nor any ERISA Affiliate (i) has knowledge that the Borrower or the ERISA Affiliate is not in material compliance with the requirements of ERISA, the IRC, or state law with respect to any Employee Benefit Plan, (ii) has knowledge that a Reportable Event occurred or continues to exist in connection with any Pension Plan, or (iii) sponsors an Employee Benefit Plan that it intends to maintain as qualified under
- (b)

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the IRC that is not so qualified, and no fact or circumstance exists which may have a material adverse effect on such Employee Benefit Plan's tax qualified status.

- Except as, in the aggregate, does not have a Material Adverse Effect, neither the Borrower nor any ERISA Affiliate has liability for any (i) accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the IRC) under any Pension Plan, whether or not waived, (ii) withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan under Section 4201 or 4243 of ERISA, or (iii) event or circumstance which could result in financial obligation to the Pension Benefit Guaranty Corporation, the Internal Revenue Service, the Department of Labor or any participant in connection with any Employee Benefit Plan (other than routine claims for benefits under the Employee Benefit Plan).

11.2 ERISA Covenants.

- (a) Neither the Borrower nor any ERISA Affiliate will, without giving prior written notice to the Lender, (i) adopt, create, assume or become a party to any Pension Plan, (ii) incur any obligation to contribute to any Multiemployer Plan, (iii) incur any obligation to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required by law) or (iv) amend any Pension Plan in a manner that would materially increase its funding obligations.

- (b) The Borrower represents, warrants and covenants that it is acting on its own behalf and that as of the date hereof it is not an Employee Benefit Plan, and the assets of the Borrower do not constitute “plan assets” of one or more such Employee Benefit Plans within the meaning of Department of Labor Regulation Section 2510.3-101. The Borrower also represents, warrants and covenants that it will not be reconstituted as an Employee Benefit Plan or as an entity whose assets constitute “plan assets.”

- (c) (i) Promptly upon discovery, and in any event within 30 days after the Borrower knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, the Borrower will provide written notice to the Lender of the Reportable Event in detail and the actions which the Borrower proposes to take to correct the deficiency, together with a copy of any related notice sent to the Pension Benefit Guaranty Corporation; (ii) promptly upon discovery, and in any event within 10 days after the Borrower fails to make a required quarterly Pension Plan contribution under Section 412(m) of the IRC, the Borrower will provide written notice to the Lender of the failure in detail and the actions that the Borrower will take to cure the failure, together with a copy of any related notice sent to the Pension Benefit Guaranty Corporation; and (iii) promptly upon discovery, and in any event within 10 days after the Borrower knows or has reason to know that it may be liable or may be reasonably expected to have liability for any withdrawal, partial withdrawal, reorganization or other event

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under any Multiemployer Plan under Sections 4201 or 4243 of ERISA, the Borrower will provide written notice to the Lender of the details of the event and the actions that the Borrower proposes to take in response.

12.

EVENTS OF DEFAULT

It shall be an “Event of Default” under this Agreement on the happening of any of the following:

12.1 Default Under Loan Documents. A default under any of the other Loan Documents, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement; or

12.2 Default under Warrant. Any violation of any terms of the Warrant occurs; or

12.3 Failure to Make Any Payment. Failure to make any payment on the Note whether principal, interest, premium or late charge, or the failure to pay any other Obligation when and as the same becomes due (whether at the stated maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise); or

12.4 Termination of Utility Agreements. Any Utility Agreement is terminated or the Utility Provider repudiates its obligations under its Utility Agreement or ceases to cause the obligations of the Utility Provider to be performed in accordance with and at the times required under the Utility Agreement and the Borrower does not provide a replacement Utility Provider under a replacement Utility Agreement acceptable to Lender within thirty (30) days thereafter; or

12.5 Breach of Covenants. Borrower breaches or fails to perform, observe or meet any covenant or condition of this Agreement and such breach or failure is not cured within a period of fifteen (15) days after notice thereof to Borrower; or

12.6 Default under LOC Loan Documents. An event of default shall occur under the LOC Loan Documents which is not cured to the satisfaction of the LOC Lender with the applicable cure period and/or the LOC Loans are accelerated, terminated, or cancelled.

12.7 Misrepresentation. Any oral or written warranty, representation, certificate or statement of the Borrower in this Agreement, the other Loan Documents or any other agreement with either Lender shall be false when made or at any time thereafter, or if any financial data or any other information now or hereafter furnished to the Lender by or on behalf of the Borrower shall prove to be false, inaccurate or misleading in any material respect; or

12.8 Filing of Liens Against the Premises. Any Lien (other than a Permitted Lien) shall be asserted or filed against the Premises and such Lien shall not be released or bonded over and stayed to Lender's satisfaction within fifteen (15) days after the assertion or filing thereof; or

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12.9 Litigation Against Borrower. Any suit shall be filed against Borrower which if adversely determined, would substantially impair the ability of the Borrower to perform its obligations under the Loan Documents; or

12.10 Judgment, Writ, Attachment or Levy Upon the Premises. A judgment, writ or warrant of attachment or execution or similar process, levy or seizure be made under any process against the Premises and such action shall not be released or bonded over to Lender's satisfaction within thirty (30) days after the assertion or filing thereof; or

12.11 Other Material Obligations. Any default in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, the Borrower with respect to any material purchase or lease of goods or services where such default, singly or in the aggregate with all other such defaults, might reasonably be expected to have a Material Adverse Effect; or

12.12 Ceasing Operations. The Borrower shall cease continuously operating the Project for the production of fuel grade, denatured, anhydrous Ethanol or shall fail to meet the Performance Guarantee Criteria, except as otherwise permitted under Section 10.1(c); or

12.13 Changes In Control. A Change of Control shall occur.

12.14 Bankruptcy of Borrower. The Borrower shall fail to pay its debts as they become due, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined under the Federal Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it file an answer admitting insolvency or inability to pay its debts as they become due, or shall fail to obtain a dismissal of such case within one hundred twenty (120) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appointed for, or have any court take jurisdiction of its property, or any part thereof, in any voluntary proceeding for the purpose of reorganization, arrangement, dissolution or liquidation and such custodian, trustee or receiver shall not be discharged, or such jurisdiction shall not be relinquished, vacated or stayed within one hundred twenty (120) days of the appointment; or

12.15 Attachment. Any part of the Lender's commitment under the Loan shall at any time be subject or liable to attachment, seizure, garnishment or levy at the suit of any creditor of the Borrower; or

12.16 Destruction. Any part of the Project is materially damaged or destroyed by fire or other casualty and within ten (10) days thereafter the loss shall prove not to be adequately covered by (i) insurance available for collection and (ii) additional funds of Owner deposited with Lender; or

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12.17 Eminent Domain. The Premises shall be the subject of condemnation by a Governmental Authority in an eminent domain proceeding or a temporary taking adverse to Borrower that materially adversely impacts operation of the Project; or

12.18 First Lien Insurance. Any refusal by Title to insure any Advance as being secured by the Mortgage as a valid first lien and security interest on the Project and continuance of such refusal for a period of thirty (30) days after notice thereof by the Lender to the Borrower; or

12.19 Change in Borrower Status. If the Borrower shall be dissolved, liquidated or wound up or shall fail to maintain its existence as a going concern in good condition be adjudged incompetent or a conservator, custodian or guardian be appointed to handle his/her affairs or shall die; or

12.20 Non-Renewal of NNG Letter of Credit. FB&T or any issuer of a replacement NNG Letter of Credit shall fail to renew such NNG Letter of Credit as required under the NNG Agreement, unless the Borrower has timely provided a replacement letter of credit or a cash deposit pursuant to the terms of Section 8.30 of this Agreement. Notwithstanding the foregoing, the Borrower shall not be required to provide a replacement letter of credit or cash deposit if FB&T fails to renew the NNG Letter of Credit and the Borrower is not required to provide an additional or replacement letter of credit or cash deposit to NNG to secure the delivery of natural gas to the Plant.

12.21 Default under Operating Agreements. If the Borrower shall fail to meet or perform any condition of any Operating Agreement to which it is a party prior to the expiration of any applicable grace period or such Operating Agreement shall be terminated; or

12.22 Default Under Regulatory Approvals. If the Borrower shall fail to meet or perform any condition of any Regulatory Approvals to which it is a party prior to the expiration of any applicable grace period or any of such Regulatory Approvals shall be terminated; or

12.23 LOC. If an event of default shall occur under the LOC Documents which is not cured to the satisfaction of the LOC Lender and/or the LOC is accelerated, terminated or cancelled or the obligation of the LOC Lender to advance the LOC proceeds is terminated or rescinded; or

12.24 Default under Other Debt. Any default by the Borrower in the payment of any Debt for any other obligation (whether or not owed to Lender) beyond any period of grace provided with respect thereto or in the performance of any other term, condition or covenant contained in any agreement (including any capital or operating lease or any agreement in connection with the deferred purchase price of property) under which any such obligation is created, the effect of which default is to cause or permit the holder of such obligation (or the other party to such other agreement) to cause such obligation to become due prior to its stated maturity or terminate such other agreement;

12.25 Material Adverse Effect. The occurrence of any development, condition or event which has a Material Adverse Effect on the Borrower; or

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12.26 Major Project Documents. Any party fails to perform or observe any term, covenant or agreement contained in any Major Project Document (other than any term, covenant or agreement that is the basis of another Event of Default) to be performed or observed by it and such failure is not remedied within any applicable grace period specifically provided for in such Major Project Document and could reasonably be expected to have a Material Adverse Effect; provided, that, if such party has diligently attempted to cure such default throughout the initial grace period provided for in the Major Project Document but such default has not been cured at the expiration of such initial grace period, and if (1) the applicable Major Project Document provides for one or more subsequent grace periods and (2) such default is likely to be cured during the next subsequent grace period provided for in the Major Project Document, then Borrower may request in writing that the Lender grant one additional grace period of the same length as the party has received pursuant to the Major Project Document within which the party may cure such default (such request to contain all relevant facts and circumstances necessary for the Lender to make an informed decision as to whether to grant an additional grace period) and the Lender, in its sole discretion, may grant one additional grace period of up to thirty (30) days within which the other party must cure the default under the Major Project Document; provided, further, that Borrower may also cure this Event of Default by entering into, within thirty (30) days after the initial occurrence of such Event of Default, a replacement agreement with a new counterparty reasonably acceptable to the Lender, which replacement agreement will be on terms and conditions at least as favorable to Borrower as the original Major Project Document being replaced.

12.27 Employee Benefits. Any Reportable Event, which the Lender in good faith believes to constitute sufficient grounds for termination of any Pension Plan or for the appointment of a trustee to administer any Pension Plan, has occurred and is continuing 30 days after the Borrower gives the Lender written notice of the Reportable Event; or a trustee is appointed by an appropriate court to administer any Pension Plan; or the Pension Benefit Guaranty Corporation institutes proceedings to terminate or appoint a trustee to administer any Pension Plan; or the Borrower or any ERISA Affiliate files for a distress termination of any Pension Plan under Title IV of ERISA; or the Borrower or any ERISA Affiliate fails to make any quarterly Pension Plan contribution required under Section 412(m) of the IRC, which the Lender in good faith believes may, either by itself or in combination with other failures, result in the imposition of a Lien on the Borrower's assets in favor of the Pension Plan; or any withdrawal, partial withdrawal, reorganization or other event occurs with respect to a Multiemployer Plan which could reasonably be expected to result in a material liability by the Borrower to the Multiemployer Plan under Title IV of ERISA.

12.28 Default under the Asset Purchase Agreement. A default by the Borrower under the Asset Purchase Agreement, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement or the failure to perform any of the obligations thereunder.

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13.

REMEDIES OF LENDER

13.1 Exercise of Rights. Upon the Event of Default the Lender may at its option exercise one or more of the following:

- (a) Acceleration. Accelerate the repayment of the Loan.
- (b) Foreclosure. Exercise any of the various remedies provided in any of the Loan Documents, including the foreclosure of the Mortgage;
- (c) Cumulative Rights. Cumulatively exercise all other rights, options and privileges provided by law;
- (d) Assignment of Contracts. Enforce the assignment of any contracts related to operation of the Project and exercise the Borrower's rights thereunder;

- (e) Receiver. Seek the appointment of a receiver to take possession of the Project and to operate the Project.
- (f) Cure Contract Defaults. Comply with, effect a cure under and/or prevent a failure or default under any agreement relating to the Project;
- (g) Protect Interest. Do all things necessary to protect its interest in the Project and the security afforded the Loan;
- (h) Provide Security. Employ security watchmen to protect the Premises;
- (i) Prevent Waste. Take such action as necessary to prevent waste;
- (j) Regulatory Approvals. Comply with, effect a cure under and/or prevent a failure or default under any Regulatory Approvals;
- (k) Operating Agreements. Comply with, effect a cure under and/or prevent a failure or default under any Operating Agreement;

Enter and Operate. Require Borrower to vacate the Premises and Lender may, at its election, (whether prior to any sale pursuant to a foreclosure of the Mortgage or during any period of redemption) either through itself, its agents or a receiver appointed by a court of competent jurisdiction:

- (i) Do all things necessary to protect its interest in the Project and the security afforded the Loan;
- (ii) to enter the Site, the Project and other property owned or leased by Borrower and operate the Project at the risk, cost and expense of Borrower; and

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(iii) take over and use all or any part of the labor, materials, supplies and equipment contracted for by or on behalf of Borrower.

- (m) LOC. Comply with, effect a cure under and/or prevent a failure or default under the LOC;
- (n) Utility Agreements. Comply with, effect a cure under and/or prevent a failure or default under the Utility Agreements;
- (o) Major Project Documents. Comply with, effect a cure under and/or prevent a failure or default under any Major Project Document;

(p) Cumulative Rights. Singularly or cumulatively exercise all other rights, options and privileges provided by law; and in furtherance thereof the Borrower irrevocably, absolutely and unconditionally agrees that Lender may disburse such amounts as Lender may deem necessary or appropriate to protect the Project and the lien of the Loan Documents and to do all of the things in connection with the Project which Borrower may do in its own behalf and hereby appoints the Lender as its attorney in fact to perform the foregoing. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked by death or otherwise. Said attorney-in-fact shall also have power to prosecute and defend all actions and proceedings in connection with the operation of the Project and to take such action and require such performance as it deems necessary. In accordance therewith, Borrower hereby assigns and quitclaims unto Lender all sums to be advanced hereunder including any retainage. Any funds so disbursed or fees or charges so incurred shall be included in any amount necessary for Borrower to pay to redeem the Premises after any foreclosure sale over and above and notwithstanding the bid price at any foreclosure sale. BORROWER EXPRESSLY COVENANTS AND AGREES THAT IT WILL COOPERATE WITH THE LENDER IN THE LENDER' S EXERCISE OF ITS REMEDIES HEREUNDER, WILL NOT OBJECT OR CONTEST THE EXERCISE OF LENDER' S REMEDIES HEREUNDER AND EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHT NOW OR HEREAFTER EXISTING AT LAW, IN EQUITY OR BY STATUTE TO OBJECT TO THE EXERCISE BY LENDER OF ALL OR ANY OF THE AFORESAID REMEDIES. BORROWER ACKNOWLEDGES THAT IT IS REPRESENTED BY COUNSEL AND THE REMEDIES HEREIN AND THE CONTENT AND EFFECT OF THIS WAIVER HAVE BEEN FULLY DISCUSSED WITH AND EXPLAINED BY COUNSEL AND EXECUTES AND DELIVERS THIS WAIVER ONLY UPON A FULL UNDERSTANDING OF THE

SAME AND THE RIGHTS WAIVED HEREUNDER. BORROWER FURTHER UNDERSTANDS THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT IN RELIANCE UPON THIS WAIVER AND THE RIGHT TO EXERCISE SUCH REMEDIES AND BUT FOR SUCH WAIVER WOULD NOT MAKE THE LOAN.

In no event will the actions of the Lender while exercising its rights pursuant to this Section constitute the Lender a mortgagee-in-possession, and Borrower hereby indemnifies the Lender from and against any and all costs and liabilities resulting from any such characterization or from their actions or omissions to act pursuant to this Section; provided, that Borrower has no obligation to indemnify the Lender for costs and liabilities resulting from the gross negligence or

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willful misconduct of the Lender. In connection with any operation of the Project undertaken by the Lender pursuant to this Section, the Lender may:

- (i) engage Persons for the purpose of operating the Project;
- (ii) pay, settle or compromise, or cause to be paid, settled or compromised, all claims or bills that may become Liens against Borrower's interest in the Site or the Project, or that have been or may be incurred in any manner in connection with the operation of the Project or for the discharge of Liens or defects in the title of Borrower's interest in the Site or the Project; and
- (iii) take such other action or refrain from acting under this Agreement as the Lender may in its sole and absolute discretion from time to time determine.

Borrower will be liable to the Lender for all sums paid or incurred for the operation of the Project and all payments made or liabilities incurred by the Lender under this Agreement of any kind whatsoever (other than sums paid or incurred or liabilities incurred due to the gross negligence or willful misconduct of the Lender) will be paid by Borrower to the Lender upon demand with interest to the date of payment to the Lender at the Default Rate. For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by this Section, Borrower irrevocably constitutes and appoints the Lender, with full power of substitution, as its true and lawful attorney-in-fact, in its name and on its behalf, and at its expense, at any time after the occurrence and during the continuance of an Event of Default, to execute, acknowledge and deliver any document and instrument and to do and perform any act such as those referred to in this Section, without notice to or the consent of Borrower. This power of attorney is coupled with an interest and is not revocable.

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

14.

CONDITIONS OF LOAN

14.1 Notwithstanding any other provision of this Agreement, the Closing Date shall not occur until all of the following conditions are satisfied:

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- (a) Delivery of Loan Documents. The Borrower shall execute and deliver to the Lender all of the following Loan Documents, all of which must be satisfactory to the Lender and the Lender's counsel in form, substance and execution:
 - (i) Loan and Security Agreement. This Agreement duly executed by the Borrower.
 - (ii) Note. The Note duly executed by the Borrower, in the form prepared by and acceptable to the Lender.
 - (iii) Mortgage. The Mortgage duly executed by the Borrower, in the form prepared by and acceptable to the Lender.

- (iv) Assignment of Rents and Leases. The Assignment of Rents and Leases duly executed by the Borrower, in the form prepared by and acceptable to the Lender.
- (v) Financing Statement(s). The Financing Statements authorized by Borrower, in the form prepared by and acceptable to the Lender.
- (vi) Assignment of Contract Rights, Intangibles and Proprietary Rights. The Assignment of Contract Rights, Intangibles and Proprietary Rights in the form prepared by and acceptable to the Lender.
- (vii) Assignment of Operating, Service Contracts, Permits and Regulatory Approvals. The Assignment of Operating, Service Contracts, Permits and Regulatory Approvals in the form prepared by and acceptable to the Lender.
- (viii) Collateral Assignment of License Agreement. The Collateral Assignment of License Agreement in the form prepared by and acceptable to the Lender.
- (ix) Assignments of Incentive Payments. The Assignments of Incentive Payments in the forms prepared by and acceptable to the Lender.
- (x) Environmental Indemnity. The Environmental Indemnity in the form prepared by and acceptable to the Lender.
- (xi) Control Agreement. Control Agreements executed by the Lender, the Borrower and the Collection Bank (or such other banks as Lender in its sole discretion may approve).
- (xii) Search Results; Lien Terminations. Copies of UCC search reports dated such a date as is reasonably acceptable to the Lender, listing all effective financing statements which name the Borrower, under its present names and any previous names, as debtors, together with (i) copies of such financing statements, (ii) payoff letters evidencing repayment in full of all existing Debt to be repaid with the Advances, the termination of all

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- agreements relating thereto and the release of all Liens granted in connection therewith, with UCC or other appropriate termination statements and documents effective to evidence the foregoing (other than Permitted Liens), and (iii) such other UCC termination statements as the Lender may reasonably request.
- (xiii) Organizational and Authorization Document. Copies of (i) the Articles of Organization and Operating Agreement of the Borrower; (ii) resolutions of the members of the Borrower approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby; (iii) signature and incumbency certificates of the members of the Borrower, executing any of the Loan Documents, each of which the Borrower hereby certifies to be true and complete, and in full force and effect without modification, it being understood that the Lender may conclusively rely on each such document and certificate until formally advised by the Borrower of any changes therein; and (iv) good standing certificates in the state of formation of the Borrower and in each other state requested by the Lender.
 - (xiv) Insurance. Evidence satisfactory to the Lender of the existence of insurance required to be maintained pursuant to Article 5, together with evidence that the Lender has been named as a lender's loss payee on all related insurance policies.
 - (xv) Intercreditor Agreement. The Intercreditor and Collateral Priority Agreement, duly executed by Lender and LOC Lender, in the form prepared by and acceptable to the Lender.
 - (xvi) Escrow Agreement. The Escrow Agreement dated as of the date of this Agreement executed by Borrower, Lender, Seller, Central Farmers Cooperative, and Escrow Agent.

- (xvii) Additional Documents. Such other certificates, financial statements, schedules, resolutions, opinions of counsel, notes and other documents which are provided for hereunder or which the Lender shall require.
- (xviii) Flood Certification. Evidence satisfactory to Lender that the Plant is not located in the flood plain.
- (xix) Opinion. Prior to the Closing Date, Borrower shall furnish such opinions of counsel as Lender may require in connection with the matters contemplated by this Agreement.
- (xx) LOC Loan Documents. Copies of the executed LOC Documents.
- (xxi) Third Party Consents. A Service Provider's Consent, Consent and Acknowledgment of Licensor, Consent and Subordination of Manager, or Consent of Rail Car Lessor, as appropriate, from Fagen under the Design

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Build Agreement and from each third party to the Operating Agreements consenting to the collateral assignment of such documents to Lender in the form prescribed by Lender, excepting those listed on the attached Exhibit F, which shall be delivered at a later date pursuant to Section 14.2; provided, however, there will be no consent required from Fremar, LLC.

- (xxii) Amendments. Lender shall have approved any amendments to the Electrical Supply Agreements, Water Supply Agreements, and Natural Gas Supply Agreements.
- (xxiii) Sale Documents. All documents sufficient to satisfy the Lender that Borrower has acquired substantially all of the assets of Seller free and clear of liens and interests including but not limited to the Plant.

- (b) Delivery of Escrow Release Direction. The Borrower shall execute and deliver to Lender and Escrow Agent on or before the Closing Date a written direction under the Escrow Agreement to the Escrow Agent to (i) deliver the executed originals of this Agreement, the Note and the other Loan Documents to the Lender and (ii) direct the Escrow Agent to deliver the Asset Purchase Agreement and related documents to Seller and Borrower as appropriate.
- (c) Asset Purchase Agreement. The closing of the transactions contemplated by the Asset Purchase Agreement shall have occurred.
- (d) Delivery of Loan Documents. The Escrow Agent shall deliver to the Lender on or before the Closing Date the executed originals of this Agreement, the Revolving Note and the other Loan Documents.
- (e) Delivery of Equity Investment. On or before the Escrow Closing Date, the Borrower shall have delivered to the Escrow Agent the Borrower Equity.
- (f) Event of Default. No Event of Default shall have occurred and be continuing.
- (g) Material Adverse Effect. No Material Adverse Effect upon the Borrower has occurred.
- (h) Litigation. No litigation or governmental proceeding shall have been instituted against the Borrower having a Material Adverse Effect upon the Borrower.
- (i) Representations and Warranties. No representation or warranty of the Borrower contained herein or in any Loan Document shall be untrue or incorrect as of the Closing Date.
- (j) Governmental Requirements and Approvals. Excepting those approvals listed on Schedule 7.9 that are in the process of being obtained as of the Closing Date, which approvals Borrower will ensure are obtained within sixty (60) days from the Closing Date,

agreed upon by the SDENR, all regulatory approvals required for the operation of the Plant as of the Closing Date shall have been issued without conditions unacceptable to the Lender and copies thereof provided to Lender.

(k) Title Insurance. The Borrower shall have delivered to Lender a title policy in form and substance acceptable to Lender, with all such endorsements as Lender may deem appropriate or desirable insuring that the Mortgage is a perfected lien in the Real Property senior to all other liens and interests.

(l) Loan Fee. The Borrower shall have paid to the Lender the Initial Loan Fee in immediately available funds.

14.2 Notwithstanding any other provision of this Agreement, Borrower shall deliver the following within the time-periods specified herein:

(i) Risk Management Consent. A Service Provider's Consent from the provider of risk management services under the Risk Management Agreement in the form prescribed by Lender within ten (10) days after the date of the Risk Management Agreement.

(ii) Rail Consent. A Service Provider's Consent from BNSF Railway Company in the form prescribed by Lender within one hundred twenty (120) days after the Closing Date.

(iii) Third Party Consents. A Service Provider's Consent, Consent and Acknowledgment of Licensor, Consent and Subordination of Manager, or Consent of Rail Car Lessor, as appropriate, from Fagen under the Design Build Agreement and from each of the other third parties to the Operating Agreements listed on the attached Exhibit F consenting to the collateral assignment of such documents to Lender in the form prescribed by Lender within one hundred twenty (120) days after the Closing Date; provided, however, there will be no consent required from Fremar, LLC.

(iv) A Consent of Railcar Lessor from the entity leasing a locomotive to Borrower in the form prescribed by Lender within ten (10) days after the date of said Railcar Lease.

(v) A Consent of Railcar Lessor from CIT Group/Equipment Financing, Inc. ("CIT") in the form prescribed by Lender within ten (10) days after the date of said Railcar Lease with CIT.

(vi) A Service Provider's Consent from BP with respect to the BP Agreement in the form prescribed by Lender within one ten (10) days after the date of such agreement with BP.

GENERAL CONDITIONS AND MISCELLANEOUS

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

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

15.3 Indemnification. The Borrower agrees to defend (with counsel satisfactory to the Lender), protect, indemnify, exonerate and hold harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which shall also include, without limitation, reasonable attorneys' fees and time charges of attorneys who may be employees of any Indemnified Party), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including securities laws, Environmental Laws, commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Agreement or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Agreement and the Loan Documents, including the use or intended use of the proceeds of the Loan, the enforcement of the Lender's rights and remedies under this Agreement, the Loan Documents, the Note, any other instruments and documents delivered hereunder, or under any other agreement between the Borrower and the Lender (other than (i) the LOC Documents which are governed by the indemnification provisions contained in the LOC Documents and (ii) the Sale Documents); provided, however, that the Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters determined by a court of competent jurisdiction by final and non-appealable judgment to have been caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the

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extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by the Borrower, shall be added to the Obligations of the Borrower and be secured by the Collateral. The provisions of this Section shall survive the satisfaction and payment of the other Obligations and the termination of this Agreement.

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

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

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

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

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

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

15.10 Notices. Any notices and other communications permitted or required by the provisions of this Agreement (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because

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of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Lender shall be addressed as follows:

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

Each notice to Borrower shall be addressed as follows:

NuGen Energy, LLC
27283 - 447th Avenue
Marion, SD 57043
Attention: President

With a copy to:

Central Farmers Cooperative
44608-273rd Street
Marion, South Dakota 57043
Attention: General Manager

15.11 Governing Law. Notwithstanding the place of execution of this instrument, the parties to this instrument have contracted for South Dakota law to govern this instrument and it is controllingly agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of South Dakota without regard to the principles of conflicts of law.

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

15.13 Consent to Jurisdiction. The Borrower submits and consents to personal jurisdiction of the Courts of the State of South Dakota and Courts of the United States of America sitting in such State for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to

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jurisdiction in the State of South Dakota. Litigation may be commenced in any state court of general jurisdiction for the State of South Dakota or the United States District Court located in that state, at the election of the Lender. Nothing contained herein shall prevent Lender from bringing any action against any other party or exercising any rights against any security given to Lender, or against the Borrower personally, or against any property of the Borrower, within any other state. Commencement of any such action or proceeding in any other state shall not constitute a waiver of consent to jurisdiction or of the submission made by the Borrower to personal jurisdiction within the State of South Dakota.

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

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

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

NUGEN ENERGY, LLC,
a South Dakota limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this the _____ day of _____, 2009, before me, a notary public, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of NuGen Energy, LLC, a South Dakota limited liability company, and that such person, as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as _____.

NuGen Energy, LLC, has no seal.

Title of officer _____

DOUGHERTY FUNDING LLC, a
Delaware limited liability company

By: _____

T. Truxtun Morrison

Its: Senior Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this the _____ day of _____, 2009, before me, a notary public, the undersigned officer, personally appeared T. Truxtun Morrison, who acknowledged himself to be the Senior Vice President of Dougherty Funding LLC, a Delaware limited liability company, and that such person, as such Senior Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Senior Vice President.

Dougherty Funding LLC has no seal.

THIS DOCUMENT WAS DRAFTED BY:
OPPENHEIMER WOLFF & DONNELLY LLP (CAE)
Plaza VII, Suite 3400
45 South Seventh Street
Minneapolis, MN 55402

TABLE OF EXHIBITS AND SCHEDULES

- Exhibit A - Premises
- Exhibit B-1 - Make-Up Consideration
- Exhibit B-2 - Make-Up Contracts
- Exhibit C - Service Provider' s Consent
- Exhibit D-1 - Owned Intellectual Property
- Exhibit D-2 - Licensed Intellectual Property
- Exhibit E - Transferred Agreements Subject to Post-Closing Consent
- Exhibit F - Third Party Consents
- Schedule 5.13 - ERISA
- Schedule 7.9 - Permits
- Schedule 7.17 - Hazardous Substances Disclosures

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EXHIBIT A

Premises Legal Description

Lots 1 and 2 of Millennium Ethanol LLC Addition, located in Section 36, Township 100 North, Range 55 West of the 5th P.M. and in Section 31, Township 100 North, Range 54 West of the 5th P.M., Turner County, South Dakota, as shown on the plat recorded in Book 7 of Plats, Pages 415-417.

Lot 20, Marion Industrial Park Addition, an addition to the City of Marion, Turner County, South Dakota.

EXHIBIT B-1

Make-Up Consideration

EXHIBIT B-2

Make-Up Contracts

EXHIBIT C

Service Provider' s Consent

Dougherty Funding LLC
90 South Seventh Street, Suite 4400
Minneapolis, Minnesota 55402

Re: Project: NuGen Ethanol Plant ("Project")
 Marion, South Dakota

 Owner/
 Borrower: NuGen Energy, LLC

 Identify Name of Agreement: _____

 Dated: _____

 Identify Service to be Provided under Agreement ("Service"): _____

Ladies/Gentlemen:

We are the entity supplying services (the "Services") to the Project under the subject Agreement ("Agreement"). We understand that you are making a loan to the Borrower to finance the Project ("Loan"). We further understand that the Borrower has collaterally assigned to you all of its right in the Agreement ("Assignment"). We consent to such Assignment and advise you that:

1. Attached hereto as Exhibit "A" is a copy of the complete Agreement.

2. Upon the occurrence of a default and subsequent failure to cure by the Borrower under the Agreement we shall notify you in writing at your address above and you shall have the right, exercisable for 30 days after such notice, to elect in writing to us to require us to continue performance under the Agreement in which case we shall thereafter continue to provide the Service under the Agreement provided we are reimbursed in accordance with the Agreement for our Services.

3. All approvals necessary to commence construction of any facilities necessary to provide the Service in the Agreement have been obtained.

4. All preconditions necessary to furnish the Services in the Agreement have been satisfied.

5. All contracts necessary to complete such facilities have been executed and delivered.

6. Any right to terminate the Agreement other than by reason of the failure of the Borrower to perform its obligations thereunder are expressly waived. In that connection the Borrower has deposited with us all cash payments and security required under the Agreement.

Dated: _____, 2009

By:

Its:

EXHIBIT D-1

Owned Intellectual Property

None

EXHIBIT D-2

Licensed Intellectual Property

1. ICM License Agreement
2. Great Plains Software
3. CompuWeigh Software
4. Siemens APACS Distributed Control System

EXHIBIT E

Transferred Agreements Subject to Post-Closing Consent

1. Energy Management Agreement, dated as of October 4, 2006, between Energy Management and Consulting Services, LLC and Millennium Ethanol, LLC

2. Electric Service Agreement, dated as of July 14, 2006, between Southeastern Electric Cooperative, Inc. and Millennium Ethanol, LLC, as amended by Service Provider Consent and Amendment to Electric Service Agreement, dated as of May 24, 2007, between Southeastern Electric Cooperative, Inc., Millennium Ethanol, LLC and Dougherty Funding LLC, as each are amended by Amendment to Electric Service Agreement II, dated as of May 21, 2009, between Southeastern Electric Cooperative, Inc. and Marion Energy Investments, LLC

3. Industry Track Agreement, made as of May 25, 2006, by and between BNSF Railway Company and Millennium Ethanol, LLC
4. Service Agreement between ICM, Inc. and Millennium Ethanol, LLC executed by Millenium Ethanol, LLC on November 17, 2005
5. Lease of Land for Construction/Rehabilitation of Track between BNSF Railway Company and Millenium Ethanol, LLC dated May 25, 2006
6. Railworks Contract, dated July 31, 2006, between Millennium Ethanol, LLC and Railworks Track Systems, Inc.

Firm Throughput Service Agreement between Millennium Ethanol, LLC and Northern Natural Gas Company dated June 9, 2006, as amended. Affirmation of Obligations Relating to Facilities, dated June 8, 2009, between Northern Natural Gas Company and Marion Energy Investments, LLC and First Amendment to Affirmation of Obligations Relating to Facilities Contract No. 600979, dated June 11, 2009, between Northern Natural Gas Company and Marion Energy Investments, LLC
- 7.
8. Agreement to Provide Security, dated June 8, 2009, between Northern Natural Gas and Marion Energy Investments, LLC
9. Lump Sum Design-Build Contract dated May 5, 2006 between Millennium Ethanol, LLC and Fagen, Inc.
10. License Agreement, dated as of May 5, 2006, between Millennium Ethanol, LLC and ICM, Inc.
13. Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC
14. RELCO Locomotives, Inc. Locomotive Maintenance Agreement, dated June 22, 2009, between Marion Energy Investments, LLC and RELCO Locomotives

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15. RELCO Finance, Inc. Locomotive Lease Agreement, dated June 22, 2009, between Marion Energy Investments, LLC and RELCO Finance, Inc.

Rider One (1) to Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC (a rider to the Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC)
- 16.
17. Rider Two (2) to Railroad Car Lease Agreement, dated July 13, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC (a rider to the Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC)

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EXHIBIT F

Third Party Agreements Requiring Collateral Consent

1. License Agreement, dated as of May 5, 2006, between Millennium Ethanol, LLC and ICM, Inc.
2. Lump Sum Design-Build Contract dated May 5, 2006 between Millennium Ethanol, LLC and Fagen, Inc.
3. Management Agreement dated June 25, 2009, between Borrower and Central Farmers Cooperative
4. Electric Service Agreement, dated as of July 14, 2006, between Southeastern Electric Cooperative, Inc. and Millennium Ethanol, LLC, as amended by Service Provider Consent and Amendment to Electric Service Agreement, dated as of May 24, 2007, between Southeastern

Electric Cooperative, Inc., Millennium Ethanol, LLC and Dougherty Funding LLC, as each are amended by Amendment to Electric Service Agreement II, dated as of May 21, 2009, between Southeastern Electric Cooperative, Inc. and Marion Energy Investments, LLC

5. Application for Transfer of Water Service dated as of December 26, 2007, originally between US Bio Marion, LLC and TM Rural Water District. Water Use Agreement dated as of June 14, 2006 originally between TM Rural Water District and Millennium Ethanol, LLC, as amended by Addendum and Consent to Assignment originally between TM Rural Water District and Marion Energy Investments, LLC dated May 13, 2009. Water Treatment Plant Financing Agreement dated June 14, 2006 originally between TM Rural Water District and Millennium Ethanol, LLC
6. Firm Throughput Service Agreement between Millennium Ethanol, LLC and Northern Natural Gas Company dated June 9, 2006, as amended and supplemented by Affirmation of Obligations Relating to Facilities, dated June 8, 2009, between Northern Natural Gas Company and Marion Energy Investments, LLC and First Amendment to Affirmation of Obligations Relating to Facilities Contract No. 600979, dated June 11, 2009, between Northern Natural Gas Company and Marion Energy Investments, LLC, and as supplemented by Agreement to Provide Security, dated June 8, 2009, between Northern Natural Gas and Marion Energy Investments, LLC
7. Energy Management Agreement, dated as of October 4, 2006, between Energy Management and Consulting Services, LLC and Millennium Ethanol, LLC
8. Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC, as supplemented by Rider One (1) to Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC (a rider to the Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC), as further supplemented by Rider Two (2) to Railroad Car Lease Agreement, dated July 13, 2009, between Trinity Industries Leasing Company

and Marion Energy Investments, LLC (a rider to the Railroad Car Lease Agreement, dated June 24, 2009, between Trinity Industries Leasing Company and Marion Energy Investments, LLC).

9. Letter Agreement for Request for Gas Distribution Service dated June 15, 2009 between Marion Energy Investments, LLC and NorthWestern Corporation d/b/a NorthWestern Energy
10. Distiller' s Grain Marketing Agreement dated June 16, 2009 between Borrower and CHS, Inc.
11. Ethanol Sales and Marketing Agreement between Borrower and CHS, Inc. dated June 16, 2009
12. Industry Track Agreement, made as of May 25, 2006, by and between BNSF Railway Company and Millennium Ethanol, LLC. Lease of Land for Construction/Rehabilitation of Track between BNSF Railway Company and Millenium Ethanol, LLC dated May 25, 2006.
13. GATX Rail Car Service Contract, dated July 1, 2009, originally between GATX Corporation and Marion Energy Investments, LLC (Contract No. 9431), as amended by Amendment No. 1 to Contract No. 9431, dated July 1, 2009, originally between GATX Corporation and Marion Energy Investments, LLC, as further amended by Rider No. 1 to Car Service Contract No. 9431, dated July 1, 2009, originally between GATX Corporation and Marion Energy Investments, LLC

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EXHIBIT G

| Agreement | Timeframe |
|---------------------------|----------------------------|
| Risk Management Agreement | 120 days from Closing Date |
| BP Agreement | 30 days from Closing Date |
| Railcar Lease with CIT | 30 days from Closing Date |

SCHEDULE 5.13

ERISA

None

SCHEDULE 7.9

Permits

1. Alcohol Fuel Producer Permit from U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau
2. South Dakota Fuel Tax License
3. Commercial feed licenses or permits in Iowa, Nebraska and South Dakota
4. SDDENR Title V Air Quality Permit
5. SDDENR Storm Water Discharge Permit for Industrial Activities
6. SDDENR Storm Water Discharge Permit for Construction Activities
7. SDDENR Surface Water Discharge Permit
8. SDDENR Notification for Above Ground Stationery Storage Tanks
9. Effective Fuel Additive Manufacturer' s Notification with the U.S. Environmental Protection Agency ("EPA")
10. EPA Facility Identification Number and Company Identification Number as a RIN Generator
11. Integrated Contingency Plan
12. Risk Management Plan
13. Spill Pollution Control and Countermeasure Plan
14. Submitted IRS Form 637 (Blender Excise Tax from U.S. Department of Treasury)
15. FDA Food Facility Registration

SCHEDULE 7.17

Hazardous Substances Disclosures

1. The Soil Stabilization Requirements.

- Those permits set forth on the attached Schedule 7.9 have not yet been issued, which permits have been applied for, are paid for, and
2. are in the process of being issued, and Borrower will ensure such permits on the attached Schedule 7.9 will be issued within sixty (60) days from the Closing Date.
-

REVOLVING CREDIT AND SECURITY AGREEMENT

This REVOLVING CREDIT AND SECURITY AGREEMENT dated as of July 23, 2009 (this "Agreement"), is executed by and between NuGen Energy, LLC, a South Dakota limited liability company (the "Borrower") and DOUGHERTY FUNDING LLC, a Delaware limited liability company, ("Lender").

PRELIMINARY RECITALS:

A. Borrower is acquiring from Marion Energy Investments, LLC, a Delaware limited liability company ("Seller"), a plant and other facilities used for the marketing, management, servicing, ownership or operation of a 100 MGY anhydrous ethanol refinery and production facility and located on certain real property located in the County of Turner, State of South Dakota ("Facility").

B. Borrower is simultaneously entering into a term loan agreement with the Lender pursuant to which the Borrower will borrow the sum of Eighty Seven Million Eight Hundred Seventy-Four Thousand Five Hundred Forty-Seven and 39/100 Dollars (\$87,874,547.39) to finance the acquisition of the Facility.

C. The Borrower and Lender seek to enter into a revolving line of credit facility ("Revolving Loan") to finance the working capital needs of the Borrower pursuant to the terms and conditions of this Agreement.

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

1.

DEFINITIONS.

1.1 Defined Terms. For the purposes of this Agreement, in addition to any other terms defined elsewhere herein, the following capitalized words and phrases shall have the meanings set forth below.

"Accounts" shall mean all of the Borrower's accounts, as such term is defined in the UCC, including each and every right of the Borrower to the payment of money, whether such right to payment now exists or hereafter arises, whether such right to payment arises out of a sale, lease or other disposition of goods or other property, out of a rendering of services, out of a loan, out of the overpayment of taxes or other liabilities, or otherwise arises under any contract or agreement, whether such right to payment is created, generated or earned by the Borrower or by some other person who subsequently transfers such person's interest to the Borrower, whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together with all other rights and interests (including all Liens) that the Borrower may at any time have by law or agreement against any Account Debtor or other obligor obligated to make

any such payment or against any property of such Account Debtor or other obligor; all including but not limited to all present and future accounts, contract rights, loans and obligations receivable, chattel papers, bonds, notes and other debt instruments, tax refunds and rights to payment in the nature of general intangibles.

"Account Debtor" shall have the meaning given it under the UCC.

"Accumulated Excess Cash Flow" shall mean the aggregate of Excess Cash Flow commencing on the date of this Agreement and continuing until the date of measurement (provided, however, there shall be no negative numbers taken into account, i.e. no reduction in the aggregate total if at any point no Excess Cash Flow is generated).

"Adjustment Date" shall mean the 30th day following the end of each Calendar Quarter.

"Affiliate" of any Person shall mean (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person, and (c) with respect to a Lender, any entity administered or managed by such Lender, or an Affiliate or investment advisor thereof and which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract, ownership of voting securities, membership interests or otherwise.

“Asset Purchase Agreement” shall mean that certain Asset Purchase Agreement, dated as of the date of this Agreement, entered into by and between Seller and the Borrower.

“Availability” means the amount by which the Borrowing Base Amount exceeds the aggregate amount of outstanding and unpaid Revolving Advances.

“Bankruptcy Code” shall mean the Bankruptcy Reform Act of 1978 as heretofore and hereafter amended, and codified as 11 U.S.C. §101 *et seq.*

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

“Borrowing Base Amount” shall mean at any time the lesser of:

- (a) Maximum Line Amount; or
 - (b) The sum of the following:
 - (i) the product of ninety percent (90%) of Eligible Accounts, plus
 - (ii) the product of ninety percent (90%) of Eligible Inventory, plus
 - (iii) the product of sixty percent (60%) of Eligible Other Inventory, plus
-
- (iv) Overadvance Amount; less
 - (v) Obligations under the Revolving Loan Documents that the Borrower owes to the Lender that have not yet been advanced on the Revolving Note.

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“Borrowing Base Certificate” shall mean a certificate to be signed by the Borrower certifying to the accuracy of the Borrowing Base Amount in form and substance satisfactory to the Lender, and attached as Exhibit A.

“BP” shall mean BP Canada Energy Marketing Corp.

“BP Agreement” shall mean the agreement for the purchase of natural gas to be entered into between Borrower and BP pursuant to which Borrower shall purchase natural gas from BP.

“Business Day” shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Minneapolis, Minnesota.

“Calendar Quarter” means any three-month period commencing on January 1, April 1, July 1 and October 1.

“Capital Expenditures” shall mean all expenditures (including Capitalized Lease Obligations) which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Borrower, but excluding expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds (or other similar recoveries)

paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

“Capital Lease” shall mean, as to any Person, a lease of any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, by such Person, as lessee, that is, or should be, in accordance with GAAP, recorded as a “capital lease” on the financial statements of such Person.

“Capitalized Lease Obligations” shall mean, as to any Person, all rental obligations of such Person, as lessee under a Capital Lease which are or will be required to be capitalized on the books of such Person.

“Cash Consideration” shall have the meaning ascribed to it in the Asset Purchase Agreement.

“Central Farmers Cooperative” shall mean Central Farmers Cooperative, a cooperative organized under the laws of South Dakota.

“Central Farmers Escrow Agreement” means an escrow agreement by and among Central Farmers Cooperative, Lender, and Escrow Agent which is acceptable to Lender and which complies with the terms of this Agreement.

“Change of Control” means the occurrence of any of the following events:

- a) Central Farmers Cooperative ceases to elect or appoint a majority of the members of the Board of Managers of the Borrower.
- b) Central Farmers Cooperative ceases to own 51% of the voting member interests of the Borrower.
- c) Steven Domm fails to hold the position and perform the duties of the Borrower’s Chief Executive Officer unless any replacement Chief Executive Officer is reasonably acceptable to Lender and Lender so states in writing.

“Chattel Paper” shall have the meaning given it under the UCC.

“Chemicals” means chemicals that are used or useful in the production of Ethanol or DGs and that are usable at the Plant.

“Closing Date” means unless extended in writing by the parties, the date that each of the conditions in Section 3.1 have been satisfied which may not occur later than thirty (30) days after the date of this Agreement unless a Repair Event occurs which requires a repair that cannot be completed in time to complete the performance test before thirty (30) days after the date of this Agreement in which case the Closing Date will be not later than forty-five (45) days after the date of this Agreement.

“CO₂” shall mean the carbon dioxide co-product of the Ethanol production process cleaned of residual alcohol and compressed for storage, if produced at the Plant.

“Collateral” shall have the meaning set forth in Section 4.1 hereof.

“Collateral Access Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Lender pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by the Borrower or any subsidiary, acknowledges the Liens of the Lender and waives any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits the Lender reasonable access to and use of such real property following the occurrence and during the continuance of an Event of Default to assemble, complete and sell any collateral stored or otherwise located thereon.

“Collection Account” means an account maintained with Collection Bank which shall be in Lender’s name and into which shall be deposited all Proceeds of Collateral.

“Collection Bank” shall mean Farmers State Bank of Marion.

“Commercial Tort Claims” shall have the meaning given it under the UCC.

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“Corn Agency Agreement” shall mean the Agency Agreement between Borrower and Fremar, LLC dated June 25, 2009 and/or any other agreement providing for the supply to the Borrower of grain sufficient to achieve 100 MGY output of Ethanol, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

“Corn and Milo Inventory” shall mean raw material corn and milo purchased by Borrower pursuant to any Corn Agency Agreement that meets the requirements of the Corn Agency Agreement.

“Control Agreement” shall mean a control agreement in form and substance acceptable to Lender and executed by Lender, the Borrower and Collection Bank or such other banks as Lender may approve in its sole discretion pursuant to which, among other things, the Lender is granted “control” (as that term is defined in the UCC with respect to deposit accounts) for purposes of perfection over any and all deposit accounts with the Collection Bank or such other bank.

“Credited Interest Adjustment Date” shall mean the first day of each consecutive calendar month that commences on the first day of the calendar month after the Closing Date.

“Credited Interest Payments” shall mean the interest payments that would otherwise be payable by the Borrower to the Plant Lender under the Plant Loan and Security Agreement but for the fact that the Borrower is entitled to a credit for the amount of such interest payments under the Plant Loan and Security Agreement due to the fact that the Borrower obtained one or more Revolving Advances to fund Initial Repair Costs not in excess of a principal amount of One Million Dollars (\$1,000,000.00); provided, that the aggregate amount of Credited Interest Payments shall equal the aggregate principal portion of any Revolving Advances used by the Borrower to fund Initial Repair Costs as calculated pursuant to subpart (d) of the definition of Gross Overadvance Amount and shall in no event exceed One Million Dollars (\$1,000,000.00).

“Debt” shall mean all items of indebtedness or liability that in accordance with GAAP would be included in determining total liabilities as shown on the liabilities side of the balance sheet for Borrower and shall also include the aggregate payments required to be made by Borrower at any time under any Capitalized Lease, the indebtedness due the Lender under the Revolving Loan and the indebtedness due the Plant Lender under the Plant Loan.

“Default Rate” shall mean a per annum rate of interest equal to the lesser of (i) the maximum lawful rate of interest permitted to be paid on the Revolving Loan or (ii) 800 Basis Points plus the LIBOR as it adjusts from time to time.

“Deposit Accounts” shall have the meaning given it under the UCC.

“DGs” shall mean dry distillers grains and wet distillers grains.

“Distribution” by any Person means (a) with respect to any stock issued by such Person or any partnership, membership or other equity interest of such Person, the retirement, redemption, purchase, or other acquisition for value of any such stock or partnership,

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membership or other equity interest, (b) the declaration or payment of any dividend or other distribution on or with respect to any stock or any partnership, membership or other equity interest of any Person, and (c) any other payment by such Person with respect to such stock or partnership, membership or other equity interest.

“Documents” shall have the meaning given it under the UCC.

“Electrical Supply Agreements” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

“Eligible Account” and “Eligible Accounts” shall mean each Account and all such Accounts (exclusive of sales, excise or other similar taxes) owing to the Borrower which meets each of the following requirements:

(a) is genuine in all respects and has arisen in the ordinary course of the Borrower’s business from the sale of Ethanol or DGs by the Borrower, including C.O.D. sales, which Ethanol or DGs have been produced and finished in accordance with the Account Debtor’s specifications (if any) and delivered to and accepted by the Account Debtor, and the Borrower has possession of, or has delivered to the Lender at the Lender’s request, shipping and delivery receipts evidencing such delivery;

(b) is subject to a perfected, first priority Lien in favor of the Lender and is not subject to any other assignment, claim or Lien, except subordinate Liens subordinated on terms satisfactory to Lender in favor of the Plant Lender;

(c) is the valid, legally enforceable and unconditional obligation of the Account Debtor with respect thereto, and is not subject to the fulfillment of any condition whatsoever or any counterclaim, credit (except as provided in subsection (h) of this definition), trade or volume discount, allowance, discount, rebate or adjustment by the Account Debtor with respect thereto, or to any claim by such Account Debtor denying liability thereunder in whole or in part and the Account Debtor has not refused to accept and/or has not returned or offered to return any of the goods or services which are the subject of such Account;

(d) is not an Account owed by an Account Debtor located outside the United States which is not (A) backed by a bank letter of credit issued by a bank acceptable to Lender and in form and substance acceptable to Lender naming the Lender as beneficiary or assigned to the Lender, in the Lender’s possession or control, and with respect to which a control agreement concerning the letter-of-credit rights is in effect, and acceptable to the Lender in all respects, in its absolute discretion, or (B) covered by a foreign receivables insurance policy acceptable to the Lender in its absolute discretion;

(e) is not an Account arising from a “sale on approval”, “sale or return”, “consignment”, “guaranteed sale” or “bill and hold”, or is subject to any other repurchase or return agreement;

(f) is not an Account with respect to which possession and/or control of the goods sold giving rise thereto is held, maintained or retained by the Borrower (or by any agent or custodian of the Borrower) for the account of, or subject to, further and/or future direction from the Account Debtor with respect thereto;

(g) it has not arisen out of contracts with the United States or any department, agency or instrumentality thereof, unless the Borrower has assigned its right to payment of such Account to the Lender pursuant to the Assignment of Claims Act of 1940, as amended, and evidence (satisfactory to the Lender) of such assignment has been delivered to the Lender, or any state, county, city or other governmental body, or any department, agency or instrumentality thereof;

(h) if the Borrower maintains a credit limit for an Account Debtor, the aggregate dollar amount of Accounts due from such Account Debtor, including such Account, does not exceed such credit limit;

- if the Account is evidenced by chattel paper or an instrument, the originals of such chattel paper or instrument shall
- (i) have been endorsed and/or assigned and delivered to the Lender or, in the case of electronic chattel paper, shall be in the control of the Lender, in each case in a manner satisfactory to the Lender;

- such Account is evidenced by an invoice delivered to the related Account Debtor and is not more than (i) in the case of Accounts arising from the sale of DGs, (X) fifteen (15) days past the due date thereof; or (Y) forty-five (45) days past the original invoice date thereof; and (ii) for all other Accounts, (X) one (1) day past the due date thereof, or (Y) thirty-one (31) days past the original invoice date thereof, in all cases according to the original terms of sale;
- (j)

- it is not an Account with respect to an Account Debtor that is located in any jurisdiction which has adopted a statute or other requirement with respect to which any Person that obtains business from within such jurisdiction must file a notice of business activities report or make any other required filings in a timely manner in order to enforce its claims in such jurisdiction's courts unless (i) such notice of business activities report has been duly and timely filed or the Borrower is exempt from filing such report and has provided the Lender with satisfactory evidence of such exemption or (ii) the failure to make such filings may be cured retroactively by the Borrower for a nominal fee;
- (k)

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- the Account Debtor with respect thereto is not the Borrower or an Affiliate of the Borrower provided however that
- (l) Borrower may sell DGs to Central Farmers Cooperative provided that such sales are at terms no less favorable to the Borrower than prevailing market terms;

- such Account does not arise out of a contract or order which, by its terms, forbids or makes void or unenforceable the assignment thereof by the Borrower to the Lender and is not unassignable to the Lender for any other reason;
- (m)

- there is no bankruptcy, insolvency or liquidation proceeding pending by or against the Account Debtor with respect thereto, nor has the Account Debtor suspended business, made a general assignment for the benefit of creditors or failed to pay its debts generally as they come due, and/or no condition or event has occurred having a Material Adverse Effect on the Account Debtor which would require the Accounts of such Account Debtor to be deemed uncollectible in accordance with GAAP;
- (n)

- it is not an Account that has been restructured, extended, amended or modified;
- (o)

- is not owed by an Account Debtor with respect to which twenty five percent (25.00%) or more of the aggregate amount of outstanding Accounts owed at such time by such Account Debtor is classified as ineligible under clause (j) or (o) of this definition; and
- (p)

- does not violate the negative covenants and does satisfy the affirmative covenants of the Borrower contained in this Agreement, and it is otherwise not unacceptable to the Lender for any other reason.
- (q)

An Account which is at any time an Eligible Account, but which subsequently fails to meet any of the foregoing requirements, shall forthwith cease to be an Eligible Account. Further, with respect to any Account, if the Lender at any time hereafter determine in its absolute discretion that the prospect of payment or performance by the Account Debtor with respect thereto is materially impaired for any reason whatsoever, such Account shall cease to be an Eligible Account after notice of such determination is given to the Borrower.

“Eligible Inventory” shall mean all Inventory of the Borrower valued at the lower of cost or market determined in accordance with GAAP which meets each of the following requirements:

- (a) is subject to a perfected, first priority Lien in favor of the Lender and is not subject to any other assignment, claim or Lien, except subordinate Liens in favor of the Plant Lender;

(b) is salable and not slow-moving, obsolete or discontinued, as determined in the absolute discretion of the Lender;

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- (c) is in the possession and control of the Borrower and it is stored and held in facilities owned by the Borrower or, if such facilities are not so owned, the Lender is in possession of a Collateral Access Agreement with respect thereto;
- (d) is not Inventory produced in violation of the Fair Labor Standards Act and subject to the “hot goods” provisions contained in Title 29 U.S.C. §215;
- (e) is not subject to any agreement or license which would restrict the Lender’s ability to sell or otherwise dispose of such Inventory;
- (f) is located in the United States or in any territory or possession of the United States that has adopted Article 9 of the Uniform Commercial Code;
- (g) is not “in transit” to the Borrower or held by the Borrower on consignment;
- (h) is not “work in progress” Inventory;
- (i) is not supply items, packaging or any other similar materials;
- (j) is not identified to any purchase order or contract to the extent progress or advance payments are received with respect to such Inventory;
- (k) does not breach any of the representations, warranties or covenants pertaining to Inventory set forth in the Loan Documents;
- (l) consists of Ethanol, Corn and Milo Inventory or DGs but does not consist of Other Inventory; and
- (m) the Lender shall not have determined in its reasonable discretion that it is unacceptable due to age, type, category, quality, quantity and/or any other reason whatsoever.

Inventory which is at any time Eligible Inventory but which subsequently fails to meet any of the foregoing requirements shall forthwith cease to be Eligible Inventory.

“Eligible Other Inventory” shall mean all Other Inventory of the Borrower valued at the lower of cost or market determined in accordance with GAAP which meets each of the following requirements:

- (n) is subject to a perfected, first priority Lien in favor of the Lender and is not subject to any other assignment, claim or Lien, except subordinate Liens in favor of the Plant Lender;
- (o) will be salable and not slow-moving, obsolete or discontinued, as determined in the absolute discretion of the Lender unless such Other Inventory is Chemicals or Spare Parts in which event such Chemicals and Spare Parts continue to be useful to the operation of the Plant, are not

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damaged or otherwise not capable of functioning to the full extent of their intended purpose;

- (p) is in the possession and control of the Borrower and it is stored and held in facilities owned by the Borrower;

- (q) is not Inventory produced in violation of the Fair Labor Standards Act and subject to the “hot goods” provisions contained in Title 29 U.S.C. §215;
- (r) is not subject to any agreement or license which would restrict the Lender’s ability to sell or otherwise dispose of such Inventory;
- (s) is located in the United States or in any territory or possession of the United States that has adopted Article 9 of the Uniform Commercial Code;
- (t) is not “in transit” to the Borrower or held by the Borrower on consignment;
- (u) is not “work in progress” Inventory unless such Other Inventory is WIP;
- (v) is not identified to any purchase order or contract to the extent progress or advance payments are received with respect to such Inventory;
- (w) does not breach any of the representations, warranties or covenants pertaining to Inventory set forth in the Loan Documents;
- (x) does not consist of Ethanol, Corn and Milo Inventory or DGs; and
- (y) the Lender shall not have determined in its reasonable discretion that it is unacceptable due to age, type, category, quality, quantity and/or any other reason whatsoever.

Inventory which is at any time Eligible Other Inventory but which subsequently fails to meet any of the foregoing requirements shall forthwith cease to be Eligible Other Inventory.

“Employee Benefit Plan” shall mean an employee benefit plan as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a plan as defined in Section 4975(e)(1) of the IRC.

“Environmental Laws” shall mean all present or future federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative or judicial orders, consent agreements, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case relating to any matter arising out of or relating to public health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, emission, release, threatened release, control or cleanup of any Hazardous Substance.

“Equipment” shall mean all of Borrower’s equipment, as defined in the UCC, including all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal property (other than Inventory), and all parts, accessories and special tools therefor, and accessions thereto and, in any event, including all machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

“Equity Investment” shall have the meaning ascribed to it in Section 3.1(e).

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

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

“Escrow Agent” means Wells Fargo Bank, National Association.

“Escrow Agreement” shall mean the Escrow Agreement dated of even date herewith by and among Borrower, Lender, Seller, Central Farmers Cooperative, and Escrow Agent.

“Escrow Closing Date” shall mean the date on which this Agreement and the Loan Documents are executed and delivered to the Escrow Agent.

“Escrow Release Notice” shall have the meaning ascribed to it in the Escrow Agreement.

“Ethanol” shall mean anhydrous denatured fuel grade ethanol alcohol meeting all applicable ASTM Standards and the ethanol standards established by the Williams Pipeline Test and ethanol standards established by all other standard ethanol industry tests.

“Event of Default” shall mean any of the events or conditions which are set forth in Section 9 hereof.

“Excess Cash Flow” shall mean for any period an amount equal to the sum of (a) Borrower’s before-tax net income for such period determined in accordance with GAAP (which for the avoidance of doubt is determined net of Interest Expense) plus (b) depreciation and amortization during such period to the extent reducing Borrower’s after-tax net income for such period determined in accordance with GAAP plus (c) the amount, if any, that the general and administrative expenses of the Borrower exceed the general and administrative expenses customarily incurred by Persons engaged in a similar

business as Borrower in a similar geographic location; plus (d) the unpaid portion of Make-Up Consideration to the extent otherwise included in Borrower’s before-tax net income for such period and to the extent such has been expensed to calculate Borrower’s before-tax net income minus the sum of the following:

- (i) non-operating gains during such period to the extent included in Borrower’s after-tax net income for such period determined in accordance with GAAP; plus
- (ii) Mandatory Principal Payments made during such period; plus
- (iii) All cash interest payments with respect to the Revolving Loan and the Plant Loan; plus
- (iv) cash payments made on account of Capital Expenditures made by the Borrower during such period in excess of amounts drawn from the FF&E Reserve; plus
- (v) Cash paid by the Borrower during such period into the FF&E Reserve; plus
- (vi) Tax Distributions made by Borrower during such period.

“Fagen Contract” shall mean the Lump Sum Design-Build Agreement dated May 5, 2006 originally between Fagen, Inc. and Millennium Ethanol, LLC.

“FB&T” shall mean First Bank & Trust in Brookings, South Dakota.

“FB&T Guaranty” means that certain Guaranty executed by Central Farmers Cooperative dated as of September 25, 2006 pursuant to which Central Farmers Cooperative, in its capacity as successor to Fremar Farmers Cooperative, Inc. guaranteed certain obligations of Millennium Ethanol, LLC to FB&T.

“FB&T Guaranty Litigation” means any law suit, arbitration or other similar proceedings in which FB&T seeks a judgment against Central Farmers Cooperative based solely upon the FB&T Guaranty.

“FB&T Resolution” shall mean: a) judgment shall have been entered in favor of FB&T with respect to the FB&T Guaranty Litigation and all appeal periods shall have expired without an appeal or if there has been an appeal or a subsequent appeal(s), all such appeals have been completed with all subsequent appeal periods having expired; b) judgment shall have been entered in favor of Central Farmers Cooperative with respect to the FB&T Guaranty Litigation and all appeal periods shall have expired without an appeal or if there has been an appeal or a subsequent appeal(s), all such appeals have been completed with all subsequent appeal periods having expired; or c) Central Farmers Cooperative and FB&T shall have entered into a settlement agreement that fully releases Central Farmers Cooperative from all liability under the FB&T Guaranty and does not include the resolution of any other liability of Central Farmers Cooperative to FB&T.

“FF&E Reserve” shall have the meaning ascribed to it in the Plant Loan Documents.

“Fixtures” shall have the meaning given it under the UCC.

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“Fremar, LLC” shall mean Fremar, LLC, a Minnesota limited liability company.

“Funding Expiration Date” shall mean the earlier of (i) the Maturity Date or (ii) the date the Lender demands payment of the Revolving Advances after an Event of Default.

“GAAP” shall mean generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, provided, however, that interim financial statements or reports shall be deemed in compliance with GAAP despite the absence of footnotes and fiscal year-end adjustments as required by GAAP.

“General Intangibles” shall have the meaning given it under the UCC.

“Gross Overadvance Amount” shall mean the sum of:

(a) the Cash Consideration minus (i) \$1,800,000 minus (ii) the amount (x) the value of the Working Capital Assets of Seller being sold to the Borrower pursuant to the terms of the Asset Purchase Agreement determined on the Closing Date exceeds (y) \$3,577,709.55; plus

(b) up to \$2,400,000 incurred after the Closing Date to the extent represented by a budget approved by the Lender and to the extent actually paid for the following purposes: amounts incurred for environmental remediation, payments made to Fagen, Inc. to cure defaults under the Fagen Contract, additional security deposits required to be paid to Southeastern Electric for the Southeastern Electric Contract and payments made to ICM to complete the Performance Criteria testing and certification pursuant to the Asset Purchase Agreement and, each represented in a submitted and approved operating budget and with proof of payment; plus

- the aggregate amount of all costs, expenses, and fees (including attorneys' fees), incurred by Borrower in connection with the
- (c) negotiation, documentation and closing of the sale of the Facility to Buyer and the loans evidenced by the Loan Agreements to the extent such is not included as Cash Consideration; plus
 - (d) the aggregate amount equal to the principal portion of any Revolving Advances used by the Borrower to fund Initial Repair Costs.

“Hazardous Substances” shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, radon gas and mold; (b) any chemicals, materials, pollutant or substances defined as or included in the definition of “hazardous substances”, “hazardous waste”, “hazardous materials”,

“extremely hazardous substances”, “restricted hazardous waste”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or release of which is prohibited, limited or regulated by any governmental authority or for which any duty or standard of care is imposed pursuant to, any Environmental Law.

“ICM” means ICM, Inc., a Kansas corporation.

“ICM License” means that certain ICM License, dated as of May 5, 2006, originally entered into by and between Millennium Ethanol, LLC and ICM.

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

“Indemnified Party” and “Indemnified Parties” shall mean, respectively, the Lender and any parent corporation, Affiliate or subsidiary of the Lender, and each of their respective officers, directors, employees, attorneys and agents, and all of such parties and entities.

“Initial Loan Fee” shall have the meaning ascribed to it in Section 2.15.

“Initial Repair Costs” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

“Instruments” shall have the meaning given it under the UCC.

“Intellectual Property” shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, patents, service marks and trademarks, and all registrations and applications for registration therefor and all licensees thereof, trade names, domain names, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

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

“Intercreditor Agreement” shall mean the Intercreditor and Collateral Priority Agreement by and among the Plant Lender (in its capacity as lender under the Plant Loan and Security Agreement) and Lender (in its capacity as lender under this Agreement), as acknowledged by the Borrower, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Interest Adjustment Date” shall mean the first day of each Calendar Quarter in a year, i.e., January 1, April 1, July 1 and October 1.

“Interest Expense” shall mean for any period, the aggregate interest expense (including capitalized interest) of the Borrower for such period including, without limitation, the interest portion of any Capitalized Lease; provided, however, that the foregoing shall be adjusted to reflect only the net effect of any interest rate swap, interest hedging transaction, or other similar arrangement entered into by the Borrower in order to reduce or eliminate variations in its interest expenses.

“Inventory” shall mean “inventory,” as that term is defined in the UCC, now or hereafter owned by Borrower, including without limitation (a) all products, goods, materials and supplies produced, purchased or acquired by Borrower for the purpose of sale in the ordinary course of its business including corn and grain supplies, ethanol, denatureants, distillers grains and carbon dioxide byproduct, (b) spare parts and maintenance materials inventory and (c) goods in which Borrower has an interest in mass or a joint or other interest or right of any kind.

“Investment Cash” shall mean the amount of cash up to \$7,000,000 received by the Borrower from a Qualified Investment after payment of all costs, expenses, fees and commissions (including but not limited to any brokerage or investment banking fees and commissions) in any way related to Qualified Investments incurred in connection with identifying, attracting, obtaining, or documenting Qualified Investments.

“Investment Property” shall have the meaning given it under the UCC.

“IRC” means the Internal Revenue Code of 1986, as amended from time to time.

“Late Charge” has the meaning given in Section 2.13.

“Letter-of-Credit Rights” shall have the meaning given it under the UCC.

“Liabilities” shall mean at all times all liabilities of the Borrower that would be shown as such on a balance sheet of the Borrower prepared in accordance with GAAP.

“LIBOR” shall mean the daily rate of interest as published in the Money Rates section of The Wall Street Journal as London Interbank Offered Rates (Libor) with a term of three (3) months. If The Wall Street Journal ceases to publish the London Interbank Offered Rates (Libor), the Lender may select a substitute publication or service that publishes the London Interbank Offered Rates (Libor), or its equivalent, and if such London Interbank Offered Rates (Libor) is no longer published, then the LIBOR Rate will be determined by the Lender computing the arithmetic mean rates of interest per annum notified to the Lender by at least two (2) major banks in the London interbank market as the rate of interest at which U.S. dollar deposits in the approximate amount of the Loan would be offered to major banks in the London interbank market at their request on the second Libor Business Day prior to the Interest Adjustment Date. If the LIBOR Rate is not published or announced on the Interest Adjustment Date, then the LIBOR Rate published

or announced on the immediate last day prior to the Interest Adjustment Date shall be substituted.

“Libor Business Day” shall mean any day on which banks in London, England and New York, New York are open for conducting transactions in foreign currency and exchange.

“Lien” shall mean, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person (including an interest in respect of a Capital Lease) which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, title retention lien, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

“Loan Fee” shall mean the sum of \$150,000.

“Loan Documents” shall mean each of the agreements, documents, instruments and certificates set forth in Section 3.1(a) hereof excepting those Plant Loan Documents and Sale Documents that are not specifically enumerated in said Section 3.1(a) in a subsection other than the general references in subsections (xv) and (xviii) thereof, and any and all such other instruments, documents, certificates and agreements from time to time executed and delivered by the Borrower for the benefit of the Lender pursuant to any of the foregoing, and all amendments, restatements, supplements and other modifications thereto.

“Loan Year” shall mean any 12 month period during the term of this Agreement commencing on the Closing Date or any anniversary of the Closing Date.

“Make-Up Consideration” shall mean the total consideration not to exceed the total amount set forth on Exhibit B-1 attached hereto (which exhibit shall be updated as agreed by Borrower and Lender as of the Closing Date), which is the aggregate amount the Borrower is offering to provide to Make-Up Sellers under Make-Up Contracts, and 50% of which amount may be paid in the form of Make-Up Payments and 50% of such amount may be paid in the form of Make-Up Equity, as more particularly described in the Plant Loan and Security Agreement and in this Agreement.

“Make-Up Contracts” shall mean collectively the contracts between a Make-Up Seller and Borrower in a form acceptable to Lender for the purchase by Borrower of corn from such Make-Up Seller provided that the Borrower has agreed to provide Make-Up Consideration to such Make-Up Seller in an amount not to exceed the amount by which the purchase price for corn under such Make-Up Seller’s corn supply contract with U.S. Bio exceeds the corresponding base price for corn related to such Make-Up Seller’s corn supply contract as listed on Exhibit B-2 attached hereto (which exhibit shall be updated as agreed by Borrower and Lender as of the Closing Date).

“Make-Up Payments” shall mean, to the extent Excess Cash Flow is payable to Borrower in accordance with the terms of the Plant Loan and Security Agreement, an amount equal to 15% of Excess Cash Flow payable quarterly which may be used by Borrower to pay Make-Up Sellers not more than 50% of the Make-Up Consideration pursuant to the Make-Up Contracts.

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“Make-Up Equity” shall mean permitted issuances of member equity interests in Borrower that Borrower may provide to Make-Up Sellers for up to fifty percent (50%) of the Make-Up Consideration pursuant to the Make-Up Contracts; provided, however, that issuance of such equity interests may never dilute the percentage interests that the Warrant Participants are entitled to receive pursuant to the Warrant.

“Make-Up Sellers” shall mean the sellers under Make-Up Contracts.

“Management Agreement” shall mean the Management Agreement dated June 25, 2009, between Borrower and Central Farmers Cooperative and/or any other agreement providing for the management of the operations of Borrower by Central Farmers Cooperative in form satisfactory to the Lender, provided such agreements and all amendments thereto must be pre-approved by Lender in writing.

“Mandatory Principal Payments” shall mean for any period, any principal payments (including the portion of any payment on any Capitalized Lease allocable to principal in accordance with GAAP) made in respect of Debt during such period, other than any permitted to be made out of Excess Cash Flow.

“Material Adverse Effect” shall mean a material adverse effect on the business, operations, property, assets, liabilities or financial condition taken as a whole, or a material adverse effect on the ability of any Person to perform its obligations.

“Maturity Date” shall mean August 1, 2015.

“Maximum Line Amount” shall mean the sum of \$20,000,000 as such amount may be reduced as provided in Section 2.21 and/or Section 6.25.

“Member” shall mean in the context of the Borrower any member of the Borrower.

“Mortgage” shall mean the Mortgage and Security Agreement and Fixture Financing Statement given by the Borrower in favor of the Lender(s) and evidencing a second priority lien on and security interest in the Premises including the Plant and Fixtures, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

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

“Natural Gas Supply Agreements” shall mean those agreements with Utility Providers to provide natural gas to the Plant, either directly or from the mainlines of such Utility Provider to a distribution point of another Utility Provider for eventual distribution to the Plant by such other Utility Provider, including without limitation the following agreements, provided all such agreements and amendments thereto must be pre-approved by Lender in writing:

BP Agreement
NNG Agreement

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Northwestern Agreement

“NNG” shall mean Northern Natural Gas Company.

“NNG Agreement” shall mean collectively the Firm Throughput Service Agreement dated June 9, 2006 originally between NNG and Millennium, as modified and supplemented by the (i) Amendment to TFX Throughput Service Agreement dated November 1, 2007 originally between Millennium and NNG; (ii) Affirmation of Obligations Relating to Facilities dated June 8, 2009 originally between NNG and Seller; (iii) Agreement to Provide Security dated June 8, 2009 originally between NNG and Seller, and (iv) First Amendment to Affirmation of Obligation Relating to Facilities Contract No. 600979 dated June 11, 2009 originally between NNG and Seller

“NNG Letter of Credit” means the letter of credit issued by FB&T as issuer for the benefit of NNG in the original face amount of \$1,975,918.00 or any letter of credit issued by any entity in replacement thereof.

“Northwestern” shall mean NorthWestern Corporation d/b/a NorthWestern Energy.

“Northwestern Agreement” shall mean Letter Agreement for Request for Gas Distribution Service dated June 15, 2009 between Seller and NorthWestern.

“Net Income” shall mean with respect to the Borrower for any period, the net income (or loss) of the Borrower for such period as determined in accordance with GAAP, excluding gains or losses on the sale of assets other than Inventory.

“Obligations” shall mean all outstanding Revolving Advances, as evidenced by the Revolving Note, all interest accrued on any of the foregoing (including interest which would be payable as post-petition in connection with any bankruptcy or similar proceeding, whether or not permitted as a claim thereunder), any fees due the Lender hereunder including the Loan Fee, any expenses incurred by the Lender hereunder, including without limitation, all liabilities and obligations under this Agreement or under any other Loan Document.

“Obligor” shall mean the Borrower.

“Operating Account” means an account in the Borrower’s name at a bank reasonably acceptable to the Lender (but not FB&T) subject to a Control Agreement in favor of the Lender which shall be used as the Borrower’s principal operating account.

“Operating Agreements” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

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

“Organizational Identification Number” means, with respect to Borrower, the organizational identification number assigned to Borrower by the applicable governmental unit or agency of the jurisdiction of organization of the Borrower.

“Other Inventory” means Chemicals, WIP and Spare Parts.

“Other Taxes” shall mean any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise solely and irrefutably from the execution, delivery, enforcement or registration of, or otherwise with respect to, this Agreement or any of the other Loan Documents.

“Overadvance Amount” shall mean, at any given time, the Gross Overadvance Amount minus the sum of (a) 40% of Accumulated Excess Cash Flow plus (b) Credited Interest Payments but in no event shall the Overadvance Amount be less than zero, which shall be adjusted as follows: (i) on each Adjustment Date in which Quarterly Excess Cash Flow for the immediately preceding Calendar Quarter was a positive number, the Overadvance Amount will be reduced in the amount equal to such positive 40% Quarterly Excess Cash Flow; and (ii) Credited Interest Payments shall be deducted from the Overadvance Amount on each Credited Interest Adjustment Date.

“Pension Plan” shall mean an employee pension benefit plan that is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the IRC, and that is maintained by Borrower or an ERISA Affiliate for employees.

“Performance Criteria” shall have the meaning assigned to such term in the Asset Purchase Agreement.

“Permitted Liens” shall mean those (i) liens and security interests in favor of Lender pursuant to this Agreement, and (ii) those liens and security interests in favor of the Plant Lender providing the Plant Loan pursuant to the Plant Loan and Security Agreement, which liens and security interests shall be subject to the terms of Intercreditor Agreement.

“Person” shall mean any natural person, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

“Plant” shall mean the dry mill grain processing plant capable of grinding approximately 36,000,000 bushels of corn per year to produce a name-plate capacity of 100,000,000 gallons of fuel grade Ethanol per year and with approximately 321,000 tons of dried distillers grains with solubles per year located on the Premises.

“Plant Lender” shall mean Dougherty Funding LLC and its successors and assigns in its capacity as lender with respect to the Plant Loan.

“Plant Loan” shall mean the loan made by the Plant Lender pursuant to the terms of the Plant Loan and Security Agreement.

“Plant Loan and Security Agreement” shall mean the Loan and Security Agreement dated as of the date of this Agreement, by the Plant Lender and the Borrower providing the terms of a term loan evidenced by a promissory note in the original principal amount of \$87,874,547.39.

“Plant Loan Documents” shall mean the documents required by the Plant Loan and Security Agreement to consummate the Plant Loan including the Intercreditor Agreement.

“Plant Mortgage” shall mean the Mortgage and Security Agreement and Fixture Financing Statement of even date given by the Borrower in favor of the Plant Lender and evidencing a first priority lien on and security interest in the Premises, as the same may be amended, restated, assigned, modified, extended, renewed, replaced and/or substituted in the future.

“Premises” shall mean the land upon which the Plant is located as more specifically described in the Mortgage.

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

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

“Qualified Investment” shall mean cash investments in the Borrower (including Unused Resolution Amount, if any, to the extent paid to the Borrower) in consideration for membership units and which otherwise satisfy the conditions and requirements of Section 2.21(c).

“Quarterly Excess Cash Flow” with respect to any Calendar Quarter, means the Excess Cash Flow for such Calendar Quarter.

“Rail Agreements” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

“Rail Spur” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

“Repair Costs” shall have the meaning ascribed to it in the Asset Purchase Agreement.

“Repair Event” shall mean one of the following: a) at anytime hereafter but prior to the Closing Date, ICM determines that the Facility has not satisfied the Performance Criteria and has determined that the Repair Costs are \$1,000,000 or less; or b) at any time hereafter but prior to the Closing Date, ICM determines that the Facility has not satisfied the Performance Criteria, has determined that the Repair Costs are in excess of \$1,000,000 and Seller timely sends a Repair Notice.

“Repair Notice” shall have the meaning ascribed to it in the Asset Purchase Agreement.

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

“Resolution Amount” means the sum of the following provided that such amounts may not exceed the Resolution Reserve:

(a) the portion of any judgment entered against Central Farmers Cooperative based solely upon Central Farmers Cooperative’s liability to FB&T under the FB&T Guaranty or the amount of any settlement payment set forth in a settlement agreement executed by Central Farmers Cooperative and FB&T provided that such settlement payment shall only compensate FB&T for amounts actually owed to FB&T pursuant to the FB&T Guaranty; plus

(b) the actual and reasonable attorneys fees and litigation costs incurred by Central Farmers Cooperative solely related to defending claims in the FB&T Guaranty Litigation related to the FB&T Guaranty and/or the actual and reasonable attorneys fees and cost incurred by FB&T related to negotiating, drafting and finalizing a settlement agreement between FB&T and Central Farmers Cooperative provided that all such attorneys fees and cost may only relate to Central Farmers Cooperative’s liability under the FB&T Guaranty provided further that all such attorneys fees and litigation or settlement costs must be supported by detailed billing statements, time records and invoices reasonably satisfactory to the Lender.

“Resolution Reserve” shall have the meaning ascribed to it in Section 3.1(f).

“Revolving Advances” shall mean, respectively, each direct advance and the aggregate of all such direct advances made by the Lender to the Borrower under and pursuant to this Agreement, as set forth in Section 2.1 of this Agreement.

“Revolving Loan” shall mean the aggregate of all advances made by the Lender to the Borrower under and pursuant to this Agreement, as set forth in Section 2.1 of this Agreement, not to exceed the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base Amount.

“Revolving Loan Commitment” shall mean at any given time the Maximum Line Amount.

“Revolving Loan Documents” shall mean those Loan Documents consisting of this Agreement, the Revolving Note and all documents and agreements executed in connection therewith together with all amendments, amendment and restatements, and modifications of any of the foregoing.

“Revolving Note” shall mean the revolving note in favor of Lender, in a maximum principal amount of Twenty Million and 00/100 Dollars (\$20,000,000.00) in the form prepared by and acceptable to Lender dated as of the date hereof, and maturing on the Maturity Date, duly executed by the Borrower and payable to the order of Lender,

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together with any and all renewal, extension, modification or replacement notes executed by the Borrower and delivered to the Lender.

“Sale Documents” shall mean the documents required by the Asset Purchase Agreement to consummate the sale of assets thereunder.

“Seller” shall have the meaning given in the preliminary recitals herein.

“Soil Stabilization Requirements” shall mean the requirements imposed by the South Dakota Department of Environment and Natural Resources to complete the requirements set out in that certain Surface Water Discharge Permit No. SD0028380, Construction Storm Water Discharge Permit No. SDR10D739, and Industrial Storm Water Discharge Permit No. SDR00B429.

“Solvent” or “Solvency” as to any Person shall mean that (i) the sum of the assets of such Person, both at a fair valuation and at present fair salable value, will exceed its liabilities, including contingent liabilities, (ii) such Person will have sufficient capital with which to conduct its business as presently conducted and as proposed to be conducted and (iii) such Person has not incurred debts, and does not intend to incur debts, beyond its ability to pay such debts as they mature. For purposes of this definition, “debt” shall mean any liability on a claim, and “claim” shall mean (x) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (y) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. With respect to any such contingent liabilities, such liabilities shall be computed at the amount which, in light of all the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

“Southeastern Electric Contract” shall mean those agreements with Utility Providers to provide the Electrical Supply System to the Plant including without limitation the Electric Service Agreement dated July 14, 2006 originally between Millennium Ethanol, LLC and Southeastern Electric Cooperative, Inc., as amended by Service Provider Consent and Amendment to Electric Service Agreement dated May 24, 2007, provided all such agreements and amendments thereto must be pre-approved by Lender in writing.

“Spare Parts” means Goods consisting of replacement parts: a) for Equipment that is located at the Plant and which Equipment is used by the Plant for the production of Ethanol or DGs; and b) that are usable at the Plant

“Start-Up and Testing Phase” shall have the meaning ascribed to it in the Asset Purchase Agreement.

“Subordination Agreement(s)” means any subordination agreement, intercreditor or similar agreement in which the Borrower is a party and which affects the Obligations including but not limited to the Intercreditor Agreement.

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“Supporting Obligations” shall have the meaning given it under the UCC.

“Tax Distribution” or “Tax Distributions” shall mean quarterly Distributions to Members for the purpose of paying the quarterly estimated federal and state income tax payments required to be made by each Member of Borrower based upon the operations of the Borrower and the resulting federal and state tax liability of such Member attributable to Borrower’s operations in the assumed amount of 35%.

“Taxes” shall mean any and all present and future taxes, duties, levies, imposts, deductions, assessments, charges or withholdings, and any and all liabilities (including interest and penalties and other additions to taxes) with respect to the foregoing.

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

“Unused Resolution Amount” means the Resolution Reserve minus the Resolution Amount.

“U.S. Bio” shall mean U.S. Bio Marion, LLC, a South Dakota limited liability company.

“Utility Provider” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

“Warrant” means the warrant issued by the Borrower in the form attached hereto as Exhibit C.

“Warrant Interests” means the membership interests of Borrower which the Warrant Participants have the right to have issued or which have been issued pursuant to the Warrant.

“Warrant Participants” shall mean collectively the Persons (a) who purchased a participating interest in the Revolving Loan and (b) who have not waived their interests in the Warrant pursuant to the terms of the Warrant, and their successors and assigns.

“Water Supply Agreements” shall have the meaning ascribed to it in the Plant Loan and Security Agreement.

“WIP” means Inventory that is work in process and is or will be Ethanol, Corn and Milo Inventory or DGs.

“Working Capital Assets” shall mean Accounts, Inventory, and Other Inventory.

1.2 Accounting Terms. Any accounting terms used in this Agreement which are not specifically defined herein shall have the meanings customarily given them in accordance with GAAP. Calculations and determinations of financial and accounting terms used and not

otherwise specifically defined hereunder and the preparation of financial statements to be furnished to the Lender pursuant hereto shall be made and prepared, both as to classification of items and as to amount, in accordance with sound accounting practices and GAAP as used in the preparation of the financial statements of the Borrower on the date of this Agreement. If any changes in accounting principles or practices from those used in the preparation of the financial statements are hereafter occasioned by the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or agencies with similar functions), which results in a material change in the method of accounting in the financial statements required to be furnished to the Lender hereunder or in the calculation of financial covenants, standards or terms contained in this Agreement, the parties hereto agree to enter into good faith negotiations to amend such provisions so as equitably to reflect such changes to the end that the criteria for evaluating the financial condition and performance of the Borrower will be the same after such changes as they were before such changes; and if the parties fail to agree on the amendment of such provisions, the Borrower will furnish financial statements in accordance

with such changes, but shall provide calculations for all financial covenants, perform all financial covenants and otherwise observe all financial standards and terms in accordance with applicable accounting principles and practices in effect immediately prior to such changes. Calculations with respect to financial covenants required to be stated in accordance with applicable accounting principles and practices in effect immediately prior to such changes shall be reviewed and certified by the Borrower's accountants.

1.3 Other Terms Defined in UCC. All other capitalized words and phrases used herein and not otherwise specifically defined herein shall have the respective meanings assigned to such terms in the UCC, to the extent the same are used or defined therein.

1.4 Other Interpretive Provisions.

- The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Whenever the
- (a) context so requires, the neuter gender includes the masculine and feminine, the single number includes the plural, and vice versa, and in particular the word "Borrower" shall be so construed.

- Section and Schedule references are to this Agreement unless otherwise specified. The words "hereof", "herein" and
- (b) "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

- (c) The term "including" is not limiting, and means "including, without limitation".

- (d) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including".

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- Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement and the other Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements and other modifications thereto, but only to the extent such amendments, restatements, supplements and other
- (e) modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation.

- (f) To the extent any of the provisions of the other Loan Documents are inconsistent with the terms of this Agreement, the provisions of this Agreement shall govern.

- This Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate
- (g) the same or similar matters. All such limitations, tests and measurements are cumulative and each shall be performed in accordance with its terms.

2.

REVOLVING LOAN.

2.1 Revolving Advances. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties of the Borrower set forth herein and in the other Loan Documents, commencing on the first Business Day following the Closing Date, the Lender agrees to make Revolving Advances at such times as the Borrower may request pursuant to the provisions of Section 2.3 until, but not including, the Funding Expiration Date, and in such amounts as the Borrower may from time to time request, provided, however, that (i) the aggregate principal balance of all Revolving Advances outstanding at any time shall not exceed the Borrowing Base Amount, (ii) the Lender need not make more than one Revolving Advance in any calendar week, and (iii) each request for a Revolving Advance shall be in an amount not less than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00). Revolving Advances made by the Lender may be repaid and, subject to the terms and conditions hereof, borrowed again up to, but not including the Funding Expiration Date unless the Revolving Advances are otherwise accelerated, terminated or extended as provided in this Agreement. The Revolving Advances shall be used by the Borrower for the purpose of working capital.

2.2 Initial Revolving Advances. On the Closing Date, the Borrower authorizes the Lender to make a Revolving Advance in an amount sufficient to pay the entire amount of Cash Consideration.

2.3 Procedure for Requesting a Revolving Advance. The Borrower agrees to comply with the following procedures in requesting Revolving Advances:

- (a) The Borrower shall make each request for a Revolving Advance to Lender before 11:00 a.m. (Minneapolis time) two (2) Business Days prior to the day of the requested Revolving Advance which Revolving Advance must

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be in a minimum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00). Requests must be made in writing accompanied by a current Borrowing Base Certificate, and transmitted by facsimile or electronic mail to the following address specifying the date of the requested Revolving Advance and the amount thereof:

Dougherty Funding LLC
90 South Seventh Street
Suite 4300
Minneapolis, Minnesota 55402
Attn: Karen Esbjornson
Email: kesbjornson@doughertymarkets.com
Facsimile: 612-317-2045
Telephone: 612-317-2178

- Upon fulfillment of the applicable conditions set forth in Article 3, Lender will disburse such Revolving Advance by transmitting the amount of such Revolving Advance via Federal Reserve Wire Transfer to Borrower's account at Collection Bank as follows unless the Lender and the Borrower shall agree in writing to another manner of disbursement:
- (b)

United Bankers Bank
ABA Number: 091001322
Into: Farmers State Bank - Account Number: 2502029
For further credit to: Nugen Energy - Account Number 162785205
Notify on Receipt: Wire Department Chairwoman; Carol Nelson,
Farmers State Bank; Assistant Chair Vicky Russell

Upon Lender's request, the Borrower shall promptly confirm each request for a Revolving Advance by executing and delivering an appropriate confirmation certificate to Lender. The Borrower shall repay all Revolving Advances even if the Lender does not receive such confirmation and even if the person requesting a Revolving Advance was not in fact authorized to do so. Any request for a Revolving Advance shall be deemed to be a representation by the Borrower that the conditions set forth in Article 3 have been satisfied as of the time of the request.

2.4 Maximum Line Amount. The Maximum Line Amount will be \$20,000,000 unless decreased in accordance with Section 2.21 or Section 6.25.

2.5 Revolving Loan Interest. Except as otherwise provided in this Section 2.5, the principal amount of the Revolving Advances outstanding from time to time shall bear interest as follows:

- (a) Pay Rate. During the term of the Revolving Loan at a fluctuating per annum interest rate equal to 300 Basis Points plus LIBOR as it adjusts on each Interest Adjustment Date.

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- Default Rate. If an Event of Default occurs, then, at the option of the Lender, during the entire period during which such Event of Default shall occur and be continuing interest shall be payable on the Principal Balance at a per annum rate of interest equal to the lesser of (i) the maximum lawful rate of interest permitted to be paid on the Revolving Loan or (ii) 800 Basis Points plus LIBOR as it adjusts from time to time ("Default Rate") whether or not the Lender has exercised its option to accelerate the maturity of the Revolving Loan and declare the entire Principal Balance due and payable.
- (b)

2.6 Revolving Loan Interest Payments. Except as otherwise provided, payments of interest under the Revolving Loan shall be payable as follows:

(a) Prior to Maturity Date. Prior to Maturity Date, on the first day of each month, there shall be paid monthly payments of all accrued and unpaid interest on the Principal Balance.

(b) Maturity Date. On the Maturity Date all accrued and unpaid interest shall be due and payable in full.

2.7 Revolving Loan Principal Payments.

(a) Revolving Loan Mandatory Payments at Maturity Date. All Revolving Advances hereunder shall be repaid by the Borrower on the Maturity Date, unless payable sooner pursuant to the provisions of this Agreement.

(b) Mandatory Payments when Excess Amount of Revolving Advances Outstanding. In the event the aggregate outstanding principal balance of all Revolving Advances hereunder exceeds the Borrowing Base Amount, the Borrower shall, without notice or demand of any kind, immediately make such repayments of the Revolving Advances or take such other actions as are satisfactory to the Lender as shall be necessary to eliminate such excess.

2.8 Payment of Accounts by Borrower's Account Debtors. Borrower shall instruct all Account Debtors to make payments either directly to the lockbox for deposit by Collection Bank directly to the Collection Account, or instruct them to deliver such payments to the Collection Bank by wire transfer, ACH, or other means as Lender may direct for deposit to the Collection Account. Until the occurrence of an Event of Default, the Lender will direct the Collection Bank to transfer funds from the Collection Account to the Borrower's Operating Account identified in Section 2.3(b) herein or any other Operating Account of the Borrower mutually agreeable in writing to both the Borrower and Lender within one (1) Business Day of receipt of funds within the Collection Account. Upon the occurrence of an Event of Default, the Lender may direct the Collection Bank (without any further consent or action by the Borrower) to cease immediately all transfers from the Collection Account to such Borrower's Operating Account. At the time of such direction by Lender, Collection Bank will promptly transfer to Lender all funds in the Collection Account and all additional payments received in the Collection Account thereafter during the continuance of an Event of Default. If Borrower receives a payment or the Proceeds

of Collateral directly, Borrower will promptly deposit the payment or Proceeds into the Collection Account. Until deposited, Borrower will hold all such payments and Proceeds in trust for the Lender without commingling with other funds or property. All deposits held in the Collection Account shall constitute Proceeds of Collateral and shall not constitute the payment of Indebtedness (as defined in Section 2.20).

2.9 Discretionary Disbursements. The Lender, in its absolute discretion, may immediately upon notice to the Borrower, disburse any or all proceeds of the Revolving Loan made or available to the Borrower pursuant to this Agreement to pay any substantiated fees, costs, expenses or other amounts undisputedly required to be paid by the Borrower hereunder and not so paid. All monies so disbursed shall be a part of the Obligations, payable by the Borrower on demand from the Lender.

2.10 Revolving Note. The Revolving Advance shall be evidenced by the Revolving Note. At the time of the initial assumption of a Revolving Advance and at each time any additional Revolving Advance shall be requested hereunder or a repayment made in whole or in part thereon, all of which shall be held, made, and received by the Lender and a notation thereof shall be made on the books and records of the Lender. All amounts recorded shall be, absent manifest error, conclusive and binding evidence of (i) the principal amount of the Revolving Advances advanced hereunder, (ii) any accrued and unpaid interest owing on the Revolving Advances, and (iii) all amounts repaid on the Revolving Advances. The failure to record any such amount or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of the Borrower under the Revolving Note to repay the correct and undisputed principal amount of the Revolving Advances, together with all interest accruing thereon.

2.11 Interest Computation; Collection of Funds. Except as otherwise set forth herein, all interest and fees shall be calculated on the basis of a year consisting of 360 days and shall be paid for the actual number of days elapsed. If any payment to be made by the Borrower hereunder or under the Revolving Note shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment. Notwithstanding anything to the contrary contained herein, the final payment due under the Revolving Loan must be made by wire transfer or other immediately available funds. All payments made by the Borrower hereunder or under any of the Loan Documents shall be made without setoff, counterclaim, or other defense. To the extent permitted by applicable law, all payments hereunder or under any of the Loan Documents (including any payment of Principal, interest, or fees) to, or for the benefit, of any Person shall be made by the Borrower free and clear of, and without deduction or withholding for, or account of, any Taxes now or hereinafter imposed by any taxing authority.

2.12 Application of Payments. Any payments received by the Lender shall be applied (i) to any costs of collection, (ii) to any Late Charges, (iii) to interest, (iv) to Principal Balance and (v) if any advance has been made by the Lender under the terms of this Agreement or any Loan Documents to repay such advances plus interest thereon, all in such order and priority as the Lender shall determine. Upon an Event

of Default any monies received shall, at the option and direction of the Lender, be applied to any sums due hereunder and any Loan Documents in such order and priority as the Lender shall determine.

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

2.14 Unused Line Fee. For the purposes of this Section 2.14, "Unused Amount" means the Revolving Loan Commitment reduced by outstanding Revolving Advances. The Borrower agrees to pay to the Lender an unused line fee at the rate of one-quarter of one percent (0.25%) per quarter on the average daily Unused Amount from the date of this Agreement to and including the Funding Expiration Date, due and payable quarterly in arrears on the last day of each calendar quarter and on the Funding Expiration Date.

2.15 Loan Fee. The Borrower agrees to pay to the Lender the Loan Fee which shall be paid in the following installments: a) \$100,000 payable on the Closing Date ("Initial Loan Fee"); and b) the sum of \$50,000 paid in 24 equally monthly installments of \$2,083 each commencing on the first of day of the month following the date in which the Closing Date occurs and continuing on the first day of each month thereafter until the Lender has received the sum of \$50,000.

2.16 Intentionally Omitted.

2.17 Intentionally Omitted.

2.18 Taxes.

All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on the Lender as a result of a present or former connection between the Lender and the jurisdiction of the governmental authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings (collectively, "Non-Excluded Taxes") or Other Taxes are required to be withheld from any amounts payable to the Lender hereunder, the amounts so payable to the Lender shall be increased to the extent necessary to yield to the Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, provided, however, that the Borrower shall

not be required to increase any such amounts payable to the Lender with respect to any Non-Excluded Taxes that are attributable to the Lender's failure to comply with the requirements of subsection 2.18 (c).

(b) The Borrower shall pay any Other Taxes to the relevant governmental authority in accordance with applicable law.

At the request of the Borrower and at the Borrower's sole cost, Lender shall take reasonable steps to (i) contest its liability for (c) any Non-Excluded Taxes or Other Taxes that have not been paid, or (ii) seek a refund of any Non-Excluded Taxes or Other Taxes that have been paid.

Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to a Lender a certified copy of an original official receipt received by the Borrower showing payment thereof in relation to the Lender. If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the (d) appropriate taxing authority or fails to remit to the Lender the required receipts or other required documentary evidence or if any governmental authority seeks to collect a Non-Excluded Tax or Other Tax directly from the Lender for any other reason, the Borrower shall indemnify the Lender on an after-tax basis for any incremental taxes, interest or penalties that may become payable by the Lender.

- (e) The agreements in this Section shall survive the satisfaction and payment of the Obligations and the termination of this Agreement.

2.19 All Revolving Advances to Constitute Single Obligation. The Revolving Advances shall constitute one general obligation of the Borrower, and shall be secured by Lender's priority security interest in and Lien upon all of the Collateral and by all other security interests, Liens, claims and encumbrances heretofore, now or at any time or times hereafter granted by the Borrower to Lender.

2.20 Savings Clause. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than permitted under state law) and that this section shall control every other covenant and agreement in this Agreement and any other Loan Documents delivered in connection herewith. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Revolving Note or under any other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Revolving Loan ("Indebtedness"), or if Lender's exercise of the option to accelerate the maturity of the Revolving Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the Principal Balance of the Revolving Note and all other Indebtedness (or, if the Revolving Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Revolving Note and the other Loan Documents shall immediately be

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deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

2.21 Warrant.

- (a) On the Escrow Closing Date, the Borrower will execute and deliver to the Warrant Participants the Warrant.
- (b) Intentionally Omitted.

- The percentage of Warrant Interests that the Warrant Participants are entitled to acquire pursuant to the Warrant (which is expressed as a percentage of the total economic interests of the Borrower) will be reduced based on additional Investment Cash invested in the Borrower in accordance with the following terms and conditions:
- (c)

- The Borrower will notify the Lender at least five (5) Business Days in advance of the Borrower's receipt of
- (i) Investment Cash on account of Qualified Investments, and Borrower will provide reasonable evidence of the receipt thereof to the Lender upon Borrower's receipt of such Investment Cash.

- No reduction of the percentage of Warrant Interests that the Warrant Participants are entitled to acquire pursuant to the Warrant (which is expressed as a percentage of the total economic interests of the Borrower) shall occur until the amount of the Investment Cash received by the Borrower on account of Qualified Investments equals \$3,000,000. Upon the receipt of Investment Cash by the Borrower on account of Qualified Investments equal to \$3,000,000, the
- (ii) percentage of Warrant Interests that the Warrant Participants are entitled to acquire pursuant to the Warrant (which is expressed as a percentage of the total economic interests of the Borrower) shall be reduced to 28.0% of the total economic interests of the Borrower. By way of example, in the event the Warrant Interests were originally 49 Class C Units of Borrower (which represents the right to acquire 49% of the economic interests of the Borrower), upon the receipt of Investment Cash by Borrower on account of Qualified Investments equal to

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\$3,000,000, the Warrant Interests that the Warrant Participants would be entitled to acquire pursuant to the Warrant would be reduced to 28 Class C Units of Borrower (which represents the right to acquire 28% of the economic interests of the Borrower).

- (iii) Once the amount of Investment Cash received by the Borrower on account of Qualified Investments equals \$3,000,000, additional Investment Cash received by the Borrower on account of Qualified Investments must be in increments of \$142,857.

- (iv) For each \$142,857 increment of Investment Cash actually received by the Borrower in excess of \$3,000,000, the percentage of Warrant Interests that the Warrant Participants are entitled to acquire pursuant to the Warrant (which is expressed as a percentage of the total economic interests of the Borrower) shall be reduced by 1.0% of the total economic interests of the Borrower. By way of example, in the event the Warrant Interests are originally 49 Class C Units and are reduced to 28 Class C Units in accordance with Section 2.21(c)(ii), each \$142,857 increment of Investment Cash actually received by the Borrower in excess of \$3,000,000 would reduce the number of Warrant Interests that the Warrant Participants would be entitled to acquire pursuant to the Warrant by 1 Class C Unit.

- (v) Any amount of Investment Cash received by the Borrower up to \$4,000,000 may be retained by the Borrower or used by the Borrower to repay Revolving Advances or Principal on the Plant Loan. The next \$3,000,000 of Investment Cash received by the Borrower (after the \$4,000,000 described in the preceding sentence) must be paid directly to the Plant Lender to prepay the Plant Loan. Any additional Investment Cash received by the Borrower in excess of an aggregate of \$7,000,000 may be retained by the Borrower or used by the Borrower to prepay any outstanding Revolving Advances or the Plant Loan at the Borrower's discretion.

- (vi) Upon receipt of any amount of Investment Cash by the Borrower up to \$4,000,000 pursuant to the first sentence of Section 2.21(c)(v), the Maximum Line Amount will be immediately and permanently reduced by the amount of such Investment Cash up to \$4,000,000 for a Maximum Line Amount of not less than \$16,000,000. In the event the Revolving Advances outstanding are in excess of the Maximum Line Amount after any reductions of the Maximum Line Amount pursuant to this Section 2.21(c)(vi), any amount of Investment Cash received by the Borrower up to the actual amount of Revolving Advances outstanding in excess of the Maximum Line Amount after the reduction of the Maximum Line Amount pursuant to this Section 2.21(c)(vi) must be paid directly

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to the Lender to the extent of any such outstanding Revolving Advances and will be applied to such outstanding Revolving Advances.

- (vii) Qualified Investments must be made on or before the first anniversary of the Closing Date.

- (d) The Borrower agrees to provide to Lender full, complete, and correct copies of each certificate provided to the Warrant Participants pursuant to the Warrant that relates to any amendment, restatement, or amendment and restatement of the exercise price and/or the number of Class C Units purchasable by any Warrant Participant upon exercise of the Warrant.

2.22 Revolving Advances to Pay Obligations. Notwithstanding the terms of Section 2.1 herein, the Lender may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions precedent to obtain a Revolving Advance would not be then satisfied, make a Revolving Advance in an amount equal to (i) the portion of the Obligations from time to time due and payable and (ii) any amount payable to Fagen, Inc. by the Borrower that is required both to maintain or to ensure the effectiveness of the ICM License and to cure all defaults under the Fagen Contract as of the Closing Date.

3.

CONDITIONS OF BORROWING.

3.1 Notwithstanding any other provision of this Agreement, the Lender shall not be required to disburse, make or continue all or any portion of the Revolving Advances if any of the following conditions shall have occurred.

- (a) Delivery of Loan Documents. The Borrower shall have failed to execute and deliver to the Lender any of the following Loan Documents, all of which must be satisfactory to the Lender and the Lender's counsel in form, substance and execution:
- (i) Revolving Credit and Security Agreement. This Agreement duly executed by the Borrower.
 - (ii) Revolving Note. The Revolving Note duly executed by the Borrower, in the form prepared by and acceptable to the Lender.
 - (iii) Collateral Access Agreement. Collateral Access Agreements dated as of the date of this Agreement, from the owner, lessor or mortgagee, as the case may be, of any real estate whereon any Collateral is stored or otherwise located, in the form prepared by and acceptable to the Lender.
 - (iv) Borrowing Base Certificate. A Borrowing Base Certificate in the form prepared by the Lender, certified as accurate by the Borrower and acceptable to the Lender in its absolute discretion.

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- (v) Lockbox Agreement. A lockbox agreement dated as of the date of this Agreement, executed by the Borrower, the Collection Bank and the Lender.
- (vi) Control Agreement. Control Agreements executed by the Lender, the Borrower and the Collection Bank (or such other banks as Lender in its sole discretion may approve).
- (vii) Search Results; Lien Terminations. Copies of UCC search reports dated such a date as is reasonably acceptable to the Lender, listing all effective financing statements which name the Borrower, under its present names and any previous names, as debtors, together with (i) copies of such financing statements, (ii) payoff letters evidencing repayment in full of all existing Debt to be repaid with the Revolving Advances, the termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with UCC or other appropriate termination statements and documents effective to evidence the foregoing (other than Permitted Liens), and (iii) such other UCC termination statements as the Lender may reasonably request.
- (viii) Organizational and Authorization Document. Copies of (i) the articles of organization and limited liability company agreement of the Borrower; (ii) resolutions of the members of the Borrower approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby; (iii) signature and incumbency certificates of the members of the Borrower, executing any of the Loan Documents, each of which the Borrower hereby certifies to be true and complete, and in full force and effect without modification, it being understood that the Lender may conclusively rely on each such document and certificate until formally advised by the Borrower of any changes therein; and (iv) good standing certificates in the state of formation of the Borrower and in each other state requested by the Lender.
- (ix) Insurance. Evidence satisfactory to the Lender of the existence of insurance required to be maintained pursuant to Section 6.6, together with evidence that the Lender has been named as a lender's loss payee on all related insurance policies.
- (x) Intercreditor and Collateral Priority Agreement. The Intercreditor and Collateral Priority Agreement, duly executed by Lender and Plant Lender, in the form prepared by and acceptable to the Lender.

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- (xi) Escrow Agreement. The Escrow Agreement dated as of the date of this Agreement executed by and among Borrower, Lender, Seller, Central Farmers Cooperative, and Escrow Agent.

- (xii) Additional Documents. Such other certificates, financial statements, schedules, resolutions, opinions of counsel, notes and other documents which are provided for hereunder or which the Lender shall require.
- (xiii) Flood Certification. Evidence satisfactory to Lender that the Plant is not located in the flood plain.
- (xiv) Opinion. Prior to the Loan Closing, Borrower shall furnish such opinions of counsel as Lender may require in connection with the matters contemplated by this Agreement.
- (xv) Plant Loan Documents. Copies of the executed Plant Loan Documents.
- (xvi) Third Party Consents. Consents of each third party to the Operating Agreements consenting to the collateral assignment of such documents to Lender, to the extent required to be received by Plant Lender pursuant to the Plant Loan and Security Agreement prior to the Closing Date.
- (xvii) Mortgage. Copies of the executed Mortgage.
- (xviii) Sale Documents. All documents sufficient to satisfy the Lender that Borrower has acquired substantially all of the assets of Seller free and clear of liens and interests including but not limited to the Plant.
- (xix) Warrant. The Warrant executed by the Borrower.

(b) Delivery of Escrow Release Direction. The Borrower shall have failed to execute and deliver to Lender and Escrow Agent on or before the Closing Date the Escrow Release Notice which directs the Escrow Agent to deliver the executed originals of this Agreement, the Revolving Note and the other Loan Documents to the Lender and directs the Escrow Agent to deliver the Asset Purchase Agreement and all related documents to Seller and Borrower as appropriate.

(c) Asset Purchase Agreement. The closing of the transactions contemplated by the Asset Purchase Agreement shall not have occurred.

(d) Delivery of Loan Documents. The Escrow Agent shall have failed to deliver to the Lender on or before the Closing Date the executed originals of this Agreement, the Revolving Note and the other Loan Documents and /or the Escrow Agent shall have failed to deliver to the Borrower and the

Seller on or before the Closing Date the Asset Purchase Agreement and all related documents.

(e) Delivery of Equity Investment. On or before the Escrow Closing Date, the Borrower shall have failed to cause Central Farmers Cooperative to deliver to the Escrow Agent the sum of Two Million and 00/100 Dollars (\$2,000,000.00) pursuant to the Escrow Agreement (“Equity Investment”).

(f) Delivery of Resolution Reserve. On or before the Escrow Closing Date, the Borrower shall have failed to deliver to the Escrow Agent the sum of One Million and 00/100 Dollars (\$1,000,000.00) pursuant to the Central Farmers Escrow Agreement (the “Resolution Reserve”).

(g) Delivery of Equity Investment to Borrower. The Escrow Agent shall have failed to deliver to the Borrower the Equity Investment.

(h) Event of Default. Any Event of Default shall have occurred and be continuing that has not been waived by Lender in writing.

- (i) Material Adverse Effect. The occurrence of any event having a Material Adverse Effect upon the Borrower.
- (j) Litigation. Any litigation or governmental proceeding shall have been instituted against the Borrower having a Materially Adverse Effect upon the Borrower.
- (k) Representations and Warranties. Any representation or warranty of the Borrower contained herein or in any Loan Document shall be untrue or incorrect as of the date of any Revolving Advance as though made on such date, except to the extent such representation or warranty expressly relates to an earlier date.
- (l) Governmental Requirements and Approvals. All regulatory approvals required for the operation of the Plant as of the date of the Revolving Advance shall not have been issued without conditions unacceptable to the Lender and copies thereof provided to Lender except for the Soil Stabilization Requirements if, at the time of such Revolving Advance, any applicable deadline with respect to such Soil Stabilization Requirements has not occurred.
- (m) Intentionally Omitted.
- (n) Intentionally Omitted.
- (o) Title Insurance. The Borrower shall have failed to deliver to Lender a title policy in form and substance acceptable to Lender, with all such endorsements as Lender may deem appropriate or desirable insuring that the Mortgage is perfected lien in the Premises senior to all other liens and interests except for the mortgage securing the Plant Loan.

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- (p) Loan Fee. The Borrower shall have failed to pay to the Lender the Initial Loan Fee in immediately available funds.
- (q) Fagen Agreement. The Borrower shall have failed to enter into an agreement with Fagen, Inc. that addresses how the Borrower will cure the defaults continuing under the Fagen Contract.

4.

SECURITY FOR THE OBLIGATIONS.

4.1 Grant of Security Interest. To secure the prompt payment and performance of the Obligations, Borrower hereby grants a continuing security interest in and Lien upon all assets of Borrower, including all of the following property (all of which property whether now owned or hereafter acquired and wherever located, along with the products and proceeds therefrom, are individually and collectively referred to as the "Collateral"):

- (i) all Accounts;
- (ii) all Inventory;
- (iii) the Collection Account;
- (iv) the Operating Account;
- (v) all Chattel Paper;
- (vi) all Deposit Accounts;
- (vii) all Documents;
- (viii) all Equipment;

- (ix) all Fixtures;
- (x) all General Intangibles;
- (xi) all Instruments;
- (xii) all Investment Property;
- (xiii) all Letter-of-Credit Rights;
- (xiv) the Plant and Premises;
- (xv) FF&E Reserve;
- (xvi) all Commercial Tort Claims;
- (xvii) all Supporting Obligations;

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- (xviii) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (xix) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

4.2 Possession and Transfer of Collateral. Unless an Event of Default exists hereunder, the Borrower shall be entitled to possession or use of the Collateral other than as otherwise provided for in this Agreement. The cancellation or surrender of the Revolving Note, upon payment or otherwise, shall not affect the right of the Lender to retain the Collateral for any other of the Obligations. The Borrower shall not sell, assign (by operation of law or otherwise), license, lease or otherwise dispose of, or grant any option with respect to any of the Collateral, except that the Borrower may sell Inventory and worn, damaged, or obsolete Equipment in the ordinary course of business.

4.3 Financing Statements. The Borrower shall, at the Lender's request, at any time and from time to time, execute and deliver to the Lender such financing statements, amendments and other documents and do such acts as the Lender deems necessary in order to establish and maintain valid, attached and perfected first priority security interests in the Collateral which is Inventory, Accounts and the proceeds thereof, including without limitation Corn and Milo Inventory, DGs, Ethanol and Accounts arising therefrom, in favor of the Lender, free and clear of all Liens and claims and rights of third parties whatsoever, except Permitted Liens. The Borrower hereby irrevocably authorizes the Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto without the signature of the Borrower that (a) indicate the Collateral (i) is comprised of all assets of the Borrower or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (ii) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Borrower is an organization, the type of organization and any Organizational Identification Number issued to the Borrower, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Borrower hereby agrees that a photocopy or other reproduction of this Agreement is sufficient for filing as a financing statement and the Borrower authorizes the Lender to file this Agreement as a financing statement in any jurisdiction. The Borrower agrees to furnish any such information to the Lender promptly upon request. The Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Lender in any jurisdiction prior to the date of this Agreement. In addition, the Borrower shall make appropriate entries on its books and records disclosing the Lender's security interests in the Collateral.

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4.4 Preservation of the Collateral. The Lender may, but is not required, to take such actions from time to time as the Lender deems appropriate to maintain or protect the Collateral. The Lender shall have exercised reasonable care in the custody and preservation of the Collateral if the Lender takes such action as the Borrower shall reasonably request in writing which is not inconsistent with the Lender's status as a secured party, but the failure of the Lender to comply with any such request shall not be deemed a failure to exercise reasonable care; provided, however, the Lender's responsibility for the safekeeping of the Collateral shall (i) be deemed reasonable if such Collateral is accorded treatment substantially equal to that which the Lender accords its own property, and (ii) not extend to matters beyond the control of the Lender, including acts of God, war, insurrection, riot or governmental actions. In addition, any failure of the Lender to preserve or protect any rights with respect to the Collateral against prior or third parties, or to do any act with respect to preservation of the Collateral, not so requested by the Borrower, shall not be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral. The Borrower shall have the sole responsibility for taking such action as may be necessary, from time to time, to preserve all rights of the Borrower and the Lender in the Collateral against prior or third parties. Without limiting the generality of the foregoing, where Collateral consists in whole or in part of securities, the Borrower represents to, and covenants with, the Lender that the Borrower has made arrangements for keeping informed of changes or potential changes affecting the securities (including rights to convert or subscribe, payment of dividends, reorganization or other exchanges, tender offers and voting rights), and the Borrower agrees that the Lender shall have no responsibility or liability for informing the Borrower of any such or other changes or potential changes or for taking any action or omitting to take any action with respect thereto.

4.5 Other Actions as to any and all Collateral. The Borrower further agrees to take any other action reasonably requested by the Lender to ensure the attachment, perfection and first priority of, and the ability of the Lender to enforce, the Lender's security interest in any and all of the Collateral which is Inventory, Accounts or the proceeds thereof, including without limitation Corn and Milo Inventory, DGs, Ethanol and Accounts arising therefrom, including (a) causing the Lender's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the Lender's security interest in such Collateral, (b) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the Lender's security interest in such Collateral, (c) obtaining governmental and other third party consents and approvals, including any consent of any licensor, lessor or other Person obligated on Collateral, (d) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Lender, and (e) taking all actions required by the UCC in effect from time to time or by other law, as applicable in any relevant UCC jurisdiction, or by other law as applicable in any foreign jurisdiction. The Borrower further agrees to indemnify and hold the Lender harmless against claims of any Persons not a party to this Agreement concerning disputes arising over the Collateral.

4.6 Collateral in the Possession of a Warehouseman or Bailee. If any of the Collateral at any time is in the possession of a warehouseman or bailee, the Borrower shall promptly notify the Lender thereof, and shall promptly obtain a Collateral Access Agreement. The Lender agrees with the Borrower that the Lender shall not give any instructions to such warehouseman or bailee pursuant to such Collateral Access Agreement unless an Event of

Default has occurred and is continuing, or would occur after taking into account any action by the Borrower with respect to the warehouseman or bailee.

4.7 Letter-of-Credit Rights. If the Borrower at any time is a beneficiary under a letter of credit now or hereafter issued in favor of the Borrower to secure payment of an Account, the Borrower shall promptly notify the Lender thereof and, at the request and option of the Lender, the Borrower shall, pursuant to an agreement in form and substance satisfactory to the Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Lender of the proceeds of any drawing under the letter of credit, or (ii) arrange for the Lender to become the transferee beneficiary of the letter of credit, with the Lender agreeing, in each case, that the proceeds of any drawing under the letter to credit are to be applied as provided in this Agreement.

4.8 Electronic Chattel Paper and Transferable Records. If the Borrower at any time holds or acquires an interest in any electronic chattel paper or any "transferable record", as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Borrower shall promptly notify the Lender thereof and, at the request of the Lender, shall take such action as the Lender may reasonably request to vest in the Lender control under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Lender agrees with the Borrower that the Lender will arrange, pursuant to procedures satisfactory to the Lender and so long as such procedures will not result in the Lender's loss of control, for the Borrower to make alterations to the electronic chattel paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control.

4.9 Administration of Inventory.

Records and Reports of Inventory. Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Lender inventory reports in form reasonably satisfactory to Lender, on such periodic basis as Lender may request. Borrower shall conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by Lender when an Event of Default exists) and periodic cycle counts consistent with historical practices, and shall provide to Lender a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as Lender may request. Lender may participate in and observe each inventory or physical count.

Records and Schedules of Equipment. Borrower shall keep accurate and complete records of its Equipment, including kind, quality, quantity, cost, acquisitions and dispositions thereof, and shall submit to Lender, on such periodic basis as Lender may request, a current schedule thereof, in form satisfactory to

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Lender. Promptly upon request, Borrower shall deliver to Lender evidence of its ownership or interests in any Equipment.

Dispositions of Equipment. Borrower shall not sell, lease or otherwise dispose of any Equipment, without the prior written consent of Lender, other than replacement of Equipment that is worn, damaged or obsolete with Equipment of like function and value, if the replacement Equipment is acquired substantially contemporaneously with such disposition and is free of Liens.

4.10 Business Purpose. Any Collateral installed in or used in the Premises are to be used by the Borrower solely for Borrower's business purposes and such Collateral will be kept on the Premises and will not be removed therefrom without the consent of the Lender and may be affixed to such buildings but will not be affixed to any other real estate.

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

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

4.13 Assignment of Insurance. As additional security for the payment and performance of the Loan, the Borrower hereby assigns to the Lender any and all monies (including proceeds of insurance and refunds of unearned premiums) due or to become due under, and all other rights of the Borrower with respect to, any and all policies of insurance now or at any time hereafter covering the Collateral or any evidence thereof or any business records or valuable papers pertaining thereto, and the Borrower hereby directs the issuer of any such policy to pay all such

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monies directly to the Lender. At any time the Lender may (but need not), in the Lender's name or in the Borrower's name, execute and deliver proof of claim, receive all such monies, endorse checks and other instruments representing payment of such monies, and adjust, litigate, compromise or release any claim against the issuer of any such policy.

4.14 License. Without limiting the generality of any other Loan Document, the Borrower hereby grants to the Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property Rights of the Borrower for the purpose of: (a) producing Ethanol, DGs and CO₂ from the Plant and (b) selling, leasing or otherwise disposing of any or all Collateral.

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

5.

REPRESENTATIONS AND WARRANTIES.

To induce the Lender to make the Revolving Advances, the Borrower makes the following representations and warranties to the Lender, each of which shall survive the execution and delivery of this Agreement:

5.1 Borrower Organization and Name. The Borrower is a limited liability company duly organized, existing and in good standing under the laws of the State of South Dakota, with full and adequate power to carry on and conduct its business as presently conducted. The Borrower is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing, except for such jurisdictions where the failure to so qualify would not have a Material Adverse Effect. The Borrower's Organizational Identification Number is DL018294. The exact legal name of the Borrower is as set forth in the first paragraph of this Agreement, and the Borrower currently does not conduct, nor has it during the last five (5) years conducted, business under any other name or trade name.

5.2 Authorization. The Borrower has full right, power and authority to enter into this Agreement, to make the borrowings and execute and deliver the Loan Documents as provided herein and to perform all of its duties and obligations under this Agreement and the other Loan Documents. The execution and delivery of this Agreement and the other Loan Documents will not, nor will the observance or performance of any of the matters and things herein or therein set forth, violate or contravene any provision of law or of the articles of organization of the

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Borrower. All necessary and appropriate action has been taken on the part of the Borrower to authorize the execution and delivery of this Agreement and the Loan Documents.

5.3 Validity and Binding Nature. This Agreement and the other Loan Documents are the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

5.4 Consent; Absence of Breach. The execution, delivery and performance of this Agreement, the other Loan Documents and any other documents or instruments to be executed and delivered by the Borrower in connection with the Revolving Advances, and the borrowings by the Borrower hereunder, do not and will not (a) require any consent, approval, authorization of, or filings with, notice to or other act by or in respect of, any governmental authority or any other Person (other than any consent or approval which has been obtained and is in full force and effect); (b) conflict with (i) any provision of law or any applicable regulation, order, writ, injunction or decree of any court or governmental authority, (ii) the articles of organization of the Borrower, or (iii) any material agreement, indenture, instrument or other document, or any judgment, order or decree, which is binding upon the Borrower or any of its properties or assets; or (c) require, or result in, the creation or imposition of any Lien on any asset of Borrower, other than Liens in favor of the Lender created pursuant to this Agreement.

5.5 Ownership of Properties; Liens. The Borrower is the sole owner of all of its properties and assets, real and personal, tangible and intangible, of any nature whatsoever (including patents, trademarks, trade names, service marks and copyrights), free and clear of all Liens, charges and claims (including infringement claims with respect to patents, trademarks, service marks, copyrights and the like), other than Permitted Liens.

5.6 Intellectual Property. The Borrower owns and possesses or has a license or other right to use all Intellectual Property, as are necessary for the conduct of the businesses of the Borrower, without any infringement upon rights of others which could reasonably be expected to have a Material Adverse Effect upon the Borrower, and no material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property nor does the Borrower know of any valid basis for any such claim.

5.7 Financial Statements. All financial statements submitted to the Lender have been prepared in accordance with sound accounting practices and GAAP on a basis, except as otherwise noted therein, consistent with the previous fiscal year and present fairly the financial condition of the Borrower and the results of the operations for the Borrower as of such date and for the periods indicated. Since the date of the most recent financial statement submitted by the Borrower to the Lender, there has been no change in the financial condition or in the assets or liabilities of the Borrower having a Material Adverse Effect on the Borrower.

5.8 Litigation and Contingent Liabilities. There is no litigation, arbitration proceeding, demand, charge, claim, petition or governmental investigation or proceeding pending, or threatened, against the Borrower, which, if adversely determined, might reasonably be expected to have a Material Adverse Effect upon the Borrower. The Borrower has no material guarantee obligations, contingent liabilities, liabilities for taxes, or any long-term leases

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or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not fully-reflected or fully reserved for in the most recent audited financial statements delivered pursuant to Article 6 or fully-reflected or fully reserved for in the most recent quarterly financial statements delivered pursuant to Article 6 and not permitted by Section 7.1.

5.9 Event of Default. No Event of Default exists or would result from the incurrence by the Borrower of any of the Obligations hereunder or under any of the other Loan Document, and the Borrower is not in default (without regard to grace or cure periods) under any other contract or agreement to which it is a party.

5.10 Adverse Circumstances. No condition, circumstance, event, agreement, document, instrument, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefor) exists which (a) would have a Material Adverse Effect upon the Borrower, or (b) would constitute an Event of Default.

5.11 Environmental Laws and Hazardous Substances. The Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Substances, on or off any of the premises of the Borrower (whether or not owned by it) in any manner which at any time violates any Environmental Law or any license, permit, certificate, approval or similar authorization thereunder. The Borrower will comply in all material respects with all Environmental Laws and will obtain all licenses, permits certificates, approvals and similar authorizations thereunder. There has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other Person, nor is any pending or, to the best of the Borrower's knowledge, threatened, and the Borrower shall immediately notify the Lender upon becoming aware of any such investigation, proceeding, complaint, order, directive, claim, citation or notice, and shall take prompt and appropriate actions to respond thereto, with respect to any non-compliance with, or violation of, the requirements of any Environmental Law by the Borrower or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects the Borrower or its business, operations or assets or any properties at which the Borrower has transported, stored or disposed of any Hazardous Substances. The Borrower has no material liability, contingent or otherwise, in connection with a release, spill or discharge, threatened or actual, of any Hazardous Substances or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material. The Borrower further agrees to allow the Lender or its agent access to the properties of the Borrower to confirm compliance with all Environmental Laws, and the Borrower shall, following determination by the Lender that there is non-compliance, or any condition which requires any action by or on behalf of the Borrower in order to avoid any non-compliance, with any Environmental Law, at the Borrower's sole expense, cause an independent environmental engineer acceptable to the Lender to conduct such tests of the relevant site as are appropriate, and prepare and deliver a report setting forth the result of such tests, a proposed plan for remediation and an estimate of the costs thereof.

5.12 Solvency, etc. As of the date hereof, and immediately prior to and after giving effect to the issuance of each Revolving Advance hereunder and the use of the proceeds thereof, the Borrower is Solvent, and (a) the Borrower is able to realize upon its assets and pay its debts

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and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (b) the Borrower does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, and (c) the Borrower is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its property would constitute unreasonably small capital.

5.13 ERISA.

- (a) Neither the Borrower nor any ERISA Affiliate as of the date hereof (i) maintains, contributes to or has any liability to contribute to any Pension Plan or has within the preceding five years made or accrued such contributions or had such liability, (ii) contributes to or has any liability to contribute to any Multiemployer Plan or has within the preceding five years made or accrued such contributions or had such liability or (iii) provides or has any material liability to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required under Section 601 of ERISA, Section 4980B of the IRC or applicable state law).

- Except as disclosed on Schedule 5.13, neither the Borrower nor any ERISA Affiliate (i) has knowledge that the Borrower or the ERISA Affiliate is not in material compliance with the requirements of ERISA, the IRC, or state law with respect to any Employee Benefit Plan, (ii) has knowledge that a Reportable Event occurred or continues to exist in connection with any Pension Plan, or (iii) sponsors an Employee Benefit Plan that it intends to maintain as qualified under the IRC that is not so qualified, and no fact or circumstance exists which may have a material adverse effect on such Employee Benefit Plan's tax qualified status.

- Except as, in the aggregate, does not have a Material Adverse Effect, neither the Borrower nor any ERISA Affiliate has liability for any (i) accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the IRC) under any Pension Plan, whether or not waived, (ii) withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan under Section 4201 or 4243 of ERISA, or (iii) event or circumstance which could result in financial obligation to the Pension Benefit Guaranty Corporation, the Internal Revenue Service, the Department of Labor or any participant in connection with any Employee Benefit Plan (other than routine claims for benefits under the Employee Benefit Plan).

5.14 Labor Relations. Except as could not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts or other labor disputes against the Borrower or threatened, (ii) hours worked by and payment made to employees of the Borrower have not been in violation of the Fair Labor Standards Act, as amended, or any other applicable law, and (ii) no unfair labor practice complaint is pending against the Borrower or threatened before any governmental authority.

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5.15 Security Interest. This Agreement creates a valid security interest in favor of the Lender in the Collateral and, when properly perfected by filing in the appropriate jurisdictions, or by possession or control of such Collateral by the Lender or delivery of such Collateral to the Lender, shall constitute a valid, perfected, first-priority security interest in such Collateral which is Inventory, Accounts and the proceeds thereof, including without limitation Corn and Milo Inventory, DGs, Ethanol and Accounts arising therefrom, and no worse than a third priority as to the Lien on any other collateral, subject to the terms and conditions of the Intercreditor Agreement.

5.16 Lending Relationship. The relationship hereby created between the Borrower and the Lender is and has been conducted on an open and arm's length basis in which no fiduciary relationship exists, and the Borrower has not relied and is not relying on any such fiduciary relationship in executing this Agreement and in consummating the Revolving Loan. The Lender represents that it will receive the Revolving Note payable to its order as evidence of a bank loan.

5.17 Business Loan. The Revolving Advances, including interest rate, fees and charges as contemplated hereby, (i) are an exempted transaction under the Truth In Lending Act, 12 U.S.C. 1601 et seq., as amended from time to time, and (ii) do not, and when disbursed shall not, violate the provisions of the South Dakota usury laws, any consumer credit laws or the usury laws of any state which may have jurisdiction over this transaction, the Borrower or any property securing the Revolving Advances.

5.18 Taxes. The Borrower has timely filed all tax returns and reports required by law to have been filed by it and has paid all taxes, governmental charges and assessments due and payable with respect to such returns, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books, are insured against or bonded over to the satisfaction of the Lender and the contesting of such payment does not create a Lien on the Collateral which is not a Permitted Lien. There is no controversy or objection pending, or threatened in respect of any tax returns of the Borrower. The Borrower has made adequate reserves on its books and records in accordance with GAAP for all taxes that have accrued but which are not yet due and payable.

5.19 Compliance with Regulation U. No portion of the proceeds of the Revolving Advances shall be used by the Borrower, or any Affiliate of the Borrower, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U as adopted by the Board of Governors of the Federal Reserve System or any successor thereto.

5.20 Governmental Regulation. The Borrower is not, or after giving effect to any loan, will not be, subject to regulation under the Federal Power Act, the ICC Termination Act of 1995 or the Investment Company Act of 1940, each as amended from time to time, or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

5.21 Bank Accounts. The Borrower has no other Deposit Accounts except those listed on Schedule 5.21 attached hereto. All such Deposit Accounts (and any other bank accounts of Borrower) shall be maintained at a financial institution as Lender and its participants shall determine.

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5.22 Place of Business. The principal place of business and books and records of the Borrower is set forth in the preamble to this Agreement, and the location of all Collateral, if other than at such principal place of business, is as set forth on Schedule 5.22 attached hereto and made a part hereof, and the Borrower shall promptly notify the Lender of any change in such location. The Borrower will not remove or

permit the Collateral to be removed from such location without the prior written consent of the Lender, except for (i) Inventory and (ii) worn-out, damaged, or obsolete Equipment in the amount permitted under Section 7.10 herein, in each case if sold or disposed of in the usual and ordinary course of the Borrower's business.

5.23 Complete Information. This Agreement and all financial statements, schedules, certificates, confirmations, agreements, contracts, and other materials and information heretofore or contemporaneously herewith furnished in writing by the Borrower to the Lender for purposes of, or in connection with, this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of the Borrower to the Lender pursuant hereto or in connection herewith will be, true and accurate in every material respect on the date as of which such information is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in light of the circumstances under which made (it being recognized by the Lender that any projections and forecasts provided by the Borrower are based on good faith estimates and assumptions believed by the Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

6.

AFFIRMATIVE COVENANTS.

6.1 Borrower Existence. The Borrower shall at all times (a) preserve and maintain its existence and good standing in the jurisdiction of its organization, (b) preserve and maintain its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary (other than such jurisdictions in which the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect), and (c) continue as a going concern in the business which the Borrower is presently conducting.

6.2 Compliance With Laws. The Borrower shall use the proceeds of the Revolving Advances for working capital and other general corporate or business purposes not in contravention of any requirements of law and not in violation of this Agreement, and shall comply in all respects, including the conduct of its business and operations and the use of its properties and assets, with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply could not reasonably be expected to have a Material Adverse Effect.

6.3 Office of Foreign Asset Control. Borrower represents and warrants that neither Borrower nor any of its respective Affiliates is a Prohibited Person (as defined below) and Borrower and all of its respective Affiliates are in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. At all times throughout the term of the Revolving Loan and until it is fully repaid, Borrower and all of its respective Affiliates shall: (i) not be a

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Prohibited Person; and (ii) be in full compliance with all applicable orders, rules, regulations and recommendations of the OFAC of the U.S. Department of the Treasury.

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

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

- (vii) who is a “disregarded entity” as defined in IRS Regulation 1.1445-2(b)(2)(iii) and whose owner falls within any of subsections (i) through (vi) above.

The term “Affiliate,” as used in this Section 6.3, shall mean as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with such person or entity or is a director or officer of such person or entity or of an Affiliate of such person or entity. As used in the definition of “Affiliate” for purposes of this Section 6.3, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

6.4 Payment of Taxes and Liabilities. The Borrower shall pay and discharge, prior to delinquency and before penalties accrue thereon, all property and other taxes, and all governmental charges or levies against it or any of the Collateral, as well as claims of any kind which, if unpaid, could become a Lien on any of its property; provided that the foregoing shall not require the Borrower to pay any such tax or charge so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP and, in the case of a claim which could

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become a Lien on any of the Collateral, such contest proceedings stay the foreclosure of such Lien or the sale of any portion of the Collateral to satisfy such claim.

6.5 Maintain Property. The Borrower shall at all times maintain, preserve and keep its Plant, properties and Equipment, including any Collateral, in good repair, working order and condition, and shall from time to time make all necessary and proper repairs, renewals, replacements, and additions thereto so that at all times the efficiency thereof shall be fully preserved and maintained. The Borrower shall permit the Lender to examine and inspect such Plant, properties and Equipment, including any Collateral, at all reasonable times.

6.6 Maintain Insurance. The Borrower shall at all times maintain with insurance companies reasonably acceptable to the Lender, such insurance coverage as may be required by any law or governmental regulation or court decree or order applicable to it and such other insurance, to such extent and against such hazards and liabilities, including employers’ , public and professional liability risks, as is customarily maintained by companies similarly situated, and shall have insured amounts no less than, and deductibles no higher than, are reasonably acceptable to the Lender. The Borrower shall furnish to the Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by the Borrower, which shall be reasonably acceptable in all respects to the Lender. The Borrower shall cause each issuer of an insurance policy to provide the Lender with an endorsement (i) showing the Lender as loss payee with respect to each policy of property or casualty insurance; and (ii) providing that thirty (30) days notice will be given to the Lender prior to any cancellation of, material reduction or change in coverage provided by or other material modification to such policy. The Borrower shall execute and deliver to the Lender a collateral assignment, in form and substance satisfactory to the Lender, of each business interruption insurance policy maintained by the Borrower.

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

6.7 ERISA Covenants.

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- (a) Neither the Borrower nor any ERISA Affiliate will, without giving prior written notice to the Lender, (i) adopt, create, assume or become a party to any Pension Plan, (ii) incur any obligation to contribute to any Multiemployer Plan, (iii) incur any obligation to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required by law) or (iv) amend any Pension Plan in a manner that would materially increase its funding obligations.

- The Borrower represents, warrants and covenants that it is acting on its own behalf and that as of the date hereof it is not an Employee Benefit Plan, and the assets of the Borrower do not constitute “plan assets” of one or more such Employee Benefit Plans within the meaning of Department of Labor Regulation Section 2510.3-101. The Borrower also represents, warrants and covenants that it will not be reconstituted as an Employee Benefit Plan or as an entity whose assets constitute “plan assets”.
- (b) (i) Promptly upon discovery, and in any event within 30 days after the Borrower knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, the Borrower will provide written notice to the Lender of the Reportable Event in detail and the actions which the Borrower proposes to take to correct the deficiency, together with a copy of any related notice sent to the Pension Benefit Guaranty Corporation; (ii) promptly upon discovery, and in any event within 10 days after the Borrower fails to make a required quarterly Pension Plan contribution under Section 412(m) of the IRC, the Borrower will provide written notice to the Lender of the failure in detail and the actions that the Borrower will take to cure the failure, together with a copy of any related notice sent to the Pension Benefit Guaranty Corporation; and (iii) promptly upon discovery, and in any event within 10 days after the Borrower knows or has reason to know that it may be liable or may be reasonably expected to have liability for any withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan under Sections 4201 or 4243 of ERISA, the Borrower will provide written notice to the Lender of the details of the event and the actions that the Borrower proposes to take in response.

6.8 Financial Statements. The Borrower shall at all times maintain a standard and modern system of accounting, on the accrual basis of accounting and in all respects in accordance with GAAP, and shall furnish to the Lender or its authorized representatives such information regarding the business affairs, operations and financial condition of the Borrower, including:

- promptly when available, and in any event, within one hundred twenty (120) days after the close of each of its fiscal years, a
- (a) copy of (i) the annual audited financial statements of the Borrower, including balance sheet, statement of income and retained earnings, statement of cash flows for the fiscal year then ended and such other information (including

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nonfinancial information) as the Lender may request, in reasonable detail, prepared and certified as true and correct by the Borrower’s treasurer or chief financial officer;

- promptly when available, and in any event, within thirty (30) days following the end of each month, a copy of the financial statements of the Borrower regarding such month and, if such month is also the last month of a Calendar Quarter, regarding
- (b) Calendar Quarter, including balance sheet, statement of income and retained earnings, statement of cash flows for the month then ended and such other information (including nonfinancial information) as the Lender may request, in reasonable detail, prepared and certified as true and correct by the Borrower’s treasurer or chief financial officer;
- (c) within ten (10) days after the filing due date (as such date may be extended in accordance with properly granted extensions) each year, a signed copy of the complete income tax returns filed with the Internal Revenue Service by the Borrower;
- (d) Annual financial projections, including balance sheet, income statement, and cash flow statement for the next fiscal year (by month) thirty (30) days prior to the beginning of the next fiscal year; and
- (e) When due to the Plant Lender, the Borrower shall provide the Lender all information, financial statements, certificates, reports and documents that the Borrower is required to provide to the Plant Lender under the Plant Loan Documents.

No change with respect to such accounting principles shall be made by the Borrower without giving prior notification to the Lender. The Borrower represents and warrants to the Lender that the financial statements delivered to the Lender at or prior to the execution and delivery of this Agreement and to be delivered at all times thereafter accurately reflect and will accurately reflect the financial condition of the Borrower. The Lender shall have the right at all times during business hours to inspect the books and records of the Borrower and make extracts therefrom.

6.9 Supplemental Financial Statements. The Borrower shall immediately upon receipt thereof, provide to the Lender copies of interim and supplemental reports if any, submitted to the Borrower by independent accountants in connection with any interim audit or review of the books of the Borrower.

6.10 Borrowing Base Certificate. The Borrower shall, (a) within ten (10) days after the end of each month, and (b) at any time the Borrower shall request a Revolving Advance hereunder, deliver to the Lender a Borrowing Base Certificate dated as of the last Business Day of such month, certified as true and correct by an authorized representative of the Borrower and acceptable to the Lender in its absolute discretion, provided, however, at any time an Event of Default exists, the Lender may require the Borrower to deliver Borrowing Base Certificates more frequently.

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6.11 Aged Accounts Schedule. The Borrower shall, within thirty (30) days after the end of each month, deliver to the Lender an aged schedule of the Accounts of the Borrower, listing the name and amount due from each Account Debtor and showing the aggregate amounts due from (a) 0-30 days, (b) 31-60 days, (c) 61-90 days and (d) more than 90 days, and certified as accurate by the Borrower's treasurer or chief financial officer.

6.12 Inventory Reports. The Borrower shall, within thirty (30) days after the end of each month, deliver to the Lender an inventory report, certified as accurate by the Borrower's treasurer or chief financial officer, and within such time as the Lender may specify, such other schedules and reports as the Lender may require.

6.13 Covenant Compliance Certificate. The Borrower shall, contemporaneously with the furnishing of the financial statements pursuant to Section 6.8, deliver to the Lender a duly completed compliance certificate, dated the date of such financial statements and certified as true and correct by an appropriate officer of the Borrower, containing a computation of each of the financial covenants, if any, and stating that the Borrower has not become aware of any Event of Default that has occurred and is continuing or, if there is any such Event of Default describing it and the steps, if any, being taken to cure it.

6.14 Field Audits. The Borrower shall permit the Lender to inspect the Inventory, other tangible assets and/or other business operations of the Borrower, to perform appraisals of the Equipment of the Borrower, and to inspect, audit, check and make copies of, and extracts from, the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to Inventory, Accounts and any other Collateral, the results of which must be satisfactory to the Lender in the Lender's absolute discretion. All such inspections or audits by the Lender shall be at the Borrower's sole expense, subject to a limit of \$5,000 per year unless an Event of Default occurs during any such year.

6.15 Other Reports. The Borrower shall, within such period of time as the Lender may specify, deliver to the Lender such other schedules and reports as the Lender may require.

6.16 Collateral Records. The Borrower shall keep full and accurate books and records relating to the Collateral and shall mark such books and records to indicate the Lender's Lien in the Collateral.

6.17 Intellectual Property. The Borrower shall maintain, preserve and renew all Intellectual Property necessary for the conduct of its business as and where the same is currently located as heretofore or as hereafter conducted by it.

6.18 Notice of Proceedings. The Borrower, promptly upon becoming aware, shall give written notice to the Lender of any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Borrower to the Lender which has been instituted or, to the knowledge of the Borrower, is threatened against the Borrower or to which any of its properties is subject which might reasonably be expected to have a Material Adverse Effect.

6.19 Notice of Event of Default or Material Adverse Effect. The Borrower shall, immediately after the commencement thereof, give notice to the Lender in writing of the occurrence of any Event of Default, or the occurrence of any condition or event having a Material Adverse Effect.

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6.20 Environmental Matters. If any release or threatened release or other disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of the Borrower, the Borrower shall cause the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, the Borrower shall comply with any federal or state judicial or administrative order requiring the performance at any real property of the Borrower of activities in response to the release or threatened release of a Hazardous Substance. To the extent that the transportation of Hazardous Substances is permitted by this Agreement, the Borrower shall dispose of such Hazardous Substances, or of any other wastes, only at licensed disposal facilities operating in compliance with Environmental Laws.

6.21 Further Assurances. The Borrower shall take such actions as are necessary or as the Lender may reasonably request from time to time to ensure that the Obligations under the Loan Documents are secured by substantially all of the assets of the Borrower, in each case as the Lender may determine, including (a) the execution and delivery of security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing, and (b) the delivery of certificated securities and other collateral with respect to which perfection is obtained by possession.

6.22 Management Agreement. Borrower shall keep the Management Agreement with Central Farmers Cooperative in full force and effect with no amendment thereto without the prior written consent of Lender.

6.23 Updated Appraisals. Borrower agrees that the Lender shall have the right to obtain, at the Borrower's expense, an updated appraisal of the Plant and Premises from an appraiser approved by Lender at any time (a) that an Event of Default shall have occurred hereunder or (b) Lender determines in its reasonable discretion that the security for the Obligations has been physically or financially impaired in any material manner. In the event that Lender shall elect to obtain such an appraisal, Lender may immediately commission an appraiser acceptable to the Lender to prepare the appraisal and the Borrower shall, after reasonable request therefor, fully cooperate with the Lender and the appraiser in obtaining the necessary information to prepare such appraisal. In the event that the Borrower fails, after reasonable request therefor, to cooperate with the Lender in obtaining such an appraisal or in the event that the Borrower shall fail to pay for the cost of such appraisal as soon as practicable, but in no event later than ten (10) business days after demand, such event shall constitute an Event of Default hereunder and the Lender shall be entitled to exercise all remedies available to it hereunder. The Borrower agrees to deliver an updated appraisal of the Plant and Premises from an appraiser approved by Lender within 60 days after the Closing Date occurs.

6.24 Organizational Documents. The Borrower shall have caused its Organization Documents to comply with and enforce the terms of the Warrant. The Borrower shall not at any time amend its Organizational Documents without the Lender's consent.

6.25 Additional Equity After First Year. After the one year anniversary of the Closing Date, any new equity investments in the Borrower shall: a) not reduce or affect that Warrant as it existed on the one year anniversary of the Closing Date; b) not dilute the Warrant Participants' percentage ownership interest as provided in the Warrant as of the one year anniversary date of

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the Closing Date or, if any Warrant Participant has exercised the Warrant, such Warrant Participant's percentage ownership interest in the Borrower; and c) result in a dollar for dollar reduction in the Maximum Line Amount.

6.26 Initial Equity Investment. On the Closing Date, the Escrow Agent will transfer to Borrower's Operating Account the Equity Investment.

6.27 Resolution Reserve. The Resolution Reserve will be retained by the Escrow Agent pursuant to the Central Farmers Escrow Agreement and will be distributed as follows and in accordance therewith: (x) if a FB&T Resolution occurs on or before January 1, 2016, the Escrow Agent will deliver: (1) the permitted Resolution Amount to Central Farmers Cooperative pursuant to a check payable to Central Farmers Cooperative; and (2) the Unused Resolution Amount to the Borrower's Operating Account; or (b) if an FB&T Resolution has not occurred by January 1, 2016, then the full amount of the Resolution Reserve will be delivered to the Borrower's Operating Account. If there is an Event of Default at such time as any amounts are to be paid to Borrower pursuant to the Central Farmers Escrow Agreement and this Section 6.27, Borrower shall immediately transfer such amounts from Borrower's Operating Account to the Collection Account for application to the Revolving Loan or if there are no outstanding obligations under the Revolving Loan at the time of such payment, to the Plant Loan. Notwithstanding anything to the contrary contained in this Section 6.27 and within five (5) days prior to the distribution of any Resolution Amount or any Unused Resolution Amount, the Borrower shall cause Central Farmers Cooperative to deliver to the Lender a certificate signed by an authorized officer Central Farmers Cooperative that (a) provides the aggregate amount of the Resolution Amount and Unused Resolution Amount to be distributed, (b) describes how the Resolution Amount and Unused Resolution Amount are calculated, and (c) lists to which Person or Persons the Resolution Amount and Unused Resolution Amount will be paid.

6.28 Maintenance of Letters of Credit in favor of NNG. If required by the NNG Agreement, the Borrower agrees (a) to maintain the NNG Letter of Credit in full force and effect in its current form and to obtain additional letters of credit satisfactory to NNG that may be requested by NNG from time to time to secure obligations of the Borrower arising under the NNG Agreement and (b) within thirty (30) calendar days prior to the expiration date of the NNG Letter of Credit if the NNG Letter of Credit is not renewed (i) to obtain a letter of credit to replace the NNG Letter of Credit in a form and substance acceptable to NNG or (ii) to deposit with NNG cash or other assets acceptable to NNG to secure obligations of the Borrower arising under the NNG Agreement in an amount acceptable to NNG. Notwithstanding the foregoing, the Borrower shall not be required to provide a replacement letter of credit or cash deposit if FB&T fails to renew the NNG Letter of Credit and the Borrower is not required to provide an additional or replacement letter of credit or cash deposit to NNG to secure the delivery of natural gas to the Facility.

6.29 Compliance with the Escrow Agreement and the Central Farmers Escrow Agreement. The Borrower shall comply with the terms and conditions of the Escrow Agreement and shall cause the Central Farmers Cooperative to comply with the terms and conditions of the Central Farmers Escrow Agreement.

6.30 Soil Stabilization Requirements. The Borrower shall timely perform all Soil Stabilization Requirements.

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6.31 Electrical Supply Agreements. The Borrower will perform its obligations under the Electrical Supply Agreements and cause the Utility Provider to perform its obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Electrical Supply Agreements and use all efforts to enforce or secure the performance of each obligation

and undertaking of the Utility Provider under the Electrical Supply Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Electrical Supply Agreements nor execute any mortgage or create or permit a Lien which may be or become superior to the Plant Mortgage and Plant Loan Documents, nor permit a subordination of the Electrical Supply Agreements to any mortgage or Lien. Borrower will not modify or amend the terms of the Electrical Supply Agreements nor excuse or waive any default of the Utility Provider thereunder without the prior written consent of Lender.

6.32 Natural Gas Supply Agreements. The Borrower will perform its obligations under the Natural Gas Supply Agreements and cause the Utility Providers to perform their obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Natural Gas Supply Agreements and use all efforts to enforce or secure the performance of each obligation and undertaking of the Utility Providers under the Natural Gas Supply Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Natural Gas Supply Agreements nor execute any mortgage or create or permit a Lien which may be or become superior to the Plant Mortgage and Plant Loan Documents, nor permit a subordination of the Natural Gas Supply Agreements to any mortgage or Lien. Borrower will not modify or amend the terms of the Natural Gas Supply Agreements nor excuse or waive any default of the Utility Providers thereunder without the prior written consent of Lender.

6.33 Water Supply Agreements. The Borrower will perform its obligations under the Water Supply Agreements and cause the Utility Provider to perform its obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Water Supply Agreements and use all efforts to enforce or secure the performance of each obligation and undertaking of the Utility Provider under the Water Supply Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Water Supply Agreements nor execute any mortgage or create or permit a Lien which may be or become superior to the Plant Mortgage and Plant Loan Documents, nor permit a subordination of the Water Supply Agreements to any mortgage or Lien. Borrower will not modify or amend the terms of the Water Supply Agreements nor excuse or waive any default of the Utility Provider thereunder without the prior written consent of Lender.

6.34 Rail Spur. The Borrower will maintain all of its rights and interest with respect to the Rail Spur. Borrower shall permit no surrender nor assignment of the Borrower's interest in the Rail Spur and Borrower will not modify or amend the terms of any agreement pertaining to the Rail Spur nor excuse or waive any default thereunder without the prior written consent of Lender.

6.35 Rail Agreements. The Borrower will perform its obligations under each Rail Agreement and cause the BNSF Railway Company to perform its obligations thereunder. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under the Rail Agreements and use all efforts to enforce or secure the

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performance of each obligation and undertaking of the BNSF Railway Company under the Rail Agreements. Borrower shall permit no surrender nor assignment of the Borrower's interest under the Rail Agreements and Borrower will not modify or amend the terms of the Rail Agreements nor excuse or waive any default of the BNSF Railway Company thereunder without the prior written consent of Lender.

7.

NEGATIVE COVENANTS

7.1 Indebtedness. The Borrower will not incur, create, assume or permit to exist any indebtedness or liability on account of deposits or advances or any indebtedness for borrowed money or letters of credit issued on the Borrower's behalf, or obligations under any Operating Lease or Capital Lease (except as permitted by Section 7.13 and Section 7.19 hereafter) any other indebtedness or liability evidenced by notes, bonds, debentures, leases or similar obligations, except:

- (a) the indebtedness arising hereunder;
- (b) the indebtedness arising and permitted under the Plant Loan of the Borrower to the Plant Lender; and
- (c) the Impositions due any governmental authority.

7.2 Encumbrances. The Borrower shall not, either directly or indirectly, create, assume, incur or suffer or permit to exist any Lien or charge of any kind or character upon any asset of the Borrower, whether owned at the date hereof or hereafter acquired, except for Permitted Liens.

7.3 Transactions with Affiliates. The Borrower shall not, directly or indirectly, enter into or permit to exist any transaction with any of its Affiliates or with any director, officer or employee of the Borrower other than transactions in the ordinary course of, and pursuant to the reasonable requirements of, the business of the Borrower and upon fair and reasonable terms which are fully disclosed to the Lender and are no less favorable to the Borrower than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate of the Borrower. Lender acknowledges that the Management Agreement and Corn Agency Agreement, as they exist as of the date of this Agreement,

comply with this Section 7.3. Further, the Lender may acquire corn and other grains from Fremar, LLC and Central Farmers Cooperative provided however that such agreements are made at arms length and pursuant to terms that, from the Borrower's perspective are at or better than market terms.

7.4 Unconditional Purchase Obligations. The Borrower shall not enter into or be a party to any contract for the purchase of materials, supplies or other property or services if such contract requires that payment be made by it regardless of whether delivery is ever made of such materials, supplies or other property or services provided however that the Borrower may, in the ordinary course of business enter into "take or pay" contracts with natural gas, water and electric utilities under commercially reasonable terms.

7.5 Cancellation of Debt. The Borrower shall not cancel any claim or debt owing to it, except for reasonable consideration or in the ordinary course of business.

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7.6 Inconsistent Agreements. The Borrower shall not enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by the Borrower hereunder or by the performance by the Borrower of any of its Obligations hereunder or under any other Loan Document, or (b) prohibit the Borrower from granting to the Lender a Lien on any of its assets.

7.7 Bank Accounts. The Borrower shall not establish any new Deposit Accounts or other bank accounts without the prior written consent of the Lender. The Borrower shall maintain all of its Deposit Accounts or other bank or other similar accounts at the Collection Bank and all such accounts shall be subject to the Liens of the Lender and subject to the Control Agreement.

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

7.9 Member Loans and Distributions. Borrower:

(a) Subordinates all loans, advances, and indebtedness owing from Borrower to Members of Borrower from time to time, whether or not evidenced by promissory notes; and

(b) Shall not make any Distributions (other than Tax Distributions) to its Members.

7.10 Sale or Transfer of Assets; Suspension of Business Operations. Except to the extent permitted under Section 7.2, the Borrower will not sell, lease, assign, transfer or otherwise dispose of (i) the Premises or Plant, (ii) all or a substantial part of its assets, or (iii) any Collateral or any interest therein (whether in one transaction or in a series of transactions) to any other Person other than the sale of Inventory in the ordinary course of business and will not liquidate, dissolve or suspend business operations, provided, however, that Borrower may in the ordinary course of business sell or dispose of Equipment constituting Collateral that is obsolete or otherwise being replaced in the ordinary course of business up to \$500,000 in the aggregate per year. The Borrower will not transfer any part of its ownership interest in any Intellectual Property Rights and will not permit any agreement under which it has licensed Intellectual Property to lapse, except that the Borrower may transfer such rights or permit such agreements to lapse if it shall have reasonably determined that the applicable Intellectual Property Rights are no longer useful in its business. If the Borrower transfers any Intellectual Property Rights for value, the Borrower will pay over the proceeds to the Lender for application to the Obligations. The Borrower will not license any other Person to use any of the Borrower's Intellectual Property Rights, except that the Borrower may grant licenses in the ordinary course of its business in connection with sales of Inventory or provision of services to its customers.

7.11 Consolidation and Merger; Asset Acquisitions. The Borrower will not consolidate with or merge into any Person, or permit any other Person to merge into it, or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all the assets of any other Person.

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7.12 Sale and Leaseback. The Borrower will not enter into any arrangement, directly or indirectly, with any other Person whereby the Borrower shall sell or transfer any real or personal property, whether now owned or hereafter acquired, and then or thereafter rent or lease as lessee such property or any part thereof or any other property that the Borrower intends to use for substantially the same purpose or purposes as the property being sold or transferred.

7.13 Capital Expenditures, etc. With respect to Capital Expenditures and the entry into Capital Leases, the Borrower covenants and agrees as follows:

(a) Borrower will not enter into any Capital Leases during any Loan Year that in the aggregate exceed \$250,000.00 without the prior written consent of Lender;

- (b) Borrower will not make any Capital Expenditure except those which in the good faith judgment of the Borrower are required to maintain, preserve or keep its plant, properties, and Equipment in good repair, working order, and condition; and
- (c) Borrower shall not expend more than the FF&E Reserve plus the amount necessary to complete the Soil Stabilization Requirements.

7.14 Restrictions on Nature of Business. The Borrower will not engage in any line of business materially different from that presently engaged in by the Borrower and will not purchase, lease or otherwise acquire assets not related to its business.

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

7.16 Discounts, etc. The Borrower will not at any time discount, modify, amend, subordinate, cancel or terminate the obligation of any Account Debtor or other obligor of the Borrower except in the ordinary course of business.

7.17 Place of Business; Name. The Borrower will not transfer its chief executive office or principal place of business, or move, relocate, close or sell any business location. The Borrower will not permit any tangible Collateral or any records pertaining to the Collateral to be located in any state or area in which, in the event of such location, a financing statement covering such Collateral would be required to be, but has not in fact been, filed in order to perfect the security interest. The Borrower will not change its name or jurisdiction of organization.

7.18 No Purchase of Perishable Agricultural Commodities. The Borrower will not purchase perishable agricultural products that are subject to the Perishable Agricultural Commodities Act, as amended.

7.19 Lease. Borrower shall not enter into any Operating Lease with annual rental payments on any such Operating Lease in excess of \$100,000.00 without the prior written consent of the Lender.

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8.

INTENTIONALLY OMITTED

9.

EVENTS OF DEFAULT.

The Borrower, without notice or demand of any kind, shall be in default under this Agreement upon the occurrence of any of the following events (each an "Event of Default").

9.1 Nonpayment of Obligations. Any amount due and owing on the Revolving Note or any of the Obligations, whether by its terms or as otherwise provided herein, is not paid when due.

9.2 Misrepresentation. Any oral or written warranty, representation, certificate or statement of the Borrower in this Agreement, the other Loan Documents or any other agreement with the Lender shall be false when made or at any time thereafter, or if any financial data or any other information now or hereafter furnished to the Lender by or on behalf of the Borrower shall prove to be false, inaccurate or misleading in any material respect.

9.3 Nonperformance. Any failure to perform or default in the performance of any covenant, condition or agreement contained in this Agreement or in the other Loan Documents or any other agreement with the Lender.

9.4 Default under Loan Documents. A default under any of the other Loan Documents, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement or the failure to perform any of the Obligations thereunder.

9.5 Default under Plant Loan and Security Agreement. An event of default shall occur under the Plant Loan Documents which is not cured to the satisfaction of the Plant Lender within the applicable cure period and/or the Plant Loan is accelerated, terminated, or cancelled.

9.6 Default under Other Debt. Any default by the Borrower in the payment of any Debt for any other obligation (whether or not owed to the Lender) beyond any period of grace provided with respect thereto or in the performance of any other term, condition or covenant contained in any agreement (including any capital or operating lease or any agreement in connection with the deferred purchase price of property) under which any such obligation is created, the effect of which default is to cause or permit the holder of such obligation (or the other party to such other agreement) to cause such obligation to become due prior to its stated maturity or terminate such other agreement.

9.7 Other Material Obligations. Any default in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, the Borrower with respect to any material purchase or lease of goods or services where such default, singly or in the aggregate with all other such defaults, might reasonably be expected to have a Material Adverse Effect.

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9.8 Bankruptcy, Insolvency, etc. The Borrower shall fail to pay its debts as they become due, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition under any chapter of the Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined

under the Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it file an answer admitting insolvency or inability to pay its debts as they become due, or shall fail to obtain a dismissal of such case within one hundred twenty (120) days after its commencement or convert the case from one chapter of the Bankruptcy Code to another chapter, or be the subject of an order for relief in such voluntary or involuntary bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appointed for, or have any court take jurisdiction of its property, or any part thereof, in any voluntary or involuntary proceeding for the purpose of reorganization, arrangement, dissolution or liquidation.

9.9 Judgments. The entry of any final judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against the Borrower which is not fully covered by insurance, or such action shall not be released or bonded over to Lender's satisfaction within fifteen (15) days after the assertion or filing thereof.

9.10 Collateral Impairment. The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against, any of the Collateral or any collateral under a separate security agreement securing any of the Obligations, or the loss, theft, destruction, seizure or forfeiture, or the occurrence of any deterioration or impairment of any of the Collateral or any of the collateral under any security agreement securing any of the Obligations, or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Collateral, in the sole opinion of the Lender acting in good faith, to become unsatisfactory as to value or character, or which causes the Lender to reasonably believe that it is insecure and that the likelihood for repayment of the Obligations is or will soon be impaired, time being of the essence. The cause of such deterioration, impairment, decline or depreciation shall include, but is not limited to, the failure by the Borrower to do any act deemed necessary by the Lender to preserve and maintain the value and collectability of the Collateral.

9.11 Change of Control. There shall occur a Change of Control.

9.12 Default or Termination of Management Agreement. Any party to the Management Agreement shall default under its obligations under such Management Agreement or the Management Agreement shall terminate without the prior written consent of the Lender.

9.13 Default Under any Subordination Agreement. Borrower engages in any act prohibited by any Subordination Agreement, or makes any payment with respect to any obligation subject to a Subordination Agreement that the subordinated creditor was not contractually entitled to receive or any party to a Subordination Agreement fails to comply with or otherwise defaults under the terms of such Subordination Agreement;

9.14 Non-Renewal of NNG Letter of Credit. FB&T or any issuer of a replacement NNG Letter of Credit shall fail to renew such NNG Letters of Credit if required under the NNG Agreement unless the Borrower has timely provided a replacement letter of credit or a cash

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deposit in accordance with Section 6.28 herein. Notwithstanding the foregoing, the Borrower shall not be required to provide a replacement letter of credit or cash deposit if FB&T fails to renew the NNG Letter of Credit and the Borrower is not required to provide an additional or replacement letter of credit or cash deposit to NNG to secure the delivery of natural gas to the Facility.

9.15 Material Adverse Effect. The occurrence of any development, condition or event which has a Material Adverse Effect on the Borrower.

9.16 Failure to Comply with Terms of Warrant. The Borrower shall fail to comply with the terms of the Warrant.

9.17 Failure to Comply with Terms of Escrow Agreement or Central Farmers Escrow Agreement. The Borrower shall fail to comply with the terms of the Escrow Agreement or shall fail to cause Central Farmers Cooperative to comply with the terms of the Central Farmers Escrow Agreement.

9.18 Employee Benefits. Any Reportable Event, which the Lender in good faith believes to constitute sufficient grounds for termination of any Pension Plan or for the appointment of a trustee to administer any Pension Plan, has occurred and is continuing 30 days after the Borrower gives the Lender written notice of the Reportable Event; or a trustee is appointed by an appropriate court to administer any Pension Plan; or the Pension Benefit Guaranty Corporation institutes proceedings to terminate or appoint a trustee to administer any Pension Plan; or the Borrower or any ERISA Affiliate files for a distress termination of any Pension Plan under Title IV of ERISA; or the Borrower or any ERISA Affiliate fails to make any quarterly Pension Plan contribution required under Section 412(m) of the IRC, which the Lender in good faith believes may, either by itself or in combination with other failures, result in the imposition of a Lien on the Borrower's assets in favor of the Pension Plan; or any withdrawal, partial withdrawal, reorganization or other event occurs with respect to a Multiemployer Plan which could reasonably be expected to result in a material liability by the Borrower to the Multiemployer Plan under Title IV of ERISA.

9.19 Default under the Asset Purchase Agreement. A default by the Borrower under the Asset Purchase Agreement, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement or the failure to perform any of the obligations thereunder.

10.

REMEDIES

Upon the occurrence of an Event of Default, the Lender shall have all rights, powers and remedies set forth in the Loan Documents, in any written agreement or instrument (other than this Agreement or the Loan Documents) relating to any of the Obligations or any security

therefor, as a secured party under the UCC or as otherwise provided at law or in equity. Without limiting the generality of the foregoing, the Lender may, at its option upon the occurrence of an Event of Default not waived by the Lender, declare its commitments to the Borrower to be terminated and all Obligations to be immediately due and payable, provided, however, that upon

the occurrence of an Event of Default under Section 9.8, all commitments of the Lender to the Borrower shall immediately terminate and all Obligations shall be automatically due and payable, all without demand, notice or further action of any kind required on the part of the Lender. The Borrower hereby waives any and all presentment, demand, notice of dishonor, protest, and all other notices and demands in connection with the enforcement of Lender's rights under the Loan Documents, and hereby consents to, and waives notice of release, with or without consideration, of any Collateral, notwithstanding anything contained herein or in the Loan Documents to the contrary. In addition to the foregoing:

10.1 Possession and Assembly of Collateral. The Lender may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral (in addition to Collateral of which the Lender already has possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may at any time enter into any of the Borrower's premises where any of the Collateral may be or is supposed to be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of and the Lender shall have the right to store and conduct a sale of the same in any of the Borrower's premises without cost to the Lender. At the Lender's request, the Borrower will, at the Borrower's sole expense, assemble the Collateral and make it available to the Lender at a place or places to be designated by the Lender which is reasonably convenient to the Lender and the Borrower.

10.2 Sale of Collateral. The Lender may sell any or all of the Collateral at public or private sale, upon such terms and conditions as the Lender may deem proper, and the Lender may purchase any or all of the Collateral at any such sale. The Borrower acknowledges that the Lender may be unable to effect a public sale of all or any portion of the Collateral because of certain legal and/or practical restrictions and provisions which may be applicable to the Collateral and, therefore, may be compelled to resort to one or more private sales to a restricted group of offerees and purchasers. The Borrower consents to any such private sale so made even though at places and upon terms less favorable than if the Collateral were sold at public sale. The Lender shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Lender may apply the net proceeds, after deducting all costs, expenses, attorneys' and paralegals' fees incurred or paid at any time in the collection, protection and sale of the Collateral and the Obligations, to the payment of the Revolving Note and/or any of the other Obligations, returning the excess proceeds, if any, to the Borrower. The Borrower shall remain liable for any amount remaining unpaid after such application, with interest at the Default Rate. Any notification of intended disposition of the Collateral required by law shall be conclusively deemed reasonably and properly given if given by the Lender at least ten (10) calendar days before the date of such disposition. The Borrower hereby confirms, approves and ratifies all acts and deeds of the Lender relating to the foregoing, and each part thereof, and expressly waives any and all claims of any nature, kind or description which it has or may hereafter have against the Lender or its representatives, by reason of taking, selling or collecting any portion of the Collateral. The Borrower consents to releases of the Collateral at any time (including prior to default) and to sales of the Collateral in groups, parcels or portions, or as an entirety, as the Lender shall deem appropriate. The Borrower expressly absolves the Lender from any loss or decline in market value of any Collateral by reason of delay in the enforcement or assertion or nonenforcement of any rights or remedies under this Agreement.

10.3 Standards for Exercising Remedies. To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, the Borrower acknowledges and agrees that it is not commercially unreasonable for the Lender (a) to fail to incur expenses reasonably deemed significant by the Lender to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as the Borrower, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, including any warranties of title, (k) to purchase insurance or credit enhancements to insure the Lender against risks of loss, collection or disposition of Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers,

consultants and other professionals to assist the Lender in the collection or disposition of any of the Collateral. The Borrower acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by the Lender would not be commercially unreasonable in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation upon the foregoing, nothing contained in this section shall be construed to grant any rights to the Borrower or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

10.4 UCC and Offset Rights. The Lender may exercise, from time to time, any and all rights and remedies available to it under the UCC or under any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other agreements between the Borrower and the Lender.

10.5 Additional Remedies. The Lender shall have the right and power to:

- (a) instruct the Borrower, at its own expense, to notify any parties obligated on any of the Collateral, including any Account Debtors, to make payment directly to the Lender of any amounts due or to become due thereunder, or the Lender may directly notify such obligors of the security interest of the Lender, and/or of the assignment to the Lender of the Collateral and direct such obligors to make payment to the Lender of any amounts due or to

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become due with respect thereto, and thereafter, collect any such amounts due on the Collateral directly from such Persons obligated thereon;

- (b) enforce collection of any of the Collateral, including any Accounts, by suit or otherwise, or make any compromise or settlement with respect to any of the Collateral, or surrender, release or exchange all or any part thereof, or compromise, extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder;

- (c) take possession or control of any proceeds and products of any of the Collateral, including the proceeds of insurance thereon;

- (d) extend, renew or modify for one or more periods (whether or not longer than the original period) the Revolving Note, any other of the Obligations, any obligation of any nature of any other obligor with respect to the Revolving Note or any of the Obligations;

- (e) grant releases, compromises or indulgences with respect to the Revolving Note, any of the Obligations, any extension or renewal of any of the Obligations, any security therefor, or to any other obligor with respect to the Revolving Note or any of the Obligations;

- (f) transfer the whole or any part of securities which may constitute Collateral into the name of the Lender or the Lender's nominee without disclosing, if the Lender so desires, that such securities so transferred are subject to the security interest of the Lender, and any corporation, association, or any of the managers or trustees of any trust issuing any of such securities, or any transfer agent, shall not be bound to inquire, in the event that the Lender or such nominee makes any further transfer of such securities, or any portion thereof, as to whether the Lender or such nominee has the right to make such further transfer, and shall not be liable for transferring the same;

- (g) make an election with respect to the Collateral under Section 1111 of the Bankruptcy Code or take action under Section 364 or any other section of the Bankruptcy Code; provided, however, that any such action of the Lender as set forth herein shall not, in any manner whatsoever, impair or affect the liability of the Borrower hereunder, nor prejudice, waive, nor be construed to impair, affect, prejudice or waive the Lender's rights and remedies at law, in equity or by statute, nor release, discharge, nor be construed to release or discharge, the Borrower, any guarantor or other Person liable to the Lender for the Obligations; and

- (h) at any time, and from time to time, accept additions to, releases, reductions, exchanges or substitution of the Collateral, without in any way altering, impairing, diminishing or affecting the provisions of this Agreement, the Loan Documents, or any of the other Obligations, or the Lender's rights hereunder, under the Revolving Note or under any of the other Obligations.

The Borrower hereby ratifies and confirms whatever the Lender may do with respect to the Collateral and agrees that the Lender shall not be liable for any error of judgment or mistakes of fact or law with respect to actions taken in connection with the Collateral, except to the extent such error or mistake constitutes gross negligence or willful misconduct of Lender.

10.6 Attorney-in-Fact. The Borrower hereby irrevocably makes, constitutes and appoints the Lender (and any officer of the Lender or any Person designated by the Lender for that purpose) as the Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in the Borrower's name, place and stead, with full power of substitution, to (i) take such actions as are permitted in this Agreement, (ii) execute such financing statements and other documents and to do such other acts as the Lender may require to perfect and preserve the Lender's security interest in, and to enforce such interests in the Collateral, and (iii) carry out any remedy provided for in this Agreement, including endorsing the Borrower's name to checks, drafts, instruments and other items of payment, and proceeds of the Collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of the Borrower, changing the address of the Borrower to that of the Lender, opening all envelopes addressed to the Borrower and applying any payments contained therein to the Obligations. The Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Agreement.

10.7 No Marshaling. The Lender shall not be required to marshal any present or future collateral security (including this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the extent that it lawfully may, the Borrower hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Lender's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Borrower hereby irrevocably waives the benefits of all such laws.

10.8 Application of Proceeds. The Lender will within three (3) Business Days after receipt of cash or solvent credits from collection of items of payment, proceeds of Collateral or any other source, apply the whole or any part thereof against the Obligations secured hereby. The Lender shall further have the exclusive right to determine how, when and what application of such payments and such credits shall be made on the Obligations, and such determination shall be conclusive upon the Borrower. Any proceeds of any disposition by the Lender of all or any part of the Collateral may be first applied by the Lender to the payment of expenses incurred by the Lender in connection with the Collateral, including attorneys' fees and legal expenses as provided for in Article 11 hereof.

10.9 No Waiver. No Event of Default shall be waived by the Lender except in writing. No failure or delay on the part of the Lender in exercising any right, power or remedy hereunder shall operate as a waiver of the exercise of the same or any other right at any other time; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. There shall be no

obligation on the part of the Lender to exercise any remedy available to the Lender in any order. The remedies provided for herein are cumulative and not exclusive of any remedies provided at law or in equity. The Borrower agrees that in the event that the Borrower fails to perform, observe or discharge any of its Obligations or liabilities under this Agreement or any other agreements with the Lender, no remedy of law will provide adequate relief to the Lender, and further agrees that the Lender shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

11.

MISCELLANEOUS

11.1 Obligations Absolute. None of the following shall affect the Obligations of the Borrower to the Lender under this Agreement or the Lender's rights with respect to the Collateral:

- (a) acceptance or retention by the Lender of other property or any interest in property as security for the Obligations;
- (b) release by the Lender of all or any part of the Collateral or of any party liable with respect to the Obligations;
- (c) release, extension, renewal, modification or substitution by the Lender of the Revolving Note, or any note evidencing any of the Obligations, or the compromise of the liability of any guarantor of the Obligations, if any; or
- (d) failure of the Lender to resort to any other security or to pursue the Borrower or any other obligor liable for any of the Obligations before resorting to remedies against the Collateral.

11.2 Entire Agreement. This Agreement and the other Loan Documents (i) are valid, binding and enforceable against the Borrower and the Lender in accordance with their respective provisions and no conditions exist as to their legal effectiveness; (ii) constitute the entire agreement between the parties with respect to the subject matter hereof and thereof; and (iii) are the final expression of the intentions of the Borrower and the Lender. No promises, either expressed or implied, exist between the Borrower and the Lender, unless contained herein or therein. This Agreement, together with the other Loan Documents, supersedes all negotiations, representations, warranties, commitments, term sheets, discussions, negotiations, offers or contracts (of any kind or nature, whether oral or written) prior to or contemporaneous with the execution hereof with respect to any matter, directly or indirectly related to the terms of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents are the result of negotiations among the Lender, the Borrower and the other parties thereto, and have been reviewed (or have had the opportunity to be reviewed) by counsel to all such parties, and are the products of all parties. Accordingly, this Agreement and the other Loan Documents shall not be construed more strictly against the Lender merely because of the Lender's involvement in their preparation.

11.3 WAIVER OF DEFENSES. THE BORROWER, WAIVES EVERY PRESENT AND FUTURE DEFENSE, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH THE BORROWER MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION

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BY THE LENDER IN ENFORCING THIS AGREEMENT. PROVIDED THE LENDER ACTS IN GOOD FAITH, THE BORROWER RATIFIES AND CONFIRMS WHATEVER THE LENDER MAY DO PURSUANT TO THE TERMS OF THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

11.4 Confirmations. The Borrower and the Lender agree from time to time, upon written request received by it from the other, to confirm to the other in writing the aggregate unpaid principal amount of the Revolving Advances then outstanding under the Revolving Note.

11.5 Binding Effect. This Agreement shall become effective upon execution by the Borrower and the Lender. If this Agreement is not dated or contains any blanks when executed by the Borrower, the Lender is hereby authorized, without notice to the Borrower, to date this Agreement as of the date when it was executed by the Borrower, and to complete any such blanks according to the terms upon which this Agreement is executed.

11.6 Enforceability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, unenforceable or invalid under any jurisdiction, such provision shall as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.7 Survival of Borrower Representations. All covenants, agreements, representations and warranties made by the Borrower herein shall, notwithstanding any investigation by the Lender, be deemed material and relied upon by the Lender and shall survive the making and execution of this Agreement and the Loan Documents and the issuance of the Revolving Note, and shall be deemed to be continuing representations and warranties until such time as the Borrower has fulfilled all of its Obligations to the Lender, and the Lender has been indefeasibly paid in full in cash. The Lender, in extending financial accommodations to the Borrower, is expressly acting and relying on the aforesaid representations and warranties.

11.8 Extensions of Lender's Commitment. This Agreement shall secure and govern the terms of (i) any extensions or renewals of the Lender's commitment hereunder, and (ii) any replacement note or notes executed by the Borrower and accepted by the Lender in its absolute discretion in substitution for one or more of the Revolving Note.

11.9 Time of Essence. Time is of the essence in making payments of all amounts due the Lender under this Agreement and in the performance and observance by the Borrower of each covenant, agreement, provision and term of this Agreement.

11.10 Release of Claims Against Lender. In consideration of the Lender making the Revolving Advances, the Borrower hereby releases and discharges the Lender of and from any and all claims, harm, injury, and damage of any and every kind, known or unknown, legal or equitable, which the Borrower may have against the Lender from the date of their respective first contact with the Lender until the date of this Agreement, including any claim arising from any reports (environmental reports, surveys, appraisals, etc.) prepared by any parties hired or recommended by the Lender. The Borrower confirms to Lender it has reviewed the effect of this

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release with competent legal counsel of its choice, or has been afforded the opportunity to do so, prior to execution of this Agreement and the Loan Documents and acknowledges and agrees that the Lender is relying upon this release in extending the Revolving Advances to the Borrower.

11.11 Costs, Fees and Expenses. The Borrower shall pay or reimburse the Lender for all reasonable costs, fees and expenses incurred by the Lender or for which the Lender becomes obligated in connection with the negotiation, preparation, consummation, collection of the Obligations or enforcement of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to

be delivered hereunder or in connection herewith (including any amendment, supplement or waiver to any Loan Document), or during any workout, restructuring or negotiations in respect thereof, including reasonable consultants' fees and attorneys' fees and time charges of counsel to the Lender, which shall also include attorneys' fees and time charges of attorneys who may be employees of the Lender or any Affiliate of the Lender, plus costs and expenses of such attorneys or of the Lender; search fees, costs and expenses; and all taxes payable in connection with this Agreement or the other Loan Documents, whether or not the transaction contemplated hereby shall be consummated. In furtherance of the foregoing, the Borrower shall pay any and all stamp and other taxes, UCC search fees, filing fees and other costs and expenses in connection with the execution and delivery of this Agreement, the Revolving Note and the other Loan Documents to be delivered hereunder, and agrees to save and hold the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs and expenses. That portion of the Obligations consisting of costs, expenses or advances to be reimbursed by the Borrower to the Lender pursuant to this Agreement or the other Loan Documents which are not paid on or prior to the date hereof shall be payable by the Borrower to the Lender on demand. If at any time or times hereafter the Lender: (a) employs counsel for advice or other representation (i) with respect to this Agreement or the other Loan Documents, (ii) to represent the Lender in any litigation, contest, dispute, suit or proceeding or to commence, defend, or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit, or proceeding (whether instituted by the Lender, the Borrower, or any other Person) in any way or respect relating to this Agreement, the other Loan Documents or the Borrower's business or affairs, or (iii) to enforce any rights of the Lender against the Borrower or any other Person that may be obligated to the Lender by virtue of this Agreement or the other Loan Documents; (b) takes any action to protect, collect, sell, liquidate, or otherwise dispose of any of the Collateral; and/or (c) attempts to or enforces any of the Lender's rights or remedies under the Agreement or the other Loan Documents, the costs and expenses incurred by the Lender in any manner or way with respect to the foregoing, shall be part of the Obligations, payable by the Borrower to the Lender on demand. Notwithstanding the foregoing, it is expressly understood and acknowledged by the Borrower and the Lender that any amounts included in Cash Consideration shall not also be due or payable pursuant to this Agreement and no amounts shall be paid in duplicate by the Borrower.

11.12 Indemnification. The Borrower agrees to defend (with counsel satisfactory to the Lender), protect, indemnify, exonerate and hold harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which shall also include, without limitation, reasonable attorneys' fees and time charges of attorneys who may be employees of any Indemnified Party), which may be imposed on, incurred by, or asserted

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against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including securities laws, Environmental Laws, commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Agreement or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Agreement and the Loan Documents, including the making or issuance and management of the Revolving Advances, the use or intended use of the proceeds of the Revolving Advances, the enforcement of the Lender's rights and remedies under this Agreement, the Loan Documents, the Revolving Note, any other instruments and documents delivered hereunder, or under any other agreement between the Borrower and the Lender (other than (i) the Plant Loan Documents which are governed by the indemnification provisions contained in the Plant Loan Documents and (ii) the Sale Documents); provided, however, that the Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters determined by a court of competent jurisdiction by final and non-appealable judgment to have been caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by the Borrower, shall be added to the Obligations of the Borrower and be secured by the Collateral. The provisions of this Section shall survive the satisfaction and payment of the other Obligations and the termination of this Agreement.

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

11.14 Customer Identification - USA Patriot Act Notice. The Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (as amended from time to time, the "Act"), and the Lender's policies and practices, the Lender is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow the Lender to identify the Borrower in accordance with the Act.

11.15 Rights of Third Parties. All conditions of the obligations of Borrower hereunder are imposed solely and exclusively for the benefit of Lender and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to

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assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time if in its absolute discretion Lender deems it desirable to do so. In this connection, Borrower agrees to and shall indemnify Lender from any liability, claims or losses resulting from the disbursement of the Revolving Loan proceeds or from the condition of the Premises whether related to the quality of construction or otherwise and whether arising during or after the term of the Revolving Loan made by Lender to Borrower in connection therewith. This provision shall survive the repayment of said Revolving Loan and shall continue in full force and effect so long as the possibility of any such liability, claims or losses exists.

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

11.17 Assignment. Borrower may not assign this Loan Agreement or any of its rights or obligations hereunder, including the right to a Revolving Advance, without the prior written consent of Lender.

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

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

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

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

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

11.23 Notices. Any notices and other communications permitted or required by the provisions of this Agreement (except for telephonic notices expressly permitted) shall be in

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

Each notice to Lender shall be addressed as follows:

Dougherty Funding LLC
Suite 4300

90 South Seventh Street
Minneapolis, Minnesota 55402
Attention: Executive Vice President and Chief Operating Officer

With a copy to:

Oppenheimer Wolff & Donnelly LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402
Attention: Steven Meyer

Each notice to Borrower shall be addressed as follows:

NuGen Energy, LLC
27283 - 447th Avenue
Marion, SD 57043
Attention: President

With a copy to:

Central Farmers Cooperative
44608-273rd Street
Marion, South Dakota 57043
Attention: General Manager

11.24 Governing Law. Notwithstanding the place of execution of this instrument, the parties to this instrument have contracted for South Dakota law to govern this instrument and it is accordingly agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of South Dakota without regard to the principles of conflicts of law.

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11.25 Participation. Lender may in its absolute discretion issue participations in the Revolving Loan and/or assign all or a portion of its obligations to make the Revolving Loan to participant(s) in the Revolving Loan. Lender may assign the Revolving Loan and its rights and obligations to any other financial institution. Subject to the confidentiality restrictions in the participation agreement, Lender may divulge all information received by it from Borrower or any other source, including but not limited to information relating to the Revolving Loan, to the Plant and to Borrower, to any such participant(s), and Borrower shall cooperate with Lender, at Lender's expense, in satisfying the reasonable requirements of any such participant(s) for consummating such a purchase or participation.

11.26 Consent to Jurisdiction. The Borrower submits and consents to personal jurisdiction of the Courts of the State of South Dakota and Courts of the United States of America sitting in such State for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in the State of South Dakota. Litigation may be commenced in any state court of general jurisdiction for the State of South Dakota or the United States District Court located in that state, at the election of the Lender. Nothing contained herein shall prevent Lender from bringing any action against any other party or exercising any rights against any security given to Lender, or against the Borrower personally, or against any property of the Borrower, within any other state. Commencement of any such action or proceeding in any other state shall not constitute a waiver of consent to jurisdiction or of the submission made by the Borrower to personal jurisdiction within the State of South Dakota.

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

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

IN WITNESS WHEREOF, the Borrower and the Lender have executed this Revolving Credit and Security Agreement as of the date first above written.

NUGEN ENERGY, LLC
A South Dakota limited liability company

By: _____

Name: _____

Title: _____

DOUGHERTY FUNDING LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
NUGEN ENERGY, LLC
BORROWING BASE CERTIFICATE
[ATTACH FINAL BORROWING BASE CERTIFICATE]

EXHIBIT B-1
MAKE-UP CONSIDERATION
[TO BE PROVIDED]

EXHIBIT B-2
MAKE-UP CONTRACTS
[TO BE PROVIDED]

EXHIBIT C
WARRANT

SCHEDULE 5.13
ERISA

None

SCHEDULE 5.21
DEPOSIT ACCOUNTS

1. Operating Account: Farmers State Bank Marion
162 785 205

2. HR/Payroll
Account: Farmers State Bank Marion
162 785 201

SCHEDULE 5.22
LOCATION OF COLLATERAL

NuGen Energy, LLC
27283 - 447th Avenue
Marion, South Dakota 57043

SUBSIDIARIES OF REX AMERICAN RESOURCES CORPORATION

| Name | State of Incorporation |
|---|---------------------------|
| _____ | _____ |
| Rex Radio and Television, Inc. ⁽¹⁾ | Ohio |
| Stereo Town, Inc. | Georgia |
| Kelly & Cohen Appliances, Inc. ⁽¹⁾ | Ohio |
| Rex Kansas, Inc. ⁽²⁾ | Kansas |
| AVA Acquisition Corp. | Delaware |
| Rex Alabama, Inc. ⁽²⁾ | Ohio |
| REX Investment, LLC ⁽⁵⁾ | Ohio |
| Rex Acquisition, LLC ⁽²⁾⁽³⁾ | Ohio |
| Farmers Energy Incorporated | Delaware |
| Farmers Energy Big River Holding, LLC ⁽⁶⁾ | Ohio |
| Farmers Energy Big River, LLC ⁽⁷⁾ | Ohio |
| Farmers Energy Levelland Holding, LLC ⁽⁶⁾ | Ohio |
| Farmers Energy Levelland, LLC ⁽⁷⁾ | Ohio |
| Farmers Energy Millennium Holding, LLC ⁽⁶⁾ | Ohio |
| Farmers Energy Millennium, LLC ⁽⁷⁾ | Ohio |
| Farmers Energy One Earth Holding, LLC ⁽⁶⁾ | Ohio |
| Farmers Energy One Earth, LLC ⁽⁷⁾ | Ohio |
| Farmers Energy Patriot Holding, LLC ⁽⁶⁾ | Ohio |
| <hr style="border: 1px solid black;"/> | |
| Farmers Energy Patriot, LLC ⁽⁷⁾ | Ohio |
| FEI Investment Incorporated | Delaware |

REX NuGen, LLC⁽⁷⁾

Ohio

REX NuGen Holding, LLC⁽⁶⁾

Ohio

-
- (1) Wholly-owned subsidiary of AVA Acquisition Corp.
 - (2) Wholly-owned subsidiary of Rex Radio and Television, Inc.
 - (3) Non-operating subsidiary.
 - (4) Wholly-owned subsidiary of Kelly & Cohen Appliances, Inc.
 - (5) AVA Acquisition Corp. is the managing member and owns a 98.032% Class A interest, a 95.46% Class B interest and a 100% Class C interest.
 - (6) First-tier wholly-owned subsidiary of Farmers Energy Incorporated.
 - (7) Second-tier wholly-owned subsidiary of Farmers Energy Incorporated.
-

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements No. 33-81706, No. 33-62645, No. 333-35118 and No. 333-69690 on Form S-8 of our reports dated April 15, 2011, relating to the consolidated financial statements and consolidated financial statement schedule of REX American Resources Corporation and subsidiaries (“the Company”) (which reports express an unqualified opinion and refer to the report of other auditors, and included an explanatory paragraph regarding the Company’s retrospective application of Accounting Standards Codification (ASC) 810, *Consolidation*, for non-controlling interests, which became effective February 1, 2009, the retrospective presentation of the Company’s retail business as discontinued operations, and deconsolidation of the assets and liabilities of a significant subsidiary as of January 31, 2011), and the effectiveness of internal control over financial reporting, appearing in the Company’s Annual Report on Form 10-K for the year ended January 31, 2011.

/S/ DELOITTE & TOUCHE LLP

Cincinnati, Ohio
April 15, 2011

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in Registration Statements No. 33-81706, No. 33-62645, No. 333-35118, and No. 333-69690 on Form S-8 of REX American Resources Corporation and subsidiaries of our report dated February 8, 2011, relating to the financial statements of Big River Resources, LLC as of December 31, 2010 and 2009 and for the years ended December 31, 2010 and 2009 and our report dated February 18, 2010 relating to the financial statements as of December 31, 2009 and 2008 and for the years ended December 31, 2009 and 2008, appearing in this annual Report on Form 10-K of REX American Resources Corporation and subsidiaries for the year ended January 31, 2011.

/S/ Christianson & Associates, PLLP

Willmar, Minnesota

April 15, 2011

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in Registration Statements No. 33-81706, No. 33-62645, No. 333-35118, and No. 333-69690 on Form S-8 of REX American Resources Corporation and subsidiaries of our report dated September 22, 2010, relating to the financial statements of NuGen Energy, LLC as of July 31, 2010 and for the year ended July 31, 2010 appearing in this annual Report on Form 10-K of REX American Resources Corporation and subsidiaries for the year ended January 31, 2011.

/S/ Christianson & Associates, PLLP

Willmar, Minnesota

April 15, 2011

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements No. 33-81706, No. 33-62645, No. 333-35118, and No. 333-69690 on Form S-8 of REX American Resources Corporation and subsidiaries of our report dated March 14, 2011, relating to the financial statements of Patriot Renewable Fuels, LLC as of December 31, 2010 and 2009 and for the years then ended, appearing in this annual Report on Form 10-K of REX American Resources Corporation and subsidiaries for the year ended January 31, 2011.

/S/ Boulay, Heutmaker, Zibell and Co. P.L.L.P.

Minneapolis, Minnesota

April 15, 2011

We consent to the incorporation by reference in Registration Statements No. 33-81706, No. 33-62645, No. 333-35118 and No. 333-69690 on Form S-8 of REX American resources Corporation and subsidiaries of our report dated November 24, 2009, relating to the financial statements of Patriot Renewable Fuels, LLC as of December 31, 2008 and 2007 and for the years ended December 31, 2008 and 2007, appearing in this annual Report on Form 10-K of REX American Resources Corporation and subsidiaries for the year ended January 31, 2011.

/S/ DELOITTE & TOUCHE LLP

Davenport, Iowa
April 15, 2011

CERTIFICATIONS

I, Stuart A. Rose, certify that:

1. I have reviewed this annual report on Form 10-K of REX American Resources Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant' s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant' s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant' s internal control over financial reporting that occurred during the registrant' s most recent fiscal quarter (the registrant' s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant' s internal control over financial reporting; and

5. The registrant' s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the

audit committee of the registrant' s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant' s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

Date: April 15, 2011

STUART A. ROSE
Stuart A. Rose
Chairman of the Board and
Chief Executive Officer

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I, Douglas L. Bruggeman, certify that:

1. I have reviewed this annual report on Form 10-K of REX American Resources Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

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(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 15, 2011

DOUGLAS L. BRUGGEMAN

Douglas L. Bruggeman

Vice President, Finance, Treasurer and

Chief Financial Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION
1350, AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002**

The undersigned officers of REX American Resources Corporation (the “Company”) hereby certify, to their knowledge, that the Company’s Annual Report on Form 10-K for the period ended January 31, 2011, which this certificate accompanies, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained therein fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

STUART A. ROSE
Stuart A. Rose
Chairman of the Board and
Chief Executive Officer

DOUGLAS L. BRUGGEMAN
Douglas L. Bruggeman
Vice President, Finance, Treasurer and
Chief Financial Officer

Dated: April 15, 2011

BIG RIVER RESOURCES, LLC
CONSOLIDATED FINANCIAL STATEMENTS
Years Ended December 31, 2010 and 2009
CHRISTIANSON & ASSOCIATES, PLLP
Certified Public Accountants and Consultants
Willmar, Minnesota

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INDEPENDENT AUDITOR' S REPORT

To the Board of Directors
Big River Resources, LLC
West Burlington, Iowa

We have audited the accompanying consolidated balance sheets of **Big River Resources, LLC** (an Iowa limited liability company) as of December 31, 2010 and 2009 and the related consolidated statements of operations, members' equity, and cash flows for the years then ended. These financial statements are the responsibility of the company' s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Big River Resources, LLC** as of December 31, 2010 and 2009 and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

CHRISTIANSON & ASSOCIATES, PLLP
Certified Public Accountants and Consultants
February 8, 2011

BIG RIVER RESOURCES, LLC
CONSOLIDATED BALANCE SHEETS
December 31, 2010 and 2009

| ASSETS | 2010 | 2009 |
|--|-----------------------|-----------------------|
| | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | \$ 20,071,789 | \$ 40,271,218 |
| Receivables | | |
| Trade | 7,759,961 | 24,881,446 |
| Other | 567,255 | 1,416,008 |
| Inventories | 82,006,748 | 32,446,083 |
| Prepaid expenses | 1,684,999 | 2,998,615 |
| Derivative instruments | 37,599,399 | 2,871,140 |
| | | |
| TOTAL CURRENT ASSETS | 149,690,151 | 104,884,510 |
| PROPERTY AND EQUIPMENT | | |
| Land and land improvements | 32,251,260 | 31,916,240 |
| Building structure | 64,759,061 | 62,762,668 |
| Grain equipment | 36,471,131 | 30,901,632 |
| Process equipment | 277,690,382 | 273,491,957 |
| Other equipment | 7,667,487 | 6,221,051 |
| Construction in progress | 143,292 | 587,425 |
| | | |
| | 418,982,613 | 405,880,973 |
| Accumulated depreciation | (68,056,674) | (40,617,012) |
| | | |
| | 350,925,939 | 365,263,961 |
| OTHER ASSETS | | |
| Investments | 5,082,606 | 4,208,902 |
| Deposit | 200,000 | 200,000 |
| Note receivables | 311,979 | - |
| Covenant not to compete, net of amortization | - | 33,333 |
| Financing costs, net of amortization | 1,634,262 | 1,963,163 |
| | | |
| | 7,228,847 | 6,405,398 |
| | | |
| TOTAL ASSETS | \$ 507,844,937 | \$ 476,553,869 |
| | | |

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED BALANCE SHEETS
December 31, 2010 and 2009

| LIABILITIES AND MEMBERS' EQUITY | 2010 | 2009 |
|--|-------------|-------------|
| | | |

CURRENT LIABILITIES

| | | |
|---|--------------|--------------|
| Payables | | |
| Trade | \$ 9,504,497 | \$ 8,539,833 |
| Grain | 11,700,616 | 7,969,243 |
| Construction | 72,990 | 243,382 |
| Deferred sales | 1,610,851 | – |
| Accrued expenses | 5,036,097 | 5,083,871 |
| Note payable - revolving line of credit | 6,000,000 | – |
| Current maturities of long-term debt | 44,769,030 | 24,325,696 |

TOTAL CURRENT LIABILITIES 78,694,081 46,162,025

LONG-TERM DEBT, less current maturities 129,936,180 176,754,976

MEMBERS' EQUITY

| | | |
|-------------------------|-------------|-------------|
| Members' capital | 277,699,596 | 241,744,791 |
| Noncontrolling interest | 21,515,080 | 11,892,077 |

299,214,676 253,636,868

TOTAL LIABILITIES AND MEMBERS' EQUITY \$ 507,844,937 \$ 476,553,869

See notes to consolidated financial statements.

- 3 -

BIG RIVER RESOURCES, LLC
CONSOLIDATED STATEMENTS OF OPERATIONS
Years Ended December 31, 2010 and 2009

| | 2010 | 2009 |
|---------------------------------|----------------|----------------|
| SALES | \$ 742,162,967 | \$ 448,145,300 |
| COST OF SALES | 658,492,388 | 402,121,201 |
| GROSS PROFIT | 83,670,579 | 46,024,099 |
| OPERATING EXPENSES | 12,624,744 | 10,173,451 |
| INCOME FROM OPERATIONS | 71,045,835 | 35,850,648 |
| OTHER INCOME (EXPENSES) | | |
| Interest income | 44,121 | 109,158 |
| Interest expense | (7,739,203) | (4,844,667) |
| Real estate investment expenses | (721,848) | – |
| Miscellaneous income | 971,041 | 536,314 |

| | | |
|--|---------------|---------------|
| | (7,445,889) | (4,199,195) |
| NET INCOME BEFORE NONCONTROLLING INTEREST | 63,599,946 | 31,651,453 |
| NONCONTROLLING INTEREST IN SUBSIDIARY' S INCOME | (11,121,621) | (4,081,131) |
| NET INCOME | \$ 52,478,325 | \$ 27,570,322 |

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY
Years Ended December 31, 2010 and 2009

| | Members' Equity | Noncontrolling Interest |
|--|----------------------------|------------------------------------|
| Balance - December 31, 2008, as previously reported | \$ 220,364,253 | \$ 810,946 |
| Cumulative effect of change in recording inventory | 467,489 | - |
| Balance - December 31, 2008, as restated | 220,831,742 | 810,946 |
| Exercise of unit options, issuance of 84 membership units | 355,013 | - |
| Issuance of employee unit options | 216,754 | - |
| Distributions to members | (7,229,040) | - |
| Capital Contributions | - | 7,000,000 |
| Net income | 27,570,322 | 4,081,131 |
| Balance - December 31, 2009 | 241,744,791 | 11,892,077 |
| Distributions to members | (16,523,520) | (1,498,618) |
| Net income | 52,478,325 | 11,121,621 |
| Balance - December 31, 2010 | \$ 277,699,596 | \$ 21,515,080 |

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years Ended December 31, 2010 and 2009

| | 2010 | 2009 |
|--|---------------------|---------------------|
| OPERATING ACTIVITIES | | |
| Net income | \$ 52,478,325 | \$ 27,570,322 |
| Charges to net income not affecting cash | | |
| Depreciation and amortization | 27,810,317 | 18,136,930 |
| Loss on firm purchase commitments | - | (4,941,011) |
| Compensation recognized from stock options | - | 216,754 |
| Loss on derivative instruments | 22,411,659 | 6,307,451 |
| Investment earnings | (377,704) | (80,665) |
| Noncontrolling interest in subsidiaries' gain | 11,121,621 | 4,548,620 |
| Decrease (increase) in current assets | | |
| Receivables | 17,970,238 | (17,605,830) |
| Inventories | (49,560,665) | (14,061,998) |
| Net paid on derivative instruments | (57,139,918) | (8,223,357) |
| Prepaid expenses | 1,313,616 | (2,455,045) |
| Increase (decrease) in current liabilities | | |
| Accounts payable | 4,737,436 | 582,555 |
| Accrued expenses | (34,224) | 3,716,985 |
| Deferred sales | 1,610,851 | - |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | 32,341,552 | 13,711,711 |
| INVESTING ACTIVITIES | | |
| Payments for deposits | - | (200,000) |
| Purchase of property and equipment | (13,335,402) | (39,464,390) |
| Purchase of investments | (807,979) | - |
| NET CASH USED IN INVESTING ACTIVITIES | (14,143,381) | (39,664,390) |
| FINANCING ACTIVITIES | | |
| Principal payments on long-term debt borrowings | (32,583,353) | (19,302,634) |
| Proceeds from long-term debt borrowings | - | 42,466,580 |
| Net proceeds (payments) on long-term revolving loan | 6,207,891 | (7,000,000) |
| Net borrowings on revolving line of credit | 6,000,000 | - |
| Payment for financing costs | - | (313,446) |
| Member contributions | - | 355,013 |
| Noncontrolling investment | - | 7,000,000 |
| Noncontrolling distributions | (1,498,618) | - |
| Distribution to member | (16,523,520) | (7,229,040) |
| NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES | (38,397,600) | 15,976,473 |

| | | |
|--|---------------|---------------|
| NET DECREASE IN CASH AND CASH EQUIVALENTS | (20,199,429) | (9,976,206) |
| CASH AND CASH EQUIVALENTS - beginning of year | 40,271,218 | 50,247,424 |
| CASH AND CASH EQUIVALENTS - end of year | \$ 20,071,789 | \$ 40,271,218 |

See notes to consolidated financial statements.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

NATURE OF BUSINESS - Big River Resources, LLC, its wholly-owned subsidiaries, Big River Resources West Burlington, LLC (West Burlington), Big River Resources Galva, LLC (Galva), its 50% joint venture Big River Resources Grinnell, LLC (Grinnell) and its 50.5% ownership in Big River United Energy, LLC, (collectively, the company) are limited liability companies.

West Burlington owns and operates an ethanol plant located in West Burlington, Iowa with an annual production nameplate capacity of 92 million gallons of denatured ethanol. The West Burlington plant produces ethanol, non-food grade corn oil and distiller grains for commercial sales throughout the United States and exports which accounted for approximately 91 percent of West Burlington's fiscal 2010 net sales. The company operates grain elevators near Monmouth and Edgington, Illinois which buys corn and soybeans from farmers as a corn supply to the ethanol operation in West Burlington, Iowa and for soybean sales throughout the United States.

In 2010, the West Burlington purchased the assets of Martin's Aledo Addition, Inc. and Martin's Grain, Inc., grain elevators which buy corn and soybeans from farmers near Aledo and Taylor Ridge, Illinois as a reserve corn supply to the company's ethanol operations and for soybean sales throughout the United States and exports. The assets were purchased for an aggregate cash purchase price of \$2,700,000. In addition, the seller has signed a covenant not to compete for a five-year period and the seller has received a credit of \$100,000 for future services to be provided to the seller, both of which are included in the purchase agreement consideration.

The company recorded these acquisitions using the purchase method of accounting in accordance with Accounting Standards Codification (ASC) 805 - Business Combinations. The purchase price equaled the estimated fair value of the identifiable net assets acquired less acquisition-related costs of the transaction.

Big River Resources Galva, LLC, an Illinois limited liability company, owns and operates a 100 million gallon annual production nameplate capacity ethanol plant near Galva, Illinois. The company produces ethanol, distiller grains and non-food grade corn oil for commercial sales throughout the United States and exports. Construction was completed and the ethanol plant became operational in May 2009.

Big River United Energy, LLC was formed on August 1, 2009 to acquire and operate an ethanol plant located in Dyersville, Iowa with an annual production nameplate capacity of 100 million gallons of denatured ethanol. The company began production of ethanol and distiller grains for commercial sales throughout the United States and exports on September 16, 2009.

Grinnell is a development stage company that was organized to construct an ethanol plant near Grinnell, Iowa with a planned annual nameplate capacity of 100 million. As of December 31, 2010, the company has no formal plans to develop the plant.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

PRINCIPALS OF CONSOLIDATION - The accompanying consolidated financial statements include the accounts of Big River Resources, LLC, and its subsidiaries. All significant intercompany account balances and transactions have been eliminated.

The company accounts for its investment in Grinnell on a consolidated basis because it is a variable interest entity and the company is its primary beneficiary.

FISCAL REPORTING PERIOD - The company has adopted a fiscal year ending December 31 for reporting financial operations.

USE OF ESTIMATES - The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses during the reporting period. Actual results could differ from those estimates.

REVENUE RECOGNITION - Revenues from the production of ethanol, distillers grains, corn oil and grain merchandising are recorded at the time title to the goods and all risks of ownership transfers to customers and a settlement price is realizable. Ethanol, distillers grains, corn oil and grains are generally shipped FOB shipping point. Undenatured ethanol is generally shipped FOB destination.

CASH AND CASH EQUIVALENTS - The company considers all highly liquid investments with a maturity of three months or less to be cash equivalents.

TRADE RECEIVABLES - The company has engaged the services of a national marketer to sell substantially all of its ethanol production and the majority of the distillers production at Big River United Energy, LLC. The company has engaged the services of national marketers to sell substantially all of its ethanol and a portion distillers production at West Burlington and Galva. The marketers handle nearly all sales functions including billing, logistics, and sales pricing. Once product is shipped, the marketers assume the risk of payment from the consumer and handle all delinquent payment issues.

The company markets a portion of its own local distiller grains and grain. The company generally bills weekly with payments due within 10 days of the invoice date, and considers accounts older than 120 days to be delinquent and would generally initiate collection procedures. If the collection procedures have not provided collection within one year of the invoice date, management generally will write off the account as a bad debt. Trade receivables are recorded net of anticipated uncollectible amounts. As of December 31, 2010 and 2009, there was no allowance for uncollectible amounts.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

INVENTORIES - For the year ended December 31, 2010, the company changed its method of accounting for ethanol, ethanol production in process, co-products and corn inventories from the lower of cost (average cost method) or market method (LCM) to net realizable value (NRV). Management believes the NRV method provides more meaningful financial reporting since this method better matches the fair value recording of the forward and futures positions that hedge the inventory. Comparative financial statements of prior years have been adjusted to apply the new method retrospectively. The following financial statement line items for 2010 and 2009 were affected by the change in accounting principle.

2010

| As Reported under LCM | As Computed under NRV | Effect of Change |
|--------------------------|-----------------------------|---------------------|
|--------------------------|-----------------------------|---------------------|

| | | | |
|---------------|---------------|---------------|--------------|
| Inventories | \$ 78,391,859 | \$ 82,006,748 | \$ 3,614,889 |
| Total Assets | 502,769,174 | 506,384,063 | 3,614,889 |
| Cost of Sales | 674,869,655 | 671,254,766 | (3,614,889) |
| Gross Profit | 66,957,160 | 70,572,049 | 3,614,889 |
| Net Income | 60,517,403 | 64,132,292 | 3,614,889 |

2009

| | As Reported under LCM | As Computed under NRV | Effect of Change |
|---------------|--------------------------|-----------------------------|---------------------|
| Inventories | \$ 29,271,292 | \$ 32,446,083 | \$ 3,174,791 |
| Total Assets | 469,756,357 | 472,931,148 | 3,174,791 |
| Cost of Sales | 408,544,550 | 405,837,248 | (2,707,302) |
| Gross Profit | 43,316,797 | 46,024,099 | 2,707,302 |
| Net Income | 29,006,595 | 31,713,897 | 2,707,302 |

Retained earnings as of the beginning of 2009 has been increased by \$467,489 for the effect of retrospective application of the new accounting method. The parts, chemicals and ingredients inventories are recorded at the lower of cost (average cost method) or market method (LCM). Soybeans and corn held at the elevators are recorded at net realizable value.

CONCENTRATIONS OF CREDIT RISK - The company extends credit to its customers in the ordinary course of business. The company performs periodic credit evaluations of its customers and generally does not require collateral. The company's operations may vary with the volatility of the commodity and ethanol markets. The company's cash balances are maintained in bank depositories and periodically exceed federally insured limits.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

PROPERTY AND EQUIPMENT - Property and equipment are stated at the lower of cost or fair value. Significant additions and betterments are capitalized with expenditures for maintenance, repairs and minor renewals being charged to operations as incurred. Depreciation is computed using the straight-line method over the following estimated useful lives:

| | |
|--------------------|--------------|
| Land improvements | 15- 20 years |
| Building structure | 5- 20 years |
| Grain equipment | 5- 20 years |
| Process equipment | 5- 20 years |
| Other equipment | 3- 15 years |

Construction in progress will be depreciated using the straight-line method over various estimated useful lives once the assets are placed into service.

The company reviews its property and equipment for impairment whenever events indicate that the carrying amount of the asset may not be recoverable. An impairment loss is recorded when the sum of the undiscounted future cash flows is less

than the carrying amount of the asset. The amount of the loss is determined by comparing the fair market values of the asset to the carrying amount of the asset. The company did not recognize any long-lived asset impairment loss for the years ended December 31, 2010 and 2009.

DERIVATIVE INSTRUMENTS - The company recognizes its derivatives in the balance sheet and measures these instruments at fair value. In order for a derivative to qualify as a hedge, specific criteria must be met and appropriate documentation maintained. Gains and losses from derivatives that do not qualify as hedges, or are undesignated, must be recognized immediately in earnings. If the derivative does qualify as a hedge, depending on the nature of the hedge, changes in the fair value of the derivative will be either offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings.

Additionally, the company evaluates its contracts to determine whether the contracts are derivatives. Certain contracts that literally meet the definition of a derivative may be exempted as "normal purchases or normal sales". Normal purchases and normal sales are contracts that provide for the purchase or sale of something other than a financial instrument or derivative instrument that will be delivered in quantities expected to be used or sold over a reasonable period of time in the normal course of business.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

DERIVATIVE INSTRUMENTS (continued) - The company has elected to record its forward purchase and sales commitments at fair value as derivative instruments which the company believes to represent more accurate financial reporting. These contracts are marked to market as an asset or liability and a corresponding gain or loss is recognized for the change in market value.

INVESTMENTS - Investments include stock in a lending cooperative bank, in the company's national ethanol marketer and membership units in an ethanol plant located in Mitchell County, Iowa. The company records the investments in the lending cooperative bank and in the company's national ethanol marketer at cost which includes its share of the allocated patronage equities. The membership units in the ethanol plant are recorded at cost. Investments include real estate properties near Dyersville, Iowa which are held for re-sale. The company carries these investments on the balance sheet at fair market value.

DEPOSITS - Deposits include monies deposited for a distilled spirits bond and is recorded at the scheduled recoverable value.

NOTES RECEIVABLE - The company has sold real estate properties and provided long term financing to the purchasers in the form of notes which are carried as other non-current assets. The notes are for a term of 30 years, maturing in 2040 with an interest rate of 5.5%. The current portion of these notes as of December 31, 2010 is approximately \$4,300 which is included in other receivables.

COVENANT NOT TO COMPETE - The company established a non-compete agreement with the former owners of the elevator at the acquisition date. The agreement requires annual payments of \$50,000 for 5 years in exchange for the former owners' compliance with the agreement. The intangible asset is being amortized over the 5 year term of the agreement using the straight-line method. This agreement expired in September 2010.

FINANCING COSTS - Financing costs are recorded at cost and include expenditures directly related to securing debt financing. Amortization is computed using the straight-line method over the loans' terms.

NONCONTROLLING INTEREST - Noncontrolling interests represent the minority partners' shares of the equity and income of Big River Resources Grinnell, LLC and Big River United Energy, LLC. Noncontrolling interests are classified in the consolidated statements of operations as a part of net income and the accumulated amount of noncontrolling interests are classified in the consolidated balance sheets as a part of members' equity.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

FAIR VALUE OF FINANCIAL INSTRUMENTS - Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date in the principal or most advantageous market. The fair value of an asset or liability is determined based on a hierarchy. The fair value hierarchy has three levels of inputs, both observable and unobservable. Fair value is determined using the lowest possible level of input. Level 1 inputs include quoted market prices in an active market for identical assets or liabilities. Level 2 inputs are market data, other than Level 1, that are observable either directly or indirectly. Level 2 inputs include quoted market prices for similar assets or liabilities, quoted market prices in an inactive market, and other observable information that can be corroborated by market data. Level 3 inputs are unobservable and corroborated by little or no market data.

Except for those assets and liabilities which are required by authoritative accounting guidance to be recorded at fair value in its balance sheets, the company has elected not to record any other assets or liabilities at fair value. No events occurred during the years ended December 31, 2010 and 2009 that would require adjustment to the recognized balances of assets or liabilities which are recorded at fair value on a nonrecurring basis.

The carrying value of cash, accounts receivable, accounts payable and accrued expenses approximates fair value. It is not currently practicable to estimate the fair value of the debt financing. Because these agreements contain certain unique terms, covenants, and restrictions, as discussed in Note E, there are no readily determinable similar instruments on which to base an estimate of fair value. The company estimates that the fair value of all financial instruments at December 31, 2010 and 2009 approximates their carrying values in the accompanying balance sheets.

DEFERRED SALES - The company receives advances for ethanol shipments (FOB destination) based on provisional pricing prior to the recognition of the sale. These advances are carried as current liabilities on the balance sheet until the criteria to recognize the revenue is met and the sale is recognized. As of December 31, 2010 and 2009, the company received \$1,610,851 and \$0 in advances for shipments which have not met the revenue recognition criteria.

INCOME TAXES - The company is organized as a limited liability company under state law and is treated as a partnership for income tax purposes. Under this type of organization, the company's earnings pass through to the member and are taxed at the member level. The company files income tax returns in the U.S. federal jurisdiction and in the States of Iowa and Illinois. As of December 31, 2010, the company is no longer subject to U.S. federal and state income tax examinations by tax authorities for tax years before 2007.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

STOCK-BASED COMPENSATION - The company accounts for stock-based payment transactions in which an enterprise receives employee services in exchange for equity instruments of the company using a fair value based method. The company uses the Black-Scholes-Merton ("BSM") option-pricing model to determine the fair value of stock-based awards. The company had no outstanding options as of December 31, 2010 and 2009.

RECLASSIFICATIONS - Certain amounts in prior year financial statements have been reclassified to conform to 2010 classification. These reclassifications had no effect on the total assets or net income as previously reported.

NOTE B: INVENTORIES

| | 2010 | 2009 |
|-------------------------------------|----------------------|----------------------|
| Ethanol | \$ 28,503,119 | \$ 6,257,797 |
| Production in process | 7,826,334 | 6,111,904 |
| Distiller grains | 1,880,214 | 1,071,937 |
| Corn | 16,338,527 | 9,603,667 |
| Corn Oil | 151,239 | 53,406 |
| Repair parts | 2,460,020 | 1,901,817 |
| Chemicals and ingredients | 1,293,971 | 1,199,794 |
| Corn and soybeans held at elevators | 23,553,324 | 6,245,761 |
| | <u>\$ 82,006,748</u> | <u>\$ 32,446,083</u> |

NOTE C: DERIVATIVE INSTRUMENTS

The company enters into derivative transactions to hedge its exposure to commodity price fluctuations. The company does not enter into derivative transactions for trading or speculative purposes.

The company, as a holder of derivative instruments, is required to provide qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses from derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements.

During 2010 and 2009, the company entered into corn, distillers grains, corn oil, natural gas, and ethanol derivative instruments. The company is required to record derivative financial instruments as either assets or liabilities at fair value in the statement of financial position. Derivatives qualify for treatment as hedges when there is a high correlation between the change in fair value of the derivative instrument and the related change in value of the underlying hedged item.

Furthermore, the company must designate the hedging instruments based upon the exposure being hedged as a fair value hedge or a cash flow hedge.

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NOTE C: DERIVATIVE INSTRUMENTS (continued)

Commodity Contracts

The company hedges substantially all of its corn, ethanol and co-product inventories as well as its future purchase and sales contracts to the extent considered necessary for minimizing risk from market price fluctuations. In connection with the execution of forward contracts, the company normally elects to create a hedging relationship by executing an exchange traded futures contract as an offsetting position. In this situation, the forward contract is valued at market price until delivery is made against the contract. The amounts recorded on the balance sheet represent the current fair market value of the instruments as determined by the broker with adjustments made by management for local basis and cash margin deposits.

These derivatives are not designated as hedges for accounting purposes. For derivative instruments that are not accounted for as hedges, or for the ineffective portions of qualifying hedges, the change in fair value is recorded through earnings in the period of change. Management expects all open positions outstanding as of December 31, 2010 to be realized within the next year.

The open derivative instruments as of December 31, 2010 are as follows:

Ethanol Plants

| | | |
|---|------------|--------|
| Forward purchase contracts | | |
| Corn | 26,204,000 | Bu |
| Forward sales contracts | | |
| Ethanol | 2,300,000 | Gal |
| Distillers grains | 133,000 | Ton |
| Corn Oil | 2,698,000 | Pounds |
| Positions on the Chicago Board of Trade | | |
| Corn (short) | 28,415,000 | Bu |

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NOTE C: DERIVATIVE INSTRUMENTS (continued)

Grain Elevators

| | | |
|---|-----------|----|
| Forward purchase contracts | | |
| Corn | 2,200,000 | Bu |
| Soybeans | 536,000 | Bu |
| Forward sales contracts | | |
| Corn | 119,000 | Bu |
| Soybeans | 261,000 | Bu |
| Positions on the Chicago Board of Trade | | |
| Corn (short) | 3,610,000 | Bu |
| Soybeans (short) | 890,000 | Bu |

The following tables provide details regarding the company's derivative financial instruments at December 31, 2010 and 2009, none of which are designated as hedging instruments:

2010

| | Balance Sheet location | Assets | Liabilities |
|---------------------|---|--|--------------------|
| Commodity contracts | Derivative instruments | \$ 37,599,399 | \$ - |
| | Statement of Operations location | Gain (loss) recognized for the year ended December 31, 2010 | |
| Commodity contracts | Cost of sales | \$ | (22,411,659) |

2009

| | Balance Sheet location | Assets | Liabilities |
|---------------------|-------------------------------|---------------|--------------------|
| Commodity contracts | Derivative instruments | \$ 2,871,140 | \$ - |

| | Statement of Operations location | Gain (loss) recognized for the year ended December 31, 2009 |
|---------------------|-------------------------------------|--|
| Commodity contracts | Cost of sales | \$ (6,307,451) |
| - 15 - | | |

NOTE D: FAIR VALUE MEASUREMENTS

The following table provides information on those assets measured at fair value on a recurring basis.

2010

| | Carrying Value in Balance Sheet at December 31, 2010 | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
|-------------------------|--|---|---|--|
| Financial Assets | | | | |
| Derivative instruments | \$ 37,599,399 | \$ 5,993,300 | \$ 31,606,099 | \$ - |

2009

| | Carrying Value in Balance Sheet at December 31, 2009 | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
|-------------------------|--|---|---|--|
| Financial Assets | | | | |
| Derivative instruments | \$ 2,871,140 | \$ 3,325,063 | \$ (453,923) | \$ - |

The company determines the fair value of the derivative instruments shown in the table above by obtaining fair value measurements from an independent pricing service. The fair value measurements for Level 1 inputs consider observable data that may include dealer quotes and live trading levels from the Chicago Board of Trade. The fair value measurements for Level 2 inputs consider observable data that may include dealer quotes and live trading levels from the Chicago Board of Trade adjusted for basis.

NOTE E: LONG-TERM DEBT

| | 2010 | 2009 |
|--|---------------|---------------|
| <u>West Burlington</u> | | |
| Term loan, further terms detailed below. | \$ 27,005,222 | \$ 38,936,061 |
| Revolving term loan, further terms detailed below. | 6,601,059 | - |

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NOTE E: LONG-TERM DEBT (continued)

| | 2010 | 2009 |
|--|----------------|----------------|
| Non-interest bearing note payable to Eastern Iowa Light and Power payable at \$4,167 per month beginning in January 2010 until January 2018 secured by letter of credit - Note M. | \$ 350,000 | \$ 400,000 |
| Non-interest bearing note payable to Eastern Iowa Light and Power payable at \$3,704 per month until October 2014, secured by letter of credit - Note M. | 166,666 | 211,111 |
| Non-interest bearing note payable to Iowa Department of Economic Development payable at \$1,750 per month until February 2010 when \$106,750 is due, secured by substantially all assets of the company. | - | 108,500 |
| Non-interest bearing non-compete agreement payable at \$50,000 per year until September 2010, unsecured. | - | 50,000 |
| <u>Galva</u> | | |
| Construction and term loan, further terms detailed below. | 55,233,088 | 67,375,000 |
| Construction and revolving loan, further terms detailed below. | 712,538 | 5,000,000 |
| <u>Big River United Energy, LLC</u> | | |
| Term loan, further terms detailed below. | 67,742,343 | 76,000,000 |
| Revolving term loan, further terms detailed below. | 16,894,294 | 13,000,000 |
| | 174,705,210 | 201,080,672 |
| Current maturities | (44,769,030) | (24,325,696) |
| | \$ 129,936,180 | \$ 176,754,976 |

Long-term debt maturities are as follows:

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NOTE E: LONG-TERM DEBT (continued)

| Years Ending December 31, | |
|------------------------------|----------------|
| 2011 | \$ 44,769,030 |
| 2012 | 28,037,301 |
| 2013 | 24,969,254 |
| 2014 | 19,912,192 |
| 2015 | 49,603,836 |
| Thereafter | 7,413,597 |
| | \$ 174,705,210 |

West Burlington

The company entered into a credit agreement with CoBank to partially finance the construction of the plant expansion. Under the credit agreement, the lender has provided a construction and term loan for \$55,000,000 and a construction and revolving term loan of \$20,000,000. The loans are secured by substantially all assets and mortgage on real estate.

For each of the loans, the company is required to pay interest monthly on the unpaid balance in accordance with one or more of the following interest rate options: a one-month fixed rate equal to 2.7% above the rate quoted by the British Bankers Association, an agent quoted fixed per annum rate or a fixed rate of LIBOR plus 2.7% (2.97% at December 31, 2010). The company shall select the applicable rate option at the time of each loan request.

The loans described above are subject to a common credit agreement with various financial and non-financial covenants that limit distributions, require minimum debt service coverage, net worth and working capital requirements. As of December 31, 2010 and 2009, the company was in compliance with all financial and non-financial covenants.

Specific terms for each loan are as follows:

Term loan

The company is required to make 24 quarterly principal installments of \$2,250,000 beginning in August 2008 until May 2014 with a final installment in an amount equal to the remaining unpaid balance on August 2014. In addition to the required payments, the company, beginning with the fiscal year ending 2008 and ending with the fiscal year 2010, is required to make additional principal payments equal to 75% of the company's excess cash flow as defined in the loan agreement not to exceed an aggregate total of \$9,000,000. Based on the operating results for the year ended December 31, 2010, the company is required to make an additional principal payment of \$3,505,222 in 2011 which is included in current maturities of long-term debt. This year's requirement meets the \$9,000,000 aggregate total.

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NOTE E: LONG-TERM DEBT (continued)

Revolving term loan

The company is required to make semi-annual principal payments beginning on March 2015 until March 2017 of a reducing commitment amount as follows

| <u>Payment Date</u> | <u>Commitment Amount</u> |
|---------------------|--------------------------|
| March 1, 2015 | \$ 16,000,000 |
| September 1, 2015 | 12,000,000 |
| March 1, 2016 | 8,000,000 |
| September 1, 2016 | 4,000,000 |
| March 1, 2017 | — |

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment.

Galva

The company entered into a credit agreement with CoBank to partially finance the construction of the plant. Under the credit agreement, the lender has provided a term loan for \$70,000,000 and a revolving term loan of \$20,000,000. The loans are secured by substantially all assets and mortgage on real estate.

For each of the loans, the company is required to pay interest monthly on the unpaid balance in accordance with one or more of the following interest rate options: a one-month fixed rate equal to 2.95% above the rate quoted by the British Bankers Association, an agent quoted fixed per annum rate or a fixed rate of LIBOR plus 2.95% (3.22% of December 31, 2010). The company shall select the applicable rate option at the time of each loan request.

The loans described above are subject to a common credit agreement with various financial and non-financial covenants that limit distributions and capital expenditures, require minimum debt service coverage, net worth and working capital requirements. As of December 31, 2010 and 2009, the company was in compliance with all financial and non-financial covenants.

Specific terms for each loan are as follows:

Construction and term loan

The company is required to make 25 quarterly principal installments of \$2,625,000 which began in December 2009 until December 2015 with a final installment in an amount equal to the remaining unpaid balance in January 2016.

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NOTE E: LONG-TERM DEBT (continued)

In addition to the required payments, beginning with the year ending 2009, the company is required to make additional principal payments equal to 75% of the company's excess cash flow as defined in the loan agreement. Based on the operating results for the year ended December 31, 2010, the company is required to make an additional principal payment of \$8,637,435 in 2011, which is included in current maturities of long-term debt. For the year ended December 31, 2009, the company was required to make an additional principal payment of \$1,641,912.

Construction and revolving term loan

The company is required to repay the outstanding loan balance at the time the commitment expires on June 1, 2016.

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment.

Big River United Energy, LLC

The company entered into a credit agreement with AgStar to finance the purchase of the plant. Under the credit agreement, the lender has provided a term loan for \$76,000,000, a term revolving loan of \$20,000,000 and a revolving line of credit of \$12,000,000. The loans are secured by substantially all assets and mortgage on real estate.

The loans described above are subject to a common credit agreement with various financial and non-financial covenants that limit distributions, require minimum debt service coverage, net worth and working capital requirements. As of December 31, 2010, the company was in compliance with all financial and non-financial covenants.

Specific terms for each loan are as follows:

Term loan

In June 2010, the company converted a portion of its term loan to a fixed rate term loan.

The variable rate portion requires the company to make interest only payments beginning in January 2010 based on a variable interest rate of 3.0% plus the greater of the one month LIBOR Rate or 2.0% (5% at December 31, 2010) until March 2011. Monthly principal and interest payments begin in April 2011 with a final installment in an amount equal to the remaining unpaid balance on September 15, 2015. As of December 31, 2010, this variable rate portion balance was \$39,224,916.

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NOTE E: LONG-TERM DEBT (continued)

The fixed rate portion requires the company to make monthly principal and interest payments until January 2013 when the rate will convert back to being based on a variable interest rate of 3.0% plus the greater of the one month LIBOR Rate or 2.0% until September 2015. As of December 31, 2010, this fixed rate portion balance was \$28,517,427.

Revolving term loan

The company is required to make interest only payments beginning in January 2010 based on a variable interest rate of 3.0% plus the greater of the one month LIBOR Rate or 2.0% (5% at December 31, 2010) until maturity, September 15, 2015, when the amount of unpaid principal balance shall be payable in full.

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment until September 15, 2015.

Revolving Line of Credit

The company is required to make interest only payments on any drawn funds beginning in January 2010 based on a variable interest rate of 4.0% plus the greater of the one month LIBOR Rate or 2.0% (6% at December 31, 2010) until maturity, September 15, 2015 when the amount of unpaid principal balance and all other amounts due shall be due.

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment until September 15, 2015. As of December 31, 2010 and 2009, the company has \$6,000,000 and \$0 drawn under this line of credit.

NOTE F: MEMBER' S EQUITY

The company was formed on March 6, 2006 as an Iowa Limited Liability Company and has a perpetual life. The company' s ownership is divided into four classes of units: Class A, B, C and D membership units. The profits and losses of the company will be allocated among the unit holders in proportion to the total units held. Distributions will be made to unit holders in proportion to the total units held. Each member is entitled to one vote for each unit held as to matters submitted to the membership.

The Class A member appoints eleven directors, Class B members appoint eight directors and Class C members appoint two directors to the board of directors. The total number of directors appointed by the Class A members shall increase by one director for each additional Class B, Class C or Class D director appointed under the terms of the operating agreement.

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NOTE F: MEMBER' S EQUITY (continued)

As of December 31, 2010, there are eleven Class A, eight Class B and two Class C directors. Transfer of the units is restricted pursuant to the operating agreement and to the applicable tax and securities laws and requires approval of the board of managers.

As of December 31, 2010 and 2009, the company had 359 and 363 members and the following membership units issued, respectively:

| | 2010 | 2009 |
|---------|-----------|-----------|
| Class A | 5,033.40 | 5,033.40 |
| Class B | 3,666.00 | 3,666.00 |
| Class C | 3,500.00 | 3,500.00 |
| Class D | 8,455.00 | 8,455.00 |
| | 20,654.40 | 20,654.40 |

NOTE G: SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

The following is a schedule of supplemental disclosure of cash flow information for the years ended December 31, 2010 and 2009:

| | 2010 | 2008 |
|---|--------------|---------------|
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION | | |
| Cash paid for interest (net of capitalized interest of \$0 and \$84,619 in 2010 and 2009, respectively) | \$ 8,891,717 | \$ 3,206,237 |
| SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES | | |
| Accounts payable incurred for construction in progress | \$ 18,041 | \$ 243,382 |
| Acquisition of net assets of RBF Acquisition III, LLC | | |
| Assets acquired | | |
| Inventories | \$ - | \$ 1,523,926 |
| Property and equipment | - | 94,476,074 |
| | \$ - | \$ 96,000,000 |

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NOTE H: CONCENTRATIONS

The company has an ethanol marketing agreement with an unrelated party which covers the entire ethanol marketing for the company. The agreement is renewed annually for one year terms, unless either party provides notice of non-renewal ninety days prior to the end of the then-current term. The agreement requires payment of an agreed upon percentage of the net sales price as defined in the agreement with a minimum and maximum cost per gallon. The ethanol could be marketed by other marketers without any significant effect on operations.

In August 2009, the company entered into a co-products marketing agreement with an unrelated party which covers all of the distillers grain marketing for Big River United Energy, LLC. The initial term of the agreement ended August 2010 and was automatically extended for an additional one year term and shall automatically extend thereafter, unless with either party provides a 90 day written notice of termination. The agreement requires payment of an agreed upon percentage of the net sales price as defined in the agreement.

NOTE I: EMPLOYEE BENEFIT PLAN

The company has a defined contribution plan which covers full-time employees who meet age and length of service eligibility requirements. The company matches the participants' contribution up to a maximum of 4% of wages. For the years ended December 31, 2010 and 2009, company matching contributions to the plan were \$290,314 and \$162,231, respectively.

NOTE J: EQUITY-BASED COMPENSATION

In 2009, the company approved an equity-based compensation plan which provides for the issuance of unit options to purchase an aggregate of 123 units of the company to members of the board of directors and management for the purpose of providing services to facilitate the completion of the construction of Galva's ethanol plant. The unit options were issued in August 2009 and were exercisable at purchase prices between \$1 and \$5,000 per unit until October 2009.

The following assumptions were used to estimate the fair values of the options granted using the BSM option-pricing formula: The risk-free interest rate of 0.1% to 0.03% is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life of 3 months and the expected volatility of 70.27% are based on the average reported lives and volatilities of a representative sample of a comparable company in the ethanol industry sector. The intrinsic value is calculated as the difference between the \$5,000 per unit exercise price of the options and the \$5,900 estimated current fair market value.

In October 2009, the members exercised 84 unit options and the company issued 84 Class D membership units for a total contribution of \$355,013.

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NOTE J: EQUITY-BASED COMPENSATION (continued)

The following table summarizes the activity for outstanding options of the company:

| | Issuable Upon Exercise of Options | Average Exercise Price |
|--|--|------------------------------|
| Balance at December 31, 2008 | 10 | \$ 5,000 |
| Granted | 123 | 4,472 |
| Exercised | (84) | 4,226 |
| Canceled/forfeited/expired | (49) | 5,000 |
| Balance at December 31, 2009 | - | \$ - |
| Balance at December 31, 2010 | - | \$ - |
| Vested and exercisable as of December 31, 2010 | - | \$ - |

NOTE K: LEASES

The company leases rail cars under a long-term operating lease agreement expiring at various dates through May 2014. The company is required to pay executory costs such as maintenance and insurance. Minimum fixed future lease payments consist of:

Years Ending December 31, _____

| | |
|-------------------------------------|---------------|
| 2011 | \$ 4,871,213 |
| 2012 | 4,189,631 |
| 2013 | 2,457,345 |
| 2014 | 618,920 |
| | <hr/> |
| Total minimum future lease payments | \$ 12,137,109 |
| | <hr/> <hr/> |

Total rent expense of \$4,522,014 and \$3,420,803 was incurred in 2010 and 2009, respectively.

The company subleases rail cars to Platinum Ethanol, LLC under a long-term operating lease agreement expiring in June 2012. The company will receive reimbursements of lease expenses including executory costs such as maintenance and insurance totaling \$931,500 over the term of the agreement and has received \$595,459 and \$0 for years ended December 31, 2010 and 2009, respectively. These payments are netted against lease expense and are included in cost of sales.

NOTE L: RELATED PARTY TRANSACTIONS

The company purchases corn from the patrons of one of the members of the company. The corn supply could be purchased from other suppliers without any significant effect on operations. The company also purchased corn totaling \$536,896 from one of the non controlling interest members during the year ended December 31, 2010.

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NOTE M: COMMITMENTS AND CONTINGENCIES

Substantially all of the companies' facilities are subject to federal, state, and local regulations relating to the discharge of materials into the environment. Compliance with these provisions has not had, nor does management expect to have, any material effect upon operations. Management believes that the current practices and procedures for the control and disposition of such wastes will comply with the applicable federal and state requirements.

In September 2010, the company entered into a sponsorship agreement in which it made a \$250,000 sponsorship payment in September 2010 for the 2011 race season. The agreement requires an initial term of six years and shall automatically renew for a single three year renewal term unless terminated by either party with a written notice of termination at least one hundred-eighty days before the end of the then-current term. The annual fee shall increase by \$11,500 each subsequent year during the term of this agreement.

BIG RIVER RESOURCES WEST BURLINGTON, LLC

The company has issued unsecured promissory notes for the specific purpose of letter of credits totaling \$577,778, which expire through September 2011, as security of certain debts. There is no amount drawn against these promissory notes as of December 31, 2010.

In January 2010, GS Clean Tech Corp. filed a lawsuit against Big River Resources West Burlington, LLC in the U.S. District Court for infringement rights on its patent covering corn oil extraction technology. On July 1, 2009, Big River Resources Galva, LLC entered into a Corn Oil Tricanter Purchase and Installation Agreement with ICM, Inc. This agreement includes an indemnification clause that holds Big River Resources West Burlington, LLC and Big River Resources Galva, LLC harmless from all claims, liabilities, and costs including attorney fees arising out of the infringement of adversely owned patents. However, if GS Clean Tech Corp. were to prevail in this lawsuit and ICM, Inc. was not able to pay the claims, the company would be liable for any amounts not paid by ICM, Inc. under the indemnification clause. Due to this indemnification clause, the company does not expect to incur any costs related to the litigation and no liability has been recorded as of December 31, 2010.

BIG RIVER RESOURCES GALVA, LLC

In October 2006, the company entered into a development agreement with the City of Kewanee for the extension of the Enterprise Zone, to include land east of Galva upon which the company intends to construct the ethanol facility. The company was obligated to compensate the City of Kewanee an amount equal to 20% of the gross value of any retailer's occupation tax exemption for which the company is eligible. Based on construction cost estimates at the time of execution of the agreement, an amount of \$300,000 was estimated and paid within three months after the completion of construction.

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NOTE M: COMMITMENTS AND CONTINGENCIES (continued)

BIG RIVER RESOURCES GALVA, LLC

In addition, the company is obligated to pay an amount equal to 20% of the gross value of the state use tax exemption that results from the purchase of any utility product, commodity or resource that such tax may be exempted from under the regulations of the enterprise zone before an extension and as it may be amended. Based on the estimated usage of natural gas at the time of the execution of the agreement, an amount of \$160 per year is estimated to be payable in quarterly installments. The term of the agreement commenced on the date of execution and shall expire December 31, 2017. For the years ended December 31, 2010 and 2009, the company made payments totaling \$160,000 and \$406,668, respectively under this agreement.

BIG RIVER UNITED ENERGY, LLC

In September 2010, the company entered into a sponsorship agreement in which it made a \$125,000 sponsorship payment in September 2010 for the 2011 race season. The agreement requires an initial term of six years and shall automatically renew for a single three year renewal term unless terminated by either party with a written notice of termination at least one hundred-eighty days before the end of the then-current term. The annual fee shall increase by \$6,000 each subsequent year during the term of this agreement.

In addition to the forward contracts marked to market and identified as derivative instruments, the company has entered into unpriced forward ethanol sales contracts for delivery in 2011 of approximately 93,531,000 gallons.

NOTE N: SUBSEQUENT EVENTS

In preparing these financial statements, the company has evaluated events and transactions for potential recognition or disclosure through February 8, 2011, the date the financial statements were available to be issued.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED FINANCIAL STATEMENTS
Years Ended December 31, 2009 and 2008
CHRISTIANSON & ASSOCIATES, PLLP
Certified Public Accountants and Consultants
Willmar, Minnesota

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INDEPENDENT AUDITOR' S REPORT

To the Board of Directors
Big River Resources, LLC
West Burlington, Iowa

We have audited the accompanying consolidated balance sheets of **Big River Resources, LLC** (an Iowa limited liability company) as of December 31, 2009 and 2008 and the related consolidated statements of operations, members' equity, and cash flows for the years then ended. These financial statements are the responsibility of the company' s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Big River Resources, LLC** as of December 31, 2009 and 2008 and the results of its operations and its cash flows for the years ended in conformity with accounting principles generally accepted in the United States of America.

/s/ Christianson & Associates, PLLP

Certified Public Accountants and Consultants

February 18, 2010

**BIG RIVER RESOURCES, LLC
CONSOLIDATED BALANCE SHEETS
December 31, 2009 and 2008**

| | <u>2009</u> | <u>2008</u> |
|-------------------------------|--------------------|-------------------|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | \$ 40,271,218 | \$ 50,247,424 |
| Receivables | | |
| Trade | 24,881,446 | 7,950,981 |
| Other | 1,416,008 | 740,643 |
| Inventories | 29,271,292 | 16,860,159 |
| Prepaid expenses | 2,998,615 | 543,570 |
| Derivative instruments | 2,871,140 | 955,234 |
| | <u>101,709,719</u> | <u>77,298,011</u> |
| TOTAL CURRENT ASSETS | | |
| PROPERTY AND EQUIPMENT | | |
| Land and land improvements | 31,916,240 | 11,843,686 |
| Building structure | 62,762,668 | 11,528,933 |

| | | |
|--|-----------------------|-----------------------|
| Grain equipment | 30,901,632 | 18,830,022 |
| Process equipment | 273,491,957 | 99,510,783 |
| Other equipment | 6,221,051 | 1,389,133 |
| Construction in progress | 587,425 | 136,378,693 |
| | 405,880,973 | 279,481,250 |
| Accumulated depreciation | (40,617,012) | (22,828,998) |
| | 365,263,961 | 256,652,252 |
| OTHER ASSETS | | |
| Investments | 4,208,902 | 4,128,237 |
| Other assets | 200,000 | – |
| Covenant not to compete, net of amortization | 33,333 | 83,333 |
| Financing costs, net of amortization | 1,963,163 | 1,888,714 |
| | 6,405,398 | 6,100,284 |
| TOTAL ASSETS | \$ 473,379,078 | \$ 340,050,547 |

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED BALANCE SHEETS
December 31, 2009 and 2008

| | 2009 | 2008 |
|--|--------------|--------------|
| | | |
| LIABILITIES AND MEMBERS' EQUITY | | |
| CURRENT LIABILITIES | | |
| Payables | | |
| Trade | \$ 8,539,833 | \$ 7,284,621 |
| Grain | 7,969,243 | 8,641,900 |
| Construction | 243,382 | 7,724,204 |
| Accrued loss on firm purchase commitments | – | 4,941,011 |
| Accrued expenses | 5,083,871 | 1,366,886 |
| Current maturities of long-term debt | 24,325,696 | 11,679,384 |
| | 46,162,025 | 41,638,006 |
| TOTAL CURRENT LIABILITIES | 46,162,025 | 41,638,006 |
| LONG-TERM DEBT, less current maturities | 176,754,976 | 77,237,342 |
| MEMBERS' EQUITY | 238,932,449 | 220,364,253 |
| MINORITY INTEREST | 11,529,628 | 810,946 |
| | 250,462,077 | 221,175,199 |

| | | |
|--|----------------|----------------|
| TOTAL LIABILITIES AND MEMBERS' EQUITY | \$ 473,379,078 | \$ 340,050,547 |
|--|----------------|----------------|

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED STATEMENTS OF OPERATIONS
December 31, 2009 and 2008

| | 2009 | 2008 |
|---|----------------|----------------|
| SALES | \$ 448,145,300 | \$ 343,697,815 |
| COST OF SALES | 404,828,503 | 308,962,871 |
| GROSS PROFIT | 43,316,797 | 34,734,944 |
| OPERATING EXPENSES | | |
| General and administrative | 10,173,451 | 7,059,826 |
| Long-lived asset impairment | - | 5,778,081 |
| INCOME FROM OPERATIONS | 33,143,346 | 21,897,037 |
| OTHER INCOME (EXPENSES) | | |
| Gain on sale of construction time slot | - | 500,000 |
| Interest income | 109,158 | 965,799 |
| Interest expense | (4,844,667) | (1,744,727) |
| Other income (expense) | 536,314 | (40,957) |
| | (4,199,195) | (319,885) |
| NET INCOME BEFORE MINORITY INTEREST | 28,944,151 | 21,577,152 |
| MINORITY INTEREST IN SUBSIDIARY' S (INCOME) LOSS | (3,718,682) | 2,963,008 |
| NET INCOME | \$ 25,225,469 | \$ 24,540,160 |

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY
December 31, 2009 and 2008

| | | |
|---|--|----------------|
| Balance - December 31, 2007 | | \$ 200,482,209 |
| Exercise of unit options, issuance of 67 membership units | | 335,000 |

| | |
|---|-----------------------|
| Issuance of employee unit options | 149,484 |
| Distributions to members | (5,142,600) |
| Net income | 24,540,160 |
| Balance - December 31, 2008 | 220,364,253 |
| Exercise of unit options, issuance of 84 membership units | 355,013 |
| Issuance of employee unit options | 216,754 |
| Distributions to members | (7,229,040) |
| Net income | 25,225,469 |
| Balance - December 31, 2009 | \$ 238,932,449 |

See notes to consolidated financial statements.

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BIG RIVER RESOURCES, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
December 31, 2009 and 2008

| | <u>2009</u> | <u>2008</u> |
|--|-------------------|-------------------|
| OPERATING ACTIVITIES | | |
| Net income | \$ 25,225,469 | \$ 24,540,160 |
| Charges to net income not affecting cash | | |
| Depreciation and amortization | 18,136,930 | 8,760,436 |
| Long-lived asset impairment | - | 5,778,081 |
| Loss on firm purchase commitments | (4,941,011) | 4,941,011 |
| Compensation recognized from stock options | 216,754 | 149,484 |
| Loss (gain) on derivative instruments | 6,307,451 | (26,555,953) |
| Deferred income | - | (500,000) |
| Investment earnings | (80,665) | (1,360) |
| Minority interest in subsidiaries' gain (loss) | 3,718,682 | (2,963,008) |
| (Increase) decrease in current assets | | |
| Receivables | (17,605,830) | (2,741,723) |
| Inventories | (10,887,207) | 1,996,209 |
| Net cash (paid) refunded on derivative instruments | (8,223,357) | 25,915,907 |
| Prepaid expenses | (2,455,045) | (63,991) |
| Increase (decrease) in current liabilities | | |
| Accounts payable | 582,555 | 8,796,168 |
| Accrued expenses | 3,716,985 | 878,155 |
| Distributions payable | - | (4,100,680) |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | 13,711,711 | 44,828,896 |

INVESTING ACTIVITIES

| | | |
|------------------------------------|--------------|---------------|
| Payments for deposits | (200,000) | – |
| Purchase of property and equipment | (39,464,390) | (137,385,506) |
| Refund of investment | – | 5,000,000 |

NET CASH USED IN INVESTING ACTIVITIES (39,664,390) (132,385,506)

FINANCING ACTIVITIES

| | | |
|---|--------------|-------------|
| Proceeds from long-term debt borrowings | 42,466,580 | 95,401,005 |
| Net payments on long-term revolving loan | (7,000,000) | – |
| Principal payments on long-term debt borrowings | (19,302,634) | (7,081,279) |
| Payment for financing costs | (313,446) | (1,296,798) |
| Member contributions | 355,013 | 335,000 |
| Minority investment | 7,000,000 | – |
| Distribution to member | (7,229,040) | (5,142,600) |

NET CASH PROVIDED BY FINANCING ACTIVITIES 15,976,473 82,215,328

NET DECREASE IN CASH AND CASH EQUIVALENTS (9,976,206) (5,341,282)

CASH AND CASH EQUIVALENTS - beginning of year 50,247,424 55,588,706

CASH AND CASH EQUIVALENTS - end of year \$ 40,271,218 \$ 50,247,424

See notes to consolidated financial statements.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

NATURE OF BUSINESS - Big River Resources, LLC, its wholly-owned subsidiaries, Big River Resources West Burlington, LLC (West Burlington), Big River Resources Galva, LLC (Galva), Big River Resources Quincy, LLC (Quincy), its 50% joint venture Big River Resources Grinnell, LLC (Grinnell) and its 50.5% ownership in Big River United Energy, LLC, (collectively, the company) are limited liability companies.

West Burlington owns and operates an ethanol plant located in West Burlington, Iowa with an annual production nameplate capacity of 92 million gallons that produces ethanol, non-food grade corn oil and distiller grains for commercial sales throughout the United States. West Burlington operates a grain elevator near Monmouth, Illinois (Monmouth) which buys corn and soybeans from farmers as a reserve corn supply to the ethanol operation in West Burlington, Iowa and for soybean sales throughout the United States.

Galva owns and operates an ethanol plant located near Galva, Illinois with an annual nameplate capacity of 100 million gallons that produces ethanol, non-food grade corn oil and distiller grains for commercial sales throughout the United States. As of December 31, 2008, the company was in the development stage with its efforts being principally devoted to grain merchandising and construction activities related to the ethanol plant. Construction was completed and the ethanol plant became operational in May 2009.

Grinnell is a development stage company that was organized to construct an ethanol plant near Grinnell, Iowa with a planned annual nameplate capacity of 100 million. As of December 31, 2009, the company has no formal plans to develop the plant.

Quincy was a development stage company with no operations. In November 2008, the Board of Directors approved a resolution to dissolve Quincy and distributed the net assets to Big River Resources, LLC.

Big River United Energy, LLC was formed on August 1, 2009 to acquire and operate an ethanol plant located in Dyersville, Iowa with an annual production nameplate capacity of 100 million gallons of denatured ethanol. The company began production of ethanol and distiller grains for commercial sales throughout the United States on September 16, 2009.

In September 2009, the company executed a purchase agreement with RBF Acquisition III, LLC to purchase substantially all of the assets of the Dyersville, Iowa ethanol plant which was formerly owned by VeraSun Energy Corporation for a price of \$96,000,000.

The following shows the allocations of the purchase consideration at the closing:

| | |
|----------------------------|--------------|
| Inventories | \$ 1,523,926 |
| Property and equipment | 94,476,074 |
| | <hr/> |
| Issuance of long-term debt | \$ |
| | <hr/> |

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

PRINCIPALS OF CONSOLIDATION - The accompanying consolidated financial statements include the accounts of Big River Resources, LLC, and its subsidiaries. All significant intercompany account balances and transactions have been eliminated.

The company accounts for its investment in Grinnell on a consolidated basis because it is a variable interest entity and the company is its primary beneficiary.

FISCAL REPORTING PERIOD - The company has adopted a fiscal year ending December 31 for reporting financial operations.

USE OF ESTIMATES - The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses during the reporting period.

REVENUE RECOGNITION - Revenues from the production of ethanol, distillers grains, corn oil and grain merchandising are recorded at the time title to the goods and all risks of ownership transfers to customers. Ethanol, distillers grains and corn oil are generally shipped FOB shipping point. Shipping and handling charges to customers are included in revenues.

CASH AND CASH EQUIVALENTS - The company considers all highly liquid investments with a maturity of three months or less to be cash equivalents.

TRADE RECEIVABLES - The company has engaged the services of a national marketer to sell substantially all of its ethanol production and the majority of the distillers produced at Big River United Energy, LLC. The marketer handles nearly

all sales functions including billing, logistics, and sales pricing. Once product is shipped, the marketer assumes the risk of payment from the consumer and handles all delinquent payment issues. In 2008, the company terminated its distiller grain marketing agreement at West Burlington and began marketing its own local truck distiller grains. The company generally bills weekly with payments due within 10 days of the invoice date, and considers accounts older than 120 days to be delinquent and would generally initiate collection procedures. If the collection procedures have not provided collection within one year of the invoice date, management generally will write off the account as a bad debt. Trade receivables are recorded net of anticipated uncollectible amounts. As of December 31, 2009 and 2008, there was no allowance for uncollectible amounts.

INVENTORIES - The ethanol, ethanol production in process, parts, chemicals and ingredients, and corn inventories are valued at the lower of cost (average cost method) or market. Soybeans and corn held at the elevator are recorded at net realizable value.

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NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CONCENTRATIONS OF CREDIT RISK - The company extends credit to its customers in the ordinary course of business. The company performs periodic credit evaluations of its customers and generally does not require collateral. The company's operations may vary with the volatility of the commodity and ethanol markets. The company's cash balances are maintained in bank depositories and periodically exceed federally insured limits.

PROPERTY AND EQUIPMENT - Property and equipment are stated at the lower of cost or fair value. Significant additions and betterments are capitalized with expenditures for maintenance, repairs and minor renewals being charged to operations as incurred. Depreciation is computed using the straight-line method over the following estimated useful lives:

| | |
|--------------------|--------------|
| Land improvements | 15- 20 years |
| Building structure | 10- 20 years |
| Grain equipment | 5- 15 years |
| Process equipment | 5- 20 years |
| Other equipment | 5- 15 years |

Construction in progress includes all expenditures directly related to the fermenters automated control system at the West Burlington plant, the distiller grains container loading system at the Galva plant and fermentation system at the Big River United Energy, LLC plant. These expenditures will be depreciated using the straight-line method over various estimated useful lives once the assets are placed into service.

The company reviews its property and equipment for impairment whenever events indicate that the carrying amount of the asset may not be recoverable. An impairment loss is recorded when the sum of the undiscounted future cash flows is less than the carrying amount of the asset. The amount of the loss is determined by comparing the fair market values of the asset to the carrying amount of the asset. At December 31, 2008, fair value of the land asset at Grinnell was estimated using the sales comparison, cost and market approaches which were included in an asset appraisal performed in 2008. The resulting long-lived asset impairment expense of \$5,778,081 is included in loss from operations on the statement of operations at December 31, 2008.

DERIVATIVE INSTRUMENTS - The company recognizes its derivatives in the balance sheet and measures these instruments at fair value. In order for a derivative to qualify as a hedge, specific criteria must be met and appropriate documentation maintained. Gains and losses from derivatives that do not qualify as hedges, or are undesignated, must be recognized immediately in earnings. If the derivative does qualify as a hedge, depending on the nature of the hedge, changes in the fair value of the derivative will be either offset against the change in fair value of the hedged assets, liabilities, or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings.

NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

DERIVATIVE INSTRUMENTS (continued) - Additionally, the company evaluates its contracts to determine whether the contracts are derivatives. Certain contracts that literally meet the definition of a derivative may be exempted as "normal purchases or normal sales". Normal purchases and normal sales are contracts that provide for the purchase or sale of something other than a financial instrument or derivative instrument that will be delivered in quantities expected to be used or sold over a reasonable period of time in the normal course of business.

Effective January 1, 2009, the company has elected to record its forward purchase and sales commitments at fair value as derivative instruments which the company believes to represent more accurate financial reporting. These contracts are marked to market as an asset or liability and a corresponding gain or loss is recognized for the change in market value.

FINANCING COSTS - Financing costs are recorded at cost and include expenditures directly related to securing debt financing. Amortization is computed using the straight-line method over the loans' terms from six to eight years.

DEPOSITS - Deposits include monies deposited for a distilled spirits bond and is recorded at the scheduled recoverable value.

INVESTMENTS - Investments include stock in a lending cooperative bank and membership units in an ethanol plant located in Mitchell County, Iowa. The stock in a lending cooperative bank is recorded under the equity method which records the company's share of the allocated earnings and distributions. The membership units in the ethanol plant are recorded at cost.

FAIR VALUE OF FINANCIAL INSTRUMENTS - Effective January 1, 2009, the company adopted, *Fair Value Measurements Topic* and *Fair Value Option for Financial Assets and Financial Liabilities Topic* of the FASB Accounting Codification, as they apply to its financial instruments. *Fair Value Measurements* defines fair value, outlines a framework for measuring fair value, and details the required disclosures about fair value measurements. *Fair Value Option for Financial Assets and Financial Liabilities* permits companies to irrevocably choose to measure certain financial instruments and other items at fair value. *Fair Value Option for Financial Assets and Financial Liabilities* also establishes presentation and disclosure requirements designed to facilitate comparison between entities that choose different measurement attributes for similar types of assets and liabilities.

NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

FAIR VALUE OF FINANCIAL INSTRUMENTS (continued) - Under *Fair Value Measurements*, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date in the principal or most advantageous market. *Fair Value Measurements* establishes a hierarchy in determining the fair value of an asset or liability. The fair value hierarchy has three levels of inputs, both observable and unobservable. *Fair Value Measurements* requires the utilization of the lowest possible level of input to determine fair value. Level 1 inputs include quoted market prices in an active market for identical assets or liabilities. Level 2 inputs are market data, other than Level 1, that are observable either directly or indirectly. Level 2 inputs include quoted market prices for similar assets or liabilities, quoted market prices in an inactive market, and other observable information that can be corroborated by market data. Level 3 inputs are unobservable and corroborated by little or no market data.

Except for those assets and liabilities which are required by authoritative accounting guidance to be recorded at fair value in its balance sheets, the company has elected not to record any other assets or liabilities at fair value, as permitted by *Fair Value Option for Financial Assets and Financial Liabilities*.

No events occurred during the year ended December 31, 2009 that would require adjustment to the recognized balances of assets or liabilities which are recorded at fair value on a nonrecurring basis. The carrying value of cash, accounts receivable, accounts payable and accrued expenses approximates fair value. It is not currently practicable to estimate the fair value of the debt financing. Because these agreements contain certain unique terms, covenants, and restrictions, as discussed in Note E, there are no readily determinable similar instruments on which to base an estimate of fair value. The

company estimates that the fair value of all financial instruments at December 31, 2009 approximates their carrying values in the accompanying balance sheet.

COVENANT NOT TO COMPETE - The company established a non-compete agreement with the former owners of the elevator at the acquisition date. The agreement requires annual payments of \$50,000 for 5 years in exchange for the former owners' compliance with the agreement. The intangible asset is being amortized over the 5 year term of the agreement using the straight-line method.

INCOME TAXES - The company is organized as a limited liability company under state law and is treated as a partnership for income tax purposes. Under this type of organization, the company's earnings pass through to the members and are taxed at the member level. The company is required to pay taxes to the State of Illinois.

STOCK-BASED COMPENSATION - The company accounts for stock-based payment transactions in which an enterprise receives employee services in exchange for equity instruments of the company using a fair value based method. The company uses the Black-Scholes-Merton ("BSM") option-pricing model to determine the fair value of stock-based awards.

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NOTE B: INVENTORIES

| | 2009 | 2008 |
|-------------------------------------|---------------|---------------|
| Ethanol | \$ 5,046,540 | \$ 1,549,548 |
| Ethanol in process | 4,837,774 | 1,718,150 |
| Distiller grains | 947,668 | 165,889 |
| Corn | 9,048,762 | 2,781,904 |
| Corn Oil | 43,176 | 31,694 |
| Repair parts | 1,901,817 | 1,377,200 |
| Chemicals and ingredients | 1,199,794 | 394,209 |
| Corn and soybeans held at elevators | 6,245,761 | 8,841,565 |
| | \$ 29,271,292 | \$ 16,860,159 |

NOTE C: DERIVATIVE INSTRUMENTS

The company enters into derivative transactions to hedge its exposure to commodity price fluctuations. The company does not enter into derivative transactions for trading or speculative purposes.

The company, as a holder of derivative instruments, is required to provide qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses from derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements.

During 2009 and 2008, the company entered into corn, distillers grains, corn oil, natural gas, and ethanol derivative instruments. The company is required to record derivative financial instruments as either assets or liabilities at fair value in the statement of financial position. Derivatives qualify for treatment as hedges when there is a high correlation between the change in fair value of the derivative instrument and the related change in value of the underlying hedged item. Furthermore, the company must designate the hedging instruments based upon the exposure being hedged as a fair value hedge, a cash flow hedge, or a hedge against foreign currency exposure.

Commodity Contracts

The company hedges a portion of its future corn purchases and ethanol sales as well as its elevator corn and soybean purchases and sales to the extent considered necessary for minimizing risk from market price fluctuations. In connection with the execution of forward contracts at its ethanol plant and elevator operations, the company normally elects to create a hedging relationship by executing an exchange traded futures contract as an offsetting position. In this situation, the forward contract is valued at market price until delivery is made against the contract. The amounts recorded on the balance sheet represent the current fair market value of the instruments as determined by the broker with adjustments made by management for local basis.

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NOTE C: DERIVATIVE INSTRUMENTS (continued)

These derivatives are not designated as hedges for accounting purposes. For derivative instruments that are not accounted for as hedges, or for the ineffective portions of qualifying hedges, the change in fair value is recorded through earnings in the period of change. Management expects all open positions outstanding as of December 31, 2009 to be realized within the next fiscal year.

The open derivative instruments as of December 31, 2009 are as follows:

Ethanol Plants

Forward purchase contracts

| | | |
|------|------------|----|
| Corn | 15,274,000 | Bu |
|------|------------|----|

Forward sales contracts

| | | |
|---------|------------|-----|
| Ethanol | 13,354,000 | Gal |
|---------|------------|-----|

| | | |
|-------------------|--------|-----|
| Distillers grains | 83,000 | Ton |
|-------------------|--------|-----|

| | | |
|----------|-----------|--------|
| Corn Oil | 1,798,000 | Pounds |
|----------|-----------|--------|

Positions on the Chicago Board of Trade

| | | |
|--------------|-----------|----|
| Corn (short) | 7,985,000 | Bu |
|--------------|-----------|----|

| | | |
|-----------------|------------|-----|
| Ethanol (short) | 19,411,500 | Gal |
|-----------------|------------|-----|

Grain Elevator

Forward purchase contracts

| | | |
|------|---------|----|
| Corn | 330,000 | Bu |
|------|---------|----|

| | | |
|----------|--------|----|
| Soybeans | 50,000 | Bu |
|----------|--------|----|

Forward sales contracts

| | | |
|------|---------|----|
| Corn | 550,000 | Bu |
|------|---------|----|

| | | |
|----------|--------|----|
| Soybeans | 30,000 | Bu |
|----------|--------|----|

Positions on the Chicago Board of Trade

| | | |
|--------------|-----------|----|
| Corn (short) | 1,180,000 | Bu |
|--------------|-----------|----|

| | | |
|------------------|---------|----|
| Soybeans (short) | 190,000 | Bu |
|------------------|---------|----|

The following tables provide details regarding the company's derivative financial instruments at December 31, 2009, none of which are designated as hedging instruments:

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NOTE C: DERIVATIVE INSTRUMENTS (continued)

| | Balance Sheet location | Assets | Liabilities |
|---------------------|----------------------------------|---|-------------|
| Commodity contracts | Derivative instruments | \$ 2,871,140 | \$ - |
| | Statement of Operations location | Gain (loss) recognized for the year ended December 31, 2009 | |
| Commodity contracts | Cost of sales | \$ | (6,307,451) |

NOTE D: FAIR VALUE MEASUREMENTS

The following table provides information on those assets measured at fair value on a recurring basis.

| | Carrying Value in Balance Sheet at December 31, 2009 | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
|-------------------------|--|---|---|---|
| Financial Assets | | | | |
| Derivative instruments | \$ 2,871,140 | \$ 2,871,140 | \$ - | \$ - |

NOTE E: LONG-TERM DEBT

West Burlington

| | | |
|--|---------------|---------------|
| Construction and term loan, further terms detailed below. | \$ 38,936,061 | \$ 50,500,000 |
| Non-interest bearing note payable to Eastern Iowa Light and Power payable at \$4,146 per month until January 2018 secured by letter of credit - Note L. | 400,000 | 400,000 |
| Non-interest bearing note payable to Eastern Iowa Light and Power payable at \$3,704 per month until July 28, 2014, secured by letter of credit - Note L. | 211,111 | 255,556 |
| Non-interest bearing note payable to Iowa Department of Economic Development payable at \$1,750 per month until February 2010 when \$106,750 is due, secured by substantially all assets of the company. | 108,500 | 127,750 |

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NOTE E: LONG-TERM DEBT (continued)

West Burlington (continued)

| | | | | |
|--|----|--------|----|---------|
| Non-interest bearing non-compete agreement payable at \$50,000 per year until September 2010, unsecured. | \$ | 50,000 | \$ | 100,000 |
|--|----|--------|----|---------|

Galva

| | | |
|---|------------|------------|
| Construction and term loan, further terms detailed below. | 67,375,000 | 27,533,420 |
|---|------------|------------|

| | | |
|--|-----------|------------|
| Construction and revolving loan, further terms detailed below. | 5,000,000 | 10,000,000 |
|--|-----------|------------|

Big River United Energy, LLC

| | | |
|--|------------|---|
| Term loan, further terms detailed below. | 76,000,000 | - |
|--|------------|---|

| | | |
|--|------------|---|
| Revolving term loan, further terms detailed below. | 13,000,000 | - |
|--|------------|---|

| | | |
|--------------------|-----------------------|----------------------|
| | 201,080,672 | 88,916,726 |
| Current maturities | (24,325,696) | (11,679,384) |
| | <u>\$ 176,754,976</u> | <u>\$ 77,237,342</u> |

Long-term debt maturities are as follows:

| Years Ending December 31, | |
|------------------------------|-----------------------|
| 2010 | \$ 24,325,696 |
| 2011 | 25,626,191 |
| 2012 | 26,832,540 |
| 2013 | 26,832,540 |
| 2014 | 17,837,762 |
| Thereafter | 79,625,943 |
| | <u>\$ 201,080,672</u> |

West Burlington

The company entered into a credit agreement with CoBank to partially finance the construction of the plant expansion. Under the credit agreement, the lender has provided a construction and term loan for \$55,000,000 and a construction and revolving term loan of \$20,000,000. The loans are secured by substantially all assets and mortgage on real estate.

NOTE E: LONG-TERM DEBT (continued)

For each of the loans, the company is required to pay interest monthly on the unpaid balance in accordance with one or more of the following interest rate options: agent base variable rate, quoted fixed per annum rate or a fixed rate of LIBOR plus 3.00% (3.5% at December 31, 2009). The company shall select the applicable rate option at the time of each loan request. Once the company has shown profitable operations and completed the \$9,000,000 in free cash flow payments, the

interest rate parameters will be decreased from 0.0% to minus 0.25% for the agent base variable rate option and from plus 3.00% to plus 2.75% for the LIBOR fixed rate option.

The loans described above are subject to a common credit agreement with various financial and non-financial covenants that limit distributions, require minimum debt service coverage, net worth and working capital requirements. As of December 31, 2009 and 2008, the company was in compliance with all financial and non-financial covenants.

Specific terms for each loan are as follows:

Construction and term loan

The company is required to make 24 quarterly principal installments of \$2,250,000 beginning in August 2008 until May 2014 with a final installment in an amount equal to the remaining unpaid balance on August 2014. In addition to the required payments, the company, beginning with the fiscal year ending 2008 and ending with the fiscal year 2010, is required to make additional principal payments equal to 75% of the Company's excess cash flow as defined in the loan agreement not to exceed an aggregate total of \$9,000,000. Based on the operating results for the year ended December 31, 2009, the company is required to make an additional principal payment of \$2,930,839 in 2010 which is included in current maturities of long-term debt.

Construction and revolving term loan

The company is required to make semi-annual principal payments beginning on March 2015 until March 2017 of a reducing commitment amount as follows:

| Payment Date | Commitment Amount |
|-------------------|-------------------|
| March 1, 2015 | \$ 16,000,000 |
| September 1, 2015 | 12,000,000 |
| March 1, 2016 | 8,000,000 |
| September 1, 2016 | 4,000,000 |
| March 1, 2017 | 0 |

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment. As of December 31, 2009 and 2008, the company had no advances on this revolving term loan.

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NOTE E: LONG-TERM DEBT (continued)

Galva

In January 2008, the company entered into a credit agreement with CoBank to partially finance the construction of the plant. Under the credit agreement, the lender has provided a construction and term loan for \$70,000,000 and a construction and revolving term loan of \$20,000,000. The loans are secured by substantially all assets and mortgage on real estate.

For each of the loans, the company is required to pay interest monthly on the unpaid balance in accordance with one or more of the following interest rate options: agent base variable rate, quoted fixed per annum rate or a fixed rate of LIBOR

plus 3.25% (3.75% at December 31, 2009). The company shall select the applicable rate option at the time of each loan request.

The loans described above are subject to a common credit agreement with various financial and non-financial covenants that limit distributions and capital expenditures, require minimum debt service coverage, net worth and working capital requirements. As of December 31, 2009 and 2008, the company was in compliance with all financial and non-financial covenants.

Specific terms for each loan are as follows:

Construction and term loan

The company is required to make 25 quarterly principal installments of \$2,625,000 beginning in December 2009 until December 2015 with a final installment in an amount equal to the remaining unpaid balance in January 2016. In addition to the required payments, beginning with the fiscal year ending 2009, the company is required to make additional principal payments equal to 75% of the company's excess cash flow as defined in the loan agreement. Based on the operating results for the year ended December 31, 2009, the company is required to make an additional principal payment of \$1,641,912 in 2010, which is included in current maturities of long-term debt.

Construction and revolving term loan

The company is required to repay the outstanding loan balance at the time the commitment expires on June 1, 2016.

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment.

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NOTE E: LONG-TERM DEBT (continued)

Big River United Energy, LLC

The company entered into a credit agreement with AgStar to finance the purchase of the plant. Under the credit agreement, the lender has provided a term loan for \$76,000,000, a term revolving loan of \$20,000,000 and a revolving line of credit of \$12,000,000. The loans are secured by substantially all assets and mortgage on real estate.

The loans described above are subject to a common credit agreement with various financial and non-financial covenants that limit distributions, require minimum debt service coverage, net worth and working capital requirements. As of December 31, 2009, the company was in compliance with all financial and non-financial covenants.

Specific terms for each loan are as follows:

Term loan

The company is required to make interest only payments beginning in January 2010 based on a variable interest rate of 3.0% plus the greater of the LIBOR Rate or 2.0% (5% at December 31, 2009) until March 2011. Monthly principal and interest installments begin in April 2011 with a final installment in an amount equal to the remaining unpaid balance on September 15, 2015.

Revolving term loan

The company is required to make interest only payments beginning in January 2010 based on a variable interest rate of 3.0% plus the greater of the LIBOR Rate or 2.0% (5% at December 31, 2009) until maturity, September 15, 2015, when the amount of unpaid principal balance shall be payable in full.

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment until September 15, 2015.

Revolving Line of Credit

The company is required to make interest only payments on any drawn funds beginning in January 2010 based on a variable interest rate of 4.0% plus the greater of the LIBOR Rate or 2.0% (6% at December 31, 2009) until maturity, September 15, 2015 when the amount of unpaid principal balance and all other amounts due shall be due.

In addition, the company agrees to pay a monthly commitment fee at a rate of 0.5% of the average daily unused portion of the commitment until September 15, 2015. As of December 31, 2009, the company has no funds drawn under this line of credit.

NOTE F: MEMBER' S EQUITY

The company was formed on March 6, 2006 as an Iowa Limited Liability Company and has a perpetual life. The company' s ownership is divided into four classes of units: Class A, B, C and D membership units. The profits and losses of the company will be allocated among the unit holders in proportion to the total units held. Distributions will be made to unit holders in proportion to the total units held. Each member is entitled to one vote for each unit held as to matters submitted to the membership.

The Class A members appoint nine directors and Class B members appoint eight directors to the board of directors. Each member who holds 1,000 units is deemed to be a Class C unit holder and is entitled to appoint one director to the board of directors. The total number of directors appointed by the Class A members shall increase by one director for each additional Class C or Class D director appointed under the terms of the operating agreement. As of December 31, 2009, there are eleven Class A, eight Class B and two Class C directors. Transfer of the units is restricted pursuant to the operating agreement and to the applicable tax and securities laws and requires approval of the board of managers.

As of December 31, 2009 and 2008, the company had the following membership units issued:

| | 2009 | 2008 |
|---------|------------------|------------------|
| Class A | 5,033.40 | 5,033.40 |
| Class B | 3,666.00 | 3,666.00 |
| Class C | 3,500.00 | 3,500.00 |
| Class D | 8,455.00 | 8,371.00 |
| | <u>20,654.40</u> | <u>20,570.40</u> |

NOTE G: SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

The following is a schedule of supplemental disclosure of cash flow information for the years ended December 31, 2009 and 2008:

| | 2009 | 2008 |
|---|--------------|--------------|
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION | | |
| Cash paid for interest (net of capitalized interest of \$84,619 and \$128,519 in 2009 and 2008, respectively) | \$ 3,206,237 | \$ 1,581,351 |
| SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES | | |
| Accounts payable incurred for construction in progress | \$ 243,382 | \$ 7,724,204 |
| Amortization of financing costs capitalized a construction in progress | \$ - | \$ 23,514 |
| Acquisition of net assets of RBF Acquisition III, LLC | | |
| Assets acquired | | |
| Inventories | \$ 1,523,926 | \$ - |
| Property and equipment | 94,476,074 | - |
| Issuance of long-term debt | | |
| | \$96,000,000 | \$ - |

NOTE H: CONCENTRATIONS

The company has an ethanol marketing agreement with an unrelated party which covers the entire ethanol marketing for the company. The agreement is renewed annually for one year terms, unless either party provides notice of non-renewal ninety days prior to the end of the then-current term. The agreement requires payment of an agreed upon percentage of the net sales price as defined in the agreement with a minimum and maximum cost per gallon. The ethanol could be marketed by other marketers without any significant effect on operations.

In August 2009, the company entered into a co-products marketing agreement with an unrelated party which covers a majority of the distillers grain marketing for BIG RIVER UNITED ENERGY, LLC. The initial term of the agreement ends August 2010 and shall be automatically extended for additional one year terms thereafter, unless with either party provides a 90 day written notice of termination. The agreement requires payment of an agreed upon percentage of the net sales price as defined in the agreement.

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NOTE I: EMPLOYEE BENEFIT PLAN

The company has a defined contribution plan which covers full-time employees who meet age and length of service eligibility requirements. The company matches the participants' contribution up to a maximum of 4% of wages. For the years ended December 31, 2009 and 2008, company matching contributions to the plan were \$162,231 and \$101,773, respectively.

NOTE J: EQUITY-BASED COMPENSATION

In 2009, the company approved an equity-based compensation plan which provides for the issuance of unit options to purchase an aggregate of 123 units of the company to members of the board of directors and management for the purpose

of providing services to facilitate the completion of the construction of Galva's ethanol plant. The unit options were issued in August 2009 and were exercisable at purchase prices between \$1 and \$5,000 per unit until October 2009.

The following assumptions were used to estimate the fair values of the options granted using the BSM option-pricing formula: The risk-free interest rate of 0.1% to 0.03% is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life of 3 months and the expected volatility of 70.27% are based on the average reported lives and volatilities of a representative sample of a comparable company in the ethanol industry sector. The intrinsic value is calculated as the difference between the \$5,000 per unit exercise price of the options and the \$5,900 estimated current fair market value.

In October 2009, the members exercised 84 unit options and the company issued 84 Class D membership units for a total contribution of \$355,013.

In 2008, the company approved an equity-based compensation plan which provides for the issuance of unit options to purchase an aggregate of 75 units of the company to members of the board of directors for the purpose of providing services to facilitate the expansion of the West Burlington facilities to 92 million gallons annual production. The unit options were issued in July 2008. The unit options were exercisable at a purchase price of \$5,000 per unit until September 2008.

The following assumptions were used to estimate the fair values of the options granted using the BSM option-pricing formula: The risk-free interest rate of 1.82% is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life of 3 months and the expected volatility of 43% are based on the average reported lives and volatilities of a representative sample of two comparable companies in the ethanol industry sector. The intrinsic value is calculated as the difference between the \$5,000 per unit exercise price of the options and the \$7,300 estimated current fair market value.

In September 2008, the members exercised 60 unit options and the company issued 60 Class D membership units for a total equity contribution of \$300,000.

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NOTE J: EQUITY-BASED COMPENSATION (continued)

The company recognized unit-based compensation expense of \$216,754 and \$149,484 for the years ended December 31, 2009 and 2008.

The following table summarizes the activity for outstanding options of the company:

| | Issuable Upon Exercise of Options | Average Exercise Price |
|------------------------------|--|------------------------------|
| | _____ | _____ |
| Balance at December 31, 2007 | 10 | \$ 5,000 |
| Granted | - | - |
| Exercised | - | - |
| Canceled/forfeited/expired | - | - |
| | _____ | _____ |
| Balance at December 31, 2008 | 10 | 5,000 |
| Granted | 123 | 4,472 |
| Exercised | 84 | 4,226 |
| Canceled/forfeited/expired | 49 | 5,000 |
| | _____ | _____ |
| Balance at December 31, 2009 | - | \$ - |
| | _____ | _____ |

NOTE K: LEASES

The company leases rail cars under a long-term operating lease agreement expiring at various dates through May 2014. The company is required to pay executory costs such as maintenance and insurance. Minimum fixed future lease payments consist of:

Years Ending December 31, _____

| | |
|-------------------------------------|---------------|
| 2010 | \$ 5,477,063 |
| 2011 | 5,460,713 |
| 2012 | 4,393,006 |
| 2013 | 2,458,845 |
| 2014 | 358,920 |
| | <hr/> |
| Total minimum future lease payments | \$ 18,148,547 |
| | <hr/> |

Total rent expense of \$3,420,803 and \$1,821,423 was incurred in 2009 and 2008, respectively.

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NOTE L: COMMITMENTS AND CONTINGENCIES

Substantially all of the companies' facilities are subject to federal, state, and local regulations relating to the discharge of materials into the environment. Compliance with these provisions has not had, nor does management expect to have, any material effect upon operations. Management believes that the current practices and procedures for the control and disposition of such wastes will comply with the applicable federal and state requirements.

BIG RIVER RESOURCES WEST BURLINGTON, LLC

The company has construction in progress at December 31, 2009 for the fermenters automated control system at the West Burlington plant. At December 31, 2009, the company has outstanding commitments related to the construction in progress of approximately \$438,000.

The company has issued unsecured promissory notes for the specific purpose of letter of credits totaling \$622,222, which expire through September 2010, as security of certain debts. There is no amount drawn against these promissory notes as of December 31, 2009.

BIG RIVER RESOURCES GALVA, LLC

In October 2006, the company entered into a development agreement with the City of Kewanee for the extension of the Enterprise Zone, to include land east of Galva upon which the company intends to construct the ethanol facility. The company was obligated to compensate the City of Kewanee an amount equal to 20% of the gross value of any retailer's occupation tax exemption for which the company is eligible. Based on construction cost estimates at the time of execution of the agreement, an amount of \$300,000 was estimated and paid within three months after the completion of construction. In addition, the company is obligated to pay an amount equal to 20% of the gross value of the state use tax exemption that results from the purchase of any utility product, commodity or resource that such tax may be exempted from under the regulations of the enterprise zone before an extension and as it may be amended. Based on the estimated usage of natural gas at the time of the execution of the agreement, an amount of \$160 per year is estimated to be payable in quarterly

installments. The term of the agreement commenced on the date of execution and shall expire December 31, 2017. For the years ended December 31, 2009 and 2008, the company made payments totaling \$406,668 and \$0, respectively under this agreement.

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NOTE M: SUBSEQUENT EVENTS

Subsequent to year end, GS Clean Tech Corp. has filed a lawsuit against Big River Resources West Burlington, LLC and Big River Resources Galva, LLC in the U.S. District Court for infringement rights on its patent covering corn oil extraction technology. On July 1, 2009, Big River Resources Galva, LLC entered into a Corn Oil Tricanter Purchase and Installation Agreement with ICM, Inc. This agreement includes an indemnification clause that holds Big River Resources West Burlington, LLC and Big River Resources Galva, LLC harmless from all claims, liabilities, and costs including attorney fees arising out of the infringement of adversely owned patents. Due to this indemnification clause, the company does not expect to incur any costs related to the litigation. As such, no liability has been recorded as of December 31, 2009.

In preparing these financial statements, the company has evaluated events and transactions for potential recognition or disclosure through February 18, 2010, the date the financial statements were available to be issued.

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Patriot Renewable Fuels, LLC

Financial Statements for the Years Ended December 31,

2010 and December 31, 2009

*And Report of Independent Registered Public
Accounting Firm*

PATRIOT RENEWABLE FUELS, LLC

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors

Patriot Renewable Fuels, LLC

Annawan, Illinois

We have audited the accompanying balance sheets of Patriot Renewable Fuels, LLC as of December 31, 2010 and 2009 and the related statements of operations, changes in members' equity, and cash flows for each of the years in the two-year period ended December 31, 2010. Patriot Renewable Fuels, LLC's management is responsible for these financial statements. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Patriot Renewable Fuels, LLC as of December 31, 2010 and 2009 and the results of its operations and its cash flows for the years in the two-year period ended December 31, 2010, in conformity with accounting principles generally accepted in the United States of America.

/s/ Boulay, Heutmaker, Zibell & Co. P.L.L.P.
 Certified Public Accountants

Minneapolis, Minnesota
 March 14, 2011

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PATRIOT RENEWABLE FUELS, LLC
 Balance Sheets

| | December 31, 2010 | December 31, 2009 |
|--|------------------------------|------------------------------|
| <u>ASSETS</u> | | |
| CURRENT ASSETS | | |
| Cash | \$ 5,350,666 | \$ 11,028,894 |
| Restricted cash | 1,352,276 | - |
| Accounts receivable, net | 3,673,146 | 6,587,083 |
| Inventory | 9,170,120 | 5,764,097 |
| Prepaid expenses and other current assets | 1,102,232 | 1,386,711 |
| Total current assets | 20,648,440 | 24,766,785 |
| PROPERTY AND EQUIPMENT | | |
| Property and equipment, at cost | 157,764,916 | 155,859,646 |
| Accumulated depreciation | (20,627,139) | (11,799,466) |
| Property and equipment, net | 137,137,777 | 144,060,180 |
| OTHER NON-CURRENT ASSETS | | |
| Deferred financing costs, net | 415,646 | 558,107 |
| Long-term investments | 333,100 | - |
| Notes receivable | 32,754,979 | 32,754,979 |
| Interest receivable | 3,445,215 | 2,580,819 |
| Total other non-current assets | 36,948,940 | 35,893,905 |
| TOTAL ASSETS | \$ 194,735,157 | \$ 204,720,870 |
| <u>LIABILITIES AND MEMBERS' EQUITY</u> | | |
| CURRENT LIABILITIES | | |
| Accounts payable | \$ 3,668,313 | \$ 2,529,484 |
| Accrued expenses and other current liabilities | 2,323,434 | 3,218,317 |
| Commodity derivative instruments | 1,980,225 | 90,255 |
| Current portion of interest rate swap | 1,507,124 | 1,618,486 |

| | | |
|---|-----------------------|-----------------------|
| Current portion of long-term debt | 9,625,439 | 15,484,485 |
| Total current liabilities | 19,104,535 | 22,941,027 |
| LONG-TERM LIABILITIES | | |
| Long-term debt | 61,064,371 | 75,288,353 |
| Interest rate swap | 2,685,152 | 2,747,249 |
| Deferred income | 31,213,573 | 33,600,244 |
| Total long-term liabilities | 94,963,096 | 111,635,846 |
| COMMITMENTS AND CONTINGENCIES | | |
| MEMBERS' EQUITY , 65,000 units authorized; 45,741 units issued and outstanding | 80,667,526 | 70,143,997 |
| TOTAL LIABILITIES AND MEMBERS' EQUITY | \$ 194,735,157 | \$ 204,720,870 |

Notes to the Financial Statements are an integral part of this Statement.

2

PATRIOT RENEWABLE FUELS, LLC
Statements of Operations

| | Years Ended December 31, | |
|---------------------------------|---------------------------------|----------------------|
| | 2010 | 2009 |
| REVENUES | \$ 261,116,700 | \$ 231,077,345 |
| COST OF GOODS SOLD | 234,180,432 | 205,366,591 |
| GROSS MARGIN | 26,936,268 | 25,710,754 |
| OPERATING EXPENSES | 2,334,448 | 2,446,600 |
| OPERATING INCOME | 24,601,820 | 23,264,154 |
| OTHER INCOME (EXPENSE) | | |
| Interest expense | (6,190,729) | (8,381,686) |
| Gain on debt extinguishment | 1,929,828 | – |
| Interest income | 864,397 | 551,127 |
| Interest rate swap gain | 98,530 | 1,796,231 |
| Other income | 80,832 | 58,033 |
| Total other expense, net | (3,217,142) | (5,976,295) |
| NET INCOME | \$ 21,384,678 | \$ 17,287,859 |

Notes to the Financial Statements are an integral part of this Statement.

3

PATRIOT RENEWABLE FUELS, LLC
Statements of Changes in Members' Equity

| | |
|---|---------------|
| BALANCE - December 31, 2008 | \$ 52,856,138 |
| Net income for the year ended December 31, 2009 | 17,287,859 |
| BALANCE - December 31, 2009 | 70,143,997 |
| Reacquisition of beneficial conversion feature upon retirement of convertible subordinated debt | (4,000,000) |
| Member distributions | (6,861,149) |
| Net income for the year ended December 31, 2010 | 21,384,678 |
| BALANCE - December 31, 2010 | \$ 80,667,526 |

Notes to the Financial Statements are an integral part of this Statement.

4

PATRIOT RENEWABLE FUELS, LLC
Statements of Cash Flows

| | Years Ended December 31, | |
|---|--------------------------|---------------|
| | 2010 | 2009 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net income | \$ 21,384,678 | \$ 17,287,859 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 7,003,031 | 6,953,274 |
| Loss on disposal of property and equipment | 16,815 | - |
| Interest income on tax increment financing notes receivable | (864,396) | (547,313) |
| Change in fair value of interest rate swap | (98,530) | (1,796,231) |
| Change in fair value of derivative instruments | 3,366,896 | (364,959) |
| Interest expense related to debt discount amortization | 466,865 | 1,333,333 |
| Gain on debt extinguishment | (1,929,828) | - |
| Patronage dividend received | (333,100) | - |
| Changes in operating assets and liabilities: | | |
| Restricted cash - commodity margin account | (1,352,276) | - |
| Accounts receivable | 2,913,937 | (490,165) |
| Inventory | (3,406,023) | 466,738 |
| Prepays and other current assets | 284,479 | 466,135 |
| Commodity derivative instruments | (1,476,926) | 118,658 |
| Accounts payable | 971,968 | (1,896,114) |
| Accrued expenses | (969,812) | (358,533) |

| | | |
|--|---------------------|----------------------|
| Net cash flows provided by operating activities | 25,977,778 | 21,172,682 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchases of property and equipment | (2,174,792) | (669,769) |
| Proceeds from the disposal of property and equipment | – | 39,059 |
| Net cash flows used in investing activities | (2,174,792) | (630,710) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Payments on line of credit, net | – | (2,013,204) |
| Proceeds from debt | – | 1,008,290 |
| Payments on long-term debt | (18,620,065) | (10,690,125) |
| Reacquisition of beneficial conversion feature upon retirement of convertible debt | (4,000,000) | – |
| Distributions paid | (6,861,149) | – |
| Net cash flows used in financing activities | (29,481,214) | (11,695,039) |
| NET INCREASE IN CASH | (5,678,228) | 8,846,933 |
| CASH - BEGINNING OF PERIOD | 11,028,894 | 2,181,961 |
| CASH - END OF PERIOD | \$ 5,350,666 | \$ 11,028,894 |
| SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION | | |
| Cash paid for interest | \$ 6,346,351 | \$ 8,152,636 |
| SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES | | |
| Property and equipment additions included in accounts payable and accrued expenses | \$ 166,861 | \$ – |
| Notes receivable included in deferred income | \$ – | \$ 8,966,896 |
| Reduction of deferred income for exchange of constructed roadway | \$ 385,815 | \$ – |
| Retainage refund used to reduce property and equipment amounts due contractor | \$ – | \$ 582,110 |

Notes to the Financial Statements are an integral part of this Statement.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements
December 31, 2010

1. NATURE OF BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

Nature of Business - Patriot Renewable Fuels, L.L.C. (an Illinois Limited Liability Company, the "Company") is a dry mill, corn-based processing facility that produces fuel-grade ethanol and distillers grains, a co-product of the ethanol production, that are derived from corn. The ethanol plant is located in Annawan, Illinois and the Company sells its production of ethanol and distillers grains throughout the United States and various international locations. The ethanol plant has a nameplate capacity (guaranteed by the design-builder) to produce 100 million gallons per year of denatured fuel-grade ethanol and approximately 320 thousand tons of dried distillers grains with solubles ("DDGS") and process 35.7 million bushels of corn.

Use of Estimates - Management uses estimates and assumptions in preparing these financial statements in accordance with generally accepted accounting principles in the United States of America. These estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported amounts of revenues and expenses. The Company uses estimates and assumptions in accounting for the following significant matters, among others: economic lives of property and equipment, realizability of accounts receivable, valuation of inventory and inventory purchase commitments, valuation of tax increment financing and subordinated debt, and the assumptions used in the impairment analysis of long-lived assets. Actual results may differ from previously estimated amounts, and such differences, if any, may be material to our financial statements. The Company periodically reviews estimates and assumptions, and the effects of revisions are reflected in the period in which the revision is made. For the years ended December 31, 2010 and 2009, the Company did not make any revisions to the financial statements for actual results that differed from previously estimated amounts.

Revenue Recognition - The Company sells ethanol and DDGS pursuant to marketing agreements as discussed further in Note 8, and generally recognizes revenue at the time of loading ethanol or distillers grains into trucks, railcars, or containers. This is the point at which the marketer has taken title and assumed the risks and rewards of ownership, prices are fixed or determinable and collectability is reasonably assured. Title is generally assumed by the buyer at the Company's shipping point. In certain instances where the sales price of the Company's ethanol is not fixed or determinable at the time title transfers to the customer, the Company defers the income until the price does become fixed or determinable.

In accordance with the Company's agreements for the marketing and sale of ethanol and distilled grain products, commissions due to the marketers are deducted from the gross sales price as earned. These commissions are recorded net of revenues as they do not provide an identifiable benefit that is sufficiently separable from the sale of ethanol and related products.

Expense Recognition - Cost of goods sold consists primarily of costs for raw materials, utilities, conversion costs, warehousing costs, salaries, wages and expenses for plant operating staff and plant management, depreciation and amortization expenses, general facility overhead charges, property taxes, and property and casualty insurance. General and administrative expenses consist primarily of salaries and expenses for management, administrative and accounting employees, and fees paid to outside service providers such as legal, accounting, and consulting firms.

Cash - The Company maintains cash and cash equivalents primarily in accounts with three financial institutions which, at times, exceed federally insured limits. The Company has not experienced any losses in such accounts or any losses in connection with these balances.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

Accounts Receivable - Accounts receivable are recorded at their estimated net realizable value and do not bear interest. Amounts collected on accounts receivable are included in net cash provided by operating activities in the statement of cash flows. The Company does not have any off-balance sheet credit exposure related to its customers. Accounts are considered past due if payment is not made on a timely basis in accordance with the Company's credit terms. Accounts considered uncollectible are written off. The Company follows a policy of providing an allowance for doubtful accounts when deemed necessary; however, based on historical experience, and its evaluation of the status of receivables, the Company believes that such accounts are collectible in all material respects and thus an allowance was not necessary at December 31, 2010 or 2009. It is possible this estimate will change in the future.

The Company performs periodic credit evaluations of its marketers and has not required collateral. The Company's operations vary with the volatility of the market for inputs (including corn, natural gas, chemicals, and denaturant) and for finished products (ethanol and DDGS), and to mitigate that volatility the Company actively seeks to minimize inventory and accounts receivable levels.

Inventory - Inventory is stated at the lower of cost or market. Cost is determined using the first in, first out ("FIFO") method. Market is based on current replacement values except that it does not exceed net realizable values and it is not less than net realizable values reduced by allowances from normal profit margin. Inventories consist of raw materials (corn, chemicals, denaturant), work in process, finished goods (ethanol and DDGS) and spare parts.

All materials and production costs related to the production of ethanol and distillers grains not sold are capitalized as inventory and recognized as cost of sales when the sale of the products is recognized.

Prepaid Expenses - Prepaid expenses are recorded for non-inventory purchases that will be consumed in less than one year. Included in prepaid expenses and other assets are certain costs paid in advance for natural gas. As of December 31, 2010 and 2009 the total amount included on the balance sheet for prepaid natural gas was \$222,527 and \$775,094, respectively.

Property and Equipment - Property and equipment is stated at cost. Depreciation is determined using the straight-line method over the estimated useful lives of the assets ranging from 3 to 30 years as shown in the table below:

| Asset Description | Years |
|-------------------------------|--------------|
| Land improvements | 10-30 years |
| Buildings | 15-30 years |
| Process equipment | 10-20 years |
| Grain handling equipment | 10 years |
| Railroad and rail equipment | 20 years |
| Office and computer equipment | 3-5 years |

The Company expenses maintenance and repair costs as incurred and major betterments and improvements are capitalized.

Property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by an asset to the carrying value of the asset. If the carrying value of the long-lived asset is not recoverable on an undiscounted cash flow basis, impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques including, but not limited to, discounted

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements

December 31, 2010

cash flow models, quoted market values and third-party independent appraisals, as considered necessary. The Company has identified no such impairment losses for the years ended December 31, 2010 or 2009.

Notes Receivable - During the year ended December 31, 2009, the Company received a promissory note from the Village of Annawan (the "Village") under a tax increment financing ("TIF") agreement. The Village provided funds in the form of interest bearing notes. The

notes bear interest at a fixed rate established at the time of issuance based on the prime rate, not to exceed 9% per annum. See Note 4 for further discussion.

Deferred Financing Costs - Costs incurred in connection with the acquisition of financing for the ethanol plant discussed in Note 5 were deferred and amortized over the term of the respective financing using the effective interest method. Accumulated amortization was \$486,278 and \$422,058 at December 31, 2010 and 2009, respectively. As discussed in Note 5, the Company's convertible subordinated debt was retired in 2010, and accordingly, the related deferred financing costs and accumulated amortization were written off.

Accounts Payable - Accounts payable are recorded as invoices are received from vendors at the invoiced amount. Accrued payables for raw materials received but not invoiced are included in accounts payable.

Interest Rate Swap - The Company entered into derivative contracts to fix the interest rate for a portion of its long-term debt. The Company records the interest rate swap at fair value with changes in fair value recognized in earnings because the interest rate swap was not designated as a cash flow hedge. See Note 6 for further discussion.

Deferred Income - Proceeds received from the Village under the TIF agreement are recorded as deferred income and will be amortized into income over the life of the related property and equipment. See Note 4 for further discussion.

Convertible Debt - The Company issued \$4,000,000 of convertible subordinated notes on November 25, 2008, the proceeds of which are recorded as long term debt, at a discount based on the conversion feature. The notes bear interest at a rate of 16%, compounded quarterly, and are convertible to units each year at the anniversary date as follows: \$1,500 per unit at November 25, 2009, \$1,000 per unit at November 25, 2010, and \$500 per unit at November 25, 2011. The intrinsic value of the beneficial conversion feature at the time of issuance was recorded as a discount on note and a component of members' equity. The discount is amortized to expense over the three year term of the convertible subordinated debt. Non-cash amortization expense of \$466,865 and \$1,333,333 was recorded for the years ended December 31, 2010 and 2009, respectively. On June 30, 2010, the Company retired this debt and recorded a \$1,929,828 non-cash gain on the early extinguishment of debt. See Note 5 for further discussion.

Income Taxes - The Company is treated as a partnership for federal and state income tax purposes and generally does not incur income taxes. Instead, the earnings and losses are included in the income tax returns of the members. Therefore, no provision or liability for federal or state income taxes has been included in these financial statements. Differences between the financial statement basis of assets and tax basis of assets is related to capitalization and amortization of organization and start-up costs for tax purposes, whereas these costs are expensed for financial statement purposes. In addition, the Company uses the modified accelerated cost recovery system method ("MACRS") for tax depreciation instead of the straight-line method that is used for book depreciation, which also causes temporary differences. The Company has no uncertain tax positions as of December 31, 2010 or 2009.

Fair Value - On January 1, 2009, the Company adopted guidance for accounting for fair value measurements of financial assets and financial liabilities and for fair value measurements of nonfinancial items that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis. On January 1, 2010, the Company adopted guidance for fair value measurement related to nonfinancial items that are recognized and disclosed at fair value in the financial statements on a nonrecurring basis. The guidance

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements).

The three levels of the fair value hierarchy are as follows:

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3 inputs are unobservable inputs for the asset or liability.

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

No events occurred during the years ended December 31, 2010 or 2009 that required adjustment to the recognized balances of assets or liabilities, which are recorded at fair value on a nonrecurring basis.

The carrying value of cash, restricted cash, accounts receivable, accounts payable and accrued liabilities approximates fair value due to the short maturity of these instruments. Fair values of interest rate swap agreements are obtained from the counterparty, who computes the values based on nominal and current interest rates, and have been evaluated for credit swap default risk. The fair value of long-term debt has been estimated using discounted cash flow analysis based upon the Company's current incremental borrowing rates for similar types of financing arrangements. The fair value of outstanding debt will fluctuate with changes in applicable interest rates. Fair value will exceed carrying value when the current market interest rate is lower than the interest rate at which the debt was originally issued. The fair value of a company's debt is a measure of its current value under present market conditions. It does not impact the financial statements under current accounting rules. As of December 31, 2010, the Company believes the carrying amount of the long-term debt approximates the fair value due to the variable market rate charged by the lenders.

Environmental Liabilities - The Company's operations are subject to environmental laws and regulations adopted by various governmental authorities in the jurisdiction in which it operates. These laws require the Company to investigate and remediate the effects of the release or disposal of material in its location. Accordingly, the Company has adopted policies, practices and procedures in the areas of pollution control, occupational health, and the production, handling, storage and use of hazardous materials to prevent environmental or other damage, and to limit the financial liability which could result from such events. Environmental liabilities are recorded when the Company's liability is probable and the costs can be reasonably estimated. No such liabilities were recorded at December 31, 2010, and 2009 and the Company is not currently a party to any unsettled environmental legal proceedings at December 31, 2010.

Reclassifications - Certain reclassifications have been made to the previously issued 2009 balance sheet, statement of operations, and cash flows for comparability purposes. This reclassification had no effect on the reported net income, members' equity, and operating cash flows as previously reported.

Subsequent Events - The Company has evaluated subsequent events through March 14, 2011, the date the financial statements were available to be issued.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

2. INVENTORY

A summary of inventory at December 31, 2010 and 2009 is as follows:

| | <u>2010</u> | <u>2009</u> |
|-----------------|-----------------------------|-----------------------------|
| Raw materials | \$ 3,648,999 | \$ 1,914,494 |
| Work in process | 1,404,402 | 1,147,920 |
| Finished goods | 2,924,560 | 1,940,412 |
| Spare parts | 1,192,159 | 761,271 |
| | <u> </u> | <u> </u> |
| Totals | <u>\$ 9,170,120</u> | <u>\$ 5,764,097</u> |

The Company performs a lower of cost or market analysis on inventory to determine if the market values of certain inventories are less than their carrying value, which is attributable primarily to decreases in market prices of corn and ethanol. Based on the lower of cost or market analysis, the Company was not required to record a lower of cost or market charge on certain inventories for the years ended December 31, 2010 or 2009.

3. PROPERTY AND EQUIPMENT

A summary of property and equipment at December 31, 2010 and 2009 is as follows:

| | <u>2010</u> | <u>2009</u> |
|--|-----------------------------|-----------------------------|
| Land and land equipment | \$ 18,089,340 | \$ 18,047,564 |
| Process and grain handling equipment | 110,713,369 | 110,629,526 |
| Buildings | 26,198,663 | 26,202,724 |
| Furniture, fixtures and computer equipment | 1,620,744 | 856,188 |
| Construction in progress | 1,142,800 | 123,644 |
| | <u> </u> | <u> </u> |
| | 157,764,916 | 155,859,646 |
| Accumulated depreciation | (20,627,139) | (11,799,466) |
| | <u> </u> | <u> </u> |
| Total property and equipment, net | <u>\$137,137,777</u> | <u>\$144,060,180</u> |

4. TAX INCREMENT FINANCING

During the years ended December 31, 2009, 2008 and 2007, the Company received amounts from the Village of Annawan, Illinois under a TIF agreement. The Village provided funds in the form of interest bearing notes in 2009 and 2008, as well as cash proceeds from a TIF bond issuance in 2007. The notes bear interest at a fixed rate established at the time of issuance based on the prime rate, not to exceed 9% per annum. Bonds issued to fund the TIF arrangement are not a liability of the Company but are an obligation of the Village since the Company does not guarantee the TIF debt and has no obligation to satisfy any shortfall in annual debt service requirements. The bonds and related notes are to be repaid by the Village from the incremental increase in property taxes related to the improvement of the Company's real property. The proceeds of the financing have been recorded as deferred income and will be amortized into income with such amortization amount based on the life of the related property and equipment. The amount of reimbursements to be received under the TIF agreement is not to exceed \$41,772,000 plus related interest on the TIF notes receivable. As of December 31, 2010, the Company had received \$9,000,000 in cash from the Village in addition to a \$32,754,979 note receivable. At December 31, 2010 and 2009, the amount recorded by the Company as deferred income related to the amounts received was \$41,754,979. Included in the statement of operations for the years ended December 31, 2010 and 2009, the Company amortized \$2,000,856 and

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

\$2,013,016 of deferred income, respectively, which was netted against depreciation expense and is included as a component of costs of goods sold.

In 2008, the Company reduced deferred income by \$5,608,792 related to the transfer of property rights for the plant access road from the Company to the Village. In 2010, the Company reduced deferred income by an additional \$385,815 related to the transfer of additional construction costs for the plant access road from the Company to the Village. The fair value of these assets was deemed to approximate the cost basis due to the recent construction of the roadway.

As of December 31, 2010 and 2009, the unamortized deferred income balance was \$31,213,573 and \$33,600,244, respectively. The notes, net of the valuation allowance of \$2,519,196 and 1,374,009, had accrued interest receivable of \$3,445,215 and \$2,580,819 at December 31, 2010 and 2009, respectively, and is recorded separate from the notes received as interest receivable. The Company has recorded a valuation allowance against the interest receivable based on the uncertainty of future cash flows of the Village. Non-cash interest income was accrued on the notes receivable at an interest rate of 6.1% for both the years ended December 31, 2010 and 2009, and was included in the statements of operations as interest income. At December 31, 2010 and 2009, the Company has recorded a valuation allowance of \$2,519,196 and \$1,374,009, respectively, against the interest receivable based on the uncertainty of future cash flows of the Village.

5. LONG-TERM DEBT and REVOLVING LINE OF CREDIT

| | 2010 | 2009 |
|--|---------------|---------------|
| Secured by substantially all assets: | | |
| Fixed rate loan, variable rate interest of 90 day LIBOR plus 300 basis points, swapped to a fixed rate of 8.655%, due October 2013 | \$ 39,528,635 | \$ 42,998,088 |
| Variable rate loan, variable interest of 90 day LIBOR plus 450 basis points with a minimum rate of 5.5%, due October 2013 | 20,661,175 | 28,811,787 |
| Long-term reducing revolving loan, variable interest of 90 day LIBOR plus 450 basis points with a minimum rate of 5.5%, due October 2013 | 10,500,000 | 17,500,000 |
| Unsecured: | | |
| Convertible subordinated debt, fixed interest rate of 16%, convertible to membership units, paid in full during 2010 | – | 4,000,000 |
| Discount on convertible subordinated debt | – | (2,537,037) |
| Total debt | 70,689,810 | 90,772,838 |
| Less: current maturities | (9,625,439) | (15,484,485) |
| Total long-term debt | \$ 61,064,371 | \$ 75,288,353 |

On November 28, 2006, the Company entered into a definitive loan agreement (the “Agreement”) with a financial institution (the “Bank”) for a Construction Loan of up to \$93,900,000, a Revolving Line of Credit of \$7,000,000 and Letters of Credit of \$3,000,000 to provide financing for construction and operation of the ethanol plant. In connection with the Agreement, the Company also entered into an interest rate swap (the “Swap”) agreement fixing the interest rate on \$46,950,000 of debt at 8.655%.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

On September 22, 2008, the Agreement was amended (the “2nd Amendment”) to increase the amount available under the Construction Loan to \$100,000,000, increase the Revolving Line of Credit to \$12,000,000, and reduce the Letters of Credit to \$972,685. In addition, the 2nd Amendment also provided for a \$4,000,000 Bridge Loan to be issued subject to replacement by issuance of convertible subordinated debt (“Subordinated Debt”) by the Company.

On October 8, 2008 (“Completion Date”) the Construction loan was converted into three term loans. One term loan, the Fixed Rate Note, is for \$46,950,000, and the balance is subject to the interest rate swap agreement (see Note 6). The remaining amounts of the Construction Loan were converted to a Variable Rate Note of \$33,050,000 and a Long-Term Reducing Revolving Loan of \$20,000,000.

The Agreement also provided for a Revolving Loan under which the Company could initially borrow the lesser of (1) a borrowing base calculation defined in the Agreement or (2) \$12,000,000. The Revolving Loan matured on April 30, 2009. On April 30, 2009, and May 31, 2009, respectively, the Revolving Loan was amended to reduce the amount available from \$12,000,000 to \$6,000,000 and to extend the maturity date from April 30, 2009 to August 31, 2009. On August 31, 2009, the Company executed an extension to the Revolving Loan as described in the following paragraph. At December 31, 2010 and at December 31, 2009, the Company did not have any borrowings outstanding under the Revolving Loan. Interest is payable quarterly on outstanding borrowings.

On August 31, 2009, the Company entered into an amended and restated loan agreement (the “Restated Agreement”) with the Bank. The Restated Agreement reduced the maximum availability on the Revolving Loan to \$5,000,000 and extended the maturity date to July 31, 2010. The Restated Agreement also revised the fixed charge and net worth covenant requirements; eliminated the working capital covenant; increased the base rate on the various loans, except for the Fixed Rate Loan, from LIBOR plus three hundred basis points, to LIBOR plus four hundred fifty basis points with a minimum interest rate of 5.5%; and established a maximum required debt service reserve of \$5,000,000 to be funded by an annual excess cash flow calculation. As of December 31, 2009, the Company owed the maximum of \$5,000,000 as the result of this calculation and paid that amount on January 22, 2010, which was applied toward the principle outstanding on the Long-term Reducing Revolving Note. This debt service reserve is fully funded and will require no additional contributions for the term of the Restated Agreement. During the year ended December 31, 2010 the \$5,000,000 Revolving Loan agreement was renewed until June 1, 2011.

The Restated Agreement contains various restrictive covenants which, among other matters, require that the Company meet certain financial ratios. The Company is in compliance with the financial covenants of the Restated Agreement as of December 31, 2010 and 2009 and expects to remain in compliance throughout 2011.

The Fixed Rate Note bears interest at a variable rate of 90 day LIBOR plus three hundred basis points. The Variable Rate Note, the Long Term Reducing Revolving Loan, and the Revolving Loan bear interest at a variable rate of 90 day LIBOR plus four hundred fifty basis points, with a minimum rate of 5.5%. The minimum rate of 5.5% was in effect at December 31, 2010 and 2009. The borrowings under the Agreement are collateralized by substantially all of the assets of the Company. The term loans require quarterly interest and principal payments and mature five years after the Completion Date of the Construction loan. In addition, the Company must make additional annual principle payments up to a maximum of \$4,000,000 based on an excess cash flow calculation, as defined in the Restated Agreement. As of December 31, 2010, the Company owed approximately \$2,100,000 as a result of this calculation that is included in the current portion of long-term debt on the balance sheet. As of December 31, 2009, the Company owed an additional \$4,000,000 as a result of this calculation and paid that amount on January 22, 2010.

Notes to Financial Statements
December 31, 2010

Annual expected maturities for long-term debt as December 31, 2010 are as follows:

| | |
|-------|---------------|
| 2011 | \$ 9,625,439 |
| 2012 | 10,620,599 |
| 2013 | 50,443,772 |
| | <hr/> |
| Total | \$ 70,689,810 |
| | <hr/> |

On November 25, 2008, the Company issued Convertible Subordinated Debt totaling \$4,000,000 to five related parties (see Note 7). The Subordinated Debt bears interest at a rate of 16%, has a term of three years, and is convertible to membership units at each anniversary date at a cost of \$1,500, \$1,000, and \$500 per unit, respectively, on November 25, 2009, 2010, and 2011. Due to the favorable conversion rate of this debt, the Company recognized a beneficial conversion feature of \$4,000,000, resulting in a discount of \$4,000,000 to the convertible subordinated debt. This discount will be recognized as interest expense over the three-year life of the debt. The Company recognized non-cash interest expense related to amortization of this debt discount of \$466,865 and \$1,333,333 during 2010 and 2009, respectively. As of June 30, 2010, the Company had made payments totaling \$4,000,000 to retire this debt and recognized a non-cash gain on the early extinguishment of this debt of \$1,929,828 which represents the total settlement amount paid being less than the current carrying value.

6. DERIVATIVE INSTRUMENTS

From time to time the Company enters into derivative transactions to hedge its exposures to interest rate and commodity price fluctuations. The Company does not enter into derivative transactions for trading purposes.

The Company provides qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses from derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements.

As of December 31, 2010, the Company had an outstanding interest rate swap agreement along with corn derivative instruments. The Company records its derivative financial instruments as either assets or liabilities at fair value in the balance sheet. Derivatives qualify for treatment as hedges when there is a high correlation between the change in fair value of the derivative instrument and the related change in value of the underlying hedged item. Based upon the exposure being hedged, the Company designates its hedging instruments as a fair value hedge, a cash flow hedge or a hedge against foreign currency exposure. The Company formally documents, designates, and assesses the effectiveness of transactions that receive hedge accounting initially and on an on-going basis. The Company does not currently have any derivative instruments that are designated as effective hedging instruments for accounting purposes.

Commodity Contracts

As part of its hedging strategy, the Company may enter into corn commodity-based derivatives, through its corn origination agreement as discussed in Note 8, in order to protect cash flows from fluctuations caused by volatility in commodity prices in order to protect gross profit margins from potentially adverse effects of market and price volatility on corn purchase commitments where the prices are set at a future date. These derivatives are not designated as effective hedges for accounting purposes. For derivative instruments that are not accounted for as hedges, or for the ineffective portions of qualifying hedges, the change in fair value is recorded through earnings in the period of change. Corn derivative changes in fair market value are included in cost of goods sold. At December 31, 2010, the total notional

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

outstanding corn derivative instruments was approximately 1,360,000 bushels that were entered into to hedge forecasted corn purchases through July 2010.

Interest Rate Contact

In accordance with the Agreement as discussed in Note 5 the Company entered into a forward starting interest rate swap in the notional amount of \$46,950,000 during 2007 to limit its exposure to the impact of increasing interest rates on its results of operations and future cash flows for interest. The Swap fixed the interest rate portion of the Fixed Rate Loan subsequent to the Completion Date at 8.655%. The Swap is effective as of October 8, 2008 and terminates on October 8, 2013.

At December 31, 2010, the Company had approximately \$39.5 million of notional amount outstanding in swap agreements that exchange the variable interest rate (three-month LIBOR plus 300 basis points) for a fixed interest rate (8.655%) over the term of the agreement. At December 31, 2010, the fair value of the interest rate swap totaled approximately \$4,200,000 of which approximately \$1,500,000 is classified as a current liability and approximately \$2,700,000 is classified as a long-term liability. At December 31, 2009, the fair value of the interest rate swap totaled approximately \$4,400,000, of which approximately \$1,600,000 is classified as a current liability and approximately \$2,800,000 is classified as a current liability. These agreements are not designated as an effective hedge for accounting purposes and the change in fair market value is recorded as "Interest rate swap gain" in the statement of operations and the associated net settlements are recorded in interest expense in the statement of operations.

The following table provides details regarding the Company's derivative financial instruments at December 31, 2010:

| | Balance Sheet Location | Assets | Liabilities |
|--------------------|----------------------------------|---------------|--------------------|
| Corn contracts | Commodity derivative instruments | \$ - | \$ 1,980,225 |
| Interest rate swap | Interest rate swap - current | - | 1,507,124 |
| Interest rate swap | Interest rate swap - long-term | - | 2,685,152 |
| Totals | | \$ - | \$ 6,172,501 |

The following table provides details regarding the Company's derivative financial instruments at December 31, 2009:

| | Balance Sheet Location | Assets | Liabilities |
|--------------------|----------------------------------|---------------|--------------------|
| Corn contracts | Commodity derivative instruments | \$ - | \$ 90,255 |
| Interest rate swap | Interest rate swap - current | - | 1,618,486 |
| Interest rate swap | Interest rate swap - long-term | - | 2,747,249 |

| | | | | |
|--------|----|---|----|-----------|
| Totals | \$ | – | \$ | 4,455,990 |
|--------|----|---|----|-----------|

The following table provides details regarding gains and (losses) from the Company's derivative financial instruments in the statement of operations, none of which are designated as hedging instruments:

| Statement of Operations Location | | Year ended December 31, 2010 | Year ended December 31, 2009 |
|-------------------------------------|-------------------------|------------------------------------|------------------------------------|
| Corn contracts | Cost of goods sold | \$ (3,366,896) | \$ 364,959 |
| Interest rate swap | Interest rate swap gain | 98,530 | 1,796,231 |
| Total gain (loss) | | \$ (3,268,366) | \$ 2,161,190 |

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

7. RELATED PARTY TRANSACTIONS

The Company has engaged CGB Enterprises Co. ("CGB"), an equity member to source corn for the plant under a long-term agreement on a fee per bushel basis (discussed further in Note 8).

The Company engaged Fagen, Inc. ("Fagen") as the general contractor for the design and construction of the ethanol plant. The sole owner of Fagen is an equity member of the Company.

The Company purchases chemicals used in its production process from Michlig Agricenter, Inc. ("Michlig"), on the basis of price and availability. There are no volume or price commitments by either party. The sole owner of Michlig is a Board member of the Company.

Total amounts paid to related parties during the years ended December 31, 2010 and 2009 were as follows:

| | Year ended December 31, 2010 | Year ended December 31, 2009 |
|---------|------------------------------------|------------------------------------|
| CGB | \$ 171,432,515 | \$ 145,489,886 |
| Fagen | – | 2,025,327 |
| Michlig | 895,077 | 678,152 |
| Totals | \$ 172,327,592 | \$ 148,193,365 |

Total amounts payable to related parties at December 31, 2010 and 2009 were as follows:

| | 2010 | 2009 |
|---------|--------------|--------------|
| CGB | \$ 1,437,265 | \$ 1,189,843 |
| Michlig | 55,459 | 20,112 |
| Totals | \$ 1,492,724 | \$ 1,209,955 |

The Company has engaged Murex N.A, LTD, (“Murex”), an equity member to market ethanol for the plant under a long term agreement on a percentage of revenue commission basis. Total amounts owed to the Company from Murex, as of December 31, 2010 and 2009 were \$2,261,462 and \$5,997,273, respectively.

As discussed in Note 5, the Company entered into subordinated debt agreements with certain equity members. Those agreements are related party transactions as each party is an equity member.

8. COMMITMENTS AND CONTINGENCIES

Corn Origination Agreement

The Company has a corn origination agreement with CGB, an equity member of the Company, whereby they are entitled to the exclusive right for procurement of 100% of the corn needs for the plant. The contract commenced in 2008 and continues for four years from the first delivery date. The price of the corn purchased will be the bid price CGB establishes with the producer of corn plus a set fee per bushel. At December 31, 2010, the Company had open forward corn purchase commitments for 14,024,519 bushels at an average price of \$6.28 with CGB. At December 31, 2009, the Company had open forward corn purchase commitments for 2,296,676 bushels at an average price of \$4.23 with CGB.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

Ethanol Marketing Agreement

The Company has a marketing agreement with Murex, an equity member of the Company, whereby they are entitled to the exclusive right for sale and distribution of 100% the plant’s ethanol. The Company pays the buyer a percentage of the net sales price for certain marketing costs. The initial term is for five years beginning in August 2008 with one year renewal terms unless notice is given by either party at least 90 days prior to the end of the current term. The Company had approximately \$219,800,000 million of ethanol sales to Murex during 2010, of which approximately \$2,261,000 is included in accounts receivable at December 31, 2010. During the year ended December 31, 2009, the Company had approximately \$197,500,000 of ethanol sales to Murex, of which approximately \$6,000,000 is included in accounts receivable at December 31, 2009. For the years ended December 31, 2010 and 2009, ethanol sales are recorded net of commissions totaling approximately \$2,050,000 and \$2,140,000, respectively.

Distillers Grains Marketing Agreement

The Company has a marketing agreement with CHS, Inc., whereby they are entitled to the exclusive right for sale and distribution of 100% of the plant’s dried distiller’s grains with solubles and wet distiller’s grains with solubles. The initial term of the agreement was

one year, but the agreement is to remain in effect until terminated by either party at its unqualified option, by providing written notice of not less than 90 days to the other party. Neither party to the agreement has provided such notice. For the year ended December 31, 2010, the Company recorded DDGS sales of approximately \$43,700,000 net of commissions of approximately \$905,000. For the year ended December 31, 2009, the Company recorded DDGS sales of approximately \$36,400,000 net of commissions of approximately \$800,000.

Natural Gas Contracts

At December 31, 2010, the Company had forward contracts to purchase approximately 354,000 British thermal units (MMBTU) of natural gas during the months of January and February 2011 at an average price of approximately \$4.65 per MMBTU.

9. CONCENTRATIONS

For the years ended December 31, 2010 and 2009, two customers accounted for all of the Company's revenues and trade accounts receivable. Accounts receivable for the ethanol marketer represented 62% and 88% of total outstanding receivables at December 31, 2010 and 2009, respectively. Accounts receivable for the dry distiller grains marketer represented 30% and 8% of total outstanding receivables at December 31, 2010 and 2009, respectively. Revenues for the ethanol marketer represented 83% of total revenues for the years ended December 31, 2010 and 2009. Revenues for the dry distiller grains marketer represented 17% of total revenues for the years ended December 31, 2010 and 2009.

All of the Company's revenue is generated from the sale of two products, ethanol and distillers grains.

10. MEMBERS' EQUITY

As specified in the Company's operating agreement, the Company has one class of membership units. The Company is authorized to issue up to 65,000 membership units. No additional units may be issued for less than \$500 per unit without the consent of the majority of the membership units then outstanding. Profits and losses of the Company are allocated to members based on the proportion of units held. As of December 31, 2010 and 2009 the Company had 45,741 membership units issued and outstanding.

During 2010, the Company paid a cash distribution of \$150.00 per membership unit for a total distribution of \$6,861,149 to its unit holders.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

11. FAIR VALUE MEASUREMENTS

The Company follows accounting guidance related to fair value disclosures. For the Company, this guidance applies to certain derivative investments. The authoritative guidance also clarifies the definition of fair value for financial reporting, establishes a framework for measuring fair value and requires additional disclosures about the use of fair value measurements.

The following table sets forth, by level, the Company's assets and liabilities that were accounted for at fair value on a recurring basis as of December 31, 2010:

Fair Value Measurement Using

| Financial (Liabilities) | Carrying Amount in Balance Sheet | Fair Value | Quoted Prices in Active Markets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable inputs (Level 3) |
|------------------------------------|---|-------------------|--|--|--|
| Corn contracts | \$ (1,980,225) | \$ (1,980,225) | \$ (1,980,225) | \$ - | \$ - |
| Interest rate swap | (4,192,276) | (4,192,276) | - | (4,192,276) | - |

The following table sets forth, by level, the Company's assets and liabilities that were accounted for at fair value on a recurring basis as of December 31, 2009:

| Financial (Liabilities) | Carrying Amount in Balance Sheet | Fair Value | Fair Value Measurement Using | | |
|------------------------------------|---|-------------------|--|--|--|
| | | | Quoted Prices in Active Markets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable inputs (Level 3) |
| Corn contracts | \$ (90,255) | \$ (90,255) | \$ (90,255) | \$ - | \$ - |
| Interest rate swap | (4,365,735) | (4,365,735) | - | (4,365,735) | - |

Fair values of interest rate swap agreements are obtained from the counterparty, who computes the values based on current market interest rates and yield curves, and have been evaluated for credit swap default risk. The fair value of corn contracts are based on quoted market prices in active markets.

12. OPERATING LEASES

The Company has various equipment leases under non-cancelable leases through October 2013. Rent expense for operating leases was approximately \$142,000 and \$133,000 for the years ended December 31, 2010 and 2009, respectively.

PATRIOT RENEWABLE FUELS, LLC

Notes to Financial Statements December 31, 2010

At December 31, 2010, the Company had the following minimum lease commitments for payment of rentals under leases, which at inception had a non-cancelable term of over one year:

| | |
|-----------------------------|------------|
| Periods ending December 31, | |
| 2011 | \$ 117,398 |
| 2012 | 91,902 |

13. RISKS AND UNCERTAINTIES

The Company has certain risks and uncertainties that it experiences during volatile market conditions, which can have a significant impact on operating results. The Company's revenues are derived from the sale and distribution of ethanol and distillers grains to customers primarily located in the U.S. Corn for the production process is supplied to the Company's plant primarily from local agricultural producers and is purchased on the open market. For the year ended December 31, 2010 ethanol sales were 83% of total revenues and corn costs were 79% of cost of goods sold.

The Company's operating and financial performance is largely driven by the prices at which it sells ethanol and the cost at which it purchases corn. The price of ethanol and the cost of corn are both influenced, not necessarily in similar directions, by factors such as supply and demand, the weather, and by government policies and programs. Ethanol is also influenced by unleaded gasoline prices and the petroleum markets as a whole, which do not necessarily impact the cost of corn. Similarly, the cost of corn may be influenced, independently of ethanol, by other grain markets such as wheat and soybeans. The Company utilizes various risk management policies and programs to protect against the price volatility of these commodities, as well as those of natural gas and distillers grains.

14. LEGAL PROCEEDINGS

From time to time in the ordinary course of business, the Company may be named as a defendant in legal proceedings related to various issues, including without limitation, workers' compensation claims, tort claims, or contractual disputes. The Company is not currently a party to any material pending legal proceedings and they are not currently aware of any such proceedings being contemplated.

Patriot Renewable Fuels, LLC

Financial Statements for the Years Ended December 31, 2008 and 2007 and Independent Auditors' Report

PATRIOT RENEWABLE FUELS, LLC

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Patriot Renewable Fuels, LLC
Annawan, Illinois

We have audited the accompanying balance sheets of Patriot Renewable Fuels, LLC (the "Company") as of December 31, 2008 and 2007, and the related statements of operations, members' equity, and cash flows for the years ended December 31, 2008 and 2007. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2008 and 2007, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Deloitte + Touche LLP

November 24, 2009

PATRIOT RENEWABLE FUELS, LLC

BALANCE SHEETS
DECEMBER 31, 2008 AND 2007

| | 2008 | 2007 |
|--|-----------------------|-----------------------|
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | \$ 2,181,961 | \$ 193,263 |
| Accounts receivable | 6,096,918 | |
| Inventory | 6,230,835 | |
| Prepaid expenses and other | 1,852,846 | 510,094 |
| | <hr/> | <hr/> |
| Total current assets | 16,362,560 | 703,357 |
| | <hr/> | <hr/> |
| PROPERTY AND EQUIPMENT: | | |
| Property and equipment, at cost | 155,812,610 | 114,544,604 |
| Accumulated depreciation | (2,984,707) | (25,937) |
| | <hr/> | <hr/> |
| Property and equipment, net | 152,827,903 | 114,518,667 |
| | <hr/> | <hr/> |
| OTHER NONCURRENT ASSETS: | | |
| Deferred financing costs, net | 708,074 | 760,809 |
| Notes receivable | 23,788,083 | 12,927,685 |
| Interest receivable | 2,033,506 | 387,096 |
| | <hr/> | <hr/> |
| Total other noncurrent assets | 26,529,663 | 14,075,590 |
| | <hr/> | <hr/> |
| TOTAL ASSETS | \$ 195,720,126 | \$ 129,297,614 |
| | <hr/> | <hr/> |
| LIABILITIES AND MEMBERS' EQUITY | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | \$ 5,188,218 | \$ 12,534,249 |
| Accrued expenses | 3,576,850 | 481,582 |
| Current portion of long term debt | 7,608,529 | |
| | <hr/> | <hr/> |
| Total current liabilities | 16,373,597 | 13,015,831 |
| | <hr/> | <hr/> |
| NONCURRENT LIABILITIES: | | |
| Long-term debt | 91,512,811 | 33,765,282 |
| Revolving loan | 2,013,204 | |
| Derivative liability | 6,318,012 | 2,629,872 |
| Deferred income | 26,646,364 | 21,927,685 |
| | <hr/> | <hr/> |
| Total liabilities | 142,863,988 | 71,338,670 |
| | <hr/> | <hr/> |

| | | |
|---------------------------------------|----------------|----------------|
| MEMBERS' EQUITY: | | |
| Members' capital | 64,016,373 | 60,016,373 |
| Retained deficit | (11,160,235) | (2,057,429) |
| Total members' equity | 52,856,138 | 57,958,944 |
| TOTAL LIABILITIES AND MEMBERS' EQUITY | \$ 195,720,126 | \$ 129,297,614 |

See notes to financial statements.

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PATRIOT RENEWABLE FUELS, LLC

STATEMENTS OF OPERATIONS FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007

| | 2008 | 2007 |
|-------------------------|----------------|----------------|
| NET REVENUE | \$ 63,534,383 | |
| COST OF GOODS SOLD | 65,562,932 | |
| GROSS MARGIN | (2,028,549) | |
| OPERATING EXPENSES | 2,426,152 | \$ 1,309,588 |
| Loss from operations | (4,454,701) | (1,309,588) |
| OTHER (INCOME) EXPENSE: | | |
| Interest expense | 2,603,204 | |
| Interest income | (1,671,990) | (1,583,077) |
| Derivative loss | 3,688,140 | 2,629,872 |
| Other (income) expense | 28,751 | (143,383) |
| Total other expense | 4,648,105 | 903,412 |
| NET LOSS | \$ (9,102,806) | \$ (2,213,000) |

See notes to financial statements.

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PATRIOT RENEWABLE FUELS, LLC

STATEMENTS OF MEMBERS' EQUITY FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007

| | Members' Capital | Retained Earnings (Deficit) | Total |
|------------------------------|---------------------|-----------------------------------|---------------|
| BALANCE AT JANUARY 1, 2007 | \$ 60,136,523 | \$ 155,571 | \$ 60,292,094 |
| Abandoned contributions | (120,150) | | (120,150) |
| Net loss | | (2,213,000) | (2,213,000) |
| BALANCE AT DECEMBER 31, 2007 | 60,016,373 | (2,057,429) | 57,958,944 |
| Issuance of convertible debt | 4,000,000 | | 4,000,000 |
| Net loss | | (9,102,806) | (9,102,806) |
| BALANCE AT DECEMBER 31, 2008 | \$ 64,016,373 | \$ (11,160,235) | \$ 52,856,138 |

See notes to financial statements.

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PATRIOT RENEWABLE FUELS, LLC

STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007

| | 2008 | 2007 |
|---|----------------|----------------|
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss | \$ (9,102,806) | \$ (2,213,000) |
| Adjustments to reconcile net loss to net cash provided by operating activities: | | |
| Abandoned equity contributions | | (120,150) |
| Depreciation and amortization | 2,686,510 | 152,918 |
| Gain on disposal of equipment | | (1,793) |
| Interest income on tax increment financing notes receivable | (1,646,410) | (387,096) |
| Derivative loss | 3,688,140 | 2,629,872 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | (6,096,918) | |
| Inventory | (6,230,835) | |
| Prepays and other current assets | (1,342,752) | (449,304) |
| Accounts payable | 2,666,821 | (3,497) |
| Accrued expenses | 3,095,268 | 21,965 |
| Net cash flows from operating activities | (12,282,982) | (370,085) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchase of investments | | (15,000,000) |
| Proceeds from sale of investments | | 32,300,000 |

| | | |
|--|--------------|--------------|
| Other proceeds from property and equipment | | 13,939 |
| Purchase of property and equipment | (56,889,651) | (96,309,640) |
| Net cash flows from investing activities | (56,889,651) | (78,995,701) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from tax increment financing | | 9,000,000 |
| Payments on deferred financing costs | (78,301) | (13,850) |
| Advances on line of credit, net | 2,013,204 | |
| Proceeds from debt | 66,234,718 | 33,765,282 |
| Payments on long term debt | (1,008,290) | |
| Proceeds from convertible subordinated debt | 4,000,000 | |
| Net cash flows from financing activities | 71,161,331 | 42,751,432 |
| NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | 1,988,698 | (36,614,354) |
| CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD | 193,263 | 36,807,617 |
| CASH AND CASH EQUIVALENTS, END OF PERIOD | \$ 2,181,961 | \$ 193,263 |

(Continued)

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PATRIOT RENEWABLE FUELS, LLC

STATEMENTS OF CASH FLOWS FOR THE YEAR ENDED DECEMBER 31, 2008 AND 2007 (CONCLUDED)

| | 2008 | 2007 |
|---|--------------|---------------|
| SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION - | | |
| Cash paid during the year for interest, net of amount capitalized | \$ 1,054,522 | \$ 1,347 |
| NONCASH INVESTING AND FINANCING ACTIVITIES: | | |
| Accounts payable incurred for property and equipment | \$ 2,500,000 | \$ 12,512,852 |
| Notes receivable included in deferred income | 10,860,398 | 12,927,685 |
| Donation of roadway to municipality | 5,608,972 | |
| See notes to financial statements. | | |

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PATRIOT RENEWABLE FUELS, LLC

NOTES TO FINANCIAL STATEMENTS FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007

1. NATURE OF BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

Nature of Business - Patriot Renewable Fuels, L.L.C., an Illinois Limited Liability Company, (the "Company") is a dry mill, corn-based processing facility that produces ethanol and distillers grains that are derived from corn. The ethanol plant is located in Annawan, Illinois and will produce 100 million gallon per year of denatured fuel grade ethanol and approximately 320,000 tons of dried distillers grains with soluble ("DDGS") and process 35.7 million bushels of corn at nameplate (guaranteed by the design-builder) capacity.

The Company began construction of the facility in November 2006 and it was commissioned on August 31, 2008. The year ended December 31, 2008 reflects approximately four full months of operations from the time of commissioning and eight months of construction activity. The ethanol plant processed 12.1 million bushels of corn and produced 33.8 million gallons of denatured fuel grade ethanol in the year ending December 31, 2008, along with approximately 96,000 tons of DDGS.

Use of Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Concentration of Credit Risk - The Company performs periodic credit evaluations of its marketers and has not required collateral. The Company's operations vary with the volatility of the market for inputs (including corn, natural gas, chemicals, and denaturant) and for finished products (ethanol and DDGS), and to mitigate that volatility the Company actively seeks to minimize inventory and accounts receivable levels.

Cash Equivalents - All highly liquid investments with a maturity of three months or less at the time of purchase are considered to be cash equivalents. The Company maintains cash and cash equivalents primarily in accounts with two financial institutions which, at times, exceed federally insured limits. The Company has not experienced any losses in such accounts or any losses in connection with these balances. At December 31, 2008, the Company had \$2,511,762 in money market funds which are classified as cash equivalents and recorded at cost which approximates fair value.

Accounts Receivable - Accounts receivable are recorded at the invoiced amount and do not bear interest. The Company does not have any off-balance sheet credit exposure related to its customers, nor has it experienced any write-offs of uncollectible accounts and no allowance for doubtful accounts is recorded.

Inventories - Inventories are stated at the lower of cost or market. Cost is determined using the first in, first out method. Inventories consist of raw materials (corn, chemicals, denaturant), work in process, finished goods (ethanol and DDGS).

All materials and production costs related to the production of ethanol and distillers grains not sold are capitalized as inventory and recognized as cost of sales when the sale of the product is recognized.

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Prepaid Expenses - Prepaid expenses are recorded for non-inventory purchases that will be consumed in less than one year. Included in prepaid expenses and other assets are certain costs paid in advance for natural gas expenses. As of December 31, 2008 the amount included on the balance sheet is \$1,229,420 for prepaid natural gas expenses.

Property and Equipment - Property and equipment is stated at cost less accumulated depreciation and amortization. Depreciation is determined using the straight-line method for financial reporting purposes over the estimated useful lives of the assets.

Estimated useful lives are as follows:

| | |
|-------------------------------|---------------|
| Land improvements | 30 years |
| Buildings | 15 - 30 years |
| Process equipment | 10 - 20 years |
| Grain handling equipment | 10 years |
| Railroad and rail equipment | 20 years |
| Office and computer equipment | 3 - 5 years |

The Company expenses maintenance and repair expenses as incurred, major improvements are capitalized.

The Company initiated ethanol and DDGS production on August 31, 2008 and began depreciating the plant on that date. Prior to that time, the Company capitalized interest on its construction in progress activities related to the ethanol plant. Interest capitalized for the years ended December 31, 2008 and 2007 was \$2,208,197 and \$532,194, respectively.

The Company reviews property and equipment whenever events or changes in circumstances indicate that the carrying amount of an asset or assets may be impaired and that the undiscounted cash flows expected to be generated by the assets are less than the carrying amount of those assets. The Company has identified no such impairment losses.

Deferred Financing Costs - Costs incurred in connection with the acquisition of financing for the ethanol plant were deferred and amortized over the term of the respective financing using the straight-line method. Accumulated amortization was \$272,091 and \$141,056 at December 31, 2008 and 2007, respectively.

Notes Receivable - During the years ended December 31, 2008 and 2007, the Company received cash and promissory notes from the Village of Annawan (the "Village") under a tax increment financing agreement ("TIF"). The Village provided funds in the form of interest bearing notes and cash proceeds from a TIF bond issuance. The notes will bear interest at a fixed rate established at the time of issuance based on the prime rate, not to exceed 9% per annum.

Interest Rate Swap - The Company entered into an interest rate swap to fix the interest rate for a portion of its long term debt. The Company records the interest rate swap at fair value with changes in fair value recognized in earnings since the interest rate swap was not designated as a cash flow hedge. The Company recognizes the fair value of its interest rate swap as "Derivative liability" on the balance sheets.

Deferred Income - Proceeds received from the Village under the TIF agreement are recorded as deferred income and amortized into income over the life of the related property and equipment.

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Convertible Debt - The Company issued \$4,000,000 of convertible subordinated notes on November 25, 2008, the proceeds of which are recorded as long term debt, at a discount based on the conversion feature. The notes bear interest at a rate of 16% and are convertible to units each year at the anniversary date as follows: \$1,500 per unit at November 25, 2009, \$1,000 per unit at November 25, 2010, and \$500 per unit at November 25, 2011. The intrinsic value of the beneficial conversion feature at the time of issuance was recorded as a discount on note and a component of members' equity. The discount will be amortized to expense over the three year term of the convertible subordinated debt.

Revenue Recognition - The Company sells ethanol and DDGS pursuant to marketing agreements, and recognizes revenue at the time of loading ethanol or distillers grains into trucks, railcars, or containers. This is the point at which the marketer takes ownership of the product and assumes risk of loss.

In accordance with the Company's agreements for the marketing and sale of ethanol and related products, commissions and freight due to the marketers are deducted from the gross sales price at the time payment is remitted to the Company. Product sales are recorded net of freight and commission. For the year ended December 31, 2008, ethanol sales are recorded net of commissions totaling \$730,228 and

freight totaling \$4,630,789. DDGS sales are also recorded net of commissions and freight of \$199,513 and \$1,641,901, respectively, for the year ended December 31, 2008.

Expense Recognition - Cost of goods sold primarily consists of costs for raw materials, utilities, conversion costs, warehousing costs, salaries, wages and expenses for plant operating staff and plant management depreciation and amortization expenses, general facility overhead charges, property taxes and property and casualty insurance.

Operating expenses consist primarily of salaries and expenses for management, administrative and accounting employees, fees paid to outside service providers such as legal, accounting, and consulting firms.

Income Taxes- The Company is organized as a limited liability company. This provides that in lieu of corporate income taxes the members are to separately account for their proportionate share of the Company's items of income, deductions, losses and credits. Therefore, these financial statements do not include a provision for income taxes.

Fair Value- The carrying amounts for cash and cash equivalents, accounts and notes receivable, and accounts payable approximate fair value. Fair values of derivative financial instruments are determined based on quoted market prices. Fair values of interest rate swap agreements are computed based on nominal and current interest rates, and have been evaluated for credit swap default risk. The fair value of the debt approximates their carrying value due to their short maturity or floating interest rates, as applicable.

Impact of New Accounting Pronouncements - Effective July 1, 2009, the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") became the single official source of authoritative, nongovernmental generally accepted accounting principles ("GAAP") in the United States. The historical GAAP hierarchy was eliminated and the ASC became the only level of authoritative GAAP. The Company's accounting policies were not affected by the conversion to ASC.

In July 2006, the FASB issued new accounting guidance of the accounting for uncertainty in income taxes. This guidance prescribes a comprehensive model for how a company should recognize, measure, present, and disclose in its financial statements uncertain tax positions that the company has taken or expects to take on a tax return. This guidance is effective for fiscal years beginning after December 15, 2008. The Company currently evaluates uncertain tax positions by estimating the amount that is probable and estimable of being payable, if successfully challenged by such tax authorities, under the provisions of accounting for contingencies. The Company has not yet determined the impact of adopting the new guidance.

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In September 2006, the FASB issued new accounting guidance of the accounting for fair value measurements and disclosures. This guidance defines fair value of financial and nonfinancial assets and liabilities, establishes a framework for measuring fair value in generally accepted accounting principles, and expands disclosures about fair value measurements. This guidance applies to fair value measurements that are already required or permitted by existing standards except for measurements of share-based payments and measurements that are similar to, but not intended to be, fair value and nullifies the Emerging Issues Task Force guidance that prohibited recognition of gains or losses at the inception of derivative transactions whose fair value is estimated by applying a model. This guidance clarifies that fair value is the amount that would be exchanged to sell an asset or transfer a liability, in an orderly transaction between market participants. This guidance is effective for the Company's year ending December 31, 2008. On November 14, 2007, the FASB approved to defer the effective date for all nonfinancial assets and liabilities until fiscal years beginning after November 15, 2008. The Company adopted this guidance, as it relates to financial assets and liabilities as of January 1, 2008 (see Note 12). The Company does not anticipate that the adoption of this guidance, as it relates to the nonfinancial assets and liabilities will have a material impact on its financial position, results of operations or cash flows.

In March 2008, the FASB issued new accounting guidance of the accounting for derivatives and hedging. This guidance requires, among other things, enhanced disclosure about the volume and nature of derivative and hedging activities and a tabular summary showing the fair value of derivative instruments included in the statement of financial position and statement of operations. This guidance also requires expanded disclosure of contingencies included in derivative instruments related to credit risk. This guidance is effective for the

Company's year ending December 31, 2009. The adoption of this guidance is not expected to have a material effect on the Company's financial statements other than providing certain enhanced disclosures.

In May 2009, the FASB issued new accounting guidance of the accounting for subsequent events, which sets forth general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. This guidance is effective for interim periods ending after June 15, 2009. The adoption of this guidance is not expected to have a material effect on the Company's financial statements other than providing certain enhanced disclosures.

2. INVENTORY

A summary of inventory at December 31, 2008 is as follows:

| | |
|-----------------|-----------------------------|
| Raw materials | \$ 2,639,996 |
| Work in process | 1,269,110 |
| Finished goods | 1,954,742 |
| Other | 366,987 |
| | <u> </u> |
| | <u>\$ 6,230,835</u> |

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3. PROPERTY AND EQUIPMENT

A summary of property and equipment at December 31, 2008 and 2007 is as follows:

| | 2008 | 2007 |
|--|-----------------------------|-----------------------------|
| Land and land development | \$ 18,187,718 | \$ 3,681,142 |
| Process and grain handling equipment | 110,544,360 | |
| Buildings | 26,337,650 | 749,336 |
| Furniture, fixtures and computer equipment | 742,882 | 183,276 |
| Construction in progress | | 109,930,850 |
| | <u> </u> | <u> </u> |
| | 155,812,610 | 114,544,604 |
| Accumulated depreciation | (2,984,707) | (25,937) |
| | <u> </u> | <u> </u> |
| Property and equipment, net | <u>\$ 152,827,903</u> | <u>\$ 114,518,667</u> |

4. TAX INCREMENT FINANCING

During the years ended December 31, 2008 and 2007, the Company received amounts from the Village under a TIF agreement. The Village provided funds in the form of interest bearing notes and cash proceeds from a TIF bond issuance. The notes will bear interest at a fixed rate established at the time of issuance based on the prime rate, not to exceed 9% per annum. Bonds issued under the TIF arrangement are not a liability of the Company but are an obligation of the Village since the Company does not guarantee the TIF debt and has no obligation to satisfy any shortfall in annual debt service requirements. The bonds and related notes are to be repaid by the Village from the incremental increase in property taxes related to the improvement of the Company's real property. The proceeds of the

financing have been recorded as deferred income and are amortized into income with such amortization amount based on the life of the related property and equipment. The amount of reimbursements to be received under the TIF agreement is not to exceed \$41,772,000 plus related interest on the TIF notes receivable. As of December 31, 2008 and 2007, the Company had received \$9,000,000 in cash from the Village in addition to \$23,788,083 and \$12,927,685 of notes receivable, respectively. The Company recorded \$32,788,083 of deferred income related to the amounts received, and has amortized \$532,927 of deferred revenue, which is included in the statement of operations for the year ended December 31, 2008. The Company also reduced deferred income by \$5,608,792 related to the transfer of property rights for the plant access road from the Company to the Village. The fair value of the asset was determined to approximate the cost basis due to the recent construction. As of December 31, 2008 and 2007 the remaining unamortized deferred income balance was \$26,646,364 and \$21,927,685, respectively. Interest of \$2,033,506 and \$387,096 was accrued on the notes receivable at an interest rate of 7.2% and included in the statements of operations for the years ended December 31, 2008 and 2007, respectively.

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5. LONG TERM DEBT

Debt consists of the following at December 31, 2008 and 2007:

| | 2008 | 2007 |
|---|----------------------|----------------------|
| Construction loan, variable interest of 90 day LIBOR plus 300 basis points | | \$ 33,765,282 |
| Fixed rate loan, variable interest of 90 day LIBOR plus 300 basis points, swapped to fixed rate of 8.655% | \$ 46,950,000 | |
| Variable rate loan, variable interest of 90 day LIBOR plus 300 basis points | 33,050,000 | |
| Long-term reducing revolving loan, variable interest of 30 day LIBOR plus 300 basis points | 18,991,710 | |
| Convertible subordinated debt, unsecured, fixed interest rate of 16% convertible to membership units | 4,000,000 | |
| Discount on convertible subordinated debt | (3,870,370) | |
| | <u>99,121,340</u> | <u>33,765,282</u> |
| Less current maturities | 7,608,529 | |
| Long-term portion | <u>\$ 91,512,811</u> | <u>\$ 33,765,282</u> |

On November 28, 2006, the Company entered into a loan agreement (the "Agreement") with a financial institution (the "Bank") for a construction loan of up to \$93,900,000, a revolving loan of \$7,000,000 and letters of credit of \$3,000,000 to provide financing for construction and operation of the ethanol plant. In connection with the Agreement, the Company also entered into an interest rate swap agreement fixing the interest rate on \$46,950,000 of debt.

On September 22, 2008, the Agreement was amended (the "Amendment") to increase the amount available under the construction loan to \$100,000,000, increase the revolving loan to \$12,000,000, and reduce the letters of credit to \$972,685. In addition, the Amendment also provided for a \$4,000,000 bridge loan to be issued subject to replacement by issuance of convertible subordinated debt ("Subordinated Debt") by the Company.

On October 8, 2008 (“Completion Date”) the construction loan was converted into three term loans. One term loan, the fixed rate loan, is for \$46,950,000, and the balance is subject to the interest rate swap agreement (see Note 6). The remaining amounts of the construction loan were converted to a variable rate loan of \$33,050,000 and a long-term reducing revolving loan of \$20,000,000.

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The Agreement also provides for a revolving loan under which the Company can borrow the lesser of (1) a borrowing base calculation defined in the Agreement or (2) \$12,000,000 and matured on April 30, 2009. On April 30, 2009, and May 31, 2009, respectively, the revolving loan was amended to reduce the amount available from \$12,000,000 to \$6,000,000 and to extend the maturity date from April 30, 2009 to August 31, 2009. Interest is payable quarterly on outstanding borrowings. At December 31, 2008 the Company had borrowings of \$2,013,204 under the revolving loan. On August 31, 2009, the Company executed an extension to the revolving loan as described in Note 13.

The fixed and variable rate notes bear interest at a variable rate of 90 day LIBOR plus three hundred basis points, and the long-term reducing revolving loan and the revolving loan bear interest at a variable rate of 30 day LIBOR plus three hundred basis points (7.52% and 4.54%, respectively, at December 31, 2008). The borrowings under the Agreement are collateralized by substantially all assets of the Company. The term loans require quarterly interest and principal payments and mature five years after the Completion Date of the construction loan. In addition, subsequent to the Completion Date, the Company must make additional annual principal payments based on an excess cash flow calculation, as defined in the Agreement. As of December 31, 2008, no additional amounts were owed under this calculation. Annual expected maturities for long term debt are as follows as of December 31, 2008:

**Year Ending
December 31,**

| | |
|------|---------------|
| 2009 | \$ 7,608,529 |
| 2010 | 8,200,730 |
| 2011 | 8,952,098 |
| 2012 | 9,481,919 |
| 2013 | 64,878,064 |
| | \$ 99,121,340 |

The Agreement contains various restrictive covenants which, among other matters, require that the Company meet certain financial ratios. At December 31, 2008 the Company was subject to a minimum net worth covenant, the requirement of which was deferred to March 31, 2009. Beginning in February 2009 the Company was to be subject to a minimum working capital covenant and in March 2009 to a minimum fixed charge covenant. The requirement for these covenants was also deferred to March 31, 2009. The Company was in violation of these covenants as of March 31, 2009 and obtained a waiver of the violations on May 31, 2009 extending the covenant measurement until August 31, 2009. On August 31, 2009, the Company entered into an amended and restated agreement with the Bank as described in Note 13.

On November 25, 2008, the Company issued Subordinated Debt totaling \$4,000,000 to five related parties (see Note 7). The Subordinated Debt bears interest at a rate of 16%, has a term of three years, and is convertible to membership units at each anniversary date at a cost of \$1,500, \$1,000, and \$500 per unit, respectively, on November 25, 2009, 2010, and 2011.

6. INTEREST RATE SWAP

As discussed in Note 6, the Company entered into a forward starting interest rate swap (the “Swap”) in the notional amount of \$46,950,000 during 2007. The Swap fixed the variable interest rate portion of the term loan subsequent to the Completion Date at

8.655%. The variable rate under the Agreement is equal to LIBOR plus three hundred basis points. The Swap is effective as of October 8, 2008 and terminates on October 8, 2013.

At December 31, 2008 and 2007, the Company recorded a liability related to the fair value of the Swap of \$6,318,012 and \$2,629,872, respectively. The change in fair value of the Swap was recorded in the statements of operations.

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7. RELATED PARTY TRANSACTIONS

The Company has engaged CGB Enterprises Co. (“CGB”), an equity member, to source corn for the plant under a long term agreement on a fee per bushel basis. During the construction of the ethanol plant, the Company engaged Scheckel Construction Co. (“Scheckel”) for the land preparation. The sole owner of Scheckel is a Board member of the Company. The Company has also engaged Fagen, Inc. (“Fagen”) as the general contractor for the design and construction of the Project. The sole owner of Fagen is an equity member of the Company.

Total amounts paid to related parties during the years ended December 31, 2008 and 2007 were as follows:

| | 2008 | 2007 |
|----------|----------------------|---------------------|
| Fagen | \$ 47,848,996 | \$ 75,628,825 |
| Scheckel | 434,289 | 3,163,551 |
| CGB | 51,949,765 | |
| | <u>\$100,233,050</u> | <u>\$78,792,376</u> |

Total amounts payable to related parties at December 31, 2008 and 2007 were as follows:

| | 2008 | 2007 |
|----------|---------------------|----------------------|
| Fagen | \$ 2,500,000 | \$ 11,139,627 |
| Scheckel | | 318,556 |
| CGB | 1,393,245 | |
| Other | | 37,100 |
| | <u>\$ 3,893,245</u> | <u>\$ 11,495,283</u> |

The Company has engaged Murex N.A, LTD, (“Murex”), an equity member, to market ethanol for the plant under a long term agreement on a percentage of revenue commission basis. Total amounts owed to the Company from Murex, as of December 31, 2008 were \$5,012,279.

As discussed in Note 5, the Company entered into convertible subordinated debt agreements with certain equity members of the Company.

8. CONTINGENCIES

The Company's operations are subject to environmental laws and regulations adopted by various governmental authorities in the jurisdiction in which it operates. These laws require the Company to investigate and remediate the effects of the release or disposal of material in its location. Accordingly, the Company has adopted policies, practices and procedures in the areas of pollution control, occupational health, and the production, handling, storage and use of hazardous materials to prevent environmental or other damage, and to limit the financial liability which could result from such events. Environmental liabilities are recorded when the Company's liability is probable and the costs can be reasonably estimated. No such liabilities were recorded at December 31, 2008 and 2007 and the Company is not currently a party to any unsettled legal proceedings at December 31, 2008.

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9. COMMITMENTS

The Company executed a corn origination agreement with CGB, an equity member of the Company, whereby CGB is entitled to the exclusive right for procurement of 100% of the corn needs for the plant. The Company executed a marketing agreement with Murex, an equity member of the Company, whereby Murex is entitled to the exclusive right for sale and distribution of 100% the plant's ethanol. The Company executed a marketing agreement with CHS, Inc., whereby CHS, Inc. is entitled to the exclusive right for sale and distribution of 100% of the plant's dried distiller's grains with solubles, wet distiller's grains and solubles.

10. MAJOR CUSTOMERS

For the year ended December 31, 2008, two customers accounted for all of the Company's revenues and trade accounts receivable. Revenues for the ethanol marketer represented 85% of total revenues for the year ended December 31, 2008. Revenues for the dry distiller grains marketer represented 15% of total revenues for the year ended December 31, 2008. Accounts receivable for the ethanol marketer represented 82% of total outstanding receivables at December 31, 2008. Accounts receivable for the dry distiller grains marketer represented 14% of total outstanding receivables at December 31, 2008.

11. MEMBERS' EQUITY

As specified in the Company's operating agreement, the Company has one class of membership units. The Company is authorized to issue up to 65,000 membership units. No additional units may be issued for less than \$500 per unit without the consent of the majority of the membership units then outstanding. Profits and losses of the Company are allocated to members based on the proportion of units held. As of December 31, 2008 and 2007 the Company had 45,741 membership units issued and outstanding.

12. FAIR VALUE MEASUREMENTS

The Company determines the fair market value of its interest rate swaps, based on the fair value definition and hierarchy levels established in the accounting guidance for fair value measurements and disclosures. This guidance establishes three levels within its hierarchy that may be used to measure fair value:

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2: Observable inputs, including Level 1 prices that have been adjusted; quoted prices for similar assets or liabilities; quoted prices in markets that are less active than traded exchanges; and other inputs that are observable or can be substantially corroborated by observable market data.

Level 3: Unobservable inputs that are supported by little or no market activity, which requires the Company to develop its own assumptions.

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. The following table sets forth, by level, the Company's assets and liabilities that were accounted for at fair value on a recurring basis as of December 31, 2008.

| | Level 1 Inputs | Level 2 Inputs | Level 3 Inputs |
|------------------------------|---------------------------|---------------------------|---------------------------|
| Interest rate swap liability | \$ - | \$ 6,318,012 | \$ - |

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13. SUBSEQUENT EVENT

On August 31, 2009, the Company entered into an amended and restated loan agreement (the "Restated Agreement") with the Bank. The Restated Agreement reduced the maximum availability on the revolving loan to \$5,000,000 and extended the maturity date under the revolving loan to July 31, 2010. The Restated Agreement also revised the fixed charge and net worth covenant requirements; eliminated the working capital covenant; increased the base rate on the various loans, except for the fixed rate loan, to LIBOR plus four hundred fifty basis points with a minimum interest rate of 5.5%; and established a required debt service reserve of \$5,000,000 to be funded by an annual excess cash flow calculation.

The Company is in compliance with the covenants of the Restated Agreement as of September 30, 2009 and expects to be in compliance with the covenants throughout 2010.

* * * * *

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NUGEN ENERGY, LLC
FINANCIAL STATEMENTS
Year Ended July 31, 2010
CHRISTIANSON & ASSOCIATES, PLLP
Certified Public Accountants and Consultants
Willmar, Minnesota

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INDEPENDENT AUDITOR' S REPORT

To the Board of Managers
NuGen Energy, LLC
Marion, South Dakota

We have audited the accompanying balance sheet of **NuGen Energy, LLC** (a South Dakota limited liability company) as of July 31, 2010 and the related statements of operations, members' equity, and cash flows for the year then ended. These financial statements are the responsibility of the company' s management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **NuGen Energy, LLC** as of July 31, 2010 and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

CHRISTIANSON & ASSOCIATES, PLLP
Certified Public Accountants and Consultants
September 22, 2010

NUGEN ENERGY, LLC
BALANCE SHEET
July 31, 2010

ASSETS

CURRENT ASSETS

| | |
|---------------------------|--------------|
| Cash and cash equivalents | \$ 8,146,677 |
| Accounts receivables | |
| Trade | 5,529,020 |
| Related party | 88,296 |
| Inventories | 7,019,491 |
| Prepaid expenses | 452,472 |
| Restricted cash | 790,668 |
| Margin deposits | 736,663 |

TOTAL CURRENT ASSETS 22,763,287

PROPERTY AND EQUIPMENT

| | |
|-----------------------|------------|
| Land and improvements | 4,836,023 |
| Building | 366,595 |
| Equipment | 85,160,789 |

| | |
|--------------------------|-------------|
| | 90,363,407 |
| Accumulated depreciation | (4,500,823) |
| | 85,862,584 |

OTHER ASSETS

| | |
|--------------------------------------|-----------|
| Deposits | 2,422,763 |
| Financing costs, net of amortization | 663,502 |
| | 3,086,265 |

TOTAL ASSETS \$ 111,712,136

LIABILITIES AND MEMBERS' EQUITY

CURRENT LIABILITIES

| | |
|---|--------------|
| Accounts payable | \$ 2,394,258 |
| Accrued liabilities | 816,064 |
| Accrued loss on firm purchase commitments | 382,269 |

TOTAL CURRENT LIABILITIES 3,592,591

LONG-TERM DEBT 93,240,753

| | |
|--|----------------|
| MEMBERS' EQUITY | 14,878,792 |
| TOTAL LIABILITIES AND MEMBERS' EQUITY | \$ 111,712,136 |

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**NUGEN ENERGY, LLC
STATEMENT OF OPERATIONS
Year Ended July 31, 2010**

| | |
|-----------------------------------|--------------------|
| SALES | \$ 234,137,190 |
| COST OF GOODS SOLD | |
| Direct and indirect costs | 215,129,020 |
| Loss on firm purchase commitments | 382,269 |
| | <u>215,511,289</u> |
| GROSS PROFIT | 18,625,901 |
| GENERAL AND ADMINISTRATIVE | 5,263,765 |
| INCOME FROM OPERATIONS | 13,362,136 |
| OTHER INCOME (EXPENSE) | |
| Interest and other income | 14,770 |
| Interest expense | (3,295,007) |
| | <u>(3,280,237)</u> |
| NET INCOME | \$ 10,081,899 |

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**NUGEN ENERGY, LLC
STATEMENT OF MEMBERS' EQUITY
Year Ended July 31, 2010**

| | |
|--|-------------|
| Balance - February 13, 2009 (Date of Inception) | \$ - |
| Capital contributions | 2,000,000 |
| Net loss | (1,324,492) |
| Balance - July 31, 2009 | 675,508 |
| Distributions | (5,140,644) |

| | |
|--|----------------------|
| Class B units issued under intrastate offering | 2,262,029 |
| Capital contributions | 7,000,000 |
| Net income | 10,081,899 |
| Balance - July 31, 2010 | \$ 14,878,792 |

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NUGEN ENERGY, LLC
STATEMENT OF CASH FLOWS
Year Ended July 31, 2010

OPERATING ACTIVITIES

| | |
|--|---------------|
| Net income | \$ 10,081,899 |
| Charges to net income not affecting cash | |
| Depreciation | 4,500,823 |
| Amortization | 145,561 |
| Loss on derivatives | 71,337 |
| Units issued in exchange for inventory | 2,262,029 |
| Loss on firm purchase commitments | 382,269 |
| (Increase) decrease in: | |
| Trade receivables | (1,368,028) |
| Inventories | (1,205,386) |
| Prepaid expenses | 402,620 |
| Margin deposits | (808,000) |
| Increase in: | |
| Accounts payable | 20,567 |
| Accrued liabilities | 1,333,140 |

NET CASH PROVIDED BY OPERATING ACTIVITIES 15,818,831

INVESTING ACTIVITIES

| | |
|------------------------------------|-------------|
| Purchase of property and equipment | (582,297) |
| Restricted cash | (790,668) |
| Deposits | (1,230,263) |

NET CASH USED IN INVESTING ACTIVITIES (2,603,228)

FINANCING ACTIVITIES

| | |
|--|-------------|
| Distributions | (5,140,644) |
| Contributed capital | 7,000,000 |
| Principal payments on term loan | (5,937,252) |
| Net principal payments on revolving line of credit | (2,696,542) |
| Payments for financing costs | (123,603) |

NET CASH USED IN FINANCING ACTIVITIES (6,898,041)

| | |
|--|--------------|
| NET INCREASE IN CASH AND CASH EQUIVALENTS | 6,317,562 |
| CASH AND CASH EQUIVALENTS - beginning of the year | 1,829,115 |
| CASH AND CASH EQUIVALENTS - end of the year | \$ 8,146,677 |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION | |
| Cash paid for interest | \$ 3,295,007 |
| SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES | |
| Additional liability assumed from asset acquisition | \$ 181,270 |

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

NATURE OF BUSINESS - NuGen Energy, LLC (the company), a South Dakota limited liability company, was formed on February 13, 2009 to acquire and operate an ethanol plant located in Marion, South Dakota with a current certified annual production nameplate capacity of 122 million gallons of undenatured ethanol. The company produces ethanol and distiller grains for commercial sales throughout the United States.

On July 30, 2009, the company acquired substantially all the assets and assumed substantially all the liabilities of Marion Energy Investments, LLC for an aggregate purchase price of \$102,045,432, which the company funded through a term loan of \$87,874,547, a \$14,000,000 advance on the company's long term revolving line of credit (see Note D) and cash of \$170,885.

The company recorded this acquisition using the purchase method of accounting in accordance with Accounting Standards Codification (ASC) 805 - Business Combinations. The purchase price equaled the estimated fair value of the identifiable net assets acquired less acquisition-related costs of the transaction.

FISCAL REPORTING PERIOD - The company has adopted a fiscal year ending of July 31 for financial reporting.

USE OF ESTIMATES - The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses during the reporting period. Actual results could differ from those estimates.

REVENUE RECOGNITION - The company generally sells ethanol and related products pursuant to marketing agreements. Revenues are recognized when the customer has taken title and has assumed the risks of ownership, prices are fixed or determinable and collection is reasonably assured. The company's products are generally shipped FOB shipping point.

In accordance with the company's ethanol marketing agreement, a fixed price per gallon is deducted for marketing, storage, and transportation costs and is recorded in cost of goods sold.

CONCENTRATIONS OF CREDIT RISK - The company extends credit to its customers in the ordinary course of business. The company performs periodic credit evaluations of its customers and generally does not require collateral. Substantially all sales of the company are to one customer. The company's operations may vary with the volatility of the commodity and ethanol markets.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CASH AND CASH EQUIVALENTS - The company considers all highly liquid investments with a maturity of three months or less to be cash equivalents. The company's cash balances are maintained in bank depositories and periodically exceed federally insured limits.

TRADE RECEIVABLES - The company has engaged the services of a national marketer to sell substantially all of its ethanol and distiller grain production. The marketer handles nearly all sales functions including billing, logistics, and sales pricing. Once product is shipped, the marketer assumes the risk of payment from the consumer and handles all delinquent payment issues.

Trade receivables are recorded at their estimated net realizable value. Accounts are considered past due if payment is not made on a timely basis in accordance with the company's credit terms. Accounts considered uncollectible are written off in the period they are determined to be uncollectible. As of July 31, 2010, the company believes that all amounts would be collectible and an allowance for bad debts is not considered necessary.

INVENTORIES - Inventories are valued at the lower of cost or market using the first-in, first-out (FIFO) method. Inventories consist of raw materials, work in process, finished goods and spare parts.

RESTRICTED CASH - The company is required by its lending institution to deposit funds in an escrow account for property and equipment repair as well as funds for future property tax liabilities.

DERIVATIVE INSTRUMENTS - The company enters into futures contracts to reduce the risk caused by market fluctuation of corn prices. The fair value of these contracts is based on quoted prices in active exchange-traded markets. The fair value of the derivatives is subject to change due to the changing market conditions. Although the company believes its derivative positions are economic hedges, none have been designated as a hedge for accounting purposes and derivative positions are recorded on the balance sheet at their fair market value, with changes in fair value recognized in current period earnings. The company has categorized the cash flows related to the hedging activities in the same category as the item being hedged.

The company's forward contracts are deemed "normal purchases and normal sales" under Accounting Standards Codification 815 - Derivatives and Hedging (FAS 133), and, therefore, are not marked to market in the company's financial statements.

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NUGEN ENERGY, LLC

NOTES TO FINANCIAL STATEMENTS

July 31, 2010

NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

At July 31, 2010, the company had commitments to purchase a total of 10,454,442 bushels of corn and a total of 274,500 MMBtu's of natural gas under fixed and variable priced forward contracts. The company also had commitments to sell a total of 15,150,200 gallons of ethanol and a total of 38,121 tons of distillers grains under fixed and variable priced forward contracts.

The following tables provide details regarding the company's derivative financial instruments at July 31, 2010, none of which are designated as hedging instruments:

| | Statement of Operations location | Gain (loss) recognized for the period ended July 31, 2010 |
|---------------------|---|--|
| Commodity contracts | Cost of goods sold | \$(71,337) |

PROPERTY AND EQUIPMENT - Property and equipment are stated at the lower of cost or fair value. Significant additions and betterments are capitalized and depreciated over their useful lives with expenditures for maintenance and repairs being charged to operations as incurred.

Depreciation is computed using the straight-line method over the following estimated useful lives:

| | |
|--------------------|----------------|
| Land improvements | 20-40 years |
| Building structure | 20-40 years |
| Grain equipment | 5- 20 years |
| Process equipment | 5- 20 years |
| Other equipment | 5- 15 years |

Depreciation expense for the year ended July 31, 2010 is \$4,500,823.

The company reviews its property and equipment for impairment whenever events indicate that the carrying amount of the asset may not be recoverable within the ordinary course of business. An impairment loss is recorded when the sum of the future cash flows is less than the carrying amount of the asset. No loss has been recorded during the year ended July 31, 2010.

DEPOSITS - The company is required to deposit funds with its various vendors and suppliers including the company's corn procurement agent, a related party through common ownership, for grain purchased on the company's behalf, the company's natural gas provider based on expected usage, the company's electricity provider and an equipment supply company who provides lab equipment. The company also has bonds required by various bureaus for the production of

ethanol that are classified as deposits. Deposits have no set recovery date and are recorded at the scheduled recoverable value.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE A: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

FINANCING COSTS - Financing costs include expenditures directly related to securing debt financing. These costs are amortized over the 15 year life of the related loans using the effective-interest method. Amortization related to financing costs is \$145,561 for the year ended July 31, 2010.

FAIR VALUE OF FINANCIAL INSTRUMENTS - The estimated fair value of financial instruments is determined by reference to various market data and other valuation techniques as appropriate. The carrying amount of cash and cash equivalents, trade receivables, accounts payable and accrued expenses approximates fair value because of the short maturity of these financial instruments. Management believes the fair value of its long-term debt would be difficult to estimate due to the nature of the obligations and the inability to access a similar obligation to base an estimate of fair value.

INCOME TAXES - The company is treated as a partnership for federal and state income tax purposes and generally does not incur income taxes. Instead, their income or losses are included in the income tax returns of the members and partners. Accordingly, no provision or liability for federal or state income taxes has been included in these financial statements.

The company has adopted guidance relating to the recognition of income tax benefits. Primarily due to the company's tax status as a partnership, the adoption of this guidance had no material impact on the company's financial condition or results of operations. As of July 31, 2010, the company does not have any tax years subject to examination by major tax jurisdictions.

NOTE B: MEMBERS' EQUITY

The company was formed on February 13, 2009 to have a perpetual life. The company's ownership is divided into three or more classes, with the initial unit classes being Class A, Class B and Class C. The profits, losses and distributions of the company will be allocated to each class of units based on class percentage ownership, then among the unit holders of a class in proportion to the total units held. Members holding Class A units are entitled to one vote for each unit held on matters requiring a membership vote including election of the Managers to the Board of Managers. Class B and C units have no voting rights.

The rights and privileges associated with the Class C units cannot be amended without the consent of the majority of the Class C units and warrants to issue Class C units (see Note D) outstanding. Transfer of the units is restricted pursuant to the operating agreement and to the applicable tax and securities laws and requires approval of the board of managers.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE B: MEMBER'S EQUITY (continued)

The company was initially capitalized by a member who received 100,000 Class A units upon formation of the company. Subsequently, the company's member contributed a total of \$2,194,945 as capital contributions.

The company also prepared a prospectus for an intrastate offering. The offering was for an aggregate maximum of 4,344,274 Class B Units. The units were only offered and sold to residents of the State of South Dakota who were corn

producers that had corn delivery contracts with the previous owner of the plant. The value of the units are equal to a portion of the difference between the price of corn under corn delivery contracts that were cancelled in connection with the bankruptcy proceedings of a previous owner and the futures price of corn for the related delivery month. Corn producers with cancelled contracts, related to the bankruptcy proceedings of a previous owner had the opportunity to receive 50 percent of the price differential in the form of non-voting Class B Units and 50 percent of the price differential in quarterly cash payments based on an excess cash flow formula set forth in the company's loan agreements in exchange for executing a master corn delivery and subscription agreement with the company in which the producer agreed to deliver the same number of bushels of corn as the cancelled contracts.

The total price differential for all cancelled contracts, rounded to the nearest dollar was \$8,688,548, of which up to \$4,344,274 may be paid out of excess cash flow and up to \$4,344,274 may be paid in Class B Units (4,344,274 Class B Units, valued at \$1 per unit). Each Class B Unit represents the right to receive 0.00000092 percent of the company's assets, profits, losses and distributions. The company's managers, officers, affiliates and future business partners that had corn contracts may also purchase Class B Units in this offering. No cash proceeds were received from the sale of Class B Units in this offering. The company terminated this offering on November 17, 2009.

In total, 175 of the 214 producers who had cancelled contracts accepted all or partial terms of the prospectus and executed new corn delivery contracts, which would provide for total cash payments in the amount of \$2,810,401 and Class B Units in the amount of \$2,727,604. As of July 31, 2010, a total of \$1,730,948 of excess cash flows has been paid and \$2,262,029 in Class B Units have been issued in connection with these corn contracts.

The company has received \$6,805,055 as a cash equity contribution from an unrelated third party for the issuance of 100 Class A Units. The units were issued on June 30, 2010 and are to be held by the subscriber for its own interests and not for sale or freely transferable in connection with any distribution of such interest.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE B: MEMBER'S EQUITY (continued)

On June 30, 2010, the majority owner of the company entered into an agreement to sell 48,949 Class A Units to an unrelated third party. The agreement includes an initial transfer constituting 48.9% of the outstanding Class A units, and an option to purchase additional Class A units from the majority owner up to an amount which would give the unrelated third party a total of 51% of the total outstanding voting and economic interests of the company. As of July 31, 2010, the option has not been exercised and the majority owner has not transferred any additional Class A Units.

As of July 31, 2010, the company has outstanding 100,100 Class A units, 2,262,029 Class B units and no Class C units.

NOTE C: INVENTORIES

Inventories consist of the following as of July 31, 2010:

| | |
|------------------|--------------|
| Ethanol | \$ 1,397,941 |
| Distiller grains | 584,517 |
| Corn | 2,392,601 |
| Chemicals | 552,670 |
| Spare parts | 998,164 |
| Work in process | 1,093,598 |
| | \$ 7,019,491 |

NOTE D: LONG-TERM DEBT

Long-term debt consists of the following as of July 31, 2010:

| | |
|--------------------------|---------------|
| Term loan | \$ 81,937,295 |
| Revolving line of credit | 11,303,458 |
| | <hr/> |
| | 93,240,753 |
| Current maturities | - |
| | <hr/> |
| | \$ 93,240,753 |

On July 23, 2009, the company entered into loan agreements with Dougherty Funding LLC that became effective on July 30, 2009, which include a term loan of \$87,874,547 and a \$20,000,000 revolving line of credit. These loans are secured by substantially all assets of the company. They contain restrictive covenants and require principal prepayments based on excess cash flows. The term loan agreement requires monthly payments be made into reserve accounts with the proceeds to be used for replacement of machinery and equipment and payment of real estate taxes. The company paid loan fees of \$539,375 at the closing and is required to pay an additional \$269,658 over a twenty-four month period. As of July 31, 2010, the company has paid \$146,047 of the additional amount required.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE D: LONG-TERM DEBT (continued)

The revolving line of credit agreement granted the participating financial institutions in the revolving line of credit a warrant to collectively purchase up to 49 Class C units of the company for \$1.00 per unit. The purchase rights were scheduled to be exercisable beginning on July 30, 2010 and to expire August 1, 2015. The number of units eligible for purchase under the warrant would decrease to 28 units if the company received cash equity contributions totaling \$3,000,000 inclusive of up to \$1,000,000 that the sole member may contribute. For each \$142,857 incremental cash equity contribution thereafter the units eligible for purchase under the warrant would be reduced by 1 unit until the cash equity contributions reach \$7,000,000, at which time the warrant would terminate and no units would be entitled to be acquired by the holders of the warrant.

As of July 30, 2010, the company had received \$7,000,000 from signed contribution agreements (see Note B). The proceeds were used in accordance to the terms of the revolving line of credit in order to terminate the warrants. Of the total \$7,000,000 cash equity contribution received, the initial sole member contributed \$194,945 and an unrelated third party contributed \$6,805,055.

The term loan contains a variable interest rate at LIBOR plus 3% (3.5103% at July 31, 2010) and requires interest-only monthly payments for twenty-four months. Thereafter, payments will be based on monthly amortized payments of principal and interest sufficient to amortize the remaining unpaid principal balance over a period of fifteen years with the entire unpaid principal and interest due on August 1, 2015.

Availability on the revolving line of credit of up to \$16,000,000 is limited to the amount calculated in the borrowing base report and expires August 1, 2015. The loan agreement provides a variable interest rate at LIBOR plus 3% (3.5103% at July 31, 2010). There is an unused line fee on the daily unused portion of the commitment at a rate of 0.25% per quarter.

Long-term debt maturities are as follows:

| <u>Years ending July 31,</u> | |
|------------------------------|---------------|
| 2011 | - |
| 2012 | 5,056,017 |
| 2013 | 5,237,616 |
| 2014 | 5,425,738 |
| 2015 | 5,620,617 |
| Thereafter | 71,900,765 |
| | \$ 93,240,753 |

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE E: RELATED PARTY TRANSACTIONS

Grain agency agreement

In June 2009, the company entered into a grain agency agreement with FREMAR, LLC, a party related through common ownership, to act as the company's agent to procure all corn required for ethanol production through the agency agreement. All purchases must be approved by the company prior to a contract being entered into. Payment for purchases will be drawn from a company account with checks prepared by FREMAR, LLC with the company's signature required.

The agreement's initial term is for four years and will be automatically renewed for two successive four-year terms unless either party gives written notice within six months of the current term expiration to the other party of its election not to renew. The agreement may also be terminated by either party upon sixty days' written notice.

The agreement requires the company to pay FREMAR, LLC a fee per bushel of corn purchases for the initial four year term; the fee may be adjusted at the renewal of the agreement. The company is required to maintain a security deposit of \$500,000 with FREMAR, LLC for corn purchases; which is included in deposits on the accompanying balance sheet. For the year ended July 31, 2010, the company has purchased \$134,606,206 of corn and incurred \$673,392 in marketing fees related to this agreement.

Management agreement

In June 2009, the company entered into a management agreement with Central Farmers Cooperative, a member of the company, to receive consulting and management services with respect to the operation of the ethanol production facility. The company pays monthly installments for the services provided for the full term of the agreement. The company is required to reimburse Central Farmers Cooperative for reasonable expenses incurred with prior written notification required for expenditures amounting to more than \$10,000.

The term of the agreement is for five years. The company may extend the agreement for additional periods of five years each. Any party may terminate the agreement for any reason by giving the other party at least ninety days' prior written

notice prior to the expiration of the then current term. The company has incurred \$1,248,000 in management fees for the year ended July 31, 2010.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE E: RELATED PARTY TRANSACTIONS (continued)

Utility Management Agreement

The company assumed a utility management agreement with an entity owned by a member of the company's board of managers in the purchase of the net assets of the plant which was initially entered into in October 2006. In August 2009, the company extended this agreement for an additional 42 month term commencing in March 2011. The agreement can be terminated by either party upon 60 days written notice prior contract end date and requires the company to pay the greater of a per month fee or a per MMBtu fee of actual usage with a percentage increase in the base fee on an annual basis. The company has incurred \$250,632 in utility management fees for the year ended July 31, 2010.

Advisory Service Agreement

The company entered into agreements with an entity owned by a member of the company's board of managers to advise the company on management and operations. The agreement is on a month-to-month term and the company may terminate at its sole discretion. The company has incurred \$310,028 in advisory services for the year ended July 31, 2010.

The company frequently purchases corn from members of its board of managers. The purchases are at market-driven prices and settled at the manager's discretion. As of July 31, 2010, the company has purchased approximately \$664,000 from its managers. The company could purchase corn from other suppliers without any significant effects on operations.

The company has incurred costs related to the equity contribution agreement discussed in Note B, which are to be reimbursed to the company from the related parties involved in the agreement. These costs are recorded as the related party accounts receivable on the accompanying balance sheet.

NOTE F: LEASES

The company leases rail cars under long-term operating lease agreements expiring at various dates through September 2012. The company also leases rail cars on month to month terms. The company is required to pay executory costs such as maintenance and insurance.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE F: LEASES (continued)

Minimum lease payments in future years are as follows:

| <u>Year Ending July 31.</u> | |
|-------------------------------------|--------------|
| 2011 | \$ 777,600 |
| 2012 | 777,600 |
| 2013 | 56,200 |
| | <hr/> |
| Total minimum future lease payments | \$ 1,611,400 |

Total lease expense, including maintenance and insurance costs of \$1,877,166 was incurred during the year ended July 31, 2010.

NOTE G: COMMITMENTS AND CONTINGENCIES

Substantially all of the company's facilities are subject to federal, state, and local regulations relating to the discharge of materials into the environment. Compliance with these provisions has not had, nor does management expect to have, any material effect upon operations other than the items noted below. Management believes that the current practices and procedures for the control and disposition of such wastes will comply with the applicable federal and state requirements.

However, the company received notification from the South Dakota Department of Environment and Natural Resources (SDENR) of noncompliance with the plant's surface water and storm water discharge permits which can subject the company to penalties of up to \$10,000 per day during the period of noncompliance. The company is in communications with the SDENR regarding the noncompliance and although it is the company's understanding that the SDENR does not believe the plant's noncompliance will cause any damage to the environment, the SDENR is still entitled to impose a penalty on the plant for every day of noncompliance with the permits.

Corrective actions have been taken to resolve the noncompliance and the company had an on-site meeting with the SDENR to retest for compliance in June 2010. Verbal rectification of the noncompliance was received during the meeting; however the company is currently waiting for written notification and has determined the probability of a material penalty to be remote and no liability has been recorded.

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NUGEN ENERGY, LLC
NOTES TO FINANCIAL STATEMENTS
July 31, 2010

NOTE G: COMMITMENTS AND CONTINGENCIES (continued)

Marketing agreements

The company has an ethanol sales and marketing agreement with an unrelated party which covers the entire ethanol marketing for the facility. The initial term of the agreement expires in July 2011 and shall be automatically extended for additional one-year terms thereafter, unless either party provides notice of non-renewal 120 days prior to the end of the then-current term. The agreement requires the company to pay the marketer an agreed upon percentage of the net sales price as defined in the agreements with a minimum cost per gallon. The ethanol could be marketed by other marketers without any significant effect on operations.

The company also has a distillers grain sales and marketing agreement with this same marketer which cover the entire distillers grains marketing for the facility. The initial term of the agreement expires in July 2012 and shall be automatically extended for additional one-year terms thereafter, unless either party provides notice of non-renewal 120 days prior to the end of the then-current term. The agreement requires the company to pay the marketer an agreed upon percentage of the net sales price as defined in the agreement with a minimum cost per ton. The distillers grains can be marketed by other marketers without any significant effects on operations.

In April 2010, the company entered into a license agreement for the use of a process fouling control and bio-refining improvements invention system. The agreement also included the costs of chemicals and services necessary to control the process. The initial term of the agreement expires in March 2013 unless the licensor provides a 90-day advance written cancellation, or the company provides a 12 month advance written notice of cancellation. The agreement requires the

company to pay the license for estimated chemical usage in monthly installments of \$29,269. These installments will be reviewed on 6 month intervals beginning in year two of the agreement.

Letters of Credit

Unsecured letters of credit in the amounts of \$1,449,316 and \$409,131, which expire November 1, 2010 and January 1, 2011, respectively, have been issued on the company' s behalf as security for obligations to a vendor. There is no amount drawn against these letters of credit as of July 31, 2010.

NOTE H: SUBSEQUENT EVENTS

In preparing these financial statements, the company has evaluated events and transactions for potential recognition or disclosure through September 22, 2010, the date the financial statements were available to be issued.